

AMENDED IN SENATE MAY 8, 2013
AMENDED IN SENATE APRIL 22, 2013

SENATE BILL

No. 189

Introduced by Senator Monning
(Coauthor: Senator De León)
(Coauthor: Assembly Member Ammiano)

February 7, 2013

An act to add and repeal Section 1367.007 of the Health and Safety Code, and to add and repeal Section 10112.7 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 189, as amended, Monning. Health care coverage: wellness programs.

Existing law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms that take effect January 1, 2014. Among other things, PPACA allows the premium rate charged by a health insurance issuer offering small group or individual coverage to vary only by family composition, rating area, age, and tobacco use, as specified, and prohibits discrimination against individuals based on health status, as specified. PPACA prohibits a health insurance issuer from requiring any individual to pay a premium or contribution that is greater than the premium or contribution paid by a similarly situated individual on the basis of any health status-related factor and prohibits construing this provision to prevent a group health insurance issuer from establishing premium discounts or rebates or modifying copayments or deductibles in return for adherence to wellness programs, as specified.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law allows small employer health care service plan contracts and health insurance policies for plan years on or after January 1, 2014, to vary rates only based on age, geographic region, and family size, as specified.

This bill, until January 1, 2020, would prohibit a health care service plan or health insurer from offering a wellness program in connection with a group health care service plan contract or group health insurance policy, or offering an incentive or reward under a group health care service plan contract or group health insurance policy, based on adherence to a wellness program, unless specified requirements are satisfied. The bill would specify that it does not apply to wellness programs established prior to its enactment provided that those programs comply with all other applicable laws, as specified.

Because a willful violation of the bill's requirements relative to health care service plans would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1367.007 is added to the Health and
- 2 Safety Code, to read:
- 3 1367.007. (a) A health care service plan shall not offer a
- 4 wellness program in connection with a group health care service
- 5 plan contract, or offer an incentive or reward under a group health
- 6 care service plan contract based on adherence to a wellness
- 7 program, unless all of the following requirements are satisfied:
- 8 (1) The program is reasonably designed to promote health or
- 9 prevent disease. A program complies with the preceding sentence
- 10 if the program has a reasonable chance of improving the health

1 of, or preventing disease in, participating individuals, is not overly
2 burdensome, is not a subterfuge for discrimination based on a
3 health status factor, does not lead to cost shifting *from employer*
4 *to employee*, and is not highly suspect in the method chosen to
5 promote health or prevent disease.

6 ~~(2) The incentive or reward is not in the form of a discount on,~~
7 ~~or rebate of, a premium, deductible, copayment, or coinsurance.~~
8 ~~Incentives may include rewards for participation that are not linked~~
9 ~~to premiums, deductibles, copayments, or coinsurance.~~

10 (2) (A) *A financial incentive or reward linked to a premium,*
11 *deductible, copayment, coinsurance, or other cost sharing paid*
12 *by enrollees is permitted only for participation-based programs.*
13 *A financial penalty is not permitted.*

14 (B) *The total amount of incentives linked to the share of a*
15 *premium, deductible, copayment, coinsurance, or other cost*
16 *sharing paid by the enrollee shall not exceed three hundred fifty*
17 *dollars (\$350) annually. This amount shall be adjusted annually*
18 *in a manner consistent with Section 1302(c)(4) of the federal*
19 *Patient Protection and Affordable Care Act (42 U.S.C.*
20 *18022(c)(4)).*

21 (3) *The program may use incentives or rewards for participation*
22 *that reduce the employee share of premium as long as the employee*
23 *share of premium does not exceed 50 percent of the premium*
24 *charged to the group. The employee share of premium shall not*
25 *vary based on a health outcome or other health status factor.*

26 (4) *The program may use incentives or rewards that reduce*
27 *costs to enrollees, including reductions in premiums, deductibles,*
28 *copayments, coinsurance, or other cost sharing, as long as the*
29 *amount does not exceed 20 percent of the original cost without*
30 *the incentive or reward.*

31 ~~(3)~~

32 (5) *Participation in the program is voluntary.*

33 ~~(4)~~

34 (6) *Receipt of an incentive or reward for participation in the*
35 *program is not conditioned on an individual satisfying a standard*
36 *that is related to a health status factor. The following wellness*
37 *Wellness programs, including, but not limited to, the following,*
38 *shall be deemed to satisfy this paragraph:*

39 (A) *A program that reimburses all or part of the cost for*
40 *membership in a fitness center.*

- 1 (B) A diagnostic testing program that provides a reward for
- 2 participation and does not base any part of the reward on outcomes.
- 3 (C) A program that provides a reward to individuals for
- 4 attending a periodic health education seminar, so long as
- 5 ~~participation is not related to a particular health condition or any~~
- 6 ~~the reward is not contingent on a health outcome or~~ other health
- 7 status factor.
- 8 ~~(5)~~
- 9 (7) Participation in the program is offered to all similarly situated
- 10 individuals.
- 11 ~~(6)~~
- 12 (8) Reasonable accommodation is provided for individuals with
- 13 disabilities who seek to voluntarily participate in the program.
- 14 ~~(7)~~
- 15 (9) A reasonably available and equivalent alternative is provided
- 16 to those individuals who seek to voluntarily participate in the
- 17 program but are unable to participate due to occupational
- 18 requirements, a medical condition, or other hardship.
- 19 ~~(8)~~
- 20 (10) All materials related to the program disclose the availability
- 21 of the accommodations under paragraphs ~~(6)~~ (8) and ~~(7)~~ (9).
- 22 ~~(9)~~
- 23 (11) The program assesses the cultural competency needs of
- 24 the health care service plan’s population in its design.
- 25 ~~(10)~~
- 26 (12) The program provides language assistance for limited
- 27 English-speaking individuals.
- 28 ~~(11)~~
- 29 (13) The program does not result in any decrease in benefits
- 30 coverage.
- 31 ~~(12) The program does not result in an increase in premium for~~
- 32 ~~the product as demonstrated through rate review consistent with~~
- 33 ~~Article 6.2 (commencing with Section 1385.01).~~
- 34 ~~(13) The incentive or reward does not exceed the amounts~~
- 35 ~~determined to be unreasonable by regulation by the director in~~
- 36 ~~consultation with the Insurance Commissioner~~
- 37 (14) *The plan reports to the department two years after*
- 38 *implementation of the wellness program and every year thereafter,*
- 39 *demonstrating reasonable effectiveness of the program in terms*

1 of improving health of participants and reducing costs, as
2 determined by the department.

3 ~~(14)~~

4 (15) The incentive or reward does not exceed the percentage of
5 the cost of coverage under the plan contract identified in Section
6 2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C.
7 Sec. 300gg-4(j)(3)(A)) or regulations adopted thereunder.

8 (b) Nothing in this section shall prohibit a wellness program
9 that was established prior to January 1, 2014, and applied consistent
10 with all applicable laws in effect immediately prior to that date,
11 and that is operating immediately prior to that date, from continuing
12 to be carried out for as long as those laws remain in effect *operate*.

13 (c) By March 1, 2019, the department shall submit a report to
14 the appropriate policy committees of the Legislature on the
15 operation of health care service plan-based wellness programs.

16 (d) For purposes of this section, “wellness program” means a
17 program that is designed to promote health or prevent disease.

18 (e) This section shall remain in effect only until January 1, 2020,
19 and as of that date is repealed, unless a later enacted statute, that
20 is enacted before January 1, 2020, deletes or extends that date.

21 SEC. 2. Section 10112.7 is added to the Insurance Code, to
22 read:

23 10112.7. (a) A health insurer shall not offer a wellness program
24 in connection with a group health insurance policy, or offer an
25 incentive or reward under a group health insurance policy based
26 on adherence to a wellness program, unless all of the following
27 requirements are satisfied:

28 (1) The program is reasonably designed to promote health or
29 prevent disease. A program complies with the preceding sentence
30 if the program has a reasonable chance of improving the health
31 of, or preventing disease in, participating individuals, is not overly
32 burdensome, is not a subterfuge for discrimination based on a
33 health status factor, does not lead to cost shifting *from employer*
34 *to employee*, and is not highly suspect in the method chosen to
35 promote health or prevent disease.

36 ~~(2) The incentive or reward is not in the form of a discount on,~~
37 ~~or rebate of, a premium, deductible, copayment, or coinsurance.~~
38 ~~Incentives may include rewards for participation that are not linked~~
39 ~~to premiums, deductibles, copayments, or coinsurance.~~

1 (2) (A) A financial incentive or reward linked to a premium,
 2 deductible, copayment, coinsurance, or other cost sharing paid
 3 by insureds is permitted only for participation-based programs.
 4 A financial penalty is not permitted.

5 (B) The total amount of incentives linked to the share of a
 6 premium, deductible, copayment, coinsurance, or other cost
 7 sharing paid by the insured shall not exceed three hundred fifty
 8 dollars (\$350) annually. This amount shall be adjusted annually
 9 in a manner consistent with Section 1302(c)(4) of the federal
 10 Patient Protection and Affordable Care Act (42 U.S.C.
 11 18022(c)(4)).

12 (3) The program may use incentives or rewards for participation
 13 that reduce the employee share of premium as long as the employee
 14 share of premium does not exceed 50 percent of the premium
 15 charged to the group. The employee share of premium shall not
 16 vary based on a health outcome or other health status factor.

17 (4) The program may use incentives or rewards that reduce
 18 costs to insureds, including reductions in premiums, deductibles,
 19 copayments, coinsurance, or other cost sharing, as long as the
 20 amount does not exceed 20 percent of the original cost without
 21 the incentive or reward.

22 ~~(3)~~

23 (5) Participation in the program is voluntary.

24 ~~(4)~~

25 (6) Receipt of an incentive or reward for participation in the
 26 program is not conditioned on an individual satisfying a standard
 27 that is related to a health status factor. ~~The following wellness~~
 28 *Wellness* programs, including, but not limited to, the following,
 29 shall be deemed to satisfy this paragraph:

30 (A) A program that reimburses all or part of the cost for
 31 membership in a fitness center.

32 (B) A diagnostic testing program that provides a reward for
 33 participation and does not base any part of the reward on outcomes.

34 (C) A program that provides a reward to individuals for
 35 attending a periodic health education seminar, so long as
 36 ~~participation is not related to a particular health condition or any~~
 37 *the reward is not contingent on a health outcome or* other health
 38 status factor.

39 ~~(5)~~

- 1 (7) Participation in the program is offered to all similarly situated
2 individuals.
3 ~~(6)~~
- 4 (8) Reasonable accommodation is provided for individuals with
5 disabilities who seek to voluntarily participate in the program.
6 ~~(7)~~
- 7 (9) A reasonably available and equivalent alternative is provided
8 to those individuals who seek to voluntarily participate in the
9 program but are unable to participate due to occupational
10 requirements, a medical condition, or other hardship.
11 ~~(8)~~
- 12 (10) All materials related to the program disclose the availability
13 of the accommodations under paragraphs ~~(6)~~ (8) and ~~(7)~~ (9).
14 ~~(9)~~
- 15 (11) The program assesses the cultural competency needs of
16 the ~~health care service plan's insurer's covered~~ population in its
17 design.
18 ~~(10)~~
- 19 (12) The program provides language assistance for limited
20 English-speaking individuals.
21 ~~(11)~~
- 22 (13) The program does not result in any decrease in benefits
23 coverage.
24 ~~(12) The program does not result in an increase in premium for~~
25 ~~the product as demonstrated through rate review consistent with~~
26 ~~Article 4.5 (commencing with Section 10181).~~
- 27 ~~(13) The incentive or reward does not exceed the amounts~~
28 ~~determined to be unreasonable by regulation by the commissioner~~
29 ~~in consultation with the Director of the Department of Managed~~
30 ~~Health Care.~~
- 31 (14) *The insurer reports to the department two years after*
32 *implementation of a wellness program and every year thereafter,*
33 *demonstrating reasonable effectiveness of the program in terms*
34 *of improving health of participants and reducing costs, as*
35 *determined by the department.*
36 ~~(14)~~
- 37 (15) The incentive or reward does not exceed the percentage of
38 the cost of coverage under the policy identified in Section
39 2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C.
40 Sec. 300gg-4(j)(3)(A)) or regulations adopted thereunder.

1 (b) Nothing in this section shall prohibit a wellness program
2 that was established prior to January 1, 2014, and applied consistent
3 with all applicable laws in effect immediately prior to that date,
4 and that is operating immediately prior to that date, from continuing
5 ~~to be carried out for as long as those laws remain in effect~~ *operate*.

6 (c) By March 1, 2019, the department shall submit a report to
7 the appropriate policy committees of the Legislature on the
8 operation of health insurer-based wellness programs.

9 (d) For purposes of this section, “wellness program” means a
10 program that is designed to promote health or prevent disease.

11 (e) This section shall remain in effect only until January 1, 2020,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2020, deletes or extends that date.

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.