AMENDED IN SENATE APRIL 15, 2010

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AMENDED IN ASSEMBLY APRIL 15, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 591

Introduced by Assembly Member De La Torre

February 25, 2009

~~An act to add Sections 1385.5 and 1363.08 to the Health and Safety Code, and to amend Section 754 of, and to add Sections 10113.96 and 10123.133 to, the Insurance Code, relating to insurance.~~ *An act to add Sections 1385.01 and 1385.02 to the Health and Safety Code, and to add Sections 10181 and 10182 to the Insurance Code, relating to health care coverage, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 591, as amended, De La Torre. ~~Insurance: referral fees: health plans and insurance: filings: identification cards.~~*Health care coverage: premium rates.*

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. *Under existing law, no change in premium rates or coverage in a health care service plan contract or health insurance policy may become effective without written*

prior notification of the change to the contractholder or policyholder. Existing law prohibits a plan or insurer during the term of a group contract or policy from changing the rate of the premium, copayment, coinsurance, or deductible during specified time periods.

~~This bill would require health care service plans to annually file with the Department of Managed Health Care a copy of each of their plan contracts issued or outstanding in this state as of the end of the previous calendar year and a list of the marketing names used for those contracts, if any. The bill would require health insurers to annually file with the Insurance Commissioner a list of their health insurance policies issued or outstanding in this state in the previous calendar year with more than 50,000 insureds, including the form number and marketing name for those policies. The bill would require the Department of Insurance to use those form numbers and marketing names when tracking the associated insurers and policies.~~

~~The bill would also require a health care service plan or health insurer that issues identification cards to enrollees or insureds to include certain additional information in those cards and would require a plan or insurer to update cards issued to enrollees or insureds prior to January 1, 2010, with this additional information, as specified.~~

This bill would prohibit a health care service plan or health insurer from increasing the premium rate it charges a subscriber or policyholder for a period of 90 days beginning with the date this provision becomes operative. Thereafter, this provision would become inoperative and the bill would prohibit a plan or insurer from increasing premium rates by more than the average percentage increase in the medical care component of the consumer price index for the immediately preceding calendar year, as calculated by the United States Bureau of Labor Statistics, unless the plan or insurer files an application with the Department of Managed Health Care or the Department of Insurance, respectively, and the application is approved by that department. The bill would prohibit approval of an application unless the applicant completes an audit showing that its medical loss ratio would meet or exceed a certain percentage, as specified. The bill would also prohibit a plan or insurer from increasing the premium rate it charges a subscriber or policyholder during the 12 months following the last premium rate increase. The bill would authorize the Department of Managed Health Care and the Department of Insurance to adopt regulations implementing certain of these provisions.

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

~~Under existing law, it is unlawful for a person to solicit, receive, offer, or pay a referral fee for the referral of an individual for the furnishing of services or goods for which the person knows or should have known that whole or partial reimbursement is or may be made by an insurer. Existing law makes a violation of those provisions a misdemeanor, punishable by a fine not to exceed $1,000 for each violation.~~

~~This bill would increase that penalty to $5,000 for each violation.~~

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.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ *2/3*. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. Section 1385.01 is added to the Health and Safety Code, to read:

1385.01. (a) Notwithstanding Section 1374.20 or any other provision of law, a health care service plan shall not increase the premium rate it charges a subscriber for a period of 90 days beginning on the date this section becomes operative.

(b) This section shall not apply to a plan that increases the premium rate it charges a subscriber when the subscriber enters into a new or amended contract that includes increased benefits, provided that the increased premium rate is equivalent to the premium rate charged by the plan for contracts that include similar increased benefits.

(c) This section shall not apply to a health care service plan contract that is issued through a publicly funded state health care coverage program, including the Medi-Cal program and the Healthy Families Program, or to Medicare supplement contracts. This subdivision shall not be construed to exempt health care

service plan contracts issued through the Public Employees' Medical and Hospital Care Act.

(d) This section shall become inoperative 90 days after it becomes operative.

SEC. 2. Section 1385.02 is added to the Health and Safety Code, to read:

1385.02. (a) A health care service plan shall not increase the premium rate it charges a subscriber by more than the average percentage increase in the medical care component of the consumer price index for the immediately preceding calendar year, as calculated by the United States Bureau of Labor Statistics, unless it submits an application to the department, and the application is approved by the department. An application shall not be approved unless the applicant completes an audit showing that the medical loss ratio of the applicant, taking into account the proposed premium rate increase, would meet or exceed the applicable percentage provided for in Section 2718 of the federal Public Health Service Act (Public Law 111-148). The department shall have six months following the receipt of an application to approve or disapprove the application.

(b) A health care service plan shall not increase the premium rate it charges a subscriber during the 12 months following the effective date of the immediately preceding premium rate increase applied by the plan to the subscriber.

(c) The department may adopt regulations to implement this section in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(d) This section shall not apply to a health care service plan contract that is issued through a publicly funded state health care coverage program, including the Medi-Cal program and the Healthy Families Program, or to Medicare supplement contracts. This subdivision shall not be construed to exempt health care service plan contracts issued through the Public Employees' Medical and Hospital Care Act.

(e) This section shall become operative on the date that Section 1385.01 becomes inoperative.

SEC. 3. Section 10181 is added to the Insurance Code, to read:

10181. (a) Notwithstanding Section 10199.48 or any other provision of law, a health insurer shall not increase the premium

rate it charges a policyholder for a period of 90 days beginning on the date this section becomes operative.

(b) This section shall not apply to an insurer that increases the premium rate it charges a policyholder when the policyholder enters into a new or amended policy that includes increased benefits, provided that the increased premium rate is equivalent to the premium rate charged by the insurer for policies that include similar increased benefits.

(c) This section shall not apply to a health insurance policy that is issued through a publicly funded state health care coverage program, including the Medi-Cal program and the Healthy Families Program, or to Medicare supplement policies. This subdivision shall not be construed to exempt health insurance policies issued through the Public Employees' Medical and Hospital Care Act.

(d) This section shall become inoperative 90 days after it becomes operative.

SEC. 4. Section 10182 is added to the Insurance Code, to read:

10182. (a) A health insurer shall not increase the premium rate it charges a policyholder by more than the average percentage increase in the medical care component of the consumer price index for the immediately preceding calendar year, as calculated by the United States Bureau of Labor Statistics, unless it submits an application to the department, and the application is approved by the department. An application shall not be approved unless the applicant completes an audit showing that the medical loss ratio of the applicant, taking into account the proposed premium rate increase, would meet or exceed the applicable percentage provided for in Section 2718 of the federal Public Health Service Act (Public Law 111-148). The department shall have six months following the receipt of an application to approve or disapprove the application.

(b) A health insurer shall not increase the premium rate it charges a policyholder during the 12 months following the effective date of the immediately preceding premium rate increase applied by the insurer to the policyholder.

(c) The department may adopt regulations to implement this section in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(d) This section shall not apply to a health insurance policy that is issued through a publicly funded state health care coverage program, including the Medi-Cal program and the Healthy Families Program, or to Medicare supplement policies. This subdivision shall not be construed to exempt health insurance policies issued through the Public Employees' Medical and Hospital Care Act.

(e) This section shall become operative on the date that Section 10181 becomes inoperative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect consumers from health care coverage premium rate increases, it is necessary that this act take effect immediately.

~~SECTION 1. Section 1385.5 is added to the Health and Safety Code, to read:~~

~~1385.5. A health care service plan shall, by June 30 of each year, file with the department a copy of each of its plan contracts issued or outstanding in this state as of the end of the previous calendar year and a list of the marketing names used for those contracts, if any.~~

~~SEC. 2. Section 1363.08 is added to the Health and Safety Code, to read:~~

~~1363.08. If a health care service plan issues identification cards to enrollees, the cards shall identify the department as the entity that regulates the plan and shall include, but not be limited to, the appropriate telephone number of the department that an enrollee may call for purposes of obtaining assistance or information about submitting a grievance to either the plan or the department pursuant~~

~~to subdivision (b) of Section 1368. A plan shall update identification cards issued to enrollees prior to January 1, 2010, with the information required by this section during the plan's next annual reissuance of the cards or, if the plan does not annually reissue cards, by July 1, 2010.~~

~~SEC. 3. Section 754 of the Insurance Code is amended to read:~~

~~754. (a) It is unlawful for any person to solicit, receive, offer, or pay any referral fee for the referral of an individual for the furnishing of services or goods for which the person knows or should have known that whole or partial reimbursement is or may be made, directly or indirectly, by any insurer. As used in this section, a referral fee is a fee paid by a person furnishing goods or services to another in return for the referral of an individual to that person for the furnishing of services or goods. It includes any referral fee, kickback, bribe, or rebate, whether made directly or indirectly, overtly or covertly, or in cash or in kind. This subdivision does not apply to any of the following:~~

~~(1) Discounts or similar reductions in prices.~~

~~(2) Referral fees between attorneys if legal services are provided pursuant to a contingency fee arrangement if any referral fee is consistent with the Rules of Professional Conduct of the State Bar of California.~~

~~(b) This section applies to all forms of insurance covering a motor vehicle, including commercial and personal lines, and comprehensive coverage, property damage coverage, collision coverage, and liability coverage.~~

~~(c) A violation of this section is a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) for each violation. Proceedings to enforce this section may be brought by any district attorney or other prosecuting attorney.~~

~~SEC. 4. Section 10113.96 is added to the Insurance Code, to read:~~

~~10113.96. (a) A health insurer shall, by June 30 of each year, file with the commissioner a list of its health insurance polices with more than 50,000 insureds issued or outstanding in this state as of the end of the previous calendar year. This list shall identify each type of policy by the form number approved by the department and by marketing name.~~

~~(b) The department shall use the form number and marketing name provided pursuant to subdivision (a) when tracking the associated health insurance policy or health insurer under this part.~~

~~(c) The filing required by this section shall be in addition to the annual filing required under Section 10192.13.~~

~~SEC. 5. Section 10123.133 is added to the Insurance Code, to read:~~

~~10123.133. If a health insurer issues identification cards to insureds, the cards shall identify the department as the entity that regulates the insurer and shall include, but not be limited to, the toll-free telephone number of the unit of the department that deals with consumer affairs. A health insurer shall update identification cards issued to insureds prior to January 1, 2010, with the information required by this section during the insurer's next annual reissuance of the cards or, if the insurer does not annually reissue cards, by July 1, 2010.~~

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

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