

AMENDED IN ASSEMBLY JUNE 25, 1998

AMENDED IN SENATE MAY 12, 1998

AMENDED IN SENATE MAY 4, 1998

AMENDED IN SENATE APRIL 13, 1998

SENATE BILL

No. 1951

Introduced by Senator Brulte

(Principal coauthor: Assembly Member Cedillo)

(Coauthor: Assembly Member Villaraigosa)

February 19, 1998

An act to add Section 512 to the *Business and Professions Code*, to add Section 1395.5 to the *Health and Safety Code*, and to add Section 10127.4 to the *Insurance Code*, relating to health coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1951, as amended, Brulte. Health coverage: providers: advertising.

Existing law provides for the licensure and regulation of health care service plans administered by the Commissioner of Corporations. Under existing law, willful violation of any of these provisions is a crime. Existing law also provides for the regulation of policies of disability insurance administered by the Insurance Commissioner.

This bill would make it unlawful for a health *care service* plan, an insurer, or any person or entity, including any group of physicians and surgeons, any medical group, any independent practice association (IPA), or any preferred

provider organization (PPO), ~~or managed care organization~~ to prohibit any health care provider from advertising. Since the willful violation of the provisions relating to health care service plans is a crime, this bill would impose a state-mandated local program. The bill would also state that its provisions are not intended to prohibit ~~contract provisions or agreements~~ that establish reasonable guidelines for advertising, including those to prevent untrue, misleading, or deceptive advertising, of a provider's participation as a member of a panel ~~serving the enrollees, subscribers, and beneficiaries of the above specified health care entities or network of participating providers.~~

~~This bill would also make it unlawful, with respect to specified disability insurance contracts, for a health plan, medical group, independent practice association (IPA), preferred provider organization (PPO), or managed care organization to prohibit any health care provider from advertising, but would not prohibit contract provisions that establish reasonable guidelines for the advertisement of a provider's participation on a panel serving insureds, under specified circumstances.~~

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. The Legislature finds and declares as
- 2 follows:
- 3 (a) The State of California recognizes that one of the
- 4 benefits of managed care is the availability of a broad
- 5 range of services to ~~health plan enrollees~~ *patients*.
- 6 (b) If patients are unaware of services ~~covered by~~
- 7 ~~their health plans~~ *available to them*, they may not use



1 these services, even when to do so would be beneficial to
2 their health.

3 ~~(e) The provider booklets issued by health plans,
4 containing the names of participating providers, are
5 frequently outdated.~~

6 ~~(d) Enrollees²~~

7 ~~(c) Patients' awareness of covered services and
8 participating providers will be improved if participating
9 health care providers are permitted to advertise their
10 services.~~

11 ~~(e) participation in provider panels or networks in an
12 appropriate manner.~~

13 ~~(d) Commercial speech is protected by the First
14 Amendment to the United States Constitution, and
15 should not be restricted except when necessary to
16 prevent fraud or dishonesty.~~

17 ~~SEC. 2. Section 1395.5 is added to the Health and
18 Safety Code, to read:~~

19 ~~1395.5. (a) Notwithstanding the provisions of any
20 contract that is issued, amended, renewed, or delivered
21 on or after January 1, 1999, it shall be unlawful for a health
22 plan, medical group, independent practice association
23 (IPA), preferred provider organization (PPO), or
24 managed care organization to prohibit any health care
25 provider from advertising.~~

26 ~~(b) Nothing in this section is intended to prohibit
27 contract provisions that establish reasonable guidelines to
28 prevent untrue, misleading, or deceptive advertising of
29 a provider's participation as a member of a panel serving
30 the enrollees, subscribers, or beneficiaries of a health
31 plan, medical group, IPA, PPO, or managed care
32 organization, if the provider's participation is not a result
33 of a direct contractual relationship with the health plan,
34 medical group, IPA, PPO, or managed care organization;
35 including, but not limited to, a requirement that each
36 advertisement contain a disclaimer to the effect that the
37 provider's services are covered for some, but not all, plans
38 or product lines of the health plan, medical group, IPA,
39 PPO, or managed care organization.~~



1 ~~SEC. 3. Section 10127.4 is added to the Insurance~~
2 ~~Code, to read:~~

3 ~~10127.4. (a) Notwithstanding the provisions of any~~
4 ~~contract that is issued, amended, renewed, or delivered~~
5 ~~on or after January 1, 1999, it shall be unlawful for an~~
6 ~~insurer, medical group, independent practice association~~
7 ~~(IPA), preferred provider organization (PPO), or~~
8 ~~managed care organization to prohibit any health care~~
9 ~~provider from advertising.~~

10 ~~(b) Nothing in this section is intended to prohibit~~
11 ~~contract provisions that establish reasonable guidelines to~~
12 ~~prevent untrue, misleading, or deceptive advertising of~~
13 ~~a provider's participation on a panel serving insureds, if~~
14 ~~the provider's participation is not a result of a direct~~
15 ~~contractual relationship with the insurer, including, but~~
16 ~~not limited to, a requirement that each advertisement~~
17 ~~contain a disclaimer to the effect that the provider's~~
18 ~~services are covered for some, but not all, insureds or~~
19 ~~product lines.~~

20 ~~SEC. 4.—~~

21 *SEC. 2. Section 512 is added to the Business and*
22 *Professions Code, to read:*

23 *512. (a) Except as otherwise provided in subdivisions*
24 *(b) and (c), and notwithstanding the provisions of any*
25 *contract that is issued, amended, renewed, or delivered*
26 *on or after January 1, 1999, or any other written or oral*
27 *agreement entered into on or after January 1, 1999, it shall*
28 *be unlawful for any person or entity, including, but not*
29 *limited to, any group of physicians and surgeons, any*
30 *medical group, any independent practice association*
31 *(IPA), or any preferred provider organization (PPO), to*
32 *prohibit, restrict, or limit any health care provider from*
33 *advertising.*

34 *(b) Nothing in this section is intended to prohibit*
35 *provisions or agreements intended to establish*
36 *reasonable guidelines for advertising, including those to*
37 *prevent untrue, misleading, or deceptive advertising, of*
38 *a provider's participation as a member of a panel or*
39 *network of participating providers, including, but not*
40 *limited to, a requirement that each advertisement*



1 contain a disclaimer to the effect that the provider's
2 services may be covered for some, but not all, plans or
3 product lines of that person or entity.

4 (c) Nothing in this section is intended to prohibit
5 provisions or agreements intended to protect service
6 marks, trademarks, trade secrets, or other confidential
7 information or property. If a health care provider
8 participates on a provider panel or network as a result of
9 a direct contractual arrangement with a person or entity,
10 including, but not limited to, any group of physicians and
11 surgeons, any medical group, any independent practice
12 association, or any preferred provider organization, that,
13 in turn, has entered into a direct contractual
14 arrangement with another person or entity, pursuant to
15 which enrollees, subscribers, insureds, and other
16 beneficiaries of that other person or entity may receive
17 covered services from the health care provider, then
18 nothing in this section is intended to prohibit reasonable
19 provisions or agreements in the direct contractual
20 arrangement between the health care provider and the
21 person or entity that protect the name or trade name of
22 the other person or entity or require that the health care
23 provider obtain the consent of the person or entity prior
24 to the use of the name or trade name of the person or
25 entity in any advertising by the health care provider.

26 SEC. 3. Section 1395.5 is added to the Health and
27 Safety Code, to read:

28 1395.5. (a) Except as otherwise provided in
29 subdivisions (b) and (c), and notwithstanding the
30 provisions of any health care service plan contract that is
31 issued, amended, renewed, or delivered on or after
32 January 1, 1999, or any other written or oral agreement
33 entered into on or after January 1, 1999, it shall be
34 unlawful for a health care service plan, including a
35 specialized health care service plan, to prohibit, restrict,
36 or limit any health care provider from advertising.

37 (b) Nothing in this section is intended to prohibit
38 provisions or agreements intended to establish
39 reasonable guidelines for advertising, including those to
40 prevent untrue, misleading, or deceptive advertising of



1 a provider's participation as a member of a panel or
2 network of participating providers, including, but not
3 limited to, a requirement that each advertisement
4 contain a disclaimer to the effect that the provider's
5 services may be covered for some, but not all, plans or
6 product lines of the health care service plan.

7 (c) Nothing in this section is intended to prohibit
8 provisions or agreements intended to protect service
9 marks, trademarks, trade secrets, or other confidential
10 information or property. If a health care provider
11 participates on a provider panel or network as a result of
12 a direct contractual arrangement with a health care
13 service plan that, in turn, has entered into a direct
14 contractual arrangement with another person or entity,
15 pursuant to which enrollees, subscribers, insureds, and
16 other beneficiaries of that other person or entity may
17 receive covered services from the health care provider,
18 then nothing in this section is intended to prohibit
19 reasonable provisions or agreements in the direct
20 contractual arrangement between the health care
21 provider and the health care service plan that protect the
22 name or trade name of the other person or entity or
23 require that the health care provider obtain the consent
24 of the health care service plan prior to the use of the name
25 or trade name of the other person or entity in any
26 advertising by the health care provider.

27 SEC. 4. Section 10127.4 is added to the Insurance
28 Code, to read:

29 10127.4. (a) Except as otherwise provided in
30 subdivisions (b) and (c), and notwithstanding the
31 provisions of any contract that is issued, amended,
32 renewed, or delivered on or after January 1, 1999, or any
33 other written or oral agreement entered into on or after
34 January 1, 1999, it shall be unlawful for an insurer to
35 prohibit, restrict, or limit any health care provider from
36 advertising.

37 (b) Nothing in this section is intended to prohibit
38 provisions or agreements intended to establish
39 reasonable guidelines for advertising, including those to
40 prevent untrue, misleading, or deceptive advertising of



1 a provider's participation as a member of a panel or
2 network of participating providers, including, but not
3 limited to, a requirement that each advertisement
4 contain a disclaimer to the effect that the provider's
5 services may be covered for some, but not all, plans or
6 product lines of the insurer.

7 (c) Nothing in this section is intended to prohibit
8 provisions or agreements intended to protect service
9 marks, trademarks, trade secrets, or other confidential
10 information or property. If a health care provider
11 participates in a provider panel or network as a result of
12 a direct contractual agreement with an insurer that, in
13 turn, has entered into a direct contractual agreement
14 with another person or entity, pursuant to which
15 enrollees, subscribers, insureds, and other beneficiaries of
16 that other person or entity may receive covered services
17 from the health care provider, then nothing in this section
18 is intended to prohibit reasonable provisions or
19 agreements in the direct contractual arrangement
20 between the health care provider and the insurer that
21 protect the name or trade name of the other person or
22 entity or requires that the health care provider obtain the
23 consent of the insurer prior to the use of the name or trade
24 name of the other person or entity in any advertising by
25 the health care provider.

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

36 Notwithstanding Section 17580 of the Government
37 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

O

