ASSEMBLY THIRD READING
AB 1770 (Garcia)
As Amended April 13, 2026
Majority vote

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.

Major Provisions

1) Grants the Attorney General (AG) 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.

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 inherently 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 (CFPB) 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 it is 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% 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."

This bill makes arbitration proceedings such as Mr. Martinez and Lindalee's subject to oversight by the Attorney General (AG) and authorizes 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 (CAA) and the Federal Arbitration Act. 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 (Code of Civil Procedure (CCP) Section 1282.4 (a)), the right to have a certified shorthand reporter transcribe a proceeding (CCP Section 1282.5), authorizes a neutral arbitrator to administer oaths (CCP Section 1282.8), and grants limited grounds for appeals of certain actions in a proceeding (CCP 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.

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.

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
None on file

FISCAL COMMENTS

According to the Assembly Appropriations Committee, ongoing costs to the Department of Justice (DOJ) to oversee compliance by health care service plans with specified provisions regulating the use of binding arbitration to settle disputes (Unfair Competition Law, General Fund). The Healthcare Rights and Access Section (HRA), within the Public Rights Division of DOJ anticipates an increase in workload investigating and litigating the mandate of the bill. The bill's oversight grant is open-ended: it does not specify the frequency, scope, or form of oversight activities, or the content, frequency, or format of reports the AG may require. DOJ workload will depend on the intensity with which the AG exercises this discretionary authority. To address the additional anticipated workload, DOJ reports needing four deputy attorneys general, a legal analyst, and three legal secretaries. DOJ estimate workload costs of $1.1 million in fiscal year (FY) 2026-27 and $2 million for FY 2027-2028 and ongoing.

The Legislative Analyst's Office has projected General Fund structural deficits of approximately $35 billion per year beginning in the 2027-28 fiscal year.

VOTES

ASM JUDICIARY: 10-2-0
YES: Kalra, Macedo, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur
NO: Dixon, Sanchez

ASM APPROPRIATIONS: 11-4-0
YES: Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache
NO: Hoover, Dixon, Ta, Tangipa

UPDATED

VERSION: April 13, 2026

CONSULTANT: Manuela Boucher / JUD. / (916) 319-2334 FN: 0002607