

ASSEMBLY BILL

No. 2028

Introduced by Assembly Member Ortega
(Coauthor: Senator Durazo)

February 1, 2024

An act to amend Section 1367.004 of the Health and Safety Code, and to amend Section 10112.26 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 2028, as introduced, Ortega. Medical loss ratios.

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 provides for the regulation of health insurers by the Department of Insurance. The federal Patient Protection and Affordable Care Act requires a health insurance issuer to comply with minimum medical loss ratios (MLRs) and to provide an annual rebate to each insured if the MLR of the amount of the revenue expended by the issuer on costs to the total amount of premium revenue is less than a certain percentage, as specified. Existing law requires health care service plans and health insurers that issue, sell, renew, or offer a contract or policy, excluding specialized dental and vision contracts and policies, to comply with a minimum MLR of 85% and provide specified rebates. Existing law requires a health care service plan or health insurer that issues, sells, renews, or offers a contract or policy covering dental services to annually report MLR information to the appropriate department.

This bill would require a health care service plan or health insurer that issues, sells, renews, or offers a specialized dental health care service plan contract or specialized dental health insurance policy to comply with a minimum MLR of 85% and to provide a specified rebate to an enrollee or insured. Because a willful violation of these provisions by a health care service plan 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.

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

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

1 SECTION 1. Section 1367.004 of the Health and Safety Code
2 is amended to read:
3 1367.004. (a) A health care service plan that issues, sells,
4 renews, or offers a contract covering dental services shall file a
5 report with the department by July 31 of each year, which shall be
6 known as the MLR annual report. The MLR annual report shall
7 be organized by market and product type and shall contain the
8 same information required in the 2013 federal Medical Loss Ratio
9 (MLR) Annual Reporting Form (CMS-10418). The department
10 shall post a health care service plan’s MLR annual report on its
11 ~~Internet Web site~~ *internet website* within 45 days after receiving
12 the report.
13 (b) The MLR reporting year shall be for the calendar year during
14 which dental coverage is provided by the plan. As applicable, all
15 terms used in the MLR annual report shall have the same meaning
16 as used in the federal Public Health Service Act (42 U.S.C. Sec.
17 300gg-18), Part 158 (commencing with Section 158.101) of Title
18 45 of the Code of Federal Regulations, and Section 1367.003.
19 (c) If the director decides to conduct a financial examination,
20 as described in Section 1382, because the director finds it necessary
21 to verify the health care service plan’s representations in the MLR
22 annual report, the department shall provide the health care service

1 plan with a notification 30 days before the commencement of the
2 financial examination.

3 (d) The health care service plan shall have 30 days from the
4 date of notification to electronically submit to the department all
5 requested records, books, and papers specified in subdivision (a)
6 of Section 1381. The director may extend the time for a health
7 care service plan to comply with this subdivision upon a finding
8 of good cause.

9 (e) The department shall make available to the public all of the
10 data provided to the department pursuant to this section.

11 (f) (1) *A health care service plan that issues, sells, renews, or*
12 *offers a contract covering dental services shall provide an annual*
13 *rebate to each enrollee under that coverage, on a pro rata basis,*
14 *if the ratio of the amount of premium revenue expended by the*
15 *plan on the costs for reimbursement for dental services provided*
16 *to enrollees under that coverage and for activities that improve*
17 *dental care quality to the total amount of premium revenue,*
18 *excluding federal and state taxes and licensing or regulatory fees*
19 *and after accounting for payments or receipts for risk adjustment,*
20 *risk corridors, and reinsurance, is less than 85 percent.*

21 (2) *The total amount of an annual rebate required under this*
22 *section shall be calculated in an amount equal to the product of*
23 *the amount by which the percentage described in paragraph (1)*
24 *exceeds the plan's MLR reported pursuant to subdivision (a)*
25 *multiplied by the total amount of premium revenue, excluding*
26 *federal and state taxes and licensing or regulatory fees and after*
27 *accounting for payments or receipts for risk adjustment, risk*
28 *corridors, and reinsurance.*

29 (f)

30 (g) This section does not apply to a health care service plan
31 contract issued, sold, renewed, or offered for health care services
32 or coverage provided in the Medi-Cal program (Chapter 7
33 (commencing with Section 14000) and Chapter 8 (commencing
34 with Section 14200) of Part 3 of Division 9 of the Welfare and
35 Institutions Code), the Medi-Cal Access Program (Chapter 2
36 (commencing with Section 15810) of Part 3.3 of Division 9 of the
37 Welfare and Institutions Code), or the California Major Risk
38 Medical Insurance Program (Chapter 4 (commencing with Section
39 15870) of Part 3.3 of Division 9 of the Welfare and Institutions

1 Code), to the extent consistent with the federal Patient Protection
2 and Affordable Care Act (Public Law 111-148).

3 ~~(g)~~

4 (h) The department may issue guidance to specialized health
5 care service plans subject to this section regarding compliance
6 with this section. The guidance shall not be subject to the
7 rulemaking provisions of the Administrative Procedure Act
8 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
9 Division 3 of Title 2 of the Government Code), and shall be
10 effective only until the department adopts regulations pursuant to
11 that act. The department shall consult with the Department of
12 Insurance in issuing the guidance specified in this section.

13 SEC. 2. Section 10112.26 of the Insurance Code is amended
14 to read:

15 10112.26. (a) A health insurer that issues, sells, renews, or
16 offers a policy covering dental services shall file a report with the
17 department, by July 31 of each year, which shall be known as the
18 MLR annual report. The MLR annual report shall be organized
19 by market and product type and contains the same information
20 required in the 2013 federal Medical Loss Ratio (MLR) Annual
21 Reporting Form (CMS-10418). The department shall post a health
22 insurer's MLR annual report on its ~~Internet Web site~~ *internet*
23 *website* within 45 days after receiving the report.

24 (b) The MLR reporting year shall be for the calendar year during
25 which dental coverage is provided by the plan. As applicable, all
26 terms used in the MLR annual report shall have the same meaning
27 as used in the federal Public Health Service Act (42 U.S.C. Sec.
28 300gg-18) and Part 158 (commencing with Section 158.101) of
29 Title 45 of the Code of Federal Regulations.

30 (c) If the commissioner decides to conduct an examination, as
31 described in Section 730, because the commissioner finds it
32 necessary to verify the health insurer's representations in the MLR
33 annual report, the department shall provide the health insurer with
34 a notification 30 days before the commencement of the
35 examination.

36 (d) The health insurer shall have 30 days from the date of
37 notification to electronically submit to the department all requested
38 records, books, and papers specified in subdivision (a) of Section
39 733. The commissioner may extend the time for a health insurer
40 to comply with this subdivision upon a finding of good cause.

1 (e) The department shall make available to the public all of the
2 data provided to the department pursuant to this section.

3 (f) (1) *A health insurer that issues, sells, renews, or offers a*
4 *policy covering dental services shall provide an annual rebate to*
5 *each insured under that coverage, on a pro rata basis, if the ratio*
6 *of the amount of premium revenue expended by the insurer on the*
7 *costs for reimbursement for dental services provided to insureds*
8 *under that coverage and for activities that improve dental care*
9 *quality to the total amount of premium revenue, excluding federal*
10 *and state taxes and licensing or regulatory fees and after*
11 *accounting for payments or receipts for risk adjustment, risk*
12 *corridors, and reinsurance, is less than 85 percent.*

13 (2) *The total amount of an annual rebate required under this*
14 *section shall be calculated in an amount equal to the product of*
15 *the amount by which the percentage described in paragraph (1)*
16 *exceeds the insurer's MLR reported pursuant to subdivision (a)*
17 *multiplied by the total amount of premium revenue, excluding*
18 *federal and state taxes and licensing or regulatory fees and after*
19 *accounting for payments or receipts for risk adjustment, risk*
20 *corridors, and reinsurance.*

21 ~~(f)~~

22 (g) This section does not apply to an insurance policy issued,
23 sold, renewed, or offered for health care services or coverage
24 provided in the Medi-Cal program (Chapter 7 (commencing with
25 Section 14000) and Chapter 8 (commencing with Section 14200)
26 of Part 3 of Division 9 of the Welfare and Institutions Code), the
27 Medi-Cal Access Program (Chapter 2 (commencing with Section
28 15810) of Part 3.3 of Division 9 of the Welfare and Institutions
29 Code), or the California Major Risk Medical Insurance Program
30 (Chapter 4 (commencing with Section 15870) of Part 3.3 of
31 Division 9 of the Welfare and Institutions Code), to the extent
32 consistent with the federal Patient Protection and Affordable Care
33 Act (Public Law 111-148).

34 ~~(g)~~

35 (h) This section does not apply to disability insurance for
36 covered benefits in the single specialized area of dental-only health
37 care that pays benefits on a fixed benefit, cash payment only basis.

38 ~~(h)~~

39 (i) The department may issue guidance to health insurers of
40 specialized health insurance policies subject to this section

1 regarding compliance with this section. The guidance shall not be
2 subject to the rulemaking provisions of the Administrative
3 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
4 Part 1 of Division 3 of Title 2 of the Government Code), and shall
5 be effective only until the department adopts regulations pursuant
6 to that act. The department shall consult with the Department of
7 Managed Health Care in issuing the guidance specified in this
8 section.

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.