

**ASSEMBLY BILL**

**No. 72**

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**Introduced by Assembly Member Eng**

December 21, 2010

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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 72, as introduced, Eng. Health care coverage: acupuncture.

Existing law requires a health care service plan, that is not a health care maintenance organization or is not a plan that enters exclusively into specialized health care service plan contracts, and a disability insurer issuing policies on a groupwide basis, to offer acupuncture coverage under those terms and conditions as may be agreed upon by the parties, with specified exceptions. A willful violation of the laws regulating health care service plans is a crime.

This bill would instead require every health care service plan, except a plan that enters exclusively into specialized health care service plan contracts, and every disability insurer issuing policies on a groupwide basis, to provide acupuncture coverage under those terms and conditions as may be agreed upon by the parties.

Because a violation of this bill's requirements with respect to a health care service plan would be a crime, this bill would impose a state-mandated local program by creating a new crime.

Existing law authorizing a disability insurance policy to provide payment for acupuncture services requires that the disability insurance policy or contract expressly include acupuncture as a benefit in order

for a licensed or certified acupuncturist to be paid or reimbursed under the policy for his or her services.

This bill would delete the requirement conditioning the payment and reimbursement of a certified or licensed acupuncturist, for his or her services, on the express inclusion of acupuncture as a benefit in a disability insurance policy or contract. This bill would also make technical and conforming changes.

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. 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 health care  
 4 service plan, that is not a health maintenance organization or is  
 5 not a plan that enters exclusively into specialized health care  
 6 service plan contracts, as defined by subdivision ~~(n)~~ (o) of Section  
 7 1345, ~~which~~ that provides coverage for hospital, medical, or  
 8 surgical expenses, shall offer coverage to group contract holders  
 9 for expenses incurred as a result of treatment by holders of  
 10 certificates under Section 4938 of the Business and Professions  
 11 Code, under ~~such~~ terms and conditions as may be agreed upon  
 12 between the health care service plan and the group contract holder.  
 13 ~~A health care service plan is not required to offer the coverage~~  
 14 ~~provided by this section as part of any contract covering employees~~  
 15 ~~of a public entity.~~  
 16 ~~(b) For the purposes of this section, “health maintenance~~  
 17 ~~organization” or “HMO” means a public or private organization,~~  
 18 ~~organized under the laws of this state, which does all of the~~  
 19 ~~following:~~  
 20 ~~(1) Provides or otherwise makes available to enrolled~~  
 21 ~~participants health care services, including at least the following~~  
 22 ~~basic health care services: usual physician services, hospitalization,~~

1 laboratory, X-ray, emergency and preventive services, and  
2 out-of-area coverage.

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

6 (3) Provides physician services primarily directly through  
7 physicians who are either employees or partners of the  
8 organization, or through arrangements with individual physicians  
9 or one or more groups of physicians, organized on a group practice  
10 or individual practice basis.

11 (b) *On and after January 1, 2012, every health care service*  
12 *plan, that is not a plan that enters exclusively into specialized*  
13 *health care service plan contracts, as defined by subdivision (o)*  
14 *of Section 1345, that provides coverage for hospital, medical, or*  
15 *surgical expenses, shall provide coverage to group contract holders*  
16 *for expenses incurred as a result of treatment by holders of*  
17 *certificates under Section 4938 of the Business and Professions*  
18 *Code, under terms and conditions as may be agreed upon between*  
19 *the health care service plan and the group contract holder.*

20 SEC. 2. Section 10127.3 of the Insurance Code is amended to  
21 read:

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

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

31 (b) *On and after January 1, 2012, every insurer issuing group*  
32 *disability insurance that covers hospital, medical, or surgical*  
33 *expenses shall provide coverage for expenses incurred as a result*  
34 *of treatment by holders of certificates under Section 4938 of the*  
35 *Business and Professions Code, under terms and conditions as*  
36 *may be agreed upon between the group policyholder and the*  
37 *insurer.*

38 SEC. 3. Section 10176 of the Insurance Code is amended to  
39 read:

1 10176. In disability insurance, the policy may provide for  
2 payment of medical, surgical, chiropractic, physical therapy, speech  
3 pathology, audiology, acupuncture, professional mental health,  
4 dental, hospital, or optometric expenses upon a reimbursement  
5 basis, or for the exclusion of any of those services, and provision  
6 may be made therein for payment of all or a portion of the amount  
7 of charge for these services without requiring that the insured first  
8 pay the expenses. The policy shall not prohibit the insured from  
9 selecting any psychologist or other person who is the holder of a  
10 certificate or license under Section 1000, 1634, 2050, 2472, 2553,  
11 2630, 2948, 3055, or 4938 of the Business and Professions Code,  
12 to perform the particular services covered under the terms of the  
13 policy, the certificate holder or licensee being expressly authorized  
14 by law to perform those services.

15 ~~If the insured selects any person who is a holder of a certificate~~  
16 ~~under Section 4938 of the Business and Professions Code, a~~  
17 ~~disability insurer or nonprofit hospital service plan shall pay the~~  
18 ~~bona fide claim of an acupuncturist holding a certificate pursuant~~  
19 ~~to Section 4938 of the Business and Professions Code for the~~  
20 ~~treatment of an insured person only if the insured's policy or~~  
21 ~~contract expressly includes acupuncture as a benefit and includes~~  
22 ~~coverage for the injury or illness treated. Unless the policy or~~  
23 ~~contract expressly includes acupuncture as a benefit, no person~~  
24 ~~who is the holder of any license or certificate set forth in this~~  
25 ~~section shall be paid or reimbursed under the policy for~~  
26 ~~acupuncture.~~

27 Nor shall the policy prohibit the insured, upon referral by a  
28 physician and surgeon licensed under Section 2050 of the Business  
29 and Professions Code, from selecting any licensed clinical social  
30 worker who is the holder of a license issued under Section 4996  
31 of the Business and Professions Code or any occupational therapist  
32 as specified in Section 2570.2 of the Business and Professions  
33 Code, or any marriage and family therapist who is the holder of a  
34 license under Section 4980.50 of the Business and Professions  
35 Code, to perform the particular services covered under the terms  
36 of the policy, or from selecting any speech-language pathologist  
37 or audiologist licensed under Section 2532 of the Business and  
38 Professions Code or any registered nurse licensed pursuant to  
39 Chapter 6 (commencing with Section 2700) of Division 2 of the  
40 Business and Professions Code, who possesses a master's degree

1 in psychiatric-mental health nursing and is listed as a  
2 psychiatric-mental health nurse by the Board of Registered Nursing  
3 or any advanced practice registered nurse certified as a clinical  
4 nurse specialist pursuant to Article 9 (commencing with Section  
5 2838) of Chapter 6 of Division 2 of the Business and Professions  
6 Code who participates in expert clinical practice in the specialty  
7 of psychiatric-mental health nursing, or any respiratory care  
8 practitioner certified pursuant to Chapter 8.3 (commencing with  
9 Section 3700) of Division 2 of the Business and Professions Code  
10 to perform services deemed necessary by the referring physician,  
11 that certificate holder, licensee or otherwise regulated person, being  
12 expressly authorized by law to perform the services.

13 Nothing in this section shall be construed to allow any certificate  
14 holder or licensee enumerated in this section to perform  
15 professional mental health services beyond his or her field or fields  
16 of competence as established by his or her education, training, and  
17 experience. For the purposes of this section, “marriage and family  
18 therapist” means a licensed marriage and family therapist who has  
19 received specific instruction in assessment, diagnosis, prognosis,  
20 and counseling, and psychotherapeutic treatment of premarital,  
21 marriage, family, and child relationship dysfunctions that is  
22 equivalent to the instruction required for licensure on January 1,  
23 1981.

24 An individual disability insurance policy, which is issued,  
25 renewed, or amended on or after January 1, 1988, *and* which  
26 includes mental health services coverage may not include a lifetime  
27 waiver for that coverage with respect to any applicant. The lifetime  
28 waiver of coverage provision shall be deemed unenforceable.

29 SEC. 4. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.

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