

AMENDED IN ASSEMBLY MAY 24, 2001

AMENDED IN ASSEMBLY MAY 15, 2001

AMENDED IN ASSEMBLY APRIL 30, 2001

AMENDED IN ASSEMBLY APRIL 23, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1600

**Introduced by Assembly Member Keeley
(Coauthor: Assembly Member Richman)**

February 23, 2001

An act to add Section 1373.22 to the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1600, as amended, Keeley. Health care service plans: provider contracts.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation and licensure of health care service plans by the Department of Managed Health Care and makes a willful violation of the act's provisions a crime. The act, among other matters, requires that a plan's contracts with providers be fair, reasonable, and consistent with the act's objectives, which include ensuring that high-quality health care coverage is provided in the most efficient and cost-effective manner possible.

This bill would authorize health care providers on a class basis and health care service plans to negotiate any contract term or condition and upon an impasse, as defined, to submit the dispute to ~~mediation~~

facilitated negotiation and, if unsuccessful, to refer the matter to *advisory* arbitration and would require the filing of the contract, ~~mediation~~ *facilitated negotiation* agreement, or *advisory* arbitration award with the department. The bill would require the department to confirm, modify, or vacate the contract, agreement, or award and would also require it to adopt regulations prior to July 1, 2002, pertaining to these ~~mediation~~ *facilitated negotiation* and *advisory* arbitration processes.

Because this bill would specify requirements for the ~~mediation~~ *facilitated negotiation* and *advisory* arbitration processes, the violation of which would be punishable as a misdemeanor offense, it would expand the scope of an existing crime, thereby imposing 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. (a) The Legislature finds and declares the
- 2 following:
- 3 (1) The principal priorities of the Legislature for health care are
- 4 the following:
- 5 (A) The citizens of this state have access to the highest quality
- 6 health care.
- 7 (B) Patients have the opportunity for continuing access to their
- 8 own health care providers.
- 9 (C) Health care costs be reasonable and affordable.
- 10 (D) Administrative costs in the health care service plan and
- 11 health care provider relationship be as low as possible in order to
- 12 keep health care costs affordable.
- 13 (E) Health care service plans and health care providers remain
- 14 financially solvent in order to provide the highest quality care and
- 15 to retain patients' continuing access to their own health care
- 16 providers.



1 (2) The current health care service plan and health care
2 provider relationship is not satisfactorily meeting the state’s health
3 care priorities for the following reasons:

4 (A) There is evidence that some health care providers are
5 choosing not to practice in California because of this relationship,
6 thereby threatening the quality of, and access to, health care in this
7 state.

8 (B) Some patients have not been able to have continuing access
9 to their own health care providers because health care service plans
10 and health care providers have been unable to reach agreement on
11 contract extensions.

12 (C) Administrative costs in the health care service plan and
13 health care provider relationship are still high, resulting in higher
14 health care costs for both health care service plans and health care
15 providers.

16 (D) A large number of providers have been economically
17 failing, threatening the quality of, and access to, health care in this
18 state and the continuity of care for patients.

19 (E) Too much of a health care provider’s time is spent in the
20 administrative aspects of the relationship, determining what care
21 may be provided to patients and settling claims, thereby reducing
22 the amount of time that providers spend with patients, increasing
23 the cost of health care, reducing patient access to health care, and
24 impairing the quality of care available.

25 (F) The negotiating relationship between health care service
26 plans and health care providers is imbalanced.

27 (b) It is the intent of the Legislature to implement a solution to
28 achieve the state’s health care priorities, given the unsatisfactory
29 relationship between health care service plans and health care
30 providers. This solution would allow competing health care
31 providers to renegotiate contracts with health care service plans,
32 thereby allowing an improved balance in the contracting
33 relationship that should result in improvements in the state’s
34 priorities because of the interests of health care service plans and
35 health care providers to resolve issues that are consistent with the
36 interests of the state. This solution would displace unfair
37 competitive practices and have an actively supervised state
38 program to ensure that health care service plan contracts with
39 health care providers are fair, reasonable, and provide appropriate
40 reimbursement, consistent with the best interests of the patients



1 and this act. The Legislature intends that this solution is consistent
2 with the state action immunity doctrine, which establishes
3 immunity from federal and state antitrust laws for conduct taken
4 or supervised by a state. *This solution does not authorize the health*
5 *care providers to conduct a group boycott or to strike.*

6 SEC. 2. Section 1373.22 is added to the Health and Safety
7 Code, to read:

8 1373.22. (a) Health care providers, on a class basis, and
9 health care service plans may agree to negotiate ~~and mediate~~ any
10 contract term or condition upon renewal of a contract or during the
11 contract term, if there is no provision for renegotiation. Any
12 contract negotiated pursuant to this section shall be subject to the
13 confirmation process set forth in subdivision (e). In the event a
14 health care service plan declines to participate in ~~those~~ *these*
15 voluntary negotiations, no further action by the class that is
16 reasonably related to the subject of the requested negotiations shall
17 be permitted.

18 (b) In the event the parties reach an impasse during the
19 negotiations, the parties, upon mutual agreement, may submit the
20 issues in dispute to ~~mediation~~ *facilitated negotiation*. For the
21 purposes of this subdivision, an “impasse” means that the parties
22 to a dispute have reached a point in meeting and negotiating where
23 their differences in position are so substantial or prolonged that
24 future meetings would be futile.

25 (c) In the event ~~mediation~~ *facilitated negotiation* is
26 unsuccessful, the matter may, upon mutual agreement by the
27 parties, be referred to *advisory* arbitration. No *advisory* arbitration
28 conducted pursuant to this section shall limit the rights and
29 remedies otherwise available to the parties under common or
30 statutory law. In addition, the arbitrator may order a party, the
31 party’s attorney, or both, to pay reasonable expenses, including
32 attorney’s fees, incurred by another party as a result of bad faith
33 actions or tactics that are frivolous or that are solely intended to
34 cause unnecessary delay.

35 (d) The Department of Managed Health Care shall adopt
36 regulations by July 1, 2002, that ensure that the ~~mediation~~
37 *facilitated negotiation* and *advisory* arbitration processes
38 described in this section are fair and effective. These regulations
39 shall include a provision requiring that the ~~mediator~~ *facilitator* and
40 arbitrator be neutral and specify factors to be considered by the



1 mediator or arbitrator when resolving the issues that shall include,
2 but not be limited to, the following:

- 3 (1) The stipulations of the parties.
- 4 (2) The interest and welfare of patients.
- 5 (3) The patient’s access to care.
- 6 (4) The ability of health care providers to render quality health
7 care services.
- 8 (5) The cost of providing the services, taking into consideration
9 the increasing age of the population, new pharmaceuticals, the
10 increasing sophistication of medical technology, and the medical
11 demographics of the population of the plan’s enrollees, *including*
12 *risk adjustment for high concentrations of diseases with high*
13 *treatment costs such as diabetes, multiple sclerosis, human*
14 *immunodeficiency virus, and acquired immune deficiency*
15 *syndrome.*

16 (6) The reasonableness of the reimbursement rates.
17 (e) Upon negotiation of a contract, the parties, or upon
18 ~~successful mediation, the mediator, or if the parties agrees to~~
19 ~~arbitration, the arbitrator, shall file a copy of the contract,~~
20 ~~mediation agreement, or arbitration award, a statement of~~
21 *successful facilitated negotiation, the facilitator, or if the parties*
22 *agree to advisory arbitration, the arbitrator, shall file a copy of the*
23 *contract, facilitated negotiation agreement, or advisory*
24 *arbitration award, a statement of reasons, and submitted evidence*
25 *to the department for review. The department, after making an*
26 *independent review of the evidence and considering the factors set*
27 *forth in subdivision (d), shall confirm, modify, or vacate the*
28 *contract, agreement, or award.*

29 (f) *For purposes of this section, the following definitions apply:*

- 30 (1) *“Health care provider” means any health care provider*
31 *licensed under Division 2 (commencing with Section 500) of the*
32 *Business and Professions Code.*
- 33 (2) *“Health care service plan” means any fully-licensed health*
34 *care service plan or specialized health care service plan that is*
35 *licensed pursuant to this chapter.*

36 (g) *The Legislature does not intend for the dispute resolution*
37 *procedures described in this section to have any application or*
38 *legal effect other than as described in this section.*

39 SEC. 3. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because



1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

O

