

Assembly Bill No. 2327

CHAPTER 139

An act to add and repeal Part 1.86 (commencing with Section 444.20) of Division 1 of the Health and Safety Code, and to repeal Sections 1 and 2 of Chapter 47 of the Statutes of 1998, relating to health care coverage, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 19, 2000. Filed with
Secretary of State July 19, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2327, Gallegos. Health care coverage: consumer information programs: confidentiality of communications.

Existing law, until June 30, 2000, provides certain immunities and confidentiality protections for communications of representatives of a pilot program known as the Health Care Consumers' Information and Assistance Program with health care consumers and certain other persons, as specified. Existing law also provides that the records and files of the pilot program shall remain confidential, except as specified.

This bill would repeal these provisions and enact other, similar provisions applicable to the Health Rights Hotline program. This bill would also enact certain related provisions applicable both to the Health Rights Hotline program as well as local Health Consumer Alliance programs. The provisions that would be enacted by this act would only be operative until December 31, 2003.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 1 of Chapter 47 of the Statutes of 1998 is repealed.

SEC. 2. Section 2 of Chapter 47 of the Statutes of 1998 is repealed.

SEC. 3. Part 1.86 (commencing with Section 444.20) is added to the Health and Safety Code, to read:

PART 1.86. HEALTH CARE CONSUMER ASSISTANCE
PROGRAMS

444.20. The Legislature finds and declares all of the following:

(a) The health care delivery system continues to undergo rapid and dramatic change. Health care services are provided by a variety



of managed care structures, including health maintenance organizations (HMOs), preferred provider organizations (PPOs), and an array of hybrid models that have elements of traditional fee-for-service and indemnity systems while applying managed care's utilization management, gatekeeper, and case management techniques. As a result of these changes, many consumers are confused about how managed care works or have problems navigating the health care system.

(b) The duties of the newly established Office of Patient Advocate within the Department of Managed Care include coordinating and working with other governmental and nongovernmental patient assistance programs and health care ombudsprograms.

(c) The Center for Health Care Rights, an independent nonprofit consumer organization, has established the Health Rights Hotline (HRH) in the Sacramento area to help all health care consumers. The program's goals are to provide an independent source of information and help for health care consumers, to collect needed information regarding health care consumers' problems, and to advocate for the improvement of the health care system for all consumers. The program is independent from, but works in close collaboration with, health plans, providers, purchasers, insurance agents and brokers, consumer groups, and regulators. The program also works with the local Health Insurance Counseling and Advocacy Program, which serves Medicare beneficiaries in target communities.

(d) The program educates consumers about their health care rights and responsibilities. It also assists consumers with questions about their health plans and with specific problems through hotline and in-person services. In addition, the program collects and analyzes information, generated both by consumers' use of the program and from other sources, that can identify the strengths and weaknesses of particular plans, provider groups, and delivery systems. The program has the potential of informing health plans, providers, purchasers, consumers, regulators, and the Legislature about how independent support can be provided to consumers in managed care.

(e) Maintaining consumer confidence is a paramount concern in the operation of the program. While one vehicle to protect these communications would be to establish attorney-client relationships with consumers served, the program is generally not designed as a "legal" program and it would undercut its collaborative strategy and problemsolving orientation if assistance were required to be positioned in a legal context. Furthermore, it is critical that consumers using the program are free from any retribution.

(f) The Health Consumer Alliance (HCA), a partnership of independent, nonprofit legal services agencies, includes six local health consumer assistance programs in the Counties of Fresno, Los Angeles, Orange, San Diego, San Francisco, and San Mateo. These six



Health Consumer Centers help low-income consumers receive necessary health care through education, training, and advocacy, and analysis of systemic health access issues.

(g) The Health Insurance Counseling and Advocacy Programs (HICAPS), a network of community-based programs throughout the State of California, assist California consumers statewide who are 60 years of age or older, or who are Medicare beneficiaries regardless of age. These programs provide objective education, information, counseling and assistance regarding Medicare, managed care, health and long-term care related life and disability insurance, and related health care coverage plans.

444.21. (a) All communications between a representative of the program described in subdivision (c) of Section 444.20 and a subscriber or enrollee, or agent of the subscriber or enrollee, or any other recipient of health care services or any individual assisting the recipient of health care services, seeking assistance regarding a grievance or complaint, if reasonably related to the requirements of the representative's responsibilities for the program, and done in good faith, shall be privileged subject to Division 8 (commencing with Section 900) of the Evidence Code. The subscriber, enrollee, or other recipient of health care services shall be the holder of the privilege and may refuse to disclose, and may prevent others from disclosing, a communication described in this subdivision. Any communication described in this subdivision shall be a privileged communication, which shall serve as a defense to any civil action in libel or slander against any of the persons described in this subdivision.

(b) All records and files of a program described in subdivision (c) of Section 444.20 relating to any complaint or request for assistance regarding a subscriber or enrollee, or any other recipient of health care services, and their identity, shall remain confidential, and shall not be subject to discovery, unless disclosure is authorized by the subscriber or enrollee, or any other recipient of health care services, or his or her legal representative. No disclosures shall be made outside of the program without the consent of the subscriber or enrollee, or any other recipient of health care services, that is the subject of the record or file, unless disclosure is made without disclosing the identity of that individual.

(c) Any representative of the program described in subdivision (c) of Section 444.20 shall be exempt from being required to testify in court as to any communications described in subdivision (a) except as the court may deem necessary to fulfill the purposes of the program.

(d) Nothing in this section shall affect the right of a person or entity to discover if the communication was not done in good faith pursuant to an in camera inspection of the communication by a court.



444.22. (a) The Legislature recognizes that the Health Rights Hotline, serving the greater Sacramento area, and the local Health Consumer Alliance (HCA) programs serving the Counties of Fresno, Los Angeles, Orange, San Diego, San Francisco, and San Mateo, provide needed education and assistance to individual consumers and provide the public with critical information about the health care system and how consumers can best be assisted. While most of their financial support is from private sources, the programs serve an important public interest, as do the HICAPS which statewide serve California Medicare beneficiaries and Californians 60 years of age or older.

(b) No discriminatory, disciplinary, or retaliatory action shall be taken against any health facility, health care service plan, provider, or an employee thereof, or any subscriber, enrollee, or agent of the subscriber or enrollee, or any other recipient of health care services or individual assisting the recipient of health care services, if the communication is made to a program described in subdivision (a) regarding a grievance or complaint and is intended to assist the program in carrying out its duties and responsibilities, unless the action was done maliciously or without good faith. This subdivision is not intended to allow for the unapproved release of confidential or proprietary information by an employee or contractor, or to otherwise infringe on the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

444.23. (a) Nothing in this part shall be construed to limit the authority and ability of the California Department of Aging or its contractors, or the direct service providers of the Health Insurance Counseling and Advocacy Program (HICAP), from accessing, monitoring, or reviewing case files and records developed by, or for, any components of these programs that contractually act as a HICAP provider. For those programs, all case records and files of HICAP clients are, and shall remain, the property of HICAP, subject to case file and record retention and disposal requirements established by the Department of Aging. For the purposes of this section, "HICAP clients" are defined as those accepted, initiated, and undertaken on behalf of consumers and clients who are 60 years of age or older, Medicare beneficiaries regardless of age, or their legal representatives.

(b) Nothing in this part shall be construed to limit the ability of the subscriber or enrollee, or any other recipient of health care services, to waive the privileges and protections provided by this section for the purpose of providing information to a regulatory agency, including, but not limited to, the Department of Corporations, the Department of Managed Care, and the Department of Insurance.

(c) Nothing in this part shall be construed to supercede the procedures set forth in Sections 1368, 1368.01, 1368.02, and 1368.03, when the programs are providing assistance to a subscriber or



enrollee in connection with a complaint against a health care service plan.

(d) For purposes of this part, a health care service plan, provider, subscriber, or enrollee shall have the same meaning as set forth in Section 1345, an agent of a subscriber or enrollee shall have the same meaning as set forth in subdivision (b) of Section 1368, and a health facility shall have the same meaning as set forth in Section 1250.

444.24. This part shall remain in effect only until December 31, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2003, deletes or extends that date. Notwithstanding this date of repeal, the privileges and protections provided under this part shall continue to apply to any actions taken or materials collected after December 31, 2003, if they relate to communications or actions made on or before December 31, 2003.

SEC. 4. All references in this act to the Department of Managed Care shall be deemed to refer to the Department of Managed Health Care if legislation is enacted to change the name of the department in that manner.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to continue to make confidentiality protections available for communications between patients and representatives of nonprofit programs to assist patients to resolve concerns about their health care plans, it is necessary that this act take effect immediately.

