

## Senate Bill No. 1191

### CHAPTER 47

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

[Approved by Governor May 28, 1998. Filed with  
Secretary of State May 29, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1191, 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 individual assisting the 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.

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

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

(a) The health care delivery system is undergoing rapid and dramatic change. Services are increasingly provided by a variety of managed care structures, including different types of health maintenance organizations (HMOs), preferred provider organizations (PPOs), and a growing array of hybrid models that have elements of traditional fee-for-service and indemnity systems while applying managed care's utilization management, gatekeeper, and case management techniques. Many consumers are confused about how managed care works or have problems navigating the health care system.

(b) The Center for Health Care Rights, an independent nonprofit consumer organization, has established a Pilot Health Care Consumers' Information and Assistance Program in the Sacramento area to help consumers in managed care. The pilot program's goals are to be an accessible source of information and help for health care consumers, collect needed information, and be an advocate to improve how the health care system works for all managed care consumers. The pilot program is independent from, but works in close collaboration with, existing health plans, providers, purchasers, insurance agents and brokers, consumer groups, and regulators. The pilot program is specifically working in partnership with the local Health Insurance Counseling and Advocacy Program, which serves Medicare beneficiaries in target communities.

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

(d) Maintaining consumer confidence is a paramount concern in the operation of the pilot program. While one vehicle to protect these communications would be to establish attorney-client relationships with consumers served, the pilot program is not designed as a "legal" program and it would undercut its collaborative strategy and problemsolving orientation if assistance were required to be positioned in a legal context. Furthermore, it is critical that consumers using the pilot program are free from any retribution.



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

(b) No discriminatory, disciplinary, or retaliatory action shall be taken against any health facility, health care service plan, provider, or their employee, subscriber, enrollee, or agent of the subscriber or enrollee or any other recipient of health care services or individual assisting the recipient of health care services, if the communication is made to the pilot program regarding a grievance or complaint and is intended to assist the pilot program in carrying out its duties and responsibilities, unless the action was done maliciously or without good faith. This subdivision is not intended to allow for the unapproved release of confidential or proprietary information by an employee or contractor, or to otherwise infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(c) All communications between a representative of the pilot program and a subscriber or enrollee, or agent of the subscriber or enrollee, or any other recipient of health care services or any individual assisting the recipient of health care services, seeking assistance regarding a grievance or complaint, if reasonably related to the requirements of the representative's responsibilities for the pilot program, and done in good faith, shall be privileged subject to Division 8 (commencing with Section 900) of the Evidence Code. The subscriber, enrollee, or other recipient of health care services shall be the holder of this privilege and may refuse to disclose, and may prevent others from disclosing, a communication described in this subdivision. Any communication described in this subdivision shall be a privileged communication within the meaning of Section 47 of the Civil Code, which shall serve as a defense to any civil action in libel or slander against any of the persons described in this subdivision.

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

(e) All records and files of the pilot program relating to any complaint or request for assistance regarding a subscriber or enrollee, or any other recipient of health care services, and their identity, shall remain confidential, and shall not be subject to discovery, unless disclosure is authorized by the subscriber or enrollee, or any other recipient of health care services, or his or her



legal representative. No disclosures shall be made outside of the pilot program without the consent of the subscriber or enrollee, or any other recipient of health care services, that is the subject of the record or file, unless disclosure is made without disclosing the identity of that individual.

(f) Nothing in this section shall be construed to limit the authority and ability of the California Department of Aging or 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 this project. All case records and files of HICAP clients are, and shall remain, the property of HICAP, subject to case file and record retention and disposal requirements established by the Department of Aging. For the purposes of this section, "HICAP clients" are defined as those accepted, initiated, and undertaken on behalf of consumers and clients who are 60 years of age or older, Medicare beneficiaries regardless of age, or their legal representatives.

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

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

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

(j) For purposes of this section, a health care service plan, provider, subscriber, or enrollee shall have the same meaning as set forth in Section 1345 of the Health and Safety Code, an agent of a subscriber or enrollee shall have the same meaning as set forth in subdivision (b) of Section 1368 of the Health and Safety Code, and a health facility shall have the same meaning as set forth in Section 1250 of the Health and Safety Code.

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



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

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