

AMENDED IN SENATE AUGUST 18, 2015

AMENDED IN SENATE JULY 7, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

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 Sections 1371.30, 1371.31, and 1371.9 to the Health and Safety Code, and to add Sections 10112.8, 10112.81, and 10112.82 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.

Existing law requires a contract between a health care service plan and a provider, or a contract between an insurer and a provider, to contain provisions requiring a fast, fair, and cost-effective dispute resolution mechanism under which providers may submit disputes to the plan or insurer. Existing law requires that dispute resolution mechanism also be made accessible to a noncontracting provider for the purpose of resolving billing and claims disputes.

This bill would require the department and the commissioner to each establish an independent dispute resolution process that would allow a noncontracting individual health professional who rendered services at a contracting health facility to appeal a claim payment dispute ~~that has completed the plan's or the insurer's internal dispute resolution mechanism~~, *with a plan or insurer*, as specified. The bill would authorize the department and the commissioner to contract with one or more independent dispute resolution organizations to conduct the independent

dispute resolution process, as specified. The bill would provide that the decision of the organization would be binding on the parties. The bill would require a health care service plan ~~or an insurer~~ to base reimbursement of a claim by a noncontracting individual health professional on statistically credible information with regard to the amount paid to ~~providers~~ *contracted individual health professionals* who provide similar services, are not capitated, and practice in the same or a similar geographic region, as specified. *The bill would require an insurer to base reimbursement of a claim by a noncontracting health professional on statistically credible information with regard to the amount paid to contracted individual health professionals who provide similar services and practice in the same or a similar geographic region, as specified. The bill would require a noncontracting individual health professional who disputes that claim reimbursement to utilize the independent dispute resolution process. The bill would provide that these provisions do not apply to emergency services and care, as defined.*

Because a willful violation of the bill’s provisions relative to a health care service plan would be a crime, the bill would impose a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 1371.30 is added to the Health and Safety
- 2 Code, immediately following Section 1371.3, to read:
- 3 1371.30. (a) (1) The department shall establish an independent
- 4 dispute resolution process for the purpose of processing and

1 resolving a claim dispute between a health care service plan and
2 a noncontracting individual health professional for services subject
3 to Section 1371.9.

4 ~~(2) A noncontracting individual health professional may appeal
5 a claim to the independent dispute resolution process established
6 pursuant to this section after the noncontracting individual health
7 professional has completed the plan's internal dispute resolution
8 mechanism, as defined in subdivision (h) of Section 1367, or if 30
9 days have elapsed since the noncontracting individual health
10 professional initiated the plan's internal dispute resolution
11 mechanism.~~

12 ~~(3) If either the noncontracting individual health professional
13 or the plan appeals a claim to the department's independent dispute
14 resolution process, the other party shall participate in the appeal
15 process as described in this section.~~

16 ~~(4) The disputed claim is limited to covered services rendered
17 by a noncontracting individual health professional, as defined by
18 paragraph (3) of subdivision (e) of Section 1371.9, at a contracting
19 health facility, as defined by paragraph (2) of subdivision (e) of
20 Section 1371.9.~~

21 *(2) If either the noncontracting individual health professional
22 or the plan appeals a claim to the department's independent dispute
23 resolution process, the other party shall participate in the appeal
24 process as described in this section.*

25 (b) The department and the Department of Insurance shall jointly
26 establish uniform written procedures for the submission, receipt,
27 processing, and resolution of claim payment disputes pursuant to
28 this section.

29 ~~(1) A noncontracting individual health professional appealing
30 to the independent dispute resolution process shall provide the
31 department with a written justification for the appeal, which shall
32 not exceed two pages.~~

33 ~~(2) The department shall respond to an appeal by a
34 noncontracting individual health professional within 30 days of
35 receipt of the written document described in paragraph (1).~~

36 ~~(3) The plan shall provide all documents submitted to the
37 department for the independent dispute resolution process to the
38 individual health professional appealing the claim. The statistically
39 credible information on the average payments described in~~

1 ~~subdivision (b) of Section 1371.31 shall be exempt from public~~
2 ~~disclosure.~~

3 ~~(e) A noncontracting individual health professional may dispute~~
4 ~~a claim for either of the following reasons:~~

5 ~~(1) The noncontracting individual health professional disputes~~
6 ~~that the payment received from the plan is the plan's average~~
7 ~~contracted rate pursuant to Section 1371.31.~~

8 ~~(2) The noncontracting individual health professional seeks to~~
9 ~~be paid more than 150 percent of the amount that the plan otherwise~~
10 ~~would pay pursuant to Section 1371.31.~~

11 ~~(d) If the disputed claim is appealed pursuant to paragraph (1)~~
12 ~~of subdivision (c), the department shall determine whether the~~
13 ~~payment provided to the noncontracting individual health~~
14 ~~professional is the plan's average contracted rate as defined in~~
15 ~~paragraph (1) of subdivision (c) of Section 1371.31. If the~~
16 ~~department determines that the payment is lower than the plan's~~
17 ~~average contracted rate, the plan shall correct the statistically~~
18 ~~credible information required by Section 1371.31 and provide~~
19 ~~payment to the noncontracting individual health professional,~~
20 ~~consistent with subdivision (j).~~

21 ~~(e) If the disputed claim is appealed pursuant to paragraph (2)~~
22 ~~of subdivision (c), the department shall determine payment based~~
23 ~~on all of the following:~~

24 ~~(1) The provider's training, qualifications, and length of time~~
25 ~~in practice.~~

26 ~~(2) The nature of the services provided.~~

27 ~~(3) The fees usually charged by or paid to the provider.~~

28 ~~(4) Prevailing provider rates charged or paid in the general~~
29 ~~geographic area in which the services were rendered.~~

30 ~~(5) Other aspects of the economics of the medical provider's~~
31 ~~practice that are relevant.~~

32 ~~(6) Any unusual circumstances in the case.~~

33 ~~(f) An eligible claim does not include any of the following:~~

34 ~~(1) A dispute concerning a claim that has completed the plan's~~
35 ~~internal dispute resolution mechanism established pursuant to~~
36 ~~subdivision (h) of Section 1367, or a claim for which fewer than~~
37 ~~30 days have elapsed since the individual health professional~~
38 ~~initiated the plan's internal dispute resolution mechanism.~~

39 ~~(2) A dispute concerning a claim that is currently in arbitration~~
40 ~~or litigation in state or federal court.~~

- 1 ~~(3) A dispute concerning a late payment.~~
- 2 ~~(4) A dispute concerning an interest payment.~~
- 3 ~~(5) A claim dispute that is not subject to the department's~~
 4 ~~jurisdiction.~~
- 5 ~~(6) A claim dispute with a health plan licensed or regulated by~~
 6 ~~another entity or state.~~
- 7 ~~(7) A dispute regarding a claim that does not involve covered~~
 8 ~~benefits.~~
- 9 ~~(8) A claim denied on the basis that the services were not~~
 10 ~~medically necessary or were experimental or investigational in~~
 11 ~~nature.~~
- 12 ~~(g) (1) A noncontracting individual health professional may~~
 13 ~~initiate an appeal to the department's independent dispute~~
 14 ~~resolution process by following the procedures specified by the~~
 15 ~~department. A noncontracting individual health professional or~~
 16 ~~group of noncontracting individual health professionals may~~
 17 ~~aggregate disputed claim amounts. An aggregated claim shall~~
 18 ~~involve the same or similar services and the same health care~~
 19 ~~service plan.~~
- 20 ~~(2) A health care service plan subject to a claim or claims~~
 21 ~~appealed by a noncontracting individual health professional shall~~
 22 ~~provide information requested by the department according to the~~
 23 ~~department's policies and procedures. If the requested information~~
 24 ~~is not received in a timely manner, the department shall make a~~
 25 ~~determination based on the information available to it.~~
- 26 ~~(h)~~
- 27 ~~(c) The department may contract with one or more independent~~
 28 ~~organizations that specialize in dispute resolution to conduct the~~
 29 ~~proceedings. The independent organization handling a dispute~~
 30 ~~shall be independent of either party to the dispute. The department~~
 31 ~~may *shall* establish additional requirements, including~~
 32 ~~conflict-of-interest standards, consistent with the purposes of this~~
 33 ~~section, that an organization shall meet in order to qualify for~~
 34 ~~participation in the independent dispute resolution program. The~~
 35 ~~department may contract with the same independent organization~~
 36 ~~or organizations as the Department of Insurance.~~
- 37 ~~(i) The independent dispute resolution organization shall issue~~
 38 ~~a decision within 60 days of the receipt of required documentation,~~
 39 ~~according to the department's written policies and procedures.~~
- 40 ~~(j)~~

1 (d) The determination obtained through the department's
2 independent dispute resolution process shall be binding on both
3 parties. ~~When making a decision, the independent dispute~~
4 ~~resolution organization shall prepare in writing and provide to the~~
5 ~~parties an award, including factual findings and the reasons on~~
6 ~~which the decision is based. If additional payment is awarded to~~
7 ~~a noncontracting individual health professional, it shall be made~~
8 ~~consistent with Section 1371.35.~~

9 (k) ~~Each party shall bear its own costs and expenses, and an~~
10 ~~equal share of the administrative fees for the independent dispute~~
11 ~~resolution process. The department shall establish fees to cover~~
12 ~~the actual cost of processing claims disputes pursuant to this~~
13 ~~section.~~

14 (l) ~~In determining what constitutes an "unfair payment pattern"~~
15 ~~as defined in Section 1371.37, the department shall take into~~
16 ~~consideration determinations of the independent dispute resolution~~
17 ~~process in order to determine whether a plan has engaged in an~~
18 ~~unfair payment pattern.~~

19 (m) ~~If a noncontracting individual health professional files~~
20 ~~multiple appeals pursuant to paragraph (2) of subdivision (c) and~~
21 ~~loses more than one third of those appeals within a one year period,~~
22 ~~he or she shall be prohibited from appealing to the department's~~
23 ~~independent dispute resolution process pursuant to paragraph (2)~~
24 ~~of subdivision (c) for one year from the first appeal. For the~~
25 ~~purposes of this section, a noncontracting individual health~~
26 ~~professional shall be deemed to have lost an appeal when the~~
27 ~~department's independent dispute resolution process awards the~~
28 ~~noncontracting individual health professional less than the amount~~
29 ~~sought by the noncontracting individual health professional.~~

30 (n)

31 (e) This section shall not apply to a Medi-Cal managed health
32 care service plan or any entity that enters into a contract with the
33 State Department of Health Care Services pursuant to Chapter 7
34 (commencing with Section 14000) of, Chapter 8 (commencing
35 with Section ~~14200~~), ~~and 14200~~ of, *and* Chapter 8.75
36 (commencing with Section 14591) ~~of of~~, Part 3 of Division 9 of
37 the Welfare and Institutions Code.

38 (o)

39 (f) If a health care service plan delegates payment functions to
40 a contracted entity, including, but not limited to, a medical group

1 or independent practice association, then the delegated entity shall
2 comply with this section.

3 *(g) This section shall not apply to emergency services and care,*
4 *as defined in Section 1317.1.*

5 SEC. 2. Section 1371.31 is added to the Health and Safety
6 Code, immediately following Section 1371.30, to read:

7 ~~1371.31. (a) This section shall apply to claim disputes between~~
8 ~~a noncontracting individual health professional subject to Section~~
9 ~~1371.9 and a health care service plan. Claim disputes shall be~~
10 ~~limited to circumstances in which either of the following occurs:~~

11 ~~(1) The noncontracting individual health professional disputes~~
12 ~~that the payment received from the plan is the plan's average~~
13 ~~contracted rate pursuant to paragraph (1) of subdivision (c) of~~
14 ~~Section 1371.30.~~

15 ~~(2) The noncontracting individual health professional seeks to~~
16 ~~be paid more than 150 percent of the amount that the plan would~~
17 ~~otherwise pay pursuant to paragraph (2) of subdivision (c) of~~
18 ~~Section 1371.30.~~

19 ~~(b)~~

20 *1371.31. (a) (1) The health care service plan shall maintain*
21 *statistically credible information, updated at least annually,*
22 *regarding rates paid to currently contracting individual health*
23 *professionals or a group of professionals who provide similar*
24 *services, are not capitated, and are practicing in the same or a*
25 *similar geographic area as the noncontracting individual health*
26 *professional.*

27 ~~(2) The statistically credible information required by paragraph~~
28 ~~(1) shall take into consideration the determinations of the~~
29 ~~independent dispute resolution process for claims filed pursuant~~
30 ~~to paragraph (1) of subdivision (c) of 1371.30.~~

31 *(2) If, based on the health care service plan's model or payment*
32 *arrangements, a health care service plan does not pay a*
33 *statistically significant number or dollar amount of claims for*
34 *covered services in order to maintain the statistically credible*
35 *information required by paragraph (1), the health care service*
36 *plan shall demonstrate to the department that it has access to a*
37 *statistically credible database reflecting reasonable rates paid to*
38 *providers for services provided in the same or similar geographic*
39 *area.*

1 (3) *The statistically credible information required by paragraphs*
2 *(1) and (2) shall be confidential and exempt from public disclosure.*

3 (e)

4 (b) (1) Unless otherwise provided in this section or otherwise
5 agreed by the noncontracting individual health professional and
6 the plan, the plan shall base reimbursement of noncontracted claims
7 for services rendered according to Section 1371.9 on the average
8 rates based on the statistically credible information with regard to
9 the amount paid to contracted individual health professionals who
10 are providing similar services, are not capitated, and practicing in
11 the same or similar geographic area.

12 (2) ~~For~~ *If nonemergency services are provided by the a*
13 *noncontracting individual health professional to an enrollee who*
14 *has voluntarily chosen to use his or her out-of-network benefit for*
15 *services covered by a preferred provider organization or a point*
16 *of service plan, unless otherwise agreed to by the plan and the*
17 *noncontracting individual health professional, the amount paid*
18 *shall be the amount set forth in the enrollee's evidence of coverage.*

19 (d) (1) ~~A health care service plan's failure to pay a~~
20 ~~noncontracting individual health professional pursuant to this~~
21 ~~section shall constitute an "unfair payment pattern" within the~~
22 ~~meaning of Section 1371.37.~~

23 (2) ~~In determining whether a plan has engaged in an "unfair~~
24 ~~payment pattern" as defined in Section 1371.37, the department~~
25 ~~shall take into consideration decisions of the independent dispute~~
26 ~~resolution process.~~

27 (3) *A noncontracting individual health professional who disputes*
28 *the claim reimbursement shall utilize the independent dispute*
29 *resolution process described in Section 1371.30.*

30 (c) *If a health care service plan delegates by written contract*
31 *the responsibility for payment of claims to a contracted entity,*
32 *including, but not limited to, a medical group or independent*
33 *practice association, then the entity to which that responsibility*
34 *is delegated shall comply with the requirements of this section.*

35 (d) *A payment made by the health care service plan to the*
36 *noncontracting health care professional for nonemergency services*
37 *as required by Section 1371.9 and this section, in addition to the*
38 *applicable cost sharing owed by the enrollee, shall constitute*
39 *payment in full for nonemergency services rendered.*

1 (e) *This section shall not apply to a Medi-Cal managed health*
2 *care service plan or any other entity that enters into a contract*
3 *with the State Department of Health Care Services pursuant to*
4 *Chapter 7 (commencing with Section 14000) of, Chapter 8*
5 *(commencing with Section 14200) of, and Chapter 8.75*
6 *(commencing with Section 14591) of, Part 3 of Division 9 of the*
7 *Welfare and Institutions Code.*

8 (f) *This section shall not apply to emergency services and care,*
9 *as defined in Section 1317.1.*

10 SEC. 3. Section 1371.9 is added to the Health and Safety Code,
11 to read:

12 1371.9. (a) (1) A health care service plan contract issued,
13 amended, or renewed on or after January 1, 2016, shall provide
14 that if an enrollee obtains care from a contracting health facility
15 at which, or as a result of which, the enrollee receives services
16 provided by a noncontracting individual health professional, the
17 enrollee shall pay the noncontracting individual health professional
18 no more than the same cost sharing that the enrollee would have
19 paid for the same covered benefits received from a contracting
20 individual health professional. This amount shall be referred to as
21 the “in-network cost sharing.”

22 (2) At the time of payment by the plan to the noncontracting
23 individual health professional, the plan shall inform the
24 noncontracting individual health professional of the in-network
25 cost sharing owed by the enrollee. If a noncontracting individual
26 health professional receives reimbursement for services provided
27 to the enrollee at a contracting health facility from the plan, an
28 enrollee shall not owe the noncontracting individual health
29 professional at the contracting health facility more than the
30 in-network cost sharing.

31 (3) Except as provided in subdivision (d), if the noncontracting
32 individual health professional collects more than the in-network
33 cost sharing from the enrollee, the noncontracting individual health
34 professional shall refund any overpayment to the enrollee within
35 30 working days of receiving notice from the plan of the in-network
36 cost sharing amount owed by the enrollee pursuant to paragraph
37 (2). If the noncontracting individual health professional does not
38 refund any overpayment within 30 working days after being
39 informed of the enrollee’s in-network cost sharing, interest shall
40 accrue at the rate of 15 percent per annum beginning with the first

1 calendar day after the 30-working day period. A noncontracting
2 individual health professional shall automatically include in his
3 or her refund of the overpayment all interest that has accrued
4 pursuant to this section without requiring the enrollee to submit a
5 request for the interest amount.

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

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

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

33 (c) For purposes of this section, the following definitions shall
34 apply:

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

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

- 1 (A) Licensed hospital.
2 (B) Skilled nursing facility.
3 (C) Ambulatory surgery.
4 (D) Laboratory.
5 (E) Radiology or imaging.
6 (F) Facilities providing mental health or substance abuse
7 treatment.
8 (G) Any other provider as the department may by regulation
9 define as a health facility for purposes of this section.
- 10 (3) “Individual health professional” means a physician or
11 surgeon or other professional who is licensed by this state to deliver
12 or furnish health care services.
- 13 (d) An enrollee may voluntarily consent to the use of a
14 noncontracting individual health professional. For purposes of this
15 section, consent shall be voluntary if at least 24 hours in advance
16 of the receipt of services, the enrollee is provided a written estimate
17 of the cost of care by the noncontracting individual health
18 professional and the enrollee consents in writing to both the use
19 of a noncontracting individual health professional and payment of
20 the estimated additional cost for the services to be provided by the
21 noncontracting individual health professional. The consent shall
22 inform the enrollee that the cost of the services of the
23 noncontracting individual health professional will not accrue to
24 the limit on annual out-of-pocket expenses or the enrollee’s
25 deductible, if any.
- 26 (e) This section shall not be construed to require a plan to cover
27 services or provide benefits that are not otherwise covered under
28 the terms and conditions of the plan contract.
- 29 (f) This section shall not be construed to exempt a plan *or*
30 *provider* from the requirements under Section 1371.4 or 1373.96
31 nor abrogate the holding in *Prospect Medical Group v. Northridge*
32 *Emergency Medical Group et al.*, (2009) 45 Cal.4th 497, that an
33 emergency room physician is prohibited from billing an enrollee
34 of a health care service plan directly for sums that the health care
35 service plan has failed to pay for the enrollee’s emergency room
36 treatment.
- 37 (g) If a health care service plan delegates payment functions to
38 a contracted entity, including, but not limited to, a medical group
39 or independent practice association, the delegated entity shall
40 comply with this section.

1 (h) This section ~~does~~ *shall* not apply to a Medi-Cal managed
2 health care service plan or any other entity that enters into a
3 contract with the State Department of Health Care Services
4 pursuant to Chapter 7 (commencing with Section 14000) of,
5 Chapter 8 (commencing with Section 14200) ~~and of, and~~ Chapter
6 8.75 (commencing with Section 14591) ~~of~~ Part 3 of Division 9 of
7 the Welfare and Institutions Code.

8 (i) This section ~~does~~ *shall* not apply to emergency services and
9 care, as defined in Section ~~1317.1 of the Health and Safety Code.~~
10 *1317.1.*

11 SEC. 4. Section 10112.8 is added to the Insurance Code, to
12 read:

13 10112.8. (a) (1) A health insurance policy issued, amended,
14 or renewed on or after January 1, 2016, shall provide that if an
15 insured obtains care from a contracting health facility at which, or
16 as a result of which, the insured receives services provided by a
17 noncontracting individual health professional, the insured shall
18 pay the noncontracting individual health professional no more than
19 the same cost sharing that the insured would have paid for the
20 same covered benefits received from a contracting individual health
21 professional. This amount shall be referred to as the “in-network
22 cost sharing.”

23 (2) At the time of payment by the health insurer to the
24 noncontracting individual health professional, the health insurer
25 shall inform the noncontracting individual health professional of
26 the in-network cost sharing owed by the insured. If a
27 noncontracting individual health professional receives
28 reimbursement for services provided to the insured at a contracting
29 health facility from the health insurer, an insured shall not owe the
30 noncontracting individual health professional at the contracting
31 health facility more than the in-network cost sharing.

32 (3) Except as provided in subdivision (d), if the noncontracting
33 individual health professional collects more than the in-network
34 cost sharing from the insured, the noncontracting individual health
35 professional shall refund any overpayment to the insured within
36 30 working days of receiving notice from the health insurer of the
37 in-network cost sharing amount owed by the insured pursuant to
38 paragraph (2). If the noncontracting individual health professional
39 does not refund any overpayment within 30 working days after
40 being informed of the insured’s in-network cost sharing, interest

1 shall accrue at the rate of 15 percent per annum beginning with
2 the first calendar day after the 30-working day period. A
3 noncontracting individual health professional shall automatically
4 include in his or her refund of the overpayment all interest that has
5 accrued pursuant to this section without requiring the insured to
6 submit a request for the interest amount.

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

26 (5) This section shall only apply to a health insurer that enters
27 into a contract with a professional or institutional provider to
28 provide services at alternative rates of payment pursuant to Section
29 10133.

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

34 (2) Cost sharing arising from services received by a
35 noncontracting individual health professional at a contracting
36 health facility shall be counted toward any deductible in the same
37 manner as cost sharing would be attributed to a contracting
38 individual health professional.

39 (c) For purposes of this section, the following definitions shall
40 apply:

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

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

7 (A) Licensed hospital.

8 (B) Skilled nursing facility.

9 (C) Ambulatory surgery.

10 (D) Laboratory.

11 (E) Radiology or imaging.

12 (F) Facilities providing mental health or substance abuse
13 treatment.

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

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

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

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

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

37 (g) *This section shall not apply to emergency services and care,*
38 *as defined in Section 1317.1.*

39 SEC. 5. Section 10112.81 is added to the Insurance Code, to
40 read:

1 10112.81. (a) (1) The commissioner shall establish an
2 independent dispute resolution process for the purpose of
3 processing and resolving a claim dispute between an insurer and
4 a noncontracting individual health professional for services subject
5 to Section 10112.8.

6 ~~(2) A noncontracting individual health professional may appeal
7 a claim to the independent dispute resolution process established
8 pursuant to this section after the noncontracting individual health
9 professional has completed the insurer’s internal dispute resolution
10 process, as defined in subdivision (b) of Section 10123.137 or if
11 30 days have elapsed since the noncontracting individual health
12 professional initiated the insurer’s internal dispute resolution
13 mechanism.~~

14 ~~(3) If either the noncontracting individual health professional
15 or the insurer appeals a claim to the department’s independent
16 dispute resolution process, the other party shall participate in the
17 appeal process as described in this section.~~

18 ~~(4) The disputed claim is limited to covered services rendered
19 by a noncontracting individual health professional, as defined by
20 paragraph (3) of subdivision (c) of Section 10112.8, at a contracting
21 health facility, as defined by paragraph (2) of subdivision (c) of
22 Section 10112.8.~~

23 *(2) If either the noncontracting individual health professional
24 or the insurer appeals a claim to the department’s independent
25 dispute resolution process, the other party shall participate in the
26 appeal process as described in this section.*

27 (b) The commissioner and the Department of Managed Health
28 Care shall jointly establish uniform written procedures for the
29 submission, receipt, processing, and resolution of claim payment
30 disputes pursuant to this section.

31 ~~(1) A noncontracting individual health professional appealing
32 to the independent dispute resolution process shall provide the
33 commissioner with a written justification for the appeal, which
34 shall not exceed two pages.~~

35 ~~(2) The commissioner shall respond to an appeal by a
36 noncontracting individual health professional within 30 days of
37 receipt of the written documentation described in paragraph (1).~~

38 ~~(3) The insurer shall provide all documents submitted to the
39 commissioner for the independent dispute resolution process to
40 the individual health professional appealing the claim. The~~

1 statistically credible information on the average payments described
2 in subdivision (b) of Section 10112.82 shall be exempt from the
3 disclosure required by this paragraph.

4 (e) A noncontracting individual health professional may dispute
5 a claim for either of the following reasons:

6 (1) The noncontracting individual health professional disputes
7 that the payment received from the insurer is the insurer's average
8 contracted rate pursuant to Section 10112.82.

9 (2) The noncontracting individual health professional seeks to
10 be paid more than 150 percent of the amount that the insurer
11 otherwise would pay pursuant to Section 10112.82.

12 (d) If the disputed claim is appealed pursuant to paragraph (1)
13 of subdivision (e), the department shall determine whether the
14 payment provided to the noncontracting individual health
15 professional is the insurer's average contracted rate as defined in
16 paragraph (1) of subdivision (e) of Section 10112.82. If the
17 commissioner determines that the payment is lower than the
18 insurer's average contracted rate, the insurer shall correct the
19 statistically credible information required by Section 10112.82
20 and provide payment to the noncontracting individual health
21 professional, consistent with subdivision (j):

22 (e) If the disputed claim is appealed pursuant to paragraph (2)
23 of subdivision (e), the commissioner shall determine payment
24 based on all of the following:

25 (1) The provider's training, qualifications, and length of time
26 in practice:

27 (2) The nature of the services provided:

28 (3) The fees usually charged by or paid to the provider:

29 (4) Prevailing provider rates charged or paid in the general
30 geographic area in which the services were rendered:

31 (5) Other aspects of the economics of the medical provider's
32 practice that are relevant:

33 (6) Any unusual circumstances in the case:

34 (f) An eligible claim does not include the following:

35 (1) A dispute concerning a claim that has not previously been
36 submitted to the insurer's dispute resolution mechanism established
37 pursuant to subdivision (b) of Section 10123.137, or a claim for
38 which fewer than 30 days have elapsed since the individual health
39 professional initiated the insurer's internal dispute resolution
40 process:

- 1 ~~(2) A dispute concerning a claim that is currently in arbitration~~
2 ~~or litigation in state or federal court.~~
- 3 ~~(3) A dispute concerning a late payment.~~
- 4 ~~(4) A dispute concerning an interest payment.~~
- 5 ~~(5) A Medi-Cal claim dispute for which a fair hearing pursuant~~
6 ~~to Chapter 7 (commencing with Section 10950) of Part 2 of~~
7 ~~Division 9 of the Welfare and Institutions Code has commenced.~~
- 8 ~~(6) A claim dispute that is not subject to the commissioner's~~
9 ~~jurisdiction.~~
- 10 ~~(7) A claim dispute with a health insurer licensed or regulated~~
11 ~~by another entity or state.~~
- 12 ~~(8) A dispute regarding a claim that does not involve covered~~
13 ~~benefits.~~
- 14 ~~(9) A claim denied on the basis that the services were not~~
15 ~~medically necessary or were experimental or investigational in~~
16 ~~nature.~~
- 17 ~~(g) (1) A noncontracting individual health professional may~~
18 ~~initiate an appeal to the independent dispute resolution process~~
19 ~~established pursuant to this section by following the procedures~~
20 ~~specified by the commissioner. A noncontracting individual health~~
21 ~~professional may aggregate disputed claim amounts. An aggregated~~
22 ~~claim shall involve the same or similar services and the same~~
23 ~~insurer.~~
- 24 ~~(2) An insurer subject to a claim or claims appealed by a~~
25 ~~noncontracting individual health professional shall provide~~
26 ~~information requested by the commissioner according to the~~
27 ~~commissioner's policies and procedures. If the requested~~
28 ~~information is not received in a timely manner, the commissioner~~
29 ~~shall make a determination based on the information available to~~
30 ~~him or her.~~
- 31 ~~(h)~~
- 32 ~~(c) The commissioner may contract with one or more~~
33 ~~independent organizations that specialize in dispute resolution to~~
34 ~~conduct the proceedings. The independent organization handling~~
35 ~~a dispute shall be independent of either party to the dispute. The~~
36 ~~commissioner may shall establish additional requirements,~~
37 ~~including conflict-of-interest standards, consistent with the~~
38 ~~purposes of this section, that an organization shall meet in order~~
39 ~~to qualify for participation in the independent dispute resolution~~
40 ~~program. The commissioner may contract with the same~~

1 independent organization or organizations as the Department of
2 Managed Health Care.

3 ~~(i) The independent dispute resolution organization shall issue~~
4 ~~a decision within 60 days of receipt of required documentation,~~
5 ~~according to the commissioner's written policies and procedures.~~

6 ~~(j)~~

7 ~~(d) The determination obtained through the independent dispute~~
8 ~~resolution process shall be binding on both parties. When making~~
9 ~~a decision, the independent dispute resolution organization shall~~
10 ~~prepare in writing and provide to the parties an award including~~
11 ~~factual findings and the reasons upon which the decision is based.~~
12 ~~If additional payment is awarded to a noncontracting individual~~
13 ~~health professional, it shall be made consistent with the~~
14 ~~requirements of Section 10123.13.~~

15 ~~(k) Each party shall bear its own costs and expenses and an~~
16 ~~equal share of the administrative fees for the independent dispute~~
17 ~~resolution process. The commissioner shall establish fees to cover~~
18 ~~the actual cost of processing claims disputes pursuant to this~~
19 ~~section.~~

20 ~~(l) In determining what constitutes an "unfair payment pattern"~~
21 ~~as defined in Section 1371.37 of the Health and Safety Code, the~~
22 ~~commissioner shall take into consideration determinations of the~~
23 ~~independent dispute resolution process established pursuant to~~
24 ~~subdivision (a) in determining whether an insurer has engaged in~~
25 ~~an unfair payment pattern.~~

26 ~~(m) If a noncontracting individual health professional files~~
27 ~~multiple appeals pursuant to paragraph (2) of subdivision (c) and~~
28 ~~loses more than one third of those appeals within a one year period,~~
29 ~~he or she shall be prohibited from appealing to the commissioner's~~
30 ~~independent dispute resolution process pursuant to paragraph (2)~~
31 ~~of subdivision (c) for one year from the first appeal. For the~~
32 ~~purposes of this section, a noncontracting individual health~~
33 ~~professional shall be deemed to have lost an appeal when the~~
34 ~~commissioner's independent dispute resolution process awards~~
35 ~~the noncontracting individual health professional less than the~~
36 ~~amount sought by the noncontracting individual health professional.~~

37 ~~(n) If an insurer delegates payment functions to a contracted~~
38 ~~entity, including, but not limited to, a medical group of independent~~
39 ~~practice association, then the delegated entity shall comply with~~
40 ~~this section.~~

1 (e) *This section shall not apply to emergency services and care,*
 2 *as defined in Section 1317.1 of the Health and Safety Code.*

3 SEC. 6. Section 10112.82 is added to the Insurance Code, to
 4 read:

5 ~~10112.82. (a) This section shall apply to a claim dispute~~
 6 ~~between a noncontracting individual health professional subject~~
 7 ~~to Section 10112.8 and a health insurer. Claim disputes shall be~~
 8 ~~limited to circumstances in which either of the following occurs:~~

9 (1) ~~The noncontracting individual health professional disputes~~
 10 ~~that the payment received from the insurer is the insurer's average~~
 11 ~~contracted rate pursuant to paragraph (1) of subdivision (c) of~~
 12 ~~Section 10112.81.~~

13 (2) ~~The noncontracting individual health professional seeks to~~
 14 ~~be paid more than 150 percent of the amount that the insurer~~
 15 ~~otherwise would pay pursuant to paragraph (2) of subdivision (c)~~
 16 ~~of Section 10112.81.~~

17 (b)

18 ~~10112.82. (a) (1) The~~~~A health insurer shall maintain~~
 19 ~~statistically credible information, updated at least annually,~~
 20 ~~regarding rates paid to currently contracting individual health~~
 21 ~~professionals or a group of professionals who provide similar~~
 22 ~~services, are not capitated, services and are practicing in the same~~
 23 ~~or a similar geographic area as the noncontracting individual health~~
 24 ~~professional.~~

25 (2) ~~The statistically credible information required by paragraph~~
 26 ~~(1) shall take into consideration the determinations of the~~
 27 ~~independent dispute resolution process for claims filed pursuant~~
 28 ~~to Section 10112.81.~~

29 (2) *If a health insurer does not pay a statistically significant*
 30 *number or dollar amount of claims for covered services in order*
 31 *to maintain the statistically credible information required by*
 32 *paragraph (1), the health insurer shall demonstrate to the*
 33 *department that it has access to a statistically credible database*
 34 *reflecting reasonable rates paid to providers for services provided*
 35 *in the same or a similar geographic area.*

36 (3) The statistically credible information required by ~~paragraph~~
 37 *paragraphs (1) and (2)* shall be confidential and shall be exempt
 38 from public disclosure.

39 (e)

1 (b) (1) Unless otherwise provided in this section or otherwise
 2 agreed to by the noncontracting individual health professional and
 3 the insurer, the insurer shall base reimbursement of *noncontracted*
 4 *claims for services rendered according to Section 10112.81 on the*
 5 *average rates based on the statistically credible information with*
 6 *regard to the amount paid to providers contracted individual health*
 7 *professionals who are providing similar services, are not capitated,*
 8 *services and practicing in the same or similar geographic area.*

9 (2) ~~For~~ *If nonemergency services are provided by the a*
 10 *noncontracting individual health professional to an insured who*
 11 *has voluntarily chosen to use his or her out-of-network benefit for*
 12 *services covered by a preferred provider organization or a*
 13 *point-of-service plan, unless otherwise agreed to by the insurer*
 14 *and the noncontracting individual health professional, the amount*
 15 *paid shall be the amount set forth in the insured’s evidence of*
 16 *coverage.*

17 ~~(d) (1) An insurer’s failure to pay a noncontracting individual~~
 18 ~~health professional consistent with this section shall constitute an~~
 19 ~~“unfair payment pattern” within the meaning of Section 1371.37~~
 20 ~~of the Health and Safety Code.~~

21 ~~(2) In determining whether an insurer has engaged in an “unfair~~
 22 ~~payment pattern” as defined in Section 1371.37 of the Health and~~
 23 ~~Safety Code, the commissioner shall take into consideration~~
 24 ~~decisions of the independent dispute resolution process established~~
 25 ~~pursuant to subdivision (a) of Section 10112.81.~~

26 (3) *A noncontracting individual health professional who disputes*
 27 *the claim reimbursement shall utilize the independent dispute*
 28 *resolution process described in Section 10112.81.*

29 (c) *A payment made by a health insurer to a noncontracting*
 30 *health care professional for nonemergency services as required*
 31 *by Section 10112.81 and this section, in addition to the applicable*
 32 *cost sharing owed by the insured, shall constitute payment in full*
 33 *for the nonemergency services rendered.*

34 (d) *This section shall not apply to a Medicare plan or a*
 35 *Medicare supplemental plan.*

36 (e) *This section shall not apply to emergency services and care,*
 37 *as defined in Section 1317.1 of the Health and Safety Code.*

38 SEC. 7. The Legislature finds and declares that Sections 2 and
 39 6 of this act, which add Section 1371.31 to the Health and Safety
 40 Code and Section 10112.82 to the Insurance Code, impose a

1 limitation on the public’s right of access to the meetings of public
2 bodies or the writings of public officials and agencies within the
3 meaning of Section 3 of Article I of the California Constitution.
4 Pursuant to that constitutional provision, the Legislature makes
5 the following findings to demonstrate the interest protected by this
6 limitation and the need for protecting that interest:

7 In order to protect confidential and proprietary information, it
8 is necessary for that information to remain confidential.

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