

By Senator Latvala

19-33A-00

1                                   A bill to be entitled  
2           An act relating to health care; amending s.  
3           455.667, F.S.; allowing defendant health care  
4           providers or their representatives to interview  
5           certain other health care providers; providing  
6           restrictions; amending s. 641.28, F.S.;  
7           revising award of attorney's fees in civil  
8           actions under certain circumstances; amending  
9           s. 641.3917, F.S.; authorizing civil actions  
10          against health maintenance organizations by  
11          certain persons under certain circumstances;  
12          providing requirements and procedures;  
13          providing for liability for damages and  
14          attorney's fees; prohibiting punitive damages  
15          under certain circumstances; requiring the  
16          advance posting of discovery costs; amending s.  
17          440.11, F.S.; establishing exclusive liability  
18          of health maintenance organizations; providing  
19          application; providing a legislative  
20          declaration; providing appropriation; providing  
21          an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

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25           Section 1. Subsection (19) is added to section  
26           455.667, Florida Statutes, to read:

27           455.667 Ownership and control of patient records;  
28           report or copies of records to be furnished.--

29           (19) Notwithstanding any other provision of law, when  
30           an action is brought after July 1, 2000, for damages resulting  
31           from personal injury or death caused by the negligence of a

1 health care provider as defined in s. 766.101, the defendant  
2 health care provider alleged to be responsible for the injury,  
3 or the defendant health care provider's insurer or legal  
4 representative, may interview ex parte, as set forth in this  
5 paragraph, any other health care provider involved in the  
6 patient's care. Such an interview may occur only after notice  
7 is provided to the claimant's attorney and must be limited to  
8 issues of causation, the claimant's current physical  
9 condition, and the mental impressions of the care and  
10 treatment rendered by the defendant health care provider or  
11 any other health care provider alleged to be responsible for  
12 the patient's injury or death. Such interviews with a  
13 claimant's treating physician may occur only after the  
14 claimant has given notice of intent to initiate a claim for  
15 medical malpractice and before the dismissal, settlement, or  
16 other final resolution of the claim.

17 Section 2. Section 641.28, Florida Statutes, is  
18 amended to read:

19 641.28 Civil remedy.--

20 (1) In any civil action brought to enforce the terms  
21 and conditions of a health maintenance organization contract:

22 (a) If the civil action is filed before or within 60  
23 days after the subscriber or enrollee filed a notice of intent  
24 to sue with the statewide provider and subscriber assistance  
25 program established pursuant to s. 408.7056 or a notice  
26 pursuant to s. 641.3917, the prevailing party is entitled to  
27 recover reasonable attorney's fees and court costs.

28 (b) If the civil action is filed more than 60 days  
29 after the subscriber or enrollee filed a notice of intent to  
30 sue with the statewide provider and subscriber assistance  
31 program established pursuant to s. 408.7056 or a notice

1 pursuant to s. 641.3917, and the subscriber or enrollee  
2 receives a final judgment or decree against the health  
3 maintenance organization in favor of the subscriber or  
4 enrollee, the court shall enter a judgment or decree against  
5 the health maintenance organization in favor of the subscriber  
6 or enrollee for reasonable attorney's fees and court costs.

7 (2) This section shall not be construed to authorize a  
8 civil action against the department, its employees, or the  
9 Insurance Commissioner or against the Agency for Health Care  
10 Administration, its employees, or the director of the agency.

11 Section 3. Paragraphs (c), (d), and (e) are added to  
12 subsection (10) of section 641.3903, Florida Statutes, and  
13 subsection (15) is added to that section, to read:

14 641.3903 Unfair methods of competition and unfair or  
15 deceptive acts or practices defined.--The following are  
16 defined as unfair methods of competition and unfair or  
17 deceptive acts or practices:

18 (10) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED  
19 CHARGES FOR HEALTH MAINTENANCE COVERAGE.--

20 (c) Cancelling or otherwise terminating any health  
21 maintenance contract or coverage, or requiring execution of a  
22 consent to rate endorsement, during the stated contract term  
23 for the purpose of offering to issue, or issuing, a similar or  
24 identical contract to the same subscriber or enrollee with the  
25 same exposure at a higher premium rate or continuing an  
26 existing contract with the same exposure at an increased  
27 premium.

28 (d) Issuing a nonrenewal notice on any health  
29 maintenance organization contract, or requiring execution of a  
30 consent to rate endorsement, for the purpose of offering to  
31 issue, or issuing, a similar or identical contract to the same

1 subscriber or enrollee at a higher premium rate or continuing  
2 an existing contract at an increased premium without meeting  
3 any applicable notice requirements.

4 (e) Cancelling or issuing a nonrenewal notice on any  
5 health maintenance organization contract without complying  
6 with any applicable cancellation or nonrenewal provision  
7 required under the Florida Insurance Code.

8 (15) REFUSAL TO COVER.--In addition to other  
9 provisions of this code, the refusal to cover, or continue to  
10 cover, any individual solely because of:

11 (a) Race, color, creed, marital status, sex, or  
12 national origin;

13 (b) The residence, age, or lawful occupation of the  
14 individual, unless there is a reasonable relationship between  
15 the residence, age, or lawful occupation of the individual and  
16 the coverage issued or to be issued; or

17 (c) The fact that the enrollee or applicant had been  
18 previously refused insurance coverage or health maintenance  
19 organization coverage by any insurer or health maintenance  
20 organization when such refusal to cover or continue to cover  
21 for this reason occurs with such frequency as to indicate a  
22 general business practice.

23 Section 4. Section 641.3917, Florida Statutes, is  
24 amended to read:

25 641.3917 Civil liability.--The provisions of this part  
26 are cumulative to rights under the general civil and common  
27 law, and no action of the department shall abrogate such  
28 rights to damage or other relief in any court.

29 (1) Any person to whom a duty is owed may bring a  
30 civil action against a health maintenance organization when  
31 such person suffers damages as a result of:

1           (a) A violation of s. 641.3903(5)(a), (b), (c)1.-7.,  
2 (10), or (15) by the health maintenance organization; or  
3           (b) The health maintenance organization's failure to  
4 provide a covered service when in good faith the health  
5 maintenance organization should have provided the service if  
6 it had acted fairly and honestly toward its subscriber or  
7 enrollee and with due regard for his or her interests and, in  
8 the independent medical judgment of a contract treating  
9 physician or other physician authorized by the health  
10 maintenance organization, the service is medically necessary.  
11  
12 However, a person pursuing a remedy under this section need  
13 not prove that such acts were committed or performed with such  
14 frequency as to indicate a general business practice.  
15           (2)(a) As a condition precedent to bringing an action  
16 under this section, the department and the health maintenance  
17 organization must have been given 60 days' written notice of  
18 the violation. If the department returns a notice for lack of  
19 specificity, the 60-day time period does not begin until a  
20 proper notice is filed.  
21           (b) The notice must be on a form provided by the  
22 department and must state with specificity the following  
23 information and such other information as the department  
24 requires:  
25           1. The provision of law, including the specific  
26 language of the law, which the health maintenance organization  
27 has allegedly violated.  
28           2. The facts and circumstances giving rise to the  
29 violation.  
30           3. The name of any individual involved in the  
31 violation.

1           4. Any reference to specific contract language that is  
2 relevant to the violation.

3           5. A statement that the notice is given in order to  
4 perfect the right to pursue the civil remedy authorized by  
5 this section.

6           (c) Within 20 days after receipt of the notice, the  
7 department may return any notice that does not provide the  
8 specific information required by this section, and the  
9 department shall indicate the specific deficiencies contained  
10 in the notice. A determination by the department to return a  
11 notice for lack of specificity is exempt from the requirements  
12 of chapter 120.

13           (d) No action shall lie under this section if, within  
14 60 days after filing notice, the damages are paid or the  
15 circumstances giving rise to the violation are corrected.

16           (e) The health maintenance organization that is the  
17 recipient of a notice filed under this section shall report to  
18 the department on the disposition of the alleged violation.

19           (f) The applicable statute of limitations for an  
20 action under this section shall be tolled for a period of 65  
21 days by the mailing of the notice required by this subsection  
22 or the mailing of a subsequent notice required by this  
23 subsection.

24           (3) Upon adverse adjudication at trial or upon appeal,  
25 the health maintenance organization is liable for damages,  
26 together with court costs and reasonable attorney's fees,  
27 incurred by the plaintiff.

28           (4) Punitive damages shall not be awarded under this  
29 section unless the acts giving rise to the violation occur  
30 with such frequency as to indicate a general business practice  
31 and are either willful, wanton, and malicious or are in

1 reckless disregard for the rights of any subscriber or  
2 enrollee. Any person who pursues a claim under this  
3 subsection shall post, in advance, the costs of discovery.  
4 Such costs shall be awarded to the health maintenance  
5 organization if no punitive damages are awarded to the  
6 plaintiff.

7 (5) This section shall not be construed to authorize a  
8 class action suit against a health maintenance organization or  
9 a civil action against the department, its employees, or the  
10 Insurance Commissioner, or against the Agency for Health Care  
11 Administration, its employees, or the director of the agency  
12 or to create a cause of action when a health maintenance  
13 organization refuses to pay a claim for reimbursement on the  
14 grounds that the charge for a service was unreasonably high or  
15 that the service provided was not medically necessary.

16 (6)(a) The civil remedy specified in this section does  
17 not preempt any other remedy or cause of action provided for  
18 pursuant to any other law or pursuant to the common law of  
19 this state. Any person may obtain a judgment under either the  
20 common law remedy of bad faith or the remedy provided in this  
21 section, but is not entitled to a judgment under both  
22 remedies. This section does not create a common law cause of  
23 action. The damages recoverable under this section include  
24 damages that are a reasonably foreseeable result of a  
25 specified violation of this section by the health maintenance  
26 organization and may include an award or judgment in an amount  
27 that exceeds contract limits.

28 (b) This section does not create a cause of action for  
29 medical malpractice. Such an action is subject to the  
30 provisions of chapter 766.

31

1           (c) This section does not apply to the provision of  
2 medical care, treatment, or attendance pursuant to chapter  
3 440.

4           Section 5. Subsection (4) of section 440.11, Florida  
5 Statutes, is amended to read:

6           440.11 Exclusiveness of liability.--

7           (4) Notwithstanding the provisions of s. 624.155 or s.  
8 641.3917, the liability of a carrier or a health maintenance  
9 organization to an employee or to anyone entitled to bring  
10 suit in the name of the employee shall be as provided in this  
11 chapter, which shall be exclusive and in place of all other  
12 liability.

13           Section 6. The Legislature finds that the provisions  
14 of this bill will fulfill an important state interest.

15           Section 7. There are hereby appropriated three  
16 positions and \$112,000 from the Insurance Commissioners'  
17 Regulatory Trust Fund to the Department of Insurance for the  
18 purposes of carrying out the provisions of this act.

19           Section 8. This act shall take effect July 1, 2000.

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22           SENATE SUMMARY

23           Allows a health care provider that is a defendant in a  
24 legal action that is based on a claim of the provider's  
25 negligence causing personal injury or death to interview  
26 other providers that have provided health care to the  
27 injured patient. Places restrictions on the subject  
28 matter and the timing of such interviews. Revises the  
29 award of attorney's fees in civil actions brought to  
30 enforce health maintenance organization contracts.  
31 Authorizes civil actions against health maintenance  
organizations by certain persons under certain  
circumstances. Provides requirements and procedures.  
Provides for liability for damages and attorney's fees.  
Prohibits the award of punitive damages under certain  
circumstances. Requires the advance posting of discovery  
costs. Establishes exclusive liability of health  
maintenance organizations. Provides a legislative  
declaration. Provides an appropriation.