AMENDED IN SENATE SEPTEMBER 7, 2001

AMENDED IN SENATE AUGUST 31, 2001

AMENDED IN SENATE AUGUST 20, 2001

AMENDED IN SENATE JULY 9, 2001

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 Section 1394.4 to the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1600, as amended, Keeley.   Health care service plans.

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. Existing law provides that the civil, criminal, and administrative remedies available to the Director of the Department of Managed Health Care are not exclusive, and may be sought and employed in any combination deemed advisable by the director to enforce these provisions.

This bill would allow any interested person to obtain equitable relief in any court of competent jurisdiction from any person or entity licensed under these provisions with respect to violations or threatened violations of these provisions, with certain exceptions. *The bill would require the interested party to exhaust all administrative remedies for actions brought under the bill after January 1, 2002.* The bill would provide that a waiver of these provisions is contrary to public policy and is therefore unenforceable and void. The bill would enact other related provisions.

Because a willful violation of these provisions by health care service plans would be a crime, this bill would thereby impose 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.   Section 1394.4 is added to the Health and Safety
2 Code, to read:
3   1394.4.   (a) Any interested person may obtain equitable relief
4 from any licensee as to any violation or threatened violation of this
5 chapter in any court of competent jurisdiction. This remedy is not
6 exclusive, but is cumulative to other remedies or penalties
7 available under all other laws of this state and under federal law.
8 *For actions brought pursuant to this section after January 1, 2002,*

1 *the interested person must first exhaust all available*
2 *administrative remedies.*
3   (b) If the contract between a licensee and provider expires
4 during the pendency of an action brought pursuant to this section,
5 the court shall issue an order extending the contract for a 180-day
6 period, in order to provide continuing care to enrollees or
7 subscribers. The current contract rates and terms shall stay in effect
8 during the 180-day period, subject to appropriate adjustment by
9 the court to ensure enrollee or subscriber access to health care. This
10 period may be extended by mutual agreement of the parties. This
11 subdivision does not affect the right of a licensee to terminate a
12 contractual relationship with an individual provider consistent
13 with the principles of Potvin v. Metropolitan Life Insurance Co.
14 (2000) 22 Cal.4th 1060, whenever applicable.
15   (c) It shall not be a defense in an action brought pursuant to this
16 section that a provision of this chapter that is at issue has been
17 contractually waived. Provisions of contracts of licensees or their
18 contracting intermediaries that require beneficiaries or providers
19 to waive any provision of this chapter are prohibited and
20 unenforceable.
21   (d) It shall be unlawful for a licensee to terminate, retaliate
22 against, or otherwise penalize plan enrollees, subscribers, or
23 providers for exercising their rights under this section.
24   (e) This section does not apply to an enrollee or subscriber's
25 individual grievance or complaint with a licensee that is subject to
26 Section 1368, 1368.01, 1368.02, 1368.03, 1368.04, 1368.1,
27 1370.4, 1374.30, 1374.31, 1374.32, 1374.33, 1374.34, 1374.35,
28 or 1374.36. Nothing in this subdivision shall limit an action to
29 obtain equitable relief from a licensee for any violation or
30 threatened violation of the sections specified in this subdivision if
31 the action does not seek relief for an enrollee's or subscriber's
32 individual grievance or complaint.
33   (f) A licensee shall not seek indemnity, whether contractual or
34 equitable, from a provider, employer, or employer group
35 purchasing organization for any liability imposed pursuant to this
36 section.
37   (g) Any waiver of this section is contrary to public policy and
38 therefore shall be unenforceable and void.
39   (h) The enactment of this section shall not be construed to
40 suggest that the law in existence prior to enactment of this section

1 prohibits or permits the filing of an action for equitable relief by
2 a private party for a violation of this chapter, and shall not in any
3 way be deemed to affect any litigation to enforce this chapter that
4 is pending on January 1, 2002.
5   SEC. 2.   No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

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