

## Senate Bill No. 1536

### CHAPTER 898

An act to amend Sections 22778, 22810, 22825.7, 22832, 22840.2, 22842, 22852, 22854, 22856, 22859, and 22891 of, to add Sections 22780 and 22791.5 to, and to repeal and add Sections 22794 and 22840 of, the Government Code, and to add Section 107 to the Labor Code, relating to employment, and making an appropriation therefor.

[Approved by Governor September 25, 2002. Filed with Secretary of State September 26, 2002.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1536, Soto. Public Employees' Medical and Hospital Care Act: wage claims.

(1) Existing law, the Public Employees' Medical and Hospital Care Act, requires the Board of Administration of the Public Employees' Retirement System to compile and provide specified data regarding health benefits plans, costs, utilization, and other matters relating to public employee health benefits coverage.

This bill would authorize the board to audit the books and records of employers to determine their compliance with the act and to enter into joint purchasing arrangements with public or private entities, subject to specified conditions.

(2) The Public Employees' Medical and Hospital Care Act provides that rates charged under any health benefits plan may be readjusted in subsequent terms based on past experience and benefit adjustments under the subsequent contract, as specified. Existing law also authorizes the Board of Administration to make provisions, as necessary, to reduce the impact of adverse selection that would affect health care plans because of enrollment of annuitants.

This bill would instead provide that the board has unlimited authority to enter into contracts with carriers providing compensation based on carrier performance or to credit premiums to employers for expenditures that are likely to improve employee health or otherwise reduce health care costs. The bill would also authorize the board to make provisions, as necessary, to reduce the impact of adverse selection because of the enrollment of annuitants, including reimbursement of Medicare late enrollment surcharges, as specified.

(3) Existing law requires contracting agencies to remit employer and employee contributions for health benefits to the Public Employees' Health Care Fund.



This bill would authorize assessment of interest and penalties, as specified, on contracting agencies who fail to remit those contributions when due, thereby making an appropriation.

(4) Under existing law, employer and employee contributions for health benefits are credited to the Public Employees' Health Care Fund or the Public Employees' Contingency Reserve Fund, both of which are continuously appropriated special funds. Under existing law, the Public Employees' Contingency Reserve Fund may be used to defray rate increases, reduce contributions, increase benefits, and pay administrative expenses, as specified. Under existing law, the Public Employees' Health Care Fund consists of, among other moneys, health plan premiums paid by public agencies.

The bill would revise and recast the provisions relating to the Public Employees' Contingency Reserve Fund by, among other things, eliminating the continuous appropriation of the fund, creating a continuously appropriated separate account within the fund for health benefit plans that the board has approved or that have entered into a contract with the board, and authorizing the use of a specified portion of the funds for cost containment programs and health benefits plan performance incentives, as specified. The bill would also create a continuously appropriated account in the Public Employees' Contingency Reserve Fund for health plan premiums paid by public agencies, and remove these premiums from the Public Employees' Health Care Fund. By changing the purpose for which the Public Employees' Contingency Reserve Fund may be used, the bill would make an appropriation. The bill would also create a separate account in the Public Employees' Contingency Reserve Fund for administrative expenses consisting of funds deposited pursuant to specified sections of law. The bill would permit money in this account to be expended pursuant to approval by the Department of Finance and the Joint Legislative Budget Committee in the manner set forth for obtaining authorization for expenditures requiring a deficiency appropriation, as specified. The bill would revise the statement of legislative findings and declarations regarding the parties for whom the Public Employees' Health Care Fund is held in trust. The bill would also make conforming changes. The bill would also require the Board of Administration of the Public Employees' Retirement System to submit an annual report to the Joint Legislative Budget Committee concerning the utilization of funds for cost containment, as specified.

(5) Existing law authorizes contracting agencies subject to the Public Employees' Medical and Hospital Care Act to maintain another plan or program offering prepaid hospital and medical care for its employees in certain circumstances.



This bill would prohibit those contracting agencies from maintaining those other plans or programs, except that specified existing plans would be authorized to continue so long as they meet and maintain the minimum standards for approved health benefits plans prescribed by the board and subject to other specified conditions. The bill would also revise the procedures by which the board may terminate the participation of contracting agencies.

(6) Existing law establishes lien rights and procedures for the recovery by specified health benefits trusts of medical costs paid on behalf of participants, as defined, for injuries caused by a 3rd party when the participant obtains a settlement, award or judgment against the 3rd party, as specified.

This bill would make those lien rights and procedures applicable to self-funded plans administered under the Public Employees' Medical and Hospital Care Act.

(7) Existing law authorizes the Labor Commissioner or his or her representatives to take assignments of certain claims for enforcement, including wage claims and incidental expense accounts and advances.

Existing law authorizes the State Department of Health Services, upon federal approval, to provide a supplemental rate adjustment to the Medi-Cal reimbursement rate for certain health care providers that have a collectively bargained contract or a comparable, legally binding, written commitment to increase salaries, wages, or benefits for nonmanagerial, nonadministrative, noncontract staff.

This bill would exclude those supplemental Medi-Cal reimbursement rate adjustments from the authority of the Labor Commissioner and his or her representatives to take assignments of wage claims and incidental expense accounts and advances for enforcement. This bill would vest enforcement of the supplemental rate adjustment provision with the State Department of Health Services.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 22778 of the Government Code is amended to read:

22778. (a) The board shall make available to employees and annuitants eligible to enroll in any health benefits plan pursuant to this part any information, in a form as the board may deem satisfactory, that will enable the employees or annuitants to exercise an informed choice among the various types of health benefits plans that have been contracted for or approved. Each employee or annuitant enrolled in a health benefits plan shall be issued an appropriate document setting forth



or summarizing the services or benefits to which the employee or annuitant or family members are entitled to thereunder, the procedure for obtaining benefits, and the principal provisions of the plan affecting the employee, annuitant, or family members.

(b) The board shall compile and provide data regarding age, sex, family composition, and geographical distribution of employees and annuitants and make continuing study of the operation of this part, including, but not necessarily limited to, surveys and reports on plans, medical and hospital benefits, the standard of care available to employees and annuitants, and the experience of plans receiving contributions under this part with respect to such matters as gross and net cost, administrative cost, benefits, utilization of benefits, and the portion of actual personal expenditure of employees and annuitants for health care that is being met by prepaid benefits.

(c) The board shall, with the advice of and in consultation and cooperation with, professional medical organizations and individuals or organizations having special skills or experience in the organization and provision of health care services on a prepaid basis, study methods of evaluating and improving the quality and cost of medical and hospital care provided under this part.

SEC. 2. Section 22780 is added to the Government Code, to read:

22780. The board or an authorized representative may perform audits of each employer and may, at a specified time and place, require the employer to provide information or make available for examination and copying books, papers, data, and records including, but not limited to, personnel and payroll records, as deemed necessary by the board to determine compliance with the provisions of this part. The information obtained from an employer shall remain confidential.

SEC. 3. Section 22791.5 is added to the Government Code, to read:

22791.5. The board may enter into any joint purchasing arrangement with private or public entities, if the arrangement does all of the following:

- (a) Benefits persons receiving health coverage under this part.
- (b) Does not restrict the authority of the board or the state.
- (c) Does not jeopardize the system's tax status or its governmental plan status.
- (d) Does not violate federal or state law.

SEC. 4. Section 22794 of the Government Code is repealed.

SEC. 5. Section 22794 is added to the Government Code, to read:

22794. Rates charged under any health benefits plan shall reasonably reflect the cost of the benefits provided. This part does not limit the board's authority to enter into contracts with carriers providing compensation based on carrier performance or to credit premiums to an



employer for expenditures that the board determines are likely to improve the health status of employees and annuitants or otherwise reduce health care costs.

SEC. 6. Section 22810 of the Government Code is amended to read:

22810. (a) An employee or annuitant may, under eligibility rules as the board may by regulation prescribe, enroll in an approved health benefits plan, either as an individual or for self and family, except that an employee of a contracting agency, or an annuitant who retired while an employee or is the beneficiary of an employee, may enroll only in a health benefits plan for which the board has contracted. With respect to state officers and employees, the regulations shall provide that every employee or annuitant enrolled in a health benefits plan shall be enrolled in a major medical plan or shall provide for inclusion of major medical benefits in health benefits plans. The regulations may provide for the exclusion of employees on the basis of the nature and type of their employment or conditions pertaining thereto, but not limited to, short-term appointments, seasonal or intermittent employment, and employment of a like nature, but no employee or group of employees shall be excluded solely on the basis of the hazardous nature of the employment. Any enrollment shall authorize the deduction of the contributions required under this part from the employee's or annuitant's salary or retirement allowance.

(b) Any annuitant who satisfies the requirement to retire within 120 days of separation as specified in subdivision (e) of Section 22754 may continue his or her enrollment, enroll within 60 days of retirement, or enroll during any future open enrollment period, as provided by regulations of the board, without discrimination as to premium rates or benefits coverage. If the survivor of an annuitant who satisfied the requirement to retire within 120 days of separation as specified in subdivision (e) of Section 22754 is also an annuitant as defined in this part, he or she shall also be eligible to enroll within 60 days of the annuitant's death or during any future open enrollment period, as provided by regulation of the board, without discrimination as to premium rates or benefits coverage. The effective date of enrollment of persons who, at the time of becoming an annuitant or survivor, were not enrolled in a health benefits plan under this part shall be a prospective date determined by the board.

(c) Any permanent intermittent employee and any employee who works less than full time may continue his or her enrollment while retired from state employment if (1) he or she was enrolled prior to separation from state employment and (2) he or she lost eligibility prior to separation but continued his or her coverage under federal law.



(d) Any annuitant who becomes entitled to the survivor allowance under Section 21571 at the age of 62 years and who was enrolled in a health benefits plan at the death of the member on whose account the survivor allowance is payable may enroll in a health benefits plan without discrimination as to premium rates or benefits coverage.

(e) In the case of the death of an employee after application has been filed for coverage of family members but prior to the effective date of coverage, family members shall be deemed to have been covered on the date of the death of the employee, and if one of the family members is an annuitant he or she shall be enrolled as if the coverage applied for were continued without discrimination as to premium rates or benefits coverage.

(f) The board shall, by rule and regulation, make whatever provisions it deems necessary to eliminate or minimize the impact of adverse selection that would affect any plans approved or contracted for because of the enrollment of annuitants. This may include the reimbursement of surcharges for late enrollment in Part B of Medicare if the board determines that payment of the surcharge would be less costly than continued enrollment in a basic plan.

SEC. 7. Section 22825.7 of the Government Code is amended to read:

22825.7. (a) The employer or the board shall pay monthly to an employee or annuitant who is enrolled in, or whose family member is enrolled in, a health benefits plan under this part providing supplemental benefits for persons enrolled under health insurance provisions of Title XVIII of the federal Social Security Act, the amount of the standard charge, exclusive of surcharge for late enrollment, except as provided in Section 22810, for insurance described in Part B under that act but not to exceed the difference between the maximum employer contribution under this article and the amount contributed by the employer to the cost of enrollment of the employee or annuitant and his or her family members in a health benefits plan or plans under this part. No payment may be made in any month in which that difference is less than one dollar (\$1).

(b) This section shall be applicable only to state employees and annuitants who retired while state employees and the family members of those annuitants.

(c) With respect to annuitants, the board shall pay to the annuitant the amount required by this section from the same source from which their allowances are paid. Those amounts are hereby appropriated monthly from the General Fund to reimburse the board.

(d) There is hereby appropriated from the appropriate funds the amounts required by this section to be paid to active state employees.



SEC. 8. Section 22832 of the Government Code is amended to read:

22832. (a) The contributions required of a contracting agency, along with contributions withheld from salaries of its employees, shall be forwarded monthly, no later than the 10th day of the month for which the contribution is due, and shall be credited to the Public Employees' Contingency Reserve Fund as specified by Section 22826.

(b) The county superintendent of schools shall draw requisitions against the county school service fund and the funds of the respective school districts for amounts equal to the total of the employers' contributions required to be paid from the county school service fund and from the funds of the districts, and the contributions deducted from the compensation of employees paid from the funds. The amounts shall be deposited in the county treasury to the credit of the contract retirement fund established under Section 20617.

The county superintendent thereafter shall draw his or her requisitions against the fund in favor of the board which when allowed by the county auditor shall constitute warrants against the funds and shall forward the warrants to the board in accordance with this section.

(c) If a contracting agency fails to remit the contributions when due, the agency may be assessed interest at an annual rate of 10 percent and the costs of collection, including reasonable legal fees, when necessary to collect the amounts due. In the case of repeated delinquencies, the contracting agency may be assessed a penalty of 10 percent of the delinquent amount. That penalty may be assessed once during each 30-day period that the amount remains unpaid. Additionally, the contracting agency may be required to deposit one-month's premium as a condition of continued participation in the program.

SEC. 9. Section 22840 of the Government Code is repealed.

SEC. 10. Section 22840 is added to the Government Code, to read:

22840. (a) There shall be maintained in the State Treasury the Public Employees' Contingency Reserve Fund. The board may invest funds in the Public Employees' Contingency Reserve Fund in accordance with the provisions of law governing its investment of the retirement fund.

(b) (1) An account shall be maintained within the Public Employees' Contingency Reserve Fund with respect to the health benefits plans the board has approved or that have entered into a contract with the board. The account shall be credited, from time to time and in amounts as determined by the board, with moneys contributed under Section 22826 or 22831 to provide an adequate contingency reserve. The income derived from any dividends, rate adjustments, or other funds received from a health benefits plan shall be credited to the account. The board may deposit, in the same manner as provided in paragraph (3), up to



one-half of one percent of premiums in the account for purposes of cost containment programs, subject to approval as provided in paragraph (2) of subdivision (c).

The account may be utilized to defray increases in future rates, to reduce the contributions of employees and annuitants and the employers, to implement cost containment programs, or to increase the benefits provided by a health benefits plan, as determined by the board.

(2) The total credited to the account for health benefits plans at any time shall be limited, in the manner and to the extent the board may find to be most practical, to a maximum of 10 percent of the total of the contributions of the employers and employees and annuitants in any fiscal year. The board may undertake any action to ensure that the maximum amount prescribed for the fund is approximately maintained.

(3) Board rules adopted pursuant to Section 22810 to minimize the impact of adverse selection or contracts entered into pursuant to Section 22794 to implement health benefits plan performance incentives may provide for deposit in and disbursement to carriers or to Medicare from the account the portion of the contributions otherwise payable directly to the carriers by the Controller under Section 22841 or 22842 as may be required for that purpose. The deposits may not be included in applying the limitations, prescribed in paragraph (2), on total amounts that may be deposited in or credited to the fund.

(4) Notwithstanding Section 13340, all moneys in the account for health benefit plans are continuously appropriated without regard to fiscal year for the purposes provided in this subdivision.

(c) (1) An account shall also be maintained in the Public Employees' Contingency Reserve Fund for administrative expenses consisting of funds deposited for this purpose pursuant to Sections 22826 and 22831.

(2) The moneys deposited pursuant to Sections 22826 and 22831 in the Public Employees' Contingency Reserve Fund may be expended by the board for administrative purposes, provided that the expenditure is approved by the Department of Finance and the Joint Legislative Budget Committee in the manner provided in the Budget Act for obtaining authorization to expend at rates requiring a deficiency appropriation, regardless of whether the expenses were anticipated.

(d) An account shall be maintained in the Public Employees' Contingency Reserve Fund for health plan premiums paid by public agencies. These funds are continuously appropriated, without regard to fiscal year, for the payment of premiums or other charges to carriers or the Public Employees' Health Care Fund. Penalties and interest paid pursuant to subdivision (c) of Section 22832 shall be deposited in the account for administrative expenses as provided for by paragraph (1) of subdivision (c).



SEC. 11. Section 22840.2 of the Government Code is amended to read:

22840.2. (a) There shall be maintained in the State Treasury the Public Employees' Health Care Fund, the purpose of which is to fund the health benefits plan or plans administered or approved by the board. The board may invest funds in the Public Employees' Health Care Fund in accordance with the provisions of law governing its investment of the retirement fund.

(b) The Public Employees' Health Care Fund shall consist of the following:

(1) Any self-funded or minimum premium plan premiums paid by public agencies, the state and enrolled employees, annuitants, and family members, including premiums paid directly for continuation coverage authorized under the Consolidated Omnibus Budget and Reconciliation Act of 1986 or as thereafter amended, and as authorized by this part.

(2) Any reserve moneys from terminated plans designated by the board for payment to self-funded or minimum premium plans.

(c) Income, of whatever nature, earned on the Public Employees' Health Care Fund during any fiscal year, shall be credited to the fund.

(d) Notwithstanding Section 13340, the Public Employees' Health Care Fund is continuously appropriated, without regard to fiscal years, to pay benefits and claims costs, to pay the costs of administering self-funded or minimum premium plans, to refund those who made direct premium payments, and to pay such other costs as the board may determine as necessary, consistent with its fiduciary duty.

(e) The Legislature finds and declares that the Public Employees' Health Care Fund is a trust fund held for the exclusive benefit of enrolled employees, annuitants, family members, the self-funded plan administrator, and those contracting to provide medical and hospital care services.

SEC. 12. Section 22842 of the Government Code is amended to read:

22842. Contributions of employees and annuitants of contracting agencies, and contributions of the employers not credited to the Public Employees' Health Care Fund or to the Public Employees' Contingency Reserve Fund for purposes specified in subdivision (b) or (c) of Section 22840, shall be utilized for payment of premiums and other charges required to be paid to carriers, and those funds are continuously appropriated for that purpose to the extent of those contributions. Those amounts shall be suitably identified and remitted monthly to the carriers by warrant of the Controller upon claims filed by the board.



SEC. 13. Section 22852 of the Government Code is amended to read:

22852. (a) A contracting agency that has elected to be subject to this part may not maintain any other plan or program offering prepaid hospital and medical care for its employees.

(b) Notwithstanding subdivision (a), a plan operating on July 1, 2002, shall be permitted to continue as long as it meets the requirements of subdivision (e). A material change in the plan, including a change in carriers, shall be permitted. Notwithstanding any other provision of this part, a contracting agency may include a dependent of an employee or retiree who is not eligible for coverage as a family member or a domestic partner, as provided in this part, if the employee or retiree is also enrolled in the alternative plan.

(c) Notwithstanding subdivision (a), a self-insured plan operating on January 1, 2003, shall be permitted to continue as long as it meets the requirements of subdivision (e). The board may extend the deadline contained in this subdivision for good cause.

(d) Notwithstanding subdivision (a), an alternative plan established by a contracting agency and approved by the board after July 1, 2002, shall be permitted to continue until December 31, 2004. The plan may only be offered in an area in which: (1) there is no board approved health maintenance organization or exclusive provider organization plan available for enrollment, or (2) there is only one board approved health maintenance organization plan available for enrollment, and that plan has less than 55 percent of the primary care physicians in its provider network available for new patients. The contracting agency shall reimburse the board for reasonable administrative expenses incurred as a result of enrollment activities outside of the system's open enrollment period caused by the creation or termination of a plan offered pursuant to this subdivision. A contracting agency providing a plan pursuant to this subdivision shall notify the board by June 1, 2004, of its intent to either terminate that plan or to terminate its participation under this part as of January 1, 2005. On or after June 1, 2004, the board may extend the termination date contained in this subdivision for a contracting agency at its discretion, based on compelling circumstances in the region in which the contracting agency is located.

(e) A plan maintained pursuant to this section shall meet and maintain the minimum standards for approved health benefit plans prescribed by the board pursuant to the requirements of this part.

(f) An election of a contracting agency to be subject to this part shall not be effective prior to the termination of any plan maintained in violation of this section. The establishment of any plan thereafter in



violation of this section shall terminate participation of the agency and all of its employees under this part as of the end of the contract year.

(g) Nothing in this part may be construed to prohibit a contracting agency from offering health plans, including collectively bargained union health and welfare trust plans, to employees and annuitants of employee groups, including collective bargaining units, if the contracting agency has not elected to provide coverage for that group under this part.

SEC. 14. Section 22854 of the Government Code is amended to read:

22854. The board may terminate the participation of a contracting agency if it fails for three months after a demand to perform any act required by this part or board rules.

SEC. 15. Section 22856 of the Government Code is amended to read:

22856. Notwithstanding any other provision of law, a school district, county board of education, personnel commission of a school district, or a county superintendent of schools may, by appropriate resolution, elect to become subject to this part. Employer contributions for annuitants shall at all times equal employer contributions paid for active employees, except as otherwise provided in this part.

SEC. 16. Section 22859 of the Government Code is amended to read:

22859. A contracting agency may elect by amendment to its contract with the board to participate in a Medicare reimbursement program for its employees or annuitants, or family members of employees or annuitants, who are enrolled in a health benefits plan under this part that provides supplemental benefits for persons enrolled under the health insurance provisions of Title XVIII of the federal Social Security Act, as prescribed by board regulations.

SEC. 17. Section 22891 of the Government Code is amended to read:

22891. As used in this chapter:

(a) "Health benefits trust" means the California Association of Highway Patrolman Health Benefits Trust, the Peace Officers Research Association of California Health Benefits Trust, the California Correctional Peace Officer Association Health Benefits Trust, or a self-funded plan administered by the board under this part.

(b) "Participant" means an employee, annuitant, or family member who is a member of a health benefits trust and who is injured by or due to the actions or inactions of a third person, and includes any other person to whom a claim accrues by reason of the injury or death of the employee, annuitant or family member.



(c) “Third party” means any tortfeasor or alleged tortfeasor against whom the participant asserts a claim for injury or death.

SEC. 18. Section 107 is added to the Labor Code, to read:

107. (a) The enforcement of Section 14110.65 of the Welfare and Institutions Code is vested with the State Department of Health Services.

(b) Any claim made under Section 14110.65 of the Welfare and Institutions Code shall not constitute a wage claim as provided in subdivision (a) of Section 96, and shall not be subject to this chapter.

SEC. 19. The Board of Administration of the Public Employees’ Retirement System shall submit to the Joint Legislative Budget Committee an annual report, not later than February 1 of each year, concerning the utilization of funds for cost containment pursuant to Section 22840 of the Government Code. The report shall include the amount deposited in the Public Employees’ Contingency Reserve Fund for this purpose, the objectives of any expenditure, and an assessment of whether the objectives were met.

