

STORAGE NAME: h0913.hcl

DATE: February 28, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
ANALYSIS**

BILL #: HB 913

RELATING TO: Adverse Determinations

SPONSOR(S): Representative Casey and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill clarifies that the rendering of an "adverse determination" as defined in s. 641.47, F.S., is the practice of medicine and that only Florida licensed allopathic or osteopathic physicians may render such a determination. It requires the licensed physician making the adverse determination to submit to the treating physician and patient, in writing within 2 days of the adverse determination, the facts and documentation that form the basis for such adverse determination. The health maintenance organization or prepaid health clinic must ensure that only Florida licensed physicians render adverse determinations and that the process for appealing an adverse determination is included in the notification of adverse determination.

There is no fiscal impact to the state.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Definitions:

An "adverse determination" is defined in s. 641.47(1), F.S., as a coverage determination by an organization that an admission, availability of care, continued stay, or other health care service has been reviewed and, based upon the information provided, does not meet the organization's requirement for medical necessity, appropriateness, health care setting, level of care or effectiveness, and coverage for the requested service is therefore denied, reduced, or terminated.

An "organization" is defined in s. 641.47(13), F.S., as a health maintenance organization or prepaid health clinic.

"Clinical review criteria," as defined by s. 641.47(4), F.S., means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by the organization to determine, for coverage purposes, the necessity and appropriateness of health care services.

The "practice of medicine" is defined in s. 458.305(3), F.S., to include the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.

Likewise, the "practice of osteopathic medicine" is defined in s. 459.003(3), F.S., to include the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements which emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.

Current Process:

Section 641.51(1), F.S., requires health maintenance organizations and prepaid health clinics to ensure that the health care services provided to subscribers (patients) are rendered under reasonable standards of quality of care consistent with the prevailing standards of medical practice in the community. Section 641.51(2), F.S., requires health

maintenance organizations and prepaid health clinics to have an ongoing internal quality assurance program for its health care services. The quality assurance program must include a written plan for providing review of physicians and other licensed medical providers. Furthermore, s. 641.51(3), F.S., prohibits modification of the treating physician's professional judgment concerning the proper course of treatment unless the course of treatment prescribed is inconsistent with the prevailing standards of medical practice in the community. However, it does not restrict utilization management programs established by organizations.

These sections do not specifically require the review of physicians to be performed by other physicians, which is commonly known as "peer review." Moreover, the current definitions of the "practice of medicine" and the "practice of osteopathic medicine" do not specifically include the rendering of an adverse determination. However, the Florida Board of Medicine has interpreted the rendering of an adverse determination to be the practice of medicine since such decisionmaking is based on medical judgment and expertise to determine medical necessity, appropriateness, and effectiveness of a treatment plan proposed by the treating physician and because it is necessary for the person making the adverse determination to render an expert opinion as to whether the treatment prescribed falls below the standard of care.

Without clarification, persons other than Florida licensed physicians can determine whether a patient will receive a health care service determined by the treating physician to be medically necessary and appropriate. In some cases, adverse determinations are rendered by nurses who would not be permitted to testify in Florida courts as to the standard of care for a physician. In other cases, adverse determinations are rendered by persons located outside of Florida who can not be held accountable by the Florida Board of Medicine or the Florida Board of Osteopathic Medicine.

C. EFFECT OF PROPOSED CHANGES:

This bill requires health maintenance organizations and prepaid health clinics to ensure that adverse determinations are only rendered by Florida licensed allopathic or osteopathic physicians. The organizations would no longer be allowed to use unlicensed physicians, other non-physician health care practitioners, or non-practitioners to make these medical decisions. Persons other than Florida licensed allopathic or osteopathic physicians making adverse determinations could be prosecuted for the unlicensed practice of medicine which is a third degree felony.

The bill requires organizations to ensure that its physicians provide the facts and documentation to the patient and treating physician to support and explain the adverse determination. It requires the physician to notify the patient and treating physician in writing within 2 working days of the reasons for the adverse determination. The notification must include the utilization review criteria or benefits provisions used by the physician and be signed by the physician rendering the adverse determination. Lastly, the notification must include information regarding the process for appealing the adverse determination.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 458.305(3), F.S., to include the rendering of an adverse determination in the definition of the "practice of medicine."

Section 2. Amends s. 459.003(3), F.S., to include the rendering of an adverse determination in the definition of the "practice of osteopathic medicine."

Section 3. Amends s. 641.51(4), F.S., to require organizations to only allow licensed physicians to render adverse determinations and to ensure that patients and treating physicians are notified of the basis for the adverse determination, including the facts, criteria, and benefits provisions used, and the process for appealing such adverse determination.

Section 4. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to expend funds or take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

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