

AMENDED IN SENATE JUNE 21, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 778**

**Introduced by Assembly Member Atkins**

February 17, 2011

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An act to ~~add Sections 1395.3 and 1395.4 to amend Section 1380 of, and to add Sections 1395.3, 1395.4, and 1395.45 to,~~ the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 778, as amended, Atkins. Health care service plans: vision care.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act), provides for the regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides that health care service plans shall not be deemed to be engaged in the practice of a profession, and may employ, or contract with, any licensed health care professional to deliver professional services, and may directly own, and may directly operate through its professional employees or contracted licensed professionals, offices and subsidiary corporations. Existing law provides that those professionals may not own or control offices or branch offices unless otherwise expressly authorized.

This bill would authorize a registered dispensing optician, an optical company, a manufacturer or distributor of optical goods, or a

nonoptometric corporation to own a *specialized* health care service plan that provides *or arranges for the provision of* vision care services, share profits with the *specialized* health care service plan, contract for specified business services with the *specialized* health care service plan, and jointly advertise vision care services with the *specialized* health care service plan. The bill would prohibit those persons or entities from engaging in conduct ~~designed to~~ *that would* influence or interfere with the clinical decisions of an optometrist, as specified, *and would set forth provisions that apply to medical records*. Because a willful violation of ~~that provision~~ *these provisions* would be a crime under the Knox-Keene Act, the bill would impose a state-mandated local program.

*Existing law requires the Department of Managed Health Care to conduct periodic onsite medical surveys of the health delivery system of each health care service plan. Survey results are publicly reported and subject to public inspection. Existing law requires the Director of the Department of Managed Health Care to notify a health care service plan of any deficiencies found by a survey.*

*This bill would require the director to provide to a health care service plan and to the executive officer of the State Board of Optometry or the Medical Board of California a copy of information relating to the quality of care of any licensed optometrist or optician contained in any survey report that, in the judgment of the director, indicates incompetent or negligent treatment, as specified.*

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. The Legislature hereby finds and declares the
- 2 following:
- 3 (a) Health care service plans, including specialized health care
- 4 service plans, are regulated by the Department of Managed Health
- 5 Care.

1 (b) To ensure that quality care and coverage are provided to  
2 enrollees, a health care service plan, including a specialized health  
3 care service plan, is required to do all of the following:

4 (1) Establish a department-approved quality assurance program  
5 to ensure that enrollees are continuously provided the appropriate  
6 level of services covered by the health care service plan.

7 (2) Ensure that a separation of fiscal and administrative  
8 management from medical services exists within the health care  
9 service plan.

10 (3) Periodically submit information to the department to  
11 demonstrate delivery of quality care, accessibility of services to  
12 enrollees, and prompt resolution of complaints.

13 (4) Establish procedures meeting specified requirements for  
14 reviewing the utilization of services and facilities.

15 (5) Participate in comprehensive medical and financial audits  
16 conducted by the department.

17 (c) Existing law prohibits an optometrist from engaging in  
18 certain business relationships with a registered optical dispenser.

19 (d) Existing law allows a health care service plan to hire and  
20 contract with licensed professionals and to engage in a business  
21 relationship with any entity. However, existing law is unclear about  
22 the relationships between *specialized* health care service plans that  
23 provide ~~vision~~ or *arrange for the provision of vision care* services  
24 and optical companies.

25 (e) Providing statutory clarity regarding permissible business  
26 relationships between a *specialized* health care service plan  
27 providing ~~vision~~ or *arranging for the provision of vision care*  
28 services and optical companies will provide certainty and allow  
29 regulating entities to ensure that health care service plans are  
30 engaged in appropriate business relationships.

31 *SEC. 2. Section 1380 of the Health and Safety Code is amended*  
32 *to read:*

33 1380. (a) The department shall conduct periodically an onsite  
34 medical survey of the health delivery system of each plan. The  
35 survey shall include a review of the procedures for obtaining health  
36 services, the procedures for regulating utilization, peer review  
37 mechanisms, internal procedures for assuring quality of care, and  
38 the overall performance of the plan in providing health care benefits  
39 and meeting the health needs of the subscribers and enrollees.

1 (b) The survey shall be conducted by a panel of qualified health  
2 professionals experienced in evaluating the delivery of prepaid  
3 health care. The department shall be authorized to contract with  
4 professional organizations or outside personnel to conduct medical  
5 surveys and these contracts shall be on a noncompetitive bid basis  
6 and shall be exempt from Chapter 2 (commencing with Section  
7 10290) of Part 2 of Division 2 of the Public Contract Code. These  
8 organizations or personnel shall have demonstrated the ability to  
9 objectively evaluate the delivery of health care by plans or health  
10 maintenance organizations.

11 (c) Surveys performed pursuant to this section shall be  
12 conducted as often as deemed necessary by the director to assure  
13 the protection of subscribers and enrollees, but not less frequently  
14 than once every three years. Nothing in this section shall be  
15 construed to require the survey team to visit each clinic, hospital  
16 office, or facility of the plan. To avoid duplication, the director  
17 shall employ, but is not bound by, the following:

18 (1) For hospital-based health care service plans, to the extent  
19 necessary to satisfy the requirements of this section, the findings  
20 of inspections conducted pursuant to Section 1279.

21 (2) For health care service plans contracting with the State  
22 Department of Health Services pursuant to the Waxman-Duffy  
23 Prepaid Health Plan Act, the findings of reviews conducted  
24 pursuant to Section 14456 of the Welfare and Institutions Code.

25 (3) To the extent feasible, reviews of providers conducted by  
26 professional standards review organizations, and surveys and audits  
27 conducted by other governmental entities.

28 (d) Nothing in this section shall be construed to require the  
29 medical survey team to review peer review proceedings and records  
30 conducted and compiled under Section 1370 or medical records.  
31 However, the director shall be authorized to require onsite review  
32 of these peer review proceedings and records or medical records  
33 where necessary to determine that quality health care is being  
34 delivered to subscribers and enrollees. Where medical record  
35 review is authorized, the survey team shall insure that the  
36 confidentiality of physician-patient relationship is safeguarded in  
37 accordance with existing law and neither the survey team nor the  
38 director or the director's staff may be compelled to disclose this  
39 information except in accordance with the physician-patient  
40 relationship. The director shall ensure that the confidentiality of

1 the peer review proceedings and records is maintained. The  
2 disclosure of the peer review proceedings and records to the  
3 director or the medical survey team shall not alter the status of the  
4 proceedings or records as privileged and confidential  
5 communications pursuant to Sections 1370 and 1370.1.

6 (e) The procedures and standards utilized by the survey team  
7 shall be made available to the plans prior to the conducting of  
8 medical surveys.

9 (f) During the survey the members of the survey team shall  
10 examine the complaint files kept by the plan pursuant to Section  
11 1368. The survey report issued pursuant to subdivision (i) shall  
12 include a discussion of the plan's record for handling complaints.

13 (g) During the survey the members of the survey team shall  
14 offer such advice and assistance to the plan as deemed appropriate.

15 (h) (1) Survey results shall be publicly reported by the director  
16 as quickly as possible but no later than 180 days following the  
17 completion of the survey unless the director determines, in his or  
18 her discretion, that additional time is reasonably necessary to fully  
19 and fairly report the survey results. The director shall provide the  
20 plan with an overview of survey findings and notify the plan of  
21 deficiencies found by the survey team at least 90 days prior to the  
22 release of the public report.

23 (2) Reports on all surveys, deficiencies, and correction plans  
24 shall be open to public inspection except that no surveys,  
25 deficiencies, or correction plans shall be made public unless the  
26 plan has had an opportunity to review the report and file a response  
27 within 45 days of the date that the department provided the report  
28 to the plan. After reviewing the plan's response, the director shall  
29 issue a final report that excludes any survey information and legal  
30 findings and conclusions determined by the director to be in error,  
31 describes compliance efforts, identifies deficiencies that have been  
32 corrected by the plan by the time of the director's receipt of the  
33 plan's 45-day response, and describes remedial actions for  
34 deficiencies requiring longer periods to the remedy required by  
35 the director or proposed by the plan.

36 (3) The final report shall not include a description of  
37 "acceptable" or of "compliance" for any uncorrected deficiency.

38 (4) Upon making the final report available to the public, a single  
39 copy of a summary of the final report's findings shall be made  
40 available free of charge by the department to members of the

1 public, upon request. Additional copies of the summary may be  
2 provided at the department's cost. The summary shall include a  
3 discussion of compliance efforts, corrected deficiencies, and  
4 proposed remedial actions.

5 (5) If requested by the plan, the director shall append the plan's  
6 response to the final report issued pursuant to paragraph (2), and  
7 shall append to the summary issued pursuant to paragraph (4) a  
8 brief statement provided by the plan summarizing its response to  
9 the report. The plan may modify its response or statement at any  
10 time and provide modified copies to the department for public  
11 distribution no later than 10 days from the date of notification from  
12 the department that the final report will be made available to the  
13 public. The plan may file an addendum to its response or statement  
14 at any time after the final report has been made available to the  
15 public. The addendum to the response or statement shall also be  
16 made available to the public.

17 (6) Any information determined by the director to be  
18 confidential pursuant to statutes relating to the disclosure of  
19 records, including the California Public Records Act (Chapter 3.5  
20 (commencing with Section 6250) of Division 7 of Title 1 of the  
21 Government Code), shall not be made public.

22 (i) (1) The director shall give the plan a reasonable time to  
23 correct deficiencies. Failure on the part of the plan to comply to  
24 the director's satisfaction shall constitute cause for disciplinary  
25 action against the plan.

26 (2) No later than 18 months following release of the final report  
27 required by subdivision (h), the department shall conduct a  
28 follow-up review to determine and report on the status of the plan's  
29 efforts to correct deficiencies. The department's follow-up report  
30 shall identify any deficiencies reported pursuant to subdivision (h)  
31 that have not been corrected to the satisfaction of the director.

32 (3) If requested by the plan, the director shall append the plan's  
33 response to the follow-up report issued pursuant to paragraph (2).  
34 The plan may modify its response at any time and provide modified  
35 copies to the department for public distribution no later than 10  
36 days from the date of notification from the department that the  
37 follow-up report will be made available to the public. The plan  
38 may file an addendum to its response at any time after the  
39 follow-up report has been made available to the public. The

1 addendum to the response or statement shall also be made available  
2 to the public.

3 (j) The director shall provide to the plan and to the executive  
4 officer of the Board of Dental Examiners a copy of information  
5 relating to the quality of care of any licensed dental provider  
6 contained in any report described in subdivisions (h) and (i) that,  
7 in the judgment of the director, indicates clearly excessive  
8 treatment, incompetent treatment, grossly negligent treatment,  
9 repeated negligent acts, or unnecessary treatment. Any confidential  
10 information provided by the director shall not be made public  
11 pursuant to this subdivision. Notwithstanding any other provision  
12 of law, the disclosure of this information to the plan and to the  
13 executive officer shall not operate as a waiver of confidentiality.  
14 There shall be no liability on the part of, and no cause of action of  
15 any nature shall arise against, the State of California, the  
16 Department of Managed Health Care, the Director of the  
17 Department of Managed Health Care, the Board of Dental  
18 Examiners, or any officer, agent, employee, consultant, or  
19 contractor of the state or the department or the board for the release  
20 of any false or unauthorized information pursuant to this section,  
21 unless the release of that information is made with knowledge and  
22 malice.

23 (k) *The director shall provide to the plan and to the executive*  
24 *officer of the State Board of Optometry or the Medical Board of*  
25 *California a copy of information relating to the quality of care of*  
26 *any licensed optometrist or optician contained in any report*  
27 *described in subdivisions (h) and (i) that, in the judgment of the*  
28 *director, indicates clearly excessive treatment, incompetent*  
29 *treatment, grossly negligent treatment, repeated negligent acts,*  
30 *or unnecessary treatment. Any confidential information provided*  
31 *by the director shall not be made public pursuant to this*  
32 *subdivision. Notwithstanding any other provision of law, the*  
33 *disclosure of this information to the plan and to the executive*  
34 *officer shall not operate as a waiver of confidentiality. There shall*  
35 *be no liability on the part of, and no cause of action of any nature*  
36 *shall arise against, the State of California, the Department of*  
37 *Managed Health Care, the Director of the Department of Managed*  
38 *Health Care, the State Board of Optometry, the Medical Board of*  
39 *California, or any officer, agent, employee, consultant, or*  
40 *contractor of the state or the department or the boards for the*

1 *release of any false or unauthorized information pursuant to this*  
2 *section, unless the release of that information is made with*  
3 *knowledge and malice.*

4 ~~(k)~~

5 *(l) Nothing in this section shall be construed as affecting the*  
6 *director’s authority pursuant to Article 7 (commencing with Section*  
7 *1386) or Article 8 (commencing with Section 1390) of this chapter.*

8 ~~SEC. 2.~~

9 *SEC. 3.* Section 1395.3 is added to the Health and Safety Code,  
10 to read:

11 1395.3. Notwithstanding any other provision of law, a  
12 registered dispensing optician, an optical company, a manufacturer  
13 or distributor of optical goods, or a nonoptometric corporation  
14 may do all of the following:

15 (a) Own a *specialized* health care service plan that provides *or*  
16 *arranges for the provision of* vision care services and share its  
17 profits.

18 (b) Contract for business services with, lease office space or  
19 equipment to or from, or share office space with, a *specialized*  
20 health care service plan that provides *or arranges for the provision*  
21 *of* vision care services.

22 (c) Jointly advertise vision care services with a *specialized* health  
23 care service plan that provides *or arranges for the provision of*  
24 vision care services.

25 ~~SEC. 3.~~

26 *SEC. 4.* Section 1395.4 is added to the Health and Safety Code,  
27 to read:

28 1395.4. (a) A registered dispensing optician, an optical  
29 company, a manufacturer or distributor of optical goods, or a  
30 nonoptometric corporation shall not engage in conduct ~~designed~~  
31 ~~to~~ *that would* influence or interfere with the clinical decisions of  
32 an optometrist employed by, or who has contracted with, a  
33 specialized vision care ~~service~~ plan for fiscal or administrative  
34 reasons, *including, but not limited to, the following:*

35 (1) *Holding an optometrist responsible for the sale of, or*  
36 *requiring an optometrist to sell, the eyewear of a registered*  
37 *dispensing optician affiliated with the specialized vision care plan.*

38 (2) *Providing compensation to an optometrist for the sale of*  
39 *the eyewear of a registered dispensing optician affiliated with the*  
40 *specialized vision care plan.*

1 ~~(b) Pursuant to subdivision (g) of Section 1367, the~~  
2 *(b) The clinical decisions of an optometrist who is employed*  
3 *by, or who has contracted with, a specialized vision care service*  
4 *plan shall be unhindered by fiscal and administrative management*  
5 *of the plan and any affiliate of the plan.*

6 *(c) An optometrist who has contracted with, or is employed by,*  
7 *a specialized vision care plan shall not be required by the plan to*  
8 *sell the eyewear of a registered dispensing optician affiliated with*  
9 *the specialized vision care plan.*

10 *(d) An optometrist who has contracted with, or is employed by,*  
11 *a specialized vision care plan shall not receive any compensation*  
12 *from the sale of eyewear by a registered dispensing optician*  
13 *affiliated with the specialized vision care plan.*

14 *(e) Notwithstanding any protocol established by a specialized*  
15 *vision care plan to meet patient and network access requirements,*  
16 *the specialized vision care plan may not set fixed quotas for the*  
17 *number of patients that a practitioner must treat in a particular*  
18 *time period.*

19 *(f) Any violation of this section shall subject the specialized*  
20 *vision care plan to the penalties that apply to health care service*  
21 *plans under this article.*

22 *(g) For purposes of this section, a “specialized vision care plan”*  
23 *shall mean a specialized health care service plan that provides or*  
24 *arranges for the provision of vision care services and that operates*  
25 *pursuant to Section 1395.3.*

26 *SEC. 5. Section 1395.45 is added to the Health and Safety*  
27 *Code, to read:*

28 *1395.45. (a) A specialized vision care plan affiliated with a*  
29 *registered dispensing optician shall not provide the registered*  
30 *dispensing optician with a copy of the patient record of any patient,*  
31 *except as permitted by applicable law.*

32 *(b) A specialized vision care plan affiliated with a registered*  
33 *dispensing optician shall, following receipt of the written*  
34 *authorization of a patient to release medical records, provide to*  
35 *a requesting optometrist formerly employed by the specialized*  
36 *vision care plan a copy of the medical record of the patient within*  
37 *15 days of the request.*

38 *(c) A specialized vision care plan in violation of this section*  
39 *shall be subject to the fines and penalties set forth in Sections*  
40 *56.35 and 56.36 of the Civil Code.*

1     (d) For purposes of this section, a “specialized vision care plan”  
2 shall mean a specialized health care service plan that provides or  
3 arranges for the provision of vision care services and that operates  
4 pursuant to Section 1395.3.

5     ~~SEC. 4.~~

6     SEC. 6. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 the only costs that may be incurred by a local agency or school  
9 district will be incurred because this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the penalty  
11 for a crime or infraction, within the meaning of Section 17556 of  
12 the Government Code, or changes the definition of a crime within  
13 the meaning of Section 6 of Article XIII B of the California  
14 Constitution.