

Senate Bill No. 1660

CHAPTER 1093

An act to amend Section 1373.19 of, and to add Section 1373.20 to, the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 29, 1996. Filed
with Secretary of State September 30, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1660, Rosenthal. Health care service plans: arbitration.

Existing law provides for the licensure and regulations of health care service plans administered by the Commissioner of Corporations. Existing law requires a plan that includes a term that requires parties to submit to binding arbitration in case of a medical malpractice claim to provide for selection by the parties of a single neutral arbitrator in cases for which the damages are \$50,000 or less. Existing law requires, if the parties are unable to agree on a single neutral arbitrator, a method whereby a court appoints an arbitrator to be used. Under existing law, willful violation of any of these provisions is a misdemeanor.

This bill would instead require those plans to provide for selection by the parties of a single neutral arbitrator for cases or disputes for which the damages are \$200,000 or less. The bill would authorize the parties, after a case or dispute has arisen and a request for arbitration has been submitted, to agree in writing to use a multiple arbitrator system.

The bill would impose conditions and restrictions on a plan that uses arbitration to settle disputes with enrollees or subscribers and does not use a professional dispute resolution organization that meets certain criteria. It would also require, if the plan uses an independent professional dispute organization, the provision for assumption of arbitration fees in cases of extreme hardship to be established and administered by the dispute resolution organization.

By changing the definition of a crime, the 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.



The people of the State of California do enact as follows:

SECTION 1. Section 1373.19 of the Health and Safety Code is amended to read:

1373.19. Any health care service plan that includes a term that requires the parties to submit to binding arbitration shall, for those cases or disputes for which the total amount of damages claimed is two hundred thousand dollars (\$200,000) or less, provide for selection by the parties of a single neutral arbitrator who shall have no jurisdiction to award more than two hundred thousand dollars (\$200,000). This provision shall not be subject to waiver, except that nothing in this section shall prevent the parties to an arbitration from agreeing in writing, after a case or dispute has arisen and a request for arbitration has been submitted, to use a tripartite arbitration panel that includes two party-appointed arbitrators or a panel of three neutral arbitrators, or another multiple arbitrator system mutually agreeable to the parties. The agreement shall clearly indicate, in boldface type, that “A case or dispute subject to binding arbitration has arisen between the parties and we mutually agree to waive the requirement that cases or disputes for which the total amount of damages claimed is two hundred thousand dollars (\$200,000) or less be adjudicated by a single neutral arbitrator.” If the parties agree to waive the requirement to use a single neutral arbitrator, the enrollee or subscriber shall have three business days to rescind the agreement. If the agreement is also signed by counsel of the enrollee or subscriber, the agreement shall be immediately binding and may not be rescinded. If the parties are unable to agree on the selection of a neutral arbitrator, and the plan does not use a professional dispute resolution organization independent of the plan that has a procedure for a rapid selection or default appointment of a neutral arbitrator, the method provided in Section 1281.6 of the Code of Civil Procedure may be utilized.

SEC. 2. Section 1373.20 is added to the Health and Safety Code, immediately following Section 1373.19, to read:

1373.20. (a) If a plan uses arbitration to settle disputes with enrollees or subscribers, and does not use a professional dispute resolution organization independent of the plan that has a procedure for a rapid selection, or default appointment, of neutral arbitrators, the following requirements shall be met by the plan with respect to the arbitration of the disputes and shall not be subject to waiver:

(1) If the party seeking arbitration and the plan against which arbitration is sought, in cases or disputes requiring a single neutral arbitrator, are unable to select a neutral arbitrator within 30 days after service of a written demand requesting the designation, it shall be conclusively presumed that the agreed method of selection has failed and the method provided in Section 1281.6 of the Code of Civil Procedure may be utilized.



(2) In cases or disputes in which the parties have agreed to use a tripartite arbitration panel consisting of two party arbitrators and one neutral arbitrator, and the party arbitrators are unable to agree on the designation of a neutral arbitrator within 30 days after service of a written demand requesting the designation, it shall be conclusively presumed that the agreed method of selection has failed and the method provided in Section 1281.6 of the Code of Civil Procedure may be utilized.

(b) If a court reviewing a petition filed pursuant to Section 1373.19 or subdivision (a) finds that a party has engaged in dilatory conduct intended to cause delay in proceeding under the arbitration agreement, the court, by order, may award reasonable costs, including attorney fees, incurred in connection with the filing of the petition.

(c) If a plan uses arbitration to settle disputes with enrollees or subscribers, the following requirements shall be met with respect to extreme hardship cases:

(1) The plan contract shall contain a provision for the assumption of all or a portion of an enrollee's or subscriber's share of the fees and expenses of the neutral arbitrator in cases of extreme hardship.

(2) The plan shall disclose this provision to subscribers in any evidence of coverage issued or amended after August 1, 1997.

(3) The plan shall provide enrollees, upon request, with an application for relief under this subdivision, or information on how to obtain an application from the professional dispute resolution organization that will administer the arbitration process. If the plan uses a professional dispute resolution organization independent of the plan, the provision for assumption of the arbitration fees in cases of extreme hardship shall be established and administered by the dispute resolution organization.

(4) Approval or denial of the application shall be determined by either (A) a professional dispute resolution organization independent of the plan if the plan uses a professional dispute resolution organization, or (B) a neutral arbitrator who is not assigned to hear the underlying dispute, who has been selected pursuant to paragraph (1) of subdivision (a), and whose fees and expenses are paid for by the plan.

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

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative



on the same date that the act takes effect pursuant to the California Constitution.

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