

AMENDED IN ASSEMBLY AUGUST 19, 2010

AMENDED IN ASSEMBLY AUGUST 16, 2010

AMENDED IN ASSEMBLY AUGUST 2, 2010

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
(Principal coauthor: Assembly Member John A. Pérez)
(Coauthor: Senator Pavley)

January 26, 2010

An act to add Title 22 (commencing with Section 100500) to the Government Code, to add Section 1346.2 to the Health and Safety Code, and to add Section ~~10112.2~~ *10112.4* to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 900, as amended, Alquist. California Health Benefit 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.

This bill would, contingent on the enactment and operation of AB 1602, establish the California Health Benefit Exchange (the Exchange) within state government. The bill would require the Exchange to be governed by a board composed of the Secretary of California Health and Human Services and 4 other members appointed by the Governor and the Legislature in a specified manner and would enact other related provisions with respect to the governance of the Exchange. The bill would also require the board of the exchange, or the California Health and Human Services Agency, if a majority of the board has not been appointed, to apply for and receive federal funds for purposes of establishing the Exchange.

The bill would require the Director of the Department of Managed Health Care and the Insurance Commissioner to review an Internet portal developed by the United States Department of Health and Human Services and to jointly develop and maintain an electronic clearinghouse of coverage available in the individual and small employer markets if the federal Internet portal does not adequately achieve certain purposes.

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. It is the intent of the Legislature to enact the
2 necessary statutory changes to California law in order to establish
3 an American Health Benefit Exchange in California as required
4 by the federal Patient Protection and Affordable Care Act (Public
5 Law 111-148), as amended by the federal Health Care and
6 Education Reconciliation Act of 2010 (Public Law 111-152).

7 SEC. 2. Title 22 (commencing with Section 100500) is added
8 to the Government Code, to read:

9
10 TITLE 22. CALIFORNIA HEALTH BENEFIT EXCHANGE

11
12 ~~100500. For purposes of this title, the following definitions~~
13 ~~shall apply:~~

14 ~~(a) "Board" means the board described in subdivision (a) of~~
15 ~~Section 100501.~~

1 ~~(b) “Carrier” means either a private health insurer holding a~~
2 ~~valid outstanding certificate of authority from the Insurance~~
3 ~~Commissioner or a health care service plan, as defined under~~
4 ~~subdivision (f) of Section 1345 of the Health and Safety Code,~~
5 ~~licensed by the Department of Managed Health Care.~~

6 ~~(c) “Exchange” means the California Health Benefit Exchange~~
7 ~~established by Section 100501.~~

8 ~~(d) “Federal act” means the federal Patient Protection and~~
9 ~~Affordable Care Act (Public Law 111-148), as amended by the~~
10 ~~federal Health Care and Education Reconciliation Act of 2010~~
11 ~~(Public Law 111-152), and any amendments to, or regulations or~~
12 ~~guidance issued under, those acts.~~

13 ~~(e) “Fund” means the California Health Trust Fund established~~
14 ~~by Section 100520.~~

15 ~~(f) “Health plan” and “qualified health plan” have the same~~
16 ~~meanings as those terms are defined in Section 1301 of the federal~~
17 ~~act.~~

18 ~~(g) “SHOP Program” means the Small Business Health Options~~
19 ~~Program established by subdivision (m) of Section 100502.~~

20 ~~(h) “Supplemental coverage” means coverage through a~~
21 ~~specialized health care service plan contract, as defined in~~
22 ~~subdivision (o) of Section 1345 of the Health and Safety Code, or~~
23 ~~a specialized health insurance policy, as defined in Section 106 of~~
24 ~~the Insurance Code.~~

25 ~~100501.~~

26 *100500.* (a) There is in state government the California Health
27 Benefit Exchange, an independent public entity not affiliated with
28 an agency or department, which shall be known as the Exchange.
29 The Exchange shall be governed by an executive board consisting
30 of five members who are residents of California. Of the members
31 of the board, two shall be appointed by the Governor, one shall be
32 appointed by the Senate Committee on Rules, and one shall be
33 appointed by the Speaker of the Assembly. The Secretary of
34 California Health and Human Services or his or her designee shall
35 serve as a voting, ex officio member of the board.

36 (b) Members of the board, other than an ex officio member,
37 shall be appointed for a term of four years, except that the initial
38 appointment by the Senate Committee on Rules shall be for a term
39 of five years, and the initial appointment by the Speaker of the
40 Assembly shall be for a term of two years. Appointments by the

1 Governor made after January 2, 2011, shall be subject to
2 confirmation by the Senate. A member of the board may continue
3 to serve until the appointment and qualification of his or her
4 successor. Vacancies shall be filled by appointment for the
5 unexpired term. The board shall elect a chairperson on an annual
6 basis.

7 (c) (1) Each person appointed to the board shall have
8 demonstrated and acknowledged expertise in at least two of the
9 following areas:

- 10 (A) Individual health care coverage.
- 11 (B) Small employer health care coverage.
- 12 (C) Health benefits plan administration.
- 13 (D) Health care finance.
- 14 (E) Administering a public or private health care delivery
15 system.

16 ~~(F) Health plan purchasing.~~
17 *(F) Purchasing health plan coverage.*

18 (2) Appointing authorities shall consider the expertise of the
19 other members of the board and attempt to make appointments so
20 that the board's composition reflects a diversity of expertise.

21 (d) Each member of the board shall have the responsibility and
22 duty to meet the requirements of this title, the federal act, and all
23 applicable state and federal laws and regulations, to serve the public
24 interest of the individuals and small businesses seeking health care
25 coverage through the Exchange, and to ensure the operational
26 well-being and fiscal solvency of the Exchange.

27 (e) In making appointments to the board, the appointing
28 authorities shall take into consideration the cultural, ethnic, and
29 geographical diversity of the state so that the board's composition
30 reflects the communities of California.

31 (f) (1) A member of the board or of the staff of the Exchange
32 shall not be employed by, a consultant to, a member of the board
33 of directors of, affiliated with, or otherwise a representative of, a
34 carrier or other insurer, an agent or broker, a health care provider,
35 or a health care facility or health clinic while serving on the board
36 or on the staff of the Exchange ~~and during the first year following~~
37 ~~that service.~~ A member of the board or of the staff of the Exchange
38 shall not be a member, a board member, or an employee of a trade
39 association of carriers, health facilities, health clinics, or health
40 care providers while serving on the board or on the staff of the

1 Exchange. A member of the board or of the staff of the Exchange
2 shall not be a health care provider unless he or she receives no
3 compensation for rendering services as a health care provider and
4 does not have an ownership interest in a professional health care
5 practice.

6 (2) A board member shall not receive compensation for his or
7 her service on the board but may receive a per diem and
8 reimbursement for travel and other necessary expenses, as provided
9 in Section 103 of the Business and Professions Code, while
10 engaged in the performance of official duties of the board.

11 (3) For purposes of this subdivision, “health care provider”
12 means a person licensed or certified pursuant to Division 2
13 (commencing with Section 500) of the Business and Professions
14 Code, or licensed pursuant to the Osteopathic Act or the
15 Chiropractic Act.

16 (g) No member of the board shall make, participate in making,
17 or in any way attempt to use his or her official position to influence
18 the making of any decision that he or she knows or has reason to
19 know will have a reasonably foreseeable material financial effect,
20 distinguishable from its effect on the public generally, on him or
21 her or a member of his or her immediate family, or on either of
22 the following:

23 (1) Any source of income, other than gifts and other than loans
24 by a commercial lending institution in the regular course of
25 business on terms available to the public without regard to official
26 status aggregating two hundred fifty dollars (\$250) or more in
27 value provided to, received by, or promised to the member within
28 12 months prior to the time when the decision is made.

29 (2) Any business entity in which the member is a director,
30 officer, partner, trustee, employee, or holds any position of
31 management.

32 (h) There shall not be any liability in a private capacity on the
33 part of the board or any member of the board, or any officer or
34 employee of the board, for or on account of any act performed or
35 obligation entered into in an official capacity, when done in good
36 faith, without intent to defraud, and in connection with the
37 administration, management, or conduct of this title or affairs
38 related to this title.

39 (i) The board shall hire an executive director to organize,
40 administer, and manage the operations of the Exchange. The

1 executive director shall be exempt from civil service and shall
2 serve at the pleasure of the board.

3 (j) The board shall be subject to the Bagley-Keene Open Meeting
4 Act (Article 9 (commencing with Section 11120) of Chapter 1 of
5 Part 1 of Division 3 of Title 2), except that the board may hold
6 closed sessions when considering matters related to litigation,
7 personnel, contracting, and rates.

8 (k) (1) The board shall apply for planning and establishment
9 grants made available to the Exchange pursuant to Section 1311
10 of the federal act. If an executive director has not been hired under
11 subdivision (i) when the United States Secretary of Health and
12 Human Services makes the planning and establishment grants
13 available, the California Health and Human Services Agency shall,
14 upon request of the board, submit the initial application for
15 planning and establishment grants to the United States Secretary
16 of Health and Human Services.

17 (2) If a majority of the board has not been appointed when the
18 United States Secretary of Health and Human Services makes the
19 planning and establishment grants available, the California Health
20 and Human Services Agency shall submit the initial application
21 for planning and establishment grants to the United States Secretary
22 of Health and Human Services. Any subsequent applications shall
23 be made as described in paragraph (1) once a majority of the
24 members have been appointed to the board.

25 (3) The board shall be responsible for using the funds awarded
26 by the United States Secretary of Health and Human Services for
27 the planning and establishment of the Exchange, consistent with
28 subdivision (b) of Section 1311 of the federal act.

29 SEC. 3. Section 1346.2 is added to the Health and Safety Code,
30 to read:

31 1346.2. The director shall, in coordination with the Insurance
32 Commissioner, review the Internet portal developed by the United
33 States Secretary of Health and Human Services under subdivision
34 (a) of Section 1103 of the federal Patient Protection and Affordable
35 Care Act (Public Law 111-148) and paragraph (5) of subdivision
36 (c) of Section 1311 of that act, and any enhancements to that portal
37 expected to be implemented by the secretary on or before January
38 1, 2015. The review shall examine whether the Internet portal
39 provides sufficient information regarding all health benefit products
40 offered by health care service plans and health insurers in the

1 individual and small employer markets in California to facilitate
2 fair and affirmative marketing of all individual and small employer
3 products, particularly outside the California Health Benefit
4 Exchange created under Title 22 (commencing with Section
5 100500) of the Government Code. If the director and the Insurance
6 Commissioner jointly determine that the Internet portal does not
7 adequately achieve those purposes, they shall jointly develop and
8 maintain an electronic clearinghouse to achieve those purposes.
9 In performing this function, the director and the Insurance
10 Commissioner shall routinely monitor individual and small
11 employer benefit filings with, and complaints submitted by
12 individuals and small employers to, their respective departments,
13 and shall use any other available means to maintain the
14 clearinghouse.

15 SEC. 4. Section ~~10112.2~~ *10112.4* is added to the Insurance
16 Code, to read:

17 ~~10112.2.~~

18 *10112.4.* The commissioner shall, in coordination with the
19 Director of the Department of Managed Health Care, review the
20 Internet portal developed by the United States Secretary of Health
21 and Human Services under subdivision (a) of Section 1103 of the
22 federal Patient Protection and Affordable Care Act (Public Law
23 111-148) and paragraph (5) of subdivision (c) of Section 1311 of
24 that act, and any enhancements to that portal expected to be
25 implemented by the secretary on or before January 1, 2015. The
26 review shall examine whether the Internet portal provides sufficient
27 information regarding all health benefit products offered by health
28 care service plans and health insurers in the individual and small
29 employer markets in California to facilitate fair and affirmative
30 marketing of all individual and small employer products,
31 particularly outside the Health Benefit Exchange created under
32 Title 22 (commencing with Section 100500) of the Government
33 Code. If the commissioner and the Director of the Department of
34 Managed Health Care jointly determine that the Internet portal
35 does not adequately achieve those purposes, they shall jointly
36 develop and maintain an electronic clearinghouse to achieve those
37 purposes. In performing this function, the commissioner and the
38 Director of the Department of Managed Health Care shall routinely
39 monitor individual and small employer benefit filings with, and
40 complaints submitted by individuals and small employers to, their

1 respective departments, and shall use any other available means
2 to maintain the clearinghouse.

3 SEC. 5. This act shall become operative only if Assembly Bill
4 1602 of the 2009–10 Regular Session is also enacted and becomes
5 operative.

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