

STORAGE NAME: h0913a.hcl

DATE: March 9, 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 YEAS 11 NAYS 1
 - (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. The fiscal impact to the organizations should be minimal since each organization is already required by law to designate a Florida licensed physician as medical director of the organization.

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 Laws and Issues:

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 require the adverse determination to be made by or reviewed by a Florida licensed physician. 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. The Florida Board of Medicine has argued that the rendering of an adverse determination is or should 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.

Pursuant to s. 641.495(11), F.S., every organization providing health care services to patients in Florida is required to designate a medical director who is an allopathic or osteopathic physician licensed in Florida. However, although the law requires the organization to designate a Florida physician as medical director, it does not require the Florida licensed medical director to perform any specific functions such as reviewing or making adverse determinations for Florida patients.

Recent news articles point to the need to hold organizations accountable for bad decisions. According to the Center for Patient Advocacy, most Americans are prohibited under federal law from suing their health maintenance organization in civil court for medical malpractice, fraud, or death if they are covered by an employer-funded health maintenance organization. The Center for Patient Advocacy believes that the laws regarding accountability for medical decisions must be changed to protect patients.

Without clarification of Florida law, 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 may or may not be health care practitioners and cannot be held accountable by any regulatory board. If Florida was to notify the state of residence of the practitioner rendering the adverse determination, that state would not be able to take action against the practitioner unless that state had a law specifically including adverse determinations in the definition of the practice of medicine or in a specific ground for discipline. That state would be powerless to hold the practitioner accountable in the same manner as Florida regulatory boards and Florida patients are now powerless to take action against the person making the wrong decision.

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 so that the practitioner may be held accountable in Florida. 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 medical director required by current law could be used to make these adverse determinations.

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 so that medical care will not be unnecessarily delayed. 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. The signed notification of the physician will then be available as proof that he or she made the decision and the basis for that decision. The signed notification may be used later as evidence against the physician or organization in a legal proceeding to determine if the adverse determination was below the standard of care. Lastly, the notification must include information regarding the process for appealing the adverse determination so that the patient and treating physician will know how to file a complaint or grievance against the organization.

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:

Pursuant to s. 641.495(11), F.S., every organization providing health care services to patients in Florida is required to designate a medical director who is an allopathic or osteopathic physician licensed in Florida. Therefore, if the organization uses the physician that they have already designated as medical director to render these adverse determinations, the fiscal impact to the organization should be minimal.

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.

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:

Representative Casey offered a strike everything amendment to conform HB 913 to CS/SB 162 which provides specific grounds for discipline for an allopathic or osteopathic physician who renders an adverse determination below the standard of care instead of changing the definition of the practice of medicine and osteopathic medicine. Representative Kelly offered a substitute amendment which requires the adverse determination to be made by a physician licensed in Florida or any other state with similar licensing requirements. The substitute amendment differs from the original bill and the Casey amendment in that it does not require that the physician be licensed in Florida. There is no ground for discipline or change to the definition of "the practice of medicine" or "the practice of osteopathic medicine" in chapters 458 or 459. Also, this amendment differs from the Casey strike everything amendment and the original bill in that the physician rendering the adverse determination need not sign the denial of treatment. Any authorized member of the organization can sign the adverse determination. After lengthy discussion regarding the ability to hold the physician and the organization accountable and the cost to an organization to require their Florida licensed medical director to approve each adverse determination made regarding a Florida patient, the committee voted 8-6 to support the Kelly substitute amendment.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Wendy Smith Hansen

Lucretia Shaw Collins