

By the Committee on Banking and Insurance; and Senators
Brown-Waite, Geller and Campbell

311-2011A-00

1 A bill to be entitled
2 An act relating to health maintenance
3 organizations; creating the "Managed Care
4 Organization's Patient's Bill of Rights";
5 providing legislative findings and intent;
6 specifying that the purpose of the act is to
7 ensure that quality health care and health
8 benefits are provided to the people of this
9 state; providing that managed care
10 organizations own a fiduciary duty to provide
11 such care; creating s. 641.275, F.S.; providing
12 legislative intent that the rights and
13 responsibilities of subscribers who are covered
14 under health maintenance organization contracts
15 be recognized and summarized; requiring health
16 maintenance organizations to operate in
17 conformity with such rights; requiring
18 organizations to provide subscribers with a
19 copy of their rights and responsibilities;
20 listing specified requirements for
21 organizations that are currently required by
22 other statutes; authorizing civil remedies to
23 enforce the rights specified in s. 641.275,
24 F.S.; providing for actual and punitive damages
25 and attorney's fees and costs; providing for
26 administrative fines; providing that there is
27 not any liability on the part of certain
28 employers or employee organizations; requiring
29 a plaintiff to submit a written grievance as a
30 condition precedent to bringing an action for
31 damages; requiring that a managed care

1 organization dispose of a grievance within a
2 specified period; requiring notice of an action
3 to enforce the rights provided under the act;
4 authorizing the court to abate an action and
5 require completion of an internal grievance
6 procedure; providing certain exceptions;
7 providing for the statute of limitations to be
8 tolled under specified circumstances;
9 authorizing an action for nonmonetary relief
10 without complying with conditions precedent for
11 the purpose of preventing potential death or
12 serious bodily harm; providing for
13 severability; providing an effective date.
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15 Be It Enacted by the Legislature of the State of Florida:
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17 Section 1. Managed Care Organization's Patient's Bill
18 of Rights.--This act may be cited as the "Managed Care
19 Organization's Patient's Bill of Rights."

20 Section 2. Legislative findings and intent.--

21 (1) The Legislature finds that:

22 (a) The health, safety, and welfare of the people of
23 this state are fundamental state interests that the
24 Legislature is responsible for protecting through the laws of
25 this state.

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

29 (2) The Legislature intends that this act apply to all
30 managed care organizations and that the term "managed care
31 organization" include health insurance carriers; health

1 maintenance organizations; health service plans; other managed
2 care entities that provide health care or health benefits; and
3 entities regulated under chapters 624 through 631, Florida
4 Statutes, and chapter 641, Florida Statutes, which provide
5 health care benefits. Managed care organizations are engaged
6 in the business of insurance in this state as that term is
7 defined under the McCarran-Ferguson Act, 15 U.S.C. ss. 1011 et
8 seq.

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

13 (4) Managed care organizations owe a fiduciary duty to
14 the people of this state to ensure appropriate quality health
15 care and health benefits to maintain and maximize the health,
16 safety, and welfare of the people of this state.

17 (5) To ensure that adequate remedies exist to protect
18 the health, safety, and welfare of the people of this state,
19 this act creates substantive rights for quality health care
20 and health benefits and provides remedies under state law for
21 persons who are harmed by the failure of a managed care
22 organization to meet appropriate standards for quality health
23 care and health benefits guaranteed under this act.

24 (6) It is the intent of the Legislature that all
25 managed care organizations be given notice of a violation of a
26 patient's rights and be provided with an opportunity to comply
27 with the law without the necessity of filing a civil action.
28 The Legislature recognizes, however, that the rights and
29 remedies identified in this act are necessary to properly
30 regulate the business of insurance in this state and to

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1 protect the health, safety, and welfare of the people of this
2 state.

3 Section 3. Section 641.275, Florida Statutes, is
4 created to read:

5 641.275 Subscriber's rights and responsibilities under
6 health maintenance contracts; required notice.--

7 (1) It is the intent of the Legislature that the
8 rights and responsibilities of subscribers who are covered
9 under health maintenance organization contracts be recognized
10 and summarized in a statement of subscriber rights and
11 responsibilities. An organization may not require a subscriber
12 to waive his or her rights as a condition of coverage or
13 treatment and must operate in conformity with such rights.

14 (2) Each organization must provide subscribers with a
15 copy of their rights and responsibilities as set forth in this
16 section, in such form as approved by the department.

17 (3) An organization shall:

18 (a) Ensure that health care services provided to
19 subscribers are rendered under reasonable standards of quality
20 of care consistent with the prevailing standards of medical
21 practice in the community, as required by s. 641.51;

22 (b) Have a quality assurance program for health care
23 services, as required by s. 641.51;

24 (c) Not modify the professional judgment of a
25 physician unless the course of treatment is inconsistent with
26 the prevailing standards of medical practice in the community,
27 as required by s. 641.51;

28 (d) Not restrict a provider's ability to communicate
29 information to the subscriber/patient regarding medical care
30 options that are in the best interest of the
31 subscriber/patient, as required by s. 641.315(8);

1 (e) Provide for standing referrals to specialists for
2 subscribers with chronic and disabling conditions, as required
3 by s. 641.51.

4 (f) Allow a female subscriber to select an
5 obstetrician/gynecologist as her primary care physician, as
6 required by s. 641.19(13)(e);

7 (g) Provide direct access, without prior
8 authorization, for a female subscriber to visit a
9 obstetrician/gynecologist, as required by s. 641.51(10);

10 (h) Provide direct access, without prior
11 authorization, to a dermatologist, as required by s.
12 641.31(33);

13 (i) Not limit coverage for the length of stay in a
14 hospital for a mastectomy for any time period that is less
15 than that determined to be medically necessary by the treating
16 physician, as required by s. 641.31(33);

17 (j) Not limit coverage for the length of a maternity
18 or newborn stay in a hospital or for follow-up care outside
19 the hospital to any time period less than that determined to
20 be medically necessary by the treating provider, as required
21 by s. 641.31(18);

22 (k) Not exclude coverage for bone marrow transplant
23 procedures determined by the Agency for Health Care
24 Administration to not be experimental, as required by s.
25 627.4236.

26 (l) Not exclude coverage for drugs on the ground that
27 the drug is not approved by the U.S. Food and Drug
28 Administration, as required by s. 627.4239.

29 (m) Give the subscriber the right to a second medical
30 opinion as required by s. 641.51(4);

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1 (n) Allow subscribers to continue treatment from a
2 provider after the provider's contract with the organization
3 has been terminated, as required by s. 641.51(7);

4 (o) Establish a procedure for resolving subscriber
5 grievances, including review of adverse determinations by the
6 organization and expedited review of urgent subscriber
7 grievances, as required by s. 641.511;

8 (p) Notify subscribers of the right to an independent
9 external review of grievances not resolved by the
10 organization, as required by s. 408.7056;

11 (q) Provide, without prior authorization, coverage for
12 emergency services and care, as required by s. 641.513;

13 (r) Not require or solicit genetic information or use
14 genetic test results for any insurance purposes, as required
15 by s. 627.4310;

16 (s) Promptly pay or deny claims as required by s.
17 641.3155;

18 (t) Provide information to subscribers regarding
19 benefits, limitations, resolving grievances, emergency
20 services and care, treatment by non-contract providers, list
21 of contract providers, authorization and referral process, the
22 process used to determine whether services are medically
23 necessary, quality assurance program, prescription drug
24 benefits and use of a drug formulary, confidentiality and
25 disclosure of medical records, process of determining
26 experimental or investigational medical treatments, and
27 process used to examine qualifications of contract providers,
28 as required by ss. 641.31, 641.495, and 641.54.

29 (4) The statement of rights in subsection (3) is a
30 summary of selected requirements for organizations contained
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1 in other sections of the Florida Statutes. This section does
2 not alter the requirements of such other sections.

3 (5)(a) Patients and providers are responsible for
4 providing, to the best of their knowledge, accurate and
5 complete information about present complaints, past illnesses,
6 hospitalizations, medications, and other matters that relate
7 to the patient's health.

8 (b) A patient is responsible for reporting unexpected
9 changes in his or her condition.

10 (c) A patient is responsible for reporting to the
11 recommending physician whether he or she understands a
12 contemplated medical course of action and what is expected of
13 him or her.

14 (d) A patient is responsible for following the
15 treatment plan recommended.

16 (e) A patient is responsible for keeping appointments
17 and, when he or she is unable to do so for any reason, for
18 notifying the health care provider or health care facility.

19 (f) A patient is responsible for following the
20 procedures of the managed care organization for selecting a
21 primary care physician and obtaining referrals.

22 (g) A patient is responsible for reading and ensuring
23 the accuracy and completeness of information on an application
24 to the best of his or her ability, and for not signing any
25 blank, incomplete, or inaccurate form.

26 (h) A patient is responsible for reading and
27 understanding the contract of his or her managed care
28 organization.

29 (i) A patient is responsible for paying the monthly
30 premium, even if the patient is involved in a financial
31 dispute with the managed care organization.

1 (j) A patient is responsible for paying his or her
2 coinsurance, deductibles, or copayments.

3 (k) A patient is responsible for arranging for prior
4 approval before accepting care from a noncontracted provider,
5 except in an emergency, as defined in s. 641.19, and for
6 understanding the financial consequences of failing to obtain
7 prior approval.

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

9 (1) Any person whose rights, as specified in section
10 641.275, Florida Statutes, are violated has a cause of action
11 against the managed care organization or provider. The action
12 may be brought by the person, by the person's guardian, by an
13 individual or organization acting on behalf of the person with
14 the consent of the person or his or her guardian, or by the
15 personal representative of the estate of a deceased person.
16 The action may be brought in any court of competent
17 jurisdiction to enforce such rights and recover actual and
18 punitive damages for any violation of the rights of the
19 person. The damages recoverable include all reasonably
20 foreseeable harm caused by the violation of the rights
21 specified in section 641.275, Florida Statutes. The damages
22 are not limited by any other state law. Punitive damages may
23 be awarded for conduct that is willful, wanton, gross,
24 flagrant, reckless, or consciously indifferent to the rights
25 of an individual protected by this act. Any plaintiff who
26 prevails in such an action may recover reasonable attorney's
27 fees, costs of the action, and damages, unless the court finds
28 that the plaintiff has acted in bad faith or with malicious
29 purpose or that there was a complete absence of a justiciable
30 issue of law or fact. A prevailing defendant may claim
31 reasonable attorney's fees under section 57.105, Florida

1 Statutes. The remedies provided in this section are remedial
2 and are in addition to and cumulative with all other legal,
3 equitable, administrative, contractual, or informal remedies
4 available to the people of this state or to state agencies.

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

11 (3) This section does not create any liability on the
12 part of an employer of a patient or that employer's employees,
13 unless the employer is the patient's managed care entity. This
14 section does not create any liability on the part of an
15 employee organization, a voluntary employee-beneficiary
16 organization, or a similar organization, unless such
17 organization is the patient's managed care entity and makes
18 coverage determinations under a managed care plan.

19 (4)(a) As a condition precedent to bringing an action
20 under this section, the patient must have submitted a written
21 grievance to the managed care organization and received a
22 final disposition of the grievance from the managed care
23 organization. For purposes of this section, if a managed care
24 organization fails to render a final disposition of the
25 grievance within 90 days, the disposition shall be deemed to
26 be adverse to the managed care organization. The 90-day time
27 limit does not apply if the medical records necessary for a
28 review of the grievance are not available or if a delay in the
29 final disposition of the grievance is caused by the patient.

30 (b) If the patient does not submit a grievance to the
31 managed care organization within 1 year after the action

1 giving rise to the grievance, as required by section
2 641.511(1), Florida Statutes, the patient is not required to
3 submit a grievance as a condition precedent to initiating and
4 maintaining a cause of action to enforce his or her rights.
5 However, the patient must provide 60 days' written notice to
6 the managed care organization of the patient's intent to
7 pursue a civil action for a violation of the managed care
8 organization's patient's bill of rights. The notice must
9 include:
10 1. The alleged violation of the patient's rights.
11 2. The facts and circumstances giving rise to the
12 violation.
13 3. The name of any individual involved in the
14 violation.
15 4. A statement that the notice is given in order to
16 give the managed care organization the opportunity to comply
17 with the law.
18 (5) If the patient does not comply with subsection
19 (4), the court may not dismiss the action, but may order that
20 the patient complete the internal grievance procedure of the
21 managed care organization, as provided in paragraph (4)(a), or
22 give the 60-day notice, as provided in paragraph (4)(b). The
23 court may abate the action for such purposes for not more than
24 90 days. Such orders of the court are the only remedies
25 available to a party that complains of a patient's failure to
26 comply with subsection (4).
27 (6) Subsection (4) does not apply if harm to the
28 patient has already occurred or is imminent.
29 (7) The statute of limitations with respect to an
30 action that may be brought under this section is tolled upon
31 submission of a grievance in accordance with section 641.511,

1 Florida Statutes, or submission of 60 days' notice, whichever
2 is applicable, and the time such grievance or notice is
3 pending is not included within the period limiting the time
4 for bringing such action.

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

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

13 (b) An action for nonmonetary relief may also be
14 brought under this section without complying with the
15 conditions precedent that are identified in subsection (4) if
16 immediate relief is necessary to prevent potential death or
17 serious bodily harm. The court shall provide for an expedited
18 hearing to resolve the matter in a manner designed to avoid
19 potential death or serious bodily harm.

20 Section 5. If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 invalidity does not affect other provisions or applications of
23 the act which can be given effect without the invalid
24 provision or application, and to this end the provisions of
25 this act are severable.

26 Section 6. This act shall take effect July 1, 2000,
27 and shall apply to contracts issued or renewed on or after
28 that date.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1900
4 Deletes section 3 of the original bill which created the
5 managed care organization's patient's bill of rights, which
6 included a broad list of rights for members of managed care
7 organizations, as defined.
8 Creates s. 641.275, F.S., which lists rights and
9 responsibilities of subscribers of health maintenance
10 organizations. The rights are a summarized list of selected
11 current statutory requirements that apply to health
12 maintenance organizations. The CS provides that a copy of the
13 rights and responsibilities must be provided by a health
14 maintenance organization to its subscribers, but that it does
15 not alter current statutory requirements.
16 The civil action for damages created by the bill applies to a
17 person whose rights in s. 641.275, are violated.
18 Changes the effective date from October 1, 2000, to July 1,
19 2000.
20 Makes conforming changes and corrects statutory references.
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