

Date of Hearing: July 11, 2023

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 595 (Roth) – As Amended June 29, 2023

SENATE VOTE: 40-0

SUBJECT: Covered California: data sharing.

SUMMARY: Requires California's Health Benefit Exchange (Exchange or Covered California) to only request from the Employment Development Department (EDD), the minimum amount of information necessary to accomplish outreach and marketing. Requires a person or entity (such as Covered California marketing vendors) to take all necessary measures to safeguard the confidentiality of any information obtained from the Exchange and prohibits a person or entity from using or disclosing that information for any purpose other than to market and publicize the availability of health care coverage through the Exchange to individuals, as directed by the Exchange. Requires information received by the Exchange from the EDD to be destroyed in a manner that maintains confidentiality. Specifically, **this bill:**

- 1) Authorizes the Exchange to use any contact method that is intended to reach an individual at their residence or other personal contact channel to communicate with an individual, as specified, to assist those individuals in obtaining health care coverage.
- 2) Authorizes the Exchange to disclose information obtained from the EDD to outreach and marketing vendors under Exchange contract.
- 3) Prohibits the Exchange from disclosing information obtained from the EDD to a certified insurance agent, a certified enrollment counselor, or any other entity without the consent of the applicant, except as provided in 2) above.
- 4) Specifies any outreach and marketing conducted pursuant to this bill to include, in a conspicuous and easy to access manner, the ability for individuals to decline all future outreach and marketing.
- 5) Requires the Exchange to take all necessary measures to safeguard the confidentiality of any information from EDD and at all times only request from the EDD, use, or disclose the minimum amount of information necessary.
- 6) Requires a person or entity that receives information from the Exchange pursuant to this bill to take all necessary measures to safeguard the confidentiality of any information obtained from the Exchange and to at no time use or disclose that information for any purpose other than to market and publicize the availability of health care coverage through the Exchange to individuals, as directed by the Exchange. Requires a person or entity to, at all times, only request from the Exchange, use, or disclose the minimum amount of information necessary to accomplish the purposes for which it was received.
- 7) Requires information received by the Exchange from the EDD to:
 - a) At all times be subject to applicable privacy and information security-related requirements arising under both federal and state law; and,

- b) Be destroyed in a manner that maintains confidentiality.
- 8) Requires the Exchange to ensure that information disclosed to outreach and marketing vendors or any other entity pursuant to this bill to comply with 7) above.
- 9) Revises existing law to specify that upon the request of either the Exchange or the Department of Health Care Services (DHCS), EDD to provide to the relevant state agency information on new applicants for unemployment insurance, state disability insurance, and paid family leave. Requires the Exchange and DHCS to, at all times, request from EDD the minimum amount of information necessary from the information listed in 2) above. Requires the information to be sent in a manner that is encrypted or otherwise complies with government data security best practices, as specified by the Exchange; and, this information to only be used for the purposes of outreach and marketing.

EXISTING LAW:

- 1) Establishes, in state government, Covered California or the Exchange, as an independent public entity not affiliated with an agency or department, and requires the Exchange to compare and make available through selective contracting health insurance for individual and small business purchasers as authorized under the federal Patient Protection and Affordable Care Act (ACA). Specifies the powers and duties of the Covered California board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers. [Government Code (GOV) §100500-100522]
- 2) Establishes the Medi-Cal program, administered by DHCS, under which low-income individuals are eligible for medical coverage. [Welfare and Institutions Code (WIC) § 14000, *et seq.*] Establishes a schedule of benefits under the Medi-Cal program, which includes benefits required under federal law and benefits provided at state option but for which federal financial participation is available. [WIC §14132]
- 3) Establishes a system of unemployment administered by the EDD. [Unemployment Insurance Code (UIC) §100, *et seq.*]
- 4) Requires the EDD Director to permit the use of any information in the EDD Director's possession to the extent necessary to enable federal, state, or local governmental departments or agencies, to verify or determine the eligibility or entitlement of any applicant for, or a recipient of, public social services, as specified, when the verification or determination is directly connected with, and limited to, the administration of public social services. Requires EDD, upon the request of either the Exchange or DHCS, to also provide to the relevant state agency information on new applicants for unemployment insurance, state disability insurance, and paid family leave. Requires specified data points to be sent in a manner that is encrypted or otherwise complies with government data security best practices, as specified by the Exchange. [UIC §1095]
- 5) Requires Covered California to request information, on at least a monthly basis, from EDD for each new applicant for unemployment compensation, state disability, and paid family leave so that Covered California can communicate with and inform those individuals of available health care coverage options through Covered California and assist those

individuals in obtaining health care coverage. [GOV §100503.9]

- 6) Prohibits Covered California from disclosing personal information obtained from EDD without the consent of the applicant. Requires Covered California to at all times take reasonable measures to safeguard the confidentiality of any personal information obtained by EDD and not disclose that information for any purposes other than to market and publicize the availability of health care coverage, and, requires this personal information to at all times be subject to applicable privacy and information security-related requirements arising under federal and state law. [GOV §100503.9]

FISCAL EFFECT: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, access to information regarding health insurance options is one of the primary barriers to achieving universal healthcare coverage in the State, especially as Californians experience transitions in employment and income. The author states that this bill is follow-up legislation to Senator Leyva’s SB 644 (Leyva), Chapter 983, Statutes of 2022, which was signed into law last year. According to the author, this bill would make certain that the provisions of SB 644 enable timely communication to individuals to reduce burdens of applying for health insurance and to minimize gaps in coverage. The author concludes that this bill is a simple fix that maintains the greater accessibility to health insurance established by SB 644—while protecting Californians from receiving cold calls from outside entities.
- 2) **BACKGROUND.** SB 644 requires Covered California to request from the EDD, at least monthly, and no later than September 1, 2023, contact information of each new applicant for unemployment compensation, state disability, and paid family leave, including their last name, first name, social security number, date of birth, and all mailing addresses. Existing law prohibits the Exchange from disclosing personal information obtained from EDD without the applicant’s consent and requires the Exchange to take reasonable measures to safeguard the confidentiality of any personal information obtained by the EDD. SB 644 also requires the Exchange to market and publicize the availability of health care coverage through the Exchange, and engage in outreach activities, to the individuals whose information the Exchange receives from EDD. While SB 644 was passed in 2022, Governor Newsom’s signing message states the following:

I am signing Senate Bill 644, which enhances partnership between Covered California and the Employment Development Department by enabling Covered California to conduct proactive and targeted outreach to applicants of unemployment insurance and other benefits. In doing so, this legislation provides Californians with important and timely information about affordable health coverage options when they may need it the most.

To ensure Covered California can effectively reach Californians, and to maximize the important impact SB 644 can have to keep Californians in need covered, I strongly encourage Covered California and the Legislature to work together on subsequent legislation next year to ensure that the provisions of the bill enable timely communication

to individuals to reduce burdens of applying for health care and minimize gaps in coverage.

According to the author and sponsors of this bill, this bill is necessary since Covered California does not directly handle the outreach and marketing to individuals. Currently, Covered California hires a third party vendor to handle the outreach and marketing and the vendor under contract must then follow all applicable privacy and information security laws. Thus, EDD is able to share applicant information with Covered California and Covered California is able to receive it, however, Covered California's vendors would need to get applicant consent again in order to conduct outreach to these individuals. This bill allows the sharing of information to enable the timely communication to individuals necessary to avoid gaps in health care coverage.

The Federal ACA. Enacted in March 2010, the ACA provides the framework, policies, regulations and guidelines for the implementation of comprehensive health care reform by the states. The ACA expands access to quality, affordable insurance and health care. The ACA required exchanges, also known as Marketplaces, to be established in every state by January 1, 2014, otherwise the federal government would establish one in the state, by federally-facilitated exchanges (FFEs). The central purpose of these new Marketplaces is to enable low and moderate income individuals, and small employers to obtain affordable health coverage. The new Marketplaces are required to carry out a number of different functions, including determining eligibility and enrolling individuals in appropriate plans; conducting plan management activities; assisting consumers; and, ensuring plan accountability.

Covered California. California was the first state in the nation to enact legislation creating an Exchange under the ACA and is the largest state-run Exchange in the nation. Additionally, it is the only place to get federal premium assistance to help Californians buy health insurance. A 2020 Covered California report, entitled "Coverage When You Need It: Lessons from Insurance Coverage Transitions in California's Individual Marketplace Pre and Post the COVID-19 Pandemic," states that Covered California's experience demonstrates the positive role a marketplace can play to meet health coverage and economic needs of Americans, especially in the time of the COVID-19 recession, as the California marketplace has reached its highest number of covered members since its launch in 2014 (over 1.53 million). Building on its outreach and promotion with a COVID-19 special enrollment period (SEP), Covered California has enrolled over twice as many people as in the year prior, with almost 290,000 Californians gaining coverage since March 20, 2020. While enrollment in states served by the FFE grew in the months since the beginning of the COVID-19 pandemic, if the FFE states experienced California's trend for new sign-ups in 2020, nearly 500,000 more Americans would have signed up for insurance coverage during the special enrollment period through May 2020. There have been dramatic changes in the mix of consumers signing up for coverage since the COVID-19 pandemic began, with far more signing up after losing job-based coverage, and one-fifth of new sign-ups from those who likely would be ineligible to enroll without California's COVID-19 SEP. The insurance-related impacts of the recession are evident in changes in where consumers are going when they leave Covered California. A much smaller share of consumers are leaving for job-based coverage (only 15% compared to the pre-COVID rate of 55%), more are enrolling in Medi-Cal as they lose income, and a greater share of consumers are leaving to become uninsured, a troubling indicator of unaffordability of even subsidized coverage in tough economic times.

Privacy Protections. This bill authorizes the Exchange to share information related to outreach and marketing without an individual's consent. To address privacy concerns, Covered California also identified some of the protections in existing law. California law prohibits Covered California from using or disclosing the information received for any other purpose other than to market and publicize the availability of health care coverage through the Exchange. The California Information Practices Act requires Covered California to maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by state or federal law. Federal regulations require Covered California to establish and implement privacy and security standards that limit the creation, collection, use, and disclosure of personally identifiable information only to the extent necessary to accomplish a specified purpose(s). Privacy and security controls set forth in the Minimum Acceptable Risk Safeguards for Exchanges (MARS-E) require Covered California to identify the minimum personally identifiable information elements required to accomplish to legally authorized purpose and use the information only for legally authorized purposes. Covered California Privacy Standards, adopted pursuant to federal regulations and approved by the Centers for Medicare & Medicaid Services, require Covered California only collect the minimum amount of consumer personally identifiable information needed to fulfill the purposes for which it was collected.

3) SUPPORT. The California Pan-Ethnic Health Network, Western Center on Law & Poverty, and Health Access California, cosponsors, write that this bill will enable Covered California to conduct targeted outreach to people who apply for unemployment insurance by utilizing information collected and shared by the EDD. One of the top hurdles to achieving universal health coverage is making sure Californians are aware of their insurance options, especially as they experience transitions in employment and income. Last year, SB 644 (Leyva) was passed and established a vital partnership between Covered California and EDD for conducting direct outreach on affordable health coverage options to community members who applied for unemployment insurance, or other EDD programs. However, current statute limits Covered California's ability to send outreach materials to Californians in need, as it would require the agency's trusted contracted and subcontracted vendors to obtain individual consent prior to contacting individuals. Currently, Covered California must abide by strict federal and state privacy protections. Similarly, any vendors that are contracted or subcontracted must abide by the same strict protections the moment a contract is signed as these trusted partners operate as an extension of the agency to assist with specific duties. According to the sponsors, this bill aligns with these existing state and federal protections. Additionally, recent amendments to the bill add additional specifications for safeguarding information and include any person or entity that receives information – which is inclusive of contracted vendors – and carefully limits the sharing of information strictly for the purpose of outreach on health care coverage options offered by Covered CA to Californians in need. California continues to take strides towards universal coverage and this bill is part of that solution. This important piece of legislation would ensure unemployed Californians are contacted and enrolled in health care coverage and avoids increasing the uninsured populations, which can become incredibly costly for the state. Without the passage of this bill, the sponsors conclude that Covered California and their outreach vendors will be unable to fulfill their outreach duties and we risk leaving thousands of community members throughout the state without quality health care coverage.

4) PREVIOUS LEGISLATION.

- a) SB 644 requires the Exchange, at least monthly no later than September 1, 2023, to request from the EDD contact information of each new applicant for unemployment compensation, state disability, and paid family leave, including last name, first name, social security number, date of birth, and all mailing addresses. Prohibits the Exchange from disclosing personal information obtained from EDD without the applicant's consent. Requires the Exchange to take reasonable measures to safeguard the confidentiality of any personal information obtained by the EDD, as specified. Requires EDD to provide specified information to the Exchange or the DHCS upon request to assist in determining eligibility for insurance eligibility administered by those state agencies. Requires the Exchange to market and publicize the availability of health care coverage through the Exchange, and engage in outreach activities, to the individuals whose information the Exchange receives from EDD.
 - b) SB 260 (Hurtado), Chapter 845, Statutes of 2019, requires Covered California, beginning July 1, 2021, to enroll an individual or individuals using electronic information from Medi-Cal or the Children's Health Insurance Program in the lowest cost silver Covered California plan. Requires a health plan or insurer to annually notify an individual that when he or she ceases to be enrolled in coverage, his or her contact information will be provided to Covered California to assist him or her in obtaining other coverage, or that he or she may opt out of this transfer of information.
 - c) AB 792 (Bonilla), Chapter 851, Statutes of 2012, establishes notification requirements about the availability of reduced-cost coverage available in Covered California and no-cost coverage available in Medi-Cal to an individual filing a dissolution or nullity of marriage, divorce or separation, or petitioning for adoption, or for an individual who ceases to be enrolled in health coverage through a health plan or health insurer.
 - d) AB 1602 (John A Pérez), Chapter 655, Statutes of 2010, and SB 900 (Alquist), Chapter 659, Statutes of 2010, establish the Exchange in California and delineate its powers and duties.
- 5) **DOUBLE REFERRAL.** This bill is double-referred; it passed the Privacy and Consumer Protection Committee by a vote of 8-0 on June 27, 2023.

REGISTERED SUPPORT / OPPOSITION:

Support

Buen Vecino
 California Pan-Ethnic Health Network
 California Rural Legal Assistance Foundation, Inc.
 Central Valley Immigrant Integration Collaborative
 Children's Partnership, the
 Coalition of California Welfare Rights Organizations
 Health Access California
 Multi Ethnic Collaborative of Community Agencies
 National Health Law Program
 South Asian Network
 Western Center on Law & Poverty

Opposition

None on file.

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