

§ 1348.6. Proscription on payment to health care practitioner to deny, limit, or delay services

(a) No contract between a health care service plan and a physician, physician group, or other licensed health care practitioner shall contain any incentive plan that includes specific payment made directly, in any type or form, to a physician, physician group, or other licensed health care practitioner as an inducement to deny, reduce, limit, or delay specific, medically necessary, and appropriate services provided with respect to a specific enrollee or groups of enrollees with similar medical conditions.

(b) Nothing in this section shall be construed to prohibit contracts that contain incentive plans that involve general payments, such as capitation payments, or shared-risk arrangements that are not tied to specific medical decisions involving specific enrollees or groups of enrollees with similar medical conditions. The payments rendered or to be rendered to physicians, physician groups, or other licensed health care practitioners under these

arrangements shall be deemed confidential information in accordance with subdivision (d) of Section 1351.

HISTORY:

Added Stats 1996 ch 1014 § 2 (AB 2649).

§ 1348.8. Requirements for telephone medical advice services; Forwarding of data to Department of Consumer Affairs

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

(1) Ensure that the in-state or out-of-state telephone medical advice service complies with the requirements of Chapter 15 (commencing with Section 4999) of Division 2 of the Business and Professions Code.

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

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

(B)(i) For specialized health care service plans providing, operating, or contracting with a telephone medical advice service in California, the staff shall be appropriately licensed, registered, or certified as a dentist pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code, as a dental hygienist pursuant to Article 7 (commencing with Section 1740) of Chapter 4 of Division 2 of the Business and Professions Code, as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the Osteopathic Initiative Act, as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, as an optometrist pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4991) of Division 2 of the Business and Professions Code, as a professional clinical counselor pursuant to Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, or as a chiropractor pursuant to the Chiropractic Initiative Act, and operating in compliance with the laws governing their respective scopes of practice.

(ii) For specialized health care service plans providing, operating, or contracting with an out-of-state telephone medical advice service, the staff shall be health care professionals, as identified in clause (i), who are licensed, registered, or certified in the state within which they are

providing the telephone medical advice services and are operating in compliance with the laws governing their respective scopes of practice. All registered nurses providing telephone medical advice services to both in-state and out-of-state business entities registered pursuant to this chapter shall be licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code.

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

(4) Ensure that staff members handling enrollee or subscriber calls, who are not licensed, certified, or registered as required by paragraph (2), do not provide telephone medical advice. Those staff members may ask questions on behalf of a staff member who is licensed, certified, or registered as required by paragraph (2), in order to help ascertain the condition of an enrollee or subscriber so that the enrollee or subscriber can be referred to licensed staff. However, under no circumstances shall those staff members use the answers to those questions in an attempt to assess, evaluate, advise, or make any decision regarding the condition of an enrollee or subscriber or determine when an enrollee or subscriber needs to be seen by a licensed medical professional.

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

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

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

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

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

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

HISTORY:

Added Stats 1999 ch 535 § 2 (AB 285). Amended Stats 2002 ch 1013 § 83 (SB 2026); Stats 2003 ch 885 § 3 (SB 969); Stats 2008 ch 31 § 51 (SB 853), effective January 1, 2009, operative July 1, 2009 (ch 31 prevails), ch 179 § 137,

effective January 1, 2008; Stats 2010 ch 328 § 113 (SB 1330), effective January 1, 2011; Stats 2011 ch 381 § 28 (SB 146), effective January 1, 2012; Stats 2016 ch 799 § 42 (SB 1039), effective January 1, 2017.

§ 1348.9. Adoption of regulations establishing Consumer Participation Program; Award of advocacy and witness fees

(a) On or before July 1, 2003, the director shall adopt regulations to establish the Consumer Participation Program, which shall allow for the director to award reasonable advocacy and witness fees to a person or organization that demonstrates that the person or organization represents the interests of consumers and has made a substantial contribution on behalf of consumers to the adoption of a regulation or to an order or decision made by the director if the order or decision has the potential to impact a significant number of enrollees.

(b) The regulations adopted by the director shall include specifications for eligibility of participation, rates of compensation, and procedures for seeking compensation. The regulations shall require that the person or organization demonstrate a record of advocacy on behalf of health care consumers in administrative or legislative proceedings in order to determine whether the person or organization represents the interests of consumers.

(c) This section applies to all proceedings of the department, but does not apply to resolution of individual grievances, complaints, or cases.

(d) Fees awarded pursuant to this section may not exceed three hundred fifty thousand dollars (\$350,000) each fiscal year.

(e) The fees awarded pursuant to this section shall be considered costs and expenses pursuant to Section 1356 and shall be paid from the assessment made under that section. The amount of the assessment shall not be increased to pay the fees awarded under this section.

(f) By March 1, 2022, and annually each March 1 thereafter, the department shall post all of the following information on its public internet website:

(1) The amount of reasonable advocacy and witness fees awarded each fiscal year.

(2) The individuals or organization to whom advocacy and witness fees were awarded pursuant to this section.

(3) The orders, decisions, and regulations pursuant to which the advocacy and witness fees were awarded.

HISTORY:

Added Stats 2002 ch 792 § 2 (SB 1092). Amended Stats 2006 ch 69 § 20 (AB 1806), effective July 12, 2006, repealed January 1, 2012. Stats 2011 ch 31 § 14 (AB 119), effective

June 29, 2011, repealed January 1, 2018. Amended Stats 2017 ch 52 § 5 (SB 97), effective July 10, 2017; Stats 2021 ch 741 § 1 (AB 326), effective January 1, 2022.