

AMENDED IN ASSEMBLY MARCH 8, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 54

Introduced by Assembly Member Dymally

December 4, 2006

~~An act to amend Section 4600 of the Labor Code, relating to workers' compensation.~~ *An act to amend Section 1373.10 of the Health and Safety Code, and to amend Sections 10127.3 and 10176 of the Insurance Code, relating to health care coverage.*

LEGISLATIVE COUNSEL'S DIGEST

AB 54, as amended, Dymally. ~~Workers' compensation~~ *Health care coverage: acupuncture.*

Existing law provides for regulation of health care service plans by the Department of Managed Health Care. Existing law provides for regulation of health insurers by the Insurance Commissioner. A willful violation of the provisions governing health care service plans is a crime. Existing law requires health care service plans and health insurers to offer coverage for acupuncture under a group plan or policy, with certain exceptions.

This bill would require health care service plans and health insurers to provide, rather than to offer, coverage for acupuncture under a group plan or policy, and would delete the exceptions from that requirement. Because the bill would impose new requirements on health care service plans, the willful 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.

~~Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including acupuncture treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.~~

~~Existing law requires the administrative director to adopt a medical treatment utilization schedule, as specified, that is required to address the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases.~~

~~This bill would define acupuncture treatment to mean treatment based upon these guidelines or, prior to the adoption of these guidelines, the specified guidelines published by the Council of Acupuncture and Oriental Medicine Association and the Foundation for Acupuncture Research, including specified information.~~

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

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

- 1 SECTION 1. Section 1373.10 of the Health and Safety Code
- 2 is amended to read:
- 3 1373.10. (a) ~~On and after January 1, 1985, every~~ Every health
- 4 care service plan, ~~that is not a health maintenance organization or~~
- 5 ~~is not a plan that enters exclusively into specialized health care~~
- 6 ~~service plan contracts, as defined by subdivision (n) of Section~~
- 7 ~~1345, which~~ that provides coverage for hospital, medical, or
- 8 surgical expenses, shall ~~offer~~ provide coverage to group contract
- 9 holders ~~contractholders~~ for expenses incurred as a result of
- 10 treatment by holders of ~~certificates~~ licenses under Section 4938
- 11 of the Business and Professions Code, under ~~such~~ terms and
- 12 conditions as may be agreed upon between the health care service
- 13 plan and the group contract holder ~~contractholder~~.
- 14 A health care service plan is not required to offer the coverage
- 15 provided by this section as part of any contract covering employees
- 16 of a public entity.

1 ~~(b) For the purposes of this section, “health maintenance~~
2 ~~organization” or “HMO” means a public or private organization,~~
3 ~~organized under the laws of this state, which does all of the~~
4 ~~following:~~

5 ~~(1) Provides or otherwise makes available to enrolled~~
6 ~~participants health care services, including at least the following~~
7 ~~basic health care services: usual physician services, hospitalization,~~
8 ~~laboratory, X-ray, emergency and preventive services, and~~
9 ~~out-of-area coverage.~~

10 ~~(2) Is compensated, except for copayments, for the provision~~
11 ~~of basic health care services listed in paragraph (1) to enrolled~~
12 ~~participants on a predetermined periodic rate basis.~~

13 ~~(3) Provides physician services primarily directly through~~
14 ~~physicians who are either employees or partners of the~~
15 ~~organization, or through arrangements with individual physicians~~
16 ~~or one or more groups of physicians, organized on a group practice~~
17 ~~or individual practice basis.~~

18 *SEC. 2 Section 10127.3 of the Insurance Code is amended to*
19 *read:*

20 10127.3. ~~On and after January 1, 1985, every~~ *Every* insurer
21 ~~issuing group disability health insurance which covers hospital,~~
22 ~~medical, or surgical expenses shall offer~~ *provide* coverage for
23 expenses incurred as a result of treatment by holders of ~~certificates~~
24 *licenses* under Section 4938 of the Business and Professions Code,
25 under such terms and conditions as may be agreed upon between
26 the group policyholder and the insurer.

27 ~~An insurer is not required to offer the coverage provided by this~~
28 ~~section as part of any policy covering employees of a public entity.~~

29 *SEC. 3. Section 10176 of the Insurance Code is amended to*
30 *read:*

31 10176. ~~In disability health insurance, the policy may provide~~
32 ~~for payment of medical, surgical, chiropractic, physical therapy,~~
33 ~~speech pathology, audiology, acupuncture, professional mental~~
34 ~~health, dental, hospital, or optometric expenses upon a~~
35 ~~reimbursement basis, or for the exclusion of any of those services,~~
36 ~~and provision may be made therein for payment of all or a portion~~
37 ~~of the amount of charge for these services without requiring that~~
38 ~~the insured first pay the expenses. The policy shall not prohibit~~
39 ~~the insured from selecting any psychologist or other person who~~
40 ~~is the holder of a certificate or license under Section 1000, 1634,~~

1 2050, 2472, 2553, 2630, 2948, 3055, or 4938 of the Business and
2 Professions Code, to perform the particular services covered under
3 the terms of the policy, the certificate holder or licensee being
4 expressly authorized by law to perform those services.

5 ~~If the insured selects any person who is a holder of a certificate
6 under Section 4938 of the Business and Professions Code, a
7 disability insurer or nonprofit hospital service plan shall pay the
8 bona fide claim of an acupuncturist holding a certificate pursuant
9 to Section 4938 of the Business and Professions Code for the
10 treatment of an insured person only if the insured's policy or
11 contract expressly includes acupuncture as a benefit and includes
12 coverage for the injury or illness treated. Unless the policy or
13 contract expressly includes acupuncture as a benefit, no person
14 who is the holder of any license or certificate set forth in this
15 section shall be paid or reimbursed under the policy for
16 acupuncture.~~

17 Nor shall the policy prohibit the insured, upon referral by a
18 physician and surgeon licensed under Section 2050 of the Business
19 and Professions Code, from selecting any licensed clinical social
20 worker who is the holder of a license issued under Section 4996
21 of the Business and Professions Code or any occupational therapist
22 as specified in Section 2570.2 of the Business and Professions
23 Code, or any marriage and family therapist who is the holder of a
24 license under Section 4980.50 of the Business and Professions
25 Code, to perform the particular services covered under the terms
26 of the policy, or from selecting any speech-language pathologist
27 or audiologist licensed under Section 2532 of the Business and
28 Professions Code or any registered nurse licensed pursuant to
29 Chapter 6 (commencing with Section 2700) of Division 2 of the
30 Business and Professions Code, who possesses a master's degree
31 in psychiatric-mental health nursing and is listed as a
32 psychiatric-mental health nurse by the Board of Registered Nursing
33 or any advanced practice registered nurse certified as a clinical
34 nurse specialist pursuant to Article 9 (commencing with Section
35 2838) of Chapter 6 of Division 2 of the Business and Professions
36 Code who participates in expert clinical practice in the specialty
37 of psychiatric-mental health nursing, or any respiratory care
38 practitioner certified pursuant to Chapter 8.3 (commencing with
39 Section 3700) of Division 2 of the Business and Professions Code
40 to perform services deemed necessary by the referring physician,

1 that certificate holder, licensee or otherwise regulated person, being
2 expressly authorized by law to perform the services.

3 Nothing in this section shall be construed to allow any certificate
4 holder or licensee enumerated in this section to perform
5 professional mental health services beyond his or her field or fields
6 of competence as established by his or her education, training, and
7 experience. For the purposes of this section, “marriage and family
8 therapist” means a licensed marriage and family therapist who has
9 received specific instruction in assessment, diagnosis, prognosis,
10 and counseling, and psychotherapeutic treatment of premarital,
11 marriage, family, and child relationship dysfunctions that is
12 equivalent to the instruction required for licensure on January 1,
13 1981.

14 An individual ~~disability~~ *health* insurance policy, which is issued,
15 renewed, or amended on or after January 1, 1988, which includes
16 mental health services coverage may not include a lifetime waiver
17 for that coverage with respect to any applicant. The lifetime waiver
18 of coverage provision shall be deemed unenforceable.

19 *SEC. 4. No reimbursement is required by this act pursuant to*
20 *Section 6 of Article XIII B of the California Constitution because*
21 *the only costs that may be incurred by a local agency or school*
22 *district will be incurred because this act creates a new crime or*
23 *infraction, eliminates a crime or infraction, or changes the penalty*
24 *for a crime or infraction, within the meaning of Section 17556 of*
25 *the Government Code, or changes the definition of a crime within*
26 *the meaning of Section 6 of Article XIII B of the California*
27 *Constitution.*

28 ~~SECTION 1. The Legislature hereby finds and declares all of~~
29 ~~the following:~~

30 ~~(a) In order to encourage the more effective utilization of~~
31 ~~acupuncture and oriental medicine services, to provide California~~
32 ~~citizens a holistic approach, and to promote the health, safety, and~~
33 ~~welfare of the public, the Legislature created the Acupuncture~~
34 ~~Licensure Act as a framework to establish a profession that would~~
35 ~~provide these services.~~

36 ~~(b) There are reports of shortages of qualified health care~~
37 ~~professionals who can address the needs of citizens who suffer~~
38 ~~from pain, work-related injuries, and other nonlife-threatening~~
39 ~~illnesses.~~

1 ~~(e) The National Institutes of Health has adopted a Consensus~~
2 ~~Statement on Acupuncture, recognizing a need for utilizing~~
3 ~~acupuncture in the American system of health care.~~

4 ~~(d) For these reasons and others, acupuncture has been a~~
5 ~~common and effective treatment for work-related injuries and~~
6 ~~should continue to be a medical treatment choice for injured~~
7 ~~workers.~~

8 SEC. 2. Section 4600 of the Labor Code is amended to read:

9 4600. (a) Medical, surgical, chiropractic, acupuncture, and
10 hospital treatment, including nursing, medicines, medical and
11 surgical supplies, crutches, and apparatus, including orthotic and
12 prosthetic devices and services, that is reasonably required to cure
13 or relieve the injured worker from the effects of his or her injury
14 shall be provided by the employer. In the case of his or her neglect
15 or refusal reasonably to do so, the employer is liable for the
16 reasonable expense incurred by or on behalf of the employee in
17 providing treatment.

18 (b) ~~As used in this division and notwithstanding any other~~
19 ~~provision of law, medical treatment that is reasonably required to~~
20 ~~cure or relieve the injured worker from the effects of his or her~~
21 ~~injury means treatment that is based upon the guidelines adopted~~
22 ~~by the administrative director pursuant to Section 5307.27 or, prior~~
23 ~~to the adoption of those guidelines, the updated American College~~
24 ~~of Occupational and Environmental Medicine's Occupational~~
25 ~~Medicine Practice Guidelines.~~

26 (c) ~~As used in this division and notwithstanding any other~~
27 ~~provision of law, acupuncture treatment that is reasonable required~~
28 ~~to relieve the injured worker from the effects of his or her injury~~
29 ~~means treatment that is based upon the guidelines adopted by the~~
30 ~~administrative director pursuant to Section 5307.27 or, prior to the~~
31 ~~adoption of those guidelines, as set forth in the "Acupuncture and~~
32 ~~Electroacupuncture: Evidence-Based Treatment Guidelines-August~~
33 ~~2004" published by the Council of Acupuncture and Oriental~~
34 ~~Medicine Associations and the Foundation for Acupuncture~~
35 ~~Research, and which shall include any subsequent updates of those~~
36 ~~guidelines or other guidelines. Nothing in this section shall prohibit~~
37 ~~the administrative director from adopting treatment guidelines for~~
38 ~~acupuncture if those guidelines are at least as comprehensive as~~
39 ~~the "Acupuncture and Electroacupuncture: Evidence-Based~~
40 ~~Treatment Guidelines-August 2004."~~

1 ~~(d) Unless the employer or the employer's insurer has~~
2 ~~established a medical provider network as provided for in Section~~
3 ~~4616, after 30 days from the date the injury is reported, the~~
4 ~~employee may be treated by a physician of his or her own choice~~
5 ~~or at a facility of his or her own choice within a reasonable~~
6 ~~geographic area.~~

7 ~~(e) (1) If an employee has notified his or her employer in~~
8 ~~writing prior to the date of injury that he or she has a personal~~
9 ~~physician, the employee shall have the right to be treated by that~~
10 ~~physician from the date of injury if either of the following~~
11 ~~conditions exist:~~

12 ~~(A) The employer provides nonoccupational group health~~
13 ~~coverage in a health care service plan, licensed pursuant to Chapter~~
14 ~~2.2 (commencing with Section 1340) of Division 2 of the Health~~
15 ~~and Safety Code.~~

16 ~~(B) The employer provides nonoccupational health coverage in~~
17 ~~a group health plan or a group health insurance policy as described~~
18 ~~in Section 4616.7.~~

19 ~~(2) For purposes of paragraph (1), a personal physician shall~~
20 ~~meet all of the following conditions:~~

21 ~~(A) The physician is the employee's regular physician and~~
22 ~~surgeon, licensed pursuant to Chapter 5 (commencing with Section~~
23 ~~2000) of Division 2 of the Business and Professions Code.~~

24 ~~(B) The physician is the employee's primary care physician and~~
25 ~~has previously directed the medical treatment of the employee,~~
26 ~~and who retains the employee's medical records, including his or~~
27 ~~her medical history. "Personal physician" includes a medical group,~~
28 ~~if the medical group is a single corporation or partnership~~
29 ~~composed of licensed doctors of medicine or osteopathy, which~~
30 ~~operates an integrated multispecialty medical group providing~~
31 ~~comprehensive medical services predominantly for~~
32 ~~nonoccupational illnesses and injuries.~~

33 ~~(C) The physician agrees to be predesignated.~~

34 ~~(3) If the employer provides nonoccupational health care~~
35 ~~pursuant to Chapter 2.2 (commencing with Section 1340) of~~
36 ~~Division 2 of the Health and Safety Code, and the employer is~~
37 ~~notified pursuant to paragraph (1), all medical treatment, utilization~~
38 ~~review of medical treatment, access to medical treatment, and other~~
39 ~~medical treatment issues shall be governed by Chapter 2.2~~
40 ~~(commencing with Section 1340) of Division 2 of the Health and~~

1 Safety Code. Disputes regarding the provision of medical treatment
2 shall be resolved pursuant to Article 5.55 (commencing with
3 Section 1374.30) of Chapter 2.2 of Division 2 of the Health and
4 Safety Code.

5 (4) If the employer provides nonoccupational health care, as
6 described in Section 4616.7, all medical treatment, utilization
7 review of medical treatment, access to medical treatment, and other
8 medical treatment issues shall be governed by the applicable
9 provisions of the Insurance Code.

10 (5) The insurer may require prior authorization of any
11 nonemergency treatment or diagnostic service and may conduct
12 reasonably necessary utilization review pursuant to Section 4610.

13 (6) An employee shall be entitled to all medically appropriate
14 referrals by the personal physician to other physicians or medical
15 providers within the nonoccupational health care plan. An
16 employee shall be entitled to treatment by physicians or other
17 medical providers outside of the nonoccupational health care plan
18 pursuant to standards established in Article 5 (commencing with
19 Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety
20 Code.

21 (7) The division shall conduct an evaluation of this program
22 and present its findings to the Governor and the Legislature on or
23 before December 31, 2008.

24 (8) This subdivision shall remain in effect only until December
25 31, 2009, and as of that date is repealed, unless a later enacted
26 statute that is enacted before December 31, 2009, deletes or extends
27 that date.

28 (f) (1) When at the request of the employer, the employer's
29 insurer, the administrative director, the appeals board, or a workers'
30 compensation administrative law judge, the employee submits to
31 examination by a physician, he or she shall be entitled to receive,
32 in addition to all other benefits herein provided, all reasonable
33 expenses of transportation, meals, and lodging incident to reporting
34 for the examination, together with one day of temporary disability
35 indemnity for each day of wages lost in submitting to the
36 examination.

37 (2) Regardless of the date of injury, "reasonable expenses of
38 transportation" includes mileage fees from the employee's home
39 to the place of the examination and back at the rate of twenty-one
40 cents (\$0.21) a mile or the mileage rate adopted by the Director

1 of the Department of Personnel Administration pursuant to Section
2 19820 of the Government Code, whichever is higher, plus any
3 bridge tolls. The mileage and tolls shall be paid to the employee
4 at the time he or she is given notification of the time and place of
5 the examination.

6 ~~(g) When at the request of the employer, the employer's insurer,~~
7 ~~the administrative director, the appeals board, or a workers'~~
8 ~~compensation administrative law judge, an employee submits to~~
9 ~~examination by a physician and the employee does not proficiently~~
10 ~~speak or understand the English language, he or she shall be~~
11 ~~entitled to the services of a qualified interpreter in accordance with~~
12 ~~conditions and a fee schedule prescribed by the administrative~~
13 ~~director. These services shall be provided by the employer. For~~
14 ~~purposes of this section, "qualified interpreter" means a language~~
15 ~~interpreter certified, or deemed certified, pursuant to Article 8~~
16 ~~(commencing with Section 11435.05) of Chapter 4.5 of Part 1 of~~
17 ~~Division 3 of Title 2 of, or Section 68566 of, the Government~~
18 ~~Code.~~

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