

**Introduced by Senator Speier**

February 17, 2005

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*An act to amend Section 1368.02 of the Health and Safety Code, and to amend Sections 510, 12921, 12921.1, 12921.15, 12921.3, and 12921.4 of the Insurance Code, relating to health care coverage.*

LEGISLATIVE COUNSEL'S DIGEST

SB 367, as amended, Speier. Health care complaint system.

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 (DMHC). Existing law also provides for the licensure and regulation of health insurance by the Department of Insurance.

~~This bill would state the Legislature's findings and intent concerning establishing a single entity for the resolution of complaints concerning health care coverage~~ *require the director of the DMHC to contract with the Insurance Commissioner for the DMHC to receive complaints regarding health insurers. The bill would specify that unresolved inquiries and complaints would be forwarded to the commissioner for processing and resolution and would require the commissioner before July 1, 2006, to establish a unit to resolve complaints relating to health insurers.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

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

- 1 SECTION 1. (a) The Legislature finds and declares the
- 2 following:

1 (1) Health care services must be available to Californians  
2 without unnecessary administrative procedures, interruptions, or  
3 delays.

4 (2) As of May 2002, the Department of Insurance estimated  
5 that it regulated insurers covering 28.79 percent of the total  
6 accident and health care market and that, with respect to those  
7 commercial products that are comparable between the  
8 Department of Insurance and the Department of Managed Health  
9 Care regulated products, the Department of Insurance regulated  
10 16.8 percent of the comprehensive commercial health insurance  
11 provided to Californians.

12 ~~(3) For a number of reasons, health care service plans~~  
13 ~~regulated by the Department of Managed Health Care have seen~~  
14 ~~their enrollment decline, with most enrollment moving to~~  
15 ~~preferred provider organizations and similar arrangements. Thus,~~  
16 ~~the percentage of health care insurance products and patients~~  
17 ~~enrolled in policies regulated by the Department of Insurance has~~  
18 ~~increased substantially and will continue to increase.~~

19 (4)

20 (3) With two separate departments responsible for regulating  
21 entities that provide health care coverage, patients and their  
22 health care providers are often confused about the identity of the  
23 appropriate regulator *and may be regularly referred between the*  
24 *departments*. Further, patients enrolled in insurance products  
25 regulated by the Department of Insurance and their health care  
26 providers do not have ~~an established~~ *a dedicated* unit within the  
27 Department of Insurance that has ~~the expertise to resolve~~  
28 ~~complaints. Thus, these individuals are not entitled to receive the~~  
29 ~~same level of regulatory protections that they would have~~  
30 ~~received had the product been regulated by the Department of~~  
31 ~~Managed Health Care.~~ *been designated to resolve health*  
32 *coverage complaints.*

33 (b) It is the intent of the Legislature to reduce confusion about  
34 the identity of the appropriate regulator, to provide all patients  
35 who have health care coverage and their health care providers  
36 with a single entity that is visible, easily accessible, and able to  
37 effectively resolve complaints, and to assure the public that the  
38 law is properly implemented.

1     *SEC. 2. This act shall be known and may be cited as the*  
2     *Patient and Provider Preferred Provider Organization*  
3     *Protection Act.*

4     *SEC. 3. Section 1368.02 of the Health and Safety Code is*  
5     *amended to read:*

6     1368.02. (a) The director shall establish and maintain a  
7     toll-free telephone number for the purpose of receiving *and, if*  
8     *appropriate, resolving* complaints regarding health care service  
9     plans regulated by the director. *The director shall also contract*  
10    *with the Insurance Commissioner for the department to receive*  
11    *complaints regarding health insurers regulated by the*  
12    *commissioner. The director may respond to an initial inquiry*  
13    *concerning a health insurer, but shall forward all unresolved*  
14    *inquiries and complaints concerning a health insurer to the*  
15    *commissioner for processing and resolution. The purpose of the*  
16    *contract is to establish a single point where all persons who have*  
17    *health care coverage and their providers, can make health*  
18    *coverage complaints. Nothing in the contract shall be construed*  
19    *to provide the director with regulatory authority over health*  
20    *insurers.*

21    (b) Every health care service plan shall publish the  
22    department's toll-free telephone number, the department's TDD  
23    line for the hearing and speech impaired, the plan's telephone  
24    number, and the department's Internet address, on every plan  
25    contract, on every evidence of coverage, on copies of plan  
26    grievance procedures, on plan complaint forms, and on all  
27    written notices to enrollees required under the grievance process  
28    of the plan, including any written communications to an enrollee  
29    that offer the enrollee the opportunity to participate in the  
30    grievance process of the plan and on all written responses to  
31    grievances. The department's telephone number, the  
32    department's TDD line, the plan's telephone number, and the  
33    department's Internet address shall be displayed by the plan in  
34    each of these documents in 12-point boldface type in the  
35    following regular type statement:

36    "The California Department of Managed Health Care is  
37    responsible for regulating health care service plans. If you have a  
38    grievance against your health plan, you should first telephone  
39    your health plan at (insert health plan's telephone number) and  
40    use your health plan's grievance process before contacting the

1 department. Utilizing this grievance procedure does not prohibit  
2 any potential legal rights or remedies that may be available to  
3 you. If you need help with a grievance involving an emergency,  
4 a grievance that has not been satisfactorily resolved by your  
5 health plan, or a grievance that has remained unresolved for more  
6 than 30 days, you may call the department for assistance. You  
7 may also be eligible for an Independent Medical Review (IMR).  
8 If you are eligible for IMR, the IMR process will provide an  
9 impartial review of medical decisions made by a health plan  
10 related to the medical necessity of a proposed service or  
11 treatment, coverage decisions for treatments that are  
12 experimental or investigational in nature and payment disputes  
13 for emergency or urgent medical services. The department also  
14 has a toll-free telephone number (1-888-HMO-2219) and a TDD  
15 line (1-877-688-9891) for the hearing and speech impaired. The  
16 department's Internet Web site <http://www.hmohelp.ca.gov> has  
17 complaint forms, IMR application forms and instructions online."

18 (c) (1) There is within the department an Office of Patient  
19 Advocate, which shall be known and may be cited as the  
20 Gallegos-Rosenthal Patient Advocate Program, to represent the  
21 interests of enrollees served by health care service plans  
22 regulated by the department. The goal of the office shall be to  
23 help enrollees secure health care services to which they are  
24 entitled under the laws administered by the department.

25 (2) The office shall be headed by a patient advocate  
26 recommended to the Governor by the Secretary of the Business,  
27 Transportation and Housing Agency. The patient advocate shall  
28 be appointed by and serve at the pleasure of the Governor.

29 (3) The duties of the office shall be determined by the  
30 secretary, in consultation with the director, and shall include, but  
31 not be limited to:

32 (A) Developing educational and informational guides for  
33 consumers describing enrollee rights and responsibilities, and  
34 informing enrollees on effective ways to exercise their rights to  
35 secure health care services. The guides shall be easy to read and  
36 understand, available in English and other languages, and shall  
37 be made available to the public by the department, including  
38 access on the department's Internet Web site and through public  
39 outreach and educational programs.

1 (B) Compiling an annual publication, to be made available on  
2 the department's Internet Web site, of a quality of care report  
3 card, including, but not limited to, health care service plans.

4 (C) Rendering advice and assistance to enrollees regarding  
5 procedures, rights, and responsibilities related to the use of health  
6 care service plan grievance systems, the department's system for  
7 reviewing unresolved grievances, and the independent review  
8 process.

9 (D) Making referrals within the department regarding studies,  
10 investigations, audits, or enforcement that may be appropriate to  
11 protect the interests of enrollees.

12 (E) Coordinating and working with other government and  
13 nongovernment patient assistance programs and health care  
14 ombudsperson programs.

15 (4) The director, in consultation with the patient advocate,  
16 shall provide for the assignment of personnel to the office. The  
17 department may employ or contract with experts when necessary  
18 to carry out functions of the office. The annual budget for the  
19 office shall be separately identified in the annual budget request  
20 of the department.

21 (5) The office shall have access to department records  
22 including, but not limited to, information related to health care  
23 service plan audits, surveys, and enrollee grievances. The  
24 department shall assist the office in compelling the production  
25 and disclosure of any information the office deems necessary to  
26 perform its duties, from entities regulated by the department, if  
27 the information is determined by the department's legal counsel  
28 to be subject, under existing law, to production or disclosure to  
29 the department.

30 (6) The patient advocate shall annually issue a public report  
31 on the activities of the office, and shall appear before the  
32 appropriate policy and fiscal committees of the Senate and  
33 Assembly, if requested, to report and make recommendations on  
34 the activities of the office.

35 *SEC. 4. Section 510 of the Insurance Code is amended to*  
36 *read:*

37 510. Whenever a policy of insurance specified in Section 660  
38 or 675, a policy of life insurance as defined in Section 101, a  
39 policy of disability insurance as defined in Section 106, *a policy*  
40 *of health insurance as defined in Section 106*, or a certificate of

1 coverage as defined in Section 10270.6, is first issued to or  
2 delivered to a new insured or a new policyholder in this state, the  
3 insurer shall include a written disclosure containing the name,  
4 address, and toll-free telephone number of the unit within the  
5 Department of Insurance that deals with consumer affairs. The  
6 telephone number shall be the same as that provided to  
7 consumers under Section 12921.1. *The certificate of coverage for*  
8 *a policy of health insurance shall also include in the disclosure*  
9 *the name, address, toll-free telephone number, and Internet Web*  
10 *site of the health care coverage complaint center established*  
11 *pursuant to subdivision (a) of Section 1368.02 of the Health and*  
12 *Safety Code. The disclosure shall be printed in large, boldface*  
13 *type.*

14 The disclosure shall contain, at the discretion of the insurer,  
15 either the address and telephone number of the insurer or the  
16 address and telephone number of the agent or broker of record, or  
17 both of those addresses and telephone numbers. The disclosure  
18 shall also contain a statement that the Department of Insurance  
19 should be contacted only after discussions with the insurer, or its  
20 agent or other representative, or both, have failed to produce a  
21 satisfactory resolution to the problem. If the policy or certificate  
22 was issued or delivered by an agent or broker, the disclosure  
23 shall specifically advise the insured to contact his or her agent or  
24 broker for assistance.

25 *SEC. 5. Section 12921 of the Insurance Code is amended to*  
26 *read:*

27 12921. (a) The commissioner shall perform all duties  
28 imposed upon him or her by the provisions of this code and other  
29 laws regulating the business of insurance in this state, and shall  
30 enforce the execution of those provisions and laws.

31 (b) In an administrative action to enforce the provisions of this  
32 code and other laws regulating the business of insurance in this  
33 state, any settlement is subject to all of the following:

34 (1) The commissioner may delegate the power to negotiate the  
35 terms and conditions of a settlement but the commissioner may  
36 not delegate the power to approve the settlement.

37 (2) Unless specifically provided for in a provision of this code,  
38 the commissioner may not agree to any of the following:

39 (A) That the respondent contribute, deposit, or transfer any  
40 moneys or other resources to a nonprofit entity.

1 (B) That a respondent contribute, deposit, or transfer any fine,  
2 penalty, assessment, cost, or fee except to the commissioner for  
3 deposit in the appropriate state fund pursuant to Section 12975.7.

4 (C) That the commissioner may or shall direct the transfer,  
5 distribution, or payment to another person or entity of any fine,  
6 penalty, assessment, cost, or fee.

7 (D) The use of the commissioner's name, likeness, or voice in  
8 any printed material or audio or visual medium, either for general  
9 distribution or for distribution to specific recipients.

10 (3) The commissioner may only agree to payment to those  
11 persons or entities, *including a provider authorized to receive*  
12 *reimbursement directly from the insurer pursuant to Section*  
13 *10133*, to whom payment may be due because of the  
14 respondent's violation of a provision of this code or other law  
15 regulating the business of insurance in this state.

16 (4) A settlement may only include the sanctions provided by  
17 this code or other laws regulating the business of insurance in  
18 this state, except that the settlement may include attorney's fees,  
19 costs of the department in bringing the enforcement action, and  
20 future costs of the department to ensure compliance with the  
21 settlement agreement.

22 *SEC. 6. Section 12921.1 of the Insurance Code is amended to*  
23 *read:*

24 12921.1. (a) The commissioner shall establish a program ~~on~~  
25 ~~or before July 1, 1991,~~ to investigate complaints and respond to  
26 inquiries received pursuant to Section 12921.3, to comply with  
27 Section 12921.4, and, when warranted, to bring enforcement  
28 actions against insurers. The program shall include, but not be  
29 limited to, the following:

30 (1) ~~A toll-free number~~ *Contracting with the Department of*  
31 *Managed Health Care to authorize that department to receive*  
32 *complaints and inquiries regarding health insurers regulated by*  
33 *the commissioner, as described in subdivision (a) of Section*  
34 *1368.02 of the Health and Safety Code.*

35 (2) *Toll-free telephone numbers published in telephone books*  
36 *throughout the state, dedicated to the handling of complaints and*  
37 *inquiries, including those received by the complaint center*  
38 *established pursuant to subdivision (a) of Section 1368.02 of the*  
39 *Health and Safety Code.*

40 (2)

- 1 (3) Public service announcements to inform consumers of the  
2 toll-free telephone number and how to register a complaint or  
3 make an inquiry to the department.  
4 ~~(3)~~
- 5 (4) A simple, standardized complaint form designed to assure  
6 that complaints will be properly registered and tracked.  
7 ~~(4)~~
- 8 (5) Retention of records on complaints for at least three years  
9 after the complaint has been closed.  
10 ~~(5)~~
- 11 (6) *A separate unit dedicated exclusively to processing*  
12 *complaints and inquiries relating to health insurance. The unit*  
13 *shall provide insureds and their health care providers with an*  
14 *easy and efficient method to resolve complaints and inquiries*  
15 *and, at a minimum, shall comply with the following*  
16 *requirements:*
- 17 (A) *Conspicuously place information on its Internet Web site*  
18 *about the unit, including its toll-free telephone number and*  
19 *e-mail address, and that identifies all insurers licensed by the*  
20 *department that offer health insurance.*
- 21 (B) *Develop educational and informational guides for*  
22 *insureds and health care providers describing their rights under*  
23 *this article. The guides shall be easy to read and understand and*  
24 *shall be made available to the public, including access on the*  
25 *department's Internet Web site.*
- 26 (C) *Provide a separate, standardized complaint form for*  
27 *insureds and health care providers to file a complaint.*
- 28 (7) Guidelines to disseminate complaint and enforcement  
29 information on individual insurers to the public, that shall  
30 include, but not be limited to, the following:
- 31 (A) License status.
- 32 (B) Number and type of complaints closed within the last full  
33 calendar year, with analogous statistics from the prior two years  
34 for comparison. The proportion of those complaints determined  
35 by the department to require that corrective action be taken  
36 against the insurer, or leading to insurer compromise, or other  
37 remedy for the complainant, as compared to those that are found  
38 to be without merit. This information shall be disseminated in a  
39 fashion that will facilitate identification of meritless complaints

1 and discourage their consideration by consumers and others  
2 interested in the records of insurers.

3 (C) Number and type of violations found, by reference to the  
4 line of insurance and the law violated.

5 (D) Number and type of enforcement actions taken.

6 (E) Ratio of complaints received to total policies in force, or  
7 premium dollars paid in a given line, or both. Private passenger  
8 automobile insurance ratios shall be calculated as the number of  
9 complaints received to total car years earned in the period  
10 studied.

11 (F) Any other information the department deems is appropriate  
12 public information regarding the complaint record of the insurer  
13 that will assist the public in selecting an insurer. However,  
14 nothing in this section shall be construed to permit disclosure of  
15 information or documents in the possession of the department to  
16 the extent that the information and those documents are protected  
17 from disclosure under any other provision of law.

18 ~~(6)~~

19 (8) Procedures and average processing times for each step of  
20 complaint mediation, investigation, and enforcement. These  
21 procedures shall be consistent with those in Article 6.5  
22 (commencing with Section 790) of Chapter 1 of Part 2 of  
23 Division 1 for complaints within the purview of that article,  
24 consistent with those in Article 7 (commencing with Section  
25 1858) of Chapter 9 of Part 2 of Division 1 for complaints within  
26 the purview of that article, and consistent with any other  
27 provisions of law requiring certain procedures to be followed by  
28 the department in investigating or prosecuting complaints against  
29 insurers.

30 ~~(7)~~

31 (9) A list of criteria to determine which violations should be  
32 pursued through enforcement action, and enforcement guidelines  
33 that set forth appropriate penalties for violations based on the  
34 nature, severity, and frequency of the violations.

35 ~~(8)~~

36 (10) Referral of complaints not within the department's  
37 jurisdiction to appropriate public and private agencies.

38 ~~(9)~~

1 (11) Complaint handling goals that can be tested against  
2 surveys carried out pursuant to subdivision (a) of Section  
3 12921.4.

4 ~~(10)~~

5 (12) Inclusion in its annual report to the Governor, required by  
6 Section 12922, detailed information regarding the program  
7 required by this section, that shall include, but not be limited to:  
8 a description of the operation of the complaint handling process,  
9 listing civil, criminal, and administrative actions taken pursuant  
10 to complaints received; the percentage of the department's  
11 personnel years devoted to the handling and resolution of  
12 complaints; and suggestions for legislation to improve the  
13 complaint handling apparatus and to increase the amount of  
14 enforcement action undertaken by the department pursuant to  
15 complaints if further enforcement is deemed necessary to insure  
16 proper compliance by insurers with the law.

17 (b) The commissioner shall promulgate a regulation that sets  
18 forth the criteria that the department shall apply to determine if a  
19 complaint is deemed to be justified prior to the public release of  
20 a complaint against a specifically named insurer.

21 (c) The commissioner shall provide to the insurer a description  
22 of any complaint against the insurer that the commissioner has  
23 received and has deemed to be justified at least 30 days prior to  
24 public release of a report summarizing the information required  
25 by this section. This description shall include all of the following:

- 26 (1) The name of the complainant.
- 27 (2) The date the complaint was filed.
- 28 (3) A succinct description of the facts of the complaint.
- 29 (4) A statement of the department's rationale for determining  
30 that the complaint was justified that applies the department's  
31 criteria to the facts of the complaint.

32 (d) An insurer shall provide to the department the name,  
33 mailing address, telephone number, and facsimile number of a  
34 person whom the insurer designates as the recipient of all notices,  
35 correspondence, and other contacts from the department  
36 concerning complaints described in this section. The insurer may  
37 change the designation at any time by providing written notice to  
38 the Consumer Services Division of the department.

1 (e) For the purposes of this section, notices, correspondence,  
2 and other contacts with the designated person shall be deemed  
3 contact with the insurer.

4 (f) *The commissioner shall complete the requirements imposed*  
5 *by the amendments to subdivision (a) made by Senate Bill No.*  
6 *367 of the 2005-06 Regular Session before July 1, 2006. Nothing*  
7 *in this section shall be construed to provide the Department of*  
8 *Managed Health Care with regulatory authority over health*  
9 *insurers.*

10 *SEC. 7. Section 12921.15 of the Insurance Code is amended*  
11 *to read:*

12 12921.15. ~~On or before July 1, 1999~~ *an annual basis*, the  
13 commissioner shall prepare a written report, to be made available  
14 by the department to interested individuals upon written request,  
15 that details complaint and enforcement information on individual  
16 insurers in accordance with guidelines established under  
17 ~~paragraph (5)~~ *paragraphs (6) and (7)* of subdivision (a) of  
18 Section 12921.1. The report shall be made available by mail  
19 through the department's consumer toll-free telephone number  
20 and through the department's Internet ~~website~~ *Web site* and  
21 transmitted via electronic mail if the individual has the ability to  
22 obtain the report in this manner. No complaint information shall  
23 be included in the report required by this section that has not  
24 been provided to the insurer in accordance with subdivision (c)  
25 of Section 12921.1.

26 *SEC. 8. Section 12921.3 of the Insurance Code is amended to*  
27 *read:*

28 12921.3. (a) The commissioner, in person or through  
29 employees of the department, shall receive complaints and  
30 inquiries, investigate complaints, prosecute insurers when  
31 appropriate and according to guidelines determined pursuant to  
32 Section 12921.1, and respond to complaints and inquiries by  
33 members of the public concerning the handling of insurance  
34 claims, including, but not limited to, violations of Article 10  
35 (commencing with Section 1861) of Chapter 9 of Part 2 of  
36 Division 1, by insurers, or alleged misconduct by insurers or  
37 production agencies.

38 (b) The commissioner shall not decline to investigate  
39 complaints *or to take enforcement action as a result of a*  
40 *complaint* for any of the following reasons:

1 (1) The insured is represented by an attorney in a dispute with  
2 an insurer, or is in mediation or arbitration.

3 (2) The insured has a civil action against an insurer.

4 (3) The complaint is from an attorney, if the complaint is  
5 based upon evidence or reasonable beliefs about violations of law  
6 known to an attorney because of a civil action.

7 (4) *The complaint is based on a single violation of law and not*  
8 *on a pattern of unlawful conduct.*

9 (c) The commissioner may defer the investigation until the  
10 finality of a dispute, mediation, arbitration, or civil action  
11 involving the claim is known.

12 (e)

13 (d) The commissioner, as he or she deems appropriate, and  
14 pursuant to Section 12921.1, shall provide for the education of,  
15 and dissemination of information to, members of the general  
16 public or licensees of the department concerning insurance  
17 matters.

18 *SEC. 9. Section 12921.4 of the Insurance Code is amended to*  
19 *read:*

20 12921.4. (a) (1) The commissioner shall, upon receipt of a  
21 written complaint with respect to the handling of an insurance  
22 claim or other obligation under a policy by an insurer or  
23 production agency, or alleged misconduct by an insurer or  
24 production agency, notify the complainant of the receipt of the  
25 complaint within 10 working days of receipt. Thereafter, the  
26 commissioner shall *make a determination on the complaint*  
27 *within 60 days of the date of its receipt. This timeframe may be*  
28 *extended by the commissioner by detailing in writing to the*  
29 *complainant, the facts showing good cause for extending the*  
30 *timeframe within which to decide the complaint.*

31 (2) *The commissioner shall* notify the complainant of the final  
32 action taken on his or her complaint within 30 days of the final  
33 action. The department shall include, with each notification of  
34 final action, or, at a minimum, with a number of randomly  
35 selected notifications of final action sufficient to assure the  
36 validity of results, a complaint handling evaluation form. This  
37 form shall clearly and concisely seek an evaluation of the  
38 department's performance in handling the complainant's  
39 grievance. The areas of evaluation shall include, but not be  
40 limited to *the following: whether*

1 (1) *Whether* the complaint was handled in a fair and  
2 reasonable manner; *and* evaluated thoroughly and without bias;  
3 ~~the.~~

4 (2) *The* time required for resolution of the complaint; ~~whether.~~

5 (3) *Whether* the complaint was referred and, if so, whether it  
6 was referred within a satisfactory time; ~~whether.~~

7 (4) ~~the~~ *Whether the* staff involved in handling the complaint  
8 demonstrated an adequate knowledge of the issues involved in  
9 the complaint; ~~whether.~~

10 (5) *Whether* the complainant was satisfied with the result of  
11 the department’s intervention; ~~and whether.~~

12 (6) *Whether* the complainant would recommend the  
13 department’s complaint handling services to others.

14 (b) The commissioner shall, if deemed appropriate, notify  
15 insurers or production agencies against whom the complaint is  
16 made of the nature of the complaint, may request appropriate  
17 relief for the complainant, and may meet and confer with the  
18 complainant and the insurer in order to mediate the complaint.  
19 This section shall not be construed to give the commissioner  
20 power to adjudicate claims.

21 ~~(b)~~

22 (c) The commissioner shall ascertain patterns of complaints by  
23 insurer, geographic area, insurance line, type of violation, and  
24 any other valid basis the commissioner may deem appropriate for  
25 further investigation, and periodically evaluate the complaint  
26 patterns to determine additional audit, investigative, or  
27 enforcement actions which may be taken by the commissioner,  
28 and report on all actions taken with respect to those patterns of  
29 complaints in his or her annual report to the Governor pursuant to  
30 Section 12922, and to the public. For the purposes of this  
31 subdivision, complaints mean those written complaints received  
32 by the commissioner under subdivision (a), and written  
33 complaints received by the commissioner from any other sources,  
34 alleging misconduct or unlawful acts by insurers or production  
35 agencies.