Senate Bill 220 (Yee):
On March 11, 2010, Senate Bill 220 was amended to include language mandating coverage for tobacco cessation services. On April 22, 2010, the Assembly Health Committee requested CHBRP to analyze language that will be included in further amendments to SB 220.

The March 11, 2010 version is included below, followed by the April 22, 2010 language.
AMENDED IN ASSEMBLY MARCH 11, 2010
AMENDED IN ASSEMBLY JULY 16, 2009
AMENDED IN ASSEMBLY JULY 2, 2009
AMENDED IN SENATE APRIL 13, 2009

SENATE BILL No. 220

Introduced by Senator Yee
(Coauthor: Senator DeSaulnier)

February 23, 2009

An act to amend Sections 8547.2, 8547.8, 19683, and 19683.5 of the Government Code, relating to whistleblower protections. An act to add Section 1367.27 to the Health and Safety Code, and to add Section 10123.175 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL’S DIGEST

SB 220, as amended, Yee. Whistleblower protection. Health care coverage: tobacco cessation services.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation of health care service plans by the Department of Managed Health Care and makes a violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Under existing law, a health care service plan and a health insurer are required to provide coverage for specified tests, including all generally medically accepted cancer screening tests.

This bill would require certain health care service plan contracts and health insurance policies that provide outpatient prescription drug benefits to also provide coverage for tobacco cessation services and would impose limits on copayments for those services.
Because a willful violation of the bill’s provisions relative to health care service plans would be a crime, 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.

(1) The California Whistleblower Protection Act authorizes a state employee or an applicant for state employment to file a complaint, as specified, with the State Personnel Board alleging reprisal, retaliation, threats, coercion, or similar improper conduct prohibited under the act.

This bill would in addition provide that the act applies to former employees, as specified, and to an individual appointed by the Legislature to a state board or commission and who is not a Member or employee of the Legislature. The bill would also prohibit retaliation in the form of decreasing the job responsibilities of an employee’s normal workload.

(2) Existing law provides that in addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure is liable in an action for damages brought against him or her by the injured party. However, any action for damages is not available to the injured party unless the injured party has first filed a complaint with the State Personnel Board, as specified, and the board has issued, or failed to issue, findings, as specified. For purposes of these provisions, protected disclosure means any good faith communication that discloses or demonstrates an intention to disclose information that may evidence an improper governmental activity or any condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was for the purpose of remediying that condition.

This bill would also require that when the injured party has requested a right-to-sue notice from the board, as provided, that request must be made before an action for damages is available. The existing definition of protected disclosure would be revised to specifically include any communication based on, or when carrying out, job duties, that otherwise falls within the definition above. The bill would modify the
definition of improper governmental activity to include any activity by an employee that is undertaken inside a state office, or, if undertaken outside a state office, directly relates to the functioning of state government. The bill would also expand the definition of protected disclosure to specifically include any good faith communication to the Bureau of State Audits alleging an improper governmental activity and any evidence delivered to the Bureau of State Audits in support of the allegation.

(3) Existing law requires the State Personnel Board to initiate a hearing or investigation of a written complaint of reprisal or retaliation that is prohibited by the California Whistleblower Protection Act within 10 working days of its submission. The executive officer is required to complete findings of the hearing or investigation within 60 working days thereafter and provide a copy of the findings to the complaining state employee or applicant for state employment and to the appropriate supervisor, manager, employee, or appointing authority. Within 60 days after receiving notification regarding a prohibited act, the appointing power must either serve notice of adverse action, as specified, or set forth in writing its reasons for not doing so. Existing law permits the supervisor, manager, employee, or appointing power to request a hearing before the State Personnel Board regarding the findings of the executive officer if the executive officer finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistleblower activities. Existing law provides that every person who violates these provisions is guilty of a misdemeanor.

This bill would instead require the board to either initiate a hearing or investigation of a written complaint of any improper acts prohibited by the act within 10 working days of its submission, or, upon written request of the complaining person submitted to the board within 10 working days of the submission of a complaint, issue a right-to-sue notice containing specified information to the person within 10 working days of the request, instead of initiating a hearing or investigation. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.

(4) Existing law provides that if, after the hearing described in (4) above, the State Personnel Board determines that a violation of the California Whistleblower Protection Act occurred, or if no hearing is requested and the findings of the executive officer conclude that
improper activity has occurred, the board may order any appropriate relief.

This bill would specify that appropriate relief may include, but would not be limited to, at the employee’s request and with the employee’s consent, transfer to or placement in any vacant position for which the employee is qualified.

(5) Existing law requires a public entity that provides for the defense of a state employee charged with a violation of the California Whistleblower Protection Act to reserve all rights to be reimbursed for any costs incurred in that defense. If a state employee is found to have violated the act, he or she is liable for all defense costs and is required to reimburse the public entity for those costs.

This bill would provide that if a state employee is successful in an action brought before the board pursuant to those provisions, the complaining employee shall be reimbursed for all costs incurred, including reasonable attorney’s fees.

This bill would also require the administrative law judge to make any orders that may appear just in order to prevent any named party from being embarrassed, delayed, or put to unnecessary expense, and may make other orders as the interests of justice may require during the administrative hearing, in all cases.

The bill would also make technical, conforming changes to those provisions.

(6) 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.


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

SECTION 1. The Legislature finds and declares the following:

(a) Providing tobacco cessation counseling and medication is one of the most clinically effective and cost-effective health services available, second only to inoculations. Tobacco cessation is five to 80 times more cost effective than pharmacologic interventions used to prevent heart attacks.
More than 70 percent of smokers wish they could quit tobacco, and each year one of every two smokers attempts to quit. However, the unassisted successful tobacco quit rate has remained constant at less than five percent. Access to counseling and pharmaceutical benefits doubles the successful quit rate and has achieved quit rates of 25 to 30 percent. Experience in health plans indicates that access to all cessation services saves four dollars ($4) for every dollar ($1) invested.

Each adult smoker costs employers one thousand seven hundred sixty dollars ($1,760) in lost productivity and one thousand six hundred twenty-three dollars ($1,623) in excess medical expenditures. Men who smoke incur fifteen thousand eight hundred dollars ($15,800) more in lifetime medical expenses than do men who do not smoke. For employers, the ultimate financial return is between five dollars ($5) and six dollars ($6) for every dollar spent on tobacco cessation.

Because of member transfers between plans, financial savings and tobacco-related disease reductions are effective only if universally available to the entire insured population. Therefore, a mandate on all plans and insurers to provide cost-effective treatment is necessary and beneficial.

It is the intent of the Legislature that this act diminish the statewide economic and personal cost of tobacco addiction by making tobacco cessation treatments available to all smokers. California has successfully reduced tobacco consumption in the last decade, but, despite that success, tobacco use is responsible for the unnecessary deaths of 40,000 residents and remains the leading cause of preventable death in this state. Annually, tobacco addiction costs California $8.6 billion in direct medical costs, which is approximately 12 percent of all health care costs.

SEC. 2. Section 1367.27 is added to the Health and Safety Code, to read:

1367.27. (a) A health care service plan contract, except a specialized health care service plan contract, that is issued, amended, delivered, or renewed on or after July 1, 2011, that provides outpatient prescription drug benefits, shall include coverage for tobacco cessation services that include two courses of treatment in a 12-month period including personal counseling, which may be telephone or individual counseling, and FDA-approved medication for tobacco cessation, including
prescription and over-the-counter medications. Covered treatment shall comply with the Public Health Service sponsored 2008 clinical practice guideline, “Treating Tobacco Use and Dependence: 2008 Update,” or its successors.

(b) No copayment or deductible shall be applied to benefits for over-the-counter tobacco cessation medications. Copayments for each course or treatment or prescription shall not exceed fifteen dollars ($15).

(c) A health care service plan may contract with qualified local, statewide, or national providers, whether for profit or nonprofit, for the provision of services under this section.

(d) A health care service plan shall disclose the benefits under this section in its evidence of coverage and disclosure forms and communicate the availability of coverage to all enrollees.

(e) The coverage provided pursuant to this section shall only be available upon the order of an authorized provider. Nothing in this subdivision shall preclude a plan from allowing enrollees to access tobacco cessation services on a self-referral basis.

SEC. 3. Section 10123.175 is added to the Insurance Code, to read:

10123.175. (a) Every individual or group health insurance policy that is issued, amended, delivered, or renewed on or after July 1, 2011, that provides outpatient prescription drug benefits, shall include coverage for tobacco cessation services that include two courses of treatment in a 12-month period including personal counseling, which may be telephone or individual counseling, and FDA-approved medication for tobacco cessation, including prescription and over-the-counter medications. Covered treatment shall comply with the Public Health Service sponsored 2008 clinical practice guideline, “Treating Tobacco Use and Dependence: 2008 Update,” or its successors.

(b) No copayment or deductible shall be applied to benefits for over-the-counter tobacco cessation medications. Copayments for each course or treatment or prescription shall not exceed fifteen dollars ($15).

(c) A health insurer may contract with qualified local, statewide, or national providers, whether for profit or nonprofit, for the provision of services under this section.
(d) An insurer shall disclose the benefits under this section in its evidence of coverage and disclosure forms and communicate the availability of coverage to all insureds.

(e) The coverage provided pursuant to this section shall only be available upon the order of an authorized provider. Nothing in this subdivision shall preclude an insurer from allowing insureds to access tobacco cessation services on a self-referral basis.

(f) This section shall not apply to a Medicare supplement, short-term limited duration health insurance, vision-only, dental-only, or Champus-supplement insurance, or to hospital indemnity, hospital-only, accident-only, or specified disease insurance that does not pay benefits on a fixed benefit, cash payment only basis.

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

All matter omitted in this version of the bill appears in the bill as amended in the Assembly, July 16, 2009. (JR11)
AMENDMENTS TO SENATE BILL NO. 220
AS AMENDED IN ASSEMBLY MARCH 11, 2010

Amendment 1
On page 5, line 14, strike out the first “do”

Amendment 2
On page 5, line 39, strike out “or individual counseling, and” strike out line 40, on page 6, strike out line 1, in line 2, strike out “shall comply with” and insert:

Amendment 3
On page 6, line 5, after “copayment” insert:

Amendment 4
On page 6, line 5, strike out “benefits for” strike out lines 6 to 8, inclusive, and insert:

Amendment 5
On page 6, line 14, after “enrollees” insert:

Amendment 6
On page 6, between lines 18 and 19, insert:

(f) As used in this section, “course of treatment” shall be defined to consist of the following:
(1) As applied to counseling, at least four sessions of counseling, each session lasting at least 10 minutes.
(2) As applied to a prescription or over-the-counter medication, the duration of treatment approved by the FDA for that medication.
(g) Enrollees shall not be required to enter counseling in order to receive tobacco cessation medications.

(h) A health care service plan shall not impose prior authorization or stepped-care requirements on tobacco cessation treatment.

Amendment 7

On page 6, line 26, strike out “or individual counseling, and” strike out lines 27 and 28, in line 29, strike out “shall comply with” and insert:

, group, or individual counseling, and all medications approved by the FDA for the purpose of tobacco cessation, including all prescription and over-the-counter medications. Covered treatment shall follow recommendations in

Amendment 8

On page 6, line 32, after “copayment” insert:

, coinsurance,

Amendment 9

On page 6, line 32, strike out “benefits for” strike out lines 33 to 35, inclusive, and insert:

the benefits under this section.

Amendment 10

On page 7, line 3, after “insureds” insert:

at least once per year

Amendment 11

On page 7, between lines 7 and 8, insert:

(f) As used in this section, “course of treatment” shall be defined to consist of the following:

(1) As applied to counseling, at least four sessions of counseling, each session lasting at least 10 minutes.

(2) As applied to a prescription or over-the-counter medication, the duration of treatment approved by the FDA for that medication.

(g) Insureds shall not be required to enter counseling in order to receive tobacco cessation medications.

(h) A health care service plan shall not impose prior authorization or stepped-care requirements on tobacco cessation treatment.
Amendment 12
On page 7, line 8, strike out "(f)" and insert:
(i)

Amendment 13
On page 7, line 8, strike out "a"

Amendment 14
On page 7, line 10, strike out "Champus-supplement" and insert:
CHAMPUS-supplement

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