

AMENDED IN SENATE APRIL 22, 2013

SENATE BILL

No. 189

Introduced by Senator Monning
(Coauthor: Senator De León)
(Coauthor: Assembly Member Ammiano)

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 amended, 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

This doesn't make sense. PPACA seems like one can get up to 30% discounts. On the other hand, health status can't be a factor, click here and follow the links for more info.

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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~~ *discrimination*

1 based on a **health status factor**, does not lead to cost shifting, and
2 is not highly suspect in the method chosen to promote health or
3 prevent disease.

4 (2)

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

9 (3) Participation in the program is voluntary.

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

14 (A) A program that reimburses all or part of the cost for
15 ~~memberships~~ **membership in a fitness center**.

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

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

22 (5) Participation in the program is offered to all similarly **situated**
23 **individuals**.

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

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

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

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

34 (10) The program provides language assistance for limited
35 English-speaking individuals.

36 (11) The program does not result in any decrease in benefits
37 coverage.

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

So, would that mean that a skinny person could take a weight loss seminar as they can't condition it on a health factor?

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

4 (14) The incentive or reward does not exceed the percentage of
5 the cost of coverage under the plan contract identified in Section
6 2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C.
7 Sec. ~~300gg-4~~ 300gg-4(j)(3)(A)) or regulations adopted thereunder.

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

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

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

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

21 SEC. 2. Section 10112.7 is added to the Insurance Code, to
22 read:

23 10112.7. (a) A health insurer shall not offer a wellness program
24 in connection with a group health insurance policy or offer an
25 incentive or reward under a group health insurance policy based
26 on adherence to a wellness program unless all of the following
27 requirements are satisfied:

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

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

40 (3) Participation in the program is voluntary.

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

5 (A) A program that reimburses all or part of the cost for
6 ~~memberships~~ *membership* in a fitness center.

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

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

13 (5) Participation in the program is offered to all similarly situated
14 individuals.

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

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

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

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

25 (10) The program provides language assistance for limited
26 English-speaking individuals.

27 (11) The program does not result in any decrease in benefits
28 coverage.

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

32 (13) The incentive or reward does not exceed the amounts
33 determined to be unreasonable by regulation by the commissioner
34 in consultation with the Director of the Department of Managed
35 Health Care.

36 (14) The incentive or reward does not exceed the percentage of
37 the cost of coverage under the policy identified in Section
38 2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C.
39 Sec. 300gg-4(j)(3)(A)) or regulations adopted thereunder.

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

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

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

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

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

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