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AMENDED IN ASSEMBLY MAY 28, 2010
AMENDED IN ASSEMBLY MARCH 18, 2010
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2578

Introduced by Assembly Members Jones and Feuer
(Principal coauthor: Senator Leno)
(Coauthors: Assembly Members Brownley, Fuentes, Salas, and Saldana)

February 19, 2010

An act to amend Section 1386 of, and to add Article 6.2 (commencing with Section 1385.01) to Chapter 2.2 of Division 2 of, the Health and Safety Code, and to add Article 4.5 (commencing with Section 10181) to Chapter 1 of Part 2 of Division 2 of the Insurance Code, relating to health care coverage, ~~and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2578, as amended, Jones. Health care coverage: rate approval.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), 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 insurers by the Department of Insurance, including health insurers. Existing law makes the violation of a final order by the Insurance Commissioner relating to rates imposed by certain insurers, other than health insurers, subject to assessment of a civil penalty and makes the willful violation by those insurers of specified rate provisions a misdemeanor. Under existing law, no change in premium rates or

coverage in a health care service plan or a health insurance policy may become effective without prior written notification of the change to the contractholder or policyholder. Existing law prohibits a plan and insurer during the term of a group plan contract or policy from changing the rate of the premium, copayment, coinsurance, or deductible during specified time periods.

This bill would require approval by the Department of Managed Health Care or the Department of Insurance of an increase in the amount of the premium, copayment, coinsurance obligation, deductible, and other charges under health care service plan contracts or health insurance policies, other than Medicare supplement-~~or~~, dental-only, *or vision-only* contracts or policies. The bill would require a plan or insurer to submit to the Department of Managed Health Care or the Department of Insurance, respectively, an application for a rate increase that would be effective on or after January 1, 2012, and would require review of the application in accordance with regulations that each department would be required to adopt no later than January 1, 2012. The bill would subject a rate increase that became effective January 1, 2010, to December 31, 2011, inclusive, to review by the appropriate department.

The bill would require each department to notify the public of a rate application and would deem the application approved within 60 days of the date of that notice unless the department holds a hearing on the application, as specified. The bill would authorize the initiation of, and intervention in, proceedings relating to rate approvals and the award of advocacy fees and costs in those proceedings in specified circumstances. The bill would require the departments to work together in implementation of these provisions; and to take specified actions in order to ensure coordination and consistency in implementation.

The bill would authorize each department to assess a charge in connection with its costs associated with a rate application. The bill would direct the deposit of these fees into the respective department's Health Rate Approval Fund, which would be created by the bill, and would ~~continuously appropriate the revenue to each department, thereby making an~~ *make those funds available to each department for those purposes, upon appropriation.* The bill would specify that a violation of its provisions is punishable by criminal sanctions under the Knox-Keene Act and under provisions applicable to insurers and, therefore, 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: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Article 6.2 (commencing with Section 1385.01)
2 is added to Chapter 2.2 of Division 2 of the Health and Safety
3 Code, to read:

4
5 Article 6.2. Approval of Rates
6

7 1385.01. (a) The following definitions apply for the purposes
8 of this article:

9 (1) "Applicant" means a health care service plan seeking to
10 increase the rate it charges its subscribers.

11 (2) "Rate" includes, but is not limited to, premiums, copayments,
12 coinsurance obligations, deductibles, and other charges.

13 (b) No applicant shall increase the rate it charges its subscribers
14 unless it submits an application to the department, and the
15 application is approved by the department.

16 (c) This article shall not apply to Medicare supplement contracts
17 or to specialized health care service plan contracts covering dental
18 services *or vision services*.

19 1385.02. (a) No rate shall be approved or remain in effect that
20 is excessive, inadequate, unfairly discriminatory, or otherwise in
21 violation of this article. In considering whether a rate is excessive,
22 inadequate, or unfairly discriminatory, the department shall
23 consider whether the rate mathematically reflects the health care
24 service plan's investment income and is reasonable in comparison
25 to coverage benefits. The department shall not consider the degree
26 of competition in determining whether a rate is excessive,
27 inadequate, or unfairly discriminatory.

28 (b) The department shall review a rate application pursuant to
29 regulations it promulgates to determine reasonable rates for medical

1 expenses and all nonmedical expenses, including the rate of return,
2 surplus, overhead, and administration.
3 1385.03. (a) A health care service plan shall file a complete
4 rate application with the department for a rate increase that will
5 become effective on or after January 1, 2012.
6 (b) The rate application shall be signed by the officers of the
7 health care service plan who exercise the functions of a chief
8 executive and chief financial officer. Each officer shall certify that
9 the representations, data, and information provided to the
10 department to support the application are true.
11 (c) No health care service plan shall submit more than one rate
12 application *per product* each calendar year.
13 (d) A rate application submitted to the department pursuant to
14 this section shall include the following information:
15 (1) The rate of return that will result if the rate application is
16 approved.
17 (2) The average rate change per affected enrollee or group that
18 will result from approval of the application.
19 (3) The overhead loss ratio, reserves, excess tangible net equity,
20 and surpluses that will result if the application is approved. For
21 the purposes of this section, “overhead loss ratio” means the ratio
22 of revenue dedicated to all nonmedical expenses and expenditures,
23 including profit, to revenue dedicated to medical expenses. A
24 medical expense is any payment to a hospital, physician, or other
25 provider for the provision of medical care or health care services
26 directly to, or for the benefit of, the enrollee.
27 (4) Salary and bonus compensation paid to the 10 highest paid
28 officers and employees of the applicant for the most recent fiscal
29 year.
30 (5) Dollar amounts of shareholder dividends paid, financial or
31 capital disbursements to affiliates, and management agreements
32 and service contracts.
33 (6) A statement setting forth all of the applicant’s nonmedical
34 expenses for the most recent fiscal year including administration,
35 dividends, rate of return, advertising, and salaries.
36 (7) A line-item report of medical expenses, including aggregate
37 totals paid to hospitals and physicians, and the amount paid by the
38 applicant for the 100 most common medical expenses incurred by
39 enrollees during the previous calendar year.

1 (e) The health care service plan has the burden to provide the
2 department with evidence and documents establishing, by a
3 preponderance of the evidence, the application’s compliance with
4 the requirements of this article.

5 (f) Rate applications shall be submitted by the health care service
6 plan electronically, and the department shall post the applications
7 on its Internet Web site within 10 days of the date of their receipt
8 by the department.

9 (g) All information in a rate application and all materials
10 submitted in its support by the applicant shall constitute a public
11 record for purposes of the California Public Records Act (Chapter
12 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
13 the Government Code) except for financial data the disclosure of
14 which would be competitively injurious to the applicant, as
15 determined by the director.

16 1385.04. A rate increase by a health care service plan that
17 became effective during the period January 1, 2010, to December
18 31, 2011, inclusive, shall be subject to review by the department
19 for compliance with this article.

20 1385.05. (a) The department shall notify the public of any rate
21 application by a health care service plan.

22 (b) The application shall be deemed approved by the department
23 60 days after the date of the public notice provided under
24 subdivision (a) unless the department conducts a hearing on the
25 application on ~~any~~ *either* of the following grounds:

26 (1) A consumer, or his or her representative, requests a hearing
27 within 45 days of the date of the public notice, and the department
28 grants the request for a hearing. If the department determines not
29 to grant the request for a hearing, it shall issue written findings in
30 support of that decision.

31 (2) The department determines for any reason to hold a hearing
32 on the application.

33 ~~(3) The proposed increase would exceed 7 percent of the amount~~
34 ~~of the current rate under the plan contract.~~

35 (c) The public notice required by this section shall be posted on
36 the department’s Internet Web site and distributed to major
37 statewide media and to any member of the public who requests
38 placement on a mailing list or electronic mail list to receive the
39 notice.

1 1385.06. All hearings under this article shall be conducted
2 pursuant to the provisions of Chapter 5 (commencing with Section
3 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
4 with the following exceptions:

5 (a) The hearing shall be conducted by an administrative law
6 judge for purposes of Sections 11512 and 11517 of the Government
7 Code, appointed pursuant to Section 11502 of the Government
8 Code or by the director.

9 (b) The hearing shall be commenced by filing a notice, in lieu
10 of Sections 11503 and 11504 of the Government Code.

11 (c) The director shall adopt, amend, or reject a decision only
12 under Section 11518.5 of the Government Code and subdivisions
13 (b) and (c) of Section 11517 of the Government Code and solely
14 on the basis of the record as provided in Section 11425.50 of the
15 Government Code.

16 (d) The right to discovery shall be liberally construed, and
17 discovery disputes shall be determined by the administrative law
18 judge as provided in Section 11507.7 of the Government Code.

19 (e) Judicial review shall be in accordance with Section 1858.6
20 of the Insurance Code. For purposes of judicial review, a decision
21 by the department to hold a hearing on the application is not a final
22 order or decision; however, a decision not to hold a hearing on an
23 application is a final order or decision for purposes of judicial
24 review.

25 1385.07. (a) A person may initiate or intervene in any
26 proceeding permitted or established pursuant to this article,
27 challenge any action of the department under this article, and
28 enforce any provision of this article on behalf of himself or herself
29 or members of the public.

30 (b) (1) The department or a court shall award reasonable
31 advocacy fees and costs, including witness fees, in a proceeding
32 described in subdivision (a) to a person who demonstrates both of
33 the following:

34 (A) The person represents the interests of consumers.

35 (B) The person has made a substantial contribution to the
36 adoption of any order, regulation, or decision by the department
37 or a court.

38 (2) The award made under this section shall be paid by the rate
39 applicant.

1 1385.08. A violation of this article is subject to the penalties
2 set forth in Sections 1386 and 1390.

3 1385.09. (a) The department may charge a health care service
4 plan a fee for the actual, reasonable costs associated with an
5 application filed by the plan under this article.

6 (b) The fees shall be deposited into the Department of Managed
7 Health Care Health Rate Approval Fund, which is hereby created
8 in the State Treasury. ~~Notwithstanding Section 13340 of the~~
9 ~~Government Code, all moneys in this fund are continuously~~
10 ~~appropriated~~ *Moneys in the fund shall be available* to the
11 department, *upon appropriation by the Legislature*, for the sole
12 purpose of implementing this article.

13 1385.10. The department, working in coordination with the
14 Department of Insurance, shall have all necessary and proper
15 powers to implement this article and shall adopt regulations to
16 implement this article no later than January 1, 2012. In
17 implementing this article, the department and the Department of
18 Insurance shall jointly develop any regulations, rate review
19 standards, staff training, policies, and procedures in order to ensure
20 maximum coordination and consistency of implementation.

21 SEC. 2. Section 1386 of the Health and Safety Code is amended
22 to read:

23 1386. (a) The director may, after appropriate notice and
24 opportunity for a hearing, by order suspend or revoke any license
25 issued under this chapter to a health care service plan or assess
26 administrative penalties if the director determines that the licensee
27 has committed any of the acts or omissions constituting grounds
28 for disciplinary action.

29 (b) The following acts or omissions constitute grounds for
30 disciplinary action by the director:

31 (1) The plan is operating at variance with the basic
32 organizational documents as filed pursuant to Section 1351 or
33 1352, or with its published plan, or in any manner contrary to that
34 described in, and reasonably inferred from, the plan as contained
35 in its application for licensure and annual report, or any
36 modification thereof, unless amendments allowing the variation
37 have been submitted to, and approved by, the director.

38 (2) The plan has issued, or permits others to use, evidence of
39 coverage or uses a schedule of charges for health care services that

1 do not comply with those published in the latest evidence of
2 coverage found unobjectionable by the director.

3 (3) The plan does not provide basic health care services to its
4 enrollees and subscribers as set forth in the evidence of coverage.
5 This subdivision shall not apply to specialized health care service
6 plan contracts.

7 (4) The plan is no longer able to meet the standards set forth in
8 Article 5 (commencing with Section 1367).

9 (5) The continued operation of the plan will constitute a
10 substantial risk to its subscribers and enrollees.

11 (6) The plan has violated or attempted to violate, or conspired
12 to violate, directly or indirectly, or assisted in or abetted a violation
13 or conspiracy to violate any provision of this chapter, any rule or
14 regulation adopted by the director pursuant to this chapter, or any
15 order issued by the director pursuant to this chapter.

16 (7) The plan has engaged in any conduct that constitutes fraud
17 or dishonest dealing or unfair competition, as defined by Section
18 17200 of the Business and Professions Code.

19 (8) The plan has permitted, or aided or abetted any violation by
20 an employee or contractor who is a holder of any certificate,
21 license, permit, registration, or exemption issued pursuant to the
22 Business and Professions Code or this code that would constitute
23 grounds for discipline against the certificate, license, permit,
24 registration, or exemption.

25 (9) The plan has aided or abetted or permitted the commission
26 of any illegal act.

27 (10) The engagement of a person as an officer, director,
28 employee, associate, or provider of the plan contrary to the
29 provisions of an order issued by the director pursuant to subdivision
30 (c) of this section or subdivision (d) of Section 1388.

31 (11) The engagement of a person as a solicitor or supervisor of
32 solicitation contrary to the provisions of an order issued by the
33 director pursuant to Section 1388.

34 (12) The plan, its management company, or any other affiliate
35 of the plan, or any controlling person, officer, director, or other
36 person occupying a principal management or supervisory position
37 in the plan, management company, or affiliate, has been convicted
38 of or pleaded nolo contendere to a crime, or committed any act
39 involving dishonesty, fraud, or deceit, which crime or act is
40 substantially related to the qualifications, functions, or duties of a

1 person engaged in business in accordance with this chapter. The
2 director may revoke or deny a license hereunder irrespective of a
3 subsequent order under the provisions of Section 1203.4 of the
4 Penal Code.

5 (13) The plan violates Section 510, 2056, or 2056.1 of the
6 Business and Professions Code or Section 1375.7.

7 (14) The plan has been subject to a final disciplinary action
8 taken by this state, another state, an agency of the federal
9 government, or another country for any act or omission that would
10 constitute a violation of this chapter.

11 (15) The plan violates the Confidentiality of Medical
12 Information Act (Part 2.6 (commencing with Section 56) of
13 Division 1 of the Civil Code).

14 (16) The plan violates Section 806 of the Military and Veterans
15 Code.

16 (17) The plan violates Section 1262.8.

17 (18) The plan has failed to comply with the requirements of
18 Article 6.2 (commencing with Section 1385.01).

19 (c) (1) The director may prohibit any person from serving as
20 an officer, director, employee, associate, or provider of any plan
21 or solicitor firm, or of any management company of any plan, or
22 as a solicitor, if either of the following applies:

23 (A) The prohibition is in the public interest and the person has
24 committed, caused, participated in, or had knowledge of a violation
25 of this chapter by a plan, management company, or solicitor firm.

26 (B) The person was an officer, director, employee, associate,
27 or provider of a plan or of a management company or solicitor
28 firm of any plan whose license has been suspended or revoked
29 pursuant to this section and the person had knowledge of, or
30 participated in, any of the prohibited acts for which the license
31 was suspended or revoked.

32 (2) A proceeding for the issuance of an order under this
33 subdivision may be included with a proceeding against a plan
34 under this section or may constitute a separate proceeding, subject
35 in either case to subdivision (d).

36 (d) A proceeding under this section shall be subject to
37 appropriate notice to, and the opportunity for a hearing with regard
38 to, the person affected in accordance with subdivision (a) of Section
39 1397.

1 SEC. 3. Article 4.5 (commencing with Section 10181) is added
2 to Chapter 1 of Part 2 of Division 2 of the Insurance Code, to read:

3
4 Article 4.5. Approval of Rates
5

6 10181. (a) The following definitions apply for the purposes
7 of this article:

8 (1) "Applicant" means a health insurer seeking to increase the
9 rate it charges its policyholders for health insurance, as defined in
10 Section 106.

11 (2) "Rate" includes, but is not limited to, premiums, copayments,
12 coinsurance obligations, deductibles, and other charges.

13 (b) No applicant shall increase the rate it charges its
14 policyholders unless it submits an application to the department,
15 and the application is approved by the department.

16 (c) This article shall not apply to Medicare supplement ~~or~~
17 ~~dental-only policies~~, *dental-only policies*, or *vision-only policies*.

18 10181.01. (a) No rate shall be approved or remain in effect
19 that is excessive, inadequate, unfairly discriminatory, or otherwise
20 in violation of this article. In considering whether a rate is
21 excessive, inadequate, or unfairly discriminatory, the department
22 shall consider whether the rate mathematically reflects the health
23 insurer's investment income and is reasonable in comparison to
24 coverage benefits. The department shall not consider the degree
25 of competition in determining whether a rate is excessive,
26 inadequate, or unfairly discriminatory.

27 (b) The department shall review a rate application pursuant to
28 regulations it promulgates to determine reasonable rates for medical
29 expenses and all nonmedical expenses, including the rate of return,
30 surplus, overhead, and administration.

31 10181.02. (a) A health insurer shall file a complete rate
32 application with the department for a rate increase that will become
33 effective on or after January 1, 2012.

34 (b) The rate application shall be signed by the officers of the
35 health insurer who exercise the functions of a chief executive and
36 chief financial officer. Each officer shall certify that the
37 representations, data, and information provided to the department
38 to support the application are true.

39 (c) No health insurer shall submit more than one rate application
40 *per product* each calendar year.

1 (d) A rate application submitted to the department pursuant to
2 this section shall include the following information:

3 (1) The rate of return that will result if the rate application is
4 approved.

5 (2) The average rate change per affected insured or group that
6 will result from approval of the application.

7 (3) The overhead loss ratio, reserves, excess tangible net equity,
8 and surpluses that will result if the application is approved. For
9 the purposes of this section, “overhead loss ratio” means the ratio
10 of revenue dedicated to all nonmedical expenses and expenditures,
11 including profit, to revenue dedicated to medical expenses. A
12 medical expense is any payment to a hospital, physician, or other
13 provider for the provision of medical care or health care services
14 directly to, or for the benefit of, the insured.

15 (4) Salary and bonus compensation paid to the 10 highest paid
16 officers and employees of the applicant for the most recent fiscal
17 year.

18 (5) Dollar amounts of shareholder dividends paid, financial or
19 capital disbursements to affiliates, and management agreements
20 and service contracts.

21 (6) A statement setting forth all of the applicant’s nonmedical
22 expenses for the most recent fiscal year including administration,
23 dividends, rate of return, advertising, and salaries.

24 (7) A line-item report of medical expenses, including aggregate
25 totals paid to hospitals and physicians, and the amount paid by the
26 applicant for the 100 most common medical expenses incurred by
27 insureds during the previous calendar year.

28 (e) The health insurer has the burden to provide the department
29 with evidence and documents establishing, by a preponderance of
30 the evidence, the application’s compliance with the requirements
31 of this article.

32 (f) Rate applications shall be submitted by the health insurer
33 electronically, and the department shall post the applications on
34 its Internet Web site within 10 days of the date of their receipt by
35 the department.

36 (g) All information in a rate application and all materials
37 submitted in its support by the applicant shall constitute a public
38 record for purposes of the California Public Records Act (Chapter
39 3.5 (commencing with Section 6250) of Division 7 of Title 1 of
40 the Government Code) except for financial data the disclosure of

1 which would be competitively injurious to the applicant, as
2 determined by the commissioner.

3 10181.03. A rate increase by a health insurer that became
4 effective during the period January 1, 2010, to December 31, 2011,
5 inclusive, shall be subject to review by the department for
6 compliance with this article.

7 10181.04. (a) The department shall notify the public of any
8 rate application by a health insurer.

9 (b) The application shall be deemed approved by the department
10 60 days after the date of the public notice provided under
11 subdivision (a) unless the department conducts a hearing on the
12 application on ~~any~~ *either* of the following grounds:

13 (1) A consumer, or his or her representative, requests a hearing
14 within 45 days of the date of the public notice, and the department
15 grants the request for a hearing. If the department determines not
16 to grant the request for a hearing, it shall issue written findings in
17 support of that decision.

18 (2) The department determines for any reason to hold a hearing
19 on the application.

20 ~~(3) The proposed increase would exceed 7 percent of the amount
21 of the current rate under the policy.~~

22 (c) The public notice required by this section shall be posted on
23 the department's Internet Web site and distributed to major
24 statewide media and to any member of the public who requests
25 placement on a mailing list or electronic mail list to receive the
26 notice.

27 10181.05. All hearings under this article shall be conducted
28 pursuant to the provisions of Chapter 5 (commencing with Section
29 11500) of Part 1 of Division 3 of Title 2 of the Government Code,
30 with the following exceptions:

31 (a) The hearing shall be conducted by an administrative law
32 judge for purposes of Sections 11512 and 11517 of the Government
33 Code, appointed pursuant to Section 11502 of the Government
34 Code or by the commissioner.

35 (b) The hearing shall be commenced by filing a notice, in lieu
36 of Sections 11503 and 11504 of the Government Code.

37 (c) The commissioner shall adopt, amend, or reject a decision
38 only under Section 11518.5 of the Government Code and
39 subdivisions (b) and (c) of Section 11517 of the Government Code

1 and solely on the basis of the record as provided in Section
2 11425.50 of the Government Code.

3 (d) The right to discovery shall be liberally construed, and
4 discovery disputes shall be determined by the administrative law
5 judge as provided in Section 11507.7 of the Government Code.

6 (e) Judicial review shall be in accordance with Section 1858.6.
7 For purposes of judicial review, a decision by the department to
8 hold a hearing on the application is not a final order or decision;
9 however, a decision not to hold a hearing on an application is a
10 final order or decision for purposes of judicial review.

11 10181.06. (a) A person may initiate or intervene in any
12 proceeding permitted or established pursuant to this article,
13 challenge any action of the department under this article, and
14 enforce any provision of this article on behalf of himself or herself
15 or members of the public.

16 (b) (1) The department or a court shall award reasonable
17 advocacy fees and costs, including witness fees, in a proceeding
18 described in subdivision (a) to a person who demonstrates both of
19 the following:

20 (A) The person represents the interests of consumers.

21 (B) The person has made a substantial contribution to the
22 adoption of any order, regulation, or decision by the department
23 or a court.

24 (2) The award made under this section shall be paid by the rate
25 applicant.

26 10181.07. A violation of this article is subject to the penalties
27 set forth in Section 1859.1. The commissioner may also suspend
28 or revoke in whole or in part the certificate of authority of a health
29 insurer for a violation of this article.

30 10181.08. (a) The department may charge a health insurer a
31 fee for the actual, reasonable costs associated with an application
32 filed by the insurer under this article.

33 (b) The fees shall be deposited into the Department of Insurance
34 Health Rate Approval Fund, which is hereby created in the State
35 Treasury. ~~Notwithstanding Section 13340 of the Government Code,~~
36 ~~all moneys in this fund are continuously appropriated to the~~
37 *Treasury. Moneys in the fund shall be available to the department,*
38 *upon appropriation by the Legislature,* for the sole purpose of
39 implementing this article.

1 10181.09. The department, working in coordination with the
2 Department of Managed Health Care, shall have all necessary and
3 proper powers to implement this article and shall adopt regulations
4 to implement this article no later than January 1, 2012. In
5 implementing this article, the department and the Department of
6 Managed Health Care shall jointly develop any regulations, rate
7 review standards, staff training, policies, and procedures in order
8 to ensure maximum coordination and consistency of
9 implementation.

10 SEC. 4. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.