

**Introduced by Senator De León**

February 24, 2012

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An act to amend Section 10705 of the Insurance Code, relating to health insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1431, as introduced, De León. Health insurance.

Existing law provides for licensing and regulation of health insurers by the Insurance Commissioner. Existing law, with respect to health insurance for small employers, requires a health insurer to file a copy of the form of the health insurance policy, contract, certificate, or statement of coverage with the commissioner for approval prior to issuance or delivery to the purchaser.

This bill would require the filing to be done electronically.

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

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

- 1 SECTION 1. Section 10705 of the Insurance Code is amended
- 2 to read:
- 3 10705. Upon the effective date of this act:
- 4 (a) No group or individual policy or contract or certificate of
- 5 group insurance or statement of group coverage providing benefits
- 6 to employees of small employers as defined in this chapter shall
- 7 be issued or delivered by a carrier subject to the jurisdiction of the
- 8 commissioner regardless of the situs of the contract or master
- 9 policyholder or of the domicile of the carrier nor, except as
- 10 otherwise provided in Sections 10270.91 and 10270.92, shall a

1 carrier provide coverage subject to this chapter until a copy of the  
2 form of the policy, contract, certificate, or statement of coverage  
3 is *electronically* filed with and approved by the commissioner in  
4 accordance with Sections 10290 and 10291, and the carrier has  
5 complied with the requirements of Section 10717.

6 (b) (1) Each carrier, except a self-funded employer, shall fairly  
7 and affirmatively offer, market, and sell all of the carrier’s benefit  
8 plan designs that are sold to, offered through, or sponsored by,  
9 small employers or associations that include small employers to  
10 all small employers in each geographic region in which the carrier  
11 makes coverage available or provides benefits.

12 (2) A carrier contracting to participate in the Voluntary Alliance  
13 Uniting Employers Purchasing Program shall be deemed to be in  
14 compliance with paragraph (1) for a benefit plan design offered  
15 through the program in those geographic regions in which the  
16 carrier participates in the program and the benefit plan design is  
17 offered exclusively through the program.

18 (3) (A) A carrier shall be deemed to meet the requirements of  
19 paragraph (1) and subdivision (c) with respect to a benefit plan  
20 design that qualifies as a grandfathered health plan under Section  
21 1251 of PPACA if all of the following requirements are met:

22 (i) The carrier offers to renew the benefit plan design, unless  
23 the carrier withdraws the benefit plan design from the small  
24 employer market pursuant to subdivision (e) of Section 10713.

25 (ii) The carrier provides appropriate notice of the grandfathered  
26 status of the benefit plan design in any materials provided to an  
27 insured of the design describing the benefits provided under the  
28 design, as required under PPACA.

29 (iii) The carrier makes no changes to the benefits covered under  
30 the benefit plan design other than those required by a state or  
31 federal law, regulation, rule, or guidance and those permitted to  
32 be made to a grandfathered health plan under PPACA.

33 (B) For purposes of this paragraph, “PPACA” means the federal  
34 Patient Protection and Affordable Care Act (Public Law 111-148),  
35 as amended by the federal Health Care and Education  
36 Reconciliation Act of 2010 (Public Law 111-152), and any rules,  
37 regulations, or guidance issued thereunder. For purposes of this  
38 paragraph, a “grandfathered health plan” shall have the meaning  
39 set forth in Section 1251 of PPACA.

1 (4) Nothing in this section shall be construed to require an  
2 association, or a trust established and maintained by an association  
3 to receive a master insurance policy issued by an admitted insurer  
4 and to administer the benefits thereof solely for association  
5 members, to offer, market or sell a benefit plan design to those  
6 who are not members of the association. However, if the  
7 association markets, offers or sells a benefit plan design to those  
8 who are not members of the association it is subject to the  
9 requirements of this section. This shall apply to an association that  
10 otherwise meets the requirements of paragraph (8) formed by  
11 merger of two or more associations after January 1, 1992, if the  
12 predecessor organizations had been in active existence on January  
13 1, 1992, and for at least five years prior to that date and met the  
14 requirements of paragraph (5).

15 (5) A carrier which (A) effective January 1, 1992, and at least  
16 20 years prior to that date, markets, offers, or sells benefit plan  
17 designs only to all members of one association and (B) does not  
18 market, offer or sell any other individual, selected group, or group  
19 policy or contract providing medical, hospital and surgical benefits  
20 shall not be required to market, offer, or sell to those who are not  
21 members of the association. However, if the carrier markets, offers  
22 or sells any benefit plan design or any other individual, selected  
23 group, or group policy or contract providing medical, hospital and  
24 surgical benefits to those who are not members of the association  
25 it is subject to the requirements of this section.

26 (6) Each carrier that sells health benefit plans to members of  
27 one association pursuant to paragraph (5) shall submit an annual  
28 statement to the commissioner which states that the carrier is selling  
29 health benefit plans pursuant to paragraph (5) and which, for the  
30 one association, lists all the information required by paragraph (7).

31 (7) Each carrier that sells health benefit plans to members of  
32 any association shall submit an annual statement to the  
33 commissioner which lists each association to which the carrier  
34 sells health benefit plans, the industry or profession which is served  
35 by the association, the association's membership criteria, a list of  
36 officers, the state in which the association is organized, and the  
37 site of its principal office.

38 (8) For purposes of paragraphs (4) and (5), an association is a  
39 nonprofit organization comprised of a group of individuals or  
40 employers who associate based solely on participation in a

1 specified profession or industry, accepting for membership any  
2 individual or small employer meeting its membership criteria,  
3 which do not condition membership directly or indirectly on the  
4 health or claims history of any person, which uses membership  
5 dues solely for and in consideration of the membership and  
6 membership benefits, except that the amount of the dues shall not  
7 depend on whether the member applies for or purchases insurance  
8 offered by the association, which is organized and maintained in  
9 good faith for purposes unrelated to insurance, which has been in  
10 active existence on January 1, 1992, and at least five years prior  
11 to that date, which has a constitution and bylaws, or other  
12 analogous governing documents which provide for election of the  
13 governing board of the association by its members, which has  
14 contracted with one or more carriers to offer one or more health  
15 benefit plans to all individual members and small employer  
16 members in this state.

17 (c) Each carrier shall make available to each small employer  
18 all benefit plan designs that the carrier offers or sells to small  
19 employers or to associations that include small employers.  
20 Notwithstanding subdivision (d) of Section 10700, for purposes  
21 of this subdivision, companies that are affiliated companies or that  
22 are eligible to file a consolidated income tax return shall be treated  
23 as one carrier.

24 (d) Each carrier shall do all of the following:

25 (1) Prepare a brochure that summarizes all of its benefit plan  
26 designs and make this summary available to small employers,  
27 agents and brokers upon request. The summary shall include for  
28 each benefit plan design information on benefits provided, a generic  
29 description of the manner in which services are provided, such as  
30 how access to providers is limited, benefit limitations, required  
31 copayments and deductibles, standard employee risk rates, an  
32 explanation of how creditable coverage is calculated if a preexisting  
33 condition or affiliation period is imposed, and a telephone number  
34 that can be called for more detailed benefit information. Carriers  
35 are required to keep the information contained in the brochure  
36 accurate and up to date, and, upon updating the brochure, send  
37 copies to agents and brokers representing the carrier. Any entity  
38 that provides administrative services only with regard to a benefit  
39 plan design written or issued by another carrier shall not be

1 required to prepare a summary brochure which includes that benefit  
2 plan design.

3 (2) For each benefit plan design, prepare a more detailed  
4 evidence of coverage and make it available to small employers,  
5 agents and brokers upon request. The evidence of coverage shall  
6 contain all information that a prudent buyer would need to be aware  
7 of in making selections of benefit plan designs. An entity that  
8 provides administrative services only with regard to a benefit plan  
9 design written or issued by another carrier shall not be required to  
10 prepare an evidence of coverage for that benefit plan design.

11 (3) Provide to small employers, agents, and brokers, upon  
12 request, for any given small employer the sum of the standard  
13 employee risk rates and the sum of the risk adjusted standard  
14 employee risk rates. When requesting this information, small  
15 employers, agents and brokers shall provide the carrier with the  
16 information the carrier needs to determine the small employer's  
17 risk adjusted employee risk rate.

18 (4) Provide copies of the current summary brochure to all agents  
19 or brokers who represent the carrier and, upon updating the  
20 brochure, send copies of the updated brochure to agents and brokers  
21 representing the carrier for the purpose of selling health benefit  
22 plans.

23 (5) Notwithstanding subdivision (d) of Section 10700, for  
24 purposes of this subdivision, companies that are affiliated  
25 companies or that are eligible to file a consolidated income tax  
26 return shall be treated as one carrier.

27 (e) Every agent or broker representing one or more carriers for  
28 the purpose of selling health benefit plans to small employers shall  
29 do all of the following:

30 (1) When providing information on a health benefit plan to a  
31 small employer but making no specific recommendations on  
32 particular benefit plan designs:

33 (A) Advise the small employer of the carrier's obligation to sell  
34 to any small employer any of the benefit plan designs it offers to  
35 small employers and provide them, upon request, with the actual  
36 rates that would be charged to that employer for a given benefit  
37 plan design.

38 (B) Notify the small employer that the agent or broker will  
39 procure rate and benefit information for the small employer on

1 any benefit plan design offered by a carrier for whom the agent or  
2 broker sells health benefit plans.

3 (C) Notify the small employer that, upon request, the agent or  
4 broker will provide the small employer with the summary brochure  
5 required in paragraph (1) of subdivision (d) for any benefit plan  
6 design offered by a carrier whom the agent or broker represents.

7 (2) When recommending a particular benefit plan design or  
8 designs, advise the small employer that, upon request, the agent  
9 will provide the small employer with the brochure required by  
10 paragraph (1) of subdivision (d) containing the benefit plan design  
11 or designs being recommended by the agent or broker.

12 (3) Prior to filing an application for a small employer for a  
13 particular health benefit plan:

14 (A) For each of the benefit plan designs offered by the carrier  
15 whose benefit plan design the agent or broker is presenting, provide  
16 the small employer with the benefit summary required in paragraph  
17 (1) of subdivision (d) and the sum of the standard employee risk  
18 rates for that particular employer.

19 (B) Notify the small employer that, upon request, the agent or  
20 broker will provide the small employer with an evidence of  
21 coverage brochure for each benefit plan design the carrier offers.

22 (C) Notify the small employer that, from July 1, 1993, to July  
23 1, 1996, actual rates may be 20 percent higher or lower than the  
24 sum of the standard employee risk rates, and from July 1, 1996,  
25 and thereafter, actual rates may be 10 percent higher or lower than  
26 the sum of the standard employee risk rates depending on how the  
27 carrier assesses the risk of the small employer's group.

28 (D) Notify the small employer that, upon request, the agent or  
29 broker will submit information to the carrier to ascertain the small  
30 employer's sum of the risk adjusted standard employee risk rate  
31 for any benefit plan design the carrier offers.

32 (E) Obtain a signed statement from the small employer  
33 acknowledging that the small employer has received the disclosures  
34 required by this paragraph and Section 10716.

35 (f) No carrier, agent, or broker shall induce or otherwise  
36 encourage a small employer to separate or otherwise exclude an  
37 eligible employee from a health benefit plan which, in the case of  
38 an eligible employee meeting the definition in paragraph (1) of  
39 subdivision (f) of Section 10700, is provided in connection with  
40 the employee's employment or which, in the case of an eligible

1 employee as defined in paragraph (2) of subdivision (f) of Section  
2 17000, is provided in connection with a guaranteed association.

3 (g) No carrier shall reject an application from a small employer  
4 for a benefit plan design provided:

5 (1) The small employer as defined by paragraph (1) of  
6 subdivision (w) of Section 10700 offers health benefits to 100  
7 percent of its eligible employees as defined in paragraph (1) of  
8 subdivision (f) of Section 10700. Employees who waive coverage  
9 on the grounds that they have other group coverage shall not be  
10 counted as eligible employees.

11 (2) The small employer agrees to make the required premium  
12 payments.

13 (h) No carrier or agent or broker shall, directly or indirectly,  
14 engage in the following activities:

15 (1) Encourage or direct small employers to refrain from filing  
16 an application for coverage with a carrier because of the health  
17 status, claims experience, industry, occupation, or geographic  
18 location within the carrier's approved service area of the small  
19 employer or the small employer's employees.

20 (2) Encourage or direct small employers to seek coverage from  
21 another carrier or the program because of the health status, claims  
22 experience, industry, occupation, or geographic location within  
23 the carrier's approved service area of the small employer or the  
24 small employer's employees.

25 (i) No carrier shall, directly or indirectly, enter into any contract,  
26 agreement, or arrangement with an agent or broker that provides  
27 for or results in the compensation paid to an agent or broker for a  
28 health benefit plan to be varied because of the health status, claims  
29 experience, industry, occupation, or geographic location of the  
30 small employer or the small employer's employees. This  
31 subdivision shall not apply with respect to a compensation  
32 arrangement that provides compensation to an agent or broker on  
33 the basis of percentage of premium, provided that the percentage  
34 shall not vary because of the health status, claims experience,  
35 industry, occupation, or geographic area of the small employer.

36 (j) Except in the case of a late insured, or for satisfaction of a  
37 preexisting condition clause in the case of initial coverage of an  
38 eligible employee, a disability insurer may not exclude any eligible  
39 employee or dependent who would otherwise be entitled to health  
40 care services on the basis of any of the following: the health status,

1 the medical condition, including both physical and mental illnesses,  
2 the claims experience, the medical history, the genetic information,  
3 or the disability or evidence of insurability, including conditions  
4 arising out of acts of domestic violence of that employee or  
5 dependent. No health benefit plan may limit or exclude coverage  
6 for a specific eligible employee or dependent by type of illness,  
7 treatment, medical condition, or accident, except for preexisting  
8 conditions as permitted by Section 10198.7 or 10708.

9 (k) If a carrier enters into a contract, agreement, or other  
10 arrangement with a third-party administrator or other entity to  
11 provide administrative, marketing, or other services related to the  
12 offering of health benefit plans to small employers in this state,  
13 the third-party administrator shall be subject to this chapter.

14 (l) (1) With respect to the obligation to provide coverage newly  
15 issued under subdivision (d), the carrier may cease enrolling new  
16 small employer groups and new eligible employees as defined by  
17 paragraph (2) of subdivision (f) of Section 10700 if it certifies to  
18 the commissioner that the number of eligible employees and  
19 dependents, of the employers newly enrolled or insured during the  
20 current calendar year by the carrier equals or exceeds: (A) in the  
21 case of a carrier that administers any self-funded health benefits  
22 arrangement in California, 10 percent of the total number of eligible  
23 employees, or eligible employees and dependents, respectively,  
24 enrolled or insured in California by that carrier as of December  
25 31 of the preceding year, or (B) in the case of a carrier that does  
26 not administer any self-funded health benefit arrangements in  
27 California, 8 percent of the total number of eligible employees, or  
28 eligible employees and dependents, respectively, enrolled or  
29 insured by the carrier in California as of December 31 of the  
30 preceding year.

31 (2) Certification shall be deemed approved if not disapproved  
32 within 45 days after submission to the commissioner. If that  
33 certification is approved, the small employer carrier shall not offer  
34 coverage to any small employers under any health benefit plans  
35 during the remainder of the current year. If the certification is not  
36 approved, the carrier shall continue to issue coverage as required  
37 by subdivision (d) and be subject to administrative penalties as  
38 established in Section 10718.

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