SENATE RULES COMMITTEE SB 910
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: SB 910
Author: Hernandez (D)
Amended: 3/5/18
Vote: 21

SENATE HEALTH COMMITTEE: 7-0, 3/14/18
AYES: Hernandez, Leyva, Mitchell, Monning, Newman, Pan, Roth
NO VOTE RECORDED: Nguyen, Nielsen

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Short-term limited duration health insurance

SOURCE: Health Access California

DIGEST: This bill prohibits a health insurer from issuing, amending, selling, renewing, or offering a policy of short-term limited duration health insurance in California commencing January 1, 2019.

ANALYSIS:

Existing law:

1) Exempts, under federal law, short-term limited duration policies from the definition of individual health insurance. [42 USC § 300gg-91 (b)(5), 45 CFR § 144.103]

2) Establishes the Department of Managed Health Care (DMHC) to regulate health plans and the California Department of Insurance (CDI) to regulate health insurance. [HSC §1340, et. seq., and IC §106, et. seq.]

3) Defines, under state law relating to conversion coverage requirements, short-term limited duration health insurance to mean individual health insurance coverage that is offered by a licensed insurance company, intended to be used

as transitional or interim coverage to remain in effect for not more than 185 days, that cannot be renewed or otherwise continued for more than one additional period of not more than 185 days, and that is not intended or marketed as health insurance coverage, a health plan, or a health maintenance organization subject to guaranteed issuance or guaranteed renewal pursuant to relevant state law. [IC § 12671 (e)(8)]

4) Makes inoperative on January 1, 2014, a requirement on a health insurer to entitle an employee or member whose coverage under a group policy has been terminated to a converted policy issued by the insurer. [IC § 12672]

5) Requires all individual health benefit plans, except short-term limited duration insurance, to be renewable with respect to all eligible individuals or dependents at the option of the individual, with exceptions such as for fraud and abuse or if the carrier ceases to provide coverage in the state, among other circumstances. [HSC §1367.29 and IC §10273.6]

6) Exempts short-term limited duration health insurance from existing requirements on health plans that cover mental health services, and on health insurance rate increase notifications, requirements on health insurance policies that include professional mental health services, orthotic and prosthetic devices and services, mammography, maternity services, and reproductive and sexual health care services. [HSC §1367.29 and §1368.016, IC §10113.9, §10123.7, §10123.81, §10123.865, §10123.866, §10123.198, §10123.199, and §10123.202]

This bill:

1) Prohibits a health insurer, commencing January 1, 2019, from issuing, amending, selling, renewing, or offering a policy of short-term limited duration health insurance in California.

2) Defines "short-term limited duration health insurance" as health insurance coverage provided pursuant to a health insurance policy that has an expiration date that is less than 12 months after the original effective date of the coverage, including renewals.

3) Deletes all exemptions in existing law for short-term limited duration health insurance and revises the definition that is in an inoperative provision of law so that it is consistent with 2) above.

Comments

1) *Author's statement.* According to the author, short-term limited duration health insurance offers very limited value in a state like California that has embraced the Affordable Care Act (ACA) and been very successful at expanding comprehensive coverage such that only 6.8% of the state's population is uninsured. Expanded access to insurance coverage is important but coverage also must be comprehensive, affordable and accessible to all. California has been enacting policies to rid the individual and small group markets of junk insurance even before the ACA. With the ACA's reforms that ensure guaranteed issue of products, prevent underwriting, and require inclusion of essential health benefits, there is no reason to allow these noncompliant products to remain in the market. These products only serve to confuse and mislead Californians into a false security that their health care needs will be covered. These products are not made available to everyone, and in addition to confusing consumers, they are destabilizing to the ACA market, resulting in increased premiums for ACA products. The Urban Institute has released an issue brief stating that average premiums in the ACA-compliant individual insurance market would increase approximately 18% in the states that do not prohibit or limit expanded short-term limited duration plans. This increase includes the impact of the elimination of the individual mandate penalties. For California, the brief indicates a 17.8% premium increase for 2019.

2) *Short-term limited duration coverage.* According to a December 2017 brief by the Georgetown University Health Policy Institute Center on Health Insurance Reforms, short-term limited duration insurance is health insurance that, by definition, covers someone for less than 12 months and is not renewable. It was designed to fill temporary gaps in coverage. These policies do not have to meet ACA consumer protection requirements and they are generally issued to consumers who can pass medical underwriting. These policies provide minimal financial protection for insureds who become sick or injured. According to one analysis described in the brief, these policies regularly excluded coverage for preexisting conditions, did not cover mental health and substance use services, maternity care, or prescription drugs and included out-of-pocket maximums ranging from $7,000 to $20,000 for only three months of coverage.

3) *Federal regulations.* Under the ACA, group and individual health insurance cannot include preexisting condition exclusions, discriminate based on health status, have lifetime and annual limits, and they are required to cover preventive health services, dependent coverage to age 26, offer guaranteed issue and renewability of coverage, and cover essential health benefits among other

requirements. Under the Obama Administration, federal regulations were adopted to prohibit insurers from offering short-term limited duration policies that lasted longer than three months and required each policy to include a prominent notice that it is not minimum essential coverage, which is coverage that individuals must have to meet ACA requirements and not be subject to a penalty. Effective in 2019, the financial penalty for not having insurance was reduced to zero by the federal Tax Cut and Jobs Act of 2017. The Obama regulations took effect January 1, 2017. However, the federal departments of Health and Human Services, Labor and Treasury indicated they would not enforce the requirement that short-term coverage be less than three months for products sold before April 1, 2017, as long as the coverage ends on or before December 31, 2017. The Trump Administration issued a proposed rule on February 20, 2018 to expand the maximum coverage duration to up to 364 days and change the notice requirement to reflect that the individual mandate penalty is no longer in effect in 2019. The notice also warns that coverage lapsing midyear may create a coverage gap until the next open enrollment period is available. Under both sets of regulations, the departments estimate that approximately 100,000 to 200,000 additional individuals would shift from the individual market to short-term limited duration insurance in 2019. The departments estimate the majority of those who switch would be young and healthy and 90% would be unsubsidized. Once finalized, the Trump regulations will take effect 60 days upon publication.

4) *Short-term limited duration health plans in CA.* According to DMHC, the Knox-Keene Act (California law that regulates health plans) is silent on the matter of short-term limited duration health insurance but these policies do not comply with many minimum standards required under the Knox-Keene Act. However, these policies do appear to be subject to some type of regulation under the CDI. CDI indicates that gaps in the intersection of federal and California law make some of these policies arguably permissible in California. CDI indicates that many existing state insurance mandates apply to these policies. In a December 8, 2017 *Los Angeles Times* article, Insurance Commissioner Dave Jones indicates that CDI estimates there are only a few thousand active short-term policies across the state. In the same article, a representative of eHealth.com, a private online health insurance marketplace, indicates that there are not many carriers willing to offer state residents short-term limited duration options.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 5/10/18)

Health Access California (source)
Alameda County Board of Supervisors
American Cancer Society Cancer Action Network
APLA Health
Asian Law Alliance
Blue Shield of California
California Chronic Care Coalition
California Federation of Teachers
California Health Professional Student Alliance
California Immigrant Policy Center
California Labor Federation
California Physicians Alliance
California Rural Legal Assistance Foundation
ChapCare
Children's Defense Fund California
Consumers Union
Disability Rights California
Equality California
Kaiser Permanente
LA Care Health Plan
Latino Coalition for a Healthy California
Maternal and Child Health Access
National Health Law Program
National Multiple Sclerosis Society
San Francisco AIDS Foundation
Small Business Majority
Western Center on Law & Poverty

OPPOSITION: (Verified 5/10/18)

Anthem Blue Cross
California Association of Health Underwriters

ARGUMENTS IN SUPPORT: Health Access California writes that short-term insurance shortchanges consumers in two ways. First, consumers are lured to these products by cheaper premiums and secondly, short-term insurance plans lack important ACA protections. Without this bill, the pending federal rule will relegate California’s individual insurance market back to the pre-ACA days when consumers were left without care because of loopholes that left those who need maternity care, chemotherapy, or prescription drugs behind. Proponents indicate that this bill would maintain the stability of California's individual market by ensuring health coverage sold in California provides comprehensive benefits and consumer protections. Short-term insurance is bad for consumers because it lacks basic protections and essential health benefits that cover prescription drugs, maternity care, mental health, and other vital services. Kaiser Permanente supports this bill because short-term plans may cause healthier people to leave comprehensive coverage and choose an alternative plan in the individual or group market, which in turn will lead to market segmentation that will result in higher premiums. Kaiser writes that short-term insurance is detrimental to consumers and will destabilize the individual market in California, leading to premium increases.

ARGUMENTS IN OPPOSITION: Anthem Blue Cross opposes a strict prohibition on short-term limited duration health insurance and supports extending the permitted duration of short-term limited duration health insurance plans to 364 days per the proposed federal rule. Anthem Blue Cross believes, when used appropriately, these policies do serve an important purpose as an affordable source of coverage for individuals who are between plans and that 364 days of coverage is necessary in some cases, such as when an individual misses the deadline for open enrollment, or is between jobs and cannot afford COBRA (COBRA is the Consolidated Omnibus Budget Reconciliation Act, which requires a health plan to offer an outgoing employee continued coverage but without the employer's premium subsidy). The California Association of Health Underwriters (CAHU) believes this bill removes a critical tool for coverage and leaves affected individuals with no option other than to utilize costly emergency services should a need arise. CAHU requests amendments making these plans available to those who are otherwise legally prohibited from purchasing comprehensive coverage and limited until the next open enrollment.

Prepared by: Teri Boughton / HEALTH / (916) 651-4111
5/16/18 9:57:41

****** END ******