

AMENDED IN ASSEMBLY MAY 4, 1998

AMENDED IN ASSEMBLY JULY 8, 1997

AMENDED IN ASSEMBLY JUNE 26, 1997

AMENDED IN SENATE MAY 5, 1997

SENATE BILL

No. 1191

**Introduced by Committee on Insurance (Senators
Rosenthal (Chair), Hughes, Leslie, Peace, and Schiff)**

February 28, 1997

An act relating to health care, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1191, as amended, Committee on Insurance. Health care: pilot program.

Existing law provides for the licensure and regulation of health care service plans and insurers that provide health care coverage. Existing law provides for the licensure and regulation of physicians and surgeons, as well as other healing arts professionals, and provides certain confidentiality protections for communications between a patient and his or her physician.

This bill would state the Legislature's recognition that the Pilot Health Care Consumers' Information and Assistance Program, a privately funded nonprofit program, has the potential to provide needed education and assistance to consumers about the health care system. The bill would provide certain immunities and confidentiality protections

for representatives of the pilot program for their communications with subscribers or enrollees *or agents of subscribers or enrollees*, any recipient of health care services, or any ~~other~~ individual assisting the ~~enrollee, or subscriber, or~~ recipient of health care services through the pilot program, and would also provide confidentiality protections to persons who use the services of the pilot program.

The bill would also provide that its provisions shall not be construed to limit the authority and ability of the Department of Aging, its contractors, or the direct service providers of the Health Insurance Counseling and Advocacy Program (HICAP), from accessing, monitoring, or reviewing case files and records developed by, or for, the HICAP component of the pilot program. The bill would prohibit construing its provisions as limiting the ability of a subscriber or enrollee or any other recipient of health care services to waive the privileges and protections provided by the bill's provisions in order to provide information to a regulatory agency.

The bill would provide for the repeal of these provisions on June 30, 2000, but would provide that the privileges, immunities, and protections provided to representatives and users of the pilot program would continue to apply to any communications or actions that take place on or before that date.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares all of
2 the following:

3 (a) The health care delivery system is undergoing
4 rapid and dramatic change. Services are increasingly
5 provided by a variety of managed care structures,
6 including different types of health maintenance
7 organizations (HMOs), preferred provider organizations
8 (PPOs), and a growing array of hybrid models that have
9 elements of traditional fee-for-service and indemnity



1 systems while applying managed care's utilization
2 management, gatekeeper, and case management
3 techniques. Many consumers are confused about how
4 managed care works or have problems navigating the
5 health care system.

6 (b) The Center for Health Care Rights, an
7 independent nonprofit consumer organization, ~~is~~
8 ~~establishing~~ *has established* a Pilot Health Care
9 Consumers' Information and Assistance Program in the
10 Sacramento area to help consumers in managed care. The
11 pilot program's goals are to be an accessible source of
12 information and help for health care consumers, collect
13 needed information, and be an advocate to improve how
14 the health care system works for all managed care
15 consumers. The pilot program ~~will be independent from,~~
16 ~~but work in close collaboration~~ *is independent from, but*
17 *works in close collaboration* with, existing health plans,
18 providers, purchasers, insurance agents and brokers,
19 consumer groups, and regulators. The pilot program is
20 specifically working in partnership with the local Health
21 Insurance Counseling and Advocacy Program, which
22 serves Medicare beneficiaries in target communities.

23 (c) The pilot program ~~will educate~~ *educates*
24 consumers about their rights and responsibilities. It ~~will~~
25 ~~also assist~~ *also assists* individuals with questions about
26 their health plan, and those with specific problems,
27 through hotline and in-person services. In addition, the
28 pilot program will collect and analyze information,
29 generated both by consumers' use of the pilot program
30 and from other sources, that can identify the strengths
31 and weaknesses of particular plans, provider groups, or
32 delivery systems. The pilot program has the potential of
33 informing health plans, providers, purchasers,
34 consumers, regulators, and the Legislature about how
35 independent support can be provided to consumers in
36 managed care.

37 (d) Maintaining consumer confidence is a paramount
38 concern in the operation of the pilot program. While one
39 vehicle to protect these communications would be to
40 establish attorney-client relationships with consumers



1 served, the pilot program is not designed as a “legal”
2 program and it would undercut its collaborative strategy
3 and problem-solving orientation if assistance were
4 required to be positioned in a legal context. Furthermore,
5 it is critical that consumers using the pilot program are
6 free from any retribution.

7 SEC. 2. (a) The Legislature recognizes that the
8 ~~planned~~ Pilot Health Care Consumers’ Information and
9 Assistance Program (the pilot program), serving the
10 greater Sacramento area, has the potential to provide
11 needed education and assistance to individual consumers
12 and provide the public with critical information about the
13 health care system and how consumers can best be
14 assisted. While the pilot program is not being supported
15 with public funds, it serves an important public interest.

16 (b) No discriminatory, disciplinary, or retaliatory
17 action shall be taken against any health facility, health
18 care service plan, provider, or their employee, subscriber,
19 enrollee, or agent of the subscriber or enrollee—~~as~~
20 ~~described in subdivision (b) of Section 1368 of the Health~~
21 ~~and Safety Code~~, or any other recipient of health care
22 services *or individual assisting the recipient of health care*
23 *services*, if the communication is made to the pilot
24 program regarding a grievance or complaint and is
25 intended to assist the pilot program in carrying out its
26 duties and responsibilities, unless the action was done
27 maliciously or without good faith. This subdivision is not
28 intended to allow for the unapproved release of
29 confidential or proprietary information by an employee
30 or contractor, or to otherwise infringe on the rights of the
31 employer to supervise, discipline, or terminate an
32 employee for other reasons. ~~For the purposes of this~~
33 ~~section, a health care service plan, provider, subscriber,~~
34 ~~or enrollee shall have the same meaning as set forth in~~
35 ~~Section 1345 of the Health and Safety Code, and a health~~
36 ~~facility shall have the same meaning as set forth in Section~~
37 ~~1250 of the Health and Safety Code.~~

38 (c) All communications between a representative of
39 the pilot program and a subscriber or enrollee, ~~any other~~
40 ~~recipient of health care services, or any individual~~



1 ~~assisting the enrollee, or subscriber, or recipient of health~~
2 ~~care services, seeking assistance or agent of the subscriber~~
3 ~~or enrollee, or any other recipient of health care services~~
4 ~~or any individual assisting the recipient of health care~~
5 ~~services, seeking assistance regarding a grievance or~~
6 ~~complaint, if reasonably related to the requirements of~~
7 ~~the representative's responsibilities for the pilot program,~~
8 ~~and done in good faith, shall be privileged and that~~
9 ~~privilege shall serve as a defense to any action in libel or~~
10 ~~slander.~~ *privileged subject to Division 8 (commencing*
11 *with Section 900) of the Evidence Code. The subscriber,*
12 *enrollee, or other recipient of health care services shall be*
13 *the holder of this privilege and may refuse to disclose, and*
14 *may prevent others from disclosing, a communication*
15 *described in this subdivision. Any communication*
16 *described in this subdivision shall be a privileged*
17 *communication within the meaning of Section 47 of the*
18 *Civil Code, which shall serve as a defense to any civil*
19 *action in libel or slander against any of the persons*
20 *described in this subdivision.*

21 (d) Any representative of the pilot program shall be
22 exempt from being required to testify in court as to any
23 communications described in subdivision (c) except as
24 the court may deem necessary to fulfill the purposes of
25 the pilot program.

26 (e) All records and files of the pilot program relating
27 to any complaint or request for assistance regarding a
28 subscriber or enrollee, or any other recipient of health
29 care services, and their identity, shall remain
30 confidential, and shall not be subject to discovery, unless
31 disclosure is authorized by the subscriber or enrollee, or
32 any other recipient of health care services, or his or her
33 legal representative. No disclosures shall be made outside
34 of the pilot program without the consent of the subscriber
35 or enrollee, or any other recipient of health care services,
36 that is the subject of the record or file, unless disclosure
37 is made without disclosing the identity of that individual.

38 (f) Nothing in this section shall be construed to limit
39 the authority and ability of the California Department of
40 Aging or its contractors, or the direct service providers of



1 the Health Insurance Counseling and Advocacy Program
2 (HICAP), from accessing, monitoring, or reviewing case
3 files and records developed by, or for, the HICAP
4 component of this project. All case records and files of
5 HICAP clients are, and shall remain, the property of
6 HICAP, subject to case file and record retention and
7 disposal requirements established by the Department of
8 Aging. For the purposes of this section, “HICAP clients”
9 are defined as those accepted, initiated, and undertaken
10 on behalf of consumers and clients who are 60 years of age
11 or older, Medicare beneficiaries regardless of age, or their
12 legal representatives.

13 (g) This section shall remain in effect only until June
14 30, 2000, and as of that date is repealed, unless a later
15 enacted statute, that is enacted before June 30, 2000,
16 deletes or extends that date. Notwithstanding this date of
17 repeal, the privileges and protections provided under this
18 section shall continue to apply to any actions taken or
19 materials collected after June 30, 2000, if they relate to
20 communications or actions made on or before June 30,
21 2000.

22 (h) Nothing in this section shall be construed to limit
23 the ability of the subscriber or enrollee, or any other
24 recipient of health care services, to waive the privileges
25 and protections provided by this section for the purpose
26 of providing information to a regulatory agency,
27 including, but not limited to, the Department of
28 Corporations and the Department of Insurance.

29 (i) Nothing in this section shall be construed to
30 supercede the procedures set forth in Sections 1368,
31 1368.01, 1368.02, and 1368.03 of the Health and Safety
32 Code, when the pilot program is providing assistance to
33 a subscriber or enrollee in connection with a complaint
34 against a health care service plan.

35 (j) *For purposes of this section, a health care service*
36 *plan, provider, subscriber, or enrollee shall have the same*
37 *meaning as set forth in Section 1345 of the Health and*
38 *Safety Code, an agent of a subscriber or enrollee shall*
39 *have the same meaning as set forth in subdivision (b) of*
40 *Section 1368 of the Health and Safety Code, and a health*



1 facility shall have the same meaning as set forth in Section
2 1250 of the Health and Safety Code.

3 *SEC. 3. This act is an urgency statute necessary for the*
4 *immediate preservation of the public peace, health, or*
5 *safety within the meaning of Article IV of the*
6 *Constitution and shall go into immediate effect. The facts*
7 *constituting the necessity are:*

8 *In order to make confidentiality protections available*
9 *immediately for communications between patients and*
10 *representatives of a nonprofit pilot program to assist*
11 *patients to resolve concerns about their health care plans,*
12 *it is necessary that this act take effect immediately.*

