

AMENDED IN ASSEMBLY JUNE 23, 2010

AMENDED IN SENATE MAY 20, 2010

AMENDED IN SENATE MAY 5, 2010

AMENDED IN SENATE APRIL 8, 2010

SENATE BILL

No. 900

**Introduced by Senators Alquist and Steinberg
(Coauthor: Senator Pavley)**

January 26, 2010

An act to add Division 114 (commencing with Section 135000) to the Health and Safety Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 900, as amended, Alquist. California Health Benefits Exchange.

Existing law, the federal Patient Protection and Affordable Care Act, requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and qualified employers, as specified, and meets certain other requirements. Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and the regulation of health insurers by the Department of Insurance. Existing law creates the California Health and Human Services Agency, which consists of various departments.

This bill would establish the California Health Benefits Exchange (the Exchange) within the California Health and Human Services Agency and would require the Exchange to, among other things, implement specified functions imposed by the federal Patient Protection and Affordable Care Act in a consumer-friendly manner, enter into contracts with health care service plans and health insurers seeking to

offer coverage in the Exchange, and provide a choice of products in each region of the state between 5 levels of coverage, as specified. *Under the bill, carriers participating in the Exchange would be required to offer, market, and sell all products made available to individuals and small employers in the Exchange to individuals and small employers purchasing coverage outside the Exchange.* The bill would authorize the Exchange to take ~~other~~ various actions and would require the Exchange to be governed by a board composed of ~~8 members~~ the Secretary of California Health and Human Services and 4 other members appointed by the Governor and the Legislature in a specified manner. The bill would create the California Health Benefits Exchange Fund in the State Treasury and would authorize the board to use moneys in the fund, upon appropriation by the Legislature, for purposes of these provisions. The bill would also require the California Health and Human Services Agency to apply for and receive federal funds for purposes of establishing the Exchange and would make those funds available to the agency and the board for those purposes upon appropriation by the Legislature.

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

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

1 SECTION 1. Division 114 (commencing with Section 135000)
 2 is added to the Health and Safety Code, to read:

3
 4 DIVISION 114. CALIFORNIA HEALTH BENEFITS
 5 EXCHANGE

6
 7 135000. There is hereby established in the California Health
 8 and Human Services Agency, the California Health Benefits
 9 Exchange.

10 135001. For purposes of this division, the following definitions
 11 shall apply:

12 (a) "Board" means the board described in subdivision ~~(f)~~ (j) of
 13 Section ~~135004~~ 135005.

14 (b) "Carrier" means either a private health insurer holding a
 15 valid outstanding certificate of authority from the Insurance
 16 Commissioner or a health care service plan, as defined under
 17 subdivision (f) of Section 1345, licensed by the Department of

1 Managed Health Care, including, but not limited to, a local
2 initiative plan, a county-organized health system, or a joint venture
3 of local initiative plans and county-organized health systems.

4 (c) “Exchange” means the California Health Benefits Exchange
5 established by Section 135000.

6 (d) “Fund” means the California Health Benefits Fund
7 established pursuant to Section ~~135010~~ 135011.

8 (e) “Health plan” and “qualified health plan” have the same
9 meanings as those terms are defined in Section 1301 of the Act.

10 (f) “The Act” means the federal Patient Protection and
11 Affordable Care Act (Public Law 111-148), *as amended by the*
12 *federal Health Care and Education Reconciliation Act of 2010*
13 *(Public Law 111-152).*

14 135002. (a) The purpose of this division is to implement the
15 provisions of the Act requiring the establishment of an American
16 Health Benefit Exchange in this state by creating an exchange in
17 state government.

18 (b) *The purpose and mission of the Exchange is to make quality*
19 *and affordable health care coverage available to eligible*
20 *Californians and to meet the requirements of the Act.*

21 135003. It is the intent of the Legislature that the Exchange
22 ~~provide~~ *do all of the following:*

23 (a) *Provide* a consumer friendly process that facilitates the
24 seamless enrollment of individuals in health care coverage.

25 (b) *Provide an easily understandable marketplace for*
26 *purchasing health care coverage where consumers can identify*
27 *their appropriate and affordable health care coverage choice and,*
28 *if eligible, claim their federal tax and cost-sharing subsidy.*

29 (c) *Organize the health care coverage and cost choices within*
30 *the Exchange to facilitate competition based on price and quality.*

31 ~~135004. The Exchange shall do all of the following:~~

32 (a) ~~Meet the requirements imposed by Section 1311 of the~~
33 ~~135004. The Exchange shall meet the requirements imposed~~
34 ~~by the Act, and perform all of the following functions in a~~
35 ~~consumer-friendly manner:~~

36 (1)

37 (a) Provide for the operation of a toll-free telephone hotline to
38 respond to requests for assistance.

39 (2)

1 (b) Maintain an Internet Web site through which enrollees and
2 prospective enrollees of qualified health plans may obtain
3 standardized comparative information on those plans.

4 ~~(3)~~

5 (c) Assign a rating to each qualified health plan offered through
6 the Exchange in accordance with the criteria developed under
7 paragraph (3) of subdivision (c) of Section 1311 of the Act.

8 ~~(4)~~

9 (d) Utilize a standardized format for presenting health benefits
10 plan options in the Exchange, including the use of the uniform
11 outline of coverage established under Section 2715 of the federal
12 Public Health Service Act.

13 ~~(5)~~

14 (e) Consistent with the system established under Section 1413
15 of the Act, inform individuals of eligibility requirements for the
16 Medi-Cal program, the Healthy Families Program, or any
17 applicable state or local public health care coverage program and,
18 if, through screening of an application by the Exchange, the
19 Exchange determines that an individual is eligible for any of those
20 programs, enroll the individual in that program.

21 ~~(6)~~

22 (f) Establish and make available by electronic means a calculator
23 to determine the actual cost of coverage after the application of
24 any premium tax credit under Section 36B of the Internal Revenue
25 Code of 1986 and any cost-sharing reduction under Section 1402
26 of the Act.

27 ~~(7)~~

28 (g) Grant a certification, subject to Section 1411 of the Act and
29 any implementing regulations, attesting that, for purposes of the
30 individual responsibility penalty under Section 5000A of the
31 Internal Revenue Code of 1986, an individual is exempt from the
32 individual responsibility requirement or from the penalty imposed
33 by that section because of either of the following:

34 ~~(A)~~

35 (1) There is no affordable qualified health plan available through
36 the Exchange, or the individual's employer, covering the
37 individual.

38 ~~(B)~~

1 (2) The individual meets the requirements for any other
2 exemption from the individual responsibility requirement or
3 penalty.

4 *135005. In addition to meeting the requirements of the Act,*
5 *the Exchange shall do all of the following:*

6 (a) *Develop and maintain an electronic clearinghouse of all*
7 *products offered to individuals and small employers by carriers*
8 *both inside and outside of the Exchange to assist individuals and*
9 *small employers in understanding and comparing the available*
10 *products and in making their coverage purchasing decision. In*
11 *developing the electronic clearinghouse, the board may require*
12 *carriers participating in the Exchange to make available and*
13 *regularly update an electronic directory of contracting health care*
14 *providers so individuals seeking coverage through the Exchange*
15 *can search by health care provider name to determine which health*
16 *plans in the Exchange include that health care provider in their*
17 *network, and whether that health care provider is accepting new*
18 *patients for that particular health plan.*

19 (b) *Negotiate and enter into contracts, including selective carrier*
20 *contracts, with carriers seeking to offer coverage in the Exchange.*

21 ~~(c) Establish quality incentives and rewards consistent with~~
22 ~~subdivisions (g) and (h) of Section 1311 of the Act, including, but~~
23 ~~not limited to, incentives that encourage the use of delivery systems~~

24 (c) *Determine the participation requirements, standards, and*
25 *selection criteria for carriers and products offered through the*
26 *Exchange, which may include, but are not limited to, standards*
27 *that encourage the use of delivery systems that deliver*
28 *cost-effective, high-quality care.*

29 (d) *Provide a choice of health plans products in each region of*
30 *the state, including a choice in each region of the state between*
31 *the five levels of coverage contained in subdivisions (d) and (e)*
32 *of Section 1302 of the Act.*

33 (e) *Require, as a condition of participation in the Exchange,*
34 *carriers to do both of the following:*

35 (1) *Fairly and affirmatively offer, market, and sell all products*
36 *made available to individuals in the Exchange to individuals*
37 *purchasing coverage outside the Exchange.*

38 (2) *Fairly and affirmatively offer, market, and sell all products*
39 *made available to small employers in the Exchange to small*
40 *employers purchasing coverage outside the Exchange.*

- 1 (f) Administer a separate Small Business Health Options
2 Program (SHOP) that is designed to assist small employers in
3 facilitating the enrollment of their employees in products offered
4 in the small group market through the Exchange.
- 5 (g) Undertake activities necessary to market and publicize the
6 availability of health care coverage through the Exchange.
- 7 (h) Select and set performance standards and compensation for
8 navigators selected pursuant to subdivision (i) of Section 1311 of
9 the Act.
- 10 (e)
- 11 (i) Employ necessary staff, including actuarial staff.
- 12 ~~(f) Be governed by a board consisting of eight members with~~
13 ~~four-year terms. Of the eight members, four shall be appointed by~~
14 ~~the Governor, two shall be appointed by the Senate Committee on~~
15 ~~Rules, and two shall be appointed by the Speaker of the Assembly.~~
16 ~~Each of the appointed members shall have demonstrated knowledge~~
17 ~~and experience in health care and issues relevant to the board's~~
18 ~~responsibilities. The board shall hold public meetings on a~~
19 ~~bimonthly basis, or more frequently as necessary.~~
- 20 (j) (1) Be governed by a board consisting of five members. Of
21 the five members, two shall be appointed by the Governor, one
22 shall be appointed by the Senate Committee on Rules, and one
23 shall be appointed by the Speaker of the Assembly. The Secretary
24 of California Health and Human Services or his or her designee
25 shall serve as an ex officio voting member.
- 26 (2) Members of the board shall be appointed for a term of four
27 years. Vacancies shall be filled by appointment for the unexpired
28 term.
- 29 (3) Each person appointed to the board shall have demonstrated
30 and acknowledged expertise in at least two of the following areas:
- 31 (A) The health care coverage market.
32 (B) The small group health care coverage market.
33 (C) Health benefits plan administration.
34 (D) Health care finance.
35 (E) Administering a public or private health care delivery
36 system.
- 37 (4) Each member of the board shall have the responsibility and
38 duty to meet the requirements of this division and the Act, to serve
39 the public interest of the individuals and small businesses seeking

1 health care coverage through the Exchange, and to ensure the
2 operational well-being and fiscal solvency of the Exchange.

3 (5) The chairperson of the board shall hire an executive director
4 to organize, administer, and manage the operations of the
5 Exchange, and to serve as secretary and as an *ex officio* nonvoting
6 member of the board.

7 (6) A member of the board shall not be employed by, a
8 consultant for, a member of the board of directors of, affiliated
9 with an agent of, or otherwise a representative of, any carrier or
10 other insurer, agent, or broker, or a health care provider, health
11 care facility, or health clinic. A board member shall not receive
12 compensation for his or her service on the board but may receive
13 per diem and reimbursement for travel and other necessary
14 expenses, as provided in Section 103 of the Business and
15 Professions Code, while engaged in the performance of official
16 duties of the board.

17 (7) The board shall hold public meetings and be subject to the
18 requirements of the Bagley-Keene Open Meeting Act (Article 9
19 commencing with Section 11120) of Chapter 1 of Part 1 of
20 Division 3 of Title 2 of the Government Code), except that the
21 board may hold closed sessions when considering matters related
22 to litigation, personnel, contracting, and the development of rates.

23 ~~(g)~~

24 (k) Receive federal funds for purposes of establishing and
25 administering the Exchange, including funds made available
26 pursuant to Section 1311 of the Act.

27 ~~135005.~~

28 135006. The Exchange may do any of the following:

29 (a) Issue rules and regulations, as necessary. Until January 1,
30 2014, ~~any rules and regulations issued pursuant to this subdivision~~
31 2014, any necessary rules and regulations may be adopted as
32 emergency regulations in accordance with the Administrative
33 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
34 Part 1 of Division 3 of Title 2 of the Government Code). The
35 adoption of these regulations shall be deemed an emergency and
36 necessary for the immediate preservation of the public peace, health
37 and safety, or general welfare.

38 (b) Apply for and receive funds from private foundations.

39 ~~(c) Exercise the federal option set forth in paragraph (2) of~~

1 (c) Report, or contract with an independent entity to report, to
2 the Legislature on whether to adopt the option in subdivision (b)
3 of Section 1311 of the Act to provide a single exchange for
4 providing services to both qualified individuals and ~~qualified small~~
5 ~~employers if the Exchange makes all of the following~~
6 ~~determinations:~~

7 ~~(1) Providing coverage through a single exchange will provide~~
8 ~~a significant benefit for the health coverage marketplace in the~~
9 ~~state.~~

10 ~~(2) Providing coverage through a single exchange will be cost~~
11 ~~effective for both qualified individuals and qualified small~~
12 ~~employers.~~

13 ~~(3) The Exchange can make coverage available through a single~~
14 ~~exchange on a guarantee issue basis without undue risk of adverse~~
15 ~~selection: qualified small employers. The report shall provide data~~
16 ~~on the impact of having a single exchange with a merged individual~~
17 ~~and small group market on rates paid by individuals and by small~~
18 ~~employers, as compared to the impact on those rates of having~~
19 ~~separate exchanges for the individual and small group markets.~~
20 ~~A report submitted under this subdivision shall be submitted in~~
21 ~~compliance with Section 9795 of the Government Code. This~~
22 ~~subdivision shall become inoperative on January 1, 2016.~~

23 (d) Enter into other contracts as are necessary or proper to carry
24 out the duties of the Exchange, including, but not limited to,
25 contracts for enrollment processing.

26 (e) Determine the health benefits coverage for small employers
27 that the Exchange will contract to purchase from participating
28 carriers.

29 (f) Appoint committees, as necessary, to provide technical
30 assistance in the operation of the Exchange.

31 (g) Undertake activities necessary to administer the Exchange,
32 including marketing and publicizing the Exchange and establishing
33 rules, conditions, and procedures for ensuring carrier, employer,
34 and enrollee compliance with Exchange requirements, consistent
35 with federal law and regulations.

36 (h) Consistent with federal procedures established under
37 subdivision (e) of Section 1312 of the Act, establish procedures
38 to allow agents or brokers to do both of the following:

1 (1) Enroll individuals in any qualified health plan in the
2 individual or small group market as soon as the plan is offered
3 through the Exchange.

4 (2) Assist individuals in applying for premium tax credits and
5 cost-sharing reductions for health plans sold through the Exchange.

6 (i) Consistent with subdivision (d) of Section 1311 of the Act,
7 include within the premiums charged to enrollees or employers
8 purchasing coverage through the Exchange an amount sufficient
9 to pay the actual, reasonable, and necessary administrative costs
10 of the Exchange.

11 ~~135006.~~

12 *135007.* (a) Notwithstanding any other provision of law, the
13 Exchange shall not be subject to licensure or regulation by the
14 Department of Insurance or the Department of Managed Health
15 Care.

16 (b) Carriers that contract with the Exchange shall be in good
17 standing with their respective regulatory agencies.

18 ~~135007.~~

19 *135008.* (a) If an individual or an employer is dissatisfied with
20 any action or failure to act that has occurred in connection with
21 eligibility for, or enrollment in, the Exchange, the individual or
22 employer shall have the right to appeal to the board and shall be
23 accorded an opportunity for a fair hearing. Hearings shall be
24 conducted pursuant to the provisions of Chapter 5 (commencing
25 with Section 11500) of Part 1 of Division 3 of Title 2 of the
26 Government Code *to the extent those provisions are consistent*
27 *with appeals requirements imposed under the Act.*

28 (b) *Notwithstanding subdivision (a), the board shall not be*
29 *required to provide an appeal concerning a coverage determination*
30 *if the subject of the appeal is within the jurisdiction of the*
31 *Department of Managed Health Care pursuant to the Knox-Keene*
32 *Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing*
33 *with Section 1340) of Division 2) and its implementing regulations,*
34 *or within the jurisdiction of the Department of Insurance pursuant*
35 *to the Insurance Code and its implementing regulations.*

36 ~~135008.~~

37 *135009.* Nothing in this division shall be construed to compel
38 an individual to enroll in a qualified health plan or to participate
39 in the Exchange.

1 ~~135009.~~

2 *135010.* The California Health and Human Services Agency
3 shall apply for and receive federal funds for purposes of
4 establishing the Exchange, including funds made available pursuant
5 to Section 1311 of the Act.

6 ~~135010.~~

7 *135011.* (a) The California Health Benefits Exchange Fund
8 is hereby created in the State Treasury as a special fund consisting
9 of revenue necessary for the purposes of this division. Any moneys
10 in the fund that are unexpended or unencumbered at the end of a
11 fiscal year may be carried forward to the next succeeding fiscal
12 year *and may be spent without regard to fiscal year.*

13 (b) The board shall establish a prudent reserve in the fund.

14 (c) *Notwithstanding any other provision of law, moneys*
15 *deposited in the fund shall not be loaned to, or borrowed by, any*
16 *other special fund or the General Fund, or a county general fund*
17 *or any other county fund.*

18 ~~(e)~~

19 (d) Except as provided in subdivision ~~(d)~~ (e), moneys in the
20 fund shall, upon appropriation by the Legislature, be used by the
21 board for the purposes of this division.

22 ~~(d)~~

23 (e) Moneys in the fund received pursuant to Section ~~135009~~
24 *135010* shall, upon appropriation by the Legislature, be used by
25 the California Health and Human Services Agency or the board
26 for purposes of establishing the Exchange.

27 ~~(e)~~

28 (f) Notwithstanding Section 16305.7 of the Government Code,
29 all interest earned on the moneys that have been deposited into the
30 fund shall be retained in the fund.