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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1244

Introduced by Assembly Members Gray and Daly

February 27, 2015

An act to amend Sections ~~139.2, 4906, and 5402~~ *139.2 and 4906* of, and to add Section 139.21 to, the Labor Code, and to amend Section 14123 of the Welfare and Institutions Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1244, as amended, Gray. Workers' compensation: providers: suspension: fees and expenses.

Under existing law, the Director of Health Care Services is authorized, for purposes of administering the Medi-Cal program, to suspend a provider of service from further participation under the program for specified reasons, including conviction of any felony or any misdemeanor involving fraud, abuse of the Medi-Cal program or any patient, or otherwise substantially related to the qualifications, functions, or duties of a provider of service. Existing law requires the director, upon receipt of written notification from the Secretary of the United

States Department of Health and Human Services that a physician or other individual practitioner has been suspended from participation in the Medicare or Medicaid programs, to promptly suspend the practitioner from participation in the Medi-Cal program.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires an employer to provide all medical services reasonably required to cure or relieve the injured worker from the effects of the injury.

Existing law authorizes an insurer, employer, or entity that provides physician network services to establish or modify a medical provider network for the provision of medical treatment to injured employees and requires the administrative director to contract with individual physicians or an independent medical review organization to perform medical provider network independent medical reviews. Existing law also requires the administrative director to appoint qualified medical evaluators in each of the respective specialties as required for the evaluation of medical-legal issues. Existing law requires the administrative director to terminate from the list of medical evaluators a physician who has been subject to disciplinary action by the relevant licensing board or who has been convicted of a misdemeanor or felony related to the conduct of his or her medical practice.

This bill would require the administrative director to promptly suspend any physician or practitioner from participating in the workers' compensation system in any capacity when the individual or entity meets specified criteria, including when that individual has been convicted of any felony or misdemeanor involving fraud or abuse of the Medi-Cal program, Medicare program, or workers' compensation system, when that individual's license, certificate, or approval to provide health care has been surrendered or revoked, or when that individual or entity has been suspended, due to fraud or abuse, from participation in the Medicare or Medicaid programs. The bill would require the administrative director to adopt regulations for suspending a physician's or practitioner's participation in the workers' compensation system pursuant to these provisions, as specified, and would require the administrative director to furnish to the physician or practitioner written notice of the right to a hearing regarding the suspension and the procedure to follow to request that hearing. If a physician is a qualified

medical examiner, and the division finds that the physician meets the criteria for suspension pursuant to these provisions, the bill would require the administrative director to terminate the physician from the list of medical evaluators. The bill would also require the administrative director to promptly notify the appropriate state licensing, certifying, or registering authority of a physician's or practitioner's suspension and to update the division's databases of qualified medical evaluators and medical provider networks. The bill would prohibit a provider of services from submitting or pursuing claims for payment for services or supplies provided by a physician or practitioner whose participation in the workers' compensation system has been suspended, unless that claim for payment has been reduced to final judgment or the services or supplies are unrelated to a violation of the laws governing workers' compensation.

The bill would also require the Director of Health Care Services to notify the administrative director of a suspension of a physician from participation in the Medi-Cal program imposed pursuant to the provisions described above authorizing the director to suspend a provider of services from participation.

Existing law establishes the Workers' Compensation Appeals Board to exercise all judicial powers vested in it, as specified, including workers' compensation proceedings for the recovery of compensation, or concerning any right or liability arising out of or incidental to the recovery of compensation. Existing law vests the appeals board with full power, authority, and jurisdiction to try and determine finally those matters, subject only to the review by the courts, as specified. Existing law authorizes the appeals board to determine, and allow as liens against any sum to be paid as compensation, as specified, a reasonable attorney's fee for legal services and the reasonable expense incurred by or on behalf of the injured employee. Existing law provides that a charge, claim, or agreement for those legal services or disbursements, or that reasonable expense, is not enforceable, valid, or binding in excess of a reasonable amount.

Existing law also requires an attorney to furnish *to* the employee a written disclosure form describing the procedures available to the injured employee or his or her dependents and specified information regarding attorney's fees. Existing law requires that a copy of the disclosure form be signed by the employee and the attorney and sent to the employer, or insurer or 3rd-party administrator, if either is known, by the attorney within 15 days of the employee's and attorney's execution of the form.

Existing law also requires the employee, the insurer, the employer, and the attorneys for each party to sign and file with the board a statement, signed under penalty of perjury, attesting that the signatories have not violated specified laws prohibiting conflicts of interest.

Existing law authorizes the appeals board, a workers' compensation judge, or any party to the action or proceeding, as specified, to cause the deposition of witnesses in any investigation or hearing before the appeals board, and provides that the deponent is entitled to receive specified benefits, such as reasonable expenses of transportation, meals, and lodging, as specified.

This bill would prohibit payment for services or expenses incurred under the provisions described above, as specified, prior to the filing of the disclosure form with the appeals board and the sending of that form to the employer, or to the insurer or 3rd-party administrator, if either is known, by the attorney. The bill would require the disclosure form described above to contain a paragraph setting forth the exact location of the district office of the appeals board at which the employee's case will be filed and to include a specified statement. The bill would impose other requirements regarding the signing and content of the form, including that the form be signed under penalty of perjury by the attorney representing the employee, and would require the form to be filed with the appeals board.

The bill would also require an attorney who subsequently assumes the representation of the employee in the same action or proceeding to complete and sign under penalty of perjury a disclosure form that meets the above-described requirements and the statement attesting that the signatories have not violated specified laws prohibiting conflicts of interest. The bill would require the attorney to file the form and statement with the appeals board, and send them to the employer, or insurer or 3rd-party administrator, if either is known, within 15 days of the employee's and attorney's execution of the form and statement.

By expanding the scope of the crime of perjury under these provisions, this bill would impose a state-mandated local program.

~~Existing law requires an employer to authorize the provision of all treatment, as specified, for an alleged injury within one working day after an employee files a specified claim for workers' compensation and to continue to provide the treatment until the date that liability for the claim is accepted or rejected. Existing law limits liability for medical treatment, until the date that liability for the claim is accepted or rejected, to \$10,000.~~

~~This bill would exclude from that liability limitation claims for occupational disease or cumulative injury filed on or after January 1, 2017, except under specified circumstances, including when the treatment is provided by a physician in a medical provider network established by the employer or when the treatment is provided by the employee's personal physician, as defined.~~

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 139.2 of the Labor Code is amended to
2 read:

3 139.2. (a) The administrative director shall appoint qualified
4 medical evaluators in each of the respective specialties as required
5 for the evaluation of medical-legal issues. The appointments shall
6 be for two-year terms.

7 (b) The administrative director shall appoint or reappoint as a
8 qualified medical evaluator a physician, as defined in Section
9 3209.3, who is licensed to practice in this state and who
10 demonstrates that he or she meets the requirements in paragraphs
11 (1), (2), (6), and (7), and, if the physician is a medical doctor,
12 doctor of osteopathy, doctor of chiropractic, or a psychologist, that
13 he or she also meets the applicable requirements in paragraph (3),
14 (4), or (5).

15 (1) Prior to his or her appointment as a qualified medical
16 evaluator, passes an examination written and administered by the
17 administrative director for the purpose of demonstrating
18 competence in evaluating medical-legal issues in the workers'
19 compensation system. Physicians shall not be required to pass an
20 additional examination as a condition of reappointment. A
21 physician seeking appointment as a qualified medical evaluator
22 on or after January 1, 2001, shall also complete prior to
23 appointment, a course on disability evaluation report writing
24 approved by the administrative director. The administrative director

1 shall specify the curriculum to be covered by disability evaluation
2 report writing courses, which shall include, but is not limited to,
3 12 or more hours of instruction.

4 (2) Devotes at least one-third of total practice time to providing
5 direct medical treatment, or has served as an agreed medical
6 evaluator on eight or more occasions in the 12 months prior to
7 applying to be appointed as a qualified medical evaluator.

8 (3) Is a medical doctor or doctor of osteopathy and meets one
9 of the following requirements:

10 (A) Is board certified in a specialty by a board recognized by
11 the administrative director and either the Medical Board of
12 California or the Osteopathic Medical Board of California.

13 (B) Has successfully completed a residency training program
14 accredited by the Accreditation Council for Graduate Medical
15 Education or the osteopathic equivalent.

16 (C) Was an active qualified medical evaluator on June 30, 2000.

17 (D) Has qualifications that the administrative director and either
18 the Medical Board of California or the Osteopathic Medical Board
19 of California, as appropriate, both deem to be equivalent to board
20 certification in a specialty.

21 (4) Is a doctor of chiropractic and has been certified in California
22 workers' compensation evaluation by a provider recognized by
23 the administrative director. The certification program shall include
24 instruction on disability evaluation report writing that meets the
25 standards set forth in paragraph (1).

26 (5) Is a psychologist and meets one of the following
27 requirements:

28 (A) Is board certified in clinical psychology by a board
29 recognized by the administrative director.

30 (B) Holds a doctoral degree in psychology, or a doctoral degree
31 deemed equivalent for licensure by the Board of Psychology
32 pursuant to Section 2914 of the Business and Professions Code,
33 from a university or professional school recognized by the
34 administrative director and has not less than five years'
35 postdoctoral experience in the diagnosis and treatment of emotional
36 and mental disorders.

37 (C) Has not less than five years' postdoctoral experience in the
38 diagnosis and treatment of emotional and mental disorders, and
39 has served as an agreed medical evaluator on eight or more
40 occasions prior to January 1, 1990.

1 (6) Does not have a conflict of interest as determined under the
2 regulations adopted by the administrative director pursuant to
3 subdivision (o).

4 (7) Meets any additional medical or professional standards
5 adopted pursuant to paragraph (6) of subdivision (j).

6 (c) The administrative director shall adopt standards for
7 appointment of physicians who are retired or who hold teaching
8 positions who are exceptionally well qualified to serve as a
9 qualified medical evaluator even though they do not otherwise
10 qualify under paragraph (2) of subdivision (b). A physician whose
11 full-time practice is limited to the forensic evaluation of disability
12 shall not be appointed as a qualified medical evaluator under this
13 subdivision.

14 (d) The qualified medical evaluator, upon request, shall be
15 reappointed if he or she meets the qualifications of subdivision (b)
16 and meets all of the following criteria:

17 (1) Is in compliance with all applicable regulations and
18 evaluation guidelines adopted by the administrative director.

19 (2) Has not had more than five of his or her evaluations that
20 were considered by a workers' compensation administrative law
21 judge at a contested hearing rejected by the workers' compensation
22 administrative law judge or the appeals board pursuant to this
23 section during the most recent two-year period during which the
24 physician served as a qualified medical evaluator. If the workers'
25 compensation administrative law judge or the appeals board rejects
26 the qualified medical evaluator's report on the basis that it fails to
27 meet the minimum standards for those reports established by the
28 administrative director or the appeals board, the workers'
29 compensation administrative law judge or the appeals board, as
30 the case may be, shall make a specific finding to that effect, and
31 shall give notice to the medical evaluator and to the administrative
32 director. Any rejection shall not be counted as one of the five
33 qualifying rejections until the specific finding has become final
34 and time for appeal has expired.

35 (3) Has completed within the previous 24 months at least 12
36 hours of continuing education in impairment evaluation or workers'
37 compensation-related medical dispute evaluation approved by the
38 administrative director.

1 (4) Has not been terminated, suspended, placed on probation,
2 or otherwise disciplined by the administrative director during his
3 or her most recent term as a qualified medical evaluator.

4 If the evaluator does not meet any one of these criteria, the
5 administrative director may in his or her discretion reappoint or
6 deny reappointment according to regulations adopted by the
7 administrative director. A physician who does not currently meet
8 the requirements for initial appointment or who has been terminated
9 under subdivision (e) because his or her license has been revoked
10 or terminated by the licensing authority shall not be reappointed.

11 (e) The administrative director may, in his or her discretion,
12 suspend or terminate a qualified medical evaluator during his or
13 her term of appointment without a hearing as provided under
14 subdivision (k) or (l) whenever either of the following conditions
15 occurs:

16 (1) The evaluator's license to practice in California has been
17 suspended by the relevant licensing authority so as to preclude
18 practice, or has been revoked or terminated by the licensing
19 authority.

20 (2) The evaluator has failed to timely pay the fee required by
21 the administrative director pursuant to subdivision (n).

22 (f) The administrative director shall furnish a physician, upon
23 request, with a written statement of its reasons for termination of,
24 or for denying appointment or reappointment as, a qualified
25 medical evaluator. Upon receipt of a specific response to the
26 statement of reasons, the administrative director shall review his
27 or her decision not to appoint or reappoint the physician or to
28 terminate the physician and shall notify the physician of its final
29 decision within 60 days after receipt of the physician's response.

30 (g) The administrative director shall establish agreements with
31 qualified medical evaluators to ensure the expeditious evaluation
32 of cases assigned to them for comprehensive medical evaluations.

33 (h) (1) When requested by an employee or employer pursuant
34 to Section 4062.1, the medical director appointed pursuant to
35 Section 122 shall assign three-member panels of qualified medical
36 evaluators within five working days after receiving a request for
37 a panel. Preference in assigning panels shall be given to cases in
38 which the employee is not represented. If a panel is not assigned
39 within 20 working days, the employee shall have the right to obtain
40 a medical evaluation from any qualified medical evaluator of his

1 or her choice within a reasonable geographic area. The medical
2 director shall use a random selection method for assigning panels
3 of qualified medical evaluators. The medical director shall select
4 evaluators who are specialists of the type requested by the
5 employee. The medical director shall advise the employee that he
6 or she should consult with his or her treating physician prior to
7 deciding which type of specialist to request.

8 (2) The administrative director shall promulgate a form that
9 shall notify the employee of the physicians selected for his or her
10 panel after a request has been made pursuant to Section 4062.1 or
11 4062.2. The form shall include, for each physician on the panel,
12 the physician's name, address, telephone number, specialty, number
13 of years in practice, and a brief description of his or her education
14 and training, and shall advise the employee that he or she is entitled
15 to receive transportation expenses and temporary disability for
16 each day necessary for the examination. The form shall also state
17 in a clear and conspicuous location and type: "You have the right
18 to consult with an information and assistance officer at no cost to
19 you prior to selecting the doctor to prepare your evaluation, or you
20 may consult with an attorney. If your claim eventually goes to
21 court, the workers' compensation administrative law judge will
22 consider the evaluation prepared by the doctor you select to decide
23 your claim."

24 (3) When compiling the list of evaluators from which to select
25 randomly, the medical director shall include all qualified medical
26 evaluators who meet all of the following criteria:

27 (A) He or she does not have a conflict of interest in the case, as
28 defined by regulations adopted pursuant to subdivision (o).

29 (B) He or she is certified by the administrative director to
30 evaluate in an appropriate specialty and at locations within the
31 general geographic area of the employee's residence. An evaluator
32 shall not conduct qualified medical evaluations at more than 10
33 locations.

34 (C) He or she has not been suspended or terminated as a
35 qualified medical evaluator for failure to pay the fee required by
36 the administrative director pursuant to subdivision (n) or for any
37 other reason.

38 (4) When the medical director determines that an employee has
39 requested an evaluation by a type of specialist that is appropriate
40 for the employee's injury, but there are not enough qualified

1 medical evaluators of that type within the general geographic area
2 of the employee's residence to establish a three-member panel,
3 the medical director shall include sufficient qualified medical
4 evaluators from other geographic areas and the employer shall pay
5 all necessary travel costs incurred in the event the employee selects
6 an evaluator from another geographic area.

7 (i) The medical director appointed pursuant to Section 122 shall
8 continuously review the quality of comprehensive medical
9 evaluations and reports prepared by agreed and qualified medical
10 evaluators and the timeliness with which evaluation reports are
11 prepared and submitted. The review shall include, but not be
12 limited to, a review of a random sample of reports submitted to
13 the division, and a review of all reports alleged to be inaccurate
14 or incomplete by a party to a case for which the evaluation was
15 prepared. The medical director shall submit to the administrative
16 director an annual report summarizing the results of the continuous
17 review of medical evaluations and reports prepared by agreed and
18 qualified medical evaluators and make recommendations for the
19 improvement of the system of medical evaluations and
20 determinations.

21 (j) After public hearing pursuant to Section 5307.3, the
22 administrative director shall adopt regulations concerning the
23 following issues:

24 (1) (A) Standards governing the timeframes within which
25 medical evaluations shall be prepared and submitted by agreed
26 and qualified medical evaluators. Except as provided in this
27 subdivision, the timeframe for initial medical evaluations to be
28 prepared and submitted shall be no more than 30 days after the
29 evaluator has seen the employee or otherwise commenced the
30 medical evaluation procedure. The administrative director shall
31 develop regulations governing the provision of extensions of the
32 30-day period in both of the following cases:

33 (i) When the evaluator has not received test results or consulting
34 physician's evaluations in time to meet the 30-day deadline.

35 (ii) To extend the 30-day period by not more than 15 days when
36 the failure to meet the 30-day deadline was for good cause.

37 (B) For purposes of subparagraph (A), "good cause" means any
38 of the following:

39 (i) Medical emergencies of the evaluator or evaluator's family.

40 (ii) Death in the evaluator's family.

1 (iii) Natural disasters or other community catastrophes that
2 interrupt the operation of the evaluator's business.

3 (C) The administrative director shall develop timeframes
4 governing availability of qualified medical evaluators for
5 unrepresented employees under Section 4062.1. These timeframes
6 shall give the employee the right to the addition of a new evaluator
7 to his or her panel, selected at random, for each evaluator not
8 available to see the employee within a specified period of time,
9 but shall also permit the employee to waive this right for a specified
10 period of time thereafter.

11 (2) Procedures to be followed by all physicians in evaluating
12 the existence and extent of permanent impairment and limitations
13 resulting from an injury in a manner consistent with Sections 4660
14 and 4660.1.

15 (3) Procedures governing the determination of any disputed
16 medical treatment issues in a manner consistent with Section
17 5307.27.

18 (4) Procedures to be used in determining the compensability of
19 psychiatric injury. The procedures shall be in accordance with
20 Section 3208.3 and shall require that the diagnosis of a mental
21 disorder be expressed using the terminology and criteria of the
22 American Psychiatric Association's Diagnostic and Statistical
23 Manual of Mental Disorders, Third Edition-Revised, or the
24 terminology and diagnostic criteria of other psychiatric diagnostic
25 manuals generally approved and accepted nationally by
26 practitioners in the field of psychiatric medicine.

27 (5) Guidelines for the range of time normally required to perform
28 the following:

29 (A) A medical-legal evaluation that has not been defined and
30 valued pursuant to Section 5307.6. The guidelines shall establish
31 minimum times for patient contact in the conduct of the
32 evaluations, and shall be consistent with regulations adopted
33 pursuant to Section 5307.6.

34 (B) Any treatment procedures that have not been defined and
35 valued pursuant to Section 5307.1.

36 (C) Any other evaluation procedure requested by the Insurance
37 Commissioner, or deemed appropriate by the administrative
38 director.

1 (6) Any additional medical or professional standards that a
2 medical evaluator shall meet as a condition of appointment,
3 reappointment, or maintenance in the status of a medical evaluator.

4 (k) Except as provided in this subdivision, the administrative
5 director may, in his or her discretion, suspend or terminate the
6 privilege of a physician to serve as a qualified medical evaluator
7 if the administrative director, after hearing pursuant to subdivision
8 (l), determines, based on substantial evidence, that a qualified
9 medical evaluator:

10 (1) Has violated any material statutory or administrative duty.

11 (2) Has failed to follow the medical procedures or qualifications
12 established pursuant to paragraph (2), (3), (4), or (5) of subdivision
13 (j).

14 (3) Has failed to comply with the timeframe standards
15 established pursuant to subdivision (j).

16 (4) Has failed to meet the requirements of subdivision (b) or
17 (c).

18 (5) Has prepared medical-legal evaluations that fail to meet the
19 minimum standards for those reports established by the
20 administrative director or the appeals board.

21 (6) Has made material misrepresentations or false statements
22 in an application for appointment or reappointment as a qualified
23 medical evaluator.

24 A hearing shall not be required prior to the suspension or
25 termination of a physician’s privilege to serve as a qualified
26 medical evaluator when the physician has done either of the
27 following:

28 (A) Failed to timely pay the fee required pursuant to subdivision
29 (n).

30 (B) Had his or her license to practice in California suspended
31 by the relevant licensing authority so as to preclude practice, or
32 had the license revoked or terminated by the licensing authority.

33 (l) The administrative director shall cite the qualified medical
34 evaluator for a violation listed in subdivision (k) and shall set a
35 hearing on the alleged violation within 30 days of service of the
36 citation on the qualified medical evaluator. In addition to the
37 authority to terminate or suspend the qualified medical evaluator
38 upon finding a violation listed in subdivision (k), the administrative
39 director may, in his or her discretion, place a qualified medical
40 evaluator on probation subject to appropriate conditions, including

1 ordering continuing education or training. The administrative
2 director shall report to the appropriate licensing board the name
3 of any qualified medical evaluator who is disciplined pursuant to
4 this subdivision.

5 (m) The administrative director shall terminate from the list of
6 medical evaluators any physician whose licensure has been
7 terminated by the relevant licensing board, or who has been
8 convicted of a misdemeanor or felony related to the conduct of his
9 or her medical practice, or of a crime of moral turpitude. The
10 administrative director shall suspend or terminate as a medical
11 evaluator any physician who has been suspended or placed on
12 probation by the relevant licensing board. The administrative
13 director shall terminate as a medical evaluator any physician who
14 is a person described in paragraph (3) of subdivision (b) of Section
15 139.21. If a physician is suspended or terminated as a qualified
16 medical evaluator under this subdivision, a report prepared by the
17 physician that is not complete, signed, and furnished to one or
18 more of the parties prior to the date of conviction or action of the
19 licensing board, whichever is earlier, shall not be admissible in
20 any proceeding before the appeals board nor shall there be any
21 liability for payment for the report and any expense incurred by
22 the physician in connection with the report.

23 (n) A qualified medical evaluator shall pay a fee, as determined
24 by the administrative director, for appointment or reappointment.
25 These fees shall be based on a sliding scale as established by the
26 administrative director. All revenues from fees paid under this
27 subdivision shall be deposited into the Workers' Compensation
28 Administration Revolving Fund and are available for expenditure
29 upon appropriation by the Legislature, and shall not be used by
30 any other department or agency or for any purpose other than
31 administration of the programs of the Division of Workers'
32 Compensation related to the provision of medical treatment to
33 injured employees.

34 (o) An evaluator shall not request or accept any compensation
35 or other thing of value from any source that does or could create
36 a conflict with his or her duties as an evaluator under this code.
37 The administrative director, after consultation with the Commission
38 on Health and Safety and Workers' Compensation, shall adopt
39 regulations to implement this subdivision.

1 SEC. 2. Section 139.21 is added to the Labor Code,
2 immediately following Section 139.2, to read:

3 139.21. (a) (1) The administrative director shall promptly
4 suspend any physician or practitioner from participating in the
5 workers' compensation system in any capacity when the individual
6 or entity meets any of the following criteria:

7 (A) The individual has been convicted of any felony or
8 misdemeanor involving fraud or abuse of the Medi-Cal program,
9 Medicare program, or workers' compensation system, or fraud or
10 abuse of any patient, or otherwise substantially related to the
11 qualifications, functions, or duties of a provider of services.

12 (B) The individual or entity has been suspended, due to fraud
13 or abuse, from the federal Medicare or Medicaid programs.

14 (C) The individual's license, certificate, or approval to provide
15 health care has been surrendered or revoked.

16 (2) The administrative director shall exercise due diligence to
17 identify physicians and practitioners who have been suspended as
18 described in subdivision (a) by accessing the quarterly updates to
19 the list of suspended and ineligible providers maintained by the
20 State Department of Health Care Services for the Medi-Cal
21 p r o g r a m a t
22 <https://files.medi-cal.ca.gov/pubsdoco/SandILanding.asp>.

23 (b) (1) The administrative director shall adopt regulations for
24 suspending a physician's or practitioner's participation in the
25 workers' compensation system, subject to the notice and hearing
26 requirements in paragraph (2).

27 (2) The administrative director shall furnish to the physician or
28 practitioner written notice of the right to a hearing regarding the
29 suspension and the procedure to follow to request a hearing. The
30 notice shall state that the division is required to suspend the
31 physician or practitioner pursuant to subdivision (a) after 30 days
32 from the date the notice is mailed unless the physician or
33 practitioner requests a hearing and, in that hearing, the physician
34 or practitioner provides proof that paragraph (1) of subdivision (a)
35 is not applicable. The physician or practitioner may request a
36 hearing within 10 days from the date the notice is sent by the
37 administrative director. The request for the hearing shall stay the
38 suspension. The hearing shall be held within 30 days of the receipt
39 of the request. Upon the completion of the hearing, if the division
40 finds that paragraph (1) of subdivision (a) is applicable, the

1 administrative director shall immediately suspend the physician
2 or practitioner.

3 (3) If a physician is a qualified medical examiner, and the
4 division finds, in accordance with the notice and hearing
5 requirements of this section, that paragraph (1) of subdivision (a)
6 is applicable to that physician, the physician shall be terminated
7 from the list of medical evaluators pursuant to subdivision (m) of
8 Section 139.2.

9 (c) The administrative director shall promptly notify the
10 physician's or practitioner's state licensing, certifying, or
11 registering authority of a suspension imposed pursuant to this
12 section and shall update the division's qualified medical evaluator
13 and medical provider network databases, as appropriate.

14 (d) A provider of services, whether an individual, clinic, group,
15 corporation, or other association, may not submit a claim for
16 payment to, or pursue a claim for payment from, a payor for any
17 services or supplies provided by a physician or practitioner whose
18 participation in the workers' compensation system has been
19 suspended pursuant to this section, unless that claim for payment
20 has been reduced to final judgment or the services or supplies are
21 unrelated to a violation of the laws governing workers'
22 compensation.

23 SEC. 3. Section 4906 of the Labor Code is amended to read:

24 4906. (a) A charge, claim, or agreement for the legal services
25 or disbursements mentioned in subdivision (a) of Section 4903,
26 or for the expense mentioned in subdivision (b) of Section 4903,
27 is not enforceable, valid, or binding in excess of a reasonable
28 amount. The appeals board may determine what constitutes a
29 reasonable amount, but payment pursuant to subdivision (a) or (b)
30 of Section 4903 or Section 5710 shall not be allowed for any
31 services or expenses incurred prior to the filing of the disclosure
32 form described in subdivision (e) with the appeals board and the
33 sending of that form to the employer, or to the insurer or third-party
34 administrator, if either is known, by the attorney.

35 (b) An attorney or agent shall not demand or accept any fee
36 from an employee or dependent of an employee for the purpose
37 of representing the employee or dependent of an employee in any
38 proceeding of the division, appeals board, or any appellate
39 procedure related thereto until the amount of the fee has been
40 approved or set by the appeals board.

1 (c) Any fee agreement shall be submitted to the appeals board
2 for approval within 10 days after the agreement is made.

3 (d) In establishing a reasonable attorney’s fee, consideration
4 shall be given to the responsibility assumed by the attorney, the
5 care exercised in representing the applicant, the time involved,
6 and the results obtained.

7 (e) At the initial consultation, an attorney shall furnish the
8 employee a written disclosure form promulgated by the
9 administrative director which shall clearly and prominently
10 describe the procedures available to the injured employee or his
11 or her dependents. The disclosure form shall describe this section,
12 the range of attorney’s fees customarily approved by the appeals
13 board, and the attorney’s fees provisions of Section 4064 and the
14 extent to which an employee may receive compensation without
15 incurring attorney’s fees. The disclosure form shall include the
16 telephone number of the administrative director together with the
17 statement that the employee may receive answers at that number
18 to questions concerning entitlement to compensation or the
19 procedures to follow to receive compensation. A copy of the
20 disclosure form shall be signed by the employee and the attorney
21 and filed with the appeals board and sent to the employer, or insurer
22 or third-party administrator, if either is known, by the attorney
23 within 15 days of the employee’s and attorney’s execution thereof.

24 (f) The disclosure form set forth in subdivision (e) shall contain,
25 prominently stated, the following statement:

26
27 “Any person who makes or causes to be made any knowingly
28 false or fraudulent material statement or representation for the
29 purpose of obtaining or denying ~~worker’s~~ *workers’* compensation
30 benefits or payments is guilty of a felony.”

31
32 (g) (1) The disclosure form described in subdivision (e) shall
33 also contain a paragraph setting forth the exact location of the
34 district office of the appeals board at which the employee’s case
35 will be filed. This paragraph shall also contain, prominently
36 displayed, the following statement:

37
38 “The employee has been advised of the district office at which
39 his or her case will be filed and that he or she may be required to

1 attend conferences or hearings at this location at his or her own
2 expense.”

3

4 (2) The disclosure form may not be signed by the employee
5 until he or she has been advised of the location at which his or her
6 case will be filed, has met with or personally spoken with an
7 attorney licensed by the State Bar of California who is regularly
8 employed by the firm by which the employee will be represented,
9 and has been advised of his or her rights as set forth in subdivision
10 (e) and the provisions of paragraph (1). The name of this individual
11 shall be clearly and legibly set forth on the disclosure form.

12 (3) The disclosure form shall include the actual date the
13 disclosure form was signed by both the employee and the attorney
14 and shall be signed under penalty of perjury by the attorney
15 representing the employee, or an attorney licensed by the State
16 Bar of California who is regularly employed by his or her firm. A
17 copy of the disclosure form containing all of the required
18 information shall be given to the employee when he or she signs
19 the disclosure form.

20 (h) In addition to the disclosure form, the employee, the insurer,
21 the employer, and the attorneys for each party shall sign under
22 penalty of perjury and file with the board a statement, with the
23 application or answer, and in addition to the disclosure required
24 pursuant to subdivision (g), that they have not violated Section
25 139.3 and that they have not offered, delivered, received, or
26 accepted any rebate, refund, commission, preference, patronage
27 dividend, discount, or other consideration, whether in the form of
28 money or otherwise, as compensation or inducement for any
29 referred examination or evaluation.

30 (i) An attorney who subsequently assumes the representation
31 of the employee in the same action or proceeding shall complete
32 a disclosure form that meets all of the requirements of this section
33 and the statement required by subdivision (h). Both the form and
34 the statement shall be signed under penalty of perjury by the
35 attorney or an attorney licensed by the State Bar of California who
36 is regularly employed by his or her firm. Both the disclosure form
37 and the statement shall be filed with the appeals board and sent to
38 the employer, or insurer or third-party administrator, if either is
39 known, by the attorney within 15 days of the employee’s and
40 attorney’s execution of the form and statement. Payment pursuant

1 to subdivision (a) or (b) of Section 4903 or Section 5710 shall not
2 be allowed for any services or expenses incurred prior to the filing
3 of the disclosure form described in subdivision (e) with the appeals
4 board and the sending of that form to the employer, or to the insurer
5 or third-party administrator, if either is known, by the attorney.

6 ~~SEC. 4. Section 5402 of the Labor Code is amended to read:~~

7 ~~5402. (a) Knowledge of an injury, obtained from any source,~~
8 ~~on the part of an employer, his or her managing agent,~~
9 ~~superintendent, foreman, or other person in authority, or knowledge~~
10 ~~of the assertion of a claim of injury sufficient to afford opportunity~~
11 ~~to the employer to make an investigation into the facts, is~~
12 ~~equivalent to service under Section 5400.~~

13 ~~(b) If liability is not rejected within 90 days after the date the~~
14 ~~claim form is filed under Section 5401, the injury shall be presumed~~
15 ~~compensable under this division. The presumption of this~~
16 ~~subdivision is rebuttable only by evidence discovered subsequent~~
17 ~~to the 90-day period.~~

18 ~~(c) Within one working day after an employee files a claim form~~
19 ~~under Section 5401, the employer shall authorize the provision of~~
20 ~~all treatment, consistent with Section 5307.27, for the alleged~~
21 ~~injury and shall continue to provide the treatment until the date~~
22 ~~that liability for the claim is accepted or rejected. Until the date~~
23 ~~the claim is accepted or rejected, liability for medical treatment~~
24 ~~shall be limited to ten thousand dollars (\$10,000).~~

25 ~~(d) The liability for payment for medical treatment set forth in~~
26 ~~subdivision (c) shall not apply to claims for occupational disease~~
27 ~~or cumulative injury filed on or after January 1, 2017, unless one~~
28 ~~of the following applies:~~

29 ~~(1) A multiemployer Taft-Hartley trust fund, as described in~~
30 ~~paragraph (5) of subdivision (c) of Section 186 of Title 29 of the~~
31 ~~United States Code, would be liable for payment for the treatment~~
32 ~~if the employer was not liable for payment for the treatment.~~

33 ~~(2) The treatment is provided by the employee's personal~~
34 ~~physician as defined in subdivision (d) of Section 4600.~~

35 ~~(3) The treatment is provided by a physician in a medical~~
36 ~~provider network established by the employer pursuant to Section~~
37 ~~4616.~~

38 ~~(e) Treatment provided under subdivision (c) shall not give rise~~
39 ~~to a presumption of liability on the part of the employer.~~

1 ~~SEC. 5.~~

2 *SEC. 4.* Section 14123 of the Welfare and Institutions Code is
3 amended to read:

4 14123. Participation in the Medi-Cal program by a provider
5 of service is subject to suspension in order to protect the health of
6 the recipients and the funds appropriated to carry out this chapter.

7 (a) (1) The director may suspend a provider of service from
8 further participation under the Medi-Cal program for violation of
9 any provision of this chapter or Chapter 8 (commencing with
10 Section 14200) or any rule or regulation promulgated by the
11 director pursuant to those chapters. The suspension may be for an
12 indefinite or specified period of time and with or without
13 conditions, or may be imposed with the operation of the suspension
14 stayed or probation granted. The director shall suspend a provider
15 of service for conviction of any felony or any misdemeanor
16 involving fraud, abuse of the Medi-Cal program or any patient, or
17 otherwise substantially related to the qualifications, functions, or
18 duties of a provider of service.

19 (2) If the provider of service is a clinic, group, corporation, or
20 other association, conviction of any officer, director, or shareholder
21 with a 10 percent or greater interest in that organization, of a crime
22 described in paragraph (1) shall result in the suspension of that
23 organization and the individual convicted if the director believes
24 that suspension would be in the best interest of the Medi-Cal
25 program. If the provider of service is a political subdivision of the
26 state or other government agency, the conviction of the person in
27 charge of the facility of a crime described in paragraph (1) may
28 result in the suspension of that facility. The record of conviction
29 or a certified copy thereof, certified by the clerk of the court or by
30 the judge in whose court the conviction is had, shall be conclusive
31 evidence of the fact that the conviction occurred. A plea or verdict
32 of guilty, or a conviction following a plea of nolo contendere is
33 deemed to be a conviction within the meaning of this section.

34 (3) After conviction, but before the time for appeal has elapsed
35 or the judgment of conviction has been affirmed on appeal, the
36 director, if he or she believes that suspension would be in the best
37 interests of the Medi-Cal program, may order the suspension of a
38 provider of service. When the time for appeal has elapsed, or the
39 judgment of conviction has been affirmed on appeal or when an
40 order granting probation is made suspending the imposition of

1 sentence irrespective of any subsequent order under Section 1203.4
2 of the Penal Code allowing a person to withdraw his or her plea
3 of guilty and to enter a plea of not guilty, or setting aside the verdict
4 of guilty, or dismissing the accusation, information, or indictment,
5 the director shall order the suspension of a provider of service.
6 The suspension shall not take effect earlier than the date of the
7 director's order. Suspension following a conviction is not subject
8 to the proceedings required in subdivision (c). However, the
9 director may grant an informal hearing at the request of the provider
10 of service to determine in the director's sole discretion if the
11 circumstances surrounding the conviction justify rescinding or
12 otherwise modifying the suspension provided for in this
13 subdivision.

14 (4) If the provider of service appeals the conviction and the
15 conviction is reversed, the provider may apply for reinstatement
16 to the Medi-Cal program after the conviction is reversed.
17 Notwithstanding Section 14124.6, the application for reinstatement
18 shall not be subject to the one-year waiting period for the filing of
19 a reinstatement petition pursuant to Section 11522 of the
20 Government Code.

21 (b) Whenever the director receives written notification from the
22 Secretary of the United States Department of Health and Human
23 Services that a physician or other individual practitioner has been
24 suspended from participation in the Medicare or Medicaid
25 programs, the director shall promptly suspend the practitioner from
26 participation in the Medi-Cal program and notify the
27 Administrative Director of the Division of Workers' Compensation
28 of the suspension, in accordance with paragraph (2) of subdivision
29 (e). This automatic suspension is not subject to the proceedings
30 required in subdivision (c). No payment from state or federal funds
31 may be made for any item or service rendered by the practitioner
32 during the period of suspension.

33 (c) The proceedings for suspension shall be conducted pursuant
34 to Section 100171 of the Health and Safety Code. The director
35 may temporarily suspend any provider of service prior to any
36 hearing when in his or her opinion that action is necessary to
37 protect the public welfare or the interests of the Medi-Cal program.
38 The director shall notify the provider of service of the temporary
39 suspension and the effective date thereof and at the same time
40 serve the provider with an accusation. The accusation and all

1 proceedings thereafter shall be in accordance with Section 100171
2 of the Health and Safety Code. Upon receipt of a notice of defense
3 by the provider, the director shall set the matter for hearing within
4 30 days after receipt of the notice. The temporary suspension shall
5 remain in effect until such time as the hearing is completed and
6 the director has made a final determination on the merits. The
7 temporary suspension shall, however, be deemed vacated if the
8 director fails to make a final determination on the merits within
9 60 days after the original hearing has been completed. This
10 subdivision does not apply where the suspension of a provider is
11 based upon the conviction of any crime involving fraud, abuse of
12 the Medi-Cal program, or suspension from the federal Medicare
13 program. In those instances, suspension shall be automatic.

14 (d) (1) The suspension by the director of any provider of service
15 shall preclude the provider from submitting claims for payment,
16 either personally or through claims submitted by any clinic, group,
17 corporation, or other association to the Medi-Cal program for any
18 services or supplies the provider has provided under the program,
19 except for services or supplies provided prior to the suspension.
20 No clinic, group, corporation, or other association which is a
21 provider of service shall submit claims for payment to the Medi-Cal
22 program for any services or supplies provided by a person within
23 the organization who has been suspended or revoked by the
24 director, except for services or supplies provided prior to the
25 suspension.

26 (2) If the provisions of this chapter, Chapter 8 (commencing
27 with Section 14200), or the regulations promulgated by the director
28 are violated by a provider of service that is a clinic, group,
29 corporation, or other association, the director may suspend the
30 organization and any individual person within the organization
31 who is responsible for the violation.

32 (e) (1) Notice of the suspension shall be sent by the director to
33 the provider's state licensing, certifying, or registering authority,
34 along with the evidence upon which the suspension was based.

35 (2) At the same time notice is provided pursuant to paragraph
36 (1), the director shall provide written notification of the suspension
37 to the Administrative Director of the Division of Workers'
38 Compensation, for purposes of Section 139.21 of the Labor Code.

39 (f) In addition to the bases for suspension contained in
40 subdivisions (a) and (b), the director may suspend a provider of

1 service from further participation under the Medi-Cal dental
2 program for the provision of services that are below or less than
3 the standard of acceptable quality, as established by the California
4 Dental Association Guidelines for the Assessment of Clinical
5 Quality and Professional Performance, Copyright 1995, Third
6 Edition, as periodically amended. The suspension shall be subject
7 to the requirements contained in subdivisions (a) to (e), inclusive.

8 ~~SEC. 6.~~

9 *SEC. 5.* 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.

O