

Introduced by Senator Alquist

February 9, 2011

An act to amend Section 16809.4 of, and to add Article 2.82 (commencing with Section 14087.98) to Chapter 7 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to health plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 222, as introduced, Alquist. Health plans: joint ventures.

Existing law creates various health benefits programs, including the Medi-Cal program, administered by the State Department of Health Care Services, and the County Medical Services Program. Existing law, the Knox-Keene Health Care Service Plan Act of 1975, administered by the Department of Managed Health Care, provides for the licensure and regulation of health care service plans.

This bill would authorize a county board of supervisors, a county special commission, or a county health authority that governs, owns, or operates a local initiative health plan or county-organized health system, as specified, or the County Medical Services Program governing board, to form joint ventures for the joint or coordinated offering of health plans to individuals and groups. The bill would require all joint ventures established pursuant to the above provisions to meet all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:

1 (1) Due to the economic downturn, hundreds of thousands of
2 Californians are joining the ranks of the uninsured or are looking
3 to publicly financed programs for their health care coverage.

4 (2) Compared to persons with health care coverage, the
5 uninsured are less likely to have a regular source of care, are likely
6 to delay seeing a doctor, and are less likely to receive preventive
7 health care services.

8 (3) Based on recent data collected by the Kaiser Family
9 Foundation, health care costs continue to rise at a faster rate than
10 general inflation and average wage growth.

11 (4) The federal Patient Protection and Affordable Care Act
12 (Public Law 111-148), as signed by the President on March 23,
13 2010, contains reforms that will give Californians better and more
14 affordable choices for how they get their health coverage.

15 (5) There is a continuing need for affordable health coverage
16 options for those with limited incomes and those who do not
17 receive health coverage through their employment or the
18 employment of a family member.

19 (6) Due to their structure and design, county local initiative
20 health plans and county-organized health systems have the potential
21 to offer affordable health coverage in the individual and group
22 markets.

23 (7) Joint ventures involving local initiative health plans and
24 county-organized health systems may be a particularly promising
25 means of providing affordable coverage in many regions of the
26 state.

27 (b) In light of these findings, it is the intent of the Legislature
28 that representatives of local initiative health plans,
29 county-organized health systems, and consumer, labor, and
30 provider groups hold stakeholder discussions for the purposes of
31 facilitating establishment of affordable health coverage options in
32 the individual and group markets.

33 SEC. 2. Article 2.82 (commencing with Section 14087.98) is
34 added to Chapter 7 of Part 3 of Division 9 of the Welfare and
35 Institutions Code, to read:

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37 Article 2.82. Health Plan Joint Ventures

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39 14087.98. (a) Notwithstanding any other provision of law, a
40 health plan that is governed, owned, or operated by a county board

1 of supervisors, a county special commission, a county-organized
2 health system, or a county health authority that is authorized by
3 Section 14018.7, 14087.31, 14087.35, 14087.36, or 14087.38,
4 Article 2.8 (commencing with Section 14087.5) or Article 2.81
5 (commencing with Section 14087.96), or Chapter 3 (commencing
6 with Section 101675) of Part 4 of Division 101 of the Health and
7 Safety Code, or the County Medical Services Program governing
8 board pursuant to paragraph (3) of subdivision (e) of Section
9 16809.4, may form joint ventures for the joint or coordinated
10 offering of health plans to individuals and groups.

11 (b) For purposes of this section, the joint ventures may consist
12 of either of the following:

13 (1) Contractual relationships entered into in order to pool risk
14 or share networks, or both.

15 (2) Contractual relationships entered into in order to provide
16 for the joint offering or marketing of health plans to individuals
17 and groups.

18 (c) In forming joint ventures, participating health plans shall
19 seek to contract with designated public hospitals, county health
20 clinics, primary care clinics, and other traditional safety net
21 providers.

22 (d) If the County Medical Services Program governing board
23 elects to participate in a joint venture as described in this section,
24 the board may elect to contract with a third-party administrator to
25 provide health coverage under the joint venture.

26 (e) All joint ventures established pursuant to this section shall
27 meet all the requirements of the Knox-Keene Health Care Service
28 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)
29 of Division 2 of the Health and Safety Code).

30 SEC. 3. Section 16809.4 of the Welfare and Institutions Code
31 is amended to read:

32 16809.4. (a) Counties voluntarily participating in the County
33 Medical Services Program pursuant to Section 16809 may establish
34 the County Medical Services Program Governing Board pursuant
35 to procedures contained in this section. The governing board shall
36 govern the County Medical Services Program.

37 (b) The membership of the governing board shall be comprised
38 of all of the following:

39 (1) Three members who shall each be a member of a county
40 board of supervisors.

- 1 (2) Three members who shall be county administrative officers.
- 2 (3) Two members who shall be county welfare directors.
- 3 (4) Two members who shall be county health officials.
- 4 (5) One member who shall be the Secretary of ~~the California~~
- 5 ~~Health and Welfare Agency,~~ *Human Services*, or his or her
- 6 designee, and who shall serve as an ex officio, nonvoting member.
- 7 (c) The governing board may establish its own bylaws and
- 8 operating procedures.
- 9 (d) The voting membership of the governing board shall meet
- 10 all of the following requirements:
- 11 (1) All of the members shall hold office or employment in
- 12 counties that participate in the County Medical Services Program.
- 13 (A) The three county supervisor members shall be elected by
- 14 the boards of supervisors of the CMSP counties, with each county
- 15 having one vote and convened at the call of the chair of the
- 16 governing board.
- 17 (B) The three county administrative officers shall be elected by
- 18 the administrative officers of the CMSP counties convened at the
- 19 call of the chair of the governing board.
- 20 (C) The two county health officials shall be selected by the
- 21 health officials of the CMSP counties convened at the call of the
- 22 chair of the governing board.
- 23 (D) The two county welfare directors shall be elected by the
- 24 welfare directors of the CMSP counties convened at the call of the
- 25 chair of the governing board.
- 26 (2) Governing board members shall serve three-year terms.
- 27 (3) No two persons from the same county may serve as members
- 28 of the governing board at the same time.
- 29 (4) The governing board may elect a permanent chair.
- 30 (e) (1) The governing board is hereby established with the
- 31 following powers:
- 32 (A) Determine program eligibility and benefit levels.
- 33 (B) Establish reserves and participation fees.
- 34 (C) Establish procedures for the entry into, and disenrollment
- 35 of counties from the County Medical Services Program.
- 36 Disenrollment procedures shall be fair and equitable.
- 37 (D) Establish cost containment and case management
- 38 procedures, including, but not limited to, alternative methods for
- 39 delivery of care and alternative methods and rates from those used
- 40 by the department.

- 1 (E) Sue and be sued in the name of the governing board.
- 2 (F) Apportion jurisdictional risk to each county.
- 3 (G) Utilize procurement policies and procedures of any of the
- 4 participating counties as selected by the governing board.
- 5 (H) Make rules and regulations.
- 6 (I) Make and enter into contracts or stipulations of any nature
- 7 with a public agency or person for the purposes of governing or
- 8 administering the County Medical Services Program.
- 9 (J) Purchase supplies, equipment, materials, property, or
- 10 services.
- 11 (K) Appoint and employ staff to assist the governing board.
- 12 (L) Establish rules for its proceedings.
- 13 (M) Accept gifts, contributions, grants, or loans from any public
- 14 agency or person for the purposes of this program.
- 15 (N) Negotiate and set rates, charges, or fees with service
- 16 providers, including alternative methods of payment to those used
- 17 by the department.
- 18 (O) Establish methods of payment that are compatible with the
- 19 administrative requirements of the department's fiscal intermediary
- 20 during the term of any contract with the department for the
- 21 administration of the County Medical Services Program.
- 22 (P) Use generally accepted accounting procedures.
- 23 (Q) Develop and implement procedures and processes to monitor
- 24 and enforce the appropriate billing and payment of rates, charges,
- 25 and fees.
- 26 (R) Investigate and pursue repayment of fees billed and paid
- 27 through improper means, including, but not limited to, fraudulent
- 28 billing and collection practices by providers.
- 29 (S) Pursue third-party recoveries and estate recoveries for
- 30 services provided under the County Medical Services Program,
- 31 including the filing and perfecting of liens to secure reimbursement
- 32 for the reasonable value of benefits provided.
- 33 (T) Establish and maintain pilot projects to identify or test
- 34 alternative approaches for determining eligibility or for providing
- 35 or paying for services.
- 36 (U) Establish provisions for payment to participating counties
- 37 for making eligibility determinations, as determined by the
- 38 governing board.
- 39 (V) Develop and implement alternative products with varying
- 40 levels of eligibility criteria and benefits outside of the County

1 Medical Services Program for counties contracting with the
2 governing board for those products, provided that any such
3 products shall be funded separately from the County Medical
4 Services Program and shall not impair the financial stability of
5 that program.

6 (2) The Legislature finds and declares that the amendment of
7 subparagraph (N) of paragraph (1) in 1995, and the addition of
8 subparagraphs (Q), (R), (S), (T), and (U) in 2006, are declaratory
9 of existing law.

10 (3) *In addition to the powers set forth in paragraph (1), the*
11 *governing board shall have the power to develop and participate*
12 *in joint ventures as described in Section 14087.98, provided that*
13 *the joint ventures shall be funded separately from the County*
14 *Medical Services Program and shall not impair the financial*
15 *stability of the program.*

16 (f) (1) The governing board shall be considered a “public entity”
17 for purposes of Division 3.6 (commencing with Section 810) of
18 Title 1 of the Government Code, and a “local public entity” for
19 purposes of Part 3 (commencing with Section 900) of Division
20 3.6 of Title 1 of the Government Code, but shall not be considered
21 a “state agency” for purposes of Chapter 3.5 (commencing with
22 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
23 Code and shall be exempt from that chapter. No participating
24 county shall have any liability for civil judgments awarded against
25 the County Medical Services Program or the governing board.
26 Nothing in this paragraph shall be construed to expand the liability
27 of the state with respect to the County Medical Services Program
28 beyond that set forth in Section 16809. Nothing in this paragraph
29 shall be construed to relieve any county of the obligation to provide
30 health care to indigent persons pursuant to Section 17000, or the
31 obligation of any county to pay its participation fees and share of
32 apportioned and allocated risk.

33 (2) Before initiating any proceeding to challenge rates of
34 payment, charges, or fees set by the governing board, to seek
35 reimbursement or release of any funds from the County Medical
36 Services Program, or to challenge any other action by the governing
37 board, any prospective claimant shall first notify the governing
38 board, in writing, of the nature and basis of the challenge and the
39 amount claimed. The governing board shall consider the matter
40 within 60 days after receiving the notice and shall promptly

1 thereafter provide written notice of the governing board’s decision.
2 If the governing board contracts with the department for
3 administration of the program in accordance with Section 16809,
4 this paragraph shall have no application to provider audit appeals
5 conducted pursuant to Article 1.5 (commencing with Section
6 51016) of Chapter 3 of Division 3 of Title 22 of the California
7 Code of Regulations and shall apply to all claims not reviewed
8 pursuant to Section 51003 or 51015 of Title 22 of the California
9 Code of Regulations.

10 (3) All regulations adopted by the governing board shall clearly
11 specify by reference the statute, court decision, or other provision
12 of law that the governing board is seeking to implement, interpret,
13 or make specific by adopting, amending, or repealing the
14 regulation.

15 (4) No regulation adopted by the governing board is valid and
16 effective unless the regulation meets the standards of necessity,
17 authority, clarity, consistency, and nonduplication, as defined in
18 paragraph (5).

19 (5) The following definitions govern the interpretation of this
20 subdivision:

21 (A) “Necessity” means the record of the regulatory proceeding
22 that demonstrates by substantial evidence the need for the
23 regulation. For purposes of this standard, evidence includes, but
24 is not limited to, facts, studies, and expert opinion.

25 (B) “Authority” means the provision of law that permits or
26 obligates the CMSP Governing Board to adopt, amend, or repeal
27 a regulation.

28 (C) “Clarity” means that the regulation is written or displayed
29 so that the meaning of the regulation can be easily understood by
30 those persons directly affected by it.

31 (D) “Consistency” means being in harmony with, and not in
32 conflict with, or contradictory to, existing statutes, court decisions,
33 or other provisions of law.

34 (E) “Nonduplication” means that a regulation does not serve
35 the same purpose as a state or federal statute or another regulation.
36 This standard requires that the governing board identify any state
37 or federal statute or regulation that is overlapped or duplicated by
38 the proposed regulation and justify any overlap or duplication.
39 This standard is not intended to prohibit the governing board from
40 printing relevant portions of enabling legislation in regulations

1 when the duplication is necessary to satisfy the clarity standard in
2 subparagraph (C). This standard is intended to prevent the
3 indiscriminate incorporation of statutory language in a regulation.

4 (g) The requirements of the Ralph M. Brown Act (Chapter 9
5 (commencing with Section 54950) of Part 1 of Division 2 of Title
6 5 of the Government Code) shall apply to the meetings of the
7 governing board, including meetings held pursuant to subdivision
8 (i), except the board may meet in closed session to consider and
9 take action on matters pertaining to contracts and contract
10 negotiations with providers of health care services.

11 (h) (1) The governing board shall comply with the following
12 procedures for public meetings held to eliminate or reduce the
13 level of services, restrict eligibility for services, or adopt
14 regulations:

15 (A) Provide prior public notice of those meetings.

16 (B) Provide that notice not less than 30 days prior to those
17 meetings.

18 (C) Publish that notice in a newspaper of general circulation in
19 each participating CMSP county.

20 (D) Include in the notice, at a minimum, the amount and type
21 of each proposed change, the expected savings, and the number
22 of persons affected.

23 (E) Either hold those meetings in the county seats of at least
24 four regionally distributed CMSP participating counties, or,
25 alternatively, hold two meetings in Sacramento County.

26 (2) For meetings held outside Sacramento County, the
27 requirements for public meetings pursuant to this subdivision to
28 eliminate or reduce the level of services, or to restrict the eligibility
29 for services or hear testimony regarding regulations to implement
30 any of these service charges, are satisfied if at least three voting
31 members of the governing board hold the meetings as required
32 and report the testimony from those meetings to the full governing
33 board at its next regular meeting. No action shall be taken at any
34 meeting held outside Sacramento County pursuant to this
35 paragraph.

36 (i) Records of the County Medical Services Program and of the
37 governing board that relate to rates of payment or to the board's
38 negotiations with providers of health care services or to the
39 governing board's deliberative processes regarding either shall not
40 be subject to disclosure pursuant to the Public Records Act

1 (Chapter 5 (commencing with Section 6250) of Division 7 of Title
2 1 of the Government Code).

3 (j) The following definitions shall govern the construction of
4 this part, unless the context requires otherwise:

5 (1) “CMSP” or “program” means the County Medical Services
6 Program, which is the program by which health care services are
7 provided to eligible persons in those counties electing to participate
8 in the CMSP pursuant to Section 16809.

9 (2) “CMSP county” means a county that has elected to
10 participate pursuant to Section 16809 in the CMSP.

11 (3) “Governing Board” means the County Medical Services
12 Program Governing Board established pursuant to this section.

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