

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1086

Introduced by Assembly Member Dababneh
(Coauthor: Senator Pan)

February 27, 2015

An act to add Section 1371.34 to the Health and Safety Code, and to add Section 10133.75 to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1086, as amended, Dababneh. Assignment of reimbursement rights.

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 and makes a willful violation of that act a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

Existing law requires, on and after January 1, 1994, every group health care service plan, that provides hospital, medical, or surgical expense benefits for plan members and their dependents to authorize and permit assignment of the enrollee's or subscriber's right to any reimbursement for health care services covered under the plan contract to the State Department of Health Care Services when health care services, excepting specified contracted services, are provided to a Medi-Cal beneficiary.

~~This bill would prohibit certain health care service plans and disability insurers from prohibiting an enrollee, subscriber, or insured from making an assignment of his or her reimbursement rights for covered health care services to the physician and surgeon who furnished those services.~~

~~The bill would require a physician and surgeon seeking payment from a health care service plan or disability insurer under the provisions of the bill to provide the plan or insurer with specified documentation and information, including an itemized bill for service. This bill would require the physician and surgeon to provide a written agreement authorizing the assignment of the enrollee's, subscriber's, or insured's reimbursement rights, and would specify the form and content of that agreement.~~ *require certain health care service plans, on and after January 1, 2016, to authorize and permit an enrollee or subscriber to assign the enrollee or subscriber's right to reimbursement for health care services covered under the plan contract by a noncontracting physician and surgeon who furnished the services, as specified. The bill would require certain disability insurers to pay group insurance benefits to a physician and surgeon rendering health care services to an insured upon obtaining written consent of the insured. The bill would require a noncontracting physician and surgeon who renders services to an enrollee or an insured to give the enrollee or the insured a written estimate of the cost of care and a notice regarding, among other things, the estimated cost of care and the enrollee's or subscriber's, and the plan's or the insurer's responsibility for payment of the cost of care, as specified. The bill would prohibit a noncontracting physician and surgeon who accepts an assignment of benefits from collecting more than the estimated cost of care from the enrollee or insured. The bill would prohibit a noncontracting physician and surgeon from accepting an assignment of benefits from a patient with whom the physician and surgeon or an employee of the physician and surgeon communicates in a language other than English or one of specified languages, unless the notice described above is given in that language.*

Because a willful violation of the bill's requirements relative to health care service plans 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:

SECTION 1. Section 1371.34 is added to the Health and Safety Code, to read:

~~1371.34. (a) A health care service plan that provides medical or surgical expense benefits for plan members and their dependents shall not prohibit an enrollee or subscriber from making an assignment of the enrollee's or subscriber's right to any reimbursement for health care services covered under the plan contract to the physician and surgeon who furnished the health care services.~~

1371.34. (a) On or after January 1, 2016, a health care service plan that provides out-of-network services as a covered benefit for plan members and their dependents shall authorize and permit assignment of the enrollee's or subscriber's right to any reimbursement for health care services covered under the plan contract to a noncontracting physician and surgeon who furnishes the health care services. This section shall not apply to emergency services covered under Section 1371.4, poststabilization services as defined in Section 1371.4, or urgent care as defined in paragraph (2) of subdivision (h) of Section 1367.01.

(b) When seeking payment from a health care service plan pursuant to subdivision (a), a *noncontracting* physician and surgeon shall provide the plan with the *noncontracting* physician and surgeon's itemized bill for service, the name and address of the person to be reimbursed, and the name and contract number of the enrollee. *The noncontracting physician and surgeon shall also retain on file, and provide upon request to the health care service plan, documentation showing the notice required in paragraph (2) of subdivision (c) was provided in a timely manner, as required by paragraph (1) of subdivision (c).*

~~(c) The written agreement authorizing assignment of the enrollee's or subscriber's right to any reimbursement for health care services covered under subdivision (a) shall do all of the following:~~

~~(1) Be written in plain language.~~

~~(2) Be made available by the physician and surgeon in the primary languages of the two largest groups seen by the physician and surgeon who either do not speak English or who are unable to effectively communicate in English because it is not their native~~

1 language, and who comprise 5 percent or more of the patients
2 served by the physician.

3 (3) ~~Be printed in at least 12-point font. The agreement shall~~
4 ~~disclose in boldface type or a font a minimum of two points larger~~
5 ~~than the rest of the agreement, exclusive of the heading, all of the~~
6 ~~following information:~~

7 (A) ~~“The enrollee or subscriber remains responsible for costs,~~
8 ~~including any provider fees, copayments, and coinsurance~~
9 ~~exceeding the amount of the benefit covered by the policy and~~
10 ~~paid by the health plan.”~~

11 (B) ~~“The enrollee or subscriber is entitled to a summary of~~
12 ~~benefits and coverage from the health care service plan pursuant~~
13 ~~to Section 300gg-15 of Title 42 of the United States Code to help~~
14 ~~in better understanding benefit design, level of financial protection,~~
15 ~~and costs related to out-of-network services.”~~

16 (C) ~~“The enrollee or subscriber is entitled to information from~~
17 ~~the health care service plan that explains how the health plan~~
18 ~~determines the amount it pays for out-of-network services. Your~~
19 ~~actual out-of-pocket costs may vary based on factors specific to~~
20 ~~your health plan. Some plans base their reimbursement rates on a~~
21 ~~percentage of “usual, customary, and reasonable” charges, which~~
22 ~~is referred to as “UCR.” Others use a formula based on the~~
23 ~~Medicare fee schedule that is published by the United States~~
24 ~~Department of Health and Human Services. To learn how your~~
25 ~~health plan determines out-of-network reimbursement rates and~~
26 ~~covered services, call the number listed on the back of your~~
27 ~~insurance card. Then, to estimate your out-of-pocket costs, visit~~
28 ~~the following Internet Web site <http://fairhealthconsumer.org>,~~
29 ~~which will, using the method that your plan uses to calculate~~
30 ~~reimbursement, allow you to estimate your out-of-pocket costs.”~~

31 (4) ~~Be signed and dated by the enrollee or subscriber.~~

32 (d) ~~This section applies only to a preferred provider organization,~~
33 ~~point of service plan, or any other plan contract that provides for~~
34 ~~out-of-network coverage and services. This section does not apply~~
35 ~~to a plan providing benefits pursuant to a specialized health care~~
36 ~~service plan contract, as defined in subdivision (o) of Section 1345.~~

37 (c) (1) *A noncontracting physician and surgeon accepting an*
38 *assignment of benefits shall give the enrollee the notice described*
39 *in paragraph (2) and obtain a signature from the enrollee. The*
40 *notice shall be in 12-point type, on a single page, without any*

1 additional information other than that specified in the statutory
2 notice.

3 (A) The notice shall be provided to the enrollee at least 24 hours
4 prior to providing care.

5 (B) For health care services offered to the enrollee within the
6 same business day from the time an appointment is requested by
7 the enrollee, the notice shall be provided to the enrollee prior to
8 providing care.

9 (2) The notice provided pursuant to paragraph (1) shall be in
10 the following form:

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12 *[Noncontracting physician and surgeon may add office logo and office contact*
13 *information here.]*

14 **ASSIGNMENT OF BENEFITS**

15 *I, [patient name] agree to receive medical services from [physician and*
16 *surgeon's name] at [business name and location]. My signature below means*
17 *I have read and understand the following:*

- 18 • *The physician and surgeon listed above is not part of my health plan's*
19 *network.*
- 20 • *My health plan may pay some of the cost, or none at all. I will be responsible*
21 *for most of the cost.*
- 22 • *My health plan must help me get care from an in-network physician and*
23 *surgeon if I call the health plan at the telephone number on my membership*
24 *card. I am likely to pay less if I use a physician and surgeon that is in my*
25 *health plan's network.*
- 26 • *My health plan may not cover the costs of other care ordered by this*
27 *physician and surgeon. Examples of care that the physician and surgeon*
28 *might order include lab tests, imaging, and referrals to other providers.*
- 29 • *State law does not require any payments I make to this physician and*
30 *surgeon to count toward my annual out-of-pocket maximum. I can call my*
31 *health plan at the telephone number on my membership card to find out the*
32 *remaining costs before I reach my out-of-pocket maximum. My costs will*
33 *also be in addition to my share of premium for this year.*
- 34 • *I have received this notice and a written estimate of the cost for care from*
35 *[physician and surgeon's name].*
- 36 • *The estimate cost of treatment may be up to [amount], and the estimate is*
37 *attached to this notice. I will receive another notice if the cost is more than*
38 *\$100 higher, or more than 10 % higher, than the original estimate,*
39 *whichever is the larger change.*

- 1 • *The estimate is limited to services provided by [physician and surgeon's*
2 *name] and may not include services from other providers, such as facility*
3 *charges.*
4 • *I have the right to confirm health plan benefit information from my health*
5 *plan before beginning treatment.*

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Signature

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Print name

(d) (1) *The noncontracting physician and surgeon shall provide the enrollee a written estimate of the cost of care at the time of providing the notice required by paragraph (2) of subdivision (c). The estimate shall include each anticipated service to be provided and the estimated cost of each service. The noncontracting physician and surgeon shall attach the written estimate, along with any explanation of the cost estimate, to the notice.*

(2) *If, upon further examination, the care costs more than the greater of one hundred dollars (\$100) more than, or more than 10 percent higher than, the physician and surgeon's initial estimate of the cost of care, the physician and surgeon shall provide a revised estimate of the cost of care in writing as soon as practicable.*

(e) *A noncontracting physician and surgeon shall not accept an assignment of benefits from a patient with whom the noncontracting physician and surgeon, or an employee or agent of that physician and surgeon, communicates primarily in a language other than English, or in a Medi-Cal threshold language, as defined by the regulations adopted pursuant to Section 14680 of the Welfare and Institutions Code, unless the written notice required by paragraph (2) of subdivision (c) is also provided in that language.*

(f) (1) *A noncontracting physician and surgeon who accepts an assignment of benefits from an enrollee may collect no more than the estimated cost of care from the enrollee.*

(2) *After receiving the direct payment from the enrollee's plan, a noncontracting physician and surgeon shall refund any overpayment to the enrollee within 30 business days if the payment from the plan is more than the estimated payment.*

1 (g) *This section shall only apply to health care service plans*
2 *that offer out-of-network covered benefits. Nothing in this section*
3 *shall be construed to require a health care service plan to cover*
4 *out-of-network benefits not otherwise required by this article. This*
5 *section does not apply to a plan providing benefits pursuant to a*
6 *specialized health care service plan contract, as defined in*
7 *subdivision (o) of Section 1345.*

8 (h) *Nothing in this section shall be construed to exempt a health*
9 *care service plan from the requirements of paragraph (2) of*
10 *subdivision (h) of Section 1367, or Section 1371.4, or 1371.37, or*
11 *to exempt a health care provider from the requirements of Section*
12 *1317, 1371.39, or 1379.*

13 SEC. 2. Section 10133.75 is added to the Insurance Code, to
14 read:

15 10133.75. (a) ~~On Notwithstanding Section 10133, on and after~~
16 ~~January 1, 2013, a disability insurer shall pay individual insurance~~
17 ~~benefits contingent upon, or for expenses incurred on account of,~~
18 ~~medical or surgical aid to the physician and surgeon having~~
19 ~~provided the medical or surgical aid where that physician and~~
20 ~~surgeon has qualified for reimbursement by submitting the items~~
21 ~~and information specified in subdivision (b). 2016, upon written~~
22 ~~consent of the insured first obtained with respect to a particular~~
23 ~~claim, a disability insurer shall pay group benefits contingent~~
24 ~~upon, or for expenses incurred on account of, hospitalization or~~
25 ~~medical or surgical aid to a physician and surgeon furnishing the~~
26 ~~hospitalization or medical or surgical aid, but the amount of that~~
27 ~~payment shall not exceed the amount of benefit provided by the~~
28 ~~policy with respect to the service or billing of the physician and~~
29 ~~surgeon, and the amount of the payments pursuant to one or more~~
30 ~~assignments shall not exceed the amount of expenses incurred on~~
31 ~~account of the hospitalization or medical or surgical aid. Payments~~
32 ~~so made shall discharge the insurer's obligation with respect to~~
33 ~~the amount so paid.~~

34 (b) *When seeking payment from a disability insurer pursuant*
35 *to subdivision (a), a person a noncontracting physician and surgeon*
36 *shall provide the insurer with the provider's physician and*
37 *surgeon's itemized bill for service, the name and address of the*
38 *person to be reimbursed, and the name and policy number of the*
39 *insured. The noncontracting physician and surgeon shall also*
40 *retain on file, and provide upon request to the insurer,*

1 *documentation showing the notice required in paragraph (2) of*
2 *subdivision (c) was provided in a timely manner, as required by*
3 *paragraph (1) of subdivision (c).*

4 ~~(e) The written agreement authorizing assignment of the~~
5 ~~insured's right to any reimbursement for health care services~~
6 ~~covered under subdivision (a) shall do all of the following:~~

7 ~~(1) Be written in plain language.~~

8 ~~(2) Be made available by the physician and surgeon in the~~
9 ~~primary languages of the two largest groups seen by the physician~~
10 ~~and surgeon who either do not speak English or who are unable~~
11 ~~to effectively communicate in English because it is not their native~~
12 ~~language, and who comprise 5 percent or more of the patients~~
13 ~~served by the physician and surgeon.~~

14 ~~(3) Be printed in at least 12-point font. The agreement shall~~
15 ~~disclose in boldface type or a font a minimum of two points larger~~
16 ~~than the rest of the agreement, exclusive of the heading, the~~
17 ~~following information:~~

18 ~~(A) "The insured remains responsible for costs, including any~~
19 ~~provider fees, copayments, and coinsurance exceeding the amount~~
20 ~~of the benefit covered by the policy and paid by the insurer."~~

21 ~~(B) "The insured is entitled to a summary of benefits and~~
22 ~~coverage from the insurer pursuant to Section 300gg-15 of Title~~
23 ~~42 of the United States Code to help in better understanding benefit~~
24 ~~design, level of financial protection, and costs related to~~
25 ~~out-of-network services."~~

26 ~~(C) "The insured is entitled to information from the insurer that~~
27 ~~explains how the insurer determines the amount it pays for~~
28 ~~out-of-network services. Your actual out-of-pocket costs may vary~~
29 ~~based on factors specific to your health plan. Some plans base their~~
30 ~~reimbursement rates on a percentage of "usual, customary, and~~
31 ~~reasonable" charges, which is referred to as "UCR." Others use a~~
32 ~~formula based on the Medicare fee schedule that is published by~~
33 ~~the United States Department of Health and Human Services. To~~
34 ~~learn how your health plan determines out-of-network~~
35 ~~reimbursement rates and covered services, call the number listed~~
36 ~~on the back of your insurance card. Then, to estimate your~~
37 ~~out-of-pocket costs, visit the following Internet Web site~~
38 ~~<http://fairhealthconsumer.org>, which will, using the method that~~
39 ~~your plan uses to calculate reimbursement, allow you to estimate~~
40 ~~your out-of-pocket costs."~~

1 ~~(4) Be signed and dated by the insured.~~

2 ~~(d) This section shall not apply to an insurer providing benefits~~
3 ~~pursuant to a specialized health insurance policy, as defined in~~
4 ~~subdivision (e) of Section 106.~~

5 (c) (1) A noncontracting physician and surgeon accepting an
6 assignment of benefits shall give the insured with the notice
7 described in paragraph (2) and obtain a signature from the
8 insured. The notice shall be in 12-point type, on a single page,
9 without any additional information other than that specified in the
10 statutory notice.

11 (A) The notice shall be provided to the insured at least 24 hours
12 prior to providing care.

13 (B) For health care services offered to the insured within the
14 same business day from the time an appointment is requested by
15 the insured, the notice shall be provided to the insured prior to
16 providing care.

17 (2) The notice provided pursuant to paragraph (1) shall be in
18 the following form:

19
20 *[Noncontracting physician and surgeon may add office logo and office contact*
21 *information here.]*

22 **ASSIGNMENT OF BENEFITS**

23 I, [patient name] agree to receive medical services from [physician and
24 surgeon's name] at [business name and location]. My signature below means
25 I have read and understand the following:

- 26 • The physician and surgeon listed above is not part of my health plan's
27 network.
- 28 • My health plan may pay some of the cost, or none at all. I will be responsible
29 for most of the cost.
- 30 • My health plan must help me get care from an in-network physician and
31 surgeon if I call the health plan at the telephone number on my membership
32 card. I am likely to pay less if I use a physician and surgeon that is in my
33 health plan's network.
- 34 • My health plan may not cover the costs of other care ordered by this
35 physician and surgeon. Examples of care that the physician and surgeon
36 might order include lab tests, imaging, and referrals to other providers.
- 37 • State law does not require any payments I make to this physician and
38 surgeon to count toward my annual out-of-pocket maximum. I can call my
39 health plan at the telephone number on my membership card to find out the

remaining costs before I reach my out-of-pocket maximum. My costs will also be in addition to my share of premium for this year.

- I have received this notice and a written estimate of the cost for care from [physician and surgeon's name].
- The estimate cost of treatment may be up to [amount], and the estimate is attached to this notice. I will receive another notice if the cost is more than \$100 higher, or more than 10 % higher, than the original estimate, whichever is the larger change.
- The estimate is limited to services provided by [physician and surgeon's name] and may not include services from other providers, such as facility charges.
- I have the right to confirm health plan benefit information from my health plan before beginning treatment.

Date

Signature

Time

Print name

(d) (1) The noncontracting physician and surgeon shall provide the insured a written estimate of the cost of care at the time of providing the notice required by paragraph (2) of subdivision (c). The estimate shall include each anticipated service to be provided and the estimated cost of each service. The noncontracting physician and surgeon shall attach the written estimate, along with any explanation of the cost estimate, to the notice.

(2) If, upon further examination, the care costs more than the greater of one hundred dollars (\$100) more than, or more than 10 percent higher than, the physician and surgeon's initial estimate of the cost of care, the physician and surgeon shall provide a revised estimate of the cost of care in writing as soon as practicable.

(e) A noncontracting physician and surgeon shall not accept an assignment of benefits from a patient with whom the noncontracting physician and surgeon, or an employee or agent of that physician and surgeon, communicates primarily in a language other than English, or in a Medi-Cal threshold language, as defined by the regulations adopted pursuant to Section 14680 of the Welfare and Institutions Code, unless the written notice required by paragraph (2) of subdivision (c) is also provided in that language.

1 (f) (1) A noncontracting physician and surgeon who accepts
2 an assignment of benefits from an insured may collect no more
3 than the estimated cost of care from the insured.

4 (2) After receiving the direct payment from the insured's insurer,
5 a noncontracting physician and surgeon shall refund any
6 overpayment to the insured within 30 business days if the payment
7 from the insurer is more than the estimated payment.

8 (g) This section shall only apply to an insurer that offers
9 out-of-network covered benefits. Nothing in this section shall be
10 construed to require an insurer to cover out-of-network benefits
11 not otherwise required by this article. This section does not apply
12 to an insurer providing benefits pursuant to a specialized health
13 insurance policy, as defined in subdivision (c) of Section 106.

14 (h) Nothing in this section shall be construed to exempt an
15 insurer from the requirements of subdivision (b) of Section
16 10123.137, or Section 10123.147.

17 SEC. 3. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.