

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 617

Introduced by Assembly Member Nazarian

February 20, 2013

An act to amend Section 100501 of, and to add Sections 100506.1, 100506.2, 100506.3, 100506.4, and 100506.5 to, the Government Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 617, as amended, Nazarian. California Health Benefit Exchange: appeals.

Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms that take effect January 1, 2014. PPACA also requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that facilitates the purchase of qualified health plans by qualified individuals and qualified small employers, as specified. Existing law establishes the California Health Benefit Exchange (Exchange) to implement the federal law. Existing law also requires the Exchange board to establish an appeals process for prospective and current enrollees of the Exchange that complies with all requirements of the federal act concerning the role of a state Exchange in facilitating federal appeals of Exchange-related determinations.

This bill would require the Exchange board to contract with the State Department of Social Services to serve as the Exchange appeals entity designated to hear appeals of eligibility determination or redetermination

for persons in the individual market. The bill would establish an appeals process for initial eligibility *or enrollment* determinations and redetermination, including an informal resolution process, as specified, establishing procedures and timelines for hearings with the appeals entity, and notice provisions. The bill would also establish continuing eligibility for individuals during the appeals process.

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. Section 100501 of the Government Code is
2 amended to read:
3 100501. For purposes of this title, the following definitions
4 shall apply:
5 (a) “Board” means the board described in subdivision (a) of
6 Section 100500.
7 (b) “Carrier” means either a private health insurer holding a
8 valid outstanding certificate of authority from the Insurance
9 Commissioner or a health care service plan, as defined under
10 subdivision (f) of Section 1345 of the Health and Safety Code,
11 licensed by the Department of Managed Health Care.
12 (c) “Exchange” means the California Health Benefit Exchange
13 established by Section 100500.
14 (d) “Federal act” means the federal Patient Protection and
15 Affordable Care Act (Public Law 111-148), as amended by the
16 federal Health Care and Education Reconciliation Act of 2010
17 (Public Law 111-152), and any amendments to, or regulations or
18 guidance issued under, those acts.
19 (e) “Fund” means the California Health Trust Fund established
20 by Section 100520.
21 (f) “Health plan” and “qualified health plan” have the same
22 meanings as those terms are defined in Section 1301 of the federal
23 act.
24 (g) “MRMIB” means the Managed Risk Medical Insurance
25 Board, established by Sections 12710 and 12710.1 of the Insurance
26 Code.
27 ~~(g)~~
28 (h) “SHOP Program” means the Small Business Health Options
29 Program established by subdivision (m) of Section 100502.

1 ~~(h)~~
 2 (i) “State health subsidy program” means a program described
 3 in Section 1413(e) of the federal act.

4 ~~(i)~~
 5 (j) “Supplemental coverage” means coverage through a
 6 specialized health care service plan contract, as defined in
 7 subdivision (o) of Section 1345 of the Health and Safety Code, or
 8 a specialized health insurance policy, as defined in Section 106 of
 9 the Insurance Code.

10 SEC. 2. Section 100506.1 is added to the Government Code,
 11 to read:

12 100506.1. An applicant or enrollee has the right to appeal any
 13 of the following:

14 (a) ~~An~~ Any action or inaction related to the individual’s
 15 eligibility for *or enrollment in* a state health subsidy program, or
 16 for advance payment of premium tax credits and cost-sharing
 17 reductions, *or* the amount of the advance payment of the premium
 18 tax credit and level of cost sharing, or eligibility for affordable
 19 plan options.

20 (b) An eligibility determination for an exemption from the
 21 individual responsibility penalty pursuant to Section 1311(d)(4)(H)
 22 of the federal act.

23 (c) A failure to provide timely notice of an eligibility
 24 determination or redetermination *or an enrollment determination*.

25 SEC. 3. Section 100506.2 is added to the Government Code,
 26 to read:

27 100506.2. (a) The entity making ~~a~~ *an eligibility or enrollment*
 28 ~~determination of eligibility~~ described in Section 100506.1 shall
 29 provide notice of the appeals process at the time of application
 30 ~~and determination~~ *at the time of eligibility or enrollment*
 31 *determination*.

32 (b) The entity making ~~a~~ *an eligibility or enrollment*
 33 ~~determination of eligibility~~ described in Section 100506.1 shall
 34 also issue a combined eligibility notice, as defined by Section
 35 435.4 of Title 42 of the Code of Federal ~~Regulations, that~~
 36 *Regulations. The combined eligibility notice* shall contain all of
 37 the following:

38 (1) Information about each state health subsidy program for
 39 which an individual or multiple family members of a household

1 have been determined to be eligible or ineligible and the effective
2 date of eligibility and enrollment.

3 (2) Information regarding *all of* the bases of eligibility for
4 non-Modified Adjusted Gross Income (MAGI) Medi-Cal and the
5 benefits and services afforded to individuals eligible on those
6 bases, sufficient to enable the individual to make an informed
7 choice as to whether to appeal the *eligibility* determination *or the*
8 *date of enrollment*.

9 (3) An explanation that the applicant or enrollee may appeal ~~an~~
10 *any* action or inaction related to an individual's eligibility for *or*
11 *enrollment* in a state health subsidy program with which the
12 applicant or enrollee is dissatisfied by requesting a *state fair*
13 hearing consistent with Section 100506.4 and the provisions of
14 Chapter 7 (commencing with Section 10950) of Part 2 of Division
15 9 of the Welfare and Institutions Code.

16 (4) Information on the applicant or enrollee's right to represent
17 himself or herself or to be represented by legal counsel or an
18 authorized representative as provided in subdivision (f) of Section
19 100506.4.

20 (5) An explanation of the circumstances under which the
21 applicant's or enrollee's eligibility ~~may~~ *shall* be maintained or
22 reinstated pending an appeal decision, pursuant to Section
23 100506.5.

24 SEC. 4. Section 100506.3 is added to the Government Code,
25 to read:

26 100506.3. The board shall enter into a contract with the State
27 Department of Social Services to serve as the Exchange appeals
28 entity designated to hear appeals of eligibility *or enrollment*
29 determination or redetermination for persons in the individual
30 market, pursuant to Section 100506 and Subpart F of Part 155 of
31 Title 45 of the Code of Federal Regulations. Except as otherwise
32 provided in this title, the hearing process shall be governed by the
33 Medi-Cal hearing process established in Chapter 7 (commencing
34 with Section 10950) of Part 2 of Division 9 of the Welfare and
35 Institutions Code.

36 SEC. 5. Section 100506.4 is added to the Government Code,
37 to read:

38 100506.4. (a) (1) Except as provided in paragraph (2), the
39 State Department of Social Services, acting as the appeals entity,
40 shall allow an applicant or enrollee to request an appeal within 90

1 days of the date of the notice of an eligibility *or enrollment*
2 determination, *unless there is good cause as provided in Section*
3 *10951 of the Welfare and Institutions Code.*

4 (2) The appeals entity shall establish and maintain a process for
5 an applicant or enrollee to request an expedited appeals process
6 where there is immediate need for health services because a
7 standard appeal could seriously jeopardize the appellant's life,
8 health, or the ability to attain, maintain, or regain maximum
9 function. If an expedited appeal is granted, the decision shall be
10 issued within three working days or as soon as is required by the
11 appellant's condition. If an expedited appeal is denied, the appeals
12 entity shall notify the appellant within two days by telephone or
13 *commonly available* electronic ~~media~~, *means*, to be followed in
14 writing, of the denial of an expedited appeal. If an expedited appeal
15 is denied, the appeal shall be handled through the standard appeal
16 process.

17 (b) Appeal requests may be submitted to the appeals entity by
18 telephone, by mail, in person, through the Internet, *through other*
19 *commonly available electronic means*, or by facsimile.

20 (c) The staff of the ~~Exchange~~ *may Exchange, the county, or*
21 *MRMIB shall* assist the applicant or enrollee in making the appeal
22 request.

23 (d) (1) Upon receipt of an appeal, the appeals entity shall send
24 timely acknowledgment to the appellant that the appeal has been
25 received. The acknowledgment shall include information relating
26 to the appellant's eligibility for benefits while the appeal is
27 pending, an explanation that advance payments of the premium
28 tax credit while the appeal is pending are subject to reconciliation,
29 an explanation that the appellant may participate in informal
30 resolution pursuant to subdivision (g), and information regarding
31 how to initiate informal resolution.

32 (2) Upon receipt of an appeal *request*, the appeals entity shall
33 send, via secure electronic interface, ~~timely acknowledgment notice~~
34 of the appeal to the ~~entity that made the determination of eligibility~~
35 ~~being appealed~~ *Exchange and the county and, if related to the*
36 *Access for Infants and Mothers or the Healthy Families Program,*
37 *MRMIB.*

38 (3) Upon receipt of the notice of appeal from the appeals entity,
39 the entity that made the determination of eligibility *or enrollment*
40 being appealed shall transmit, either as a hard copy or

1 electronically, the appellant’s eligibility ~~record~~ *and enrollment*
 2 *records* for use in the adjudication of the appeal to the appeals
 3 entity.

4 ~~(4) Upon receipt of an appeal that fails to meet the requirements~~
 5 ~~of this section, the appeals entity shall promptly and without undue~~
 6 ~~delay send written notice to the appellant that the appeal is not~~
 7 ~~accepted and the reason why. The appellant shall be given an~~
 8 ~~opportunity to cure, if possible, and the appeals entity shall accept~~
 9 ~~amended appeals that fulfill all the requirements for appeal,~~
 10 ~~including timeliness.~~

11 (e) A member of the board, employee of the Exchange, a county,
 12 ~~the Managed Risk Medical Insurance Board (MRMIB), MRMIB,~~
 13 or the appeals entity shall not limit or interfere with an applicant
 14 or enrollee’s right to make an appeal or attempt to direct the
 15 individual’s decisions regarding the appeal.

16 (f) An applicant or enrollee may be represented by counsel or
 17 designate an authorized representative to act on his or her behalf,
 18 including, but not limited to, when making an appeal request and
 19 participating in the informal resolution process provided in
 20 subdivision (g).

21 (g) An applicant or enrollee who files an appeal shall have the
 22 opportunity for informal resolution, prior to a hearing, that
 23 conforms with all of the following:

24 *(1) A representative of the Exchange, the county, or MRMIB*
 25 *shall contact the appellant and offer to discuss the determination*
 26 *with the appellant if he or she agrees.*

27 ~~(1)~~

28 (2) The appellant’s right to a hearing shall be preserved if the
 29 appellant is dissatisfied with the outcome of the informal resolution
 30 process. *The appellant or the authorized representative may*
 31 *withdraw the hearing request voluntarily or may agree to a*
 32 *conditional withdrawal that shall list the agreed-upon conditions*
 33 *that the appellant and the Exchange, county, or MRMIB shall*
 34 *meet.*

35 ~~(2)~~

36 (3) If the appeal advances to a hearing, the appellant shall not
 37 be required to provide duplicative information or documentation
 38 that he or she previously provided during the application,
 39 redetermination, or informal resolution processes.

40 ~~(3)~~

1 (4) The informal resolution process shall not delay the timeline
2 for a provision of a hearing.

3 (5) *The informal resolution process is voluntary and neither an*
4 *appellant's participation nor nonparticipation in the informal*
5 *resolution process shall affect the right to a hearing under this*
6 *section.*

7 ~~(4)~~

8 (6) For eligibility *or enrollment* determinations for state health
9 subsidy programs based on modified adjusted gross income
10 (MAGI), the appellant may initiate the informal resolution process
11 with the entity that made the ~~eligibility~~ determination, except that
12 all of the following shall apply:

13 (A) The Exchange shall conduct informal resolution involving
14 issues related only to the Exchange, including, but not limited to,
15 exemption from the individual responsibility penalty pursuant to
16 Section 1311(d)(4)(H) of the federal act, offers of affordable
17 employer coverage, special enrollment periods, and eligibility for
18 affordable plan options.

19 (B) Counties shall conduct informal resolution involving issues
20 related to non-MAGI Medi-Cal.

21 (C) MRMIB shall conduct informal resolution involving issues
22 related only to the Access for Infants and Mothers Program or the
23 Healthy Families Program.

24 ~~(5)~~

25 (7) The staff involved in the informal resolution process shall
26 try to resolve the issue through a review of case documents, *in*
27 *person or through electronic means as desired by the appellant,*
28 and shall give the appellant the opportunity to review case
29 documents, verify the accuracy of submitted documents, and submit
30 updated information or provide further explanation of previously
31 submitted documents.

32 ~~(6)~~

33 (8) The informal resolution process set forth by the State
34 Department of ~~Health Care Service's~~ *Social Services'* Manual of
35 Policies and Procedures Section 22-073 shall be used for the
36 informal resolutions pursuant to this subdivision.

37 (h) (1) A position statement, as required by Section 10952.5
38 of the Welfare and Institutions Code, shall be electronically
39 available at least two working days before the hearing on the
40 appeal.

1 (2) The appeals entity shall send written notice, electronically
2 or in hard copy, to the appellant of the date, time, and location of
3 the hearing no later than 15 days prior to the date of the hearing.
4 If the date, time, and location of the hearing are prohibitive of
5 participation by the appellant, the appeals entity shall make
6 reasonable efforts to set a reasonable, mutually convenient date,
7 time, and location. *The notice shall include the right of the*
8 *appellant to request that the hearing be held via telephone or video*
9 *conference and include instructions for submitting the request on*
10 *the notice, by telephone or through other commonly available*
11 *electronic means.*

12 (3) The format of the hearing ~~may be telephonic, video~~
13 ~~teleconference, or in person.~~ *shall be in person, unless the appellant*
14 *requests the hearing be held telephonically or via video conference*
15 *pursuant to paragraph (2).*

16 (4) The hearing shall be an evidentiary hearing where the
17 appellant may present evidence, bring witnesses, establish all
18 relevant facts and circumstances, and question or refute any
19 testimony or evidence, including, but not limited to, the opportunity
20 to confront and cross-examine adverse witnesses, if any.

21 (5) The hearing shall be conducted by one or more impartial
22 officials who have not been directly involved in the eligibility *or*
23 *enrollment* determination or any prior appeal decision in the same
24 matter.

25 (6) The appellant shall have the opportunity to review his or
26 her appeal record, *case file*, and all documents to be used by the
27 appeals entity at the hearing, at a reasonable time before the date
28 of the hearing as well as during the hearing.

29 (7) Cases and evidence shall be reviewed de novo by the appeals
30 entity.

31 (i) Decisions shall be made within 90 days from the date the
32 appeal is filed, ~~or as soon as administratively feasible,~~ and shall
33 be based exclusively on the application of the *applicable laws and*
34 *eligibility and enrollment* rules to the information used to make
35 the eligibility *or enrollment* decision, as well as any other
36 information provided by the appellant during the course of the
37 appeal. The content of the decision of appeal shall include a
38 decision with a plain language description of the effect of the
39 decision on the appellant's eligibility *or enrollment*, a summary
40 of the facts relevant to the appeal, an identification of the legal

1 basis for the decision, and the effective date of the decision, which
2 may be retroactive.

3 (j) Upon adjudication of the appeal, the appeals entity shall
4 transmit the decision of appeal to the entity that made the *eligibility*
5 *or enrollment* determination ~~of eligibility~~ via a secure electronic
6 interface.

7 (k) If an appellant disagrees with the decision of the appeals
8 entity, he or she may make an appeal request regarding issues
9 relating to the Exchange to the federal Health and Human Services
10 Agency within 30 days of the notice of decision through any of
11 the methods in subdivision (b).

12 (l) An appellant may also seek judicial review to the extent
13 provided by law. *Appeal to the federal Department of Health and*
14 *Human Services is not a prerequisite for seeking judicial review.*

15 (m) Nothing in this section, or in Sections 100506.1 and
16 100506.2, shall limit or reduce an appellant's rights to notice,
17 hearing, and appeal under Medi-Cal, county indigent programs,
18 or any other public programs.

19 SEC. 6. Section 100506.5 is added to the Government Code,
20 to read:

21 100506.5. For appeals of ~~redeterminations~~ *redetermination of*
22 *Exchange advance premium tax credits or cost-sharing reductions,*
23 upon receipt of notice from the appeals entity that it has received
24 an appeal, the entity that made the redetermination shall continue
25 to consider the applicant or enrollee *eligible for the same level of*
26 *advance premium tax credits or costing-sharing reductions* while
27 the appeal is pending in accordance with the level of eligibility
28 immediately before the redetermination being appealed.