

ASSEMBLY BILL

No. 1976

Introduced by Assembly Member Cohn

February 14, 2002

An act to add Section 1367.04 to the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1976, as introduced, Cohn. Contract requirements.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a violation of the act's provisions a crime. The act requires that all contracts between a health care service plan and a health care provider be fair, reasonable, and consistent with the act's objectives.

This bill would make certain types of provisions in a contract between a health care provider and a health care service plan, a specialized health care service plan, or a contracting agent for either type of plan unlawful, void, and unenforceable. The bill would require a health care service plan to provide an actuary statement that the rate of payment in its contract with a provider is actuarially sound.

Because the bill would specify additional requirements with regard to the operation of a plan, the violation of which would be punishable as a crime, it 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 1367.04 is added to the Health and
- 2 Safety Code, to read:
- 3 1367.04. (a) A contract between a provider and a health care
- 4 service plan or a specialized health care service plan or a
- 5 contracting agent for either type of plan shall be fair, reasonable,
- 6 and consistent with the objectives of this chapter. The following
- 7 provisions in these contracts shall be unlawful, void, and
- 8 unenforceable:
- 9 (1) A provision that expressly or implicitly waives any
- 10 provision of this chapter.
- 11 (2) A provision governing compensation that fails to disclose
- 12 the level and scope of services and the amount the provider will be
- 13 paid for each service to be performed under the contract. In a
- 14 contract with a fee-for-service payment provision, this includes,
- 15 but is no limited to, any failure to disclose either the fee schedule
- 16 or the payment rules pursuant to which the plan downcodes,
- 17 bundles, or otherwise adjusts payments. In a contract with a
- 18 capitation payment provision, this includes, but is not limited to,
- 19 any failure to disclose on a monthly basis the name of each new
- 20 enrollee and the date of his or her enrollment, the per member per
- 21 month capitation payment amount, and any deductions, withholds,
- 22 or other reductions in payment that may be made by the plan.
- 23 (3) A provision that allows the unilateral amendment of the
- 24 contract including any of the manuals, policies, or other materials
- 25 that have been incorporated by reference in the contract.
- 26 (4) A provision that authorizes the use of payment rules that are
- 27 at variance from those authorized by common procedural
- 28 terminology or by Medicare.
- 29 (5) A provision governing termination of the contract that
- 30 prohibits a provider from communicating with patients as to
- 31 available options for maintaining their relationship with the
- 32 provider or that violates the provisions of Section 2056.1 of the
- 33 Business and Professions Code.



1 (6) A provision governing termination of the contract that is
2 inconsistent with the peer review requirements of Section 809 and
3 following of the Business and Professions Code or with the
4 decision of the court in *Potvin v. Metropolitan Life Insurance Co.*
5 (2000) 22 Cal.4th 1060.

6 (7) A provision governing termination of the contract that
7 requires a provider to continue to provide services at the contract
8 rate after the contract has been terminated by the plan or by the
9 provider for cause, unless the provision complies with the
10 requirements of this chapter for a termination caused by
11 insolvency of the plan.

12 (8) A provision that prohibits a provider from selecting a plan
13 type or a health plan affiliate in which or with which the provider
14 will participate.

15 (9) A provision authorizing the use of medically inappropriate
16 clinical practice guidelines, medical or utilization management
17 policies, patient referral policies, or quality improvement
18 programs over which the provider has no effective input or control
19 and that cause adverse financial or other consequences to the
20 provider if a deviation is required to provide appropriate care.

21 (10) A provision that makes the provider financially
22 responsible for services that were not contemplated at the time the
23 contract was executed. These services include, but are not limited
24 to, new or substantially more costly uses of medical technology,
25 new mandates for coverage pursuant to this chapter, and services
26 for which no sound actuarial projection exists or for which
27 expected utilization cannot be predicted.

28 (11) Any other provision that a court finds to be
29 unconscionable, unjust, unreasonable, or unfair.

30 (b) A health care service plan and a specialized health care
31 service plan shall provide an actuary statement that the payment
32 rate in a contract described in subdivision (a) is actuarially sound.
33 The statement shall disclose all assumptions on which it is based.

34 SEC. 2. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 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.

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