

AMENDED IN SENATE JULY 12, 2005

AMENDED IN SENATE JUNE 14, 2005

AMENDED IN ASSEMBLY MAY 9, 2005

AMENDED IN ASSEMBLY APRIL 28, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1116

Introduced by Assembly Member Yee
(Coauthors: Assembly Members Chu and Koretz)
(Coauthor: Senator Hollingsworth)

February 22, 2005

~~An act to amend Sections 4935 and 4938 of the Business and Professions Code, relating to acupuncture. An act to add Section 1379.1 to, and to add Article 5.53 (commencing with Section 1374.29) to Chapter 2.2 of Division 2 of, the Health and Safety Code, and to add Article 3.7 (commencing with Section 10169.7) to Chapter 1 of Part 2 of Division 2 of the Insurance Code, relating to health care coverage.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1116, as amended, Yee. ~~Acupuncture.~~ *Health care coverage: claims.*

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 a crime. Existing law provides for the regulation of health insurers by the Department of Insurance.

Existing law establishes an independent medical review system where requests for review of certain claim disputes are conducted by an independent medical review organization.

This bill would require the Department of Managed Health Care and the Department of Insurance to implement an independent provider dispute resolution system, in consultation with representatives of health plans or insurers, providers, and consumer representatives.

Existing law requires that a health care provider contracting with a health care service plan agree that he or she will not collect or attempt to collect from a subscriber or enrollee any sums owed by the plan for services that the provider rendered.

This bill would, commencing March 1, 2006, prohibit a hospital-based physician, as defined, from seeking payment from individual enrollees for services he or she rendered and would require that physician or group of physicians to seek reimbursement solely from the enrollee's health care service plan or the contracting risk-bearing organization. The bill would require a health care service plan that becomes aware that one of its enrollees has been billed in violation of these provisions to report that violation to the Department of Managed Health Care. This bill would also provide that an enrollee shall have no obligation to pay an amount billed in violation of these provisions.

Because the bill would specify additional requirements for health care service plans, a 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.

~~The Acupuncture Licensure Act provides for the licensure and regulation of acupuncturists by the Acupuncture Board. The act makes the unlicensed practice of acupuncture, as defined, unlawful except as otherwise specified, and sets forth requirements for licensure, including education and training requirements.~~

~~This bill would additionally require an applicant for licensure to complete a postgraduate internship under the supervision of a licensed acupuncturist and pursuant to regulations to be adopted by the board.~~

~~This bill would incorporate additional changes in Section 4935 of the Business and Professions Code, to become operative only if AB 1117 and this bill are both chaptered and become effective on or before January 1, 2006, and this bill is chaptered last.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~yes.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known and may be cited as the*
2 *Patient Billing Protection Act.*

3 *SEC. 2. Article 5.53 (commencing with Section 1374.29) is*
4 *added to Chapter 2.2 of Division 2 of the Health and Safety*
5 *Code, to read:*

6
7 *Article 5.53. Patient Billing Protection*
8

9 1374.29. (a) *On or before March 1, 2006, the department*
10 *shall implement an independent provider claims dispute*
11 *resolution system for noncontracting hospital-based providers*
12 *for the purpose of ensuring that reimbursement of these*
13 *providers reflects a reasonable and customary value of the health*
14 *care services pursuant to Section 1300.71 of Title 28 of the*
15 *California Code of Regulations. The dispute resolution system*
16 *established pursuant to this section shall meet all of the following*
17 *requirements:*

18 (1) *Require plans to participate in the system if the provider*
19 *wishes to present a claim and the results shall be binding on the*
20 *plan and any provider who elects to use it.*

21 (2) *Be available to providers only after the provider has*
22 *exhausted the dispute resolution process the plan and its*
23 *contracting risk-bearing organization are required to make*
24 *available under Section 1367.*

25 (3) *Require that a provider wishing to submit a dispute to the*
26 *system do so within 90 days of completing the internal dispute*
27 *resolution process required to be offered by the plan and its*
28 *contracting risk-bearing organization under Section 1367.*

29 (4) *Not be available to providers for disputes involving claims*
30 *for services provided to Medi-Cal beneficiaries when the*
31 *provider is entitled to utilize the dispute resolution process*

1 *required under Section 53620 of Title 22 of the California Code*
2 *of Regulations.*

3 *(b) The cost of adjudicating claims disputes shall be*
4 *apportioned among the parties based on the outcome. The*
5 *proportion of the cost paid by the plan shall be equal to the*
6 *percentage that results from dividing the difference between the*
7 *provider's initial claim and the amount awarded to the provider*
8 *by the difference between the plan's initial payment or offer of*
9 *payment and the provider's initial claim. The provider shall pay*
10 *the balance.*

11 *(c) The department shall develop the system in consultation*
12 *with representatives of health care service plans, providers, and*
13 *consumer representatives. The department shall consider*
14 *implementation of a system similar to the independent medical*
15 *review system in Article 5.55 (commencing with Section*
16 *1374.30), to permit independent review of disputed*
17 *noncontracting hospital-based provider claims, and payment*
18 *levels.*

19 *SEC. 3. Section 1379.1 is added to the Health and Safety*
20 *Code, to read:*

21 *1379.1. (a) Commencing March 1, 2006, a hospital-based*
22 *physician who provides services at a general acute care hospital*
23 *that contracts with a health care service plan shall seek*
24 *reimbursement for medically necessary covered services*
25 *provided to an enrollee of that plan solely from the plan or its*
26 *contracting risk-bearing organization that is financially*
27 *responsible for the covered services rendered under the contract*
28 *between the plan and the risk-bearing organization. The*
29 *hospital-based physician shall not seek payment from individual*
30 *enrollees for those covered services, except for allowable*
31 *copayments and deductibles. A hospital-based physician subject*
32 *to this section shall have the right to receive reimbursement*
33 *owed pursuant to the provisions of this chapter from the plan or*
34 *the contracting risk-bearing organization that is financially*
35 *responsible for the covered services.*

36 *(b) For purposes of this section, a "hospital-based physician"*
37 *means an anesthesiologist, radiologist, pathologist, or*
38 *emergency room physician, or a group of such physicians*
39 *providing medical services at the hospital.*

1 (c) For purposes of this section, “risk-bearing organization”
2 shall have the meaning set forth in subdivision (g) of Section
3 1375.4.

4 (d) An enrollee who is billed by a hospital-based physician in
5 violation of this section may report receipt of the bill to the
6 health care service plan and the department. A health care
7 service plan that becomes aware that one of its enrollees has
8 been billed in violation of this section shall also report that
9 violation to the department. The department shall have sole
10 authority to enforce this section, and shall take appropriate
11 action against a hospital-based physician upon a determination
12 that the physician has violated this section, including the
13 issuance of a written warning, a cease and desist order, or other
14 actions, as provided in Section 1387.

15 (e) An enrollee shall have no obligation to pay an amount
16 billed in violation of this section.

17 SEC. 4. Article 3.7 (commencing with Section 10169.7) is
18 added to Chapter 1 of Part 2 of Division 2 of the Insurance
19 Code, to read:

20

21 *Article 3.7. Patient Billing Protection*

22

23 10169.7. On or before March 1, 2006, the department shall
24 implement an independent provider dispute resolution system.
25 The department shall develop the system in consultation with
26 representatives of health insurers, providers, and consumer
27 representatives. The department shall consider implementation of
28 a system similar to the independent medical review system in
29 Article 3.5 (commencing with Section 10169), to permit
30 independent review of disputed provider complaints, claims, and
31 payment levels.

32 SEC. 5. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the
37 penalty for a crime or infraction, within the meaning of Section
38 17556 of the Government Code, or changes the definition of a
39 crime within the meaning of Section 6 of Article XIII B of the
40 California Constitution.

1 SECTION 1. ~~Section 4935 of the Business and Professions~~
2 ~~Code is amended to read:~~

3 4935. (a) (1) ~~It is a misdemeanor, punishable by a fine of not~~
4 ~~less than one hundred dollars (\$100) and not more than two~~
5 ~~thousand five hundred dollars (\$2,500), or by imprisonment in a~~
6 ~~county jail not exceeding one year, or by both that fine and~~
7 ~~imprisonment, for any person who does not hold a current and~~
8 ~~valid license to practice acupunctuure under this chapter or to hold~~
9 ~~himself or herself out as practicing or engaging in the practice of~~
10 ~~acupunctuure.~~

11 (2) ~~It is a misdemeanor, punishable by a fine of not less than~~
12 ~~one hundred dollars (\$100) and not more than two thousand five~~
13 ~~hundred dollars (\$2,500), or by imprisonment in a county jail not~~
14 ~~exceeding one year, or by both that fine and imprisonment, for~~
15 ~~any person to fraudulently buy, sell, or obtain a license to~~
16 ~~practice acupunctuure, or to violate the provisions of this chapter.~~

17 (b) ~~Notwithstanding any other provision of law, any person,~~
18 ~~other than a physician and surgeon, a dentist, or a podiatrist, who~~
19 ~~is not licensed under this article but is licensed under Division 2~~
20 ~~(commencing with Section 500), who practices acupunctuure~~
21 ~~involving the application of a needle to the human body,~~
22 ~~performs any acupunctuure technique or method involving the~~
23 ~~application of a needle to the human body, or directs, manages,~~
24 ~~or supervises another person in performing acupunctuure~~
25 ~~involving the application of a needle to the human body is guilty~~
26 ~~of a misdemeanor.~~

27 (c) ~~A person holds himself or herself out as engaging in the~~
28 ~~practice of acupunctuure by the use of any title or description of~~
29 ~~services incorporating the words “acupunctuure,” “acupuncturist,”~~
30 ~~“certified acupuncturist,” “licensed acupuncturist,” “oriental~~
31 ~~medicine,” or any combination of those words, phrases, or~~
32 ~~abbreviations of those words or phrases, or by representing that~~
33 ~~he or she is trained, experienced, or an expert in the field of~~
34 ~~acupunctuure, oriental medicine, or Chinese medicine.~~

35 (d) ~~Subdivision (a) shall not prohibit a person from~~
36 ~~administering acupunctuure treatment as part of his or her~~
37 ~~educational training if he or she meets one of the following~~
38 ~~requirements:~~

39 (1) ~~Is engaged in a course or tutorial program in acupunctuure,~~
40 ~~as provided in this chapter.~~

1 ~~(2) Is a graduate of a school of acupuncture approved by the~~
2 ~~board and participating in either of the following:~~

3 ~~(A) A postgraduate review course that does not exceed one~~
4 ~~year in duration at a school approved by the board.~~

5 ~~(B) A postgraduate internship pursuant to subdivision (f) of~~
6 ~~Section 4938.~~

7 ~~SEC. 1.5. Section 4935 of the Business and Professions Code~~
8 ~~is amended to read:~~

9 ~~4935. (a) (1) It is a misdemeanor, punishable by a fine of not~~
10 ~~less than one hundred dollars (\$100) and not more than two~~
11 ~~thousand five hundred dollars (\$2,500), or by imprisonment in a~~
12 ~~county jail not exceeding one year, or by both that fine and~~
13 ~~imprisonment, for any person who does not hold a current and~~
14 ~~valid license to practice acupuncture under this chapter or to hold~~
15 ~~himself or herself out as practicing or engaging in the practice of~~
16 ~~acupuncture.~~

17 ~~(2) It is a misdemeanor, punishable by a fine of not less than~~
18 ~~one hundred dollars (\$100) and not more than two thousand five~~
19 ~~hundred dollars (\$2,500), or by imprisonment in a county jail not~~
20 ~~exceeding one year, or by both that fine and imprisonment, for~~
21 ~~any person to fraudulently buy, sell, or obtain a license to~~
22 ~~practice acupuncture, or to violate the provisions of this chapter.~~

23 ~~(b) Notwithstanding any other provision of law, any person,~~
24 ~~other than a physician and surgeon, a dentist, or a podiatrist, who~~
25 ~~is not licensed under this article but is licensed under Division 2~~
26 ~~(commencing with Section 500), who practices acupuncture~~
27 ~~involving the application of a needle to the human body,~~
28 ~~performs any acupuncture technique or method involving the~~
29 ~~application of a needle to the human body, or directs, manages,~~
30 ~~or supervises another person in performing acupuncture~~
31 ~~involving the application of a needle to the human body is guilty~~
32 ~~of a misdemeanor.~~

33 ~~(c) A person holds himself or herself out as engaging in the~~
34 ~~practice of acupuncture by the use of any title or description of~~
35 ~~services incorporating the words "acupuncture," "acupuncturist,"~~
36 ~~"certified acupuncturist," "licensed acupuncturist," "Asian~~
37 ~~medicine," "oriental medicine," or any combination of those~~
38 ~~words, phrases, or abbreviations of those words or phrases, or by~~
39 ~~representing that he or she is trained, experienced, or an expert in~~
40 ~~the field of acupuncture, Asian medicine, or Chinese medicine.~~

1 ~~(d) Subdivision (a) shall not prohibit a person from~~
2 ~~administering acupuncture treatment as part of his or her~~
3 ~~educational training if he or she meets one of the following~~
4 ~~requirements:~~

5 ~~(1) Is engaged in a course or tutorial program in acupuncture,~~
6 ~~as provided in this chapter.~~

7 ~~(2) Is a graduate of a school of acupuncture approved by the~~
8 ~~board and participating in either of the following:~~

9 ~~(A) A postgraduate review course that does not exceed one~~
10 ~~year in duration at a school approved by the board.~~

11 ~~(B) A postgraduate internship pursuant to subdivision (f) of~~
12 ~~Section 4938.~~

13 ~~SEC. 2.— Section 4938 of the Business and Professions Code is~~
14 ~~amended to read:~~

15 ~~4938. The board shall issue a license to practice acupuncture~~
16 ~~to any person who makes an application and meets the following~~
17 ~~requirements:~~

18 ~~(a) Is at least 18 years of age.~~

19 ~~(b) Furnishes satisfactory evidence of completion of one of the~~
20 ~~following:~~

21 ~~(1) An educational and training program approved by the~~
22 ~~board pursuant to Section 4939.~~

23 ~~(2) Satisfactory completion of a tutorial program in the~~
24 ~~practice of an acupuncturist which is approved by the board.~~

25 ~~(3) In the case of an applicant who has completed education~~
26 ~~and training outside the United States and Canada, documented~~
27 ~~educational training and clinical experience which meets the~~
28 ~~standards established pursuant to Sections 4939 and 4941.~~

29 ~~(e) Passes a written examination administered by the board~~
30 ~~that tests the applicant's ability, competency, and knowledge in~~
31 ~~the practice of an acupuncturist. The written examination shall be~~
32 ~~developed by the Office of Examination Resources of the~~
33 ~~Department of Consumer Affairs.~~

34 ~~(d) Is not subject to denial pursuant to Division 1.5~~
35 ~~(commencing with Section 475).~~

36 ~~(e) Completes a clinical internship training program approved~~
37 ~~by the board. The clinical internship training program shall not~~
38 ~~exceed nine months in duration and shall be located in a clinic in~~
39 ~~this state, which is approved by the board pursuant to Section~~
40 ~~4939. The length of the clinical internship shall depend upon the~~

1 ~~grades received in the examination and the clinical training~~
 2 ~~already satisfactorily completed by the individual prior to taking~~
 3 ~~the examination. On and after January 1, 1987, individuals with~~
 4 ~~800 or more hours of documented clinical training shall be~~
 5 ~~deemed to have met this requirement. The purpose of the clinical~~
 6 ~~internship training program shall be to assure a minimum level of~~
 7 ~~clinical competence.~~

8 ~~(f) Completes a postgraduate internship requirement~~
 9 ~~comprised of a minimum number of hours, as set forth in~~
 10 ~~regulations adopted by the board, of practice under the~~
 11 ~~supervision of a licensed acupuncturist. For purposes of this~~
 12 ~~section, "supervision" means that a licensed acupuncturist is~~
 13 ~~physically present in the treatment facility during the~~
 14 ~~performance of those procedures. Notwithstanding paragraph (3)~~
 15 ~~of subdivision (c) of Section 313.1, the regulations adopted by~~
 16 ~~the board to implement the postgraduate internship program~~
 17 ~~required by this subdivision must be approved by the Director of~~
 18 ~~the Department of Consumer Affairs before taking effect. The~~
 19 ~~postgraduate internship requirement in this subdivision shall only~~
 20 ~~apply to a person entering a school or college approved by the~~
 21 ~~board offering a training program related to the study and~~
 22 ~~practice of acupuncture and oriental medicine, one year after the~~
 23 ~~effective date of the regulations.~~

24 ~~(g) An applicant who qualifies for a license shall pay, as a~~
 25 ~~condition precedent to its issuance and in addition to other fees~~
 26 ~~required, the initial licensure fee.~~

27 ~~SEC. 3. Section 1.5 of this bill incorporates amendments to~~
 28 ~~Section 4935 of the Business and Professions Code proposed by~~
 29 ~~this bill and AB 1117. It shall only become operative if (1) both~~
 30 ~~bills are enacted and become effective on or before January 1,~~
 31 ~~2006, (2) each bill amends Section 4935 of the Business and~~
 32 ~~Professions Code, and (3) this bill is enacted after AB 1117, in~~
 33 ~~which case Section 1 of this bill shall not become operative.~~