

Senate Bill No. 900

CHAPTER 659

An act to add Title 22 (commencing with Section 100500) to the Government Code, to add Section 1346.2 to the Health and Safety Code, and to add Section 10112.4 to the Insurance Code, relating to health care coverage.

[Approved by Governor September 30, 2010. Filed with
Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 900, Alquist. California Health Benefit Exchange.

Existing law, the federal Patient Protection and Affordable Care Act, requires each state to, by January 1, 2014, establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and qualified employers, as specified, and meets certain other requirements. Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and the regulation of health insurers by the Department of Insurance.

This bill would, contingent on the enactment and operation of AB 1602, establish the California Health Benefit Exchange (the Exchange) within state government. The bill would require the Exchange to be governed by a board composed of the Secretary of California Health and Human Services, or his or her designee, and 4 other members appointed by the Governor and the Legislature in a specified manner and would enact other related provisions with respect to the governance of the Exchange. The bill would also require the board of the exchange, or the California Health and Human Services Agency, if a majority of the board has not been appointed, to apply for and receive federal funds for purposes of establishing the Exchange.

The bill would require the Director of the Department of Managed Health Care and the Insurance Commissioner to review an Internet portal developed by the United States Department of Health and Human Services and to jointly develop and maintain an electronic clearinghouse of coverage available in the individual and small employer markets if the federal Internet portal does not adequately achieve certain purposes.

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

SECTION 1. It is the intent of the Legislature to enact the necessary statutory changes to California law in order to establish an American Health Benefit Exchange in California as required by the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal

Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

SEC. 2. Title 22 (commencing with Section 100500) is added to the Government Code, to read:

TITLE 22. CALIFORNIA HEALTH BENEFIT EXCHANGE

100500. (a) There is in state government the California Health Benefit Exchange, an independent public entity not affiliated with an agency or department, which shall be known as the Exchange. The Exchange shall be governed by an executive board consisting of five members who are residents of California. Of the members of the board, two shall be appointed by the Governor, one shall be appointed by the Senate Committee on Rules, and one shall be appointed by the Speaker of the Assembly. The Secretary of California Health and Human Services or his or her designee shall serve as a voting, ex officio member of the board.

(b) Members of the board, other than an ex officio member, shall be appointed for a term of four years, except that the initial appointment by the Senate Committee on Rules shall be for a term of five years, and the initial appointment by the Speaker of the Assembly shall be for a term of two years. Appointments by the Governor made after January 2, 2011, shall be subject to confirmation by the Senate. A member of the board may continue to serve until the appointment and qualification of his or her successor. Vacancies shall be filled by appointment for the unexpired term. The board shall elect a chairperson on an annual basis.

(c) (1) Each person appointed to the board shall have demonstrated and acknowledged expertise in at least two of the following areas:

- (A) Individual health care coverage.
- (B) Small employer health care coverage.
- (C) Health benefits plan administration.
- (D) Health care finance.
- (E) Administering a public or private health care delivery system.
- (F) Purchasing health plan coverage.

(2) Appointing authorities shall consider the expertise of the other members of the board and attempt to make appointments so that the board's composition reflects a diversity of expertise.

(d) Each member of the board shall have the responsibility and duty to meet the requirements of this title, the federal act, and all applicable state and federal laws and regulations, to serve the public interest of the individuals and small businesses seeking health care coverage through the Exchange, and to ensure the operational well-being and fiscal solvency of the Exchange.

(e) In making appointments to the board, the appointing authorities shall take into consideration the cultural, ethnic, and geographical diversity of the state so that the board's composition reflects the communities of California.

(f) (1) A member of the board or of the staff of the Exchange shall not be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, a carrier or other insurer, an agent or broker, a health care provider, or a health care facility or health clinic while serving on the board or on the staff of the Exchange. A member of the board or of the staff of the Exchange shall not be a member, a board member, or an employee of a trade association of carriers, health facilities, health clinics, or health care providers while serving on the board or on the staff of the Exchange. A member of the board or of the staff of the Exchange shall not be a health care provider unless he or she receives no compensation for rendering services as a health care provider and does not have an ownership interest in a professional health care practice.

(2) A board member shall not receive compensation for his or her service on the board but may receive a per diem and reimbursement for travel and other necessary expenses, as provided in Section 103 of the Business and Professions Code, while engaged in the performance of official duties of the board.

(3) For purposes of this subdivision, “health care provider” means a person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Act or the Chiropractic Act.

(g) No member of the board shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any decision that he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on him or her or a member of his or her immediate family, or on either of the following:

(1) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the member within 12 months prior to the time when the decision is made.

(2) Any business entity in which the member is a director, officer, partner, trustee, employee, or holds any position of management.

(h) There shall not be any liability in a private capacity on the part of the board or any member of the board, or any officer or employee of the board, for or on account of any act performed or obligation entered into in an official capacity, when done in good faith, without intent to defraud, and in connection with the administration, management, or conduct of this title or affairs related to this title.

(i) The board shall hire an executive director to organize, administer, and manage the operations of the Exchange. The executive director shall be exempt from civil service and shall serve at the pleasure of the board.

(j) The board shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of

Division 3 of Title 2), except that the board may hold closed sessions when considering matters related to litigation, personnel, contracting, and rates.

(k) (1) The board shall apply for planning and establishment grants made available to the Exchange pursuant to Section 1311 of the federal act. If an executive director has not been hired under subdivision (i) when the United States Secretary of Health and Human Services makes the planning and establishment grants available, the California Health and Human Services Agency shall, upon request of the board, submit the initial application for planning and establishment grants to the United States Secretary of Health and Human Services.

(2) If a majority of the board has not been appointed when the United States Secretary of Health and Human Services makes the planning and establishment grants available, the California Health and Human Services Agency shall submit the initial application for planning and establishment grants to the United States Secretary of Health and Human Services. Any subsequent applications shall be made as described in paragraph (1) once a majority of the members have been appointed to the board.

(3) The board shall be responsible for using the funds awarded by the United States Secretary of Health and Human Services for the planning and establishment of the Exchange, consistent with subdivision (b) of Section 1311 of the federal act.

SEC. 3. Section 1346.2 is added to the Health and Safety Code, to read:

1346.2. The director shall, in coordination with the Insurance Commissioner, review the Internet portal developed by the United States Secretary of Health and Human Services under subdivision (a) of Section 1103 of the federal Patient Protection and Affordable Care Act (Public Law 111-148) and paragraph (5) of subdivision (c) of Section 1311 of that act, and any enhancements to that portal expected to be implemented by the secretary on or before January 1, 2015. The review shall examine whether the Internet portal provides sufficient information regarding all health benefit products offered by health care service plans and health insurers in the individual and small employer markets in California to facilitate fair and affirmative marketing of all individual and small employer products, particularly outside the California Health Benefit Exchange created under Title 22 (commencing with Section 100500) of the Government Code. If the director and the Insurance Commissioner jointly determine that the Internet portal does not adequately achieve those purposes, they shall jointly develop and maintain an electronic clearinghouse to achieve those purposes. In performing this function, the director and the Insurance Commissioner shall routinely monitor individual and small employer benefit filings with, and complaints submitted by individuals and small employers to, their respective departments, and shall use any other available means to maintain the clearinghouse.

SEC. 4. Section 10112.4 is added to the Insurance Code, to read:

10112.4. The commissioner shall, in coordination with the Director of the Department of Managed Health Care, review the Internet portal developed by the United States Secretary of Health and Human Services

under subdivision (a) of Section 1103 of the federal Patient Protection and Affordable Care Act (Public Law 111-148) and paragraph (5) of subdivision (c) of Section 1311 of that act, and any enhancements to that portal expected to be implemented by the secretary on or before January 1, 2015. The review shall examine whether the Internet portal provides sufficient information regarding all health benefit products offered by health care service plans and health insurers in the individual and small employer markets in California to facilitate fair and affirmative marketing of all individual and small employer products, particularly outside the Health Benefit Exchange created under Title 22 (commencing with Section 100500) of the Government Code. If the commissioner and the Director of the Department of Managed Health Care jointly determine that the Internet portal does not adequately achieve those purposes, they shall jointly develop and maintain an electronic clearinghouse to achieve those purposes. In performing this function, the commissioner and the Director of the Department of Managed Health Care shall routinely monitor individual and small employer benefit filings with, and complaints submitted by individuals and small employers to, their respective departments, and shall use any other available means to maintain the clearinghouse.

SEC. 5. This act shall become operative only if Assembly Bill 1602 of the 2009–10 Regular Session is also enacted and becomes operative.