

AMENDED IN SENATE JUNE 27, 2001
AMENDED IN SENATE JUNE 25, 2001
AMENDED IN ASSEMBLY JUNE 4, 2001
AMENDED IN ASSEMBLY MAY 24, 2001
AMENDED IN ASSEMBLY MAY 15, 2001
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

An act to add and repeal Section 1373.22 of the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1600, as amended, Keeley. 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 facilitated negotiation and, if unsuccessful, to refer the matter to advisory arbitration and would require the filing of the contract, facilitated negotiation agreement, or advisory arbitration award with the department. The bill would require the department to ~~confirm, modify, or vacate~~ *approve, modify, or reject* the contract, agreement, or award and would also require it to adopt regulations prior to July 1, 2002, pertaining to these facilitated negotiation and advisory arbitration processes. The bill would specify that its provisions become inoperative on July 1, 2004, and are repealed on January 1, 2005, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends these dates.

Because this bill would specify requirements for the facilitated negotiation and advisory 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.

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. (a) The Legislature finds and declares the
- 2 following:
- 3 (1) The principal priorities of the Legislature for health care are
- 4 the following:
- 5 (A) The citizens of this state have access to the highest quality
- 6 health care.
- 7 (B) Patients have the opportunity for continuing access to their
- 8 own health care providers.



1 (C) Health care costs be reasonable and affordable.

2 (D) Administrative costs in the health care service plan and
3 health care provider relationship be as low as possible in order to
4 keep health care costs affordable.

5 (E) Health care service plans and health care providers remain
6 financially solvent in order to provide the highest quality care and
7 to retain patients' continuing access to their own health care
8 providers.

9 (2) The current health care service plan and health care
10 provider relationship is not satisfactorily meeting the state's health
11 care priorities for the following reasons:

12 (A) There is evidence that some health care providers are
13 choosing not to practice in California because of this relationship,
14 thereby threatening the quality of, and access to, health care in this
15 state.

16 (B) Some patients have not been able to have continuing access
17 to their own health care providers because health care service plans
18 and health care providers have been unable to reach agreement on
19 contract extensions.

20 (C) Administrative costs in the health care service plan and
21 health care provider relationship are still high, resulting in higher
22 health care costs for both health care service plans and health care
23 providers.

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

27 (E) Too much of a health care provider's time is spent in the
28 administrative aspects of the relationship, determining what care
29 may be provided to patients and settling claims, thereby reducing
30 the amount of time that providers spend with patients, increasing
31 the cost of health care, reducing patient access to health care, and
32 impairing the quality of care available.

33 (F) The negotiating relationship between health care service
34 plans and health care providers is imbalanced.

35 (b) It is the intent of the Legislature to implement a solution to
36 achieve the state's health care priorities, given the unsatisfactory
37 relationship between health care service plans and health care
38 providers. This solution would allow competing health care
39 providers to renegotiate contracts with health care service plans,
40 thereby allowing an improved balance in the contracting



1 relationship that should result in improvements in the state's
2 priorities because of the interests of health care service plans and
3 health care providers to resolve issues that are consistent with the
4 interests of the state. This solution would displace unfair
5 competitive practices and have an actively supervised state
6 program to ensure that health care service plan contracts with
7 health care providers are fair, reasonable, and provide appropriate
8 reimbursement, consistent with the best interests of the patients
9 and this act. The Legislature intends that this solution is consistent
10 with the state action immunity doctrine, which establishes
11 immunity from federal and state antitrust laws for conduct taken
12 or supervised by a state. This solution does not authorize the health
13 care providers to conduct a group boycott or to strike. Only activity
14 specifically ~~proscribed~~ *authorized* by this bill shall receive
15 immunity from antitrust liability.

16 SEC. 2. Section 1373.22 is added to the Health and Safety
17 Code, to read:

18 1373.22. (a) (1) Health care providers, on a class basis, and
19 health care service plans may agree to negotiate any contract term
20 or condition upon renewal of a contract or during the contract term,
21 if there is no provision for renegotiation. Any contract negotiated
22 pursuant to this section shall be subject to the confirmation process
23 set forth in subdivision (e). In the event a health care service plan
24 declines to participate in these voluntary negotiations, no further
25 action by the class that is reasonably related to the subject of the
26 requested negotiations shall be permitted.

27 (2) Prior to commencing any negotiations authorized by this
28 section, health care providers shall submit a statement to the
29 Department of Managed Health Care indicating who will
30 represent the providers in the negotiations, the type of licensure of
31 the providers participating in the negotiations, and the number of
32 providers who that person will represent in the negotiations. If the
33 department finds that the nature of the representation is not in the
34 best interest of enrollees or is otherwise inconsistent with the
35 Knox-Keene Health Care Service Plan Act of 1975, it shall
36 indicate the reasons for its findings and recommend changes to the
37 representation to protect the best interest of enrollees and to
38 conform with the provisions of the Knox-Keene Health Care
39 Service Plan Act of 1975.



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

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

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

- 25 (1) The stipulations of the parties.
- 26 (2) The interest and welfare of patients.
- 27 (3) The patient’s access to care.
- 28 (4) The ability of health care providers to render quality health
29 care services.
- 30 (5) The cost of providing the services, taking into consideration
31 the increasing age of the population, new pharmaceuticals, the
32 increasing sophistication of medical technology, and the medical
33 demographics of the population of the plan’s enrollees, including
34 risk adjustment for high concentrations of diseases with high
35 treatment costs such as diabetes, multiple sclerosis, human
36 immunodeficiency virus, and acquired immune deficiency
37 syndrome.
- 38 (6) The reasonableness of the reimbursement rates.
- 39 (7) The impact on the costs of health care premiums to
40 purchasers.



1 (e) Upon negotiation of a contract, the parties, or upon
 2 successful facilitated negotiation, the facilitator, or if the parties
 3 agree to advisory arbitration, the arbitrator, shall file a copy of the
 4 contract, facilitated negotiation agreement, or advisory arbitration
 5 award, a statement of reasons, and submitted evidence to the
 6 department for review. The department, after making an
 7 independent review of the evidence and considering the factors set
 8 ~~forth in subdivision (d), shall confirm, modify, or vacate the~~ *forth*
 9 *in subdivision (d), shall approve, modify, or reject the* contract,
 10 agreement, or award.

11 (f) For purposes of this section, the following definitions apply:

12 (1) “Health care providers” shall mean any health care
 13 professional licensed pursuant to, or group, corporation, or
 14 partnership of health care professionals lawfully organized under
 15 Division 2 (commencing with Section 500) of the Business and
 16 Professions Code or licensed pursuant to the Chiropractic or
 17 Osteopathic Initiative Acts. Health care providers shall also mean
 18 all primary care providers who agree to provide case management
 19 to Medi-Cal beneficiaries pursuant to Section 14088 and
 20 following of the Welfare and Institutions Code. Health care
 21 providers shall not include entities primarily organized as
 22 pharmacies or pharmacy corporations, and pharmacists licensed
 23 under Chapter 9 (commencing with Section 4000) of Division 2
 24 of the Business and Professions Code.

25 (2) “Health care service plan” means any fully licensed health
 26 care service plan or specialized health care service plan that is
 27 licensed pursuant to this chapter.

28 (3) A representative may be a professional association, labor
 29 union, or any other person or entity designated by the class.

30 ~~(4) “Facilitated negotiation” shall mean any negotiation~~
 31 ~~between the parties that utilizes a neutral, third party to resolve~~
 32 ~~their differences for a contract renewal.~~

33 ~~(5) “Advisory arbitration” shall mean any arbitration process~~
 34 ~~that the parties utilize to resolve their differences for a contract~~
 35 ~~renewal.~~

36 (4) “*Facilitated negotiation*” means any negotiation between
 37 the parties that utilizes a neutral, third party to resolve their
 38 differences for a contract renewal that is advisory in nature and
 39 subject to the approval, modification, or rejection of the
 40 Department of Managed Health Care.



1 (5) “Advisory arbitration” means any arbitration process that
2 the parties utilize to resolve their differences for a contract renewal
3 that is advisory in nature and subject to the approval, modification,
4 or rejection of the Department of Managed Health Care.

5 (g) The Legislature does not intend for the dispute resolution
6 procedures described in this section to have any application or
7 legal effect other than as described in this section.

8 (h) On or after January 1, 2003, each health care service plan
9 shall annually submit a report to the department regarding contract
10 negotiations conducted pursuant to this section. The report shall
11 include the number of providers who utilize the contract
12 negotiation process and a summary of the disposition of those
13 negotiations. The report shall also include information on the
14 number of providers who sought to utilize the process, but did not
15 because the health plan did not agree to the process.

16 (i) This section shall not affect the scope of practice of health
17 care providers or the rights and responsibilities of health care
18 providers mandated by law.

19 (j) This section shall not affect the operation of Section 16770
20 of the Business and Professions Code insofar as health care
21 providers organized into a class pursuant to subdivision (b) shall
22 not exclude from the class another health care provider where the
23 ground for the exclusion is failure to possess the same license or
24 certification as is possessed by the members of the class.

25 (k) This section shall become inoperative on July 1, 2004, and,
26 as of January 1, 2005, is repealed, unless a later enacted statute,
27 that becomes operative on or before January 1, 2005, deletes or
28 extends the dates on which it becomes inoperative and is repealed.

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

