
UNFINISHED BUSINESS

Bill No: SB 326
Author: Pan (D), et al.
Amended: 9/1/21
Vote: 21

SENATE HEALTH COMMITTEE: 11-0, 3/10/21

AYES: Pan, Melendez, Eggman, Gonzalez, Grove, Hurtado, Leyva, Limón, Roth, Rubio, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 36-0, 5/6/21

AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

NO VOTE RECORDED: Dahle, Limón, Melendez, Stern

ASSEMBLY FLOOR: 62-0, 9/7/21 - See last page for vote

SUBJECT: Health care coverage: federal health care reforms

SOURCE: Author

DIGEST: This bill deletes provisions in law that would make health plan and insurer preexisting condition protections, premium rating limitations and other antidiscrimination requirements inoperative if specified provisions of the Affordable Care Act are repealed or amended to no longer apply.

Assembly Amendments:

- 1) Add parallel amendments in the Insurance Code so that the bill also applies to health insurers.

- 2) Add amendments to avoid chaptering out conflicts with SB 255 (Portantino) and SB 718 (Bates).

ANALYSIS:

Existing federal law:

- 1) Establishes, under the Affordable Care Act (ACA), among many other provisions, a prohibition against discriminatory health insurance premium rates, a guarantee of coverage issuance and renewability in the individual and small group markets, a prohibition on preexisting condition exclusions or other discrimination based on health status, coverage for essential health benefits, coverage for individuals participating in approved clinical trials, a prohibition on lifetime or annual limits on the dollar value of benefits per enrollee, a prohibition on rescissions once an enrollee is covered, coverage for preventive services without cost-sharing, and extension of dependent coverage until the dependent is 26 years old. [42 U.S.C. 300gg, et seq.]
- 2) Requires all individuals with access to affordable coverage to purchase minimum essential coverage (MEC) or pay a penalty. Exempts from this coverage mandate individuals not lawfully present in the U.S., religious objectors and incarcerated individuals. Additional exemptions are allowed for taxpayers with income below the filing threshold, members of Indian tribes, those granted a hardship waiver and individuals who were not covered for less than three months of the year. [42 U.S.C. 18091]

Existing state law:

- 1) Establishes the Department of Managed Health Care to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act) and California Department of Insurance to regulate health insurance. [HSC §1340, et seq. and INS §106, et seq.]
- 2) Prohibits a health plan for group or individual coverage from imposing any preexisting condition provision or waived condition provision upon any enrollee, and makes this provision inoperative if, the federal requirement to have MEC is repealed or amended to no longer apply to the individual market, 12 months after the date of that repeal or amendments, as specified. [HSC §1357.51 and HSC §1399.849]
- 3) Requires health plans to fairly and affirmatively offer, market, and sell all of a plan's small employer health care service plan contracts to all small employers in each service area, or all of the health plan's contracts that are sold in the

individual market to all individuals and dependents in which the plan provides or arranges for the provision of health care services, and prohibits contracts with rules associated with health status factors, as specified. Makes these provisions inoperative if specified federal law becomes inoperative 12 months after the repeal date, in which case other provisions of California law will become operative, as specified. [HSC §1357.503 and HSC §1399.849]

- 4) Establishes premium rate requirements based on federal law for small employer health plans and health plans for individuals based on age (rates cannot vary by more than three to one for individuals 21 and older), geographic regions, as specified, individual or families, and prohibits rates from changing less than 12 months, as specified. Makes these provisions inoperative if specified federal law is repealed 12 months after the repeal date of the federal law and makes specified provisions of California law operative, as specified. [HSC §1357.512 and HSC §1399.855]
- 5) Requires an individual or small group health plan contract to include coverage for essential health benefits pursuant to the ACA and as outlined in California law. Requires these provisions to be implemented only to the extent essential health benefits are required pursuant to the ACA. [HSC §1367.005]
- 6) Requires a California resident, for each month beginning on or after January 1, 2020, to be enrolled in and maintain MEC for that month, except as provided. [GOV §100705]

This bill:

- 1) Deletes a provision of law that would make preexisting condition protections for health plan enrollees and insureds inoperative 12 months after the date of the federal repeal of that provision under the ACA.
- 2) Deletes provisions of law that would make requirements on health plans and insurers to offer, market and sell health plans to small employers and individuals without regard to health status inoperative 12 months after the federal repeal of that provision under the ACA.
- 3) Deletes provisions of law that would make limits on factors that health plans and insurers can use to establish premium rates for small businesses and individuals inoperative 12 months after the federal repeal of that revision under the ACA.
- 4) Deletes a provision of law that requires health plans and insurers to cover essential health benefits only to the extent required pursuant to the ACA.

- 5) Includes amendments to avoid chaptering out conflicts with SB 255 (Portantino) and SB 718 (Bates).

Background

In 2012, the California Legislature approved AB 1461 (Monning) and SB 961 (Ed Hernandez), which would have established insurance market rules for individual purchasers. Both bills were vetoed by then Governor Brown because a provision to link or "tie back" state law to federal law was viewed as insufficient. As a result, Covered California had to initiate its first Qualified Health Plan solicitation process based on assumptions of what might be the individual market rules in California.

On January 24, 2013, Governor Brown issued a proclamation to convene the Legislature in Extraordinary Session to consider and act upon legislation necessary to implement the ACA in the areas of: (1) California's private health insurance market, rules and regulations governing the individual and small group market; (2) California's Medi-Cal program and changes necessary to implement federal law; and, (3) options that allow low-cost health coverage through Covered California to be provided to individuals who have income up to 200% of the federal poverty level. ABX1-2 (Pan, Chapter 1, Statutes of 2013, First Extraordinary Session) and SBX1-2 (Hernandez, Chapter 2, Statutes of 2013, First Extraordinary Session) address the first of the three areas identified in the Governor's proclamation. The ACA insurance market rules established through the legislation apply to health insurance sold through Covered California as well as insurance products sold in the commercial market outside of Covered California, and were needed to be put in place for state regulatory enforcement purposes.

ACA litigation. Since its passage, the ACA has been challenged multiple times in the courts and Congress. More recently, in *Texas v. Azar*, 18 state attorneys general, led by the state of Texas, and two individuals filed a lawsuit challenging the constitutionality of the individual coverage mandate. The plaintiffs argued that the entire ACA should fall as a result of Congressional action in 2017 that made the ACA coverage penalty amount zero. This position was also supported by the U.S. Department of Justice (DOJ) under the Trump administration. The Biden administration has dropped DOJ's support. Associated with an earlier U.S. Supreme Court ruling, plaintiffs in Texas argued that with no penalty on the coverage mandate there is no longer an exercise of federal taxing power, and the entire ACA should be struck down. A federal district court agreed. A federal appeals court ruled the coverage mandate requirement unconstitutional and remanded the question of severability to the lower court. California, 20 other state attorneys general, the Governor of Kentucky, and the U.S. House of

Representatives appealed the decision to the Supreme Court, which heard *California v. Texas*, on November 10, 2020. The Supreme Court determined the plaintiffs could not prove injury and therefore did not have standing to move the case forward.

Comments

The author states that 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, so that if the ACA were repealed at the federal level, there would also be a repeal (12 months later) of the state law. These “tiebacks” are not necessary and should be removed from California law.

Related/Prior Legislation

SB 255 (Portantino, 2021) allows an association of employers to offer a large group health plan contract or health insurance policy if certain conditions are met, including the association was established prior to March 23, 2010, provides an equivalent to or greater level of coverage to the platinum level offered through Covered California and essential health benefits, and that it includes coverage for job categories on a project-by-project basis for one or more participating employers, for at least 101 employees. SB 255 is pending on the Assembly Floor.

SB 718 (Bates, 2021) permits an association of employers to offer a large group health plan contract or health insurance policy to small group employer members in the biomedical industry if the association is headquartered in California, was established before March 23, 2010, and in continued existence as a bonafide association that may act as an employer, as specified. SB 718 is pending on the Assembly Floor.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, this bill likely has no costs.

SUPPORT: (Verified 9/7/21)

California Chapter of the American College of Emergency Physicians
California Commission on Aging

California Immigrant Policy Center
California Insurance Commissioner, Ricardo Lara
California Pan - Ethnic Health Network
County Health Executives Association of California
Health Access California
Western Center on Law & Poverty

OPPOSITION: (Verified 9/7/21)

None received

ARGUMENTS IN SUPPORT: Health Access California writes that this bill will ensure that these consumer protections remain in place even if federal law were to be repealed. Currently, if federal law were to change, plans could drastically alter their methodology for determining premiums, opening the door for discrimination or unfair pricing based on health status, pre-existing conditions, tobacco use or other factors. This bill eliminates the reliance of California law on federal law, both because of national experience and because California has enacted its own individual mandate. Whatever happens to the federal law, the consumer protections California has enacted, which are better than federal law, would remain in place.

ASSEMBLY FLOOR: 62-0, 9/7/21

AYES: Aguiar-Curry, Arambula, Bennett, Berman, Boerner Horvath, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Flora, Frazier, Friedman, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Lee, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood

NO VOTE RECORDED: Bauer-Kahan, Bigelow, Bloom, Choi, Davies, Fong, Gabriel, Lorena Gonzalez, Gray, Kiley, Levine, Mathis, Nazarian, Nguyen, Patterson, Seyarto, Smith, Rendon

Prepared by: Teri Boughton / HEALTH / (916) 651-4111
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