

2-22-1996

Health Care Businesses. Regulation. Consumer Protection.

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State of California

SECRETARY OF STATE

June 6, 1996

TO: ALL COUNTY CLERKS/REGISTRARS OF VOTERS (96196)

Pursuant to Section 9033 of the Elections Code, I hereby certify that on June 6, 1996 the certificates received from the County Clerks or Registrars of Voters by the Secretary of State established that the Initiative Statute, HEALTH CARE BUSINESSES. REGULATION. CONSUMER PROTECTION. has been signed by the requisite number of qualified electors needed to declare the petition sufficient. The HEALTH CARE BUSINESSES. REGULATION. CONSUMER PROTECTION. INITIATIVE STATUTE. is, therefore, qualified for the November 5, 1996 General Election.

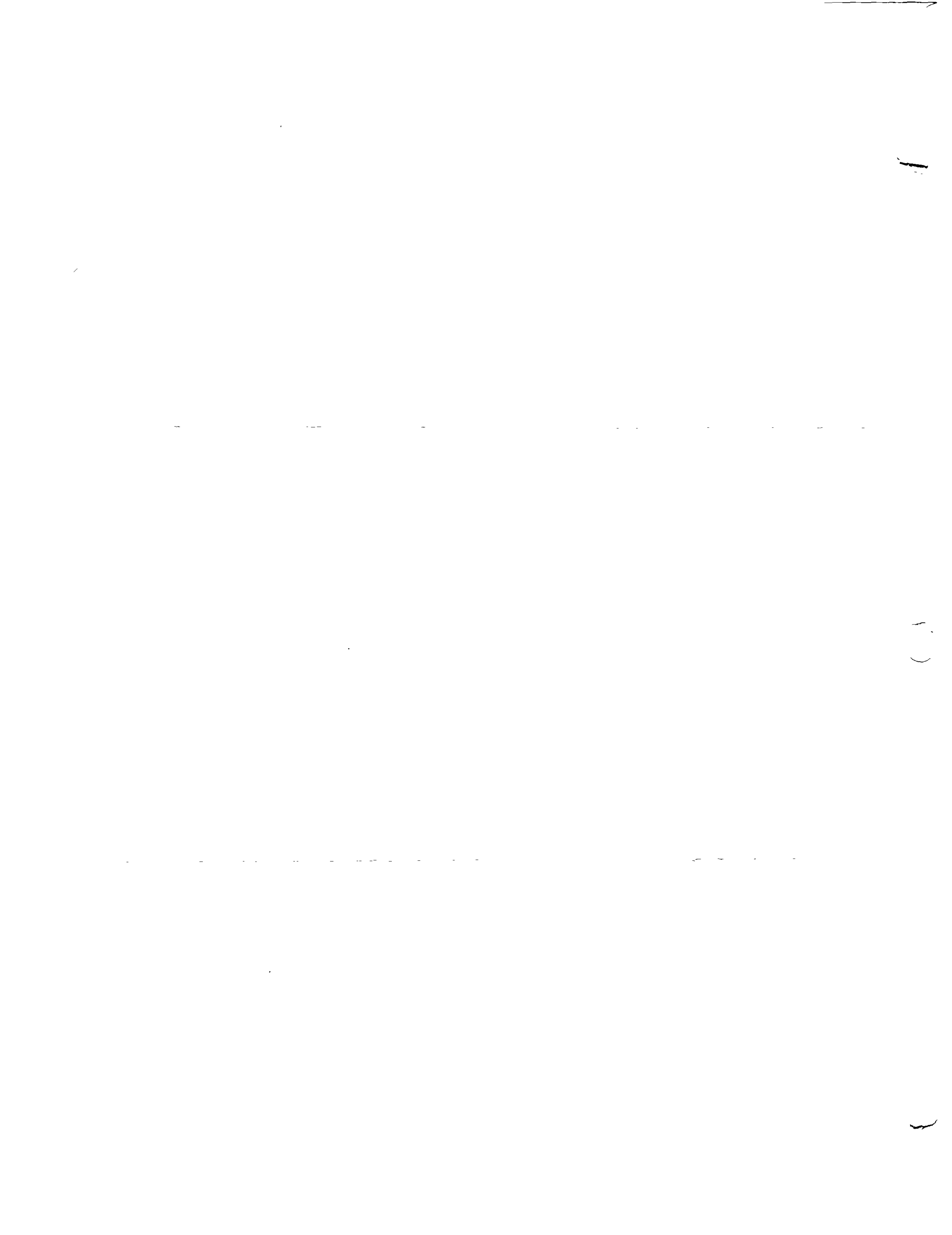
HEALTH CARE BUSINESSES. REGULATION. CONSUMER PROTECTION. INITIATIVE STATUTE. Prohibits health care businesses from: discouraging health care professionals from informing patients or advocating for treatment; offering incentives for withholding care; refusing services recommended by physician or nurse without examination by business' own professional. Requires health care businesses to: make tax returns and other financial information public; disclose certain financial information to consumers including administrative costs; establish criteria for authorizing or denying payments; provide for minimum safe and adequate staffing of health care facilities. Authorizes public and private enforcement actions. Provides penalties for repeated violations. Defines "health insurer." Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown direct and indirect costs to state and local governments of potentially \$10 million to several hundreds of millions of dollars.



IN WITNESS WHEREOF, I hereunto set my hand and affix the Great Seal of the State of California this 6thth day of June, 1996.

Bill Jones

BILL JONES
Secretary of State



- DIVISIONS:**
 Archives
 Corporate Filings
 Elections
 Information Technology
 Limited Partnership
 Management Services
 Notary Public
 Political Reform
 Uniform Commercial Code



ELECTIONS DIVISION
 (916) 657-2166
 1500 - 11th STREET
 SACRAMENTO, CA 95814
 Voter Registration Hotline
 1-800-345-VOTE
 For Hearing and Speech Impaired Only
 1-800-833-8683
 e-mail: comments@ss.ca.gov

BILL JONES

Secretary of State
 State of California
 #724

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FEB 28 1996

LIBRARY
 HASTINGS COLLEGE OF THE LAW

February 22, 1996

TO ALL REGISTRARS OF VOTERS, OR COUNTY CLERKS, AND PROPONENT(S) (96094)

Pursuant to Section 336 of the Elections Code, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed Initiative Measure entitled:

**HEALTH CARE BUSINESSES. REGULATION.
 CONSUMER PROTECTION.
 INITIATIVE STATUTE.**

Circulating and Filing Schedule

1. Minimum number of signatures required 433,269
 Cal. Const., Art II, Sec. 8(b).

2. Official Summary Date Thursday, 02/22/96
 Elec. C., Sec. 336.

3. Petitions Sections:
 - a. First day Proponents can circulate Sections for
 signatures Thursday, 02/22/96
 Elec. C., Sec. 336.

 - b. Last day Proponents can circulate and file with
 the county. All sections are to be filed at
 the same time within each county. Monday, 07/22/96*
 Elec. C., Secs. 336, 9030(a).

 - c. Last day for county to determine total number of
 signatures affixed to petitions and to transmit total
 to the Secretary of State Thursday, 08/01/96
 Elec. C., Sec. 9030(b).

(If the Proponents file the petition with the county on a date prior to 07/22/96, the county has eight working days from the filing of the petition to determine the total number of signatures affixed to the petition and to transmit the total to the Secretary of State.) Elec. C., Sec. 9030(b).

* Date adjusted for official deadline which falls on Saturday. Elec. C., Sec. 15.
"Ensuring the integrity of California's election process"

- d. Secretary of State determines whether the total number of signatures filed with all county clerks meets the minimum number of required signatures, and notifies the counties Saturday, 08/10/96**
Elec. C., Sec. 9030(c).

- e. Last day for county to determine total number of qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State Tuesday, 09/24/96
Elec. C., Sec. 9030(d), (e).

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 08/10/96, the last day is no later than the thirtieth day after the county's receipt of notification.)
Elec. C., Sec. 9030(d), (e).

- f. If the signature count is more than 476,596 or less than 411,606 then the Secretary of State certifies the petition has qualified or failed, and notifies the counties. If the signature count is between 411,606 and 476,596 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of all signatures Friday, 10/04/96**
Elec. C., Secs. 9030(f), (g); 9031(a).

- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State Tuesday, 11/19/96
Elec. C., Sec. 9031(b), (c).

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 10/04/96, the last day is no later than the thirtieth working day after the county's receipt of notification.)
Elec. C., Sec. 9031(b), (c).

- h. Secretary of State certified whether the petition has been signed by the number of qualified voters required to declare the petition sufficient Saturday, 11/23/96**
Elec. C., Secs. 9031(d), 9033.

** Date varies based on receipt of county certification.

4. The Proponents of the above-named measure are:

Glen Schneider
Connie Jacowitz
2325 California Street
Berkeley, CA 94703
(510) 644-1776

5. Important Points:

- (a) California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fund raising or requests for support. Any such misuse constitutes a crime under California law. Elections Code sections 18650; *Bilofsky v. Deukmejian* (1981) 123 Cal.App. 3d 825, 177 Cal.Rptr. 621; 63 Ops. Cal.Atty.Gen.37 (1980).
- (b) Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- (c) Your attention is directed to the campaign disclosure requirements of the Political Reform Act of 1974, Government Code section 81000 et seq.
- (d) When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- (e) When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- (f) When filing the petition with the county elections official, please provide a blank petition for elections official use.

NOTE TO PROPONENTS WHO WISH TO QUALIFY FOR THE NOVEMBER 5, 1996 GENERAL ELECTION: This initiative must be certified for the ballot 131 days before the election (June 27, 1996). Please remember to time your submissions accordingly. For example, in order to allow the maximum time permitted by law for the random sample verification process, it is suggested that proponents file their petitions to county elections officials by April 19, 1996. If a 100% check of signatures is necessary, it is advised that the petitions be filed by February 28, 1996.

Sincerely,



CATHY MITCHELL
ELECTIONS SPECIALIST

DANIEL E. LUNGREN
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550
(916) 445-9555

Facsimile: (916) 323-2137
(916) 324-5490

FILED

In the office of the Secretary of State
of the State of California

February 22, 1996

FEB 22 1996

Bill Jones
Secretary of State
1500 - 11th Street
Sacramento, CA 95814

BILL JONES, Secretary of State
By *[Signature]*
Deputy Secretary of State

Re: Initiative Title and Summary
Subject: HEALTH CARE BUSINESSES. REGULATION. CONSUMER PROTECTION.
INITIATIVE STATUTE.
File No: SA 96 RF 0002

Dear Mr. Jones:

Pursuant to the provisions of sections 9004 and 336 of the Elections Code, you are hereby notified that on this day we mailed to the proponents of the above-identified proposed initiative our title and summary.

Enclosed is a copy of our transmittal letter to the proponents, a copy of our title and summary, a declaration of mailing thereof, and a copy of the proposed measure.

According to information available in our records, the names and addresses of the proponents are as stated on the declaration of mailing.

Sincerely,

DANIEL E. LUNGREN
Attorney General

[Signature]

KATHLEEN F. DaROSA
Initiative Coordinator

KFD:ms
Enclosures

Date: February 22, 1996
File No: SA96RF0002

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

HEALTH CARE BUSINESSES. REGULATION. CONSUMER PROTECTION.

INITIATIVE STATUTE. Prohibits health care businesses from: discouraging health care professionals from informing patients or advocating for treatment; offering incentives for withholding care; refusing services recommended by physician or nurse without examination by business' own professional. Requires health care businesses to: make tax returns and other financial information public; disclose certain financial information to consumers including administrative costs; establish criteria for authorizing or denying payments; provide for minimum safe and adequate staffing of health care facilities. Authorizes public and private enforcement actions. Provides penalties for repeated violations. Defines "health insurer." Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: Unknown direct and indirect costs to state and local governments of potentially \$10 million to several hundreds of millions of dollars.

December 26, 1995

RECEIVED
JAN 5 1996

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Office of the Attorney General
Department of Justice
1515 K Street
Sacramento, CA 95814

Attention: Kathleen DaRosa, Initiative Coordinator

RE: Health Care Patient Protection Act of 1996

Dear Ms. DaRosa:

Pursuant to the Elections Code S. 9002, I request the Attorney General to prepare a title and summary of an initiative measure entitled "Health Care Patient Protection Act of 1996." The text of the measure and a check for \$200 are attached. We may be contacted at the address below, which also is the address at which we are registered to vote.

Sincerely,



Glen Schneider
2325 California St.
Berkeley, CA 94703
510-644-1776
Fax 510-644-2976



Connie Jacowitz
2325 California St.
Berkeley, CA 94703
510-644-1776
Fax: 510-644-2976

The Health Care Patient Protection Act of 1996

Section 1. Purpose and Intent.

(a) This measure shall be known as the Health Care Patient Protection Act of 1996. The People of California find and declare that:

(1) No health maintenance organization (HMO) or other health care business should be able to prevent physicians, nurses and other health caregivers from informing patients of any information that is relevant to their health care.

(2) Doctors, nurses and other health caregivers should be able to advocate for patients without fear of retaliation from HMOs and other health care businesses.

(3) Health care businesses should not create conflicts of interest that force doctors and other caregivers to choose between increasing their pay or giving their patients medically appropriate care.

(4) Patients should not be denied the medical care their doctor recommends just because their HMO or health insurer thinks it will cost too much.

(5) HMOs and other health insurers should establish publicly available criteria for authorizing or denying care that are determined by appropriately qualified health professionals.

(6) No HMO or other health insurer should be able to deny a treatment recommended by a patient's physician unless the decision to deny is made by an appropriately qualified health professional who has physically examined the patient.

(7) All doctors and health care professionals who are responsible for determining in any way the medical care that a health plan provides to patients should be subject to the same professional standards and disciplinary procedures as similarly licensed health professionals who provide direct care for patients.

(8) No hospital, nursing home or other health facility should be allowed to operate unless it maintains minimum levels of safe staffing by doctors, nurses, and other health caregivers.

(9) The quality of health care available to California consumers will suffer if health care becomes a big business that cares more about making money than it cares about taking good care of patients.

(10) It is not fair to consumers when health care executives are paid millions of dollars in salaries and bonuses while consumers are being forced to accept more and more restrictions on their health care coverage.

(11) The premiums paid to health insurers should be spent on the health care services to which patients are entitled, not on big corporate salaries, expensive advertising and other excessive administrative overhead.

(12) The people of California should not be forced to rely only upon politicians and their political appointees to enforce this Act. The people themselves should have standing with administrative agencies and the courts to make sure that the provisions, purposes and intent of this Act are carried out.

(b) This Act contains reforms based upon these findings. It is the purpose and intent of each section of this Act to protect the health, safety and welfare of the people of California

by ensuring the quality of health services provided to consumers and patients and by requiring health care businesses to provide the services to which consumers and patients are entitled in a safe and appropriate manner.

Section 2. Full Disclosure of Medical Information to Patients.

No health care business shall attempt to prevent in any way a physician, nurse, or other licensed or certified caregiver from disclosing to a patient any information that the caregiver determines to be relevant to the patient's health care.

Section 3. Physicians Must Be Able to Advocate for Their Patients.

(a) No health care business shall discharge, demote, terminate a contract with, deny privileges to, or otherwise sanction a physician, nurse, or other licensed or certified caregiver for advocating in private or in public on behalf of patients or for reporting any violation of law to appropriate authorities.

(b) No physician, nurse, or other licensed or certified caregiver shall be discharged, demoted, have a contract terminated, be denied privileges, or otherwise sanctioned except for just cause. Examples of just cause include, but are not limited to, proven malpractice, patient endangerment, substance abuse, sexual abuse of patients, or economic necessity.

Section 4. Ban on Financial Conflicts of Interest.

No health care business shall offer or pay bonuses, incentives or other financial compensation directly or indirectly to any physician, nurse or other licensed or certified caregiver for the denial, withholding, or delay of medically appropriate care to which patients or enrollees are entitled. This section shall not prohibit a health care business from using capitated rates.

Section 5. Written Criteria for the Denial of Care.

Health insurers shall establish criteria for authorizing or denying payment for care and for assuring quality of care. The criteria shall:

(a) Be determined by physicians, nurses or other appropriately licensed health professionals, acting within their existing scope of practice and actively providing direct care to patients;

(b) Use sound clinical principles and processes;

- (c) Be updated at least annually; and
- (d) Be publicly available.

Section 6. Patients Must Be Examined Before Care is Denied.

In arranging for medical care and in providing direct care to patients, no health care business shall refuse to authorize the health care services to which a patient is entitled and which have been recommended by a patient's physician or other appropriately licensed health care professional acting within their existing scope of practice unless the following conditions are met:

- (a) the employee or contractor who authorizes the denial on behalf of the health care business has physically examined the patient in a timely manner;
- (b) that employee or contractor is an appropriately licensed health care professional with the education, training, and relevant expertise that is appropriate for evaluating the specific clinical issues involved in the denial; and
- (c) any denial and the reasons for it have been communicated by that employee or contractor in a timely manner in writing to the patient and the physician or other licensed health care professional responsible for the care of the patient.

Section 7. Physicians Determine Medical Care.

A physician, nurse, or other licensed caregiver who is an employee or contractor of a health care business and who is responsible for establishing procedures for assuring quality of care or in any way determining what care will be provided to patients shall be subject to the same standards and disciplinary procedures as all other physicians, nurses, or other licensed caregivers providing direct patient care in California.

Section 8. Safe Physician and Nursing Levels in Health Facilities.

- (a) All health care facilities shall provide minimum safe and adequate staffing of physicians, nurses and other licensed and certified caregivers.
- (b) The Director of Health Services shall periodically update staffing standards designed to assure minimum safe and adequate levels of patient care in facilities licensed by the Department of Health Services. Those standards shall be based upon:
 - (1) the severity of patient illness;
 - (2) factors affecting the period and quality of patient recovery; and
 - (3) any other factor substantially related to the condition and health care needs of patients.
- (c) For those health services which are provided by health care service plans licensed by the Department of Corporations and provided in organized medical clinics not licensed by

the Department of Health Services, the Commissioner of Corporations shall periodically update staffing standards designed to assure minimum safe and adequate levels of patient care.

(d) Licensed health facilities shall make available for public inspection reports of the daily staffing patterns utilized by the facility and a written plan for assuring compliance with the staffing standards required by law.

Section 9. Disclosure of Excessive Overhead of Health Insurers.

(a) Health care insurers shall disclose to all purchasers of health insurance coverage the amount of the total premiums, fees, and other periodic payments received by the insurer spent providing for health care services to its subscribers or enrollees and the amount spent on administrative costs. For the purposes of this Act, administrative costs are defined to include all of the following:

- (1) Marketing and advertising, including sales costs and commissions;
- (2) Total compensation, including bonuses, incentives, and stock options for officers and directors of the corporation;
- (3) Dividends, shares of profit, or any other compensation received by shareholders, if any, or any other revenue in excess of expenditures for the direct provision of health care; and
- (4) All other expenses not related to the provision of direct health care services.

(b) Should the amount of administrative costs exceed 10% of the total premiums, fees, and other periodic payments received by the insurer, the insurer shall further disclose to all its purchasers of health insurance the specific amounts spent on marketing and advertising, total compensation, on dividends, profits or excess revenues, and on other expenses not related to the provision of direct health care services.

(c) The disclosures required by this section also shall be filed with the appropriate state agency and be made available for public inspection.

Section 10. Protection of Patient Privacy.

The confidentiality of patients' medical records shall be fully protected as provided by law. No section of this Act shall be interpreted as changing such protections except as follows: No health care business shall sell a patient's medical records to any third party without the express written authorization of the patient.

Section 11. Public Disclosure.

(a) The appropriate agencies shall collect and review such information as is necessary to assure compliance with this Act.

(b) Each private health care business and its affiliated enterprises with more than 100 employees in the aggregate shall file annually with the responsible agency:

- (1) data or studies used to determine the quality, scope or staffing of health care services, including modifications in such services;
- (2) financial reports substantially similar to the reports required of non-profit health care businesses under existing law;
- (3) copies of all state and federal tax and securities reports and filings; and
- (4) a description of the subject and outcome of all complaints, lawsuits, arbitrations or other legal proceedings brought against the business or any affiliated enterprise, unless such disclosure is prohibited by court order or applicable law.

(c) Any information collected or filed in order to comply with this section shall be available for public inspection.

Section 12. Interpretation.

(a) This law is written in plain language so that people who are not lawyers can read and understand it. When any question of interpretation arises it is the intent of the people that this Act shall be interpreted in a manner that is consistent with its findings, purpose and intent and, to the greatest extent possible, advances and safeguards the rights of patients, enhances the quality of health care services to which consumers are entitled, and furthers the application of the reforms contained in this Act.

(b) If any provision of this Act conflicts with any other provision of California statute or legal precedent, this Act shall prevail.

Section 13. Implementation and Enforcement.

(a) The provisions of this Act shall be administered and enforced by the appropriate state agencies, which shall issue regulations, hold hearings, and take any other administrative actions that are necessary to carry out the purposes and enforce the provisions of this Act.

(b) Health care consumers shall have standing to intervene in any administrative matter arising from this Act. Health care consumers also may go directly to court to enforce any provision of this Act individually or in the public interest, and any successful enforcement of the provisions of this Act by consumers confers a substantial benefit upon the general public. Conduct in violation of this Act is wrongful and in violation of public policy.

(c) Any private health care business found by a court in either a private or governmental enforcement action to have engaged in a pattern and practice of deliberate or willful violation of the provisions of this Act shall for a period of five years be prohibited from asserting as a defense or otherwise relying on any of the antitrust law exemptions contained in Business and Professions Code S. 16770, Health and Safety Code S. 1342.6, or Insurance Code S. 10133.6 in any civil or criminal action against it for restraint of trade,

unfair trading practices, unfair competition or other violations of Business and Professions Code, Division 7, Part 2.

(d) The remedies contained in this Act are in addition and cumulative to any other remedies provided by statute or common law.

Section 14. Severability.

(a) If any provision, sentence, phrase, word or group of words in this Act, or their application to any person or circumstance, is held to be invalid, that invalidity shall not affect other provisions, sentences, phrases, words, groups of words or applications of this Act. To this end, the provisions, sentences, phrases, words and groups of words in this Act are severable.

(b) Whenever a provision, sentence, phrase, word or group of words is held to be in conflict with federal law, that provision, sentence, phrase, word or group of words shall remain in full force and effect to the maximum extent permitted by federal law.

Section 15. Amendment.

(a) This Act may only be amended by the Legislature in ways that further its purposes. Any other change in the provisions of this Act must be approved by vote of the people. In any judicial proceeding concerning a legislative amendment to this Act, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this Act.

(b) No amendment shall be deemed to further the purposes of this Act unless it furthers the purpose of the specific provision of this Act that is being amended.

Section 16. Definitions.

The following definitions shall apply to this Act:

(a) "Affiliated enterprise" means any entity of any form that is wholly owned, controlled, or managed by a health care business, or in which a health care business holds a beneficial interest of at least 25% either through ownership of shares or control of memberships.

(b) "Available for public inspection" means available at the facility or agency during regular business hours to any person for inspection and/or for copying, with any charges for the copying limited to the reasonable cost of reproduction and, when applicable, postage.

(c) "Caregiver" or "licensed or certified caregiver" means health personnel licensed or certified under Division 2 (commencing with Section 500) of the Business & Professions Code, including a person licensed under any initiative act referred to therein, health

personnel regulated by the Department of Health Services, and health personnel regulated by the Emergency Medical Services Authority.

(d) "Health care business" means any health facility, organization or institution of any kind which provides or arranges for the provision of health services, regardless of business form and whether or not organized and operating as a profit or non-profit, tax-exempt enterprise, including

- (1) any health facility defined herein;
- (2) any health care service plan as defined in Sec. 1345 (f) of the Health and Safety Code;
- (3) any non-profit hospital service plans as governed by chapter 11 of the insurance code, commencing with S. 1149;
- (4) any disability insurer providing hospital, medical or surgical coverage as governed by the Insurance Code, commencing with S. 11012.5;
- (5) any provider of emergency ambulance services, limited advanced life support or advanced life support services; and
- (6) any preferred provider organization, independent practice association or other organized group of health professionals with 50 or more employees in the aggregate contracting for the provision or arrangement of health services.

(e) "Health care consumer" or "patient" means any person who is an actual or potential recipient of health services.

(f) "Health care services" or "health services" means health services of any kind, including but not limited to diagnostic tests or procedures, medical treatments, nursing care, mental health, and other health care services as defined in S. 1345 (b) of the Health and Safety Code.

(g) "Health facility" means any licensed facility of any kind at which health services are provided, including but not limited to those facilities defined in S. 1250, 1200, 1200.1, and 1204, and home health agencies, as defined in S. 1374.10, regardless of business form and whether or not organized and operating as a profit or non-profit, tax-exempt or non-exempt enterprise, and including facilities owned, operated, or controlled by governmental entities, hospital districts, or other public entities.

(h) "Private health care business" means any health care business as defined herein except governmental entities, including hospital districts and other public entities. "Private health care business" shall include any joint venture, partnership, or any other arrangement or enterprise involving a private entity or person in combination or alliance with a public entity.

(i) "Health insurer" means:

- (1) any health care service plan as defined in Sec. 1345 (f) of the Health and Safety Code;
- (2) any non-profit hospital service plans as governed by chapter 11 of the insurance code, commencing with S. 1149; and
- (3) any disability insurer providing hospital, medical or surgical coverage as governed by the Insurance Code, commencing with S. 11012.5.

