

AMENDED IN SENATE JANUARY 6, 2014

SENATE BILL

No. 280

Introduced by Senators Lieu and Lara
(Coauthor: Assembly Member Pan)

February 14, 2013

~~An act relating to state government.~~ *An act to amend Section 15926 of the Welfare and Institutions Code, relating to health care coverage.*

LEGISLATIVE COUNSEL'S DIGEST

SB 280, as amended, Lieu. ~~State government: data collection.~~
Insurance affordability programs: application form.

Existing law requires the California Health and Human Services Agency, in consultation with specified entities, to establish a single, standardized, accessible application form and related renewal procedures for insurance affordability programs, as defined, in accordance with specified requirements. Existing law authorizes the form to include questions that are voluntary for applicants to answer regarding demographic data categories, including race, ethnicity, primary language, disability status, and other categories recognized by the federal Secretary of Health and Human Services pursuant to federal law.

This bill would authorize the form to also include questions that are voluntary for applicants to answer regarding sexual orientation and gender identity or expression. The bill would, effective January 1, 2016, require the form to include questions that are voluntary for applicants to answer regarding those demographic data categories.

~~Existing law requires state agencies to follow specific procedures when collecting data relating to the statistical tabulation of minority groups.~~

~~This bill would state the intent of the Legislature to enact legislation that would improve data collection by state agencies on sexual orientation and gender identity.~~

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

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

1 *SECTION 1. Section 15926 of the Welfare and Institutions*
2 *Code, as amended by Section 26 of Chapter 3 of the First*
3 *Extraordinary Session of the Statutes of 2013, is amended to read:*

4 15926. (a) The following definitions apply for purposes of
5 this part:

6 (1) “Accessible” means in compliance with Section 11135 of
7 the Government Code, Section 1557 of the PPACA, and regulations
8 or guidance adopted pursuant to these statutes.

9 (2) “Limited-English-proficient” means not speaking English
10 as one’s primary language and having a limited ability to read,
11 speak, write, or understand English.

12 (3) “Insurance affordability program” means a program that is
13 one of the following:

14 (A) The Medi-Cal program under Title XIX of the federal Social
15 Security Act (42 U.S.C. Sec. 1396 et seq.).

16 (B) The state’s children’s health insurance program (CHIP)
17 under Title XXI of the federal Social Security Act (42 U.S.C. Sec.
18 1397aa et seq.).

19 (C) A program that makes available to qualified individuals
20 coverage in a qualified health plan through the California Health
21 Benefit Exchange established pursuant to Title 22 (commencing
22 with Section 100500) of the Government Code with advance
23 payment of the premium tax credit established under Section 36B
24 of the Internal Revenue Code.

25 (4) A program that makes available coverage in a qualified
26 health plan through the California Health Benefit Exchange
27 established pursuant to Title 22 (commencing with Section 100500)
28 of the Government Code with cost-sharing reductions established
29 under Section 1402 of PPACA and any subsequent amendments
30 to that act.

1 (b) An individual shall have the option to apply for insurance
2 affordability programs in person, by mail, online, by telephone,
3 or by other commonly available electronic means.

4 (c) (1) A single, accessible, standardized paper, electronic, and
5 telephone application for insurance affordability programs shall
6 be developed by the department in consultation with MRMIB and
7 the board governing the Exchange as part of the stakeholder process
8 described in subdivision (b) of Section 15925. The application
9 shall be used by all entities authorized to make an eligibility
10 determination for any of the insurance affordability programs and
11 by their agents.

12 (2) The department may develop and require the use of
13 supplemental forms to collect additional information needed to
14 determine eligibility on a basis other than the financial
15 methodologies described in Section 1396a(e)(14) of Title 42 of
16 the United States Code, as added by the federal Patient Protection
17 and Affordable Care Act (Public Law 111-148), and as amended
18 by the federal Health Care and Education Reconciliation Act of
19 2010 (Public Law 111-152) and any subsequent amendments, as
20 provided under Section 435.907(c) of Title 42 of the Code of
21 Federal Regulations.

22 (3) The application shall be tested and operational by the date
23 as required by the federal Secretary of Health and Human Services.

24 (4) The application form shall, to the extent not inconsistent
25 with federal statutes, regulations, and guidance, satisfy all of the
26 following criteria:

27 (A) The form shall include simple, user-friendly language and
28 instructions.

29 (B) The form may not ask for information related to a
30 nonapplicant that is not necessary to determine eligibility in the
31 applicant's particular circumstances.

32 (C) The form may require only information necessary to support
33 the eligibility and enrollment processes for insurance affordability
34 programs.

35 (D) The form may be used for, but shall not be limited to,
36 screening.

37 (E) The form may ask, or be used otherwise to identify, if the
38 mother of an infant applicant under one year of age had coverage
39 through an insurance affordability program for the infant's birth,
40 for the purpose of automatically enrolling the infant into the

1 applicable program without the family having to complete the
2 application process for the infant.

3 (F) ~~The~~ *(i) Except as specified in clause (ii), the form may*
4 *include questions that are voluntary for applicants to answer*
5 *regarding demographic data categories, including race, ethnicity,*
6 *primary language, disability status, sexual orientation, gender*
7 *identity or expression, and other categories recognized by the*
8 *federal Secretary of Health and Human Services under Section*
9 *4302 of the PPACA.*

10 *(ii) Effective January 1, 2016, the form shall include questions*
11 *that are voluntary for applicants to answer regarding demographic*
12 *data categories, including race, ethnicity, primary language,*
13 *disability status, sexual orientation, gender identity or expression,*
14 *and other categories recognized by the federal Secretary of Health*
15 *and Human Services under Section 4302 of the PPACA.*

16 (G) Until January 1, 2016, the department shall instruct counties
17 to not reject an application that was in existence prior to January
18 1, 2014, but to accept the application and request any additional
19 information needed from the applicant in order to complete the
20 eligibility determination process. The department shall work with
21 counties and consumer advocates to develop the supplemental
22 questions.

23 (d) Nothing in this section shall preclude the use of a
24 provider-based application form or enrollment procedures for
25 insurance affordability programs or other health programs that
26 differs from the application form described in subdivision (c), and
27 related enrollment procedures. Nothing in this section shall
28 preclude the use of a joint application, developed by the department
29 and the State Department of Social Services, that allows for an
30 application to be made for multiple programs, including, but not
31 limited to, CalWORKs, CalFresh, and insurance affordability
32 programs.

33 (e) The entity making the eligibility determination shall grant
34 eligibility immediately whenever possible and with the consent of
35 the applicant in accordance with the state and federal rules
36 governing insurance affordability programs.

37 (f) (1) If the eligibility, enrollment, and retention system has
38 the ability to prepopulate an application form for insurance
39 affordability programs with personal information from available
40 electronic databases, an applicant shall be given the option, with

1 his or her informed consent, to have the application form
2 prepopulated. Before a prepopulated application is submitted to
3 the entity authorized to make eligibility determinations, the
4 individual shall be given the opportunity to provide additional
5 eligibility information and to correct any information retrieved
6 from a database.

7 (2) All insurance affordability programs may accept
8 self-attestation, instead of requiring an individual to produce a
9 document, for age, date of birth, family size, household income,
10 state residence, pregnancy, and any other applicable criteria needed
11 to determine the eligibility of an applicant or recipient, to the extent
12 permitted by state and federal law.

13 (3) An applicant or recipient shall have his or her information
14 electronically verified in the manner required by the PPACA and
15 implementing federal regulations and guidance and state law.

16 (4) Before an eligibility determination is made, the individual
17 shall be given the opportunity to provide additional eligibility
18 information and to correct information.

19 (5) The eligibility of an applicant shall not be delayed beyond
20 the timeliness standards as provided in Section 435.912 of Title
21 42 of the Code of Federal Regulations or denied for any insurance
22 affordability program unless the applicant is given a reasonable
23 opportunity, of at least the kind provided for under the Medi-Cal
24 program pursuant to Section 14007.5 and paragraph (7) of
25 subdivision (e) of Section 14011.2, to resolve discrepancies
26 concerning any information provided by a verifying entity.

27 (6) To the extent federal financial participation is available, an
28 applicant shall be provided benefits in accordance with the rules
29 of the insurance affordability program, as implemented in federal
30 regulations and guidance, for which he or she otherwise qualifies
31 until a determination is made that he or she is not eligible and all
32 applicable notices have been provided. Nothing in this section
33 shall be interpreted to grant presumptive eligibility if it is not
34 otherwise required by state law, and, if so required, then only to
35 the extent permitted by federal law.

36 (g) The eligibility, enrollment, and retention system shall offer
37 an applicant and recipient assistance with his or her application or
38 renewal for an insurance affordability program in person, over the
39 telephone, by mail, online, or through other commonly available

1 electronic means and in a manner that is accessible to individuals
2 with disabilities and those who are limited-English proficient.

3 (h) (1) During the processing of an application, renewal, or a
4 transition due to a change in circumstances, an entity making
5 eligibility determinations for an insurance affordability program
6 shall ensure that an eligible applicant and recipient of insurance
7 affordability programs that meets all program eligibility
8 requirements and complies with all necessary requests for
9 information moves between programs without any breaks in
10 coverage and without being required to provide any forms,
11 documents, or other information or undergo verification that is
12 duplicative or otherwise unnecessary. The individual shall be
13 informed about how to obtain information about the status of his
14 or her application, renewal, or transfer to another program at any
15 time, and the information shall be promptly provided when
16 requested.

17 (2) The application or case of an individual screened as not
18 eligible for Medi-Cal on the basis of Modified Adjusted Gross
19 Income (MAGI) household income but who may be eligible on
20 the basis of being 65 years of age or older, or on the basis of
21 blindness or disability, shall be forwarded to the Medi-Cal program
22 for an eligibility determination. During the period this application
23 or case is processed for a non-MAGI Medi-Cal eligibility
24 determination, if the applicant or recipient is otherwise eligible
25 for an insurance affordability program, he or she shall be
26 determined eligible for that program.

27 (3) Renewal procedures shall include all available methods for
28 reporting renewal information, including, but not limited to,
29 face-to-face, telephone, mail, and online renewal or renewal
30 through other commonly available electronic means.

31 (4) An applicant who is not eligible for an insurance affordability
32 program for a reason other than income eligibility, or for any reason
33 in the case of applicants and recipients residing in a county that
34 offers a health coverage program for individuals with income above
35 the maximum allowed for the Exchange premium tax credits, shall
36 be referred to the county health coverage program in his or her
37 county of residence.

38 (i) Notwithstanding subdivisions (e), (f), and (j), before an online
39 applicant who appears to be eligible for the Exchange with a

1 premium tax credit or reduction in cost sharing, or both, may be
2 enrolled in the Exchange, both of the following shall occur:

3 (1) The applicant shall be informed of the overpayment penalties
4 under the federal Comprehensive 1099 Taxpayer Protection and
5 Repayment of Exchange Subsidy Overpayments Act of 2011
6 (Public Law 112-9), if the individual's annual family income
7 increases by a specified amount or more, calculated on the basis
8 of the individual's current family size and current income, and that
9 penalties are avoided by prompt reporting of income increases
10 throughout the year.

11 (2) The applicant shall be informed of the penalty for failure to
12 have minimum essential health coverage.

13 (j) The department shall, in coordination with MRMIB and the
14 Exchange board, streamline and coordinate all eligibility rules and
15 requirements among insurance affordability programs using the
16 least restrictive rules and requirements permitted by federal and
17 state law. This process shall include the consideration of
18 methodologies for determining income levels, assets, rules for
19 household size, citizenship and immigration status, and
20 self-attestation and verification requirements.

21 (k) (1) Forms and notices developed pursuant to this section
22 shall be accessible and standardized, as appropriate, and shall
23 comply with federal and state laws, regulations, and guidance
24 prohibiting discrimination.

25 (2) Forms and notices developed pursuant to this section shall
26 be developed using plain language and shall be provided in a
27 manner that affords meaningful access to limited-English-proficient
28 individuals, in accordance with applicable state and federal law,
29 and at a minimum, provided in the same threshold languages as
30 required for Medi-Cal managed care plans.

31 (l) The department, the California Health and Human Services
32 Agency, MRMIB, and the Exchange board shall establish a process
33 for receiving and acting on stakeholder suggestions regarding the
34 functionality of the eligibility systems supporting the Exchange,
35 including the activities of all entities providing eligibility screening
36 to ensure the correct eligibility rules and requirements are being
37 used. This process shall include consumers and their advocates,
38 be conducted no less than quarterly, and include the recording,
39 review, and analysis of potential defects or enhancements of the
40 eligibility systems. The process shall also include regular updates

1 on the work to analyze, prioritize, and implement corrections to
2 confirmed defects and proposed enhancements, and to monitor
3 screening.

4 (m) In designing and implementing the eligibility, enrollment,
5 and retention system, the department, MRMIB, and the Exchange
6 board shall ensure that all privacy and confidentiality rights under
7 the PPACA and other federal and state laws are incorporated and
8 followed, including responses to security breaches.

9 (n) Except as otherwise specified, this section shall be operative
10 on January 1, 2014.

11 ~~SECTION 1. It is the intent of the Legislature to enact~~
12 ~~legislation that would improve data collection by state agencies~~
13 ~~on sexual orientation and gender identity.~~