

AMENDED IN ASSEMBLY AUGUST 24, 1998

AMENDED IN ASSEMBLY AUGUST 10, 1998

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 *contract between a health care provider and a health care service plan*, a disability 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) to ~~prohibit any contain provisions that prohibit, restrict, or limit the 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 shall not be construed to prohibit 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 or network of participating providers in connection with specified regulated activities, or to impair or impede existing authority to regulate advertising, disclosure, or solicitation.~~

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 patients.
- 6 (b) If patients are unaware of services available to
- 7 them, they may not use these services, even when to do
- 8 so would be beneficial to their health.
- 9 (c) Patients' awareness of covered services and
- 10 participating providers will be improved if health care



1 providers are permitted to advertise their participation
2 in provider panels or networks in an appropriate manner.

3 ~~(d) Commercial speech is protected by the First~~
4 ~~Amendment to the United States Constitution, and~~
5 ~~should not be restricted except when necessary to~~
6 ~~prevent fraud or dishonesty.~~

7 SEC. 2. Section 512 is added to the Business and
8 Professions Code, to read:

9 512. (a) Except as ~~otherwise~~ provided in subdivisions
10 ~~(b) and (c), and notwithstanding the provisions of any~~
11 ~~(b) and (c), no~~ contract that is issued, amended,
12 renewed, or delivered on or after January 1, 1999, ~~or any~~
13 ~~other written or oral agreement entered into on or after~~
14 ~~January 1, 1999, it shall be unlawful for~~ *between* any
15 person or entity, including, but not limited to, any group
16 of physicians and surgeons, any medical group, any
17 independent practice association (IPA), or any preferred
18 provider organization (PPO), ~~to~~ *and a health care*
19 *provider shall contain provisions that* prohibit, restrict, or
20 limit ~~any~~ *the* health care provider from advertising.

21 (b) ~~Nothing in this section is intended to prohibit~~
22 ~~provisions or agreements intended to establish~~
23 ~~reasonable guidelines for advertising, including those to~~
24 ~~prevent untrue, misleading, or deceptive advertising, of~~
25 ~~a provider's participation as a member of a panel or~~
26 ~~network of participating providers, including, but not~~
27 ~~limited to, a requirement that each advertisement~~
28 ~~contain a disclaimer to the effect that the provider's~~
29 ~~services may be covered for some, but not all, plans or~~
30 ~~product lines of that person or entity. shall be construed~~
31 ~~to prohibit the establishment of reasonable guidelines in~~
32 ~~connection with the activities regulated pursuant to this~~
33 ~~division, including those to prevent advertising that is, in~~
34 ~~whole or in part, untrue, misleading, deceptive, or~~
35 ~~otherwise inconsistent with this division or the rules and~~
36 ~~regulations promulgated thereunder. For~~
37 ~~advertisements mentioning a provider's participation in~~
38 ~~a plan or product line of any person or entity, nothing in~~
39 ~~this section shall be construed to prohibit requiring each~~
40 ~~advertisement to contain a disclaimer to the effect that~~



1 *the provider's services may be covered for some, but not*
2 *all, plans or product lines of that person or entity, or that*
3 *the person or entity may cover some, but not all, provider*
4 *services.*

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

27 (d) *Nothing in this section shall be construed to impair*
28 *or impede the authority of any state department to*
29 *regulate advertising, disclosure, or solicitation pursuant*
30 *to this division.*

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

33 1395.5. (a) Except as otherwise provided in
34 subdivisions (b) and (c), ~~and notwithstanding the~~
35 ~~provisions of any health care service plan~~ *no* contract that
36 is issued, amended, renewed, or delivered on or after
37 ~~January 1, 1999, or any other written or oral agreement~~
38 ~~entered into on or after January 1, 1999, it shall be~~
39 ~~unlawful for a health care service plan, including a~~
40 ~~specialized health care service plan, to prohibit, restrict,~~



1 *January 1, 1999, between a health care service plan,*
2 *including a specialized health care service plan, and a*
3 *provider shall contain provisions that prohibit, restrict, or*
4 *limit any the health care provider from advertising.*

5 (b) ~~Nothing in this section is intended to prohibit~~
6 ~~provisions or agreements intended to establish~~
7 ~~reasonable guidelines for advertising, including those to~~
8 ~~prevent untrue, misleading, or deceptive advertising of~~
9 ~~a provider's participation as a member of a panel or~~
10 ~~network of participating providers, including, but not~~
11 ~~limited to, a requirement that each advertisement~~
12 ~~contain a disclaimer to the effect that the provider's~~
13 ~~services may be covered for some, but not all, plans or~~
14 ~~product lines of the health care service plan. shall be~~
15 *construed to prohibit plans from establishing reasonable*
16 *guidelines in connection with the activities regulated*
17 *pursuant to this chapter, including those to prevent*
18 *advertising that is, in whole or in part, untrue, misleading,*
19 *deceptive, or otherwise inconsistent with this chapter or*
20 *the rules and regulations promulgated thereunder. For*
21 *advertisements mentioning a provider's participation in*
22 *a plan, nothing in this section shall be construed to*
23 *prohibit plans from requiring each advertisement to*
24 *contain a disclaimer to the effect that the provider's*
25 *services may be covered for some, but not all, plan*
26 *contracts, or that plan contracts may cover some, but not*
27 *all, provider services.*

28 (c) Nothing in this section is intended to prohibit
29 provisions or agreements intended to protect service
30 marks, trademarks, trade secrets, or other confidential
31 information or property. If a health care provider
32 participates on a provider panel or network as a result of
33 a direct contractual arrangement with a health care
34 service plan that, in turn, has entered into a direct
35 contractual arrangement with another person or entity,
36 pursuant to which enrollees, subscribers, insureds, and
37 other beneficiaries of that other person or entity may
38 receive covered services from the health care provider,
39 then nothing in this section is intended to prohibit
40 reasonable provisions or agreements in the direct



1 contractual arrangement between the health care
2 provider and the health care service plan that protect the
3 name or trade name of the other person or entity or
4 require that the health care provider obtain the consent
5 of the health care service plan prior to the use of the name
6 or trade name of the other person or entity in any
7 advertising by the health care provider.

8 *(d) Nothing in this section shall be construed to impair*
9 *or impede the authority of the commissioner to regulate*
10 *advertising, disclosure, or solicitation pursuant to this*
11 *chapter.*

12 SEC. 4. Section 10127.4 is added to the Insurance
13 Code, to read:

14 10127.4. (a) Except as otherwise provided in
15 subdivisions (b) and (c), ~~and notwithstanding the~~
16 ~~provisions of any~~ no contract that is issued, amended,
17 renewed, or delivered on or after January 1, 1999, ~~or any~~
18 ~~other written or oral agreement entered into on or after~~
19 ~~January 1, 1999, it shall be unlawful for a disability insurer~~
20 ~~that provides coverage for hospital, medical, or surgical~~
21 ~~benefits to~~ *between a disability insurer that provides*
22 *coverage for hospital, medical, or surgical benefits and a*
23 *health care provider shall contain provisions that*
24 *prohibit, restrict, or limit any the health care provider*
25 *from advertising.*

26 (b) ~~Nothing in this section is intended to prohibit~~
27 ~~provisions or agreements intended to establish~~
28 ~~reasonable guidelines for advertising, including those to~~
29 ~~prevent untrue, misleading, or deceptive advertising of~~
30 ~~a provider's participation as a member of a panel or~~
31 ~~network of participating providers, including, but not~~
32 ~~limited to, a requirement that each advertisement~~
33 ~~contain a disclaimer to the effect that the provider's~~
34 ~~services may be covered for some, but not all, plans or~~
35 ~~product lines of the insurer.~~ *shall be construed to prohibit*
36 *disability insurers from establishing reasonable*
37 *guidelines in connection with the activities regulated*
38 *pursuant to this part, including those to prevent*
39 *advertising that is, in whole or in part, untrue, misleading,*
40 *deceptive, or otherwise inconsistent with this part or the*



1 *rules and regulations promulgated thereunder. For*
2 *advertisements mentioning a provider's participation in*
3 *a plan or product line of a disability insurer, nothing in*
4 *this section shall be construed to prohibit disability*
5 *insurers from requiring each advertisement to contain a*
6 *disclaimer to the effect that the provider's services may*
7 *be covered for some, but not all, plans or product lines of*
8 *the disability insurer, or that the disability insurer may*
9 *cover some, but not all, provider services.*

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

29 (d) *Nothing in this section shall be construed to impair*
30 *or impede the authority of the commissioner to regulate*
31 *advertising, disclosure, or solicitation pursuant to this*
32 *part.*

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



1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.
3 Notwithstanding Section 17580 of the Government
4 Code, unless otherwise specified, the provisions of this act
5 shall become operative on the same date that the act
6 takes effect pursuant to the California Constitution.

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