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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1244

Introduced by Assembly Members Gray and Daly
(Coauthors: Assembly Members Arambula, Brown, Cooley, Cooper, Dodd, Frazier, Irwin, Low, Medina, Ting, and Wood)

February 27, 2015

An act to amend ~~Sections 139.2 and~~ *Section* 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:~~ *compensation.*

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~~ *physician, practitioner, or provider* from participating in the workers' compensation system ~~in any capacity when if as a physician, practitioner, or provider~~ the individual or entity meets specified criteria, including ~~when if~~ 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 if~~ that individual's license, certificate, or approval to provide health care has been surrendered or revoked, or ~~when if~~ 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~~ *physician, practitioner, or provider from*

*participating in the workers' compensation system pursuant to these provisions, as specified, and would require the administrative director to furnish to the ~~physician or practitioner~~ *physician, practitioner, or provider* 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~~ *physician's, practitioner's, or provider'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.~~ *require the administrative director to notify the chief judge of the division of a suspension under these provisions, as specified, and post a notice on the department's Internet Web site. The bill would enact special lien proceedings for the adjudication of any liens of a physician, practitioner, or provider who has been suspended pursuant to these provisions because he or she has been convicted of a felony or misdemeanor that meets specified criteria.**

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~~ *service* 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: *services and disbursements in connection with those legal services*. Existing law provides that a charge, claim, or agreement for those legal services or disbursements, or that reasonable expense, *disbursements* 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 *legal services or disbursements in connection with those legal services*, or expenses relating to the *deposition of witnesses*, 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.

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~~

1 approved by the administrative director. The administrative director
2 shall specify the curriculum to be covered by disability evaluation
3 report writing courses, which shall include, but is not limited to,
4 12 or more hours of instruction.

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

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

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

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

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

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

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

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

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

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

38 (C) ~~Has not less than five years' postdoctoral experience in the~~
39 ~~diagnosis and treatment of emotional and mental disorders, and~~

1 ~~has served as an agreed medical evaluator on eight or more~~
2 ~~occasions prior to January 1, 1990.~~

3 ~~(6) Does not have a conflict of interest as determined under the~~
4 ~~regulations adopted by the administrative director pursuant to~~
5 ~~subdivision (o):~~

6 ~~(7) Meets any additional medical or professional standards~~
7 ~~adopted pursuant to paragraph (6) of subdivision (j):~~

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

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

19 ~~(1) Is in compliance with all applicable regulations and~~
20 ~~evaluation guidelines adopted by the administrative director:~~

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

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

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

4 139.21. (a) (1) The administrative director shall promptly
5 ~~suspend any physician or practitioner~~ *suspend, pursuant to*
6 *subdivision (b), any physician, practitioner, or provider* from
7 participating in the workers’ compensation system ~~in any capacity~~
8 ~~when as a physician, practitioner, or provider~~ if the individual or
9 entity meets any of the following criteria:

10 (A) The individual has been convicted of any felony or
11 ~~misdemeanor involving~~ *misdemeanor and that crime comes within*
12 *any of the following descriptions:*

13 (i) *It involves* fraud or abuse of the Medi-Cal program, Medicare
14 program, or workers’ compensation system, or fraud or abuse of
15 ~~any patient, or patient.~~

16 (ii) *It relates to the conduct of the individual’s medical practice*
17 *as it pertains to patient care.*

18 (iii) *It is a financial crime that relates to the Medi-Cal program,*
19 *Medicare program, or workers’ compensation system.*

20 (iv) *It is* otherwise substantially related to the qualifications,
21 functions, or duties of a provider of services.

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

24 (C) The individual’s license, certificate, or approval to provide
25 health care has been surrendered or revoked.

26 (2) The administrative director shall exercise due diligence to
27 ~~identify physicians and practitioners~~ *physicians, practitioners, or*
28 *providers* who have been suspended as described in subdivision
29 (a) by accessing the quarterly updates to the list of suspended and
30 ineligible providers maintained by the State Department of Health
31 Care Services for the Medi-Cal program at
32 <https://files.medi-cal.ca.gov/pubsdoco/SandILanding.asp>.

33 (b) (1) The administrative director shall adopt regulations for
34 ~~suspending a physician’s or practitioner’s participation~~ *physician,*
35 *practitioner, or provider from participating* in the workers’
36 compensation system, subject to the notice and hearing
37 requirements in paragraph (2).

38 (2) The administrative director shall furnish to the ~~physician or~~
39 ~~practitioner~~ *physician, practitioner, or provider* written notice of
40 the right to a hearing regarding the suspension and the procedure

1 to follow to request a hearing. The notice shall state that the
2 ~~division administrative director~~ is required to suspend the ~~physician~~
3 ~~or practitioner~~ *physician, practitioner, or provider* pursuant to
4 subdivision (a) after 30 days from the date the notice is mailed
5 unless the ~~physician or practitioner~~ *physician, practitioner, or*
6 *provider* requests a hearing and, in that hearing, the ~~physician or~~
7 ~~practitioner~~ *physician, practitioner, or provider* provides proof
8 that paragraph (1) of subdivision (a) is not applicable. The
9 ~~physician or practitioner~~ *physician, practitioner, or provider* may
10 request a hearing within 10 days from the date the notice is sent
11 by the administrative director. The request for the hearing shall
12 stay the suspension. The hearing shall be held within 30 days of
13 the receipt of the request. Upon the completion of the hearing, if
14 the ~~division administrative director~~ finds that paragraph (1) of
15 subdivision (a) is applicable, the administrative director shall
16 immediately suspend the ~~physician or practitioner~~. *physician,*
17 *practitioner, or provider.*

18 ~~(3) If a physician is a qualified medical examiner, and the~~
19 ~~division finds, in accordance with the notice and hearing~~
20 ~~requirements of this section, that paragraph (1) of subdivision (a)~~
21 ~~is applicable to that physician, the physician shall be terminated~~
22 ~~from the list of medical evaluators pursuant to subdivision (m) of~~
23 ~~Section 139.2.~~

24 *(3) The administrative director shall have power and jurisdiction*
25 *to do all things necessary or convenient to conduct the hearings*
26 *provided for in paragraph (2). The hearings and investigations*
27 *may be conducted by any designated hearing officer appointed by*
28 *the administrative director. Any authorized person conducting that*
29 *hearing or investigation may administer oaths, subpoena and*
30 *require the attendance of witnesses and the production of books*
31 *or papers, and cause the depositions of witnesses residing within*
32 *or without the state to be taken in the manner prescribed by law*
33 *for like depositions in civil cases in the superior court of this state*
34 *under Title 4 (commencing with Section 2016.010) of Part 4 of the*
35 *Code of Civil Procedure.*

36 (c) The administrative director shall promptly notify the
37 ~~physician's or practitioner's~~ *physician's, practitioner's, or*
38 *provider's* state licensing, certifying, or registering authority of a
39 suspension imposed pursuant to this section and shall update the

1 division's qualified medical evaluator and medical provider
2 network databases, as appropriate.

3 ~~(d) A provider of services, whether an individual, clinic, group,~~
4 ~~corporation, or other association, may not submit a claim for~~
5 ~~payment to, or pursue a claim for payment from, a payor for any~~
6 ~~services or supplies provided by a physician or practitioner whose~~
7 ~~participation in the workers' compensation system has been~~
8 ~~suspended pursuant to this section, unless that claim for payment~~
9 ~~has been reduced to final judgment or the services or supplies are~~
10 ~~unrelated to a violation of the laws governing workers'~~
11 ~~compensation.~~

12 *(d) Upon suspension of a physician, practitioner, or provider*
13 *pursuant to this section, the administrative director shall give*
14 *notice of the suspension to the chief judge of the division, and the*
15 *chief judge shall promptly thereafter provide written notification*
16 *of the suspension to district offices and all workers' compensation*
17 *judges. The method of notification to all district offices and to all*
18 *workers' compensation judges shall be in a manner determined*
19 *by the chief judge in his or her discretion. The administrative*
20 *director shall also post notification of the suspension on the*
21 *department's Internet Web site.*

22 *(e) The following procedures shall apply for the adjudication*
23 *of any liens of a physician, practitioner, or provider suspended*
24 *pursuant to subparagraph (A) of paragraph (1) of subdivision (a),*
25 *including any liens filed by or on behalf of the physician,*
26 *practitioner, or provider or any clinic, group or corporation in*
27 *which the suspended physician, practitioner, or provider has an*
28 *ownership interest.*

29 *(1) If the disposition of the criminal proceeding provides for or*
30 *requires, whether by plea agreement or by judgment, dismissal of*
31 *liens and forfeiture of sums claimed therein, as specified in the*
32 *criminal disposition, all of those liens shall be deemed dismissed*
33 *with prejudice by operation of law as of the effective date of the*
34 *final disposition in the criminal proceeding, and orders notifying*
35 *of those dismissals may and shall be entered by workers'*
36 *compensation judges.*

37 *(2) If the disposition of the criminal proceeding fails to specify*
38 *the disposition to be made of lien filings in the workers'*
39 *compensation system as set forth in paragraph (1), all liens*
40 *pending in any workers' compensation case in any district office*

1 *within the state shall be consolidated and adjudicated in a special*
2 *lien proceeding as described in subdivisions (f) to (i), inclusive.*

3 *(f) After notice of suspension, pursuant to subdivision (d), and*
4 *if subdivision (e) applies, the administrative director shall appoint*
5 *a special lien proceeding attorney, who shall be an attorney*
6 *employed by the division or by the department. The special lien*
7 *proceeding attorney shall, based on the information that is*
8 *available, identify liens subject to disposition pursuant to*
9 *subdivision (e), and workers' compensation cases in which those*
10 *liens are pending, and shall notify the chief judge regarding those*
11 *liens. Based on this information, the chief judge shall identify a*
12 *district office for a consolidated special lien proceeding to*
13 *adjudicate those liens, and shall appoint a workers' compensation*
14 *judge to preside over that proceeding.*

15 *(g) It shall be a presumption affecting the burden of proof that*
16 *all liens to be adjudicated in the special lien proceeding, and all*
17 *underlying bills for service and claims for compensation asserted*
18 *therein, arise from the conduct subjecting the physician,*
19 *practitioner, or provider to suspension, and that payment is not*
20 *due and should not be made on those liens because they arise from,*
21 *or are connected to, criminal, fraudulent, or abusive conduct or*
22 *activity. A lien claimant shall not have the right to payment unless*
23 *he or she rebuts that presumption by a preponderance of the*
24 *evidence.*

25 *(h) The special lien proceedings shall be governed by the same*
26 *laws, regulations, and procedures that govern all other matters*
27 *before the appeals board. The administrative director shall*
28 *promulgate regulations for the implementation of this section.*

29 *(i) If it is determined in a special lien proceeding that a lien*
30 *does not arise from the conduct subjecting a physician,*
31 *practitioner, or provider to suspension, the workers' compensation*
32 *judge shall have the discretion to adjudicate the lien or transfer*
33 *the lien back to the district office having venue over the case in*
34 *which the lien was filed.*

35 *(j) At any time following suspension, a physician, practitioner,*
36 *or provider lien claimant may elect to withdraw or to dismiss his*
37 *or her lien with prejudice, which shall constitute a final disposition*
38 *of the claim for compensation asserted therein.*

39 *(k) The provisions of this section shall not affect, amend, alter,*
40 *or in any way apply to the provisions of Section 139.2.*

1 ~~SEC. 3.~~

2 *SEC. 2.* Section 4906 of the Labor Code is amended to read:

3 4906. (a) A charge, claim, or agreement for the legal services
4 or disbursements mentioned in subdivision (a) of Section 4903,
5 or for the expense mentioned in subdivision (b) of Section 4903,
6 is not enforceable, valid, or binding in excess of a reasonable
7 amount. The appeals board may determine what constitutes a
8 reasonable amount, but payment pursuant to subdivision (a) ~~or (b)~~
9 of Section 4903 or Section 5710 shall not be allowed for any
10 services or expenses incurred prior to the filing of the disclosure
11 form described in subdivision (e) with the appeals board and the
12 sending of that form to the employer, or to the insurer or third-party
13 administrator, if either is known, by the attorney.

14 (b) An attorney or agent shall not demand or accept any fee
15 from an employee or dependent of an employee for the purpose
16 of representing the employee or dependent of an employee in any
17 proceeding of the division, appeals board, or any appellate
18 procedure related thereto until the amount of the fee has been
19 approved or set by the appeals board.

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

22 (d) In establishing a reasonable attorney's fee, consideration
23 shall be given to the responsibility assumed by the attorney, the
24 care exercised in representing the applicant, the time involved,
25 and the results obtained.

26 (e) At the initial consultation, an attorney shall furnish the
27 employee a written disclosure form promulgated by the
28 administrative director which shall clearly and prominently
29 describe the procedures available to the injured employee or his
30 or her dependents. The disclosure form shall describe this section,
31 the range of attorney's fees customarily approved by the appeals
32 board, and the attorney's fees provisions of Section 4064 and the
33 extent to which an employee may receive compensation without
34 incurring attorney's fees. The disclosure form shall include the
35 telephone number of the administrative director together with the
36 statement that the employee may receive answers at that number
37 to questions concerning entitlement to compensation or the
38 procedures to follow to receive compensation. A copy of the
39 disclosure form shall be signed by the employee and the attorney
40 and filed with the appeals board and sent to the employer, or insurer

1 or third-party administrator, if either is known, by the attorney
2 within 15 days of the employee's and attorney's execution thereof.

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

5
6 "Any person who makes or causes to be made any knowingly
7 false or fraudulent material statement or representation for the
8 purpose of obtaining or denying workers' compensation benefits
9 or payments is guilty of a felony."

10
11 (g) (1) The disclosure form described in subdivision (e) shall
12 also contain a paragraph setting forth the exact location of the
13 district office of the appeals board at which the employee's case
14 will be filed. This paragraph shall also contain, prominently
15 displayed, the following statement:

16
17 "The employee has been advised of the district office at which
18 his or her case will be filed and that he or she may be required to
19 attend conferences or hearings at this location at his or her own
20 expense."

21
22 (2) The disclosure form may not be signed by the employee
23 until he or she has been advised of the location at which his or her
24 case will be filed, has met with or personally spoken with an
25 attorney licensed by the State Bar of California who is regularly
26 employed by the firm by which the employee will be represented,
27 and has been advised of his or her rights as set forth in subdivision
28 (e) and the provisions of paragraph (1). The name of this individual
29 shall be clearly and legibly set forth on the disclosure form.

30 (3) The disclosure form shall include the actual date the
31 disclosure form was signed by both the employee and the attorney
32 and shall be signed under penalty of perjury by the attorney
33 representing the employee, or an attorney licensed by the State
34 Bar of California who is regularly employed by his or her firm. A
35 copy of the disclosure form containing all of the required
36 information shall be given to the employee when he or she signs
37 the disclosure form.

38 (h) In addition to the disclosure form, the employee, the insurer,
39 the employer, and the attorneys for each party shall sign under
40 penalty of perjury and file with the board a statement, with the

1 *complete* application or answer, and in addition to the disclosure
2 required pursuant to subdivision (g), that they have not violated
3 Section 139.3 and that they have not offered, delivered, received,
4 or accepted any rebate, refund, commission, preference, patronage
5 dividend, discount, or other consideration, whether in the form of
6 money or otherwise, as compensation or inducement for any
7 referred examination or evaluation.

8 (i) An attorney who subsequently assumes the representation
9 of the employee in the same action or proceeding shall complete
10 a disclosure form that meets all of the requirements of this section
11 and the statement required by subdivision (h). Both the form and
12 the statement shall be signed under penalty of perjury by the
13 attorney or an attorney licensed by the State Bar of California who
14 is regularly employed by his or her firm. Both the disclosure form
15 and the statement shall be filed with the appeals board and sent to
16 the employer, or insurer or third-party administrator, if either is
17 known, by the attorney within 15 days of the employee's and
18 attorney's execution of the form and statement. Payment pursuant
19 to subdivision (a) ~~or (b)~~ of Section 4903 or Section 5710 shall not
20 be allowed for any services or expenses incurred prior to the filing
21 of the disclosure form described in subdivision (e) with the appeals
22 board and the sending of that form to the employer, or to the insurer
23 or third-party administrator, if either is known, by the attorney.

24 ~~SEC. 4.~~

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

27 14123. Participation in the Medi-Cal program by a provider
28 of service is subject to suspension in order to protect the health of
29 the recipients and the funds appropriated to carry out this chapter.

30 (a) (1) The director may suspend a provider of service from
31 further participation under the Medi-Cal program for violation of
32 any provision of this chapter or Chapter 8 (commencing with
33 Section 14200) or any rule or regulation promulgated by the
34 director pursuant to those chapters. The suspension may be for an
35 indefinite or specified period of time and with or without
36 conditions, or may be imposed with the operation of the suspension
37 stayed or probation granted. The director shall suspend a provider
38 of service for conviction of any felony or any misdemeanor
39 involving fraud, abuse of the Medi-Cal program or any patient, or

1 otherwise substantially related to the qualifications, functions, or
2 duties of a provider of service.

3 (2) If the provider of service is a clinic, group, corporation, or
4 other association, conviction of any officer, director, or shareholder
5 with a 10 percent or greater interest in that organization, of a crime
6 described in paragraph (1) shall result in the suspension of that
7 organization and the individual convicted if the director believes
8 that suspension would be in the best interest of the Medi-Cal
9 program. If the provider of service is a political subdivision of the
10 state or other government agency, the conviction of the person in
11 charge of the facility of a crime described in paragraph (1) may
12 result in the suspension of that facility. The record of conviction
13 or a certified copy thereof, certified by the clerk of the court or by
14 the judge in whose court the conviction is had, shall be conclusive
15 evidence of the fact that the conviction occurred. A plea or verdict
16 of guilty, or a conviction following a plea of nolo contendere is
17 deemed to be a conviction within the meaning of this section.

18 (3) After conviction, but before the time for appeal has elapsed
19 or the judgment of conviction has been affirmed on appeal, the
20 director, if he or she believes that suspension would be in the best
21 interests of the Medi-Cal program, may order the suspension of a
22 provider of service. When the time for appeal has elapsed, or the
23 judgment of conviction has been affirmed on appeal or when an
24 order granting probation is made suspending the imposition of
25 sentence irrespective of any subsequent order under Section 1203.4
26 of the Penal Code allowing a person to withdraw his or her plea
27 of guilty and to enter a plea of not guilty, or setting aside the verdict
28 of guilty, or dismissing the accusation, information, or indictment,
29 the director shall order the suspension of a provider of service.
30 The suspension shall not take effect earlier than the date of the
31 director's order. Suspension following a conviction is not subject
32 to the proceedings required in subdivision (c). However, the
33 director may grant an informal hearing at the request of the provider
34 of service to determine in the director's sole discretion if the
35 circumstances surrounding the conviction justify rescinding or
36 otherwise modifying the suspension provided for in this
37 subdivision.

38 (4) If the provider of service appeals the conviction and the
39 conviction is reversed, the provider may apply for reinstatement
40 to the Medi-Cal program after the conviction is reversed.

1 Notwithstanding Section 14124.6, the application for reinstatement
2 shall not be subject to the one-year waiting period for the filing of
3 a reinstatement petition pursuant to Section 11522 of the
4 Government Code.

5 (b) Whenever the director receives written notification from the
6 Secretary of the United States Department of Health and Human
7 Services that a physician or other individual practitioner has been
8 suspended from participation in the Medicare or Medicaid
9 programs, the director shall promptly suspend the practitioner from
10 participation in the Medi-Cal program and notify the
11 Administrative Director of the Division of Workers' Compensation
12 of the suspension, in accordance with paragraph (2) of subdivision
13 (e). This automatic suspension is not subject to the proceedings
14 required in subdivision (c). No payment from state or federal funds
15 may be made for any item or service rendered by the practitioner
16 during the period of suspension.

17 (c) The proceedings for suspension shall be conducted pursuant
18 to Section 100171 of the Health and Safety Code. The director
19 may temporarily suspend any provider of service prior to any
20 hearing when in his or her opinion that action is necessary to
21 protect the public welfare or the interests of the Medi-Cal program.
22 The director shall notify the provider of service of the temporary
23 suspension and the effective date thereof and at the same time
24 serve the provider with an accusation. The accusation and all
25 proceedings thereafter shall be in accordance with Section 100171
26 of the Health and Safety Code. Upon receipt of a notice of defense
27 by the provider, the director shall set the matter for hearing within
28 30 days after receipt of the notice. The temporary suspension shall
29 remain in effect until such time as the hearing is completed and
30 the director has made a final determination on the merits. The
31 temporary suspension shall, however, be deemed vacated if the
32 director fails to make a final determination on the merits within
33 60 days after the original hearing has been completed. This
34 subdivision does not apply where the suspension of a provider is
35 based upon the conviction of any crime involving fraud, abuse of
36 the Medi-Cal program, or suspension from the federal Medicare
37 program. In those instances, suspension shall be automatic.

38 (d) (1) The suspension by the director of any provider of service
39 shall preclude the provider from submitting claims for payment,
40 either personally or through claims submitted by any clinic, group,

1 corporation, or other association to the Medi-Cal program for any
2 services or supplies the provider has provided under the program,
3 except for services or supplies provided prior to the suspension.
4 No clinic, group, corporation, or other association which is a
5 provider of service shall submit claims for payment to the Medi-Cal
6 program for any services or supplies provided by a person within
7 the organization who has been suspended or revoked by the
8 director, except for services or supplies provided prior to the
9 suspension.

10 (2) If the provisions of this chapter, Chapter 8 (commencing
11 with Section 14200), or the regulations promulgated by the director
12 are violated by a provider of service that is a clinic, group,
13 corporation, or other association, the director may suspend the
14 organization and any individual person within the organization
15 who is responsible for the violation.

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

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

23 (f) In addition to the bases for suspension contained in
24 subdivisions (a) and (b), the director may suspend a provider of
25 service from further participation under the Medi-Cal dental
26 program for the provision of services that are below or less than
27 the standard of acceptable quality, as established by the California
28 Dental Association Guidelines for the Assessment of Clinical
29 Quality and Professional Performance, Copyright 1995, Third
30 Edition, as periodically amended. The suspension shall be subject
31 to the requirements contained in subdivisions (a) to (e), inclusive.

32 ~~SEC. 5.~~

33 *SEC. 4.* No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O