

By the Committee on Banking and Insurance; and Senator Latvala

311-2103-00

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

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

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21 Section 1. Section 641.28, Florida Statutes, is
22 amended to read:

23 641.28 Civil remedy.--

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

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

1 (b) If the civil action is filed more than 60 days
2 after the subscriber or enrollee filed a notice of intent to
3 sue with the statewide provider and subscriber assistance
4 program established pursuant to s. 408.7056 or a notice
5 pursuant to s. 641.3917, and the subscriber or enrollee
6 receives a final judgment or decree against the health
7 maintenance organization in favor of the subscriber or
8 enrollee, the court shall enter a judgment or decree against
9 the health maintenance organization in favor of the subscriber
10 or enrollee for reasonable attorney's fees and court costs.

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

15 Section 2. Paragraphs (c), (d), and (e) are added to
16 subsection (10) of section 641.3903, Florida Statutes, and
17 subsection (15) is added to that section, to read:

18 641.3903 Unfair methods of competition and unfair or
19 deceptive acts or practices defined.--The following are
20 defined as unfair methods of competition and unfair or
21 deceptive acts or practices:

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

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

1 (d) Issuing a nonrenewal notice on any health
2 maintenance organization contract, or requiring execution of a
3 consent to rate endorsement, for the purpose of offering to
4 issue, or issuing, a similar or identical contract to the same
5 subscriber or enrollee at a higher premium rate or continuing
6 an existing contract at an increased premium without meeting
7 any applicable notice requirements.

8 (e) Cancelling or issuing a nonrenewal notice on any
9 health maintenance organization contract without complying
10 with any applicable cancellation or nonrenewal provision
11 required under the Florida Insurance Code.

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

15 (a) Race, color, creed, marital status, sex, or
16 national origin;

17 (b) The residence, age, or lawful occupation of the
18 individual, unless there is a reasonable relationship between
19 the residence, age, or lawful occupation of the individual and
20 the coverage issued or to be issued; or

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

27 Section 3. Section 641.3917, Florida Statutes, is
28 amended to read:

29 641.3917 Civil liability.--The provisions of this part
30 are cumulative to rights under the general civil and common
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1 law, and no action of the department shall abrogate such
2 rights to damage or other relief in any court.

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

6 (a) A violation of s. 641.3903(5)(a), (b), (c)1.-7.,
7 (10), or (15) by the health maintenance organization; or

8 (b) The health maintenance organization's failure to
9 provide a covered service when in good faith the health
10 maintenance organization should have provided the service if
11 it had acted fairly and honestly toward its subscriber or
12 enrollee and with due regard for his or her interests and, in
13 the independent medical judgment of a contract treating
14 physician or other physician authorized by the health
15 maintenance organization, the service is medically necessary.

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17 However, a person pursuing a remedy under this section need
18 not prove that such acts were committed or performed with such
19 frequency as to indicate a general business practice.

20 (2)(a) As a condition precedent to bringing an action
21 under this section, the department and the health maintenance
22 organization must have been given 60 days' written notice of
23 the violation. If the department returns a notice for lack of
24 specificity, the 60-day time period does not begin until a
25 proper notice is filed.

26 (b) The notice must be on a form provided by the
27 department and must state with specificity the following
28 information and such other information as the department
29 requires:

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1 1. The provision of law, including the specific
2 language of the law, which the health maintenance organization
3 has allegedly violated.

4 2. The facts and circumstances giving rise to the
5 violation.

6 3. The name of any individual involved in the
7 violation.

8 4. Any reference to specific contract language that is
9 relevant to the violation.

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

13 (c) Within 20 days after receipt of the notice, the
14 department may return any notice that does not provide the
15 specific information required by this section, and the
16 department shall indicate the specific deficiencies contained
17 in the notice. A determination by the department to return a
18 notice for lack of specificity is exempt from the requirements
19 of chapter 120.

20 (d) No action shall lie under this section if, within
21 60 days after filing notice, the damages are paid or the
22 circumstances giving rise to the violation are corrected.

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

26 (f) The applicable statute of limitations for an
27 action under this section shall be tolled for a period of 65
28 days by the mailing of the notice required by this subsection
29 or the mailing of a subsequent notice required by this
30 subsection.

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

5 (4) Punitive damages shall not be awarded under this
6 section unless the acts giving rise to the violation occur
7 with such frequency as to indicate a general business practice
8 and are either willful, wanton, and malicious or are in
9 reckless disregard for the rights of any subscriber or
10 enrollee. Any person who pursues a claim under this
11 subsection shall post, in advance, the costs of discovery.
12 Such costs shall be awarded to the health maintenance
13 organization if no punitive damages are awarded to the
14 plaintiff.

15 (5) This section shall not be construed to authorize a
16 class action suit against a health maintenance organization or
17 a civil action against the department, its employees, or the
18 Insurance Commissioner, or against the Agency for Health Care
19 Administration, its employees, or the director of the agency
20 or to create a cause of action when a health maintenance
21 organization refuses to pay a claim for reimbursement on the
22 grounds that the charge for a service was unreasonably high or
23 that the service provided was not medically necessary.

24 (6)(a) The civil remedy specified in this section does
25 not preempt any other remedy or cause of action provided for
26 pursuant to any other law or pursuant to the common law of
27 this state. Any person may obtain a judgment under either the
28 common law remedy of bad faith or the remedy provided in this
29 section, but is not entitled to a judgment under both
30 remedies. This section does not create a common law cause of
31 action. The damages recoverable under this section include

1 damages that are a reasonably foreseeable result of a
2 specified violation of this section by the health maintenance
3 organization and may include an award or judgment in an amount
4 that exceeds contract limits.

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

8 (c) This section does not apply to the provision of
9 medical care, treatment, or attendance pursuant to chapter
10 440.

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

13 440.11 Exclusiveness of liability.--

14 (4) Notwithstanding the provisions of s. 624.155 or s.
15 641.3917, the liability of a carrier or a health maintenance
16 organization to an employee or to anyone entitled to bring
17 suit in the name of the employee shall be as provided in this
18 chapter, which shall be exclusive and in place of all other
19 liability.

20 Section 5. The Legislature finds that the provisions
21 of this bill will fulfill an important state interest.

22 Section 6. There are hereby appropriated three
23 positions and \$112,000 from the Insurance Commissioners'
24 Regulatory Trust Fund to the Department of Insurance for the
25 purposes of carrying out the provisions of this act.

26 Section 7. This act shall take effect July 1, 2000.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2154

Deletes section 1 of SB 2154, which amended s. 455.667, F.S.,
to provide an additional circumstance when the contents of a
patient's medical records may be disclosed without the
patient's written authorization.