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AMENDED IN ASSEMBLY JUNE 30, 2014

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AMENDED IN SENATE APRIL 29, 2014

AMENDED IN SENATE MARCH 28, 2014

SENATE BILL

No. 1052

Introduced by Senator Torres
(Coauthor: Assembly Member Waldron)

February 18, 2014

An act to add Section 100503.1 to the Government Code, to amend Sections 1363.01 and 1368.016 of, and to add Section 1367.205 to, the Health and Safety Code, and to amend Section 10123.199 of, and to add Section 10123.192 to, the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1052, as amended, Torres. Health care coverage.

Existing law, the Knox-Keene Health Care Service Plan Act (Knox-Keene Act) of 1975, 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 health insurers by the Department of Insurance. The Knox-Keene Act requires a health care service plan that provides prescription drug benefits and maintains one or more drug formularies to provide to members of the public, upon request, a copy of the most current list of prescription drugs on the formulary, as specified.

This bill would require a health care service plan or health insurer that provides prescription drug benefits and maintains one or more drug formularies to post those formularies on its Internet Web site and update that posting ~~within 72 hours after making any formulary changes~~ *with changes on a monthly basis and within 72 hours during open enrollment periods*. The bill would require the departments to jointly develop a standard formulary template *by January 1, 2017*, and would require plans and insurers to use that template to display formularies, as specified. The bill would make other related conforming changes. Because a willful violation of these requirements by a health care service plan would be a crime, the bill would impose a state-mandated local program.

Existing law establishes the California Health Benefit Exchange within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers.

Existing law requires the board to determine the minimum requirements a health care service plan or health insurer must meet to be considered for participation in the Exchange and the standards and criteria for selecting qualified health plans to be offered through the Exchange that are in the best interests of qualified individuals and qualified small employers.

This bill would require the board of the Exchange to ensure that its Internet Web site provides a direct link to the formularies for each qualified health plan offered through the Exchange that are posted by plans and insurers pursuant to the bill's provisions. The bill would also require the board, on or before the later of October 1, 2017, or 18 months after the standard formulary template described above is developed, to create a search tool on its Internet Web site that allows potential enrollees to search for qualified health plans by a particular drug and compare coverage and cost sharing for that drug.

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: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 100503.1 is added to the Government
2 Code, to read:

3 100503.1. (a) The board shall ensure that the Internet Web
4 site maintained under subdivision (c) of Section 100502 provides
5 a direct link to the formulary, or formularies, for each qualified
6 health plan offered through the Exchange that is posted by the
7 carrier pursuant to Section 1367.205 of the Health and Safety Code
8 or Section 10123.192 of the Insurance Code.

9 (b) On or before the later of October 1, 2017, or the date that is
10 18 months after the date the standard formulary template is
11 developed pursuant to subdivision (b) of Section 1367.205 of the
12 Health and Safety Code and subdivision (b) of Section 10123.192
13 of the Insurance Code, the board shall create a search tool on the
14 Internet Web site maintained under subdivision (c) of Section
15 100502 that allows potential enrollees to search for qualified health
16 plans by a particular drug and compare coverage and cost sharing
17 for that drug.

18 SEC. 2. Section 1363.01 of the Health and Safety Code is
19 amended to read:

20 1363.01. (a) Every plan that covers prescription drug benefits
21 shall provide notice in the evidence of coverage and disclosure
22 form to enrollees regarding whether the plan uses a formulary.
23 The notice shall be in language that is easily understood and in a
24 format that is easy to understand. The notice shall include an
25 explanation of what a formulary is, how the plan determines which
26 prescription drugs are included or excluded, and how often the
27 plan reviews the contents of the formulary.

28 (b) Every plan that covers prescription drug benefits shall
29 provide to members of the public, upon request, information
30 regarding whether a specific drug or drugs are on the plan's
31 formulary. Notice of the opportunity to secure this information
32 from the plan, including the plan's telephone number for making
33 a request of this nature and the Internet Web site where the
34 formulary is posted under Section 1367.205, shall be included in
35 the evidence of coverage and disclosure form to enrollees.

36 (c) Every plan shall notify enrollees, and members of the public
37 who request formulary information, that the presence of a drug on
38 the plan's formulary does not guarantee that an enrollee will be

1 prescribed that drug by his or her prescribing provider for a
2 particular medical condition.

3 SEC. 3. Section 1367.205 is added to the Health and Safety
4 Code, to read:

5 1367.205. (a) In addition to the list required to be provided
6 under Section 1367.20, a health care service plan that provides
7 prescription drug benefits and maintains one or more drug
8 formularies shall do all of the following:

9 (1) Post the formulary or formularies for each product offered
10 by the plan on the plan's Internet Web site in a manner that is
11 accessible and searchable by potential enrollees, enrollees, and
12 providers.

13 (2) *Except as provided in paragraph (3), update the formularies*
14 *posted pursuant to paragraph (1) with any change to those*
15 *formularies on a monthly basis.*

16 ~~(2) Update the formularies~~

17 (3) *During any applicable open enrollment period for a product,*
18 *update the formulary or formularies for the product posted*
19 *pursuant to paragraph (1) with any change to those formularies*
20 *within 72 hours after making the change.*

21 ~~(3)~~

22 (4) No later than six months after the date that a standard
23 formulary template is developed under subdivision (b), use that
24 template to display the formulary or formularies for each product
25 offered by the plan.

26 (b) (1) ~~By April 1, 2016,~~ *January 1, 2017,* the department and
27 the Department of Insurance shall jointly, and with input from
28 interested parties from at least one public meeting, develop a
29 standard formulary template for purposes of paragraph (3) of
30 subdivision (a). In developing the template, the department and
31 Department of Insurance shall take into consideration existing
32 requirements for reporting of formulary information established
33 by the federal Centers for Medicare and Medicaid Services. *To*
34 *the extent feasible, in developing the template, the department and*
35 *the Department of Insurance shall evaluate a way to include on*
36 *the template, in addition to the information required to be included*
37 *under paragraph (2), cost-sharing information for drugs subject*
38 *to coinsurance.*

39 (2) The standard formulary template shall include the
40 notification described in subdivision (c) of Section 1363.01, and

1 as applied to a particular formulary for a product offered by a plan,
2 shall do all of the following:

3 (A) Include information on ~~cost sharing~~ *cost-sharing tiers* and
4 utilization controls, including prior authorization or step therapy
5 requirements, for each drug covered by the product. ~~To the extent~~
6 ~~feasible, the template shall provide consumers with an estimate of~~
7 ~~their out-of-pocket costs for each drug covered by the product.~~

8 (B) ~~Facilitate comparison of drug coverage, cost sharing, and~~
9 ~~utilization controls, including prior authorization or step therapy~~
10 ~~requirements, between products.~~

11 (C)

12 (B) Indicate any drugs on the formulary that are preferred over
13 other drugs on the formulary.

14 (D) ~~Include information about the coverage of drugs under the~~
15 ~~product's medical benefit. This information shall allow a consumer~~
16 ~~to easily determine whether a drug is covered.~~

17 (C) *Indicate the drugs that are covered under the product's*
18 *medical benefit or indicate how a consumer can obtain this*
19 *information before enrolling in the product.*

20 (D) *Include information advising a consumer of his or her right*
21 *to access medicine deemed medically necessary if that medicine*
22 *is not covered by the product. This information shall include*
23 *information indicating how an enrollee may access the Independent*
24 *Medical Review System pursuant Article 5.55 (commencing with*
25 *Section 1374.30).*

26 (c) For purposes of this section, "formulary" means the complete
27 list of drugs preferred for use and eligible for coverage under a
28 health care service plan product and includes the drugs covered
29 under both the pharmacy benefit of the product and the medical
30 benefit of the product.

31 SEC. 4. Section 1368.016 of the Health and Safety Code is
32 amended to read:

33 1368.016. (a) A health care service plan that provides coverage
34 for professional mental health services, including a specialized
35 health care service plan that provides coverage for professional
36 mental health services, shall, pursuant to subdivision (f) of Section
37 1368.015, include on its Internet Web site, or provide a link to,
38 the following information:

39 (1) A telephone number that the enrollee or provider can call,
40 during normal business hours, for assistance obtaining mental

1 health benefits coverage information, including the extent to which
2 benefits have been exhausted, in-network provider access
3 information, and claims processing information.

4 (2) A link to prescription drug formularies posted pursuant to
5 Section 1367.205, or instructions on how to obtain the formulary,
6 as described in Section 1367.20.

7 (3) A detailed summary that describes the process by which the
8 plan reviews and authorizes or approves, modifies, or denies
9 requests for health care services as described in Sections 1363.5
10 and 1367.01.

11 (4) Lists of providers or instructions on how to obtain the
12 provider list, as required by Section 1367.26.

13 (5) A detailed summary of the enrollee grievance process as
14 described in Sections 1368 and 1368.015.

15 (6) A detailed description of how an enrollee may request
16 continuity of care pursuant to subdivisions (a) and (b) of Section
17 1373.95.

18 (7) Information concerning the right, and applicable procedure,
19 of an enrollee to request an independent medical review pursuant
20 to Section 1374.30.

21 (b) Any modified material described in subdivision (a) shall be
22 updated at least quarterly.

23 (c) The information described in subdivision (a) may be made
24 available through a secured Internet Web site that is only accessible
25 to enrollees.

26 (d) The material described in subdivision (a) shall also be made
27 available to enrollees in hard copy upon request.

28 (e) Nothing in this article shall preclude a health care service
29 plan from including additional information on its Internet Web
30 site for applicants, enrollees or subscribers, or providers, including,
31 but not limited to, the cost of procedures or services by health care
32 providers in a plan's network.

33 (f) The department shall include on the department's Internet
34 Web site a link to the Internet Web site of each health care service
35 plan and specialized health care service plan described in
36 subdivision (a).

37 (g) This section shall not apply to Medicare supplement
38 insurance, Employee Assistance Programs, short-term limited
39 duration health insurance, Champus-supplement insurance, or
40 TRI-CARE supplement insurance, or to hospital indemnity,

1 accident-only, and specified disease insurance. This section shall
2 also not apply to specialized health care service plans, except
3 behavioral health-only plans.

4 (h) This section shall not apply to a health care service plan that
5 contracts with a specialized health care service plan, insurer, or
6 other entity to cover professional mental health services for its
7 enrollees, provided that the health care service plan provides a link
8 on its Internet Web site to an Internet Web site operated by the
9 specialized health care service plan, insurer, or other entity with
10 which it contracts, and that plan, insurer, or other entity complies
11 with this section or Section 10123.199 of the Insurance Code.

12 SEC. 5. Section 10123.192 is added to the Insurance Code, to
13 read:

14 10123.192. (a) A health insurer that provides prescription drug
15 benefits and maintains one or more drug formularies shall do all
16 of the following:

17 (1) Post the formulary or formularies for each product offered
18 by the insurer on the insurer's Internet Web site in a manner that
19 is accessible and searchable by potential insureds, insureds, and
20 providers.

21 (2) *Except as provided in paragraph (3), update the formularies*
22 *posted pursuant to paragraph (1) with any change to those*
23 *formularies on a monthly basis.*

24 ~~(2) Update the formularies~~

25 (3) *During any applicable open enrollment period for a product,*
26 *update the formulary or formularies for the product posted*
27 *pursuant to paragraph (1) with any change to those formularies*
28 *within 72 hours after making the change.*

29 ~~(3)~~

30 (4) No later than six months after the date that a standard
31 formulary template is developed under subdivision (b), use that
32 template to display the formulary or formularies for each product
33 offered by the insurer.

34 (b) (1) ~~By April 1, 2016,~~ *January 1, 2017,* the department and
35 the Department of Managed Health Care shall jointly, and with
36 input from interested parties from at least one public meeting,
37 develop a standard formulary template for purposes of paragraph
38 ~~(3)~~ (4) of subdivision (a). In developing the template, the
39 department and Department of Managed Health Care shall take
40 into consideration existing requirements for reporting of formulary

1 information established by the federal Centers for Medicare and
2 Medicaid Services. *To the extent feasible, in developing the*
3 *template, the department and the Department of Managed Health*
4 *Care shall evaluate a way to include on the template, in addition*
5 *to the information required to be included under paragraph (2),*
6 *cost-sharing information for drugs subject to coinsurance.*

7 (2) The standard formulary template shall include a notification
8 that the presence of a drug on the insurer's formulary does not
9 guarantee that an insured will be prescribed that drug by his or her
10 prescribing provider for a particular medical condition. As applied
11 to a particular formulary for a product offered by an insurer, the
12 standard formulary template shall do all of the following:

13 (A) Include information on cost sharing *tiers* and utilization
14 controls, including prior authorization or step therapy requirements,
15 for each drug covered by the product. ~~To the extent feasible, the~~
16 ~~template shall provide consumers with an estimate of their~~
17 ~~out-of-pocket costs for each drug covered by the product.~~

18 ~~(B) Facilitate comparison of drug coverage, cost sharing, and~~
19 ~~utilization controls, including prior authorization or step therapy~~
20 ~~requirements, between products.~~

21 ~~(C)~~

22 (B) Indicate any drugs on the formulary that are preferred over
23 other drugs on the formulary.

24 ~~(D) Include information about the coverage of drugs under the~~
25 ~~product's medical benefit. This information shall allow a consumer~~
26 ~~to easily determine whether a drug is covered.~~

27 (C) *Indicate the drugs that are covered under the product's*
28 *medical benefit or indicate how a consumer can obtain this*
29 *information before enrolling in the product.*

30 (D) *Include information advising a consumer of his or her right*
31 *to access medicine deemed medically necessary if that medicine*
32 *is not covered by the product. This information shall include*
33 *information indicating how an insured may access the Independent*
34 *Medical Review System pursuant Article 3.5 (commencing with*
35 *Section 10169).*

36 (c) *The commissioner may adopt regulations as may be*
37 *necessary to carry out the purposes of this section. In adopting*
38 *regulations, the commissioner shall comply with Chapter 3.5*
39 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
40 *2 of the Government Code.*

1 (e)

2 (d) For purposes of this section, “formulary” means the complete
3 list of drugs preferred for use and eligible for coverage under a
4 health insurance product and includes the drugs covered under
5 both the pharmacy benefit of the product and the medical benefit
6 of the product.

7 SEC. 6. Section 10123.199 of the Insurance Code is amended
8 to read:

9 10123.199. (a) A health insurer that provides coverage for
10 professional mental health services shall establish an Internet Web
11 site. Each Internet Web site shall include, or provide a link to, the
12 following information:

13 (1) A telephone number that the insured or provider can call,
14 during normal business hours, for assistance obtaining mental
15 health benefits coverage information, including the extent to which
16 benefits have been exhausted, in-network provider access
17 information, and claims processing information.

18 (2) A link to prescription drug formularies posted pursuant to
19 Section 10123.192, or instructions on how to obtain formulary
20 information.

21 (3) A detailed summary description of the process by which the
22 insurer reviews and approves, modifies, or denies requests for
23 health care services as described in Section 10123.135.

24 (4) Lists of providers or instructions on how to obtain a provider
25 list as required by Section 10133.1.

26 (5) A detailed summary of the health insurer’s grievance process.

27 (6) A detailed description of how the insured may request
28 continuity of care as described in Section 10133.55.

29 (7) Information concerning the right, and applicable procedure,
30 of the insured to request an independent medical review pursuant
31 to Section 10169.

32 (b) Except as otherwise specified, the material described in
33 subdivision (a) shall be updated at least quarterly.

34 (c) The information described in subdivision (a) may be made
35 available through a secured Internet Web site that is only accessible
36 to the insured.

37 (d) The material described in subdivision (a) shall also be made
38 available to insureds in hard copy upon request.

39 (e) Nothing in this article shall preclude an insurer from
40 including additional information on its Internet Web site for

1 applicants or insureds, including, but not limited to, the cost of
2 procedures or services by health care providers in an insurer’s
3 network.

4 (f) The department shall include on the department’s Internet
5 Web site, a link to the Internet Web site of each health insurer
6 described in subdivision (a).

7 (g) This section shall not apply to Medicare supplement
8 insurance, Employee Assistance Programs, short-term limited
9 duration health insurance, Champus-supplement insurance, or
10 TRI-CARE supplement insurance, or to hospital indemnity,
11 accident-only, and specified disease insurance. This section shall
12 also not apply to specialized health insurance policies, except
13 behavioral health-only policies.

14 (h) This section shall not apply to a health insurer that contracts
15 with a specialized health care service plan, insurer, or other entity
16 to cover professional mental health services for its insureds,
17 provided that the health insurer provides a link on its Internet Web
18 site to an Internet Web site operated by the specialized health care
19 service plan, insurer, or other entity with which it contracts, and
20 that plan, insurer, or other entity complies with this section or
21 Section 1368.016 of the Health and Safety Code.

22 SEC. 7. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.