AMENDED IN SENATE JULY 9, 2001

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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 *make public all parts of the contract which are not considered proprietary or confidential, and allow public comment. The bill would also require the department to* 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 The bill would specify that its provisions become inoperative on July 1, 2004, and are repealed on January 1, 2005, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends these dates.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:

SECTION 1. (a) The Legislature finds and declares the following:

(1) The principal priorities of the Legislature for health care are the following:

(A) The citizens of this state have access to the highest quality health care.

(B) Patients have the opportunity for continuing access to their own health care providers.

(C) Health care costs be reasonable and affordable.

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

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

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

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

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

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

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

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

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

(b) It is the intent of the Legislature to implement a solution to achieve the state's health care priorities, given the unsatisfactory

relationship between health care service plans and health care providers. This solution would allow competing health care providers to renegotiate contracts with health care service plans, thereby allowing an improved balance in the contracting relationship that should result in improvements in the state's priorities because of the interests of health care service plans and health care providers to resolve issues that are consistent with the interests of the state. This solution would displace unfair competitive practices and have an actively supervised state program to ensure that health care service plan contracts with health care providers are fair, reasonable, and provide appropriate reimbursement, consistent with the best interests of the patients and this act. The Legislature intends that this solution is consistent with the state action immunity doctrine, which establishes immunity from federal and state antitrust laws for conduct taken or supervised by a state. This solution does not authorize the health care providers to conduct a group boycott or to strike. Only activity specifically authorized by this bill shall receive immunity from antitrust liability.

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

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

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

representation to protect the best interest of enrollees and to conform with the provisions of the Knox-Keene Health Care Service Plan Act of 1975.

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

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

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

(1) The stipulations of the parties.

(2) The interest and welfare of patients.

(3) The patient's access to care.

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

(5) The cost of providing the services, taking into consideration the increasing age of the population, new pharmaceuticals, the increasing sophistication of medical technology, and the medical demographics of the population of the plan's enrollees, including risk adjustment for high concentrations of diseases with high treatment costs such as diabetes, multiple sclerosis, human immunodeficiency virus, and acquired immune deficiency syndrome.

(6) The reasonableness of the reimbursement rates.

(7) The impact on the costs of health care premiums to purchasers.

(e) Upon negotiation of a contract, the parties, or upon successful facilitated negotiation, the facilitator, or if the parties agree to advisory arbitration, the arbitrator, shall file a copy of the contract, facilitated negotiation agreement, or advisory arbitration award, a statement of reasons, and submitted evidence to the department for review. *The department shall make public all parts of the contract which are not considered proprietary or confidential, and allow public comment.* The department, after making an independent review of the evidence and considering *public comment and* the factors set forth in subdivision (d), shall approve, modify, or reject the contract, agreement, or award.

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

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

(2) ''Health care service plan'' means any fully licensed health care service plan or specialized health care service plan that is licensed pursuant to this chapter.

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

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

(5) ''Advisory arbitration'' means any arbitration process that the parties utilize to resolve their differences for a contract renewal

that is advisory in nature and subject to the approval, modification, or rejection of the Department of Managed Health Care.

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

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

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

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

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

SEC. 3. 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.

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