

Date of Hearing: April 21, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 1770 Garcia – As Amended April 13, 2026

SUBJECT: ARBITRATION: HEALTH CARE SERVICE PLANS

KEY ISSUE: SHOULD THE ATTORNEY GENERAL HAVE OVERSIGHT OVER HEALTH CARE SERVICE PLANS TO THE EXTENT NECESSARY TO ENSURE THAT SUCH PLANS THAT REQUIRE BINDING ARBITRATION ARE COMPLYING WITH EXISTING LAW?

SYNOPSIS

Arbitration disputes in California are governed by the California Arbitration Act and the Federal Arbitration Act. While the Federal Arbitration Act largely preempts state laws that seek to modify the content of arbitration agreements or dissuade their formation, states generally have authority to govern the procedure by which arbitrations are conducted through their state civil procedure statutes. Arbitration proceedings arising out of a dispute under a health care plan are additionally governed by provisions of the Health and Safety Code. While arbitration has the potential to streamline dispute resolution, in some cases it may result in unjust outcomes with little recourse for the consumer to appeal the final decision. Where these claims deal with particularly sensitive circumstances such as the health or passing of a loved one, a lack of transparency can exacerbate the sense of injustice. This bill attempts to increase insight into arbitration claims arising out of health care service plans by granting oversight to the Attorney General, and authorizing the AG the authority to require reports from health care service plans in order to ensure arbitration proceedings are conducted in compliance with the California Arbitration Act and the relevant provisions of the Health and Safety Code.

This bill is sponsored by Patient Equity Coalition and Praxis Project. It is further supported by the Consumer Attorneys of California and the California Senior Legislature. Kaiser Permanente opposed a prior version of this bill, but it is unclear whether recent amendments address their concerns.

SUMMARY: Grants the Attorney General oversight over health care service plans to the extent necessary to ensure that plans that have binding arbitration terms comply with the California Arbitration Act. Specifically, **this bill:**

- 1) Grants the Attorney General oversight over, and authorizes the AG to require reports from, health care service plans to ensure that health care service plans that include a term requiring the parties to submit to binding arbitration to settle disputes comply with the specified requirements.
- 2) Clarifies that, notwithstanding any other law, an arbitration claim initiated pursuant to a healthcare service plan must be conducted pursuant to the California Arbitration Act.

EXISTING LAW:

- 1) Establishes the Federal Arbitration Act (FAA), which provides that a written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by

arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. (9 U.S.C. Section 2.)

- 2) Establishes the California Arbitration Act (CAA), which governs arbitrations in California, including the enforcement of arbitration agreements, rules for neutral arbitrators, the conduct of arbitration proceedings, and the enforcement of arbitration awards. (Code of Civil Procedure Section 1280 *et seq.*)
- 3) Requires health care service plans that include terms that require binding arbitration to settle disputes and that restrict, or provide for a waiver of, the right to a jury trial, to include, in clear and understandable language, a disclosure that meets all of the following conditions:
 - a) The disclosure shall clearly state whether the plan uses binding arbitration to settle disputes, including specifically whether the plan uses binding arbitration to settle claims of medical malpractice;
 - b) The disclosure shall appear as a separate article in the agreement issued to the employer group or individual subscriber and shall be prominently displayed on the enrollment form signed by each subscriber or enrollee;
 - c) The disclosure shall clearly state whether the subscriber or enrollee is waiving his or her right to a jury trial for medical malpractice, other disputes relating to the delivery of service under the plan, or both, and shall be substantially expressed in the wording provided as specified;
 - d) In any contract or enrollment agreement for a health care service plan, the disclosure required by this section shall be displayed immediately before the signature line provided for the representative of the group contracting with a health care service plan and immediately before the signature line provided for the individual enrolling in the health care service plan. (Health and Safety Code Section 1363.1.)
- 4) Requires any health care service plan that includes a term that requires the parties to submit to binding arbitration, for those cases or disputes for which the total amount of damages claimed is \$200,000 or less, provide for selection by the parties of a single neutral arbitrator who shall have no jurisdiction to award more than \$200,000. This provision is not subject to waiver, except that nothing in the section prevents the parties to an arbitration from agreeing in writing, after a case or dispute has arisen and a request for arbitration has been submitted, to use a tripartite arbitration panel that includes two party-appointed arbitrators or a panel of three neutral arbitrators, or another multiple arbitrator system mutually agreeable to the parties. Provides a required statement. Grants the enrollee or subscriber three business days to rescind the agreement, if the parties agree to waive the requirement to use a single neutral arbitrator. Makes the agreement immediately binding and may not be rescinded if the agreement is also signed by counsel of the enrollee or subscriber. Applies the specified arbitrator selection method if the parties are unable to agree on the selection of a neutral arbitrator and the plan does not use a professional dispute resolution organization independent of the plan that has a procedure for rapid selection or default appointment of a neutral arbitrator. (Health and Safety Code Section 1373.19.)

- 5) Imposes the specified requirements on a plan with respect to the arbitration of disputes which are not subject to waiver if a plan uses arbitration to settle disputes with enrollees or subscribers, and does not use a professional dispute resolution organization independent of the plan that has a procedure for a rapid selection, or default appointment, of neutral arbitrators. (Health and Safety Code Section 1373.20.)
- 6) Requires an arbitration award to be accompanied by a written decision to the parties that indicates the prevailing party, the amount of any award and other relevant terms of the award, and the reasons for the award rendered, if a health care service plan uses arbitration to settle disputes with enrollees or subscribers. (Health and Safety Code Section 1373.21 (a).)
- 7) Requires a copy of any modified written decision, including the amount of the award and other relevant terms of the award, the reasons for the award rendered, the name of the arbitrator or arbitrators, but excluding the names of the enrollee, the plan, witnesses, attorneys, providers, health plan employees, and health facilities, to be provided to the department on a quarterly basis, and requires these modified decisions to be made available to the public upon request. (Health and Safety Code Section 1373.21 (b).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Arbitration is a method of alternative dispute resolution that allows parties to a contract to have their issues heard by a neutral third party, rather than a judge. This third party, or arbitrator, issues a binding decision that is rarely appealable. The theory supporting the process of arbitration is that it can provide a swifter, less financially burdensome process to formal litigation that simultaneously eases burdens on the court system, and both federal and state law aim to encourage its use. Arbitration agreements are ubiquitous in business and employment contracts, and while the alternative proceedings do theoretically provide a more efficient method to resolving conflicts, the modern practice of arbitration comes with a litany of potential pitfalls that overwhelmingly impact consumers and employees.

In both consumer and employment contexts, the party offering a contract – namely the provider of a service or goods or the employer – will also opt to include an arbitration agreement in those contracts. In the context of business relationships, most arbitration agreements are contained within a broader contract, usually a contract that is adhesive or take-it-or-leave-it, and are often in a “click-through” contract or buried in the fine print. In combination, these practices leave consumers with little choice but to agree to arbitrate any potential dispute. Over the past twenty years, federal courts have significantly expanded the validity of arbitration provisions in contracts of adhesion and considerably limited the state’s ability to regulate such agreements. (*See, e.g., AT&T Mobility LLC v. Concepcion* (2011) 562 U.S. 333.) In both the employment and business contexts, the employer or goods provider holds the power to offer or decline a valuable thing to the other party and these parties also benefit from greater financial resources, creating an inherent unbalanced power dynamic.

Arbitration can pose significant difficulties for the party forced to adjudicate its claims outside of court. Existing law permits arbitration agreements to contain limits on evidence presented and the claims that can be considered. The arbitration agreement will lay out the procedures that will be followed during the arbitration hearing. For example, the terms of the arbitration agreement may stipulate that the award need not be written or justified, unlike in court, and that the entire process is secret, although arbitration proceedings arising out of a health plan contract are subject to additional standards, as discussed below. Arbitrators do not need to be lawyers, nor do they

need to be trained in the law. Arbitrators who issue favorable awards to a particular company can be repeatedly hired by that same company to serve as the arbitration-neutral without ever notifying the public about that award-history. Essentially, it's easy to predict the calls if you can hire the umpire. Arbitration can also save employers and providers of consumer goods and services significant time and costs when compared to court, thus there is little question why the more powerful signatory to a contract would demand arbitration.

The impact of arbitration on consumers' and workers' recovery. Even assuming the arbitration process is quicker, and therefore less financially burdensome than litigation, there is an outstanding question regarding the disparate recovery between arbitration and traditional litigation for consumers and workers. In just one example, a 2015 study by the Consumer Financial Protection Bureau found that while millions of consumers are eligible for relief every year, very few seek relief through arbitration. This is seemingly a result of limitations on class actions within arbitration clauses and consumers' general lack of clarity regarding whether they are covered by an arbitration clause. More specifically, the CFPB's research indicated that tens of millions of consumers are covered by arbitration clauses, yet only approximately 600 arbitration cases and 1,200 individual federal lawsuits are initiated by consumers each year. The study further explained that despite 32 million consumers being eligible for relief through class action settlements each year, "[b]y design, arbitration clauses can be used to block class actions in court. The CFPB found that it is rare for a company to try to force an individual lawsuit into arbitration but common for arbitration clauses to be invoked to block class actions. For example, in cases where credit card issuers with an arbitration clause were sued in a class action, companies invoked the arbitration clause to block class actions 65 percent of the time." (*CFPB Study Finds That Arbitration Agreements Limit Relief for Consumers*, Consumer Financial Protection Bureau (March 10, 2015) available at: <https://www.consumerfinance.gov/about-us/newsroom/cfpb-study-finds-that-arbitration-agreements-limit-relief-for-consumers/>.)

The heartbreaking impetus for this particular measure also highlights the clinical and often ineffective nature of arbitration proceedings. Mr. Stephen Martinez, one of the sponsors of this measure, has shared his excruciating experience arbitrating claims against their health care provider alleging their failure to provide his wife adequate care leading up to and following her breast cancer diagnosis. In 2010, after being denied an appointment with her OBGYN after noticing a large lump in her left breast, Lindalee was ultimately seen by a physician's assistant who dismissed her concerns and "prescribed warm compresses and a sports bra and advised Lindalee to avoid chocolate." Lindalee and Mr. Martinez spent 13 years navigating her health conditions and arbitration before she passed in 2023. (Stephen Martinez, *She spent six of her last years in arbitration with her HMO. Her husband's still fighting the system* (February 26, 2026) CalMatters Commentary, available at: <https://calmatters.org/commentary/2026/02/hmo-arbitration-battle-bias-california/>.)

The article details Mr. Martinez's experience with arbitration in significant depth:

Arbitration was almost as bad as the cancer. An exhausting deposition brought Lindalee to tears. The HMO's attorney then grilled her for five hours at the arbitration. The attorney argued Lindalee was entirely to blame for her breast cancer spreading, which struck me as victim blaming. The verdict was shocking. 'The Arbitrator finds that [the HMO's] treatment...was within the standard of care...Claimants are to take nothing. This was despite two HMO surgeons, with 60 years of combined breast cancer expertise, testifying that the HMO had failed to follow its standard of care.

Mr. Martinez's account further details his second experience with arbitration against the same provider, where he claims that the HMO's attorney introduced evidence of Lindalee's psychiatric records, and "tried to use these private records, with no medical relevance, to torment Lindalee." He also claimed "[t]he arbitrator allowed HMO witnesses to use language about my wife that is not fit to print. In the of incredible insults and stacked odds, we gave up."

According to the author:

This bill starts to inject fairness into the healthcare service plan binding arbitration process by requiring the California Department of Justice to ensure compliance with existing laws throughout the process and reminding healthcare service plans that the California Arbitration Act is to be followed at every step of the binding arbitration process.

This bill would make arbitration proceedings such as Mr. Martinez and Lindalee's subject to oversight by the Attorney General (AG) and would authorize the AG to require reports from the health care service plans to ensure such proceedings are complying with Health and Safety Code Sections 1363.1, and 1373.19 through 1373.21.

Health and Safety Code Section 1363.1 imposes notice requirements on health care service plans that include binding arbitration clauses. The statute requires plans to disclose 1) whether the plan uses binding arbitration to settle disputes, including whether the plan uses arbitration to settle claims of medical malpractice, and 2) whether the enrollee is waiving their right to a jury trial for medical malpractice, other disputes relating to the delivery of the service under the plan, or both. The Health and Safety Code imposes additional standards and requirements for the selection of a neutral arbitrator, and requires arbitration decisions to be in writing that indicates 1) the prevailing party, 2) any award and terms of the award, and 3) the reasons for the award. (Health and Safety Code Sections 1373.19 *et seq.*)

Arbitration proceedings in California are governed by the California Arbitration Act and the Federal Arbitration Act. As previously mentioned, statutes that seek to control the *substance* or prevalence of arbitration clauses in contracts are typically preempted by the Federal Arbitration Act. However, states are generally allowed to govern the *procedure* by which arbitrations are conducted. For example, the CAA entitles a party to the arbitration with the right to be represented by an attorney (Section 1282.4 (a)), the right to have a certified shorthand reporter transcribe a proceeding (Section 1282.5), authorizes a neutral arbitrator to administer oaths (Section 1282.8), and grants limited grounds for appeals of certain actions in a proceeding (Section 1294). Arbitration claims arising out of disputes with health care plans that require binding arbitration are, like any other arbitration proceeding in California, governed by the CAA. This bill reaffirms that application and ensures that any of the plans under the purview of the AG's new oversight mechanism would not fall outside the CAA's scope.

Opposition. Kaiser Permanente submitted their opposition to a previous version of this bill. Prior to recent amendments, this bill proposed a novel oversight mechanism of arbitration proceedings arising out of health care plans claims housed within the Department of Managed Health Care. It imposed significant new standards and regulations specifically for such arbitration proceedings. As detailed, the bill no longer imposes any such standards or regulations and simply grants the AG discretionary oversight of health care service plans to the extent necessary to ensure plans requiring binding arbitration comply with existing law relating to arbitration of medical disputes. It is not clear whether the amendments address Kaiser Permanente's concerns.

ARGUMENTS IN SUPPORT: This bill is sponsored by Patient Equity Coalition and Praxis Project. It is further supported by the Consumer Attorneys of California and the California Senior Legislature. In support of the measure, the Praxis Project submits:

The current privatized medical arbitration system remains tilted in favor of health plans. Health plans often require consumers and their families to submit to binding arbitration as a condition of obtaining coverage, even though the overall terms of coverage are frequently negotiated by an employer rather than the individual patient. As a result, consumers can be forced into binding arbitration without a meaningful opportunity to pursue their claims in court when a health plan wrongfully fails to provide access to necessary medical care.

A binding arbitration system that gives too much deference to health plans only further undermines confidence in the health care system as a whole. Arbitrators may depend on repeat business from the very entities they are judging, while patients are routed into proceedings outside the civil court system that lack meaningful oversight and adequate safeguards against error, bias, or misconduct. These experiences are far too common, and consumers should have confidence that if they are compelled into arbitration, the process will be balanced, fair, and neutral, with strong safeguards to protect patients and their families.

Health care is already expensive and difficult to navigate, and patients often face complex barriers when trying to obtain timely and appropriate care. AB 1770 is a critical step forward because it strengthens neutrality, transparency, and oversight in the arbitration process and begins to restore fairness and public confidence for consumers and families. The bill would require qualified arbitrators with expertise in medical malpractice, remove health plans from arbitrator selection, and improve transparency, oversight, and accountability in arbitration proceedings.

ARGUMENTS IN OPPOSITION: Kaiser Permanente submitted their opposition to a previous version of this bill. However, since their opposition, the author substantially amended this bill. It is not clear whether the amendments address Kaiser Permanente's concern. Regarding the previous version they submitted:

Office of the Independent Administrator

Kaiser Permanente has used arbitration to resolve legal claims since 1971. Arbitration is a widely used and effective alternative to the court system and does not limit a member's ability to sue Kaiser Permanente, the Permanente Medical Group (TPMG), Southern California Permanente Medical Group (SCPMG) or its providers or employees. Arbitration is simply a different forum for resolution of the dispute. Arbitrators are experienced retired judges and attorneys who follow the same laws and have the same ability to render damage awards as if the matter were in court.

AB 1770 would effectively eliminate the arbitration system Kaiser Permanente uses in California, which relies on an independent external administrator – the Office of the Independent Administrator (OIA) – and instead require the use of arbitrators selected and overseen by the Department of Managed Health Care (DMHC).

In 1998, Kaiser Permanente discontinued self-administration of the arbitration system and transitioned to an independent administrator. The OIA operates independently under the oversight of the Arbitration Oversight Board (AOB) and issues annual reports to assess

performance and improvements. The AOB selects and oversees the independent administrator for Kaiser Permanente's arbitration process. The AOB has 11 board members, including representatives from labor, employer purchasers of health insurance, consumer advocates, attorneys who represent plaintiffs and defendants, and two Kaiser Permanente representatives. Pursuant to the AOB bylaws, no more than four members may be affiliated with Kaiser Permanente.

[...]

AB 1770 Undermines Privacy Protections

AB 1770 requires that all arbitration records be provided to the DMHC, including highly sensitive patient information, as well as confidential information about other participants to the arbitration including family members. Expanded public disclosure of arbitration records under AB 1770 risks exposing sensitive medical and personal information and imposes a cumbersome and potentially costly procedure on arbitration participants who wish to protect their privacy.

AB 1770 Slows Resolution of Disputes Between Health Plans and Members

AB 1770 would slow resolution of disputes, as the added procedural requirements will lengthen timelines for completion of the arbitration process. The bill allows each party to appeal decisions based on legal or factual errors made by the arbitrator, which is a broad and vague threshold that could lead to disputes dragging indefinitely. The California Arbitration Act does not provide for appeals, and the bill does not specify how such appeals would be conducted, to whom they would be directed, or under what standards. If these appeals were to be made to the superior courts, this would increase both the costs and time to achieve a final judgment.

AB 1770 Enables Unprecedented Regulatory Fines Outside Provider Licensing Boards

Under AB 1770, the DMHC arbitrator, who has no expertise in licensing matters or affiliation with licensing boards, would be authorized to impose fines on providers for alleged violations of statute or regulations governing licensing or certification. This is a marked departure from current law and raises numerous questions. That authority lies with specialized state regulators or licensing boards who can impose fines and penalties in separate proceedings. Currently, independent arbitrators may award damages but cannot impose fines or penalties on plans and providers. Today, going through an arbitration does not preclude a licensing board from imposing fines or penalties later.

AB 1770 would dismantle an effective, independent arbitration system and replace it with a slower, less experienced, and less private process. The current arbitration system works well, is accessible to consumers, and is transparent. By regulation, Kaiser Permanente provides all arbitration decisions to the DMHC on a quarterly basis and the DMHC publishes redacted versions of these decisions on its website. The OIA maintains extensive data about the arbitration process, the participants, and arbitration outcomes and publishes annual reports about the performance of the arbitration system. The annual reports of performance for the current and past years are published on the OIA's website.

REGISTERED SUPPORT / OPPOSITION:

Support

Patient Equity Coalition (co-sponsor)

The Praxis Project (co-sponsor)

California Senior Legislature

Consumer Attorneys of California

Opposition

Kaiser Permanente (to a prior version of the bill)

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