Intended by Senator Monning

February 7, 2013

An act to add and repeal Section 1367.007 of the Health and Safety Code, and to add and repeal Section 10112.7 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL’S DIGEST

SB 189, as introduced, Monning. Health care coverage: wellness programs.

Existing federal law, the federal Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms that take effect January 1, 2014. Among other things, PPACA allows the premium rate charged by a health insurance issuer offering small group or individual coverage to vary only by family composition, rating area, age, and tobacco use, as specified, and prohibits discrimination against individuals based on health status, as specified. PPACA prohibits a health insurance issuer from requiring any individual to pay a premium or contribution that is greater than the premium or contribution paid by a similarly situated individual on the basis of any health status-related factor and prohibits construing this provision to prevent a group health insurance issuer from establishing premium discounts or rebates or modifying copayments or deductibles in return for adherence to wellness programs, as specified.

Existing law, the Knox-Keene Health Care Service Plan 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. Existing law allows small employer health care service plan contracts and health insurance
policies for plan years on or after January 1, 2014, to vary rates only based on age, geographic, region, and family size, as specified.

This bill, until January 1, 2020, would prohibit a health care service plan or health insurer from offering a wellness program in connection with a group health care service plan contract or group health insurance policy, or offering an incentive or reward under a group health care service plan contract or group health insurance policy, based on adherence to a wellness program, unless specified requirements are satisfied. The bill would specify that it does not apply to wellness programs established prior to its enactment provided that those programs comply with all other applicable laws, as specified.

Because a willful violation of the bill’s requirements 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.


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

SECTION 1. Section 1367.007 is added to the Health and Safety Code, to read:

1367.007. (a) A health care service plan shall not offer a wellness program in connection with a group health care service plan contract, or offer an incentive or reward under a group health care service plan contract based on adherence to a wellness program, unless all of the following requirements are satisfied:

(1) The program is reasonably designed to promote health or prevent disease. A program complies with the preceding sentence if the program has a reasonable chance of improving the health of, or preventing disease in, participating individuals, is not overly burdensome, is not a subterfuge for discriminating based on a health status factor, does not lead to cost shifting, and is not highly suspect in the method chosen to promote health or prevent disease.

(2) The incentive or reward is not in the form of a discount on or rebate of premium, deductible, copayment, or coinsurance.
Incentives may include rewards for participation that are not linked
to premiums, deductibles, copayments, or coinsurance.

(3) Participation in the program is voluntary.

(4) Receipt of an incentive or reward for participation in the
program is not conditioned on an individual satisfying a standard
that is related to a health status factor. The following wellness
programs shall be deemed to satisfy this paragraph:

(A) A program that reimburses all or part of the cost for
memberships in a fitness center.

(B) A diagnostic testing program that provides a reward for
participation and does not base any part of the reward on outcomes.

(C) A program that provides a reward to individuals for
attending a periodic health education seminar, so long as
participation is not related to a particular health condition or any
other health status factor.

(5) Participation in the program is offered to all similarly situated
individuals.

(6) Reasonable accommodation is provided for individuals with
disabilities who seek to voluntarily participate in the program.

(7) A reasonably available and equivalent alternative is provided
to those individuals who seek to voluntarily participate in the
program but are unable to participate due to occupational
requirements, a medical condition, or other hardship.

(8) All materials related to the program disclose the availability
of the accommodations under paragraphs (6) and (7).

(9) The program assesses the cultural competency needs of the
health care service plan’s population in its design.

(10) The program provides language assistance for limited
English-speaking individuals.

(11) The program does not result in any decrease in benefits
coverage.

(12) The program does not result in an increase in premium for
the product as demonstrated through rate review consistent with
Article 6.2 (commencing with Section 1385.01).

(13) The incentive or reward does not exceed the amounts
determined to be unreasonable by regulation by the director in
consultation with the Insurance Commissioner

(14) The incentive or reward does not exceed the percentage of
the cost of coverage under the plan contract identified in Section
2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-4) or regulations adopted thereunder.

(b) Nothing in this section shall prohibit a wellness program that was established prior to January 1, 2014, and applied consistent with all applicable laws in effect immediately prior to that date, and that is operating immediately prior to that date, from continuing to be carried out for as long as those laws remain in effect.

(c) By March 1, 2019, the department shall submit a report to the appropriate policy committees of the Legislature on the operation of health care service plan-based wellness programs.

(d) For purposes of this section, “wellness program” means a program that is designed to promote health or prevent disease.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 2. Section 10112.7 is added to the Insurance Code, to read:

10112.7. (a) A health insurer shall not offer a wellness program in connection with a group health insurance policy or offer an incentive or reward under a group health insurance policy based on adherence to a wellness program unless all of the following requirements are satisfied:

(1) The program is reasonably designed to promote health or prevent disease. A program complies with the preceding sentence if the program has a reasonable chance of improving the health of, or preventing disease in, participating individuals, is not overly burdensome, is not a subterfuge for discriminating based on a health status factor, does not lead to cost shifting, and is not highly suspect in the method chosen to promote health or prevent disease.

(2) The incentive or reward is not in the form of a discount on or rebate of premium, deductible, copayment, or coinsurance. Incentives may include rewards for participation that are not linked to premiums, deductibles, copayments, or coinsurance.

(3) Participation in the program is voluntary.

(4) Receipt of an incentive or reward for participation in the program is not conditioned on an individual satisfying a standard that is related to a health status factor. The following wellness programs shall be deemed to satisfy this paragraph:

(A) A program that reimburses all or part of the cost for memberships in a fitness center.
A diagnostic testing program that provides a reward for participation and does not base any part of the reward on outcomes.

A program that provides a reward to individuals for attending a periodic health education seminar, so long as participation is not related to a particular health condition or any other health status factor.

Participation in the program is offered to all similarly situated individuals.

Reasonable accommodation is provided for individuals with disabilities who seek to voluntarily participate in the program.

A reasonably available and equivalent alternative is provided to those individuals who seek to voluntarily participate in the program but are unable to participate due to occupational requirements, a medical condition, or other hardship.

All materials related to the program disclose the availability of the accommodations under paragraphs (6) and (7).

The program assesses the cultural competency needs of the health care service plan’s population in its design.

The program provides language assistance for limited English-speaking individuals.

The program does not result in any decrease in benefits coverage.

The program does not result in an increase in premium for the product as demonstrated through rate review consistent with Article 4.5 (commencing with Section 10181).

The incentive or reward does not exceed the amounts determined to be unreasonable by regulation by the commissioner in consultation with the Director of the Department of Managed Health Care.

The incentive or reward does not exceed the percentage of the cost of coverage under the policy identified in Section 2705(j)(3)(A) of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-4(j)(3)(A)) or regulations adopted thereunder.

(b) Nothing in this section shall prohibit a wellness program that was established prior to January 1, 2014, and applied consistent with all applicable laws in effect immediately prior to that date, and that is operating immediately prior to that date, from continuing to be carried out for as long as those laws remain in effect.
(c) By March 1, 2019, the department shall submit a report to
the appropriate policy committees of the Legislature on the
operation of health insurer-based wellness programs.
(d) For purposes of this section, “wellness program” means a
program that is designed to promote health or prevent disease.
(e) This section shall remain in effect only until January 1, 2020,
and as of that date is repealed, unless a later enacted statute, that
is enacted before January 1, 2020, deletes or extends that date.
SEC. 3. 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.