SA2003RF0028

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July 9, 2003

Tricia Knight, Initiative Coordinator
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RECEIVED
JUL 15 2003
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Ms. Knight,

Enclosed please find the Initiative Measure I and my associates would like to be submitted directly to the voters - the Voluntary Health Plan Arbitration Act of 2004. We would like to request that a title and summary of the chief purpose and points of the proposed initiative measure be prepared. Also enclosed is the fee of $200. I will be the contact person as the chairman of the initiative drive. All of my contact numbers can be put on line as I have as a physician always had a published home phone number without restriction.

I am a Board Certified Emergency Physician (FACEP - Fellow of the American College of Emergency Physicians) with a special interest in safe prehospital system development. I am quite convinced that we have within the forcing of arbitration on HMO and PPO patients as they enroll in health plans a life threatening and life ending systems problem throughout California in need of rapid correction. The citizens of California are not willing to be viewed as "external customers" in some business model with profit motives built in.

This initiative has been prepared skillfully by Harvey Frey, MD, PhD, Esq. It is already available online at http://www.harp.org/og/arbitinit.htm. It has already impressed a focus group called the Kaiser Permanente Reform Committee. Interest is growing daily in seeing justice improved in this managed care area of medicine.

Sincerely,

Charles Phillips, MD, FACEP
cphil49401@aol.com [← ok to post]

SA2003RF0028

ELECTIONS CODE 9608

9608. (a) A proponent of an initiative measure shall execute and submit, along with the request for a title and summary for the proposed measure, a signed statement that reads as follows:

I, _____, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

_____
(Signature of Proponent)
Dated this 15 day of July, 2003

CHARLES PHILLIPS, M.D.
C16783 - BP2744503

(b) The certification required by subdivision (a) shall be kept on file by the agency authorized to prepare the title and summary for the proposed initiative measure for not less than eight months after the certification of the results of the election for which the petition qualified for, or if the measure, for any reason, is not submitted to the voters, eight months after the deadline for submission of the petition to the elections official.

(c) Failure to comply with this section shall not invalidate any signatures on a state or local initiative petition.

(d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

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Initiative Measure to Be Submitted Directly to the Voters

VOLUNTARY HEALTH PLAN ARBITRATION ACT OF 2004

SECTION 1. The People of the State of California find as follows:

Many health care service plans (HMOs) will not sell coverage unless the client agrees in advance to mandatory binding arbitration. But, under current law, arbitration is much more unfair to enrollees than an action in a real court, if they have a claim against their HMO. The reasons are:

1.Enrollees are currently forced to sign away many of their Constitutional Due Process rights in order to get coverage.
Arbitrators don't have to apply or follow the law. They can make gross errors about the facts. Their decisions cannot be appealed even if they make obvious errors.

2.Arbitrators are more likely to be biased toward the HMO than a judge or a jury would be.
Many arbitrators depend on repeat business for a significant portion of their income. HMOs arbitrate much more frequently than plaintiffs, so can and do maintain dossiers on arbitrators. They know who has ruled against them, and can refuse to use them for future cases. This threat of being blackballed by the HMOs represents a significant conflict of interest for an arbitrator, and an incentive to benefit the HMO, in order to safeguard his own future income. A judge's or jury member's income can not be affected by his decision, as an arbitrator's can.

3.The procedures of arbitration are not as fair to enrollees as those of a court trial.
The enrollee is less able to get needed information from the HMO than in a trial. HMOs can drag out the proceedings to enrollee's detriment. A frequent arbitrator, inured to malpractice, is less likely to reflect community sensibilities to the same degree as a jury of citizens. Arbitration actually results in lower awards than trials. It is precisely this unfairness which is the reason that HMOs push so aggressively for arbitration.

4.Arbitration costs enrollees more than equivalent court trials. If an enrollee can't pay the higher costs, and the HMO won't, the enrollee can never get his case heard.
Under current law, enrollees must often advance the costs of arbitration

administration and arbitrators' compensation before their case can be heard. His or her share of the costs of a three arbitrator panel may be in the range of $10,000 to $20,000. The comparable cost to file a complaint in the California Superior Court is less than $200, plus jury fees and court reporter fees if the case goes to trial.

5.Currently, the law allows the enrollee's constitutional right to a trial to be signed away by employers to save themselves money. This should not be allowed.

6.Arbitration proceedings are more secret than trials, inhibiting regulatory oversight, and preventing other enrollees from learning about bad HMOs and doctors.
Since written arbitration decisions are generally less comprehensive than those of lawsuits, and since arbitrators are not required to follow the law, as judges are, the Department of Managed Health Care is not able to review arbitrated disputes for regulatory issues which may not have been addressed by the arbitrator.

7.Arbitration may not decrease conflict in the long run.
Decisions are not reported and are not binding in future cases, so the same issues may be arbitrated again and again in the absence of binding precedent. Injunctions, which might prevent repetitive malpractice, are unavailable to arbitrators as remedies. The lower awards typically given by arbitrators are less likely to discourage repetitive malpractice.

8.Judges gain personal advantage from arbitration, which may cause them to overlook its potential for injustice.
When salaried, their workload is eased by diverting cases out of the judicial system. They may look forward to a comfortable retirement, funded by acting as private arbitrators themselves. It is therefore to their financial benefit to insure a steady stream of cases to arbitration, in spite of the clearcut detriments to plaintiffs outlined above.

SECTION 2 [Arbitration must be voluntary]

(a) Health and Safety Code Section 1363.1 is amended to read as follows:

Section 1363.1

(a) Health care service plans must not require, as a condition of plan membership, that potential enrollees agree to binding arbitration or any other dispute resolution procedure which would require the enrollee to waive the right to a trial in a court of law.

(b) Any health care service plan that allows enrollees to voluntarily agree to pre-dispute binding arbitration, or to waive their right to a trial in a court of law, must provide, in clear and understandable language, a disclosure that meets all of the following conditions:
(1) It must clearly state that choosing arbitration is optional, and that full coverage will be provided even if the enrollee does not choose arbitration.

(2) It must clearly state whether the binding arbitration is used to settle claims of medical malpractice, coverage and/or utilization review disputes.

(3) It must be reciprocal, i.e.: it must apply to HMO claims against enrollees, including but not limited to subrogation, as well as to enrollee claims against the HMO.

(4) It must appear as a separate article in the agreement issued to the employer group or individual subscriber and must be prominently displayed on the enrollment form signed by each subscriber or enrollee.

(5) It must be expressed substantially in the wording provided in subdivision (a) of Section 1295 of the Code of Civil Procedure.

(c) The binding arbitration agreement must be individually signed by the individual enrollee, or in appropriate cases, by his parent, guardian, or conservator. The enrollee shall not be bound by the signature of a representative of the group contracting with a health care service plan, nor by an agent of an employer. The disclosure required by this section must be displayed immediately before the signature line provided for the individual enrollee.

(d) Post-dispute binding arbitration agreements must comply with the requirements of this Act, mutatis mutandis.