AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL No. 1431

Introduced by Senator De León

February 24, 2012

An act to add Chapter 8.1 (commencing with Section 10750) to Part 2 of Division 2 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1431, as amended, De León. Stop-loss insurance coverage.

Existing law prohibits a person from transacting any class of insurance business, including health insurance, in this state without first being an admitted insurer. Under existing law, admission is secured by procuring a certificate of authority from the Insurance Commissioner. Existing law prohibits a health insurance policy from being issued or delivered to any person in this state unless specified requirements have been met, including that a copy of the form and premium rates are filed with the commissioner. Under existing law, if the commissioner notifies the health insurer that the filed form does not comply with specified requirements, it is unlawful for that health insurer to issue any health insurance policy in that form.

Existing law, with respect to small employer health insurance, requires a carrier providing aggregate or specific stop-loss coverage or any other assumption of risk with reference to a health benefit plan, as defined, to provide that the plan meets specified requirements concerning

preexisting condition provisions, waiting or affiliation periods, and late enrollees.

Existing law, the federal Patient Protection and Affordable Care Act (PPACA), commencing January 1, 2014, prohibits a group health plan and a health insurance issuer offering group or individual health insurance coverage from imposing any preexisting condition exclusion with respect to the plan or coverage.

Existing law provides for self-funded or partially self-funded multiple employer welfare arrangements (MEWAs) and allows for MEWAs to apply for a certificate of compliance to do business in the state.

This bill would require a stop-loss carrier, as defined, to offer coverage ~~to~~ *for* all employees and dependents of a small employer to which it issues a stop-loss insurance policy and would prohibit the carrier from excluding any employee or dependent on the basis of actual or expected health status-related factors, as specified. Except as specified, the bill would require a stop-loss carrier to renew, at the option of the small employer, all stop-loss insurance policies. The bill would prohibit a stop-loss insurance policy issued on or after January 1, 2012, to a small employer from containing ~~certain unspecified~~ *specified* individual or aggregate attachment points, as defined, for a policy year or providing direct coverage, as defined, of an employee's health claims. The bill would make a stop-loss carrier in violation of these provisions subject to administrative penalties and would direct those fine and penalty moneys received to the General Fund to be available upon appropriation by the Legislature. The bill would, in addition, exempt the ongoing operation of MEWAs, as specified, from the operation of these provisions.

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

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

SECTION 1. Chapter 8.1 (commencing with Section 10750) is added to Part 2 of Division 2 of the Insurance Code, to read:

Chapter 8.1. Stop-Loss Insurance

10750. As used in this chapter, the following definitions shall apply:

(a) "Attachment point" means the total amount of health claims incurred by a small employer in a policy year for its employees and their dependents above which the stop-loss carrier incurs a liability for payment.

(1) "Individual attachment point" means the total amount of health claims incurred by a small employer in a policy year for an individual employee or dependent of an employee above which the stop-loss carrier incurs a liability for payment. For purposes of this chapter, "specific attachment point" shall have the same meaning as "individual attachment point."

(2) "Aggregate attachment point" means the total amount of health claims incurred by a small employer in a policy year for all covered employees and their dependents above which the stop-loss carrier incurs a liability for payment.

(b) "Dependent" means the spouse, registered domestic partner as described in Section 297 of the Family Code, or child of an employee.

(c) "Direct coverage" means that an insurance company assumes a direct obligation to an employee under an insurance policy to pay or indemnify the employee for health claims incurred by the employee or the employee's dependents.

(d) "Expected claims" means, *for the purposes of aggregate stop-loss coverage*, the total amount of health claims that, in the absence of a stop-loss insurance policy or other insurance, are projected to be incurred by a small employer for its employees and their dependents *in a policy year*.

(e) "Policy year" means the 12-month period that is designated as the policy year for the stop-loss insurance policy. If the stop-loss insurance policy does not designate a policy year, the policy year is the year in which the total amount of health claims incurred by a small employer for an individual employee or dependent of an employee, or the aggregate amount for all covered employees and their dependents, are added together for the purposes of determining whether the claims have exceeded the attachment point.

(f) "Small employer" has the same meaning as defined in subdivision (w) of Section 10700.

(g) "Stop-loss carrier" means an insurance company or other entity providing individual or aggregate stop-loss insurance coverage, *or both individual and aggregate stop-loss insurance*

coverage, or any other assumption of risk, to a small employer for the health claims of its employees and their dependents~~, regardless of the situs of the contract or master policyholder~~.

(h) "Stop-loss insurance policy" means a policy, contract, certificate, or statement of coverage between a stop-loss carrier and small employer providing individual or aggregate stop-loss insurance coverage, *or both individual and aggregate stop-loss insurance coverage,* or any other assumption of risk, to a small employer for the health claims of its employees and their dependents~~, regardless of the situs of the contract or master policyholder~~.

10750.1. A stop-loss carrier shall offer coverage ~~to~~ *for* all employees and dependents of employees of a small employer to which it issues a stop-loss insurance policy and shall not exclude any employee or dependent on the basis of an actual or expected health status-related factor. Health status-related factors include, but are not limited to, any of the following: health status; medical condition, including both physical and mental illnesses; claims experience; medical history; receipt of health care; genetic information; disability; evidence of insurability, including conditions arising out of acts of domestic violence of the employee or dependent; or any other health status-related factor as determined by the department.

10750.2. A stop-loss carrier shall renew, at the option of the small employer, all stop-loss insurance policies written, issued, administered, or renewed on or after the effective date of this chapter, and all stop-loss insurance policies in force on or after the effective date of this chapter, except as follows:

(a) (1) For nonpayment of the required premiums by the small employer, if the small employer has been duly notified and billed for the charge and at least a 30-day grace period has elapsed since the date of notification or, if longer, the period of time required for notice and any other requirements pursuant to Section 2703, 2712, or 2742 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-2, 300gg-12, or 300gg-42) and any subsequent rules or regulations has elapsed.

(2) A stop-loss carrier shall continue to provide coverage as required by the small employer's policy during the grace period described in paragraph (1). Nothing in this section shall be

construed to affect or impair the small employer's or carrier's other rights and responsibilities pursuant to the policy.

(b) Where the stop-loss carrier demonstrates fraud or an intentional misrepresentation of material fact by the small employer under the terms of the stop-loss insurance policy.

(c) Where the stop-loss carrier has been determined by the commissioner to be financially impaired.

(d) Where the stop-loss carrier ceases to write, issue, or administer new stop-loss insurance policies in this state; provided, however, that the following conditions are satisfied:

(1) Notice of the decision to cease writing, issuing, or administering new or existing stop-loss insurance policies in this state is provided to the commissioner, and to the small employer, at least 180 days prior to the discontinuation of the coverage.

(2) Stop-loss insurance policies subject to this chapter shall not be canceled until 180 days after the date of the notice required under paragraph (1). During that time, the stop-loss carrier shall continue to comply with this chapter.

10750.3. No stop-loss insurance policy issued on or after January 1, 2012, to a small employer shall contain any of the following provisions:

(a) An individual attachment point for a policy year that is lower than ~~_____~~ *sixty thousand* dollars ~~(_____)~~ *($60,000)*.

(b) An aggregate attachment point for a policy year that is lower than the greater of one of the following:

(1) ~~_____~~ *Fifteen thousand* dollars ~~(_____)~~ *($15,000)* times the total number of covered employees and dependents.

(2) One hundred ~~twenty~~ *thirty* percent of expected claims.

(3) ~~_____~~ *Sixty thousand* dollars ~~(_____)~~ *($60,000)*.

(c) A provision for direct coverage of an employee's health claims.

10750.4. The commissioner may adopt regulations as may be necessary to carry out the purposes of this chapter. In adopting regulations, the commissioner shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

10750.5. A stop-loss carrier that violates the provisions of this chapter shall be subject to the remedies and administrative penalties pertaining to carriers in Sections 10718 and 10718.5. All fine and penalty moneys received pursuant to this section shall be deposited

in the General Fund and shall be available for expenditure by the commissioner upon appropriation by the Legislature.

10750.6. Nothing in this chapter shall affect the ongoing operations of multiple employer welfare arrangements regulated pursuant to Article 4.7 (commencing with Section 742.20) of Chapter 1 of Part 2 of Division 1 that provide health care benefits to their members on a self-funded or partially self-funded basis and that comply with small group health reforms.

10750.7. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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