

AMENDED IN ASSEMBLY APRIL 23, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 533**

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**Introduced by Assembly Member Bonta**

February 23, 2015

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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 contracting health facility, as defined, at which, or as a result of which, the enrollee or insured receives covered services provided by a noncontracting individual health professional, as defined, the enrollee or insured is required to pay the noncontracting individual health professional only the same cost sharing required if the services were provided by a 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 contracting health facility
- 6 at which, or as a result of which, the enrollee receives services

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

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

16 (3) Except as provided in subdivision (d), if the noncontracting  
17 individual health professional collects more than the in-network  
18 cost sharing from the enrollee, the noncontracting individual health  
19 professional shall refund any overpayment to the enrollee within  
20 30 working days of receiving notice from the plan of the in-network  
21 cost sharing amount owed by the enrollee pursuant to paragraph  
22 (2). If the noncontracting individual health professional does not  
23 refund ~~an~~ any overpayment within 30 working days after being  
24 informed of the enrollee’s in-network cost sharing, interest shall  
25 accrue at the rate of 15 percent per annum beginning with the first  
26 calendar day after the 30-working day period. A noncontracting  
27 individual health professional shall automatically include in his  
28 or her refund of the overpayment all interest that has accrued  
29 pursuant to this section without requiring the enrollee to submit a  
30 request for the interest amount.

31 (4) If the noncontracting individual health professional has  
32 advanced to collections any amount owed by the enrollee, the plan  
33 shall not reimburse the noncontracting individual health  
34 professional for services provided to the enrollee by the  
35 noncontracting individual health professional at a contracting  
36 health facility. In submitting a claim to the plan, the noncontracting  
37 individual health professional at a contracting health facility shall  
38 affirm in writing that he or she has not advanced to collections any  
39 payment owed by the enrollee. A noncontracting individual health  
40 professional shall not attempt to collect more than the in-network

1 cost sharing from the enrollee after receiving payment from the  
2 plan. Once the noncontracting individual health professional  
3 receives payment from the plan, the noncontracting individual  
4 health professional may advance to collections any in-network  
5 cost sharing owed by the enrollee if the enrollee fails to pay the  
6 in-network cost sharing after the plan has informed the  
7 noncontracting individual health professional of the amount owed  
8 by the enrollee pursuant to paragraph (2).

9 (b) (1) Any cost sharing paid by the enrollee for the services  
10 provided by a noncontracting individual health professional at the  
11 contracting health facility shall count toward the limit on annual  
12 out-of-pocket expenses established under Section 1367.006.

13 (2) Cost sharing arising from services received by a  
14 noncontracting individual health professional at a contracting  
15 health facility shall be counted toward any deductible in the same  
16 manner as cost sharing would be attributed to a contracting  
17 individual health professional.

18 (c) For purposes of this section, the following definitions shall  
19 apply:

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

23 (2) “Health facility” means a health facility provider who is  
24 licensed by this state to deliver or furnish health care services. A  
25 health facility shall include the following providers:

26 (A) Licensed hospital.

27 (B) Skilled nursing facility.

28 (C) Ambulatory surgery.

29 (D) Laboratory.

30 (E) Radiology or imaging.

31 (F) Facilities providing mental health or substance abuse  
32 treatment.

33 (G) Any other provider as the department may by regulation  
34 define as a *health facility* for purposes of this section.

35 (3) ~~“Individual Health Professional”~~—“*Individual health*  
36 *professional*” means a physician or surgeon or other professional  
37 who is licensed by this state to deliver or furnish health care  
38 services.

39 (d) An enrollee may voluntarily consent to the use of a  
40 noncontracting individual health professional. For purposes of this

1 section, consent shall be voluntary if at least 24 hours in advance  
2 of the receipt of services, the enrollee is provided a written estimate  
3 of the cost of care by the noncontracting individual health  
4 professional and the enrollee consents in writing to both the use  
5 of a noncontracting individual health professional and *payment of*  
6 the estimated additional cost for the services to be provided by the  
7 noncontracting individual health professional. The consent shall  
8 inform the enrollee that the cost of the services of the  
9 noncontracting individual health professional will not accrue to  
10 the limit on annual out-of-pocket expenses or the enrollee's  
11 deductible, if any.

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

15 (f) This section shall not be construed to exempt a plan from  
16 the requirements under Section 1373.96 or Section 1371.4, nor  
17 abrogate the holding in *Prospect Medical Group v. Northridge*  
18 *Emergency Medical Group et al.*, (2009) 45 Cal.4th 497, that an  
19 emergency room physician is prohibited from billing an enrollee  
20 of a health care service plan directly for sums that the health care  
21 service plan has failed to pay for the enrollee's emergency room  
22 treatment.

23 SEC. 2. Section 10112.8 is added to the Insurance Code, to  
24 read:

25 10112.8. (a) (1) A health insurance policy issued, amended,  
26 or renewed on or after January 1, 2016, shall provide that if an  
27 insured obtains care from a contracting health facility at which, or  
28 as a result of which, the insured receives services provided by a  
29 noncontracting individual health professional, the insured shall  
30 pay the noncontracting individual health professional no more than  
31 the same cost sharing that the insured would have paid for the  
32 same covered benefits received from a contracting individual health  
33 professional. This amount shall be referred to as the "in-network  
34 cost sharing."

35 (2) At the time of payment by the health insurer to the  
36 noncontracting individual health professional, the health insurer  
37 shall inform the noncontracting individual health professional of  
38 the in-network cost sharing owed by the insured. If a  
39 noncontracting individual health professional receives  
40 reimbursement for services provided to the insured at a contracting

1 health facility from the health insurer, an insured shall not owe the  
2 noncontracting individual health professional at the contracting  
3 health facility more than the in-network cost sharing.

4 (3) Except as provided in subdivision (d), if the noncontracting  
5 individual health professional collects more than the in-network  
6 cost sharing from the insured, the noncontracting individual health  
7 professional shall refund any overpayment to the insured within  
8 30 working days of receiving notice from the health insurer of the  
9 in-network cost sharing amount owed by the insured pursuant to  
10 paragraph (2). If the noncontracting individual health professional  
11 does not refund ~~an~~ any overpayment within 30 working days after  
12 being informed of the insured's in-network cost sharing, interest  
13 shall accrue at the rate of 15 percent per annum beginning with  
14 the first calendar day after the 30-working day period. A  
15 noncontracting individual health professional shall automatically  
16 include in his or her refund of the overpayment all interest that has  
17 accrued pursuant to this section without requiring the insured to  
18 submit a request for the interest amount.

19 (4) If the noncontracting individual health professional has  
20 advanced to collections any amount owed by the insured, the health  
21 insurer shall not reimburse the noncontracting individual health  
22 professional for services provided to the insured by the  
23 noncontracting individual health professional at a contracting  
24 health facility. In submitting a claim to the health insurer, the  
25 noncontracting individual health professional at a contracting  
26 health facility shall affirm in writing that he or she has not  
27 advanced to collections any payment owed by the insured. A  
28 noncontracting individual health professional shall not attempt to  
29 collect more than the in-network cost sharing from the insured  
30 after receiving payment from the health insurer. Once the  
31 noncontracting individual health professional receives payment  
32 from the health insurer, the noncontracting individual health  
33 professional may advance to collections any in-network cost  
34 sharing owed by the insured if the insured fails to pay the  
35 in-network cost sharing after the health insurer has informed the  
36 noncontracting individual health professional of the amount owed  
37 by the insured pursuant to paragraph (2).

38 (5) This section shall only apply to a health insurer that enters  
39 into a contract with a professional or institutional provider to

1 provide services at alternative rates of payment pursuant to Section  
2 10133.

3 (b) (1) Any cost sharing paid by the insured for the services  
4 provided by a noncontracting individual health professional at the  
5 contracting health facility shall count toward the limit on annual  
6 out-of-pocket expenses established under Section 10112.28.

7 (2) Cost sharing arising from services received by a  
8 noncontracting individual health professional at a contracting  
9 health facility shall be counted toward any deductible in the same  
10 manner as cost sharing would be attributed to a contracting  
11 individual health professional.

12 (c) For purposes of this section, the following definitions shall  
13 apply:

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

17 (2) “Health facility” means a health facility provider who is  
18 licensed by this state to deliver or furnish health care services. A  
19 *health* facility shall include the following providers:

20 (A) Licensed hospital.

21 (B) Skilled nursing facility.

22 (C) Ambulatory surgery.

23 (D) Laboratory.

24 (E) Radiology or imaging.

25 (F) Facilities providing mental health or substance abuse  
26 treatment.

27 (G) Any other provider as the commissioner may by regulation  
28 define as a *health* facility for purposes of this section.

29 (3) “Individual health professional” means a physician or  
30 surgeon or other professional who is licensed by this state to deliver  
31 or furnish health care services.

32 (d) An insured may voluntarily consent to the use of a  
33 noncontracting individual health professional. For purposes of this  
34 section, consent shall be voluntary if at least 24 hours in advance  
35 of the receipt of services, the insured is provided a written estimate  
36 of the cost of care by the noncontracting individual health  
37 professional and the insured consents in writing to both the use of  
38 a noncontracting individual health professional and *payment of*  
39 the estimated additional cost for the services to be provided by the  
40 noncontracting individual health professional. The consent shall

1 inform the insured that the cost of the services of the  
2 noncontracting individual health professional will not accrue to  
3 the limit on annual out-of-pocket expenses or the insured's  
4 deductible, if any.

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

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

10 SEC. 3. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.