

AMENDED IN ASSEMBLY JULY 10, 1997

AMENDED IN SENATE MAY 23, 1997

AMENDED IN SENATE MAY 15, 1997

AMENDED IN SENATE APRIL 28, 1997

AMENDED IN SENATE APRIL 9, 1997

SENATE BILL

No. 977

Introduced by Senator Peace

(Coauthor: Assembly Member Figueroa)

February 27, 1997

~~An act to amend Sections 2050 , 2411, and 2435 of, and to add Article 1.7 (commencing with Section 515) to Chapter 1 of Division 2 of, the Business and Professions Code, and to add Section 1344.5 to the Health and Safety Code, relating to health care service plans, and making an appropriation therefor.— An act to add Sections 1344.5 and 1344.6 to the Health and Safety Code, relating to health care service plans.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 977, as amended, Peace. Health care service plans: ~~the practice of medicine: malpractice~~ *health care treatment decisions: liability.*

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for licensure and regulation of health care service plans and specialized health care service plans by the Commissioner of Corporations. Willful violation of those provisions is a crime.

~~Existing law, the Medical Practice Act, establishes the Medical Board of California and vests within the board jurisdiction over administration of laws relating to the practice of medicine.~~

~~This bill would declare provision of comprehensive health care services or any physician and surgeon services, on or after January 1, 1998, directly or indirectly by a health care service plan that compensates medical providers on a capitated basis or a specialized health care service plan that compensates medical providers on a capitated basis to be the practice of medicine. The bill would, for services rendered on or after January 1, 1998, require any corporation offering or operating a health care service plan that compensates medical providers on a capitated basis and that includes physician and surgeon services, to obtain a certificate of corporate medical practice issued by the California Medical Board pursuant to regulations adopted by the board, and would make conforming changes. The bill would require the plan to be subject to the Medical Practice Act and the jurisdiction of the board in the same manner as any physician and surgeon. The bill would make a health care service plan that compensates medical providers on a capitated basis directly liable for its own medical malpractice in the same manner as are other health care providers and would make the plan directly liable for the medical malpractice of any of its employees, officers, or agents, with certain exceptions.~~

~~By increasing the fee revenue deposited into the continuously appropriated Medical Board Contingent Fund, this bill would make an appropriation.~~

~~This bill would require any health care service plan or specialized health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975 that contracts for capitated payment for services provided by health care professionals licensed in the healing arts to obtain a certificate of corporate practice issued by the board or agency that licenses those healing arts providers, would require the various licensing board or agencies to adopt regulations establishing criteria for these certificates, and would require them to issue certificates of corporate practice to the applicant plans or specialized plans that meet those~~



~~criteria in the same manner as they would issue licenses or certificates to healing arts professionals under their jurisdiction, including, but not limited to, the assessment of fees. By increasing the fees to be deposited in the various continuously appropriate regulatory funds, this bill would make an appropriation.~~

This bill would provide that a health care service plan has the duty to exercise ordinary care when making health care treatment decisions, as defined, and is liable for damages for harm to an enrollee proximately caused by its failure to exercise ordinary care.

The bill would also provide that a health care service plan is liable for damages for harm to an enrollee proximately caused by the health care treatment decisions made by employers, agents, ostensible agents, or certain representatives of the health care service plan.

The bill would set forth a defense against an action asserted against a health care service plan.

The bill would prohibit a person from maintaining a cause of action against a health care service plan unless the affected enrollee or representative of the affected enrollee has exhausted a prescribed appeals process, except under certain circumstances.

By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 ~~SECTION 1.—The Legislature finds and declares that~~
- 2 *SECTION 1. Section 1344.5 is added to the Health and*
- 3 *Safety Code, to read:*



1 1344.5. (a) For services rendered on or after January
2 1, 1998, a health care service plan shall be directly
3 accountable to patients to ensure that physicians, not the
4 health care service plan, are in charge of patient care.
5 This section does not abrogate or limit any other theory
6 of liability otherwise available at law.

7 (b) A health care service plan has the duty to exercise
8 ordinary care when making health care treatment
9 decisions and is liable for damages for harm to an enrollee
10 proximately caused by its failure to exercise ordinary
11 care.

12 (c) A health care service plan is also liable for damages
13 for harm to an enrollee proximately caused by the health
14 care treatment decisions made by any of the following:

15 (1) Employees of the health care service plan.

16 (2) Agents of the health care service plan.

17 (3) Ostensible agents of the health care service plan.

18 (4) Representatives who are acting on behalf of the
19 health care service plan and over whom the plan has the
20 right to exercise influence or control, or has actually
21 exercised influence or control, that results in the failure
22 to exercise ordinary care.

23 (d) For purposes of this section, a “health care
24 treatment decision” means a determination made when
25 a health care service plan arranges for medical services or
26 a decision by the health care service plan that affects the
27 quality of the diagnosis, care, or treatment provided to
28 enrollees of the plan.

29 (e) It shall be a defense to any action asserted against
30 a health care service plan if both of the following apply:

31 (1) Neither the health care service plan, nor any
32 employee, agent, ostensible agent, or representative for
33 whose conduct the health care service plan is liable under
34 subdivision (b), controlled, influenced, delayed, or
35 participated in the health care treatment decision.

36 (2) The health care service plan did not deny or delay
37 payment for any treatment prescribed or recommended
38 by a provider to the enrollee.

39 (f) The standards set forth in subdivisions (a) and (b)
40 create no obligation on the part of the health care service



1 *plan to provide to an enrollee treatment that is not*
2 *covered by the health care service plan.*

3 *(g) This section shall not create any liability on the*
4 *part of an employer or an employer group purchasing*
5 *organization that purchases coverage or assumes risk on*
6 *behalf of its employees.*

7 *SEC. 2. Section 1344.6 is added to the Health and*
8 *Safety Code, to read:*

9 *1344.6. (a) A person may not maintain a cause of*
10 *action under this chapter against a health care service*
11 *plan that offers a grievance process unless the affected*
12 *enrollee or representative of the affected enrollee has*
13 *exhausted the appeals process offered by the health care*
14 *service plan pursuant to Section 1368.*

15 *(b) An enrollee is not required to comply with*
16 *subdivision (a) and no abatement or other order for*
17 *failure to comply shall be imposed if the enrollee has filed*
18 *a pleading alleging in substance both of the following:*

19 *(1) Harm to the enrollee has already occurred because*
20 *of the conduct of the health care service plan or because*
21 *of an act or omission of an employee, agent, ostensible*
22 *agent, or representative of the health care service plan*
23 *for whose conduct the plan is liable, or the requirement*
24 *of exhausting the process for appeal and review places the*
25 *health of the enrollee in serious jeopardy.*

26 *(2) The review would not be beneficial to the enrollee,*
27 *unless the court, upon motion by a defendant carrier,*
28 *organization, or entity finds after hearing that the*
29 *pleading was not made in good faith, in which case the*
30 *court may order the parties to submit to an independent*
31 *review or mediation or other nonbinding alternative*
32 *dispute resolution and may abate the action for a period*
33 *of not to exceed 30 days. The order of the court shall be*
34 *the sole remedy available to a party complaining of an*
35 *enrollee's failure to comply with subdivision (a).*

36 ~~health care service plans are integrating the functions of~~
37 ~~paying for health care, determining what health care is~~
38 ~~paid for, and arranging for the care. This integration is~~
39 ~~breaking down traditional distinctions as to function.~~
40 ~~Increasingly, health care service plans are governing~~



1 ~~what health care is provided and controlling decisions~~
2 ~~that in the past were the exclusive domain of health care~~
3 ~~professionals and patients. The Legislature further finds~~
4 ~~that this integration makes it imperative that health care~~
5 ~~service plans and specialized health care service plans be~~
6 ~~held fully responsible for their decisions, to the same~~
7 ~~extent and in the same manner that health care~~
8 ~~professionals have been held responsible for the~~
9 ~~consequences of their decisions.~~

10 SEC. 2. ~~Article 1.7 (commencing with Section 515) is~~
11 ~~added to Chapter 1 of Division 2 of the Business and~~
12 ~~Professions Code, to read:~~

13
14 ~~Article 1.7. Corporate Healing Arts Practice by Health~~
15 ~~Care Service Plans~~

16
17 ~~515. (a) Any health care service plan or specialized~~
18 ~~health care service plan licensed under the Knox-Keene~~
19 ~~Health Care Service Plan Act of 1975 (Chapter 2.2~~
20 ~~(commencing with Section 1340) of Division 2 of the~~
21 ~~Health and Safety Code) that contracts for capitated~~
22 ~~payment for services provided by health care~~
23 ~~professionals licensed under this division, shall obtain a~~
24 ~~certificate of corporate practice issued by the board or~~
25 ~~agency that licenses the healing arts providers providing~~
26 ~~services under the plan.~~

27 ~~(b) The various licensing boards or agencies shall issue~~
28 ~~certificates of corporate practices to plans and specialized~~
29 ~~plans applying for licensure under this section, that meet~~
30 ~~the criteria established pursuant to subdivision (c), in the~~
31 ~~same manner as it issues licenses or certificates to healing~~
32 ~~arts professionals under its jurisdiction, including, but not~~
33 ~~limited to, the assessment of fees established at an amount~~
34 ~~necessary to recover the actual costs of the licensing~~
35 ~~program.~~

36 ~~(c) The various licensing boards or agencies shall~~
37 ~~adopt regulations establishing criteria for issuance of~~
38 ~~certificates under this article.~~

39 SEC. 3. ~~Section 2050 of the Business and Professions~~
40 ~~Code is amended to read:~~



1 ~~2050. (a) Except as set forth in subdivision (b), the~~
2 ~~Division of Licensing shall issue one form of certificate to~~
3 ~~all physicians and surgeons licensed by the board which~~
4 ~~shall be designated as a “physician’s and surgeon’s~~
5 ~~certificate.”~~

6 ~~(b) The division shall also issue a “certificate of~~
7 ~~corporate medical practice” to a health care service plan~~
8 ~~licensed under the Knox-Keene Health Care Service Plan~~
9 ~~Act of 1975 (Chapter 2.2 (commencing with Section~~
10 ~~1340) of Division 2 of the Health and Safety Code), as set~~
11 ~~forth in Section 2411, if the health care service plan~~
12 ~~compensates medical providers on a capitated basis.~~

13 ~~SEC. 4. Section 2411 of the Business and Professions~~
14 ~~Code is amended to read:~~

15 ~~2411. (a) Notwithstanding any other provision of~~
16 ~~law, the offering and operation by a medical corporation~~
17 ~~of a health care service plan licensed pursuant to Chapter~~
18 ~~2.2 (commencing with Section 1340) of Division 2 of the~~
19 ~~Health and Safety Code is hereby authorized. For that~~
20 ~~purpose, a medical corporation may employ, or enter into~~
21 ~~contracts or other arrangements with, any person or~~
22 ~~persons authorized to practice any of the healing arts, but~~
23 ~~no such employment, contract, or arrangement shall~~
24 ~~provide for the rendering, supervision, or control of~~
25 ~~professional services other than as authorized by law.~~

26 ~~(b) Notwithstanding any other provision of law,~~
27 ~~including, but not limited to, subdivision (a) and Section~~
28 ~~2400, provision of comprehensive health care services or~~
29 ~~any physician and surgeon services, on or after January 1,~~
30 ~~1998, directly or indirectly by a health care service plan~~
31 ~~that compensates medical providers on a capitated basis~~
32 ~~or a specialized health care service plan that compensates~~
33 ~~medical providers on a capitated basis constitutes the~~
34 ~~practice of the profession of medicine. Accordingly, those~~
35 ~~health care service plans and specialized health care~~
36 ~~service plans that compensate medical providers on a~~
37 ~~capitated basis shall, for services rendered on or after~~
38 ~~January 1, 1998, be subject to all of the requirements of~~
39 ~~this chapter to the same extent as any licensed physician~~
40 ~~and surgeon.~~



1 ~~(c) Notwithstanding any other provision of law, for~~
2 ~~services rendered on or after January 1, 1998, any~~
3 ~~corporation offering or operating a health care service~~
4 ~~plan that compensates medical providers on a capitated~~
5 ~~basis that includes physician and surgeon services, shall~~
6 ~~obtain a certificate of corporate medical practice issued~~
7 ~~by the California Medical Board pursuant to regulations~~
8 ~~adopted by the board, and shall be subject to the~~
9 ~~jurisdiction of the board in the same manner as any~~
10 ~~physician and surgeon.~~

11 ~~SEC. 5. Section 2435 of the Business and Professions~~
12 ~~Code is amended to read:~~

13 ~~2435. The following fees apply to the licensure of~~
14 ~~physicians and surgeons and to the issuance of certificates~~
15 ~~of corporate medical practice pursuant to subdivision (b)~~
16 ~~of Section 2050:~~

17 ~~(a) Each applicant for a certificate based upon a~~
18 ~~national board diplomate certificate, and each applicant~~
19 ~~for a certificate based on reciprocity, and each applicant~~
20 ~~for a certificate based upon written examination, shall pay~~
21 ~~a nonrefundable application and processing fee, as set~~
22 ~~forth in subdivision (b), at the time the application is~~
23 ~~filed.~~

24 ~~(b) The application and processing fee shall be~~
25 ~~established by the Division of Licensing by May 1 of each~~
26 ~~year, to become effective on July 1 of that year. The fee~~
27 ~~shall be fixed at an amount necessary to recover the actual~~
28 ~~costs of the licensing program as projected for the fiscal~~
29 ~~year commencing on the date the fees become effective.~~

30 ~~(c) Each applicant for a certificate by written~~
31 ~~examination, unless otherwise provided by this chapter,~~
32 ~~shall pay an examination fee established by the board,~~
33 ~~which shall equal the actual cost to the board of the~~
34 ~~purchase of the written examination furnished by the~~
35 ~~organization pursuant to Section 2176, plus the actual cost~~
36 ~~to the board of administering the written examination.~~
37 ~~The actual cost to the board of administering the written~~
38 ~~examination that shall be charged to the applicant shall~~
39 ~~not exceed one hundred dollars (\$100). The board may~~



1 ~~charge the examination fee provided for in this section for~~
2 ~~any subsequent reexamination of the applicant.~~

3 ~~(d) The board shall charge each applicant who is~~
4 ~~required to take the oral examination as a condition of~~
5 ~~licensure an oral examination fee that is equal to the~~
6 ~~amount necessary to recover the actual cost of that~~
7 ~~examination. The board shall charge the oral examination~~
8 ~~fee provided for in this subdivision for any subsequent~~
9 ~~oral examination taken by the applicant.~~

10 ~~(e) Each applicant who qualifies for a certificate, as a~~
11 ~~condition precedent to its issuance, in addition to other~~
12 ~~fees required herein, shall pay an initial license fee, if any.~~
13 ~~The initial license fee shall be established by the board at~~
14 ~~an amount not to exceed six hundred dollars (\$600), in~~
15 ~~accordance with paragraph (2) of subdivision (f). Any~~
16 ~~applicant enrolled in an approved postgraduate training~~
17 ~~program shall be required to pay only 50 percent of the~~
18 ~~initial license fee.~~

19 ~~(f) (1) The biennial renewal fee shall be established~~
20 ~~by the board at an amount not to exceed six hundred~~
21 ~~dollars (\$600), in accordance with paragraph (2).~~

22 ~~(2) The board shall establish the biennial renewal fee~~
23 ~~and the initial license fee so that, together with the~~
24 ~~amounts from other revenues, the reserve balance in the~~
25 ~~board's contingent fund shall be equal to approximately~~
26 ~~two months of annual authorized expenditures. Any~~
27 ~~change in the renewal and initial license fees shall be~~
28 ~~effective upon a determination by the board, by~~
29 ~~emergency regulations adopted pursuant to Section 2436,~~
30 ~~that changes in the amounts are necessary to maintain a~~
31 ~~reserve balance in the board's contingent fund equal to~~
32 ~~two months of annual authorized expenditures in the~~
33 ~~state fiscal year in which the expenditures are to occur.~~

34 ~~(g) Notwithstanding Section 163.5, the delinquency~~
35 ~~fee is 10 percent of the biennial renewal fee.~~

36 ~~(h) The duplicate certificate and endorsement fees~~
37 ~~shall each be fifty dollars (\$50), and the certification and~~
38 ~~letter of good standing fees shall each be ten dollars (\$10).~~

39 ~~(i) It is the intent of the Legislature that, in setting fees~~
40 ~~pursuant to this section, the board shall seek to maintain~~



1 a reserve in the Contingent Fund of the Medical Board
2 of California equal to approximately two months'
3 operating expenditures.

4 (j) The board shall report to the appropriate policy
5 and fiscal committees of each house of the Legislature
6 whenever the board proposes or approves a fee increase
7 pursuant to this section. The board shall specify the
8 reasons for each increase and identify the percentage of
9 funds to be derived from an increase in the fees that will
10 be used for investigation or enforcement related
11 activities by the board.

12 SEC. 6. Section 1344.5 is added to the Health and
13 Safety Code, to read:

14 1344.5. For services rendered on or after January 1,
15 1998, a health care service plan that compensates medical
16 providers on a capitated basis shall be directly liable for
17 its own medical malpractice in the same manner as are
18 other health care providers and shall be directly liable for
19 the medical malpractice of any of its employees, officers,
20 or agents, except for medical malpractice of a medical
21 provider resulting from his or her sole negligence, in
22 which case a health care service plan and health care
23 provider contracting with the plan are each responsible
24 for their own acts or omissions.

25 SEC. 7.—

26 SEC. 3. No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because the only costs that may be incurred
29 by a local agency or school district will be incurred
30 because this act creates a new crime or infraction,
31 eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition
34 of a crime within the meaning of Section 6 of Article
35 XIII B of the California Constitution.

36 Notwithstanding Section 17580 of the Government
37 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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