

SENATE BILL

No. 189

Introduced by Senator Monning

February 7, 2013

An act to add and repeal Section 1367.007 of the Health and Safety Code, and to add and repeal Section 10112.7 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 189, as introduced, Monning. Health care coverage: **wellness programs.**

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. Among other things, PPACA allows the **premium rate** charged by a health insurance issuer offering small group or individual coverage to **vary only by family composition, rating area, age,** and tobacco use, as specified, and prohibits discrimination against individuals based on **health status,** as specified. PPACA prohibits a health insurance issuer from requiring any individual to pay a premium or contribution that is greater than the premium or contribution paid by a **similarly situated individual** on the basis of any health status-related factor and **prohibits** construing this provision to prevent a group health insurance issuer from establishing premium **discounts** or rebates or modifying copayments or deductibles in return for **adherence to wellness programs,** as specified.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance. Existing law allows small employer health care service plan contracts and health insurance

policies for plan years on or after January 1, 2014, to vary rates only based on age, geographic, region, and family size, as specified.

This bill, until January 1, 2020, would prohibit a health care service plan or health insurer from offering a wellness program in connection with a group health care service plan contract or group health insurance policy, or offering an incentive or reward under a group health care service plan contract or group health insurance policy, based on adherence to a wellness program, unless specified requirements are satisfied. The bill would specify that it does not apply to wellness programs established prior to its enactment provided that those programs comply with all other applicable laws, as specified.

Because a willful violation of the bill's requirements relative to health care service plans would be a crime, 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 no reimbursement is required by this act for a specified reason.

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 1367.007 is added to the Health and
2 Safety Code, to read:

3 1367.007. (a) A health care service plan shall not offer a
4 wellness program in connection with a group health care service
5 plan contract, or offer an incentive or reward under a group health
6 care service plan contract based on adherence to a wellness
7 program, unless all of the following requirements are satisfied:

8 (1) The program is reasonably designed to promote health or
9 prevent disease. A program complies with the preceding sentence
10 if the program has a reasonable chance of improving the health
11 of, or preventing disease in, participating individuals, is not overly
12 burdensome, is not a subterfuge for discriminating based on a
13 health status factor, does not lead to cost shifting, and is not highly
14 suspect in the method chosen to promote health or prevent disease.

15 (2) The incentive or reward is not in the form of a discount on
16 or rebate of premium, deductible, copayment, or coinsurance.

1 Incentives may include rewards for participation that are not linked
2 to premiums, deductibles, copayments, or coinsurance.

3 (3) Participation in the program is voluntary.

4 (4) Receipt of an incentive or reward for participation in the
5 program is not conditioned on an individual satisfying a standard
6 that is related to a health status factor. The following wellness
7 programs shall be deemed to satisfy this paragraph:

8 (A) A program that reimburses all or part of the cost for
9 memberships in a fitness center.

10 (B) A diagnostic testing program that provides a reward for
11 participation and does not base any part of the reward on outcomes.

12 (C) A program that provides a reward to individuals for
13 attending a periodic health education seminar, so long as
14 participation is not related to a particular health condition or any
15 other health status factor.

16 (5) Participation in the program is offered to all similarly situated
17 individuals.

18 (6) Reasonable accommodation is provided for individuals with
19 disabilities who seek to voluntarily participate in the program.

20 (7) A reasonably available and equivalent alternative is provided
21 to those individuals who seek to voluntarily participate in the
22 program but are unable to participate due to occupational
23 requirements, a medical condition, or other hardship.

24 (8) All materials related to the program disclose the availability
25 of the accommodations under paragraphs (6) and (7).

26 (9) The program assesses the cultural competency needs of the
27 health care service plan's population in its design.

28 (10) The program provides language assistance for limited
29 English-speaking individuals.

30 (11) The program does not result in any decrease in benefits
31 coverage.

32 (12) The program does not result in an increase in premium for
33 the product as demonstrated through rate review consistent with
34 Article 6.2 (commencing with Section 1385.01).

35 (13) The incentive or reward does not exceed the amounts
36 determined to be unreasonable by regulation by the director in
37 consultation with the Insurance Commissioner

38 (14) The incentive or reward does not exceed the percentage of
39 the cost of coverage under the plan contract identified in Section

1 2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C.
2 Sec. 300gg-4) or regulations adopted thereunder.

3 (b) Nothing in this section shall prohibit a wellness program
4 that was established prior to January 1, 2014, and applied consistent
5 with all applicable laws in effect immediately prior to that date,
6 and that is operating immediately prior to that date, from continuing
7 to be carried out for as long as those laws remain in effect.

8 (c) By March 1, 2019, the department shall submit a report to
9 the appropriate policy committees of the Legislature on the
10 operation of health care service plan-based wellness programs.

11 (d) For purposes of this section, “wellness program” means a
12 program that is designed to promote health or prevent disease.

13 (e) This section shall remain in effect only until January 1, 2020,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2020, deletes or extends that date.

16 SEC. 2. Section 10112.7 is added to the Insurance Code, to
17 read:

18 10112.7. (a) A health insurer shall not offer a wellness program
19 in connection with a group health insurance policy or offer an
20 incentive or reward under a group health insurance policy based
21 on adherence to a wellness program unless all of the following
22 requirements are satisfied:

23 (1) The program is reasonably designed to promote health or
24 prevent disease. A program complies with the preceding sentence
25 if the program has a reasonable chance of improving the health
26 of, or preventing disease in, participating individuals, is not overly
27 burdensome, is not a subterfuge for discriminating based on a
28 health status factor, does not lead to cost shifting, and is not highly
29 suspect in the method chosen to promote health or prevent disease.

30 (2) The incentive or reward is not in the form of a discount on
31 or rebate of premium, deductible, copayment, or coinsurance.
32 Incentives may include rewards for participation that are not linked
33 to premiums, deductibles, copayments, or coinsurance.

34 (3) Participation in the program is voluntary.

35 (4) Receipt of an incentive or reward for participation in the
36 program is not conditioned on an individual satisfying a standard
37 that is related to a health status factor. The following wellness
38 programs shall be deemed to satisfy this paragraph:

39 (A) A program that reimburses all or part of the cost for
40 memberships in a fitness center.

1 (B) A diagnostic testing program that provides a reward for
2 participation and does not base any part of the reward on outcomes.

3 (C) A program that provides a reward to individuals for
4 attending a periodic health education **seminar**, so long as
5 participation is not related to a particular health condition or any
6 other health status factor.

7 (5) Participation in the program is offered to all similarly situated
8 individuals.

9 (6) Reasonable accommodation is provided for individuals with
10 disabilities who seek to voluntarily participate in the program.

11 (7) A reasonably available and equivalent alternative is provided
12 to those individuals who seek to voluntarily participate in the
13 program but are unable to participate due to occupational
14 requirements, a medical condition, or other hardship.

15 (8) All materials related to the program disclose the availability
16 of the accommodations under paragraphs (6) and (7).

17 (9) The program assesses the cultural competency needs of the
18 health care service plan's population in its design.

19 (10) The program provides language assistance for limited
20 English-speaking individuals.

21 (11) The program does not result in any decrease in benefits
22 coverage.

23 (12) The program does **not result in an increase in premium** for
24 the product as demonstrated through rate review consistent with
25 Article 4.5 (commencing with Section 10181).

26 (13) The incentive or reward does not exceed the amounts
27 determined to be unreasonable by regulation by the commissioner
28 in consultation with the Director of the Department of Managed
29 Health Care.

30 (14) The incentive or reward does not exceed the **percentage of**
31 **the cost of coverage** under the policy identified in Section
32 2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C.
33 Sec. 300gg-4(j)(3)(A)) or regulations adopted thereunder.

34 (b) Nothing in this section shall prohibit a wellness program
35 that was established prior to January 1, 2014, and applied consistent
36 with all applicable laws in effect immediately prior to that date,
37 and that is operating immediately prior to that date, from continuing
38 to be carried out for as long as those laws remain in effect.

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1 (c) By March 1, 2019, the department shall submit a report to
2 the appropriate policy committees of the Legislature on the
3 operation of health insurer-based wellness programs.

4 (d) For purposes of this section, “wellness program” means a
5 program that is designed to promote health or prevent disease.

6 (e) This section shall remain in effect only until January 1, 2020,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2020, deletes or extends that date.

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

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