

Assembly Bill No. 285

CHAPTER 535

An act to add Chapter 15 (commencing with Section 4999) to Division 2 of the Business and Professions Code, to add Section 1348.8 to the Health and Safety Code, and to add Section 10279 to the Insurance Code, relating to health care services.

[Approved by Governor September 27, 1999. Filed
with Secretary of State September 28, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 285, Corbett. Health care coverage: medical advice services.

Under existing law, the Knox-Keene Health Care Service Plan Act of 1975, health care service plans are regulated by the Department of Corporations. Under existing law, the willful violation of these provisions is a crime. Existing law also provides for the regulation of insurers by the Department of Insurance.

This bill would require every health care service plan, and every disability insurer that provides coverage for hospital, medical, and surgical expenses, that provides, operates, or contracts for telephone medical advice services to require that the staff employed to provide the services hold a valid license, registration, or certification, in any of specified health professions. The bill would require that a physician and surgeon be available to the telephone medical advice service on an on-call basis at all times the service is advertised to be available.

The bill would prohibit a health care service plan and certain disability insurers from operating, or contracting with an in-state or out-of-state telephone medical advice service to operate, a telephone medical advice service unless the service is registered as provided under the bill and if certain other conditions are met.

Existing law provides for the licensure, certification, or regulation of physicians and surgeons and other health care professionals by various boards under the jurisdiction of the Department of Consumer Affairs.

This bill would provide for the registration of telephone medical advice services with the department and would authorize the Director of Consumer Affairs to set fees for this purpose. The bill would prohibit, on and after January 1, 2000, an in-state or out-of-state business entity from providing telephone medical advice services to a patient at a California address unless the person is registered with the department.

The bill would also impose various related duties upon health care service plans and disability insurers, as well as the state agencies charged with their regulation.

Because this bill would change the requirements of health care service plans, this bill would change the definition of a crime, thereby imposing 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. Chapter 15 (commencing with Section 4999) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 15. TELEPHONE MEDICAL ADVICE SERVICES

4999. (a) On and after January 1, 2000, no in-state or out-of-state business entity shall engage in the business of providing telephone medical advice services to a patient at a California address unless the business is registered with the Department of Consumer Affairs.

(b) Any in-state or out-of-state business entity required to be registered under subdivision (a) that submits proof of accreditation by the American Accreditation Healthcare Commission, URAC, the National Committee for Quality Assurance, the National Quality Health Council, or the Joint Commission on Accreditation of Healthcare Organizations shall be deemed provisionally registered by the board until the earlier of the following:

(1) December 31, 2000.

(2) The granting or denial of an application for registration pursuant to subdivision (a).

(c) This article shall not apply to individuals licensed pursuant to any other provision of this division who provide telephone medical advice that is incidental to the primary focus of their medical advice activities in their professional practices.

4999.1. Application for registration as an in-state or out-of-state telephone medical advice service shall be made on a form prescribed by the department, accompanied by the fee prescribed pursuant to Section 4999.5. The department shall make application forms available no later than July 1, 2000. Applications shall contain all of the following:

(a) The signature of the individual owner of the in-state or out-of-state telephone medical advice service, or of all of the partners if the service is a partnership, or of the president or secretary if the service is a corporation. The signature shall be accompanied by a resolution or other written communication identifying the individual



whose signature is on the form as owner, partner, president, or secretary.

(b) The name under which the person applying for the in-state or out-of-state telephone medical advice service proposes to do business.

(c) The physical address, mailing address, and telephone number of the business entity.

(d) The designation of an agent for service of process in California.

(e) A list of all in-state or out-of-state staff providing telephone medical advice services that are required to be licensed, registered, or certified pursuant to this chapter. This list shall be submitted to the department on a quarterly basis on a form to be prescribed by the department and shall include, but not be limited to, the name, address, state of licensure, category of license, and license number.

(f) The department shall be notified within 30 days of any change of name, location of business, corporate officer, or agent of service.

4999.2. (a) In order to obtain and maintain a registration, in-state or out-of-state telephone medical advice services shall comply with the requirements established by the department. Those requirements shall include, but shall not be limited to, all of the following:

(1) (A) Ensuring that all staff who provide medical advice services are appropriately licensed, certified, or registered as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000), as a dentist pursuant to Chapter 4 (commencing with Section 1600), as a dental hygienist pursuant to Section 1758 et seq., as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900), as a marriage, family and child counselor pursuant to Chapter 13 (commencing with Section 4980), as an optometrist pursuant to Chapter 7 (commencing with Section 3000), as a chiropractor pursuant to the Chiropractic Initiative Act or as an osteopath pursuant to the Osteopathic Initiative Act, and operating consistent with the laws governing their respective scopes of practice in the state within which they provide telephone medical advice services, except as provided in paragraph (2).

(B) Ensuring that all staff who provide telephone medical advice services from an out-of-state location are health care professionals as identified in subparagraph (A) that are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and operating consistent with the laws governing their respective scopes of practice.

(2) Ensuring that all registered nurses providing telephone medical advice services to both in-state and out-of-state business entities registered pursuant to this chapter shall be licensed pursuant to Chapter 6 (commencing with Section 2700).

(3) Ensuring that the telephone medical advice provided is consistent with good professional practice.



(4) Maintaining records of telephone medical advice services, including records of complaints, provided to patients in California for a period of at least five years.

(5) Complying with all directions and requests for information made by the department.

(b) To the extent permitted by Article VII of the California Constitution, the department may contract with a private nonprofit accrediting agency to evaluate the qualifications of applicants for registration pursuant to this chapter, and to make recommendations to the department.

4999.3. (a) The department may suspend, revoke, or otherwise discipline a registrant or deny an application for registration as an in-state or out-of-state telephone medical advice service based on any of the following:

(1) Incompetence, gross negligence, or repeated similar negligent acts performed by the registrant or any employee of the registrant.

(2) An act of dishonesty or fraud by the registrant or any employee of the registrant.

(3) The commission of any act, or being convicted of a crime, that constitutes grounds for denial or revocation of licensure pursuant to any provision of this division.

(b) The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all powers granted therein.

(c) Copies of any complaint against an in-state or out-of-state telephone medical advice service shall be forwarded to the Department of Managed Care.

(d) The department shall forward a copy of any complaint submitted to the department pursuant to this chapter to the entity that issued the license to the licensee involved in the advice provided to the patient.

4999.4. (a) Every registration issued to an in-state or out-of-state telephone medical advice service shall expire 24 months after the initial date of issuance.

(b) To renew an unexpired registration, the registrant shall, before the time at which the license registration would otherwise expire, apply for renewal on a form prescribed by the department, and pay the renewal fee authorized by Section 4999.5.

4999.5. The department may set fees for registration, as an in-state or out-of-state telephone medical advice service sufficient to pay the costs of administration of this chapter.

4999.6. The department may adopt, amend, or repeal any rules and regulations that are reasonably necessary to carry out this chapter.



4999.7. (a) Nothing in this section shall limit, preclude, or otherwise interfere with the practices of other persons licensed or otherwise authorized to practice, under any other provision of this division, telephone medical advice services consistent with the laws governing their respective scopes of practice, or licensed under the Osteopathic Initiative Act or the Chiropractic Initiative Act and operating consistent with the laws governing their respective scopes of practice.

(b) For the purposes of this section, “medical advice” means any activity that would require licensure under this division, the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

4999.8. (a) The department shall conduct a study of issues pertaining to the provision of telephone medical advice services provided by registered and provisionally registered telephone medical advice services providers to patients in California by health care professionals licensed, certified, or registered in other states. All data required for the study shall be submitted to the department within 30 days of the end of each calendar quarter. The study shall be based upon information of telephone medical advice service activities occurring between January 1, 2000, and December 31, 2000. The study shall include, and not be limited to, all of the following:

(1) The number of complaints that were filed with the telephone medical advice service.

(2) The number of complaints that involved health care professionals licensed in other states.

(3) The number of complaints referred to licensing entities in California and other states.

(4) The disposition of complaints filed with the department pursuant to this chapter.

(5) Complaint information submitted by the Director of the Department of Managed Care pursuant to subdivision (b) of Section 1348.8.

(6) Any other information the department determines to be necessary to evaluate the impact of out-of-state licensees providing telephone medical advice services on the quality of care provided to patients in California.

(b) On or before March 1, 2001, the department shall deliver a report summarizing the findings of the study to both the Assembly Committee on Rules and the Senate Committee on Rules, which shall refer the report to appropriate policy committees. The report shall be prepared utilizing existing agency resources.

(c) The department shall conduct a study of issues pertaining to the provision of medical advice services provided by registered telephone medical advice services to patients in California by health care professionals licensed, certified, or registered in other states. All data required for the study shall be submitted to the department within 30 days of the end of each calendar quarter. The study shall



be based upon information of telephone medical advice service activities occurring between January 1, 2001, and December 31, 2001, and shall include, but not limited to, the following:

(1) The number of complaints that were filed with the telephone medical advice service.

(2) The number of complaints that were filed with the department pursuant to this chapter.

(3) The number of complaints that involved health care professionals licensed in other states.

(4) The number of complaints referred to licensing entities in California and other states.

(5) The disposition of complaints filed with the department pursuant to this chapter.

(6) Complaint information submitted by the Director of the Department of Managed Care pursuant to subdivision (b) of Section 1348.8.

(7) Any other information the department determines to be necessary to evaluate the impact of out-of-state licensees providing telephone medical advice services on the quality of care provided to patients in California.

(d) On or before March 1, 2002, the department shall deliver a report summarizing the findings of the study to both the Assembly Committee on Rules and the Senate Committee on Rules, which shall refer the report to appropriate policy committees. The report shall be prepared from then existing agency resources.

4999.9. The director shall, on or before June 30, 2000, adopt emergency regulations to implement this chapter in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

The adoption of emergency regulations described in this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall be exempt from review by the Office of Administrative Law. The emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and shall remain in effect for no more than 180 days.

SEC. 2. Section 1348.8 is added to the Health and Safety Code, to read:

1348.8. (a) Every health care service plan that provides, operates, or contracts for, telephone medical advice services to its enrollees and subscribers shall do all of the following:

(1) Ensure that the in-state or out-of-state telephone medical advice service is registered pursuant to Chapter 15 (commencing with Section 4999) of Division 2 of the Business and Professions Code.



(2) Ensure that the staff providing telephone medical advice services for the in-state or out-of-state telephone medical advice service are licensed as follows:

(A) For full service health care service plans, the staff hold a valid California license as a registered nurse or a valid license in the state within which they provide telephone medical advice services as a physician and surgeon or physician assistant and are operating consistent with the laws governing their respective scopes of practice.

(B) (i) For specialized health care service plans providing, operating, or contracting with a telephone medical advice service in California, the staff shall be appropriately licensed, registered, or certified as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, as a dentist pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code, as a dental hygienist pursuant to Section 1758 et seq. of the Business and Professions Code, as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, as a marriage, family and child counselor pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, as an optometrist pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, as a chiropractor pursuant to the Chiropractic Initiative Act, or as an osteopath pursuant to the Osteopathic Initiative Act and operating consistent with the laws governing their respective scopes of practice.

(ii) For specialized health care service plans providing, operating, or contracting with an out-of-state telephone medical advice service, the staff shall be health care professionals, as identified in clause (i) that are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and operating consistent with the laws governing their respective scopes of practice. All registered nurses providing telephone medical advice services to both in-state and out-of-state business entities registered pursuant to this chapter shall be licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code.

(3) Ensure that every full service health care service plan provides for a physician and surgeon who is available on an on-call basis at all times the service is advertised to be available to enrollees and subscribers.

(4) Ensure that the in-state or out-of-state telephone medical advice service designates an agent for service of process in California and files this designation with the director.



(5) Requires that the in-state or out-of-state telephone medical advice service makes and maintains records for a period of five years after the telephone medical advice services are provided, including, but not limited to, oral or written transcripts of all medical advice conversations with the health care service plan's enrollees or subscribers in California and copies of all complaints. If the records of telephone medical advice services are kept out of state, the health care service plan shall, upon the request of the director, provide the records to the director within 10 days of the request.

(6) Ensures that the telephone medical advice services are provided consistent with good professional practice.

(b) The director shall forward to the Department of Consumer Affairs, within 30 days of the end of each calendar quarter, data regarding complaints filed with the department concerning telephone medical advice services.

SEC. 3. Section 10279 is added to the Insurance Code, to read:

10279. (a) Every disability insurer that provides group or individual policies of disability, or both, that provides, operates, or contracts for, telephone medical advice services to its insureds shall do all of the following:

(1) Ensure that the in-state or out-of-state telephone medical advice service is registered pursuant to Chapter 15 (commencing with Section 4999) of Division 2 of the Business and Professions Code.

(2) Ensure that the staff providing telephone medical advice services for the in-state or out-of-state telephone medical advice service hold a valid California license as a registered nurse or a valid license in the state within which they provide telephone medical advice services as a physician and surgeon or physician assistant and are operating consistent with the laws governing their respective scopes of practice.

(3) Ensure that a physician and surgeon is available on an on-call basis at all times the service is advertised to be available to enrollees and subscribers.

(4) Ensure that the in-state or out-of-state telephone medical advice service designates an agent for service of process in California and files this designation with the commissioner.

(5) Require that the in-state or out-of-state telephone medical advice service makes and maintains records for a period of five years after the telephone medical advice services are provided, including, but not limited to, oral or written transcripts of all medical advice conversations with the disability insurer's insureds in California and copies of all complaints. If the records of telephone medical advice services are kept out of state, the insurer shall, upon the request of the director, provide the records to the director within 10 days of the request.

(6) Ensure that the telephone medical advice services are provided consistent with good professional practice.



(b) The commissioner shall forward to the Department of Consumer Affairs, within 30 days of the end of each calendar quarter, data regarding complaints filed with the department concerning telephone medical advice services.

SEC. 4. 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.

