

ASSEMBLY BILL

No. 1157

Introduced by Assembly Members Ortega and Wilson

February 16, 2023

An act to amend Section 1367.005 of, and to add Section 1342.9 to, the Health and Safety Code, and to amend Section 10112.27 of, and to add Section 10112.275 to, the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1157, as introduced, Ortega. Rehabilitative and habilitative services: durable medical equipment and services.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, requires the Department of Managed Health Care to license and regulate health care service plans and makes a willful violation of the act a crime. Other existing law requires the Department of Insurance to regulate health insurers. Existing law requires an individual or small group health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2017, to include, at a minimum, coverage for essential health benefits pursuant to the federal Patient Protection and Affordable Care Act. Under existing law, essential health benefits includes, among other things, rehabilitative and habilitative services. Existing law requires habilitative services and devices to be covered under the same terms and conditions applied to rehabilitative services and devices under the plan contract or policy, and defines habilitative services to mean health care services and devices that help a person keep, learn, or improve skills and functioning for daily living.

This bill would specify that coverage of rehabilitative and habilitative services and devices under a health care service plan or health insurance

policy includes durable medical equipment, services, and repairs, if the equipment, services, or repairs are prescribed or ordered by a physician, surgeon, or other health professional acting within the scope of their license. The bill would define “durable medical equipment” to mean devices, including replacement devices, that are designed for repeated use, and that are used for the treatment or monitoring of a medical condition or injury in order to help a person to partially or fully acquire, improve, keep, or learn, or minimize the loss of, skills and functioning of daily living. The bill would prohibit coverage of durable medical equipment and services from being subject to financial or treatment limitations, as specified. Because a violation of the bill’s 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 1342.9 is added to the Health and Safety
- 2 Code, to read:
- 3 1342.9. The Legislature finds and declares all of the following:
- 4 (a) Lack of access to durable medical equipment
- 5 disproportionately affects individuals with disabilities or
- 6 chronically ill individuals.
- 7 (b) Because of their effect on protected population classes,
- 8 categorical exclusions of durable medical equipment by health
- 9 care service plans, and burdensome financial limitations imposed
- 10 by plans on durable medical equipment, result in plan designs that
- 11 discriminate against people with disabilities in violation of federal
- 12 and state nondiscrimination provisions, including Sections 1302
- 13 and 1557 of the federal Patient Protection and Affordable Care
- 14 Act (Public Law 111-148), as amended by the federal Health Care
- 15 and Education Reconciliation Act of 2010 (Public Law 111-152).
- 16 (c) In order to comply with federal and state requirements
- 17 regarding nondiscrimination in benefit design, it is important that

1 coverage of rehabilitative and habilitative services and devices
2 include durable medical equipment and services.

3 SEC. 2. Section 1367.005 of the Health and Safety Code is
4 amended to read:

5 1367.005. (a) An individual or small group health care service
6 plan contract issued, amended, or renewed on or after January 1,
7 2017, shall include, at a minimum, coverage for essential health
8 benefits pursuant to the federal Patient Protection and Affordable
9 Care Act (PPACA) and as outlined in this section. For purposes
10 of this section, “essential health benefits” means all of the
11 following:

12 (1) Health benefits within the categories identified in Section
13 1302(b) of PPACA: ambulatory patient services, emergency
14 services, hospitalization, maternity and newborn care, mental health
15 and substance use disorder services, including behavioral health
16 treatment, prescription drugs, rehabilitative and habilitative services
17 and devices, laboratory services, preventive and wellness services
18 and chronic disease management, and pediatric services, including
19 oral and vision care.

20 (2) (A) The health benefits covered by the Kaiser Foundation
21 Health Plan Small Group HMO 30 plan (federal health product
22 identification number 40513CA035) as this plan was offered during
23 the first quarter of 2014, as follows, regardless of whether the
24 benefits are specifically referenced in the evidence of coverage or
25 plan contract for that plan:

26 (i) Medically necessary basic health care services, as defined
27 in subdivision (b) of Section 1345 and Section 1300.67 of Title
28 28 of the California Code of Regulations.

29 (ii) The health benefits mandated to be covered by the plan
30 pursuant to statutes enacted before December 31, 2011, as
31 described in the following sections: Sections 1367.002, 1367.06,
32 and 1367.35 (preventive services for children); Section 1367.25
33 (prescription drug coverage for contraceptives); Section 1367.45
34 (AIDS vaccine); Section 1367.46 (HIV testing); Section 1367.51
35 (diabetes); Section 1367.54 (alpha-fetoprotein testing); Section
36 1367.6 (breast cancer screening); Section 1367.61 (prosthetics for
37 laryngectomy); Section 1367.62 (maternity hospital stay); Section
38 1367.63 (reconstructive surgery); Section 1367.635 (mastectomies);
39 Section 1367.64 (prostate cancer); Section 1367.65
40 (mammography); Section 1367.66 (cervical cancer); Section

1 1367.665 (cancer screening tests); Section 1367.67 (osteoporosis);
2 Section 1367.68 (surgical procedures for jaw bones); Section
3 1367.71 (anesthesia for dental); Section 1367.9 (conditions
4 attributable to diethylstilbestrol); Section 1368.2 (hospice care);
5 Section 1370.6 (cancer clinical trials); Section 1371.5 (emergency
6 response ambulance or ambulance transport services); subdivision
7 (b) of Section 1373 (sterilization operations or procedures); Section
8 1373.4 (inpatient hospital and ambulatory maternity); Section
9 1374.56 (phenylketonuria); Section 1374.17 (organ transplants for
10 HIV); Section 1374.72 (mental health parity); and Section 1374.73
11 (autism/behavioral health treatment).

12 (iii) Any other benefits mandated to be covered by the plan
13 pursuant to statutes enacted before December 31, 2011, as
14 described in those statutes.

15 (iv) The health benefits covered by the plan that are not
16 otherwise required to be covered under this chapter, to the extent
17 required pursuant to Sections 1367.18, 1367.21, 1367.215, 1367.22,
18 1367.24, and 1367.25, and Section 1300.67.24 of Title 28 of the
19 California Code of Regulations.

20 (v) Any other health benefits covered by the plan that are not
21 otherwise required to be covered under this chapter.

22 (B) If there are any conflicts or omissions in the plan identified
23 in subparagraph (A) as compared with the requirements for health
24 benefits under this chapter that were enacted prior to December
25 31, 2011, the requirements of this chapter shall be controlling,
26 except as otherwise specified in this section.

27 (C) Notwithstanding subparagraph (B) or any other provision
28 of this section, the home health services benefits covered under
29 the plan identified in subparagraph (A) shall be deemed to not be
30 in conflict with this chapter.

31 (D) For purposes of this section, the Paul Wellstone and Pete
32 Domenici Mental Health Parity and Addiction Equity Act of 2008
33 (Public Law 110-343) shall apply to a contract subject to this
34 section. Coverage of mental health and substance use disorder
35 services pursuant to this paragraph, along with any scope and
36 duration limits imposed on the benefits, shall be in compliance
37 with the Paul Wellstone and Pete Domenici Mental Health Parity
38 and Addiction Equity Act of 2008 (Public Law 110-343), and all
39 rules, regulations, or guidance issued pursuant to Section 2726 of
40 the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26).

1 (3) (A) With respect to habilitative services, in addition to any
2 habilitative services and devices identified in paragraph (2),
3 coverage shall also be provided as required by federal rules,
4 regulations, and guidance issued pursuant to Section 1302(b) of
5 PPACA. Habilitative services and devices shall be covered under
6 the same terms and conditions applied to rehabilitative services
7 and devices under the plan contract. Limits on habilitative and
8 rehabilitative services and devices shall not be combined.

9 (B) *Coverage of rehabilitative and habilitative services and*
10 *devices includes durable medical equipment, services, and repairs,*
11 *if the equipment, services, or repairs are prescribed or ordered*
12 *by a physician, surgeon, or other health professional acting within*
13 *the scope of their license.*

14 (4) With respect to pediatric vision care, the same health benefits
15 for pediatric vision care covered under the Federal Employees
16 Dental and Vision Insurance Program vision plan with the largest
17 national enrollment as of the first quarter of 2014. The pediatric
18 vision care benefits covered pursuant to this paragraph shall be in
19 addition to, and shall not replace, any vision services covered under
20 the plan identified in paragraph (2).

21 (5) With respect to pediatric oral care, the same health benefits
22 for pediatric oral care covered under the dental benefit received
23 by children under the Medi-Cal program as of 2014, including the
24 provision of medically necessary orthodontic care provided
25 pursuant to the federal Children's Health Insurance Program
26 Reauthorization Act of 2009. The pediatric oral care benefits
27 covered pursuant to this paragraph shall be in addition to, and shall
28 not replace, any dental or orthodontic services covered under the
29 plan identified in paragraph (2).

30 (b) (1) Treatment limitations imposed on health benefits
31 described in this section shall be no greater than the treatment
32 limitations imposed by the corresponding plans identified in
33 subdivision (a), subject to the requirements set forth in paragraph
34 (2) of subdivision (a).

35 (2) *Notwithstanding paragraph (1), with respect to rehabilitative*
36 *and habilitative services and devices, coverage of durable medical*
37 *equipment and services shall not be subject to financial or*
38 *treatment limitations, including annual caps or requirements*
39 *limiting coverage of the devices to those for home use.*

1 (c) Except as provided in subdivision (d), this section does not
2 permit a health care service plan to make substitutions for the
3 benefits required to be covered under this section, regardless of
4 whether those substitutions are actuarially equivalent.

5 (d) To the extent permitted under Section 1302 of PPACA and
6 any rules, regulations, or guidance issued pursuant to that section,
7 and to the extent that substitution would not create an obligation
8 for the state to defray costs for any individual, a plan may substitute
9 its prescription drug formulary for the formulary provided under
10 the plan identified in subdivision (a) if the coverage for prescription
11 drugs complies with the sections referenced in clauses (ii) and (iv)
12 of subparagraph (A) of paragraph (2) of subdivision (a) that apply
13 to prescription drugs.

14 (e) A health care service plan, or its agent, solicitor, or
15 representative, shall not issue, deliver, renew, offer, market,
16 represent, or sell any product, contract, or discount arrangement
17 as compliant with the essential health benefits requirement in
18 federal law, unless it meets all of the requirements of this section.

19 (f) This section applies regardless of whether the plan contract
20 is offered inside or outside the California Health Benefit Exchange
21 created by Section 100500 of the Government Code.

22 (g) This section does not exempt a plan or a plan contract from
23 meeting other applicable requirements of law.

24 (h) This section does not prohibit a plan contract from covering
25 additional benefits, including, but not limited to, spiritual care
26 services that are tax deductible under Section 213 of the Internal
27 Revenue Code.

28 (i) Subdivision (a) does not apply to any of the following:

29 (1) A specialized health care service plan contract.

30 (2) A Medicare supplement plan.

31 (3) A plan contract that qualifies as a grandfathered health plan
32 under Section 1251 of PPACA or any rules, regulations, or
33 guidance issued pursuant to that section.

34 (j) This section shall not be implemented in a manner that
35 conflicts with a requirement of PPACA.

36 (k) An essential health benefit is required to be provided under
37 this section only to the extent that federal law does not require the
38 state to defray the costs of the benefit.

1 (l) This section does not obligate the state to incur costs for the
2 coverage of benefits that are not essential health benefits as defined
3 in this section.

4 (m) A plan is not required to cover, under this section, changes
5 to health benefits that are the result of statutes enacted on or after
6 December 31, 2011.

7 (n) (1) The department may adopt emergency regulations
8 implementing this section. The department may, on a one-time
9 basis, readopt any emergency regulation authorized by this section
10 that is the same as, or substantially equivalent to, an emergency
11 regulation previously adopted under this section.

12 (2) The initial adoption of emergency regulations implementing
13 this section and the readoption of emergency regulations authorized
14 by this subdivision shall be deemed an emergency and necessary
15 for the immediate preservation of the public peace, health, safety,
16 or general welfare. The initial emergency regulations and the
17 readoption of emergency regulations authorized by this section
18 shall be submitted to the Office of Administrative Law for filing
19 with the Secretary of State and each shall remain in effect for no
20 more than 180 days, by which time final regulations may be
21 adopted.

22 (3) The initial adoption of emergency regulations implementing
23 this section made during the 2015–16 Regular Session of the
24 Legislature and the readoption of emergency regulations authorized
25 by this subdivision shall be deemed an emergency and necessary
26 for the immediate preservation of the public peace, health, safety,
27 or general welfare. The initial emergency regulations and the
28 readoption of emergency regulations authorized by this section
29 shall be submitted to the Office of Administrative Law for filing
30 with the Secretary of State and each shall remain in effect for no
31 more than 180 days, by which time final regulations may be
32 adopted.

33 (4) The director shall consult with the Insurance Commissioner
34 to ensure consistency and uniformity in the development of
35 regulations under this subdivision.

36 (5) This subdivision shall become inoperative on July 1, 2018.

37 (o) For purposes of this section, the following definitions apply:

38 (1) *“Durable medical equipment” means devices, including*
39 *replacement devices, that are designed for repeated use and that*
40 *are used for the treatment or monitoring of a medical condition*

1 or injury in order to help a person to partially or fully acquire,
2 improve, keep, or learn, or minimize the loss of, skills and
3 functioning of daily living. The prescription or order for durable
4 medical equipment shall include fittings, design, adjustment,
5 programming, and other necessary services for the provision or
6 maintenance of the devices.

7 (1)

8 (2) “Habilitative services” means health care services and
9 devices that help a person keep, learn, or improve skills and
10 functioning for daily living. Examples include therapy for a child
11 who is not walking or talking at the expected age. These services
12 may include physical and occupational therapy, speech-language
13 pathology, and other services for people with disabilities in a
14 variety of inpatient or outpatient settings, or both. Habilitative
15 services shall be covered under the same terms and conditions
16 applied to rehabilitative services under the plan contract.

17 (2)

18 (3) (A) “Health benefits,” unless otherwise required to be
19 defined pursuant to federal rules, regulations, or guidance issued
20 pursuant to Section 1302(b) of PPACA, means health care items
21 or services for the diagnosis, cure, mitigation, treatment, or
22 prevention of illness, injury, disease, or a health condition,
23 including a behavioral health condition.

24 (B) “Health benefits” does not mean any cost-sharing
25 requirements such as copayments, coinsurance, or deductibles.

26 (3)

27 (4) “PPACA” means the federal Patient Protection and
28 Affordable Care Act (Public Law 111-148), as amended by the
29 federal Health Care and Education Reconciliation Act of 2010
30 (Public Law 111-152), and any rules, regulations, or guidance
31 issued thereunder.

32 (4)

33 (5) “Small group health care service plan contract” means a
34 group health care service plan contract issued to a small employer,
35 as defined in Section 1357.500.

36 SEC. 3. Section 10112.27 of the Insurance Code is amended
37 to read:

38 10112.27. (a) An individual or small group health insurance
39 policy issued, amended, or renewed on or after January 1, 2017,
40 shall include, at a minimum, coverage for essential health benefits

1 pursuant to the federal Patient Protection and Affordable Care Act
2 (PPACA) and as outlined in this section. This section shall
3 exclusively govern the benefits a health insurer must cover as
4 essential health benefits. For purposes of this section, “essential
5 health benefits” means all of the following:

6 (1) Health benefits within the categories identified in Section
7 1302(b) of PPACA: ambulatory patient services, emergency
8 services, hospitalization, maternity and newborn care, mental health
9 and substance use disorder services, including behavioral health
10 treatment, prescription drugs, rehabilitative and habilitative services
11 and devices, laboratory services, preventive and wellness services
12 and chronic disease management, and pediatric services, including
13 oral and vision care.

14 (2) (A) The health benefits covered by the Kaiser Foundation
15 Health Plan Small Group HMO 30 plan (federal health product
16 identification number 40513CA035) as this plan was offered during
17 the first quarter of 2014, as follows, regardless of whether the
18 benefits are specifically referenced in the plan contract or evidence
19 of coverage for that plan:

20 (i) Medically necessary basic health care services, as defined
21 in subdivision (b) of Section 1345 of the Health and Safety Code
22 and Section 1300.67 of Title 28 of the California Code of
23 Regulations.

24 (ii) The health benefits mandated to be covered by the plan
25 pursuant to statutes enacted before December 31, 2011, as
26 described in the following sections of the Health and Safety Code:
27 Sections 1367.002, 1367.06, and 1367.35 (preventive services for
28 children); Section 1367.25 (prescription drug coverage for
29 contraceptives); Section 1367.45 (AIDS vaccine); Section 1367.46
30 (HIV testing); Section 1367.51 (diabetes); Section 1367.54
31 (alpha-fetoprotein testing); Section 1367.6 (breast cancer
32 screening); Section 1367.61 (prosthetics for laryngectomy); Section
33 1367.62 (maternity hospital stay); Section 1367.63 (reconstructive
34 surgery); Section 1367.635 (mastectomies); Section 1367.64
35 (prostate cancer); Section 1367.65 (mammography); Section
36 1367.66 (cervical cancer); Section 1367.665 (cancer screening
37 tests); Section 1367.67 (osteoporosis); Section 1367.68 (surgical
38 procedures for jaw bones); Section 1367.71 (anesthesia for dental);
39 Section 1367.9 (conditions attributable to diethylstilbestrol);
40 Section 1368.2 (hospice care); Section 1370.6 (cancer clinical

1 trials); Section 1371.5 (emergency response ambulance or
2 ambulance transport services); subdivision (b) of Section 1373
3 (sterilization operations or procedures); Section 1373.4 (inpatient
4 hospital and ambulatory maternity); Section 1374.56
5 (phenylketonuria); Section 1374.17 (organ transplants for HIV);
6 Section 1374.72 (mental health parity); and Section 1374.73
7 (autism/behavioral health treatment).

8 (iii) Any other benefits mandated to be covered by the plan
9 pursuant to statutes enacted before December 31, 2011, as
10 described in those statutes.

11 (iv) The health benefits covered by the plan that are not
12 otherwise required to be covered under Chapter 2.2 (commencing
13 with Section 1340) of Division 2 of the Health and Safety Code,
14 to the extent otherwise required pursuant to Sections 1367.18,
15 1367.21, 1367.215, 1367.22, 1367.24, and 1367.25 of the Health
16 and Safety Code, and Section 1300.67.24 of Title 28 of the
17 California Code of Regulations.

18 (v) Any other health benefits covered by the plan that are not
19 otherwise required to be covered under Chapter 2.2 (commencing
20 with Section 1340) of Division 2 of the Health and Safety Code.

21 (B) If there are any conflicts or omissions in the plan identified
22 in subparagraph (A) as compared with the requirements for health
23 benefits under Chapter 2.2 (commencing with Section 1340) of
24 Division 2 of the Health and Safety Code that were enacted before
25 December 31, 2011, the requirements of Chapter 2.2 (commencing
26 with Section 1340) of Division 2 of the Health and Safety Code
27 shall control, except as otherwise specified in this section.

28 (C) Notwithstanding subparagraph (B) or any other provision
29 of this section, the home health services benefits covered under
30 the plan identified in subparagraph (A) shall not be in conflict with
31 Chapter 2.2 (commencing with Section 1340) of Division 2 of the
32 Health and Safety Code.

33 (D) For purposes of this section, the Paul Wellstone and Pete
34 Domenici Mental Health Parity and Addiction Equity Act of 2008
35 (Public Law 110-343) shall apply to a policy subject to this section.
36 Coverage of mental health and substance use disorder services
37 pursuant to this paragraph, along with any scope and duration
38 limits imposed on the benefits, shall be in compliance with the
39 Paul Wellstone and Pete Domenici Mental Health Parity and
40 Addiction Equity Act of 2008 (Public Law 110-343), and all rules,

1 regulations, and guidance issued pursuant to Section 2726 of the
2 federal Public Health Service Act (42 U.S.C. Sec. 300gg-26).

3 (3) (A) With respect to habilitative services, in addition to any
4 habilitative services and devices identified in paragraph (2),
5 coverage shall also be provided as required by federal rules,
6 regulations, or guidance issued pursuant to Section 1302(b) of
7 PPACA. Habilitative services and devices shall be covered under
8 the same terms and conditions applied to rehabilitative services
9 and devices under the policy. Limits on habilitative and
10 rehabilitative services and devices shall not be combined.

11 (B) *Coverage of rehabilitative and habilitative services and*
12 *devices includes durable medical equipment, services, and repairs,*
13 *if the equipment, services, or repairs are prescribed or ordered*
14 *by a physician, surgeon, or other health professional acting within*
15 *the scope of their license.*

16 (4) With respect to pediatric vision care, the same health benefits
17 for pediatric vision care covered under the Federal Employees
18 Dental and Vision Insurance Program vision plan with the largest
19 national enrollment as of the first quarter of 2014. The pediatric
20 vision care services covered pursuant to this paragraph shall be in
21 addition to, and shall not replace, any vision services covered under
22 the plan identified in paragraph (2).

23 (5) With respect to pediatric oral care, the same health benefits
24 for pediatric oral care covered under the dental benefit received
25 by children under the Medi-Cal program as of 2014, including the
26 provision of medically necessary orthodontic care provided
27 pursuant to the federal Children's Health Insurance Program
28 Reauthorization Act of 2009. The pediatric oral care benefits
29 covered pursuant to this paragraph shall be in addition to, and shall
30 not replace, any dental or orthodontic services covered under the
31 plan identified in paragraph (2).

32 (b) (1) Treatment limitations imposed on health benefits
33 described in this section shall be no greater than the treatment
34 limitations imposed by the corresponding plans identified in
35 subdivision (a), subject to the requirements set forth in paragraph
36 (2) of subdivision (a).

37 (2) *Notwithstanding paragraph (1), with respect to rehabilitative*
38 *and habilitative services and devices, coverage of durable medical*
39 *equipment and services shall not be subject to financial or*

1 *treatment limitations, including annual caps or requirements*
2 *limiting coverage of the devices to those for home use.*

3 (c) Except as provided in subdivision (d), this section does not
4 permit a health insurer to make substitutions for the benefits
5 required to be covered under this section, regardless of whether
6 those substitutions are actuarially equivalent.

7 (d) To the extent permitted under Section 1302 of PPACA and
8 any rules, regulations, or guidance issued pursuant to that section,
9 and to the extent that substitution would not create an obligation
10 for the state to defray costs for any individual, an insurer may
11 substitute its prescription drug formulary for the formulary
12 provided under the plan identified in subdivision (a) if the coverage
13 for prescription drugs complies with the sections referenced in
14 clauses (ii) and (iv) of subparagraph (A) of paragraph (2) of
15 subdivision (a) that apply to prescription drugs.

16 (e) A health insurer, or its agent, producer, or representative,
17 shall not issue, deliver, renew, offer, market, represent, or sell any
18 product, policy, or discount arrangement as compliant with the
19 essential health benefits requirement in federal law, unless it meets
20 all of the requirements of this section. This subdivision shall be
21 enforced in the same manner as Section 790.03, including through
22 the means specified in Sections 790.035 and 790.05.

23 (f) This section applies regardless of whether the policy is
24 offered inside or outside the California Health Benefit Exchange
25 created by Section 100500 of the Government Code.

26 (g) This section does not exempt a health insurer or a health
27 insurance policy from meeting other applicable requirements of
28 law.

29 (h) This section does not prohibit a policy from covering
30 additional benefits, including, but not limited to, spiritual care
31 services that are tax deductible under Section 213 of the Internal
32 Revenue Code.

33 (i) Subdivision (a) does not apply to any of the following:

34 (1) A policy that provides excepted benefits as described in
35 Sections 2722 and 2791 of the federal Public Health Service Act
36 (42 U.S.C. Sec. 300gg-21; 42 U.S.C. Sec. 300gg-91).

37 (2) A policy that qualifies as a grandfathered health plan under
38 Section 1251 of PPACA or any binding rules, regulations, or
39 guidance issued pursuant to that section.

1 (j) This section shall not be implemented in a manner that
2 conflicts with a requirement of PPACA.

3 (k) An essential health benefit is required to be provided under
4 this section only to the extent that federal law does not require the
5 state to defray the costs of the benefit.

6 (l) This section does not obligate the state to incur costs for the
7 coverage of benefits that are not essential health benefits as defined
8 in this section.

9 (m) An insurer is not required to cover, under this section,
10 changes to health benefits that are the result of statutes enacted on
11 or after December 31, 2011.

12 (n) (1) The commissioner may adopt emergency regulations
13 implementing this section. The commissioner, on a one-time basis,
14 may readopt any emergency regulation authorized by this section
15 that is the same as, or substantially equivalent to, an emergency
16 regulation previously adopted under this section.

17 (2) The initial adoption of emergency regulations implementing
18 this section and the readoption of emergency regulations authorized
19 by this subdivision shall be deemed an emergency and necessary
20 for the immediate preservation of the public peace, health, safety,
21 or general welfare. The initial emergency regulations and the
22 readoption of emergency regulations authorized by this section
23 shall be submitted to the Office of Administrative Law for filing
24 with the Secretary of State and each shall remain in effect for no
25 more than 180 days, by which time final regulations may be
26 adopted.

27 (3) The initial adoption of emergency regulations implementing
28 this section made during the 2015–16 Regular Session of the
29 Legislature and the readoption of emergency regulations authorized
30 by this subdivision shall be deemed an emergency and necessary
31 for the immediate preservation of the public peace, health, safety,
32 or general welfare. The initial emergency regulations and the
33 readoption of emergency regulations authorized by this section
34 shall be submitted to the Office of Administrative Law for filing
35 with the Secretary of State and each shall remain in effect for no
36 more than 180 days, by which time final regulations may be
37 adopted.

38 (4) The commissioner shall consult with the Director of the
39 Department of Managed Health Care to ensure consistency and

1 uniformity in the development of regulations under this
2 subdivision.

3 (5) This subdivision shall become inoperative on July 1, 2018.

4 (o) This section does not impose on health insurance policies
5 the cost sharing or network limitations of the plans identified in
6 subdivision (a) except to the extent otherwise required to comply
7 with this code, including this section, and as otherwise applicable
8 to all health insurance policies offered to individuals and small
9 groups.

10 (p) For purposes of this section, the following definitions apply:

11 (1) *“Durable medical equipment” means devices, including*
12 *replacement devices, that are designed for repeated use and that*
13 *are used for the treatment or monitoring of a medical condition*
14 *or injury in order to help a person to partially or fully acquire,*
15 *improve, keep, or learn, or minimize the loss of, skills and*
16 *functioning of daily living. The prescription or order for durable*
17 *medical equipment shall include fittings, design, adjustment,*
18 *programming, and other necessary services for the provision or*
19 *maintenance of the devices.*

20 (1)

21 (2) *“Habilitative services” means health care services and*
22 *devices that help a person keep, learn, or improve skills and*
23 *functioning for daily living. Examples include therapy for a child*
24 *who is not walking or talking at the expected age. These services*
25 *may include physical and occupational therapy, speech-language*
26 *pathology, and other services for people with disabilities in a*
27 *variety of inpatient or outpatient settings, or both. Habilitative*
28 *services shall be covered under the same terms and conditions*
29 *applied to rehabilitative services under the policy.*

30 (2)

31 (3) (A) *“Health benefits,” unless otherwise required to be*
32 *defined pursuant to federal rules, regulations, or guidance issued*
33 *pursuant to Section 1302(b) of PPACA, means health care items*
34 *or services for the diagnosis, cure, mitigation, treatment, or*
35 *prevention of illness, injury, disease, or a health condition,*
36 *including a behavioral health condition.*

37 (B) *“Health benefits” does not mean any cost-sharing*
38 *requirements such as copayments, coinsurance, or deductibles.*

39 (3)

1 (4) “PPACA” means the federal Patient Protection and
2 Affordable Care Act (Public Law 111-148), as amended by the
3 federal Health Care and Education Reconciliation Act of 2010
4 (Public Law 111-152), and any rules, regulations, or guidance
5 issued thereunder.

6 ~~(4)~~

7 (5) “Small group health insurance policy” means a group health
8 insurance policy issued to a small employer, as defined in
9 subdivision (q) of Section 10753.

10 SEC. 4. Section 10112.275 is added to the Insurance Code,
11 immediately following Section 10112.27, to read:

12 10112.275. The Legislature finds and declares all of the
13 following:

14 (a) Lack of access to durable medical equipment
15 disproportionately affects individuals with disabilities or
16 chronically ill individuals.

17 (b) Because of their effect on protected population classes,
18 categorical exclusions of durable medical equipment by health
19 insurers, and burdensome financial limitations imposed by those
20 insurers on durable medical equipment, result in insurance policy
21 designs that discriminate against people with disabilities in
22 violation of federal and state nondiscrimination provisions,
23 including Sections 1302 and 1557 of the federal Patient Protection
24 and Affordable Care Act (Public Law 111-148), as amended by
25 the federal Health Care and Education Reconciliation Act of 2010
26 (Public Law 111-152).

27 (c) In order to comply with federal and state requirements
28 regarding nondiscrimination in benefit design, it is important that
29 coverage of rehabilitative and habilitative services and devices
30 include durable medical equipment and services.

31 SEC. 5. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O