

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 533

Introduced by Assembly Member Bonta

February 23, 2015

An act to add Section 1371.9 to the Health and Safety Code, and to add Section 10112.8 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 533, as amended, Bonta. Health care coverage: out-of-network coverage.

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. A willful violation of the act is a crime. Existing law requires a health care service plan to reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee. Existing law prohibits a plan from requiring a provider to obtain authorization prior to the provision of emergency services and care necessary to stabilize the enrollee's emergency medical care, as specified.

Existing law also provides for the regulation of health insurers by the Insurance Commissioner. Existing law requires a health insurance policy issued, amended, or renewed on or after January 1, 2014, that provides or covers benefits with respect to services in an emergency department of a hospital to cover emergency services without the need for prior authorization, regardless of whether the provider is a participating provider, and subject to the same cost sharing required if the services were provided by a participating provider, as specified.

This bill would require a health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2016, to provide that if an enrollee *or insured* obtains care from a ~~participating~~ *contracting health* facility, as defined, at which, or as a result of which, the enrollee *or insured* receives covered services provided by a ~~nonparticipating provider~~, *noncontracting individual health professional*, as defined, the enrollee *or insured* is required to pay the ~~nonparticipating provider~~ *noncontracting individual health professional* only the same cost sharing required if the services were provided by a ~~participating provider~~. *contracting individual health professional. The bill would prohibit an enrollee or insured from owing the noncontracting individual health professional at the contracting health facility more than the in-network cost sharing amount if the noncontracting individual health professional receives reimbursement for services provided to the enrollee or insured at a contracting health facility from the plan or health insurer. The bill would require a noncontracting individual health professional who collects more than the in-network cost sharing amount from the enrollee or insured to refund any overpayment to the enrollee or insured, as specified, and would provide that interest on any amount overpaid by, and not refunded to, the enrollee or insured shall accrue at 15% per annum, as specified.* Because a willful violation of the bill’s provisions by a health care service plan would be a crime, this bill 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 1371.9 is added to the Health and Safety
- 2 Code, to read:
- 3 1371.9. (a) (1) A health care service plan contract issued,
- 4 amended, or renewed on or after January 1, 2016, shall provide
- 5 that if an enrollee obtains care from a ~~participating~~ *contracting*
- 6 *health* facility at which, or as a result of which, the enrollee

1 receives services provided by a ~~nonparticipating provider,~~
2 *noncontracting individual health professional*, the enrollee shall
3 pay the ~~nonparticipating provider~~ *noncontracting individual health*
4 *professional* no more than the same cost sharing that the enrollee
5 would have paid for the same covered benefits received from a
6 ~~participating provider.~~ *contracting individual health professional.*
7 *This amount shall be referred to as the “in-network cost sharing.”*

8 ~~(2) Except as provided in subdivision (d), the plan shall not~~
9 ~~reimburse a nonparticipating provider for services provided to the~~
10 ~~enrollee if the nonparticipating provider obtains, or seeks to obtain,~~
11 ~~more than the in-network cost sharing from the enrollee.~~

12 *(2) At the time of payment by the plan to the noncontracting*
13 *individual health professional, the plan shall inform the*
14 *noncontracting individual health professional of the in-network*
15 *cost sharing owed by the enrollee. If a noncontracting individual*
16 *health professional receives reimbursement for services provided*
17 *to the enrollee at a contracting health facility from the plan, an*
18 *enrollee shall not owe the noncontracting individual health*
19 *professional at the contracting health facility more than the*
20 *in-network cost sharing.*

21 *(3) Except as provided in subdivision (d), if the noncontracting*
22 *individual health professional collects more than the in-network*
23 *cost sharing from the enrollee, the noncontracting individual health*
24 *professional shall refund any overpayment to the enrollee within*
25 *30 working days of receiving notice from the plan of the in-network*
26 *cost sharing amount owed by the enrollee pursuant to paragraph*
27 *(2). If the noncontracting individual health professional does not*
28 *refund an overpayment within 30 working days after being*
29 *informed of the enrollee’s in-network cost sharing, interest shall*
30 *accrue at the rate of 15 percent per annum beginning with the first*
31 *calendar day after the 30-working day period. A noncontracting*
32 *individual health professional shall automatically include in his*
33 *or her refund of the overpayment all interest that has accrued*
34 *pursuant to this section without requiring the enrollee to submit*
35 *a request for the interest amount.*

36 *(4) If the noncontracting individual health professional has*
37 *advanced to collections any amount owed by the enrollee, the plan*
38 *shall not reimburse the noncontracting individual health*
39 *professional for services provided to the enrollee by the*
40 *noncontracting individual health professional at a contracting*

1 *health facility. In submitting a claim to the plan, the noncontracting*
 2 *individual health professional at a contracting health facility shall*
 3 *affirm in writing that he or she has not advanced to collections*
 4 *any payment owed by the enrollee. A noncontracting individual*
 5 *health professional shall not attempt to collect more than the*
 6 *in-network cost sharing from the enrollee after receiving payment*
 7 *from the plan. Once the noncontracting individual health*
 8 *professional receives payment from the plan, the noncontracting*
 9 *individual health professional may advance to collections any*
 10 *in-network cost sharing owed by the enrollee if the enrollee fails*
 11 *to pay the in-network cost sharing after the plan has informed the*
 12 *noncontracting individual health professional of the amount owed*
 13 *by the enrollee pursuant to paragraph (2).*

14 (b) (1) Any cost sharing paid by the enrollee for the services
 15 provided by a ~~nonparticipating provider~~ *noncontracting individual*
 16 *health professional at the participating contracting health facility*
 17 shall count toward the limit on annual out-of-pocket expenses
 18 established under Section 1367.006.

19 (2) Cost sharing *arising from services received by a*
 20 *noncontracting individual health professional at a contracting*
 21 *health facility shall be counted toward any deductible in the same*
 22 *manner as cost sharing would be attributed to a ~~participating~~*
 23 *provider. contracting individual health professional.*

24 (c) For purposes of this section, the following definitions shall
 25 apply:

26 (1) “Cost sharing” includes any copayment, coinsurance, or
 27 deductible, or any other form of cost sharing paid by the enrollee
 28 other than premium or share of premium.

29 ~~(2) “Nonparticipating provider” means a provider who is not~~
 30 ~~contracted with the enrollee’s health care service plan to provide~~
 31 ~~services under the enrollee’s plan contract.~~

32 ~~(3) “Participating~~
 33 ~~(2) “Health facility” means a health facility provider who is~~
 34 ~~contracted with the enrollee’s health care service plan to provide~~
 35 ~~services under the enrollee’s plan contract. licensed by this state~~
 36 ~~to deliver or furnish health care services. A health facility shall~~
 37 include the following providers:

- 38 (A) Licensed hospital.
- 39 (B) Skilled nursing facility.
- 40 (C) Ambulatory surgery.

- 1 (D) Laboratory.
- 2 (E) Radiology or imaging.
- 3 (F) Facilities providing mental health or substance abuse
- 4 treatment.

5 (G) Any other provider as the department may by regulation
6 define as a facility for purposes of this section.

7 ~~(4) “Provider” means a health facility or any person who is~~
8 ~~licensed by the state to deliver or furnish health care services.~~

9 (3) *“Individual Health Professional” means a physician or*
10 *surgeon or other professional who is licensed by this state to*
11 *deliver or furnish health care services.*

12 (d) An enrollee may voluntarily consent to the use of a
13 ~~nonparticipating provider.~~ *noncontracting individual health*
14 *professional.* For purposes of this section, consent shall be
15 voluntary if at least 24 hours in advance of the receipt of services,
16 the enrollee is provided a written estimate of the cost of care by
17 ~~the nonparticipating provider.~~ *noncontracting individual health*
18 *professional* and the enrollee consents in writing to both the use
19 of a ~~nonparticipating provider.~~ *noncontracting individual health*
20 *professional* and the estimated additional cost for the services to
21 be provided by the ~~nonparticipating provider.~~ *noncontracting*
22 *individual health professional.* The consent shall inform the
23 enrollee that the cost of the services of the ~~nonparticipating~~
24 ~~provider.~~ *noncontracting individual health professional* will not
25 accrue to the limit on annual out-of-pocket ~~expenses.~~ *expenses or*
26 *the enrollee’s deductible, if any.*

27 (e) This section shall not be construed to require a plan to cover
28 services or provide benefits that are not otherwise covered under
29 the terms and conditions of the plan contract.

30 (f) *This section shall not be construed to exempt a plan from*
31 *the requirements under Section 1373.96 or Section 1371.4, nor*
32 *abrogate the holding in Prospect Medical Group v. Northridge*
33 *Emergency Medical Group et al., (2009) 45 Cal.4th 497, that an*
34 *emergency room physician is prohibited from billing an enrollee*
35 *of a health care service plan directly for sums that the health care*
36 *service plan has failed to pay for the enrollee’s emergency room*
37 *treatment.*

38 SEC. 2. Section 10112.8 is added to the Insurance Code, to
39 read:

1 10112.8. (a) (1) A health insurance policy issued, amended,
 2 or renewed on or after January 1, 2016, shall provide that if an
 3 insured obtains care from a ~~participating~~ *contracting health* facility
 4 at which, or as a result of which, the insured receives services
 5 provided by a ~~nonparticipating provider,~~ *noncontracting individual*
 6 *health professional*, the insured shall pay the ~~nonparticipating~~
 7 ~~provider~~ *noncontracting individual health professional* no more
 8 than the same cost sharing that the insured would have paid for
 9 the same covered benefits received from a ~~participating provider.~~
 10 *contracting individual health professional. This amount shall be*
 11 *referred to as the “in-network cost sharing.”*

12 ~~(2) Except as provided in subdivision (d), the insurer shall not~~
 13 ~~reimburse a nonparticipating provider for services provided to the~~
 14 ~~insured if the nonparticipating provider obtains, or seeks to obtain,~~
 15 ~~more than the in-network cost sharing from the insured.~~

16 *(2) At the time of payment by the health insurer to the*
 17 *noncontracting individual health professional, the health insurer*
 18 *shall inform the noncontracting individual health professional of*
 19 *the in-network cost sharing owed by the insured. If a*
 20 *noncontracting individual health professional receives*
 21 *reimbursement for services provided to the insured at a contracting*
 22 *health facility from the health insurer, an insured shall not owe*
 23 *the noncontracting individual health professional at the contracting*
 24 *health facility more than the in-network cost sharing.*

25 *(3) Except as provided in subdivision (d), if the noncontracting*
 26 *individual health professional collects more than the in-network*
 27 *cost sharing from the insured, the noncontracting individual health*
 28 *professional shall refund any overpayment to the insured within*
 29 *30 working days of receiving notice from the health insurer of the*
 30 *in-network cost sharing amount owed by the insured pursuant to*
 31 *paragraph (2). If the noncontracting individual health professional*
 32 *does not refund an overpayment within 30 working days after being*
 33 *informed of the insured’s in-network cost sharing, interest shall*
 34 *accrue at the rate of 15 percent per annum beginning with the first*
 35 *calendar day after the 30-working day period. A noncontracting*
 36 *individual health professional shall automatically include in his*
 37 *or her refund of the overpayment all interest that has accrued*
 38 *pursuant to this section without requiring the insured to submit a*
 39 *request for the interest amount.*

1 (4) *If the noncontracting individual health professional has*
2 *advanced to collections any amount owed by the insured, the health*
3 *insurer shall not reimburse the noncontracting individual health*
4 *professional for services provided to the insured by the*
5 *noncontracting individual health professional at a contracting*
6 *health facility. In submitting a claim to the health insurer, the*
7 *noncontracting individual health professional at a contracting*
8 *health facility shall affirm in writing that he or she has not*
9 *advanced to collections any payment owed by the insured. A*
10 *noncontracting individual health professional shall not attempt to*
11 *collect more than the in-network cost sharing from the insured*
12 *after receiving payment from the health insurer. Once the*
13 *noncontracting individual health professional receives payment*
14 *from the health insurer, the noncontracting individual health*
15 *professional may advance to collections any in-network cost*
16 *sharing owed by the insured if the insured fails to pay the*
17 *in-network cost sharing after the health insurer has informed the*
18 *noncontracting individual health professional of the amount owed*
19 *by the insured pursuant to paragraph (2).*

20 (3)

21 (5) This section shall only apply to a health insurer that enters
22 into a contract with a professional or institutional provider to
23 provide services at alternative rates of payment pursuant to Section
24 10133.

25 (b) (1) Any cost sharing paid by the insured for the services
26 provided by a ~~nonparticipating provider~~ *noncontracting individual*
27 *health professional at the ~~participating~~ contracting health facility*
28 shall count toward the limit on annual out-of-pocket expenses
29 established under Section 10112.28.

30 (2) Cost sharing *arising from services received by a*
31 *noncontracting individual health professional at a contracting*
32 *health facility shall be counted toward any deductible in the same*
33 *manner as cost sharing would be attributed to a ~~participating~~*
34 *provider. contracting individual health professional.*

35 (c) For purposes of this section, the following definitions shall
36 apply:

37 (1) “Cost sharing” includes any copayment, coinsurance, or
38 deductible, or any other form of cost sharing paid by the insured
39 other than premium or share of premium.

1 ~~(2) “Nonparticipating provider” means a provider who is not~~
2 ~~contracted with the insured’s health insurer to provide services~~
3 ~~under the insured’s policy.~~

4 ~~(3) “Participating~~

5 ~~(2) “Health facility” means a health facility provider who is~~
6 ~~contracted with the insured’s health insurer to provide services~~
7 ~~under the insured’s policy. licensed by this state to deliver or~~
8 ~~furnish health care services. A facility shall include the following~~
9 ~~providers:~~

10 (A) Licensed hospital.

11 (B) Skilled nursing facility.

12 (C) Ambulatory surgery.

13 (D) Laboratory.

14 (E) Radiology or imaging.

15 (F) Facilities providing mental health or substance abuse
16 treatment.

17 (G) Any other provider as the ~~department~~ *commissioner* may
18 by regulation define as a facility for purposes of this section.

19 ~~(4) “Provider” means a health facility or any person who is~~
20 ~~licensed by the state to deliver or furnish health care services.~~

21 ~~(3) “Individual health professional” means a physician or~~
22 ~~surgeon or other professional who is licensed by this state to~~
23 ~~deliver or furnish health care services.~~

24 (d) An insured may voluntarily consent to the use of a
25 ~~nonparticipating provider. noncontracting individual health~~
26 ~~professional. For purposes of this section, consent shall be~~
27 ~~voluntary if at least 24 hours in advance of the receipt of services,~~
28 ~~the insured is provided a written estimate of the cost of care by~~
29 ~~the nonparticipating provider noncontracting individual health~~
30 ~~professional and the insured consents in writing to both the use of~~
31 ~~a nonparticipating provider noncontracting individual health~~
32 ~~professional and the estimated additional cost for the services to~~
33 ~~be provided by the nonparticipating provider. noncontracting~~
34 ~~individual health professional. The consent shall inform the insured~~
35 ~~that the cost of the services of the nonparticipating provider~~
36 ~~noncontracting individual health professional will not accrue to~~
37 ~~the limit on annual out-of-pocket expenses. expenses or the~~
38 ~~insured’s deductible, if any.~~

1 (e) This section shall not be construed to require an insurer to
2 cover services or provide benefits that are not otherwise covered
3 under the terms and conditions of the policy.

4 (f) *This section shall not be construed to exempt a health insurer*
5 *from the requirements under Section 10112.7 or Section 10133.56.*

6 SEC. 3. 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.

O