



Agenda Item 7a

May 14, 2013

ITEM NAME: Senate Bill 189 (Monning) – Health Care Coverage: Wellness Programs

As Amended on April 22, 2013

Sponsor: Author

PROGRAM: Legislation

ITEM TYPE: Action

RECOMMENDATION

Adopt an **Oppose** position for Senate Bill (SB) 189, as it would restrict the California Public Employees' Retirement System (CalPERS) Board of Administration's (Board) statutory authority to design its own wellness programs for the Health Maintenance Organization (HMO) health benefit plans it offers to the full extent allowed under federal law.

EXECUTIVE SUMMARY

SB 189 would, until January 1, 2020, prohibit a group health plan regulated by the Department of Managed Health Care (DMHC) or the Department of Insurance (CDI) from offering a wellness-program unless it satisfies specified requirements. Among these requirements is that a wellness program cannot offer incentives linked to premiums, cost sharing or conditioned on meeting specific health status outcomes. Moreover, this bill does not make any distinctions between participatory wellness programs and health contingent programs as current federal law does calling into question whether, and under what circumstances, these programs can be offered in California.

STRATEGIC PLAN

The item is not a specific product of the Annual or Strategic Plan, but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

BACKGROUND

Voluntary Wellness Programs and Wellness Programs Linking Incentives to Results

Many employers, including CalPERS, offer voluntary wellness programs to encourage employees to undergo health screenings, join fitness centers, quit smoking, or pursue other health goals. It is widely believed that such programs improve health and control spending, but experience thus far has shown that employers need to offer strong financial incentives to encourage participation. The Affordable Care Act raises the amount by which employers may vary employees'

premium contributions to encourage greater adoption of, and participation in, wellness program.

A recent Aon Hewitt survey found there are employers who penalize workers not making healthy changes, such as quitting smoking or losing weight. These employers are linking incentives to measurable results. Programs seeking to impose consequences on workers by charging them higher premiums or requiring them to pay a surcharge have come under criticism because such policies are seen as invasive and punish people for health problems that are not always easy to fix. In a separate, recent Aon Hewitt survey, done in partnership with the National Business Group on Health and the consulting firm Futures Company, evidence was offered from the survey that incentive programs can change behaviors.

CalPERS Wellness Programs and Initiatives

CalPERS authority to offer health benefits is specified in the Public Employees' Medical and Hospital Care Act, which provides the Board responsibility for the approval of health benefit plans, contracts with carriers, health benefit design, and the establishment of monthly premiums and co-payments. The wellness programs currently offered to CalPERS members through contracted health plans (Anthem, Kaiser and Blue Shield), vary among the plans, however all of them provide rewards and incentives programs for participating members. These rewards are contingent upon completing programs and are not linked to targeted health outcomes, or impact premiums or cost sharing.

In 2011, the Board approved the recommendations contained in the CalPERS Health Benefits Purchasing Review, a three to five year business plan that consists of 21 initiatives intended to leverage market changes, to influence health care delivery, and to contain market costs over the long term. This project includes an initiative to develop a wellness platform that could prevent illness and improve wellness outcomes.

Chapter 445 of 2012 (Assembly Bill (AB) 2142, Furutani), provides the Board with authority to adjust premiums as part of programs for health promotion and disease prevention. These changes may be incorporated into future health-benefit plan designs subject to Board approval.

Federal Law and Wellness Programs

The Affordable Care Act (ACA) includes provisions that emphasize health promotion and wellness, and require health plans to cover certain preventive services without cost sharing. The ACA also specifically exempts wellness programs from the provision of the ACA prohibiting discrimination against individuals enrolled in a health plan based on their health status. Moreover, the ACA allows rewards for health contingent wellness programs in the form of: "a discount or rebate of a premium or contribution, a waiver of all or part of a cost-sharing mechanism (such as deductibles, copayments, or coinsurance), the absence of a surcharge, or the value of a benefit

that would otherwise not be provided under the plan, or other financial or nonfinancial incentives or disincentives.” The Departments of Health and Human Services, Labor and the Treasury have released proposed rules on wellness programs to implement the ACA and to encourage appropriately designed, consumer-protective wellness programs in group health coverage. Once finalized, the proposed rules would be effective for plan years starting on or after January 1, 2014.

The proposed rules support “participatory wellness programs” which generally are available without regard to an individual’s health status. These include, for example, programs that reimburse for the cost of membership in a fitness center; that provide a reward to employees for attending monthly, no-cost health education seminars; or that provide a reward to employees who complete a health risk assessment without requiring them to take further action.

The proposed rules also support “health-contingent wellness programs,” which generally require individuals to meet a specific goal related to their health to obtain a reward. Examples of health-contingent wellness programs include programs that provide a reward to those who do not use, or decrease their use of, tobacco, those who achieve a specified cholesterol level or weight, and programs for those who fail to meet that biometric target but take certain additional required actions.

The proposed rules to implement the ACA have also updated and clarified five existing federal requirements for health-contingent wellness programs designed to protect consumers from unfair practices. They include:

- “The total reward for such wellness programs offered by a plan sponsor does not exceed 20 percent of the total cost of coverage under the plan.”
- “The program is reasonably designed to promote health or prevent disease. For this purpose, it must have a reasonable chance of improving health or preventing disease, not be overly burdensome, not be a subterfuge for discriminating based on a health factor, and not be highly suspect in method.”
- “The program gives eligible individuals an opportunity to qualify for the reward at least once per year.”
- “The reward is available to all similarly situated individuals. For this purpose, a reasonable alternative standard (or waiver of the otherwise applicable standard) must be made available to any individual for whom it is unreasonably difficult due to a medical condition to satisfy the otherwise applicable standard during that period (or for whom it is medically inadvisable to attempt to satisfy the otherwise applicable standard).”
- “In all plan materials describing the terms of the program, the availability of a reasonable alternative standard (or the possibility of waiver of the otherwise applicable standard) is disclosed.”

ANALYSIS

1. Proposed Changes

Specifically, this bill would, until January 1, 2020:

- Prohibit a group health plan to offer a wellness program, or offer an incentive or reward under a group health plan based on adherence to a wellness program unless it is reasonably designed to promote health or prevent disease, which means it:
 1. Has a reasonable chance of improving the health or preventing disease in participating individuals;
 2. Is not overly burdensome;
 3. Is not a subterfuge for discrimination based on a health status factor;
 4. Does not lead to cost shifting; and
 5. Is not highly suspect in the method chosen to promote health or prevent disease.
- Require that incentives or rewards not be in the form of a discount on or rebate of premium, deductible, copayment, or coinsurance.
- Allow incentives to include rewards for participation that are not linked to premiums, deductibles, copayments, or coinsurance.
- Require that participation in the program be voluntary.
- Require that receipt of an incentive or reward for participation in the program not be conditioned on the individual satisfying a standard related to a health status factor.
- Require that participation in the program be offered to all similarly situated individuals.
- Require reasonable accommodation for individuals with disabilities seeking to voluntarily participate in the program.
- Require a reasonable and equivalent alternative for individuals seeking to voluntarily participate in the program, who are unable to participate due to occupational requirements, a medical condition, or other hardship.
- Require all materials related to the program disclose the availability of the accommodations.
- Require the program to assess the cultural competency needs of the health-care service plan's population in its design.
- Require the program to provide language assistance for limited English-speaking individuals.
- Require that the program does not result in any decrease in benefits coverage.
- Stipulate that the program not result in an increase in premium for the product as demonstrated through rate review.
- Make certain that the incentive or reward not exceed the amounts determined to be unreasonable by regulation by the Director of the DMHC in consultation with the Insurance Commissioner.
- Require that the incentive or reward not exceed the percentage of the cost of coverage under the plan contract.

2. The Use of Wellness Programs to Discriminate Does Not Appear to Be An Issue for a Large Group Provider Like CalPERS

Among other things, the ACA requires health plans and insurers to provide health coverage regardless of any preexisting condition, and limits the rating factors they can use to determine premiums to age, geographic region, family size, and tobacco use. Senator Monning, the author of this bill, previously authored AB 1083 (Chapter 852, Statutes of 2012), which further prohibits tobacco use as a rating factor in the California individual and small group markets.

Since passage of the ACA, consumer advocates have expressed concern that the design of wellness programs could be used to overcome the prohibition on using health status as a rating factor. In response, then Assembly Member Monning introduced AB 1636 of 2012, which would have required the DMHC and other state agencies to review and evaluate health and wellness programs offered by health plans, insurers, and employers for their effectiveness and potential for discrimination based on individuals' medical history and other factors. That bill was held in the Senate Appropriations Committee, and the study was never conducted.

The Committee's analysis of AB 1636 included an example of potential discrimination, whereby "a wellness program that provided significant financial incentives to employees to participate in physically demanding activity may have the effect of excluding employees with ongoing health problems from participating in a health plan or insurance policy."

Such a situation would not appear to apply to a large group provider such as CalPERS, which, through its affiliated health plan providers, covers more than 1.3 million current and retired public employees and their families. CalPERS members have several insurance options from which to choose, all designed by CalPERS professional staff and approved by the CalPERS Board in pre-noticed and well publicized public forums. Members are able to choose from several Preferred Provider Organization and HMOs with full or restricted networks. While all these plan options include wellness programs, the programs currently only provide financial incentives for participation, and not actual health outcomes.

3. Overly Broad and Undefined Provisions May Cause Conflict with Federal Requirements

Several stated requirements of SB 189 are already contained in the ACA, and the proposed rules discussed above, including that wellness programs: 1) be reasonably designed to promote health or prevent disease, 2) are not overly burdensome, 3) do not lead to cost shifting, 4) are not subterfuge for discrimination based on a health status factor, and 5) are not highly suspect in the method chosen to promote health or prevent disease. As currently contained in SB 189, these requirements are undefined and subjective in nature. Furthermore,

various federal agencies have proposed, but not yet finalized, regulations to clarify and implement their intent.

These undefined and subjective provisions, as included in SB 189, appear to be more appropriate statements of legislative intent rather than statutory requirements subject to state enforcement. As legislative intent, they can provide a helpful guide for health plans and insurers as they develop wellness programs, or serve as a declaration that state law will mirror federal law. As statute, they provide the DMHC and the CDI an opportunity to promulgate additional regulations, which will impact current and future wellness programs in the HMOs CalPERS offers. These potential state regulations could conflict with the expected federal regulations or hinder CalPERS ability to design these programs to better improve members' health outcomes and reduce public employers' healthcare costs.

4. Extending Health-Contingent Plan Protections To Participatory Plans Increases Costs and Limits Effectiveness

SB 189 would extend anti-discrimination provisions already contained in federal laws and their associated proposed regulations that apply to health-contingent wellness programs, to all types of wellness programs. For example, it requires that participation in a wellness program be offered to all similarly situated individuals. It is unclear how such a provision would apply to large group providers such as CalPERS that attempt through their wellness programs to identify members with one or more health risk factors and provide them with appropriate treatment or prevention services. Would it require CalPERS to offer financial incentives for participation in these programs regardless of whether a member, in fact, has the risk factor, or rather, that the program must be available to all those members that have the risk factor? If the former, CalPERS costs to provide wellness programs will likely increase, and their effectiveness decrease.

5. Limiting Financial Incentives Impacts CalPERS Existing and Future Wellness Programs

Recent studies show that people are more inclined to participate in wellness programs when they offer monetary rewards. For example, Blue Shield of California currently offers monetary rewards to CalPERS members enrolled in the HMO plans it offers for participating in their wellness programs, regardless of whether they achieve any health care outcomes. However, upon further study, CalPERS may develop health-contingent wellness program designs that are tied to financial incentives, and allow members to achieve even better health outcomes and cost savings.

The primary difference between federal law and SB 189 is that the ACA encouraged outcome-based wellness programs and the use of financial incentives in all forms of wellness programs to offset individuals' premium costs, whereas, SB 189 would prohibit any rewards for participation in any type of wellness

program from being in the form of a discount, a rebate of a premium, a reduction of a copayment, deductible, or coinsurance, and would prohibit incentives or rewards for meeting specific goals of a health-contingent wellness program.

While the author would appear to recognize the important role that wellness programs play in controlling the increase of chronic health conditions and health costs, by removing existing monetary incentives, whether for specific wellness program designs, or through specific payment methods, this bill could actually diminish participation in wellness programs and limit CalPERS ability to control health care costs.

6. Places Limits on the Board's Authority to Design Effective Wellness Programs
SB 189 would limit the Board's authority to design health-benefits for CalPERS HMO plans by placing restrictions on rewards and incentives associated with its wellness programs, and prohibiting them from exceeding amounts determined to be "unreasonable" by the DMHC. This would impede the Board's ability to adjust premiums as part of health promotion and disease management efforts, as provided by the Board-sponsored AB 2142 enacted in 2012. Furthermore, it would not allow the Board to design cost effective wellness programs for its HMO plans.

CalPERS is in the process of contracting with new HMO health plans for the 2014 plan year. SB 189 would not permit these plans, should they offer a wellness program, to provide incentives or rewards in the form of or linked to premiums, deductibles, copayments, coinsurance, or rebate of premiums.

7. Costs
The fiscal impacts cannot be determined at this time.

BENEFITS/RISKS

1. Benefits of Bill Becoming Law
 - Provides individuals equality of opportunity to participate in wellness programs.
2. Risks of Bill Becoming Law
 - Usurps the Board's authority for the benefit design of wellness program for CalPERS HMO health plans.
 - Restricts CalPERS HMO health plans in their use of otherwise effective rewards and incentives.

ATTACHMENTS

Attachment 1 – Legislative History

Attachment 2 – List of Support and Opposition

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