Two Patient Protection Initiatives On The November 1996 California Ballot

Prepared by the Kaiser Family Foundation

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Comparison of the Text of the Proposed Laws for Propositions 214 and 216

Proposition 214: The Health Care Patient Protection Act

Health Care. Consumer Protection. Initiative Statute.

Sponsors: Service Employees International Union, AFL-CIO; Neighbor to Neighbor; Health Access California

Proposition 216: The Patient Protection Act

Health Care. Consumer Protection. Taxes on Corporate Restructuring. Initiative Statute.

Sponsors: California Nurses Association; Harvey Rosenfield

Provisions	Proposition 214	Proposition 216

"Gag" Rules	Prohibits health care businesses (any health facility, organization, or institution that provides or arranges for the provision of health services, including health facilities, HMOs, insurers, medical groups with more than 50 employees) from: -- preventing physicians, nurses, or other licensed or certified caregivers from disclosing to patients any information relevant to their health care; -- terminating or otherwise penalizing licensed or certified caregivers who advocate on behalf of patients or report violations of law.	Prohibits health care businesses (any health facility, organization, or institution with more than 25 employees that provides or arranges for the provision of health services, including health facilities, HMOs, insurers, medical groups) from: -- preventing physicians, nurses, or other licensed or certified caregivers from disclosing to patients any information relevant to their health care; -- terminating or otherwise penalizing licensed or certified caregivers who provide safe, adequate, and appropriate care; advocate on behalf of patients; or report violations of law.
Termination or Penalties Without Just Cause	Prohibits health care businesses from terminating or otherwise penalizing licensed or certified caregivers for any reason except just cause; provides that examples of just cause include proven malpractice, patient endangerment, substance abuse, sexual abuse of patients, economic necessity.	No provision.
Financial Incentives	Prohibits health care businesses from offering financial incentives to health care professionals for denying, withholding, or delaying appropriate care. Does not prohibit the use of capitated rates.	Prohibits health care businesses from offering financial incentives to health care professionals for denying, withholding, or delaying appropriate care. Does not prohibit the use of capitated rates.

Criteria for Denial of Treatment	Requires health insurers and HMOs to establish criteria for authorizing or denying payment for care and for assuring quality of care.	Requires health care businesses to establish criteria for denying payment for care and for assuring quality of care.
	Requires that these criteria be determined by licensed health professionals, based on sound clinical principles, updated at least annually, and publicly available.	Requires that these criteria be determined by licensed health professionals, based on sound clinical principles, updated at least annually, and publicly available.
	Requires that the reasons for denial be communicated in writing to the patient and to the licensed health care professional responsible for the patient's care.	Requires that the reasons for denial be communicated in writing to the patient and to the caregiver whose recommendation is being denied.
Physical Exam Before Denial of Care	Prohibits health care businesses from denying covered health services recommended by the patient's licensed health care professional unless the denial is made by a qualified health care professional who has physically examined the patient.	Prohibits health care businesses from denying covered health care services recommended by the patient's licensed caregiver unless the denial is made by a qualified health care professional who has physically examined the patient.
Standards for Licensed Caregivers Who Determine Medical Care	Requires that physicians, nurses, or other licensed caregivers who are employees or contractors of health care businesses and who are responsible for quality of care procedures or determining what care is provided to patients must be subject to the same standards and disciplinary procedures as all licensed caregivers providing direct patient care in California.	Requires that physicians, registered nurses, or other licensed caregivers who are employees or contractors of health care businesses and who are responsible for quality of care procedures or determining what care is provided to patients must be subject to the same standards and disciplinary procedures as all licensed caregivers providing direct patient care in California.

Physician and Nurse Staffing Levels	Requires all health facilities to provide minimum safe and adequate staffing of physicians, nurses, and other licensed and certified caregivers.	Requires all health care facilities to provide safe and adequate staffing of physicians, registered nurses, and other licensed and certified caregivers. The skills, experience, and educational levels of such caregivers must conform to standards adopted by regulatory and accreditation agencies.
	Requires the Department of Health Services (DHS) to periodically update staffing standards designed to assure minimum safe and adequate levels of patient care in facilities it licenses. Requires the Department of Corporations to periodically update staffing standards to assure minimum safe and adequate levels of patient care in health care service plans it licenses and in organized medical clinics not licensed by the DHS.	Requires the DHS to issue emergency regulations within 6 months of the effective date establishing standards to determine the numbers and classifications of licensed or certified direct caregivers necessary to ensure safe and adequate staffing at all health care facilities.
	Requires that the DHS standards be based on the severity of patient illness, factors affecting the period and quality of patient recovery, and other factors related to the condition and health care needs of patients.	Requires that the DHS standards be based on the severity of each patient's illness, factors affecting the period and quality of each patient's recovery, and other factors related to the condition and health care needs of each patient.
	Requires licensed health facilities to make their daily staffing pattern reports and a written plan for assuring compliance with the staffing standards available to the public.	Requires licensed health facilities to make their daily staffing pattern reports and a written explanation of their method of applying the staffing standards available to the public.

	No provision.	As a condition of licensure, requires all health care facilities to file annually with the DHS a statement of compliance with staffing standards.
	No provision.	Requires the courts to consider safe and adequate staffing levels an element of the standard of reasonable care.
Disclosure of Financial, Quality, and Other Information	Requires private health care businesses with more than 100 employees to disclose:	Requires health care businesses to disclose:
	-- studies and data they use to determine the quality, scope, or staffing of health care services;	-- studies and data they use to determine the nature, scope, quality, and staffing of health care services;
	-- financial reports similar to those required of nonprofit health care businesses;	-- statements of financial interest in other health care businesses, for health care businesses with more than 150 employees;
	-- state and federal tax and securities reports and filings;	-- state and federal tax and securities reports and returns, for health care businesses with more than 150 employees;
	-- complaints, lawsuits and other legal proceedings brought against the business.	-- complaints, lawsuits and other legal proceedings brought against the business.
	Requires health insurers and HMOs to disclose the amount of premiums spent to provide health care services and the amount spent on administrative activities, compensation, and profit.	No provision.
Patient Privacy	Requires that the confidentiality of patients' medical records be protected.	Requires that the confidentiality of patients' medical records be protected.

	Prohibits health care businesses from selling patient medical records without written consent from patients.	Prohibits health care businesses from selling patient medical records without written consent from patients.
Quality of Care Dispute Resolution	No provision.	In quality of care disputes, prohibits private health care businesses from requiring the patient to give up the right to sue (mandatory binding arbitration) unless the patient agrees to do so and a written alternative dispute resolution agreement meets certain requirements.

New Health Care Consumer Association	No provision.	Establishes a consumer-based, not-for-profit, tax-exempt public corporation known as the Health Care Consumer Association (HCCA) to protect and advocate the interests of health care consumers. The HCCA would be funded by confidential voluntary membership contributions, grants, or donations; it would be free to any Californian who wanted to join. Requires the HCCA to: -- evaluate and issue reports on the quality of health services provided by health care businesses; -- advise state agencies in their adoption of standards and regulations required by this proposition; -- advocate legislation to protect the interests of health care consumers; -- initiate or intervene in proceedings to implement or enforce these provisions.

New Taxes	No provision.	Provides for the following new taxes on private health care businesses with 150 or more employees: -- Community Health Service Disinvestment Fee: a fee for any reorganization, restructuring, downsizing, or closing of a health care facility that results in a reduction in licensed inpatient care beds; -- Fee on Conversion of Nonprofit or Governmental Health Care Assets: a fee when a nonprofit California Public Benefit Corporation or a governmental or public health facility transfers assets or changes to private ownership; -- Excessive Compensation Fee: a fee on payments of stock or securities to personnel of private health care businesses who hold more than $2 million in stock or securities in the business; -- Merger, Acquisition, and Monopolization Fees: fees on mergers, acquisitions, and the establishment of multiprovider networks by private health care businesses.

New Public Health and Preventive Services Fund	No provision.	Provides that the new taxes would be deposited in a new Public Health and Preventive Services Fund, to be used to: -- pay costs associated with the implementation of Proposition 216; -- help maintain community public health services; -- provide health services for seniors; -- help assure access to public health services and facilities, particularly for those who lose employer health benefits coverage.
Increases in Premiums/Charges	No provision.	Prohibits a health care business from increasing premiums, copayments, deductibles, or charges for health services unless it files a statement with the DHS certifying that the increases are necessary, and discloses certain financial information to the public.
Enforcement	Prohibits private health care businesses that violate these provisions from using antitrust law exemptions for 5 years in actions against them for restraint of trade, unfair trading practices, unfair competition or other violations.	Prohibits private health care businesses that violate these provisions from using antitrust law exemptions for 5 years in actions against them for restraint of trade, unfair trading practices, unfair competition or other violations.

	Provides that health care consumers may intervene in any administrative matter related to these provisions, and may go directly to court to enforce any provision individually or in the public interest.	Provides that health care consumers may intervene in any administrative matter related to these provisions, and may go directly to court to enforce any provision individually or in the public interest.
Net Fiscal Impact on State and Local Government	Summary of California Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact: -- increased state and local government costs for existing health care programs and benefits, in the range of tens of millions to hundreds of millions of dollars annually, depending on several factors.	Summary of California Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact: -- additional state and local costs for existing health care programs and benefits, in the range of tens of millions to hundreds of millions of dollars annually, depending on several factors; -- increased revenue from new taxes on health care businesses, potentially in the hundreds of millions of dollars annually, to fund specified health care services; -- reduced state General Fund revenue of up to tens of millions of dollars annually because the new taxes would reduce businesses' taxable income.
Amendment	Provides that this law may be amended only by the California Legislature in ways that further its purposes; any other change must be approved by vote of the people.	Prohibits amendment of these provisions by the California Legislature except to further its purposes by a law passed with a two-thirds majority in each house, or by a law approved by the electorate.

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