

AMENDED IN SENATE MAY 13, 2013

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 28

Introduced by Senators Hernandez and Steinberg

December 3, 2012

An act to amend Section 100503 of the Government Code, to amend Section 12739.53 of, and to add Section 12712.5 to, the Insurance Code, and to amend Section 14011.6 of the Welfare and Institutions Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

SB 28, as amended, Hernandez. California Health Benefit Exchange.

(1) Existing law establishes the California Major Risk Medical Insurance Program (MRMIP), which is administered by the Managed Risk Medical Insurance Board (MRMIB), to provide major risk medical coverage to persons who, among other things, have been rejected for coverage by at least one private health plan. Existing law requires MRMIB to enter into an agreement with the federal Department of Health and Human Services to administer a temporary high risk pool to provide health coverage, until January 1, 2014, to specified individuals who have preexisting conditions, consistent with the federal Patient Protection and Affordable Care Act (PPACA).

Under PPACA, each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. Existing state law establishes the California Health Benefit Exchange (Exchange) within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals

and small employers by January 1, 2014. Existing law also requires the board to undertake activities necessary to market and publicize the availability of health care coverage and federal subsidies through the Exchange and to undertake outreach and enrollment activities.

This bill would require MRMIB to provide the Exchange, or its designee, with specified information of subscribers and applicants of MRMIP and the temporary high risk pool in order to assist the Exchange in conducting outreach to those subscribers and applicants.

The bill would require the board governing the Exchange to provide a specified notice informing those subscribers and applicants that they may be eligible for reduced-cost coverage through the Exchange or no-cost coverage through Medi-Cal.

(2) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions.

Existing law requires, to the extent that federal financial participation is available, that the department implement an option provided for under the federal Social Security Act for a program for accelerated enrollment of children into the Medi-Cal program. Existing law requires the department to designate the single point of entry, as defined, as the qualified entity for determining eligibility under these provisions.

This bill would, commencing October 1, 2013, require the department to designate the Exchange and its agents, and specified county departments as qualified entities for determining eligibility under the above-mentioned provisions. The bill would also require the qualified entity to grant accelerated enrollment if a complete eligibility determination cannot be made based upon the receipt of an application for a child at the time of the initial application *and the child is eligible for accelerated enrollment*.

Because the bill would require counties to make additional Medi-Cal eligibility determinations, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 100503 of the Government Code is
2 amended to read:

3 100503. In addition to meeting the minimum requirements of
4 Section 1311 of the federal act, the board shall do all of the
5 following:

6 (a) Determine the criteria and process for eligibility, enrollment,
7 and disenrollment of enrollees and potential enrollees in the
8 Exchange and coordinate that process with the state and local
9 government entities administering other health care coverage
10 programs, including the State Department of Health Care Services,
11 the Managed Risk Medical Insurance Board, and California
12 counties, in order to ensure consistent eligibility and enrollment
13 processes and seamless transitions between coverage.

14 (b) Develop processes to coordinate with the county entities
15 that administer eligibility for the Medi-Cal program and the entity
16 that determines eligibility for the Healthy Families Program,
17 including, but not limited to, processes for case transfer, referral,
18 and enrollment in the Exchange of individuals applying for
19 assistance to those entities, if allowed or required by federal law.

20 (c) Determine the minimum requirements a carrier must meet
21 to be considered for participation in the Exchange, and the
22 standards and criteria for selecting qualified health plans to be
23 offered through the Exchange that are in the best interests of
24 qualified individuals and qualified small employers. The board
25 shall consistently and uniformly apply these requirements,
26 standards, and criteria to all carriers. In the course of selectively
27 contracting for health care coverage offered to qualified individuals
28 and qualified small employers through the Exchange, the board
29 shall seek to contract with carriers so as to provide health care
30 coverage choices that offer the optimal combination of choice,
31 value, quality, and service.

1 (d) Provide, in each region of the state, a choice of qualified
2 health plans at each of the five levels of coverage contained in
3 subdivisions (d) and (e) of Section 1302 of the federal act.

4 (e) Require, as a condition of participation in the Exchange,
5 carriers to fairly and affirmatively offer, market, and sell in the
6 Exchange at least one product within each of the five levels of
7 coverage contained in subdivisions (d) and (e) of Section 1302 of
8 the federal act. The board may require carriers to offer additional
9 products within each of those five levels of coverage. This
10 subdivision shall not apply to a carrier that solely offers
11 supplemental coverage in the Exchange under paragraph (10) of
12 subdivision (a) of Section 100504.

13 (f) (1) Require, as a condition of participation in the Exchange,
14 carriers that sell any products outside the Exchange to do both of
15 the following:

16 (A) Fairly and affirmatively offer, market, and sell all products
17 made available to individuals in the Exchange to individuals
18 purchasing coverage outside the Exchange.

19 (B) Fairly and affirmatively offer, market, and sell all products
20 made available to small employers in the Exchange to small
21 employers purchasing coverage outside the Exchange.

22 (2) For purposes of this subdivision, “product” does not include
23 contracts entered into pursuant to Part 6.2 (commencing with
24 Section 12693) of Division 2 of the Insurance Code between the
25 Managed Risk Medical Insurance Board and carriers for enrolled
26 Healthy Families beneficiaries or contracts entered into pursuant
27 to Chapter 7 (commencing with Section 14000) of, or Chapter 8
28 (commencing with Section 14200) of, Part 3 of Division 9 of the
29 Welfare and Institutions Code between the State Department of
30 Health Care Services and carriers for enrolled Medi-Cal
31 beneficiaries.

32 (g) Determine when an enrollee’s coverage commences and the
33 extent and scope of coverage.

34 (h) Provide for the processing of applications and the enrollment
35 and disenrollment of enrollees.

36 (i) Determine and approve cost-sharing provisions for qualified
37 health plans.

38 (j) Establish uniform billing and payment policies for qualified
39 health plans offered in the Exchange to ensure consistent

1 enrollment and disenrollment activities for individuals enrolled in
2 the Exchange.

3 (k) (1) Undertake activities necessary to market and publicize
4 the availability of health care coverage and federal subsidies
5 through the Exchange. The board shall also undertake outreach
6 and enrollment activities that seek to assist enrollees and potential
7 enrollees with enrolling and reenrolling in the Exchange in the
8 least burdensome manner, including populations that may
9 experience barriers to enrollment, such as the disabled and those
10 with limited English language proficiency.

11 (2) Use the information received pursuant to Section 12712.5
12 of, and paragraph (10) of subdivision (b) of Section 12739.53 of,
13 the Insurance Code to provide an individual a notice that he or she
14 may be eligible for reduced-cost coverage through the Exchange
15 or no-cost coverage through Medi-Cal. The notice shall include
16 information on obtaining coverage pursuant to those programs.

17 (l) Select and set performance standards and compensation for
18 navigators selected under subdivision (l) of Section 100502.

19 (m) Employ necessary staff.

20 (1) The board shall hire a chief fiscal officer, a chief operations
21 officer, a director for the SHOP Exchange, a director of Health
22 Plan Contracting, a chief technology and information officer, a
23 general counsel, and other key executive positions, as determined
24 by the board, who shall be exempt from civil service.

25 (2) (A) The board shall set the salaries for the exempt positions
26 described in paragraph (1) and subdivision (i) of Section 100500
27 in amounts that are reasonably necessary to attract and retain
28 individuals of superior qualifications. The salaries shall be
29 published by the board in the board's annual budget. The board's
30 annual budget shall be posted on the Internet Web site of the
31 Exchange. To determine the compensation for these positions, the
32 board shall cause to be conducted, through the use of independent
33 outside advisors, salary surveys of both of the following:

34 (i) Other state and federal health insurance exchanges that are
35 most comparable to the Exchange.

36 (ii) Other relevant labor pools.

37 (B) The salaries established by the board under subparagraph
38 (A) shall not exceed the highest comparable salary for a position
39 of that type, as determined by the surveys conducted pursuant to
40 subparagraph (A).

1 (C) The Department of Human Resources shall review the
2 methodology used in the surveys conducted pursuant to
3 subparagraph (A).

4 (3) The positions described in paragraph (1) and subdivision (i)
5 of Section 100500 shall not be subject to otherwise applicable
6 provisions of the Government Code or the Public Contract Code
7 and, for those purposes, the Exchange shall not be considered a
8 state agency or public entity.

9 (n) Assess a charge on the qualified health plans offered by
10 carriers that is reasonable and necessary to support the
11 development, operations, and prudent cash management of the
12 Exchange. This charge shall not affect the requirement under
13 Section 1301 of the federal act that carriers charge the same
14 premium rate for each qualified health plan whether offered inside
15 or outside the Exchange.

16 (o) Authorize expenditures, as necessary, from the California
17 Health Trust Fund to pay program expenses to administer the
18 Exchange.

19 (p) Keep an accurate accounting of all activities, receipts, and
20 expenditures, and annually submit to the United States Secretary
21 of Health and Human Services a report concerning that accounting.
22 Commencing January 1, 2016, the board shall conduct an annual
23 audit.

24 (q) (1) Annually prepare a written report on the implementation
25 and performance of the Exchange functions during the preceding
26 fiscal year, including, at a minimum, the manner in which funds
27 were expended and the progress toward, and the achievement of,
28 the requirements of this title. This report shall be transmitted to
29 the Legislature and the Governor and shall be made available to
30 the public on the Internet Web site of the Exchange. A report made
31 to the Legislature pursuant to this subdivision shall be submitted
32 pursuant to Section 9795.

33 (2) In addition to the report described in paragraph (1), the board
34 shall be responsive to requests for additional information from the
35 Legislature, including providing testimony and commenting on
36 proposed state legislation or policy issues. The Legislature finds
37 and declares that activities including, but not limited to, responding
38 to legislative or executive inquiries, tracking and commenting on
39 legislation and regulatory activities, and preparing reports on the
40 implementation of this title and the performance of the Exchange,

1 are necessary state requirements and are distinct from the
2 promotion of legislative or regulatory modifications referred to in
3 subdivision (d) of Section 100520.

4 (r) Maintain enrollment and expenditures to ensure that
5 expenditures do not exceed the amount of revenue in the fund, and
6 if sufficient revenue is not available to pay estimated expenditures,
7 institute appropriate measures to ensure fiscal solvency.

8 (s) Exercise all powers reasonably necessary to carry out and
9 comply with the duties, responsibilities, and requirements of this
10 act and the federal act.

11 (t) Consult with stakeholders relevant to carrying out the
12 activities under this title, including, but not limited to, all of the
13 following:

14 (1) Health care consumers who are enrolled in health plans.

15 (2) Individuals and entities with experience in facilitating
16 enrollment in health plans.

17 (3) Representatives of small businesses and self-employed
18 individuals.

19 (4) The State Medi-Cal Director.

20 (5) Advocates for enrolling hard-to-reach populations.

21 (u) Facilitate the purchase of qualified health plans in the
22 Exchange by qualified individuals and qualified small employers
23 no later than January 1, 2014.

24 (v) Report, or contract with an independent entity to report, to
25 the Legislature by December 1, 2018, on whether to adopt the
26 option in paragraph (3) of subdivision (c) of Section 1312 of the
27 federal act to merge the individual and small employer markets.
28 In its report, the board shall provide information, based on at least
29 two years of data from the Exchange, on the potential impact on
30 rates paid by individuals and by small employers in a merged
31 individual and small employer market, as compared to the rates
32 paid by individuals and small employers if a separate individual
33 and small employer market is maintained. A report made pursuant
34 to this subdivision shall be submitted pursuant to Section 9795.

35 (w) With respect to the SHOP Program, collect premiums and
36 administer all other necessary and related tasks, including, but not
37 limited to, enrollment and plan payment, in order to make the
38 offering of employee plan choice as simple as possible for qualified
39 small employers.

1 (x) Require carriers participating in the Exchange to immediately
2 notify the Exchange, under the terms and conditions established
3 by the board when an individual is or will be enrolled in or
4 disenrolled from any qualified health plan offered by the carrier.

5 (y) Ensure that the Exchange provides oral interpretation
6 services in any language for individuals seeking coverage through
7 the Exchange and makes available a toll-free telephone number
8 for the hearing and speech impaired. The board shall ensure that
9 written information made available by the Exchange is presented
10 in a plainly worded, easily understandable format and made
11 available in prevalent languages.

12 SEC. 2. Section 12712.5 is added to the Insurance Code, to
13 read:

14 12712.5. In order to assist the California Health Benefit
15 Exchange, established under Title 22 (commencing with Section
16 100500) of the Government Code, in conducting outreach to
17 program subscribers and applicants, the board shall provide the
18 Exchange, or its designee, with the names, addresses, email
19 addresses, telephone numbers, other contact information, and
20 written and spoken languages of program subscribers and
21 applicants.

22 SEC. 3. Section 12739.53 of the Insurance Code is amended
23 to read:

24 12739.53. (a) The board shall, consistent with Section 1101
25 of the federal Patient Protection and Affordable Care Act (P.L.
26 111-148) and state and federal law and contingent on the agreement
27 of the federal Department of Health and Human Services and
28 receipt of sufficient federal funding, enter into an agreement with
29 the federal Department of Health and Human Services to administer
30 the federal temporary high risk pool in California.

31 (b) If the federal Department of Health and Human Services
32 and the state enter into an agreement to administer the federal
33 temporary high risk pool, the board shall do all of the following:

- 34 (1) Administer the program pursuant to that agreement.
35 (2) Begin providing coverage in the program on the date
36 established pursuant to the agreement with the federal Department
37 of Health and Human Services.
38 (3) Establish the scope and content of high risk medical
39 coverage.

- 1 (4) Determine reasonable minimum standards for participating
2 health plans, third-party administrators, and other contractors.
- 3 (5) Determine the time, manner, method, and procedures for
4 withdrawing program approval from a plan, third-party
5 administrator, or other contractor, or limiting enrollment of
6 subscribers in a plan.
- 7 (6) Research and assess the needs of persons without adequate
8 health coverage and promote means of ensuring the availability
9 of adequate health care services.
- 10 (7) Administer the program to ensure the following:
 - 11 (A) That the program subsidy amount does not exceed amounts
12 transferred to the fund pursuant to this part.
 - 13 (B) That the aggregate amount spent for high risk medical
14 coverage and program administration does not exceed the federal
15 funds available to the state for this purpose and that no state funds
16 are spent for the purposes of this part.
- 17 (8) Maintain enrollment and expenditures to ensure that
18 expenditures do not exceed amounts available in the fund and that
19 no state funds are spent for purposes of this part. If sufficient funds
20 are not available to cover the estimated cost of program
21 expenditures, the board shall institute appropriate measures to limit
22 enrollment.
- 23 (9) In adopting benefit and eligibility standards, be guided by
24 the needs and welfare of persons unable to secure adequate health
25 coverage for themselves and their dependents and by prevailing
26 practices among private health plans.
- 27 (10) (A) As required by the federal Department of Health and
28 Human Services, implement procedures to provide for the transition
29 of subscribers into qualified health plans offered through the
30 California Health Benefit Exchange established pursuant to Title
31 22 (commencing with Section 100500) of the Government Code.
 - 32 (B) In order to assist the Exchange in conducting outreach to
33 program subscribers and applicants, provide the Exchange, or its
34 designee, with the names, addresses, email addresses, telephone
35 numbers, other contact information, and written and spoken
36 languages of program subscribers and applicants.
- 37 (11) Post on the board's Internet Web site the monthly progress
38 reports submitted to the federal Department of Health and Human
39 Services. In addition, the board shall provide notice of any
40 anticipated waiting lists or disenrollments due to insufficient

1 funding to the public, by making that notice available as part of
2 its board meetings, and concurrently to the Legislature.

3 (12) Develop and implement a plan for marketing and outreach.

4 (c) There shall not be any liability in a private capacity on the
5 part of the board or any member of the board, or any officer or
6 employee of the board for or on account of any act performed or
7 obligation entered into in an official capacity, when done in good
8 faith, without intent to defraud, and in connection with the
9 administration, management, or conduct of this part or affairs
10 related to this part.

11 SEC. 4. Section 14011.6 of the Welfare and Institutions Code
12 is amended to read:

13 14011.6. (a) To the extent federal financial participation is
14 available, the department shall exercise the option provided in
15 Section 1920a of the federal Social Security Act (42 U.S.C. Sec.
16 1396r-1a) to implement a program for accelerated enrollment of
17 children.

18 (b) The department shall designate the single point of entry, as
19 defined in subdivision (c), as the qualified entity for determining
20 eligibility under this section.

21 (c) For purposes of this section, “single point of entry” means
22 the centralized processing entity that accepts and screens
23 applications for benefits under the Medi-Cal program for the
24 purpose of forwarding them to the appropriate counties.

25 (d) Commencing October 1, 2013, the department shall designate
26 the California Health Benefit Exchange, established under Title
27 22 (commencing with Section 100500) of the Government Code,
28 and its agents and county human services departments as qualified
29 entities for determining eligibility for accelerated enrollment under
30 this section.

31 (e) The department shall implement this section only if, and to
32 the extent that, federal financial participation is available.

33 (f) The department shall seek federal approval of any state plan
34 amendments necessary to implement this section. When federal
35 approval of the state plan amendment or amendments is received,
36 the department shall commence implementation of this section on
37 the first day of the second month following the month in which
38 federal approval of the state plan amendment or amendments is
39 received, or on July 1, 2002, whichever is later.

1 (g) Notwithstanding Chapter 3.5 (commencing with Section
2 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
3 the department shall, without taking any regulatory action,
4 implement this section by means of all-county letters. Thereafter,
5 the department shall adopt regulations in accordance with the
6 requirements of Chapter 3.5 (commencing with Section 11340) of
7 Part 1 of Division 3 of Title 2 of the Government Code.

8 (h) Upon the receipt of an application for a child who has
9 coverage pursuant to the accelerated enrollment program, a county
10 shall determine whether the child is eligible for Medi-Cal benefits.
11 If the county determines that the child does not meet the eligibility
12 requirements for participation in the Medi-Cal program, the county
13 shall report this finding to the Medical Eligibility Data System so
14 that accelerated enrollment coverage benefits are discontinued.
15 The information to be reported shall consist of the minimum data
16 elements necessary to discontinue that coverage for the child. This
17 subdivision shall become operative on July 1, 2002, or the date
18 that the program for accelerated enrollment coverage for children
19 takes effect, whichever is later.

20 (i) If a complete eligibility determination cannot be made based
21 upon the receipt of an application for a child at the time of the
22 initial application, the qualified entity shall grant accelerated
23 enrollment pursuant to this section *to the child if he or she is*
24 *eligible for accelerated enrollment.*

25 SEC. 5. If the Commission on State Mandates determines that
26 this act contains costs mandated by the state, reimbursement to
27 local agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code.