

AMENDED IN ASSEMBLY APRIL 30, 2001

AMENDED IN ASSEMBLY APRIL 23, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1600**

**Introduced by Assembly Member Keeley  
(Coauthor: Assembly Member Richman)**

February 23, 2001

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~~An act to add Title 9.6 (commencing with Section 1299.20) to Part 3 of the Code of Civil Procedure, to amend Section 1367 of, and to add Section 1367.001 to, the Health and Safety Code, and to add Section 10178.4 to the Insurance Code, relating to arbitration. An act to add Section 1373.22 to the Health and Safety Code, relating to health care service plans.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1600, as amended, Keeley. ~~Arbitration: health care provider disputes~~ *Health care service plans: provider contracts.*

*Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the regulation and licensure of health care service plans by the Department of Managed Health Care and makes a willful violation of the act's provisions a crime. The act, among other matters, requires that a plan's contracts with providers be fair, reasonable, and consistent with the act's objectives, which include ensuring that high-quality health care coverage is provided in the most efficient and cost-effective manner possible.*

*This bill would authorize health care providers on a class basis and health care service plans to negotiate any contract term or condition*



*and upon an impasse, as defined, to submit the dispute to mediation and, if unsuccessful, to refer the matter to arbitration. The bill would require the department to adopt regulations prior to July 1, 2002, pertaining to these mediation and arbitration processes.*

*Because this bill would specify requirements for the mediation and arbitration processes, the violation of which would be punishable as a misdemeanor offense, it would expand the scope of an existing 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.*

~~Existing law provides, in general, for contract arbitration, and establishes special provisions for the arbitration of certain issues.~~

~~This bill would establish special provisions for the arbitration of health care provider disputes and would set forth the findings and declarations of the Legislature in this regard.~~

~~Existing law, contained in the Knox-Keene Health Care Service Plan Act of 1975, sets forth the process for the review of disputes with a health care service plan by health care providers concerning health care services provided to plan enrollees, as specified. A violation of the provisions of that act is a misdemeanor.~~

~~This bill would revise various requirements for the operation of a dispute resolution process to deal with provider disputes concerning matters arising out of plan-provider contracts and to conform with the bill's arbitration provisions. The bill would make certain conduct by a health care service plan directed at providers unlawful.~~

~~Existing law provides for the regulation of disability insurers by the Insurance Commissioner.~~

~~This bill would establish parallel dispute resolution provisions to govern a dispute between providers and insurers issuing policies of disability insurance, and would make health care provider disputes with disability insurers subject to the bill's arbitration provisions. This bill would make certain conduct by a disability insurer directed at providers unlawful.~~

~~Because this bill would revise the requirements for the establishment and operation of a dispute resolution procedure by a health care service plan and would make certain actions by a plan directed at providers~~



~~unlawful, this bill would create a state-mandated local program by creating new crimes and changing the definitions of existing crimes.~~

~~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: no. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 ~~SECTION 1.~~ Title 9.6 (commencing with Section 1299.20) is
- 2 *SECTION 1. (a) The Legislature finds and declares the*
- 3 *following:*
- 4 *(1) The principal priorities of the Legislature for health care*
- 5 *are the following:*
- 6 *(A) The citizens of this state have access to the highest quality*
- 7 *health care.*
- 8 *(B) Patients have the opportunity for continuing access to their*
- 9 *own health care providers.*
- 10 *(C) Health care costs be reasonable and affordable.*
- 11 *(D) Administrative costs in the health care service plan and*
- 12 *health care provider relationship be as low as possible in order to*
- 13 *keep health care costs affordable.*
- 14 *(E) Health care service plans and health care providers remain*
- 15 *financially solvent in order to provide the highest quality care and*
- 16 *to retain patients' continuing access to their own health care*
- 17 *providers.*
- 18 *(2) The current health care service plan and health care*
- 19 *provider relationship is not satisfactorily meeting the state's health*
- 20 *care priorities for the following reasons:*
- 21 *(A) There is evidence that some health care providers are*
- 22 *choosing not to practice in California because of this relationship,*
- 23 *thereby threatening the quality of, and access to, health care in this*
- 24 *state.*
- 25 *(B) Some patients have not been able to have continuing access*
- 26 *to their own health care providers because health care service*



1 *plans and health care providers have been unable to reach*  
2 *agreement on contract extensions.*

3 *(C) Administrative costs in the health care service plan and*  
4 *health care provider relationship are still high, resulting in higher*  
5 *health care costs for both health care service plans and health care*  
6 *providers.*

7 *(D) A large number of providers have been economically*  
8 *failing, threatening the quality of, and access to, health care in this*  
9 *state and the continuity of care for patients.*

10 *(E) Too much of a health care provider's time is spent in the*  
11 *administrative aspects of the relationship, determining what care*  
12 *may be provided to patients and settling claims, thereby reducing*  
13 *the amount of time that providers spend with patients, increasing*  
14 *the cost of health care, reducing patient access to health care, and*  
15 *impairing the quality of care available.*

16 *(F) The negotiating relationship between health care service*  
17 *plans and health care providers is imbalanced.*

18 *(b) It is the intent of the Legislature to implement a solution to*  
19 *achieve the state's health care priorities, given the unsatisfactory*  
20 *relationship between health care service plans and health care*  
21 *providers. This solution would allow competing health care*  
22 *providers to renegotiate contracts with health care service plans,*  
23 *thereby allowing an improved balance in the contracting*  
24 *relationship that should result in improvements in the state's*  
25 *priorities because of the interests of health care service plans and*  
26 *health care providers to resolve issues that are consistent with the*  
27 *interests of the state. This solution would displace unfair*  
28 *competitive practices and have an actively supervised state*  
29 *program to ensure that health care service plan contracts with*  
30 *health care providers are fair, reasonable, and provide appropriate*  
31 *reimbursement, consistent with the best interests of the patients*  
32 *and this act. The Legislature intends that this solution is consistent*  
33 *with the state action immunity doctrine, which establishes*  
34 *immunity from federal antitrust laws for conduct taken or*  
35 *supervised by a state.*

36 *SEC. 2. Section 1373.22 is added to the Health and Safety*  
37 *Code, to read:*

38 *1373.22. (a) Health care providers, on a class basis, and*  
39 *health care service plans may agree to negotiate and mediate any*



1 *contract term or condition upon renewal of a contract or during*  
2 *the contract term, if there is no provision for renegotiation.*

3 *(b) In the event the parties reach an impasse during the*  
4 *negotiations, the parties, upon mutual agreement, may submit the*  
5 *issues in dispute to mediation. For the purposes of this subdivision,*  
6 *an “impasse” means that the parties to a dispute have reached a*  
7 *point in meeting and negotiating where their differences in*  
8 *position are so substantial or prolonged that future meetings would*  
9 *be futile.*

10 *(c) In the event mediation is unsuccessful, the matter shall be*  
11 *referred by the parties to arbitration. No arbitration conducted*  
12 *pursuant to this section shall limit the rights and remedies*  
13 *otherwise available to the parties under common or statutory law.*  
14 *In addition, the arbitrator may order a party, the party’s attorney,*  
15 *or both, to pay reasonable expenses, including attorney’s fees,*  
16 *incurred by another party as a result of bad faith actions or tactics*  
17 *that are frivolous or that are solely intended to cause unnecessary*  
18 *delay.*

19 *(d) The Department of Managed Health Care shall adopt*  
20 *regulations by July 1, 2002, that ensure that the mediation and*  
21 *arbitration processes described in this section are fair and*  
22 *effective. These regulations shall include a provision requiring*  
23 *that the mediator and arbitrator be neutral and specify factors to*  
24 *be considered by the mediator or arbitrator when resolving the*  
25 *issues that shall include, but not be limited to, the following:*

26 *(1) The stipulations of the parties.*

27 *(2) The interest and welfare of patients.*

28 *(3) The patient’s access to care.*

29 *(4) The ability of health care providers to render quality health*  
30 *care services.*

31 *(5) The cost of providing the services, taking into consideration*  
32 *the increasing age of the population, new pharmaceuticals, the*  
33 *increasing sophistication of medical technology, and the medical*  
34 *demographics of the population of the plan’s enrollees.*

35 *(6) The reasonableness of the reimbursement rates.*

36 *(e) Upon reaching the decision, the mediator, or if mediation is*  
37 *unsuccessful, the arbitrator, shall file a copy of the mediation*  
38 *decision or arbitration award, a statement of reasons, and*  
39 *submitted evidence with the department for review and to confirm,*  
40 *modify, or vacate the decision or award. When considering the*



1 *award, the department shall consider whether it is supported by*  
2 *substantial evidence consistent with the factors described in*  
3 *subdivision (d).*

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

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**All matter omitted in this version of the  
bill appears in the bill as amended in the  
Assembly, April 23, 2001 (JR 11)**

