

By Senator Brown-Waite

10-1149-00

1 A bill to be entitled
2 An act relating to managed care organizations;
3 creating the "Managed Care Organization's
4 Patient's Bill of Rights"; providing
5 legislative findings and intent; specifying
6 that the purpose of the act is to ensure that
7 quality health care and health benefits are
8 provided to the people of this state; providing
9 that managed care organizations own a fiduciary
10 duty to provide such care; requiring managed
11 care organizations to provide patients with a
12 copy of their rights as set forth in the act;
13 specifying the rights and responsibilities of
14 members of managed care organizations;
15 authorizing civil remedies to enforce the
16 rights specified in the act; providing for
17 actual and punitive damages and attorney's fees
18 and costs; providing for administrative fines;
19 providing that there is not any liability on
20 the part of certain employers or employee
21 organizations; requiring a plaintiff to submit
22 a written grievance as a condition precedent to
23 bringing an action for damages; requiring that
24 a managed care organization dispose of a
25 grievance within a specified period; requiring
26 notice of an action to enforce the rights
27 provided under the act; authorizing the court
28 to abate an action and require completion of an
29 internal grievance procedure; providing certain
30 exceptions; providing for the statute of
31 limitations to be tolled under specified

1 circumstances; authorizing an action for
2 nonmonetary relief without complying with
3 conditions precedent for the purpose of
4 preventing potential death or serious bodily
5 harm; providing for severability; providing an
6 effective date.

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8 Be It Enacted by the Legislature of the State of Florida:

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10 Section 1. Managed Care Organization's Patient's Bill
11 of Rights.--This act may be cited as the "Managed Care
12 Organization's Patient's Bill of Rights."

13 Section 2. Legislative findings and intent.--

14 (1) The Legislature finds that:

15 (a) The health, safety, and welfare of the people of
16 this state are fundamental state interests that the
17 Legislature is responsible for protecting through the laws of
18 this state.

19 (b) The manner in which health care is provided to the
20 people of this state has a direct impact upon the health,
21 safety, and welfare of state residents.

22 (2) The Legislature intends that this act apply to all
23 managed care organizations and that the term "managed care
24 organization" include health insurance carriers; health
25 maintenance organizations; health service plans; other managed
26 care entities that provide health care or health benefits; and
27 entities regulated under chapters 624 through 631, Florida
28 Statutes, and chapter 641, Florida Statutes, which provide
29 health care benefits. Managed care organizations are engaged
30 in the business of insurance in this state as that term is
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1 defined under the McCarran-Ferguson Act, 15 U.S.C. ss. 1011 et
2 seq.

3 (3) The purpose of this act is to regulate the
4 business of insurance and to ensure that appropriate quality
5 health care and health benefits are provided through managed
6 health care to the people of this state.

7 (4) Managed care organizations owe a fiduciary duty to
8 the people of this state to ensure appropriate quality health
9 care and health benefits to maintain and maximize the health,
10 safety, and welfare of the people of this state.

11 (5) To ensure that adequate remedies exist to protect
12 the health, safety, and welfare of the people of this state,
13 this act creates substantive rights for quality health care
14 and health benefits and provides remedies under state law for
15 persons who are harmed by the failure of a managed care
16 organization to meet appropriate standards for quality health
17 care and health benefits guaranteed under this act.

18 (6) It is the intent of the Legislature that all
19 managed care organizations be given notice of a violation of a
20 patient's rights and be provided with an opportunity to comply
21 with the law without the necessity of filing a civil action.
22 The Legislature recognizes, however, that the rights and
23 remedies identified in this act are necessary to properly
24 regulate the business of insurance in this state and to
25 protect the health, safety, and welfare of the people of this
26 state.

27 Section 3. Managed care organization's patient's bill
28 of rights.--

29 (1) It is a public policy of this state that the
30 interests of patients be recognized in a patient's bill of
31 rights and that a managed care organization or health care

1 provider may not require a patient to waive his or her rights
2 as a condition of coverage or treatment. All managed care
3 organizations shall adopt and provide patients with a copy of
4 their rights as set forth in this section and shall treat
5 patients in accordance with those rights. All managed care
6 organizations shall assure that:

7 (a) A patient has the right to be treated fairly,
8 honestly, with dignity, and with respect and has the right to
9 privacy.

10 (b) A patient has the right to receive adequate and
11 appropriate health care services that are accessible in a
12 reasonable and timely manner from any participating provider
13 designated by the patient.

14 (c) A patient has the right to accurate and easily
15 understood information so that the patient may make informed
16 decisions about health plans, providers, facilities, and
17 treatment options.

18 (d) A patient has the right to be provided medical
19 care by the managed care organization, with the goal of
20 maintaining the patient's good health and treating the
21 patient's medical conditions, as necessary and appropriate to
22 maintain good health.

23 (e) A patient has the right to expedited decisions and
24 treatment of any covered condition that jeopardizes the life
25 or health of a patient or jeopardizes the patient's ability to
26 regain maximum function.

27 (f) A patient has the right to a health care provider
28 that advocates on the patient's behalf for appropriate and
29 medically necessary health care without the patient's managed
30 care organization removing the provider from its plan or
31 refusing to renew the provider's contract due to such

1 advocacy. A managed care organization may not prohibit or
2 restrict a health care provider from advising a patient about
3 his or her health-care status or treatment options, regardless
4 of whether coverage is provided under the contract.

5 (g) A patient has the right to be provided with timely
6 notice of an adverse determination with respect to coverage
7 for the patient, including notice of the reasons for the
8 determination and the clinical rational or scientific-based
9 evidence that was used to make the determination, which is
10 written in a manner that is understandable to the average
11 patient. A patient has the right to be informed of the
12 procedures necessary to obtain additional information
13 concerning an adverse determination and to be informed of the
14 right to submit a grievance regarding the determination. A
15 patient has the right to be provided with instructions on how
16 to submit a grievance. The managed care organization has the
17 burden of proving that an adverse determination is consistent
18 with the prevailing standards of medical practice in the
19 community.

20 (h) Upon the recommendation of the primary care
21 physician, a patient has the right to a timely referral,
22 including payment preauthorization, for covered treatment
23 outside the managed care organization's provider network when,
24 in the judgment of the primary care physician, a managed care
25 organization does not have a provider in the network which
26 meets the particular health care needs of the patient. A
27 patient has the right to be notified of the procedure by which
28 he or she may obtain such referral.

29 (i) If the contract between a managed care
30 organization and a health care provider is terminated, or if
31 benefits or coverage provided by a health care provider are

1 terminated because of a change in the terms of provider
2 participation, and a patient is undergoing a course of
3 treatment from the provider at the time of such termination,
4 the patient has the right to timely notification of the
5 termination and the right to continued coverage for the course
6 of treatment with the provider, as set forth in section
7 641.51(7), Florida Statutes.

8 (j) A patient has the right to receive a referral for
9 medically necessary and appropriate specialty care from any
10 participating specialty care provider. If the patient has a
11 condition that requires ongoing care from a specialist, the
12 patient has the right to a standing referral to that
13 specialist, which is subject to review by the managed care
14 organization every 6 months to determine medical necessity.

15 (k) A patient who has an emergency medical condition,
16 as defined in section 641.47, Florida Statutes, has the right
17 to coverage for emergency services:

18 1. Without the need for prior authorization;

19 2. Regardless of whether the health care provider is a
20 participating provider; and

21 3. Without the patient being held liable for any
22 amount that exceeds the contracted amount or the amount
23 established under section 641.513, Florida Statutes, for
24 noncontracted providers.

25 (l) A patient has the right to a managed care
26 organization that complies with all laws and rules that affect
27 coverage, claims, or treatment.

28 (m) A patient has the right to receive any covered
29 services at no cost, other than for coinsurance, deductibles,
30 or copayments. A managed care organization, a provider, or the
31 agent of an organization or provider may not collect any

1 additional charge from a patient. In addition, a provider or
2 the agent of a provider may not submit a patient's unpaid
3 balance to a credit or collection agency while the patient has
4 a grievance pending regarding the payment at issue if the
5 patient has notified the provider that he or she has filed a
6 grievance or submitted the grievance to the statewide provider
7 and subscriber assistance panel as provided in section
8 408.7056, Florida Statutes.

9 (n) A patient has the right to rely upon a
10 preauthorization or precertification for treatment made by a
11 managed care organization. Once a preauthorization or
12 precertification is made by the managed care organization and
13 the authorized or certified treatment is performed, the
14 managed care organization may not reverse its authorization or
15 certification, and the managed care organization may not
16 refuse to pay the covered amount for the authorized or
17 certified treatment performed.

18 (o) A patient has the right to have his or her medical
19 history, records, and personal information kept confidential,
20 including the right to decline the dissemination or sale of
21 his or her medical history, records, or personal information,
22 unless otherwise required by law.

23 (p) A patient has the right to gynecological,
24 maternity, or obstetric care from a participating provider who
25 specializes in such care without first obtaining an
26 authorization or a referral from the primary care provider.

27 (q) To the extent that a managed care organization
28 provides coverage for benefits with respect to prescription
29 drugs and limits such coverage to drugs included in a
30 formulary, the organization must ensure participation of
31 physicians and pharmacists in developing and reviewing such

1 formulary, and, in accordance with applicable quality
2 assurance and utilization review standards, the managed care
3 organization must provide for exceptions from the formulary
4 when a nonformulary alternative is medically necessary and
5 appropriate.

6 (r) A patient has the right to be informed of all
7 financial arrangements, financial interests in, or contractual
8 provisions that the managed care organization has with
9 utilization review companies or any other health care provider
10 or facility which would encourage or limit the type, amount,
11 duration, or scope of services offered or which would restrict
12 or limit referral of or treatment to patients, including, but
13 not limited to, financial incentives to limit, restrict, or
14 deny access to or delivery of medical or other services. A
15 managed care organization may not offer an incentive to a
16 provider to provide services to a patient which are less than
17 medically necessary.

18 (s) A patient has the right to have tests evaluated by
19 a medically competent laboratory.

20 (t) A patient has the right not to be subjected to
21 experimental treatments without his or her knowledge and
22 consent.

23 (u) A patient has the right to be treated fairly by a
24 managed care organization and may not be discriminated against
25 in the delivery of health care services, consistent with the
26 benefits covered under the plan or coverage, or as required by
27 law based on race, color, creed, ethnicity, national origin,
28 religion, sex, age, marital status, place of residence, lawful
29 occupation, mental or physical disability, genetic
30 information, or source of payment. A managed care organization
31 may not refuse to cover, or continue to cover, any patient

1 solely because the patient has been previously refused
2 coverage by a managed care organization when such refusal to
3 cover, or continue to cover, for this reason occurs with such
4 frequency as to indicate a general business practice as
5 provided in section 626.9541(1)(x)5.

6 (v) A patient has the right not to be subjected to
7 unfair and deceptive acts or practices by the managed care
8 organization.

9 (w) A patient has the right to a description of how
10 the managed care organization addresses the needs of
11 non-English-speaking patients.

12 (x) Patients and providers are responsible for
13 providing, to the best of their knowledge, accurate and
14 complete information about present complaints, past illnesses,
15 hospitalizations, medications, and other matters that relate
16 to the patient's health.

17 (y) A patient is responsible for reporting unexpected
18 changes in his or her condition.

19 (z) A patient is responsible for reporting to the
20 recommending physician whether he or she understands a
21 contemplated medical course of action and what is expected of
22 him or her.

23 (aa) A patient is responsible for following the
24 treatment plan recommended.

25 (bb) A patient is responsible for keeping appointments
26 and, when he or she is unable to do so for any reason, for
27 notifying the health care provider or health care facility.

28 (cc) A patient is responsible for following the
29 procedures of the managed care organization for selecting a
30 primary care physician and obtaining referrals.

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1 (dd) A patient is responsible for reading and ensuring
2 the accuracy and completeness of information on an application
3 to the best of his or her ability, and for not signing any
4 blank, incomplete, or inaccurate form.

5 (ee) A patient is responsible for reading and
6 understanding the contract of his or her managed care
7 organization.

8 (ff) A patient is responsible for paying the monthly
9 premium, even if the patient is involved in a financial
10 dispute with the managed care organization.

11 (gg) A patient is responsible for paying his or her
12 coinsurance, deductibles, or copayments.

13 (hh) A patient is responsible for arranging for prior
14 approval before accepting care from a noncontracted provider,
15 except in an emergency, as defined in section 641.19, Florida
16 Statutes, and for understanding the financial consequences of
17 failing to obtain prior approval.

18 Section 4. Civil remedy to enforce rights.--

19 (1) Any person whose rights, as specified in section
20 3, are violated has a cause of action against the managed care
21 organization or provider. The action may be brought by the
22 person, by the person's guardian, by an individual or
23 organization acting on behalf of the person with the consent
24 of the person or his or her guardian, or by the personal
25 representative of the estate of a deceased person. The action
26 may be brought in any court of competent jurisdiction to
27 enforce such rights and recover actual and punitive damages
28 for any violation of the rights of the person. The damages
29 recoverable include all reasonably foreseeable harm caused by
30 the violation of the rights specified in section 3. The
31 damages are not limited by any other state law. Punitive

1 damages may be awarded for conduct that is willful, wanton,
2 gross, flagrant, reckless, or consciously indifferent to the
3 rights of an individual protected by this act. Any plaintiff
4 who prevails in such an action may recover reasonable
5 attorney's fees, costs of the action, and damages, unless the
6 court finds that the plaintiff has acted in bad faith or with
7 malicious purpose or that there was a complete absence of a
8 justiciable issue of law or fact. A prevailing defendant may
9 claim reasonable attorney's fees under section 57.105, Florida
10 Statutes. The remedies provided in this section are remedial
11 and are in addition to and cumulative with all other legal,
12 equitable, administrative, contractual, or informal remedies
13 available to the people of this state or to state agencies.

14 (2) Upon an adverse adjudication, the defendant is
15 liable for actual and punitive damages as provided in
16 subsection (1) or \$500 per violation of the managed care
17 organization's patient's bill of rights, whichever is greater,
18 together with court costs and reasonable attorney's fees
19 incurred by the plaintiff.

20 (3) This section does not create any liability on the
21 part of an employer of a patient or that employer's employees,
22 unless the employer is the patient's managed care entity. This
23 section does not create any liability on the part of an
24 employee organization, a voluntary employee-beneficiary
25 organization, or a similar organization, unless such
26 organization is the patient's managed care entity and makes
27 coverage determinations under a managed care plan.

28 (4)(a) As a condition precedent to bringing an action
29 under this section, the patient must have submitted a written
30 grievance to the managed care organization and received a
31 final disposition of the grievance from the managed care

1 organization. For purposes of this section, if a managed care
2 organization fails to render a final disposition of the
3 grievance within 90 days, the disposition shall be deemed to
4 be adverse to the managed care organization. The 90-day time
5 limit does not apply if the medical records necessary for a
6 review of the grievance are not available or if a delay in the
7 final disposition of the grievance is caused by the patient.

8 (b) If the patient does not submit a grievance to the
9 managed care organization within 1 year after the action
10 giving rise to the grievance, as required by section
11 641.511(1), Florida Statutes, the patient is not required to
12 submit a grievance as a condition precedent to initiating and
13 maintaining a cause of action to enforce his or her rights.
14 However, the patient must provide 60 days' written notice to
15 the managed care organization of the patient's intent to
16 pursue a civil action for a violation of the managed care
17 organization's patient's bill of rights. The notice must
18 include:

19 1. The alleged violation of the patient's rights.

20 2. The facts and circumstances giving rise to the
21 violation.

22 3. The name of any individual involved in the
23 violation.

24 4. A statement that the notice is given in order to
25 give the managed care organization the opportunity to comply
26 with the law.

27 (5) If the patient does not comply with subsection
28 (4), the court may not dismiss the action, but may order that
29 the patient complete the internal grievance procedure of the
30 managed care organization, as provided in paragraph (4)(a), or
31 give the 60-day notice, as provided in paragraph (4)(b). The

1 court may abate the action for such purposes for not more than
2 90 days. Such orders of the court are the only remedies
3 available to a party that complains of a patient's failure to
4 comply with subsection (4).

5 (6) Subsection (4) does not apply if harm to the
6 patient has already occurred or is imminent.

7 (7) The statute of limitations with respect to an
8 action that may be brought under this section is tolled upon
9 submission of a grievance in accordance with section 641.511,
10 Florida Statutes, or submission of 60 days' notice, whichever
11 is applicable, and the time such grievance or notice is
12 pending is not included within the period limiting the time
13 for bringing such action.

14 (8) There is no other condition precedent to bringing
15 an action under this section.

16 (9)(a) It is the intent of the Legislature that this
17 section provide to the people of this state the ability to
18 enforce their rights through equitable, injunctive, or other
19 relief, in addition to relief for monetary damages. A claim
20 for nonmonetary relief may be brought in conjunction with a
21 claim for monetary damages by complying with subsection (4).

22 (b) An action for nonmonetary relief may also be
23 brought under this section without complying with the
24 conditions precedent that are identified in subsection (4) if
25 immediate relief is necessary to prevent potential death or
26 serious bodily harm. The court shall provide for an expedited
27 hearing to resolve the matter in a manner designed to avoid
28 potential death or serious bodily harm.

29 Section 5. If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 invalidity does not affect other provisions or applications of

1 the act which can be given effect without the invalid
2 provision or application, and to this end the provisions of
3 this act are severable.

4 Section 6. This act shall take effect October 1, 2000.

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7 SENATE SUMMARY

8 Creates the "Managed Care Organization's Patient's Bill
9 of Rights." Provides that managed care organizations own
10 a fiduciary duty to provide quality health care and
11 health benefits to the people of this state. Requires
12 that managed care organizations provide patients with a
13 copy of their rights. Authorizes civil remedies to
14 enforce the patient's bill of rights. Requires that a
15 plaintiff submit a written grievance before bringing an
16 action for damages. Authorizes an action for nonmonetary
17 relief without complying with other requirements to
18 prevent imminent death or serious bodily harm. (See bill
19 for details.)
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