DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 1, 2011 **BILL NUMBER:** AB 52
POSITION: Oppose **AUTHOR:** M. Feuer

<u>BILL SUMMARY</u>: Health Care Coverage: Rate Approval

AB 52 increases the California Department of Managed Health Care and the California Department of Insurance (regulators) responsibility above those required under federal health care reform to include reviewing and approving all rate changes and rates for new products, including the large group market. AB 52 would authorize regulators to reject rate increases that are excessive, inadequate, or unfairly discriminatory, whereas state law previously only authorized regulators to determine whether rate increases are reasonable and post findings to their public website. Further, regulators will be required to hold administrative hearings under certain circumstances, and the determinations and findings may be subject to review in a court in accordance with the Code of Civil Procedure. Finally, AB 52 allows an enrollee or a representative of enrollees to intervene in any proceeding under the bill and recoup reasonable costs associated with intervening.

This bill would be effective January 1, 2012. However, a provision in the bill allows regulators to retro-actively review rate increases which become effective January 1, 2011 to December 31, 2011 for compliance with this bill and order refunds of payments if applicable.

<u>FISCAL SUMMARY</u>

AB 52 requires additional workload for rate review activities beyond what is already required under existing state law and the federal Patient Protection and Affordable Care Act (PPACA). The annual costs include reviewing additional rate applications, conducting hearings, and addressing litigation. Additionally, regulators will incur first-year implementation/one-time costs such as staff time to review health plan forms, policies, and procedures to ensure compliance with the bill, issuing guidance and regulations, and retroactively reviewing rates that became effective between January 1, 2011 and December 31, 2011.

<u>Department of Managed Health Care (DMHC)</u>
DMHC services a vast majority of the large group market and therefore will be responsible for most of the additional workload. DMHC estimates they will need an additional 173 positions including actuarial, legal, information technology, and administration staff. DMHC also estimates an annual cost of approximately $26.5 million and a one-time cost of approximately $30.2 million.

<u>Department of Insurance (DOI)</u>
DOI estimates they will need an additional 8 positions including actuarial and legal staff. DOI also estimates these staff will cost an additional $603,000 in fiscal year 2011-12 and an on-going annual cost of $957,000.

These estimates are subject to uncertainty as workload would depend on the timing and number of proposed rate increases.

This bill authorizes the imposition of fees on health care service plans and health insurers for costs related to filing and reviewing an application, to be deposited into one of two newly established state special funds.

Analyst/Principal	Date	Program Budget Manager	Date
( ) C. Hill		Mark Hill	

Department Deputy Director	Date

Governor's Office:	By:	Date:	Position Approved_______ Position Disapproved

AUTHOR	AMENDMENT DATE	BILL NUMBER
M. Feuer	June 1, 2011	AB 52

It will take time to establish protocol for charging the additional fees and to build up special fund balances to a sufficient level in order to implement the provisions of the bill. Absent an additional appropriation in AB 52, the costs associated with this bill realistically won't occur until fiscal year 2012-13. Therefore, Finance estimates the following costs associated with this bill for 2012-13 as follows:

DMHC first year implementation/one-time costs	$30,200,000
DMHC annual cost	$26,500,000
DOI annual cost	$957,000
Total AB 52 costs for fiscal year 2012-13	**$57,657,000**

The increase in fees charged to health care service plans and health insurers may be offset to a limited degree by federal grants available to states to carry out the provision of the PPACA. California will receive approximately $4.2 million over the next three years and may be eligible for an additional $2 million.

COMMENTS

Finance is opposed to this bill because the large amount of rates that would have to be reviewed would require very large staff increases that are likely to be impractical to achieve. Thus, the state's regulators could create an approval backlog resulting in no coverage for a large number of Californians. Additionally, should this bill pass as written, it is likely to be challenged and the cost of litigation could be significant. Finance notes that this bill exceeds what is required by the PPACA and current state law, and has substantial first year and ongoing costs.

ANALYSIS

Programmatic Analysis

The PPACA requires the federal Secretary of the Department of Health and Human Services in conjunction with states, to establish a process for the annual review of unreasonable increases in premiums for health insurance coverage. It also requires health insurance issuers to submit justification for an unreasonable premium change prior to the increase, and to post such information on their websites.

SB 1163 (Chapter 661, Stats. 2010) requires health plans starting January 1, 2011 to file rate information for the individual and small group markets at least 60 days prior to implementing a rate change or rate for a new product. For the large group, health plans are required to submit rate information only for unreasonable rate changes, as defined by the PPACA and forthcoming regulations. Rate filings must include the required rate information and actuarial certification that the proposed rate is based on sound methodology and whether the proposed rate is unreasonable. The regulators review all rate filings for the individual and small group markets, and publish to their public websites certain rate information, including the determination as to whether the proposed rate is unreasonable. But the law does not allow regulators to approve or disapprove rates. Only if a pattern of excessive rates are demonstrated, can regulators bar products from the Health Care Exchange. If states do not do this, the federal government will assume the function.

Most notably, AB 52 would do the following starting January 1, 2012.

- Permits regulators to approve, deny, or modify all proposed rate increases for a new product or rate change for an existing product. This bill also prohibits any rate from being approved or remaining in effect if the regulators find the rate to be excessive, inadequate, unfairly discriminatory, or in violation of the standards established by this bill. Additionally, it prohibits carriers from implementing a rate for a new product or changes the rate it charges, unless it submits an application and that application is approved by regulators.

AUTHOR	AMENDMENT DATE	BILL NUMBER
M. Feuer	June 1, 2011	AB 52

- Allows regulators to review rate increases which become effective January 1, 2011 to December 31, 2011 for compliance with this bill. Additionally, regulators will be required to order a refund of payments made pursuant to any rate that they find to be excessive, inadequate, or unfairly discriminatory.
- Requires regulators to hold administrative hearings under certain circumstances, and the determinations and findings may be subject to review in a court in accordance with the Code of Civil Procedure.
- Requires that all information submitted in a rate application and all information submitted in support of the application be subject to the California Public Records Act, except for financial data, where the disclosure of which would be competitively injurious to the carrier.
- Requires regulators to notify the public of rate applications submitted by carriers through a posting on their websites and to any member of the public who requests to receive notice.
- Authorizes an enrollee or policyholder to initiate or intervene in any proceeding pursuant to this bill, and allows compensation of reasonable costs.
- Imposes civil penalties on a health care service plan or health insurer for violating AB 52 provisions.
- Authorizes the imposition of fees on health care service plans and health insurers for costs related to filing and reviewing an application, to be deposited into one of two newly established state special funds - the Department of Managed Health Care Health Rate Approval Fund or the Department of Insurance Health Rate Approval Fund.

Fiscal Analysis

AB 52 requires additional workload for rate review activities beyond what is already required under SB 1163, and the PPACA. The annual costs include reviewing additional rate applications, conducting hearings, and addressing litigation. Additionally, regulators will incur first-year implementation costs such as staff time to review health plan forms, policies, and procedures to ensure compliance with the bill, issuing guidance and regulations, and retroactively reviewing rates that became effective between January 1, 2011 and December 31, 2011.

Department of Managed Health Care (DMHC)
DMHC services a vast majority of the large group market and therefore, will be responsible for most of the additional workload. DMHC estimates they will need an additional 173 positions including actuarial, legal, information technology, and administration staff. DMHC also estimates an annual cost of approximately $26.5 million and a one-time cost of approximately $30.2 million. First year costs are associated with the look-back at 2011 rates, and one-time costs for regulations, equipment and space acquisition.

Department of Insurance (DOI)
DOI estimates they will need an additional 8 positions including actuarial and legal staff. DOI also estimates these staff will cost an additional $603,000 in fiscal year 2011-12 and an on-going annual cost of $957,000.

These estimates are subject to uncertainty as workload would depend on the timing and number of proposed rate increases.

This bill authorizes the imposition of fees on health care service plans and health insurers for costs related to filing and reviewing an application, to be deposited into one of two newly established state special funds. It will take time to establish protocol for charging the additional fees and to build up special fund balances to a sufficient level in order to implement the provisions of the bill. Absent an additional appropriation in AB 52, the costs associated with this bill realistically won't occur until fiscal year 2012-13. Since the bill creates a new fund for DMHC to implement the bill and does not appropriate any money from it, the department could not absorb any costs of implementation and would have to wait until the 2012-13 budget is enacted or

AUTHOR	AMENDMENT DATE	BILL NUMBER
M. Feuer	June 1, 2011	AB 52

other funding legislation was enacted. Therefore, Finance estimates the following costs associated with this bill for 2012-13.

DMHC first year implementation/one-time costs	$30,200,000
DMHC annual cost	$26,500,000
DOI annual cost	$957,000
Total AB 52 costs for fiscal year 2012-13	**$57,657,000**

The increase in fees charged to health care service plans and health insurers may be offset to a limited degree by federal grants available to states to carry out the provision of the PPACA. California will receive approximately $4.2 million over the next three years and may be eligible for an additional $2 million.

Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2011-2012	FC	2012-2013	FC	2013-2014	Fund Code
1256/Othr Reg Fee	RV	No		--	U	$56,700	U	$26,500	0499
1256/Othr Reg Fee	RV	No		--	U	$957	U	$957	0499
2400/MngedHltCare	SO	No		--	A	$56,700	A	$26,500	0499
0845/Insurance	SO	No		--	A	$957	A	$957	0499

Fund Code	Title
0499	Pending New Special Funds