

AMENDED IN SENATE APRIL 18, 2001

SENATE BILL

No. 1040

Introduced by Senator Machado
(Principal coauthor: Senator Polanco)
(Principal coauthor: Assembly Member Thomson)
(Coauthor: Assembly Member Correa)

February 23, 2001

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1040, as amended, Machado. Health care service plans: arbitration.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. The act, among other matters, regulates a plan's use of arbitration to settle disputes with subscribers and enrollees. Existing law makes a willful violation of the act's provisions a crime.

This bill would prohibit a health care service plan contract that contains terms concerning mandatory or voluntary arbitration with subscribers or enrollees from imposing limits on the damages that may be awarded in an arbitration that differ from the damages that could otherwise be awarded in a similar dispute decided by a court or jury trial and from precluding a subscriber or enrollee from representation by counsel, filing a written brief, or making a closing argument before the arbitrator. The bill would also provide that the same statute of limitations that governs the timeliness of civil actions shall also govern the timeliness of a demand for arbitration and would require the contract

to incorporate provisions of existing law concerning discovery in arbitration actions.

The bill would, if a health care service plan contract includes a term requiring the use of mandatory binding arbitration, prohibit the subscriber or enrollee from paying specified costs and require that the health care service plan ~~to~~ use mandatory binding arbitration to settle disputes with a subscriber or enrollee.

The bill would make any arbitration agreement in a plan contract having terms inconsistent with these provisions void and unenforceable and would authorize a court to vacate an arbitration award under specified circumstances.

Because this bill would specify prohibited conduct by a health care service plan, the violation of which would constitute a criminal offense, ~~this~~ *the* bill 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. It is the intent of the Legislature that the
2 enactment of Section 2 shall not be construed as legislative intent
3 either to limit a court’s power to find a term limiting damages in
4 any other arbitration agreement to be unconscionable and void and
5 unenforceable or to restrict a court’s power to find an arbitration
6 agreement with that unconscionable term to be void and
7 unenforceable in its entirety. The enactment of Section 2 shall not
8 be construed as legislative intent to affect in any manner any
9 pending matter before the California Supreme Court.

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

12 1373.22. (a) Any health care service plan contract that
13 contains terms concerning mandatory or voluntary binding



1 arbitration to settle disputes with subscribers or enrollees shall
2 comply with all of the following:

3 (1) The plan contract shall not impose limits on damages that
4 may be awarded in an arbitration that differ from the damages that
5 could be otherwise awarded in a similar dispute decided by a court
6 or jury trial.

7 (2) The plan contract shall not prohibit an enrollee or
8 subscriber from retaining and being represented by counsel.

9 (3) The plan contract shall not prohibit a subscriber or enrollee
10 from filing a written brief or making a closing argument before the
11 arbitrator.

12 (4) The plan contract shall provide that the same statute of
13 limitations that governs the timeliness of civil actions shall also
14 govern the timeliness of a demand for arbitration.

15 (5) The plan contract shall expressly incorporate the provisions
16 of Section 1283.05 of the Code of Civil Procedure.

17 (b) Any health care service plan contract that includes a term
18 requiring the use of mandatory binding arbitration to settle
19 disputes with subscribers or enrollees shall comply with the
20 following:

21 (1) A subscriber or an enrollee shall not be required to pay any
22 portion of the neutral arbitrator's fees.

23 (2) A subscriber or an enrollee shall not be required to pay
24 administrative fees, except for a filing fee, which shall not exceed
25 the amount of the first appearance filing fee in the superior court.

26 ~~(3) A subscriber or an enrollee shall not be required to pay~~
27 ~~attorneys' fees, expert witness fees, deposition fees, or any other~~
28 ~~costs that are recoverable by the subscriber or enrollee under~~
29 ~~Section 998 of the Code of Civil Procedure or under a fee or~~
30 ~~cost shifting provision of a remedial statute on which the claim of~~
31 ~~the enrollee or subscriber is based.~~

32 ~~(4)~~

33 (3) The health care service plan shall be required to use
34 mandatory binding arbitration to settle disputes that may arise with
35 a subscriber or enrollee.

36 (c) Any arbitration agreement in a health care service plan
37 contract that includes terms that are inconsistent with this section
38 shall be void and unenforceable.

39 (d) Notwithstanding any other provision of law, a court may
40 vacate an award of an arbitrator in an arbitration to which this



1 section applies if the award, on its face, evidences a manifest
2 disregard of the law and thereby results in a substantial injustice.
3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

