

AMENDED IN ASSEMBLY JUNE 30, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE APRIL 29, 2014

AMENDED IN SENATE MARCH 28, 2014

SENATE BILL

No. 1052

Introduced by Senator Torres

(Coauthor: Assembly Member Waldron)

February 18, 2014

An act to add Section 100503.1 to the Government Code, to amend Sections 1363.01 and 1368.016 of, and to add Section 1367.205 to, the Health and Safety Code, and to amend Section 10123.199 of, and to add Section 10123.192 to, the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1052, as amended, Torres. Health care coverage.

Existing law, the Knox-Keene Health Care Service Plan Act (Knox-Keene 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. The Knox-Keene Act requires a health care service plan that provides prescription drug benefits and maintains one or more drug formularies to provide to members of the public, upon request, a copy of the most current list of prescription drugs on the formulary, as specified.

This bill would require a health care service plan or health insurer that provides prescription drug benefits and maintains one or more drug

~~formularies to post those formularies on its Internet Web-site; site and update that posting within 24 72 hours after making any formulary changes, use a standard template to display formularies, and include in any published formulary, among other information, the prior authorization or step edit requirements for, and the range of cost sharing for, each drug included on the formulary. The bill would authorize the Department of Managed Health Care and the Department of Insurance to develop a standard formulary template and would require plans and insurers to use that template to comply with specified provisions of the bill. changes. The bill would require the departments to jointly develop a standard formulary template and would require plans and insurers to use that template to display formularies, as specified.~~ The bill would make other related conforming changes. Because a willful violation of these requirements by a health care service plan would be a crime, the bill would impose a state-mandated local program.

Existing law establishes the California Health Benefit Exchange within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers.

Existing law requires the board to determine the minimum requirements a health care service plan or health insurer must meet to be considered for participation in the Exchange and the standards and criteria for selecting qualified health plans to be offered through the Exchange that are in the best interests of qualified individuals and qualified small employers.

This bill would require the board of the Exchange to ensure that its Internet Web site provides a direct link to the formularies for each qualified health plan offered through the Exchange that are posted by plans and insurers pursuant to the bill's provisions. The bill would also require the board, on or before ~~January 1, 2016; the later of October 1, 2017, or 18 months after the standard formulary template described above is developed,~~ to create a search tool on its Internet Web site that allows potential enrollees to search for qualified health plans by a particular drug ~~and by a particular therapeutic condition. and compare coverage and cost sharing for that drug.~~

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 100503.1 is added to the Government
2 Code, to read:

3 100503.1. (a) The board shall ensure that the Internet Web
4 site maintained under subdivision (c) of Section 100502 provides
5 a direct link to the formulary, or formularies, for each qualified
6 health plan offered through the Exchange that is posted by the
7 carrier pursuant to Section 1367.205 of the Health and Safety Code
8 or Section 10123.192 of the Insurance Code.

9 (b) On or before ~~January 1, 2016~~, *the later of October 1, 2017,*
10 *or the date that is 18 months after the date the standard formulary*
11 *template is developed pursuant to subdivision (b) of Section*
12 *1367.205 of the Health and Safety Code and subdivision (b) of*
13 *Section 10123.192 of the Insurance Code, the board shall create*
14 *a search tool on the Internet Web site maintained under subdivision*
15 *(c) of Section 100502 that allows potential enrollees to search for*
16 *qualified health plans by a particular drug ~~and by a particular~~*
17 *~~therapeutic condition.~~ and compare coverage and cost sharing for*
18 *that drug.*

19 SEC. 2. Section 1363.01 of the Health and Safety Code is
20 amended to read:

21 1363.01. (a) Every plan that covers prescription drug benefits
22 shall provide notice in the evidence of coverage and disclosure
23 form to enrollees regarding whether the plan uses a formulary.
24 The notice shall be in language that is easily understood and in a
25 format that is easy to understand. The notice shall include an
26 explanation of what a formulary is, how the plan determines which
27 prescription drugs are included or excluded, and how often the
28 plan reviews the contents of the formulary.

29 (b) Every plan that covers prescription drug benefits shall
30 provide to members of the public, upon request, information
31 regarding whether a specific drug or drugs are on the plan's
32 formulary. Notice of the opportunity to secure this information
33 from the plan, including the plan's telephone number for making

1 a request of this nature and the Internet Web site where the
 2 formulary is posted under Section 1367.205, shall be included in
 3 the evidence of coverage and disclosure form to enrollees.

4 (c) Every plan shall notify enrollees, and members of the public
 5 who request formulary information, that the presence of a drug on
 6 the plan's formulary does not guarantee that an enrollee will be
 7 prescribed that drug by his or her prescribing provider for a
 8 particular medical condition.

9 SEC. 3. Section 1367.205 is added to the Health and Safety
 10 Code, to read:

11 1367.205. (a) In addition to the list required to be provided
 12 under Section 1367.20, a health care service plan that provides
 13 prescription drug benefits and maintains one or more drug
 14 formularies shall do all of the following:

15 (1) Post the formulary or formularies for each product offered
 16 by the plan on the plan's Internet Web site in a manner that is
 17 accessible and searchable by potential enrollees, enrollees, and
 18 providers.

19 (2) Update the formularies posted pursuant to paragraph (1)
 20 with any change to those formularies within ~~24~~ 72 hours after
 21 making the change.

22 (3) ~~Use a standard~~ *No later than six months after the date that*
 23 *a standard formulary template is developed under subdivision (b),*
 24 *use that template to display the formulary or formularies for each*
 25 *product offered by the plan. This template shall do both of the*
 26 *following:*

27 (A) ~~Use the United States Pharmacopeia classification system.~~

28 (B) ~~Organize drugs by therapeutic class, listing drugs~~
 29 ~~alphabetically.~~

30 (4) ~~Include all of the following on any published formulary for~~
 31 ~~any product offered by the plan, including, but not limited to, the~~
 32 ~~formulary or formularies posted pursuant to paragraph (1) and the~~
 33 ~~list provided pursuant to Section 1367.20:~~

34 (A) ~~Any prior authorization or step edit requirements for each~~
 35 ~~specific drug included on the formulary.~~

36 (B) ~~The range of cost sharing for a potential enrollee of each~~
 37 ~~specific drug included on the formulary, as follows:~~

38 (i) ~~Under \$100 — \$.~~

39 (ii) ~~\$100-\$250 — \$\$.~~

40 (iii) ~~\$251-\$500 — \$\$\$.~~

1 ~~(iv) Over \$500—\$\$\$\$.~~

2 *(b) (1) By April 1, 2016, the department and the Department*
3 *of Insurance shall jointly, and with input from interested parties*
4 *from at least one public meeting, develop a standard formulary*
5 *template for purposes of paragraph (3) of subdivision (a). In*
6 *developing the template, the department and Department of*
7 *Insurance shall take into consideration existing requirements for*
8 *reporting of formulary information established by the federal*
9 *Centers for Medicare and Medicaid Services.*

10 *(2) The standard formulary template shall include the*
11 *notification described in subdivision (c) of Section 1363.01, and*
12 *as applied to a particular formulary for a product offered by a*
13 *plan, shall do all of the following:*

14 *(A) Include information on cost sharing and utilization controls,*
15 *including prior authorization or step therapy requirements, for*
16 *each drug covered by the product. To the extent feasible, the*
17 *template shall provide consumers with an estimate of their*
18 *out-of-pocket costs for each drug covered by the product.*

19 *(B) Facilitate comparison of drug coverage, cost sharing, and*
20 *utilization controls, including prior authorization or step therapy*
21 *requirements, between products.*

22 *(C) ~~Identification of~~ Indicate any drugs on the formulary that*
23 *are preferred over other drugs on the formulary.*

24 ~~*(D) The notification described in subdivision (c) of Section*~~
25 ~~*1363.01.*~~

26 ~~*(b) The department may develop a standard formulary template*~~
27 ~~*provided that the department consults with the Department of*~~
28 ~~*Insurance on the template design. If the department develops this*~~
29 ~~*template, a health care service plan shall use the template to comply*~~
30 ~~*with paragraph (3) of subdivision (a).*~~

31 *(D) Include information about the coverage of drugs under the*
32 *product's medical benefit. This information shall allow a consumer*
33 *to easily determine whether a drug is covered.*

34 *(c) For purposes of this section, "formulary" means the complete*
35 *list of drugs preferred for use and eligible for coverage under a*
36 *health care service plan product and includes the drugs covered*
37 *under both the pharmacy benefit of the product and the medical*
38 *benefit of the product.*

39 SEC. 4. Section 1368.016 of the Health and Safety Code is
40 amended to read:

1 1368.016. (a) A health care service plan that provides coverage
2 for professional mental health services, including a specialized
3 health care service plan that provides coverage for professional
4 mental health services, shall, pursuant to subdivision (f) of Section
5 1368.015, include on its Internet Web site, or provide a link to,
6 the following information:

7 (1) A telephone number that the enrollee or provider can call,
8 during normal business hours, for assistance obtaining mental
9 health benefits coverage information, including the extent to which
10 benefits have been exhausted, in-network provider access
11 information, and claims processing information.

12 (2) A link to prescription drug formularies posted pursuant to
13 Section 1367.205, or instructions on how to obtain the formulary,
14 as described in Section 1367.20.

15 (3) A detailed summary that describes the process by which the
16 plan reviews and authorizes or approves, modifies, or denies
17 requests for health care services as described in Sections 1363.5
18 and 1367.01.

19 (4) Lists of providers or instructions on how to obtain the
20 provider list, as required by Section 1367.26.

21 (5) A detailed summary of the enrollee grievance process as
22 described in Sections 1368 and 1368.015.

23 (6) A detailed description of how an enrollee may request
24 continuity of care pursuant to subdivisions (a) and (b) of Section
25 1373.95.

26 (7) Information concerning the right, and applicable procedure,
27 of an enrollee to request an independent medical review pursuant
28 to Section 1374.30.

29 (b) Any modified material described in subdivision (a) shall be
30 updated at least quarterly.

31 (c) The information described in subdivision (a) may be made
32 available through a secured Internet Web site that is only accessible
33 to enrollees.

34 (d) The material described in subdivision (a) shall also be made
35 available to enrollees in hard copy upon request.

36 (e) Nothing in this article shall preclude a health care service
37 plan from including additional information on its Internet Web
38 site for applicants, enrollees or subscribers, or providers, including,
39 but not limited to, the cost of procedures or services by health care
40 providers in a plan's network.

1 (f) The department shall include on the department's Internet
2 Web site a link to the Internet Web site of each health care service
3 plan and specialized health care service plan described in
4 subdivision (a).

5 (g) This section shall not apply to Medicare supplement
6 insurance, Employee Assistance Programs, short-term limited
7 duration health insurance, Champus-supplement insurance, or
8 TRI-CARE supplement insurance, or to hospital indemnity,
9 accident-only, and specified disease insurance. This section shall
10 also not apply to specialized health care service plans, except
11 behavioral health-only plans.

12 (h) This section shall not apply to a health care service plan that
13 contracts with a specialized health care service plan, insurer, or
14 other entity to cover professional mental health services for its
15 enrollees, provided that the health care service plan provides a link
16 on its Internet Web site to an Internet Web site operated by the
17 specialized health care service plan, insurer, or other entity with
18 which it contracts, and that plan, insurer, or other entity complies
19 with this section or Section 10123.199 of the Insurance Code.

20 SEC. 5. Section 10123.192 is added to the Insurance Code, to
21 read:

22 10123.192. (a) A health insurer that provides prescription drug
23 benefits and maintains one or more drug formularies shall do all
24 of the following:

25 (1) Post the formulary or formularies for each product offered
26 by the insurer on the insurer's Internet Web site in a manner that
27 is accessible and searchable by potential insureds, insureds, and
28 providers.

29 (2) Update the formularies posted pursuant to paragraph (1)
30 with any change to those formularies within ~~24~~ 72 hours after
31 making the change.

32 (3) ~~Use a standard~~ *No later than six months after the date that*
33 *a standard formulary template is developed under subdivision (b),*
34 *use that template to display the formulary or formularies for each*
35 *product offered by the insurer. This template shall do both of the*
36 *following:*

37 (A) ~~Use the United States Pharmacopeia classification system.~~

38 (B) ~~Organize drugs by therapeutic class, listing drugs~~
39 ~~alphabetically.~~

1 ~~(4) Include all of the following on any published formulary for~~
 2 ~~any product offered by the insurer, including, but not limited to,~~
 3 ~~the formulary or formularies posted pursuant to paragraph (1):~~
 4 ~~(A) Any prior authorization or step edit requirements for each~~
 5 ~~specific drug included on the formulary.~~
 6 ~~(B) The range of cost sharing for a potential insured of each~~
 7 ~~specific drug included on the formulary, as follows:~~
 8 ~~(i) Under \$100 — \$.~~
 9 ~~(ii) \$100-\$250 — \$\$.~~
 10 ~~(iii) \$251-\$500 — \$\$\$.~~
 11 ~~(iv) Over \$500 — \$\$\$\$.~~
 12 ~~(b) (1) By April 1, 2016, the department and the Department~~
 13 ~~of Managed Health Care shall jointly, and with input from~~
 14 ~~interested parties from at least one public meeting, develop a~~
 15 ~~standard formulary template for purposes of paragraph (3) of~~
 16 ~~subdivision (a). In developing the template, the department and~~
 17 ~~Department of Managed Health Care shall take into consideration~~
 18 ~~existing requirements for reporting of formulary information~~
 19 ~~established by the federal Centers for Medicare and Medicaid~~
 20 ~~Services.~~
 21 ~~(2) The standard formulary template shall include a notification~~
 22 ~~that the presence of a drug on the insurer’s formulary does not~~
 23 ~~guarantee that an insured will be prescribed that drug by his or~~
 24 ~~her prescribing provider for a particular medical condition. As~~
 25 ~~applied to a particular formulary for a product offered by an~~
 26 ~~insurer, the standard formulary template shall do all of the~~
 27 ~~following:~~
 28 ~~(A) Include information on cost sharing and utilization controls,~~
 29 ~~including prior authorization or step therapy requirements, for~~
 30 ~~each drug covered by the product. To the extent feasible, the~~
 31 ~~template shall provide consumers with an estimate of their~~
 32 ~~out-of-pocket costs for each drug covered by the product.~~
 33 ~~(B) Facilitate comparison of drug coverage, cost sharing, and~~
 34 ~~utilization controls, including prior authorization or step therapy~~
 35 ~~requirements, between products.~~
 36 ~~(C) Identification of—Indicate any drugs on the formulary that~~
 37 ~~are preferred over other drugs on the formulary.~~
 38 ~~(D) A notification that the presence of a drug on the insurer’s~~
 39 ~~formulary does not guarantee that an insured will be prescribed~~

1 that drug by his or her prescribing provider for a particular medical
2 condition.

3 ~~(b) The department may develop a standard formulary template~~
4 ~~provided that the department consults with the Department of~~
5 ~~Managed Health Care on the template design. If the department~~
6 ~~develops this template, a health insurer shall use the template to~~
7 ~~comply with paragraph (3) of subdivision (a).~~

8 *(D) Include information about the coverage of drugs under the*
9 *product's medical benefit. This information shall allow a consumer*
10 *to easily determine whether a drug is covered.*

11 (c) For purposes of this section, "formulary" means the complete
12 list of drugs preferred for use and eligible for coverage under a
13 health insurance product and includes the drugs covered under
14 both the pharmacy benefit of the product and the medical benefit
15 of the product.

16 SEC. 6. Section 10123.199 of the Insurance Code is amended
17 to read:

18 10123.199. (a) A health insurer that provides coverage for
19 professional mental health services shall establish an Internet Web
20 site. Each Internet Web site shall include, or provide a link to, the
21 following information:

22 (1) A telephone number that the insured or provider can call,
23 during normal business hours, for assistance obtaining mental
24 health benefits coverage information, including the extent to which
25 benefits have been exhausted, in-network provider access
26 information, and claims processing information.

27 (2) A link to prescription drug formularies posted pursuant to
28 Section 10123.192, or instructions on how to obtain formulary
29 information.

30 (3) A detailed summary description of the process by which the
31 insurer reviews and approves, modifies, or denies requests for
32 health care services as described in Section 10123.135.

33 (4) Lists of providers or instructions on how to obtain a provider
34 list as required by Section 10133.1.

35 (5) A detailed summary of the health insurer's grievance process.

36 (6) A detailed description of how the insured may request
37 continuity of care as described in Section 10133.55.

38 (7) Information concerning the right, and applicable procedure,
39 of the insured to request an independent medical review pursuant
40 to Section 10169.

1 (b) Except as otherwise specified, the material described in
2 subdivision (a) shall be updated at least quarterly.

3 (c) The information described in subdivision (a) may be made
4 available through a secured Internet Web site that is only accessible
5 to the insured.

6 (d) The material described in subdivision (a) shall also be made
7 available to insureds in hard copy upon request.

8 (e) Nothing in this article shall preclude an insurer from
9 including additional information on its Internet Web site for
10 applicants or insureds, including, but not limited to, the cost of
11 procedures or services by health care providers in an insurer's
12 network.

13 (f) The department shall include on the department's Internet
14 Web site, a link to the Internet Web site of each health insurer
15 described in subdivision (a).

16 (g) This section shall not apply to Medicare supplement
17 insurance, Employee Assistance Programs, short-term limited
18 duration health insurance, Champus-supplement insurance, or
19 TRI-CARE supplement insurance, or to hospital indemnity,
20 accident-only, and specified disease insurance. This section shall
21 also not apply to specialized health insurance policies, except
22 behavioral health-only policies.

23 (h) This section shall not apply to a health insurer that contracts
24 with a specialized health care service plan, insurer, or other entity
25 to cover professional mental health services for its insureds,
26 provided that the health insurer provides a link on its Internet Web
27 site to an Internet Web site operated by the specialized health care
28 service plan, insurer, or other entity with which it contracts, and
29 that plan, insurer, or other entity complies with this section or
30 Section 1368.016 of the Health and Safety Code.

31 SEC. 7. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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