

Senate Bill No. 56

Passed the Senate August 25, 2010

Secretary of the Senate

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 16809.4 of, and to add Article 2.82 (commencing with Section 14087.98) to Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to health plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 56, Alquist. Health plans: joint ventures.

Existing law creates various health benefits programs, including the Medi-Cal program, administered by the State Department of Health Care Services, and the County Medical Services Program. Existing law, the Knox-Keene Health Care Service Plan Act of 1975, administered by the Department of Managed Health Care, provides for the licensure and regulation of health care service plans.

This bill would authorize certain local initiative health plans, county-organized health plans, and the County Medical Services Program governing board to form joint ventures that consist of contractual relationships to pool risk or share networks, or both, or to provide for the joint or coordinated offering of health plans to individuals and groups. The bill would require all joint ventures established pursuant to the above provisions to meet all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975.

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

SECTION 1. (a) The Legislature finds and declares as follows:

(1) Due to the economic downturn, hundreds of thousands of Californians are joining the ranks of the uninsured or are looking to publicly financed programs for their health care coverage.

(2) Compared to persons with health care coverage, the uninsured are less likely to have a regular source of care, are likely to delay seeing a doctor, and are less likely to receive preventive health care services.

(3) Based on recent data collected by the Kaiser Family Foundation, health care costs continue to rise at a faster rate than general inflation and average wage growth.

(4) The federal Patient Protection and Affordable Care Act (Public Law 111-148), as signed by the President on March 23, 2010, contains reforms that will give Californians better and more affordable choices for how they get their health coverage.

(5) There is a continuing need for affordable health coverage options for those with limited incomes and those who do not receive health coverage through their employment or the employment of a family member.

(6) Due to their structure and design, county local initiative health plans and county-organized health systems have the potential to offer affordable health coverage in the individual and group markets.

(7) Joint ventures involving local initiative health plans and county-organized health systems may be a particularly promising means of providing affordable coverage in many regions of the state.

(b) In light of these findings, it is the intent of the Legislature that representatives of local initiative health plans, county-organized health systems, and consumer, labor, and provider groups hold stakeholder discussions for the purposes of facilitating establishment of affordable health coverage options in the individual and group markets.

SEC. 2. Article 2.82 (commencing with Section 14087.98) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 2.82. Health Plan Joint Ventures

14087.98. (a) Notwithstanding any other provision of law, a health plan that is governed, owned, or operated by a county board of supervisors, a county special commission, a county-organized health system, or a county health authority that is authorized by Section 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, Article 2.8 (commencing with Section 14087.5), Article 2.81 (commencing with Section 14087.96), or Chapter 3 (commencing with Section 101675) of Part 4 of Division 101 of the Health and Safety Code, or the County Medical Services Program governing board pursuant

to paragraph (3) of subdivision (e) of Section 16809.4, may form joint ventures for the joint or coordinated offering of health plans to individuals and groups.

(b) For purposes of this section, the joint ventures may consist of either of the following:

(1) Contractual relationships entered into in order to pool risk or share networks, or both.

(2) Contractual relationships entered into in order to provide for the joint offering or marketing of health plans to individuals and groups.

(c) In forming joint ventures, participating health plans shall seek to contract with designated public hospitals, county health clinics, primary care clinics, and other traditional safety net providers.

(d) If the County Medical Services Program governing board elects to participate in a joint venture as described in this section, the board may elect to contract with a third-party administrator to provide health coverage under the joint venture.

(e) All joint ventures established pursuant to this section shall meet all the requirements of the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

SEC. 3. Section 16809.4 of the Welfare and Institutions Code is amended to read:

16809.4. (a) Counties voluntarily participating in the County Medical Services Program pursuant to Section 16809 may establish the County Medical Services Program Governing Board pursuant to procedures contained in this section. The governing board shall govern the County Medical Services Program.

(b) The membership of the governing board shall be comprised of all of the following:

(1) Three members who shall each be a member of a county board of supervisors.

(2) Three members who shall be county administrative officers.

(3) Two members who shall be county welfare directors.

(4) Two members who shall be county health officials.

(5) One member who shall be the Secretary of California Health and Human Services, or his or her designee, and who shall serve as an ex officio, nonvoting member.

(c) The governing board may establish its own bylaws and operating procedures.

(d) The voting membership of the governing board shall meet all of the following requirements:

(1) All of the members shall hold office or employment in counties that participate in the County Medical Services Program.

(A) The three county supervisor members shall be elected by the boards of supervisors of the CMSP counties, with each county having one vote and convened at the call of the chair of the governing board.

(B) The three county administrative officers shall be elected by the administrative officers of the CMSP counties convened at the call of the chair of the governing board.

(C) The two county health officials shall be selected by the health officials of the CMSP counties convened at the call of the chair of the governing board.

(D) The two county welfare directors shall be elected by the welfare directors of the CMSP counties convened at the call of the chair of the governing board.

(2) Governing board members shall serve three-year terms.

(3) No two persons from the same county may serve as members of the governing board at the same time.

(4) The governing board may elect a permanent chair.

(e) (1) The governing board is hereby established with the following powers:

(A) Determine program eligibility and benefit levels.

(B) Establish reserves and participation fees.

(C) Establish procedures for the entry into, and disenrollment of counties from the County Medical Services Program. Disenrollment procedures shall be fair and equitable.

(D) Establish cost containment and case management procedures, including, but not limited to, alternative methods for delivery of care and alternative methods and rates from those used by the department.

(E) Sue and be sued in the name of the governing board.

(F) Apportion jurisdictional risk to each county.

(G) Utilize procurement policies and procedures of any of the participating counties as selected by the governing board.

(H) Make rules and regulations.

(I) Make and enter into contracts or stipulations of any nature with a public agency or person for the purposes of governing or administering the County Medical Services Program.

(J) Purchase supplies, equipment, materials, property, or services.

(K) Appoint and employ staff to assist the governing board.

(L) Establish rules for its proceedings.

(M) Accept gifts, contributions, grants, or loans from any public agency or person for the purposes of this program.

(N) Negotiate and set rates, charges, or fees with service providers, including alternative methods of payment to those used by the department.

(O) Establish methods of payment that are compatible with the administrative requirements of the department's fiscal intermediary during the term of any contract with the department for the administration of the County Medical Services Program.

(P) Use generally accepted accounting procedures.

(Q) Develop and implement procedures and processes to monitor and enforce the appropriate billing and payment of rates, charges, and fees.

(R) Investigate and pursue repayment of fees billed and paid through improper means, including, but not limited to, fraudulent billing and collection practices by providers.

(S) Pursue third-party recoveries and estate recoveries for services provided under the County Medical Services Program, including the filing and perfecting of liens to secure reimbursement for the reasonable value of benefits provided.

(T) Establish and maintain pilot projects to identify or test alternative approaches for determining eligibility or for providing or paying for services.

(U) Establish provisions for payment to participating counties for making eligibility determinations, as determined by the governing board.

(V) Develop and implement alternative products with varying levels of eligibility criteria and benefits outside of the County Medical Services Program for counties contracting with the governing board for those products, provided that any such products shall be funded separately from the County Medical Services Program and shall not impair the financial stability of that program.

(2) The Legislature finds and declares that the amendment of subparagraph (N) of paragraph (1) in 1995, and the addition of subparagraphs (Q), (R), (S), (T), and (U) in 2006, are declaratory of existing law.

(3) In addition to the powers set forth in paragraph (1), the governing board shall have the power to develop and participate in joint ventures as described in Section 14087.98, provided that the joint ventures shall be funded separately from the County Medical Services Program and shall not impair the financial stability of the program.

(f) (1) The governing board shall be considered a “public entity” for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, and a “local public entity” for purposes of Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, but shall not be considered a “state agency” for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be exempt from that chapter. No participating county shall have any liability for civil judgments awarded against the County Medical Services Program or the governing board. Nothing in this paragraph shall be construed to expand the liability of the state with respect to the County Medical Services Program beyond that set forth in Section 16809. Nothing in this paragraph shall be construed to relieve any county of the obligation to provide health care to indigent persons pursuant to Section 17000, or the obligation of any county to pay its participation fees and share of apportioned and allocated risk.

(2) Before initiating any proceeding to challenge rates of payment, charges, or fees set by the governing board, to seek reimbursement or release of any funds from the County Medical Services Program, or to challenge any other action by the governing board, any prospective claimant shall first notify the governing board, in writing, of the nature and basis of the challenge and the amount claimed. The governing board shall consider the matter within 60 days after receiving the notice and shall promptly thereafter provide written notice of the governing board’s decision. If the governing board contracts with the department for administration of the program in accordance with Section 16809, this paragraph shall have no application to provider audit appeals conducted pursuant to Article 1.5 (commencing with Section

51016) of Chapter 3 of Division 3 of Title 22 of the California Code of Regulations and shall apply to all claims not reviewed pursuant to Section 51003 or 51015 of Title 22 of the California Code of Regulations.

(3) All regulations adopted by the governing board shall clearly specify by reference the statute, court decision, or other provision of law that the governing board is seeking to implement, interpret, or make specific by adopting, amending, or repealing the regulation.

(4) No regulation adopted by the governing board is valid and effective unless the regulation meets the standards of necessity, authority, clarity, consistency, and nonduplication, as defined in paragraph (5).

(5) The following definitions govern the interpretation of this subdivision:

(A) “Necessity” means the record of the regulatory proceeding that demonstrates by substantial evidence the need for the regulation. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(B) “Authority” means the provision of law that permits or obligates the CMSP Governing Board to adopt, amend, or repeal a regulation.

(C) “Clarity” means that the regulation is written or displayed so that the meaning of the regulation can be easily understood by those persons directly affected by it.

(D) “Consistency” means being in harmony with, and not in conflict with, or contradictory to, existing statutes, court decisions, or other provisions of law.

(E) “Nonduplication” means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that the governing board identify any state or federal statute or regulation that is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit the governing board from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in subparagraph (C). This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

(g) The requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title

5 of the Government Code) shall apply to the meetings of the governing board, including meetings held pursuant to subdivision (i), except the board may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations with providers of health care services.

(h) (1) The governing board shall comply with the following procedures for public meetings held to eliminate or reduce the level of services, restrict eligibility for services, or adopt regulations:

(A) Provide prior public notice of those meetings.

(B) Provide that notice not less than 30 days prior to those meetings.

(C) Publish that notice in a newspaper of general circulation in each participating CMSP county.

(D) Include in the notice, at a minimum, the amount and type of each proposed change, the expected savings, and the number of persons affected.

(E) Either hold those meetings in the county seats of at least four regionally distributed CMSP participating counties, or, alternatively, hold two meetings in Sacramento County.

(2) For meetings held outside Sacramento County, the requirements for public meetings pursuant to this subdivision to eliminate or reduce the level of services, or to restrict the eligibility for services or hear testimony regarding regulations to implement any of these service charges, are satisfied if at least three voting members of the governing board hold the meetings as required and report the testimony from those meetings to the full governing board at its next regular meeting. No action shall be taken at any meeting held outside Sacramento County pursuant to this paragraph.

(i) Records of the County Medical Services Program and of the governing board that relate to rates of payment or to the board's negotiations with providers of health care services or to the governing board's deliberative processes regarding either shall not be subject to disclosure pursuant to the Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(j) The following definitions shall govern the construction of this part, unless the context requires otherwise:

(1) “CMSP” or “program” means the County Medical Services Program, which is the program by which health care services are provided to eligible persons in those counties electing to participate in the CMSP pursuant to Section 16809.

(2) “CMSP county” means a county that has elected to participate pursuant to Section 16809 in the CMSP.

(3) “Governing Board” means the County Medical Services Program Governing Board established pursuant to this section.

Approved _____, 2010

Governor