AMENDED IN ASSEMBLY APRIL 16, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1521

Introduced by Assembly Member Jones

February 27, 2009

An act to add Sections 1359.1 and 1359.2 to the Health and Safety Code, and to add Sections 10119.4 and 10119.45 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1521, as amended, Jones. Health care coverage: solicitation.

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 regulates the solicitation of health care service plan products and health insurance. Existing law specifies that certain persons who assist applicants in submitting an application to a health care service plan or health insurer have a duty to assist those applicants in providing answers to health questions accurately and completely and requires those persons to make a specified attestation on the written application.

This bill would specify that an entity submitting an application to a plan or insurer that results in the offer, sale, or purchase of health care coverage has a ~~fiduciary~~ duty *of honesty, good faith, and fair dealing* to the offeree or purchaser of that coverage. The bill would also require that entity to disclose to the offeree or purchaser, prior to the sale or purchase of coverage, any compensation received by the entity as fees, commissions, or any other remuneration or thing of value, as specified.

The bill would prohibit the entity from receiving any compensation other than that disclosed pursuant to these provisions. *If the application or offer is made by an employee of the plan or insurer, the bill would require the application or offer to include a written disclosure of that fact.*

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:

SECTION 1. Section 1359.1 is added to the Health and Safety Code, to read:

1359.1. An agent, broker, solicitor, solicitor firm, representative, or any other entity that submits an application to a health care service plan that results in the offer, sale, or purchase of individual or group health care coverage from a health care service plan has a ~~fiduciary duty~~ *duty of honesty, good faith, and fair dealing* to the offeree or purchaser of that coverage.

SEC. 2. Section 1359.2 is added to the Health and Safety Code, to read:

1359.2. (a) *(1)* An agent, broker, solicitor, solicitor firm, representative, or any other entity that submits an application to a health care service plan that results in the offer, sale, or purchase of individual or group health care coverage from a health care service plan shall disclose to the offeree or purchaser of that coverage any compensation received by the agent, broker, solicitor, solicitor firm, representative, or other entity involved in the transaction as fees, commissions, or any other remuneration or thing of value. The disclosure shall include any compensation to be received by the agent, broker, solicitor, solicitor firm, representative, or other entity at any time prior to, during, or after

the period of coverage as a result of the transaction or potential transaction.

(2) If the application or offer is made by an employee of the health care service plan, the application or offer shall include a disclosure in writing that the application or offer is being made by an employee of the health care service plan. If the compensation of the employee is dependent on the volume or amount of purchases he or she generates, this shall also be disclosed to the offeree or purchaser.

(b) The disclosure to the offeree or purchaser shall be made prior to the sale or purchase of coverage.

(c) (1) The disclosure shall provide an estimate of the percentage of the premium to be paid by the offeree or purchaser as compensation to the agent, broker, solicitor, solicitor firm, representative, or other entity.

(2) The estimate shall include the percentage of premium to be paid to the agent, broker, solicitor, solicitor firm, representative, or other entity in the first year of coverage and in future years, if any.

(d) The health care service plan may provide to the offeree or purchaser of individual or group health care coverage the information required under this section. If the plan provides the information to the offeree or purchaser, it shall also provide the same information to the agent, broker, solicitor, solicitor firm, representative, or other entity engaged in the transaction.

(e) The agent, broker, solicitor, solicitor firm, representative, or other entity shall receive no compensation from the plan, the offeree or purchaser, or any other source except for the compensation disclosed to the offeree or purchaser pursuant to this section.

SEC. 3. Section 10119.4 is added to the Insurance Code, to read:

10119.4. An agent, broker, or any other entity that submits an application to a health insurer that results in the offer, sale, or purchase of individual or group health insurance, as defined in Section 106, has a ~~fiduciary duty~~ *duty of honesty, good faith, and fair dealing* to the offeree or purchaser of that insurance.

SEC. 4. Section 10119.45 is added to the Insurance Code, to read:

10119.45. (a) *(1)* An agent, broker, or any other entity that submits an application to a health insurer that results in the offer, sale, or purchase of individual or group health insurance, as defined in Section 106, from a health insurer shall disclose to the offeree or purchaser of that insurance any compensation received by the agent, broker, or other entity involved in the transaction as fees, commissions, or any other remuneration or thing of value. The disclosure shall include any compensation to be received by the agent, broker, or other entity at any time prior to, during, or after the period of insurance as a result of the transaction or potential transaction.

(2) If the application or offer is made by an employee of the health insurer, the application or offer shall include a disclosure in writing that the application or offer is being made by an employee of the health insurer. If the compensation of the employee is dependent on the volume or amount of purchases he or she generates, this shall also be disclosed to the offeree or purchaser.

(b) The disclosure to the offeree or purchaser shall be made prior to the sale or purchase of insurance.

(c) (1) The disclosure shall provide an estimate of the percentage of the premium to be paid by the offeree or purchaser as compensation to the agent, broker, or other entity.

(2) The estimate shall include the percentage of premium to be paid to the agent, broker, or other entity in the first year of insurance and in future years, if any.

(d) The health insurer may provide to the offeree or purchaser of individual or group health insurance the information required under this section. If the insurer provides the information to the offeree or purchaser, it shall also provide the same information to the agent, broker, or other entity engaged in the transaction.

(e) The agent, broker, or other entity shall receive no compensation from the insurer, the offeree or purchaser, or any other source except for the compensation disclosed to the offeree or purchaser pursuant to this section.

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.

O