California Board of PSYCHOLOGY

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MEMORANDUM

DATE	April 6, 2017
TO	Board of Psychology
FROM	Konnor Leitzell Central Services Student Assistant
SUBJECT	Agenda Item #4(b)(1)(B)(39) – SB 538 (Monning) Hospital Contracts

Background:

This bill would place restrictions on contracts made between a hospital or any affiliate of a hospital, and a contracting agent or health care service plan. Under this bill, these contracts could not set payment rates for nonparticipating affiliates of the hospitals, nor require payors to certify, attest, or otherwise confirm in writing that the payor is bound by the terms of the contract. This bill would also prohibit contracts from requiring the contracting agent to submit to arbitration any claims or causes of action that arise under state or federal antitrust laws. The bill would also prohibit contracts from requiring the contracting agent to provide coverage to beneficiaries for services rendered by the hospital and any of its affiliates at the same level of copayment, coinsurance, deductible, or any similar cost-sharing provision, for services rendered by other in-network hospitals and any of their affiliates.

Location: Senate Committee on Health

Status: 04/06/2017 Set first hearing, canceled at the request of author

Action Requested:
No action is required at this time. Staff will continue to watch SB 538 (Monning) to monitor changes to hospital contract requirements relating to psychologist reimbursement and coverage of mental health services.

SB-538 Hospital contracts. (2017-2018)

SECTION 1. *Section 513 is added to the Business and Professions Code, to read:*

513. *(a) A contract between a hospital or any affiliate of a hospital and a contracting agent shall not, directly or indirectly, do any of the following:*

(1) Set payment rates or other terms for nonparticipating affiliates of the hospital.

(2) Require the contracting agent to contract with any one or more of the hospital's affiliates. This section does not prohibit a contract from requiring that the contracting agent contract with the medical group with which the hospital's medical staff is affiliated.

(3) Require payors to certify, attest, or otherwise confirm in writing that the payor is bound by the terms of the contract between the hospital and the contracting agent.

(4) Require the contracting agent, as a condition to entering into the contract with the hospital or continuing the contract on its then current terms, to submit to arbitration, or any other alternative dispute resolution program, any claims or causes of action that arise under state or federal antitrust laws. This paragraph does not prohibit a hospital or any affiliate of a hospital and a contracting agent from entering into a consensual agreement to submit those claims or causes of action to arbitration or any other alternative dispute resolution program, other than as a condition to entering into the contract or continuing the contract on its then current terms.

(5) Require the contracting agent to provide coverage to beneficiaries for services rendered by the hospital and any of its affiliates at the same level of copayment, coinsurance, deductible, or any similar cost-sharing provision, for services rendered by other in-network hospitals and any of their affiliates.

(6) Require the contracting agent to keep the contract's payment rates secret from any existing or potential payor that is or may become financially responsible for the payments. This paragraph does not prohibit a requirement that any communication of the contract's payment rates to an existing or potential payor be subject to a reasonable nondisclosure agreement.

(b) Any contract provision that violates subdivision (a) is void and unenforceable.

(c) For the purposes of this section, the following terms have the following meanings:

(1) "Affiliate" means, with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, that person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, membership rights, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative thereto.

(2) "Contracting agent" has the same meaning as set forth in Section 511.1.

(3) "Hospital" means any general acute care hospital, acute psychiatric hospital, or special hospital, as defined in Section 1250 of the Health and Safety Code.

(4) "Nonparticipating" means that with respect to the services rendered, the hospital or its affiliate is out of network according to the applicable health care service plan contract or health care welfare benefit plan.

(5) "Payor" means a person who is financially responsible, in whole or in part, for paying or reimbursing the cost of health care services received by beneficiaries of a health care welfare benefit plan sponsored or arranged by that person. This definition includes, but is not limited to, the health care welfare benefit plan itself.

SEC. 2. *Section 1367.32 is added to the Health and Safety Code, to read:*

1367.32. *(a) A contract between a hospital or any affiliate of a hospital and a health care service plan shall not, directly or indirectly, do any of the following:*

(1) Set payment rates or other terms for nonparticipating affiliates of the hospital.

(2) Require the health care service plan to contract with any one or more of the hospital's affiliates. This section does not prohibit a contract from requiring that the health care service plan contract with the medical group with which the hospital's medical staff is affiliated.

(3) Require payors to certify, attest, or otherwise confirm in writing that the payor is bound by the terms of the contract between the hospital and the health care service plan.

(4) Require the health care service plan, as a condition to entering into the contract with the hospital or continuing the contract on its then current terms, to submit to arbitration, or any other alternative dispute resolution program, any claims or causes of action that arise under state or federal antitrust laws. This paragraph does not prohibit a hospital or any affiliate of a hospital and a health care service plan from entering into a consensual agreement to submit those claims or causes of action to arbitration or any other dispute resolution program, other than as a condition to entering into the contract or continuing the contract on its then current terms.

(5) Require the health care service plan to provide coverage to its enrollees for services rendered by the hospital and any of its affiliates at the same level of copayment, coinsurance, deductible, or any similar cost-sharing provision, as for services rendered by other in-network hospitals and any of their affiliates.

(6) Require the health care service plan to keep the contract's payment rates secret from any exiting or potential payor that is or may become financially responsible for the payments. This paragraph does not prohibit a requirement that any communication of the contract's payment rates to an existing or potential payor be subject to a reasonable nondisclosure agreement.

(b) Any contract provision that violates subdivision (a) is void and unenforceable.

(c) For the purposes of this section, the following terms have the following meanings:

(1) "Affiliate" means, with respect to any person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, that person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, membership rights, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative thereto.

(2) "Hospital" means any general acute care hospital, acute psychiatric hospital, or special hospital, as defined in Section 1250.

(3) "Nonparticipating" means that with respect to the services rendered, the hospital or affiliate is out of network according to the applicable health care service plan contract or health care welfare benefit plan.

(4) "Payor" means a person that is financially responsible, in whole or in part, for paying or reimbursing the cost of health care services received by beneficiaries of a health care welfare benefit plan sponsored or arranged by that person. This definition includes, but is not limited to, the health care welfare benefit plan itself.

SEC. 3. *The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

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