

Date of Hearing: July 13, 2021

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 326 (Pan) – As Amended June 30, 2021

SENATE VOTE: 36-0

SUBJECT: Health care coverage: federal health care reforms.

SUMMARY: Codifies the following existing federal Patient and Protection Affordable Care Act (ACA) law into state law:

- 1) The requirement to provide coverage of essential health benefits (EHBs);
- 2) The prohibition on imposing preexisting condition provision or waived condition provision upon any individual;
- 3) The requirement for a health care service plan (health plan) or health insurer or carrier to fairly and affirmatively offer, market, and sell all of the health plan or insurer's health benefit plans sold in the individual and small group market; and,
- 4) The requirement to establish only specified rating criteria in the individual and small group markets.

EXISTING FEDERAL LAW:

- 1) Establishes the ACA, which enacts various health care coverage market reforms, including the availability of health insurance exchanges, coverage of EHBs, a prohibition against imposing a preexisting condition provision, a requirement to maintain minimum essential coverage (MEC), imposing a shared responsibility penalty (individual mandate) on an applicable individual who does not maintain MEC, and to fairly and affirmatively offer, market, and sell all of the health plan's health benefit plans that are sold in the individual and small group market, as specified.
- 2) Specifies EHBs in the following 10 categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and, pediatric services, including oral and vision care.

EXISTING STATE LAW:

- 1) Establishes in state government, the California Health Benefits Exchange, referred to as Covered California, as an independent public entity not affiliated with an agency or department, and requires Covered California to compare and make available through selective contracting health insurance for individuals and small business purchasers as authorized under the ACA.

- 2) Provides for the regulation of health plans by the Department of Managed Health Care under the Health and Safety Code and health insurers by the California Department of Insurance under the Insurance Code.
- 3) Requires health plans and insurers, to the extent EHBs are required by federal law, providing health coverage in the individual and small group markets to cover, at a minimum, EHBs, including the ten EHB benefit categories in the ACA, and consistent with California's EHB benchmark plan, the Kaiser Foundation Health Plan Small Group HMO 30 plan (Kaiser benchmark), as specified.
- 4) Prohibits a nongrandfathered health benefit plan for individual coverage from imposing a preexisting condition provision or waived condition provision upon a person, and makes this provision inoperative if federal law on MEC is repealed or amended.
- 5) Requires a health plan or insurer or carrier to fairly and affirmatively offer, market, and sell all of the insurer's or carrier's health benefit plans sold in the individual or small group market, as specified. Specifies that these provisions would become inoperative 12 months after the repeal of the federal coverage guarantee and premium rate regulation provisions or the federal individual mandate.
- 6) Requires a health plan or insurer to use only age, geographic region, and whether the contract covers an individual or family in setting premium rates for nongrandfathered small employer and individual health benefit plans, as specified. Specifies that these provisions would become inoperative 12 months after the repeal of the federal coverage guarantee and premium rate regulation provisions or the federal individual mandate.

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

1) PURPOSE OF THIS BILL. According to the author, over 10 years after the passage of the ACA, with several years of successful implementation in California, it is time to remove unnecessary ties of California law to the repeal of federal law. Early in the implementation stages of the ACA, some parties raised concerns about the structural changes the ACA would have on health insurance markets. Also because of repeated challenges in the courts, state legislation that was enacted to implement the ACA in California contained provisions that tied the state law to specific federal requirements of the ACA, such as the federal individual mandate, so that if the ACA were repealed, there would also be a repeal (12 months later) of some of the major consumer protection provisions of state law. These "tiebacks" are not necessary and should be removed from California law. The author concludes that California's insurance markets are strong, there is a state individual mandate, and there is minimal risk if the federal individual mandate is repealed.

2) BACKGROUND.

- a) **ACA.** Enacted in March 2010, the ACA provides the framework, policies, regulations and guidelines for the implementation of comprehensive health care reform by the states. The ACA expands access to quality, affordable insurance and health care. As of January

1, 2014, insurers are no longer able to deny coverage or charge higher premiums based on preexisting conditions (under rules referred to as guaranteed issue and modified community rating, respectively). These aspects of the ACA, along with tax credits for low and middle income people buying insurance on their own in new health benefit exchanges, make it easier for people with preexisting conditions to gain insurance coverage.

b) ACA lawsuit. In December 2018, a federal judge in Texas struck down the entire ACA on the grounds that its mandate requiring people to buy health insurance is unconstitutional and the rest of the law is void without it. At issue was whether the health law's insurance mandate still compelled people to buy coverage after Congress reduced the penalty to zero dollars as a result of the federal 2017 tax law. When the Supreme Court upheld the mandate as constitutional in 2012, it was based on Congress's taxing power and that Congress could legally impose a tax penalty on people who do not have health insurance. The recent ACA lawsuit, led by Texas, argued that with the penalty zeroed out, the individual mandate had become unconstitutional, and that the rest of the law could not be severed from it. California's Attorney General (AG) led a coalition of state AGs in filing an expedited motion to prevent disruption to Americans' healthcare and to challenge the December decision. In November 2020, the Supreme Court heard oral argument in *California v. Texas*. If the Supreme Court strikes down the ACA in its entirety, 20 million people would have lost health insurance, including eliminating a variety of protections for people with pre-existing conditions would be eliminated, and an extensive set of policies affecting the health care system would be reversed. In June 2021, the U.S. Supreme Court decision upheld the ACA and determined that the states had not met the minimum threshold to show injury in this case. The U.S. Supreme Court dismissed the ACA lawsuit on the basis that the challengers of the 2010 law did not have the legal right to bring the case and "failed to show a concrete, particularized injury fairly traceable to the defendants' conduct in enforcing the specific statutory provision they attack as unconstitutional."

3) SUPPORT. Health Access California writes that this bill will remove several of these tie backs in California's Health and Safety Code, securing California's ability to offer quality, affordable coverage to enrollees in Covered California, our Affordable Care Act marketplace, regardless of future changes at the federal level.

4) RELATED LEGISLATION. SB 326 (Pan) was recently amended to incorporate the Insurance Code provisions from AB 493 (Wood).

5) PREVIOUS LEGISLATION.

a) SB 406 (Pan), Chapter 302, Statutes of 2020, codifies existing ACA law into state law that prohibits lifetime or annual limits in health plan and health insurance policies and requires coverage of preventative health services without cost sharing.

b) ABX1 2 (Pan), Chapter 1, Statutes of 2013-14 First Extraordinary Session and SBX1 2 (Hernandez), Chapter 2, Statutes of 2013-14 First Extraordinary Session, established the health insurance market reforms contained in the ACA specific to individual purchasers, such as prohibiting insurers from denying coverage based on preexisting conditions; and, make conforming changes to small employer health insurance laws resulting from final federal regulations.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chapter of The American College of Emergency Physicians
California Commission on Aging
California Immigrant Policy Center
County Health Executives Association of California (CHEAC)
Health Access California
Western Center on Law & Poverty, Inc.

Opposition

None on file.

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