

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SB 1179 (Glazer)  
Version: March 22, 2022  
Hearing Date: April 5, 2022  
Fiscal: No  
Urgency: No  
AM

**SUBJECT**

Electronic transactions: insurance

**DIGEST**

This bill allows applications for Medicare supplement policies that are regulated by the California Department of Insurance (CDI) to be signed electronically.

**EXECUTIVE SUMMARY**

The California Uniform Electronic Transactions Act (UETA) generally authorizes the transaction of business, commerce, and contracts by electronic means. (Civ. Code § 1633.1.) UETA does not apply to transactions that are subject to certain laws, such as laws governing the creation and execution of wills, codicils, or testamentary trusts. (Civ. Code § 1633.3(a).) UETA further lists a series of specific transactions that it does not apply to. Among the transactions exempted are the purchase of Medicare supplement policies that are regulated by the CDI. (Civ. Code § 1633.3(c).) Under existing law, Medicare supplement policies that are regulated by CDI are exempted from UETA but Medicare supplement policies regulated by the Department of Managed Health Care (DMHC) are not. This means consumers can complete applications for Medicare supplement policies regulated by DMHC with an electronic signature, but must physically sign applications for Medicare supplement policies regulated by CDI. The bill seeks to address this difference by allowing applications for Medicare supplement policies regulated by CDI to be signed electronically.

The bill is author sponsored. It is supported by AHIP and the Association of California Life and Health Insurance Companies. There is no known opposition.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Uniform Electronic Transactions Act (UETA), which generally authorizes the transaction of business, commerce, and contracts by electronic means. (Civ. Code § 1633.1 et seq.) UETA does not apply to transactions that are subject to certain laws, such as laws governing the creation and execution of wills, codicils, or testamentary trusts. (Civ. Code § 1633.3(a).)
- 2) Provides a series of specific transactions to which UETA does not apply. Among these exemptions are Medicare supplement policies that are regulated by CDI. (Civ. Code § 1633.3(c).)
- 3) Provides for regulation of health plans by the Department of Managed Health Care (DMHC) under the Knox-Keene Health Care Service Plan Act (Knox-Keene) and for regulation of health insurers by CDI under the Insurance Code, and establishes standards for Medicare supplement policies sold in California. (§§ 1340-1399.874 Health. & Saf. Code & §§ 10192.1-10192.24 Ins. Code.)

This bill strikes the provision exempting Medicare supplement policies that are regulated by the CDI from the scope of transactions governed by UETA, and makes other nonsubstantive changes.

## COMMENTS

### 1. Stated need for the bill

The Author writes:

SB 1179 removes barriers and streamlines the process for Medicare Supplemental plans regulated by the California Department of Insurance, allowing all Medicare supplement enrollments to be completed with electronic signatures. Medicare supplemental plans are private health insurance plans that help beneficiaries who have Original Medicare cover their out-of-pocket costs, such as coinsurance, copayments, and deductibles. These plans are sold by companies regulated by either the Department of Insurance (CDI) or the Department of Managed Health Care (DMHC). Currently, consumers are allowed to complete applications of plans regulated by DMHC with an electronic signature. Whereas, applications for plans regulated by the CDI require a wet signature.

California is the *only* state where Medicare supplement applications are not permitted to be completed with electronic signatures. This restriction creates a disparate enrollment experience for consumers, based solely on the carrier's

regulatory agency. Without electronic signatures, applicants would be required to meet face-to-face with agents or wait for applications to be sent back and forth through the mail – a longer, potentially riskier process due to COVID-19 that does not meet consumer’s expectations for purchasing in 2022. Therefore, California consumers are singularly subjected to a confusing, inconsistent, and out of date process. Allowing electronic signatures on Medicare supplement applications does not replace but rather boosts the paper process, affording consumers the option to transact business in the way they prefer. This will simplify and streamline applications for all consumers ensuring that they are able to submit their applications however they see fit and don’t have to worry about arbitrary regulations.

## 2. Background

### *a. UETA*

In 1999 with the passage of SB 820 (Sher, Ch. 428, Stats. 1999), California enacted the Uniform Electronic Transactions Act (UETA), which was based on a model law to set rules by which electronic commerce may be conducted across the country proposed by the National Conference of Commissioners on Uniform State Laws. One of the motivating factors for enacting a law validating electronic records was the Statute of Frauds, which requires that certain contracts be in writing. In California, the Statute of Frauds is codified at Section 1624 of the Civil Code, which expressly states that certain contracts are invalid (i.e., unenforceable) unless they, or some note or memorandum thereof, are in writing and subscribed by the party to be charged or by the party’s agent. Such contracts include, for example: an agreement that by its terms is not to be performed within a year from its making; an agreement for a lease lasting for a period longer than one year; an agreement for the sale of real property, or of an interest therein; or specified contracts, promises, undertakings, or commitments to loan money or to grant or extend credit, in an amount greater than \$100,000.

UETA provides that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form, that a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation, and that an electronic record or signature satisfies a requirement in the law that a record be in writing or a signature be affixed or if a law provides consequences if there is no record or signature.

UETA, however, does not apply to all contracts. For example, expressly excluded from UETA are: transactions that are subject to a law governing the creation and execution of wills, codicils, or testamentary trusts; specified transactions in the Uniform Commercial Code that were specifically drafted in consideration of electronic records; and transactions subject to a law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed or initialed, such as real estate

transactions. Also specifically excluded from UETA are Medicare supplement policies that are regulated by CDI (Civ. Code § 1633.3(c)).

*b. Medicare supplement policies*

Medicare supplement policies are policies sold by private companies that provide Medicare beneficiaries with coverage for benefits and cost-sharing not covered by Medicare, such as copays, deductibles, and coinsurance. These policies are subject to the jurisdiction of either DMHC or CDI depending on the type of policy. Generally, DMHC regulates insurance policies that are health maintenance organizations (HMOs) and CDI regulates traditional health insurance policies. Medicare supplement policies that are regulated by DMHC are not exempted from the provisions of UETA and can be signed electronically. Section 1358.18 of the Health and Safety Code is similar to Section 10192.18 of the Insurance Code, as both sections address Medicare supplement applications; however, Section 10192.18 of the Insurance Code is the only section specifically exempted from the provisions of UETA.

According to the author, California is the only state that prohibits Medicare supplement policies from being signed electronically. Furthermore, it only does so for certain Medicare supplement policies. It is unclear why there are different rules regarding electronic applications for Medicare supplement policies based solely on which state entity regulates them. As there does not seem to be any strong policy reasons for this distinction and there is no indication of harm to consumers of Medicare supplement policies regulated by DMHC from electronic applications, the bill seeks to allow consumers of Medicare supplement policies regulated by CDI to be signed electronically.

3. Comments in support

The Association of California Life and Health Insurance Companies writes in support:

[...] SB 1179 would correct an inconsistency in current law when it comes to acceptance of Medicare supplement applications. Under existing law, exempted from UETA are Medicare supplement applications for insurers that are regulated by the CDI; however, there is no similar exemption for insurers regulated by DMHC. This discrepancy creates a disparate enrollment experience for consumers. Based on the regulator of the carrier with whom a consumer decides to enroll, the consumer may be able to apply electronically, or they may be required to fill out a paper form with a wet signature.

California is the only state where all Medicare supplement applications are not permitted to be completed with electronic signature. Allowing electronic signatures on Medicare supplement applications does not replace but rather

augments the paper process, affording consumers the option to transact business in the way they prefer. [...]

**SUPPORT**

AHIP

Association of California Life and Health Insurance Companies

**OPPOSITION**

None known

**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: None known.

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