

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 969

Introduced by Senator Bowen
(Principal coauthor: Assembly Member Corbett)

February 21, 2003

An act to amend Section 4999.7 of the *Business and Professions Code*, and to amend Section 1348.8 of the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 969, as amended, Bowen. Telephone medical advice services.

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 and makes a violation of the act's provision a crime. Under the act, a health care service plan that provides, operates, or contracts for telephone medical advice services for its enrollees and subscribers is required to ensure those services comply with certain standards, including that staff providing telephone medical advice are licensed, certified, or registered professionals. *Existing law also provides for the regulation and certification of telephone medical advice services, and requires the staff of those advice services to be appropriately licensed, certified, or registered in various healing arts professions.*

This bill would additionally require a health care service plan to ensure that ~~only staff who are licensed, certified, or registered in specified health care professions provide medical advice to an enrollee or subscriber~~ *handling enrollee or subscriber calls, but who are not licensed, certified, or registered in various healing arts professions, do not provide telephone medical advice.* The bill would also require a

health care service plan to ensure that no staff member uses a title or designation that would cause a reasonable person to believe the staff member is licensed, certified, or registered as a specified type of health care professional unless the person meets those requirements. *The bill would enact other related provisions.*

Because the bill would add requirements concerning the operation of a health care service plan, the violation of which would be a crime, it would 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 4999.7 of the Business and Professions*
2 *Code is amended to read:*

3 4999.7. (a) Nothing in this section shall limit, preclude, or
4 otherwise interfere with the practices of other persons licensed or
5 otherwise authorized to practice, under any other provision of this
6 division, telephone medical advice services consistent with the
7 laws governing their respective scopes of practice, or licensed
8 under the Osteopathic Initiative Act or the Chiropractic Initiative
9 Act and operating consistent with the laws governing their
10 respective scopes of practice.

11 (b) For the purposes of this chapter, “telephone medical
12 advice” means a telephonic communication between a patient and
13 a health care professional, wherein the health care professional’s
14 primary function is to provide to the patient a telephonic response
15 to the patient’s questions regarding his or her or a family member’s
16 medical care or treatment. “*Telephone medical advice*” includes
17 *assessment, evaluation, or advice provided to patients or their*
18 *family members.*

19 (c) For the purposes of this chapter, “health care professional”
20 is a staff person described in Section 4999.2 who provides medical
21 advice services and is appropriately licensed, certified, or



1 registered as a registered nurse pursuant to Chapter 6
2 (commencing with Section 2700), a physician and surgeon
3 pursuant to Chapter 5 (commencing with Section 2000) or the
4 Osteopathic Initiative Act, a dentist pursuant to Chapter 4
5 (commencing with Section 1600), a dental hygienist pursuant to
6 Section 1758 et seq., a psychologist pursuant to Chapter 6.6
7 (commencing with Section 2900), a marriage and family therapist
8 pursuant to Chapter 13 (commencing with Section 4980), an
9 optometrist pursuant to Chapter 7 (commencing with Section
10 3000), a chiropractor pursuant to the Chiropractic Initiative Act,
11 and who is operating consistent with the laws governing his or her
12 respective scopes of practice in the state in which he or she
13 provides telephone medical advice services.

14 *SEC. 2. Section 1348.8 of the Health and Safety Code is*
15 *amended to read:*

16 1348.8. (a) Every health care service plan that provides,
17 operates, or contracts for, telephone medical advice services to its
18 enrollees and subscribers shall do all of the following:

19 (1) Ensure that the in-state or out-of-state telephone medical
20 advice service is registered pursuant to Chapter 15 (commencing
21 with Section 4999) of Division 2 of the Business and Professions
22 Code.

23 (2) Ensure that the staff providing telephone medical advice
24 services for the in-state or out-of-state telephone medical advice
25 service are licensed as follows:

26 (A) For full service health care service plans, the staff hold a
27 valid California license as a registered nurse or a valid license in
28 the state within which they provide telephone medical advice
29 services as a physician and surgeon or physician assistant and are
30 operating in compliance with the laws governing their respective
31 scopes of practice.

32 (B) (i) For specialized health care service plans providing,
33 operating, or contracting with a telephone medical advice service
34 in California, the staff shall be appropriately licensed, registered,
35 or certified as a physician and surgeon pursuant to Chapter 5
36 (commencing with Section 2000) of Division 2 of the Business and
37 Professions Code, as a registered nurse pursuant to Chapter 6
38 (commencing with Section 2700) of Division 2 of the Business and
39 Professions Code, as a dentist pursuant to Chapter 4 (commencing
40 with Section 1600) of Division 2 of the Business and Professions



1 Code, as a dental hygienist pursuant to Article 7 (commencing
2 with Section 1740) of Chapter 4 of Division 2 of the Business and
3 Professions Code, as a psychologist pursuant to Chapter 6.6
4 (commencing with Section 2900) of Division 2 of the Business and
5 Professions Code, as a marriage and family therapist pursuant to
6 Chapter 13 (commencing with Section 4980) of Division 2 of the
7 Business and Professions Code, as an optometrist pursuant to
8 Chapter 7 (commencing with Section 3000) of Division 2 of the
9 Business and Professions Code, as a chiropractor pursuant to the
10 Chiropractic Initiative Act, or as an osteopath pursuant to the
11 Osteopathic Initiative Act and operating in compliance with the
12 laws governing their respective scopes of practice.

13 (ii) For specialized health care service plans providing,
14 operating, or contracting with an out-of-state telephone medical
15 advice service, the staff shall be health care professionals, as
16 identified in clause (i) that are licensed, registered, or certified in
17 the state within which they are providing the telephone medical
18 advice services and operating in compliance with the laws
19 governing their respective scopes of practice. All registered nurses
20 providing telephone medical advice services to both in-state and
21 out-of-state business entities registered pursuant to this chapter
22 shall be licensed pursuant to Chapter 6 (commencing with Section
23 2700) of Division 2 of the Business and Professions Code.

24 (3) Ensure that every full service health care service plan
25 provides for a physician and surgeon who is available on an on-call
26 basis at all times the service is advertised to be available to
27 enrollees and subscribers.

28 ~~(4) Ensure that only staff who are licensed, certified, or~~
29 ~~registered in one of the professions described in Section 4999.2~~
30 ~~provide medical advice to an enrollee or subscriber.~~

31 *(4) Ensure that staff members handling enrollee or subscriber*
32 *calls, who are not licensed, certified, or registered as required by*
33 *Section 4999.2 of the Business and Professions Code, do not*
34 *provide telephone medical advice. Those staff members may ask*
35 *questions on behalf of a staff member who is licensed, certified, or*
36 *registered as required by Section 4999.2 of the Business and*
37 *Professions Code, in order to help ascertain the condition of an*
38 *enrollee or subscriber so that the enrollee or subscriber can be*
39 *referred to licensed staff. However, under no circumstances shall*
40 *those staff members use the answers to those questions in an*



1 *attempt to assess, evaluate, advise, or make any decision regarding*
2 *the condition of an enrollee or subscriber, nor shall those staff*
3 *members provide advice or schedule an appointment based on*
4 *those answers.*

5 (5) Ensure that no staff uses a title or designation when
6 speaking to an enrollee or subscriber that may cause a reasonable
7 person to believe that the staff member is a licensed, certified, or
8 registered professional described in Section 4999.2 unless the
9 person is a licensed, certified, or registered professional.

10 (6) Ensure that the in-state or out-of-state telephone medical
11 advice service designates an agent for service of process in
12 California and files this designation with the director.

13 (7) Requires that the in-state or out-of-state telephone medical
14 advice service makes and maintains records for a period of five
15 years after the telephone medical advice services are provided,
16 including, but not limited to, oral or written transcripts of all
17 medical advice conversations with the health care service plan's
18 enrollees or subscribers in California and copies of all complaints.
19 If the records of telephone medical advice services are kept out of
20 state, the health care service plan shall, upon the request of the
21 director, provide the records to the director within 10 days of the
22 request.

23 (8) Ensures that the telephone medical advice services are
24 provided consistent with good professional practice.

25 (b) The director shall forward to the Department of Consumer
26 Affairs, within 30 days of the end of each calendar quarter, data
27 regarding complaints filed with the department concerning
28 telephone medical advice services.

29 (c) *For the purposes of this section, "telephone medical*
30 *advice" means a telephonic communication between a patient and*
31 *a health care professional, wherein the health care professional's*
32 *primary function is to provide to the patient a telephonic response*
33 *to the patient's questions regarding his or her or a family member's*
34 *medical care or treatment. "Telephone medical advice" includes*
35 *assessment, evaluation, or advice provided to patients or their*
36 *family members.*

37 ~~SEC. 2.~~

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school



1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O

