

By Representative Argenziano

1 A bill to be entitled
 2 An act relating to managed care; creating the
 3 "Managed Care Organization Accountability Act
 4 of 2001"; providing legislative findings and
 5 intent; providing definitions; providing
 6 liability of a managed care entity for certain
 7 damages for harm to an insured or enrollee;
 8 providing certain defenses to an action against
 9 a managed care entity; prohibiting such
 10 entities from seeking indemnity from providers
 11 for liability provided under the act; providing
 12 that certain waivers are void and
 13 unenforceable; providing limitations; providing
 14 severability; providing a legislative finding
 15 of an important state interest; providing an
 16 effective date.

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

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 20 Section 1. This act may be cited as the "Managed Care
 21 Organization Accountability Act of 2001."

22 Section 2. The Legislature finds and declares as
 23 follows:

24 (1) Based on the fundamental nature of the
 25 relationships involved, a health insurance carrier, health
 26 maintenance organization, or other managed care entity
 27 regulated under chapter 627 or chapter 641, Florida Statutes,
 28 is engaged in the business of insurance in this state, as that
 29 term is defined for purposes of the McCarran-Ferguson Act, 15
 30 U.S.C. s. 1011 et seq.

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1 (2) The state's interest in regulating the business of
2 insurance as provided in this act is to protect insurance
3 purchasers and their beneficiaries, including employees, their
4 dependents and families, and any other patients covered by
5 private employer-sponsored health and disability insurance,
6 from the harm that may occur when insurance entities,
7 including managed health care insurance entities, act
8 improperly.

9 (3) Undue influence by a health care service plan or
10 managed care entity based upon financial interests interferes
11 with the role of the provider as the determiner of the
12 patient's health care needs. A health care service plan,
13 having established the organizational structure that fosters
14 such conduct, should bear the liability for injury resulting
15 from such conduct.

16 (4) It is the intent of the Legislature in enacting
17 this act to:

18 (a) Provide remedies under state law to health care
19 service plan members and enrollees and other insureds when
20 they suffer injury, whether physical, mental, emotional, or
21 economic, as a result of the failure of a health care service
22 plan or a medical insurer to provide quality health care
23 services to patients.

24 (b) Ensure that adequate remedies under state law
25 exist for all persons who are subject to the wrongful acts of
26 those entities that promise insurance for the life, health,
27 and disability of Florida citizens. The existence and
28 deterrent effects of these remedies are necessary to protect
29 the health and safety of the residents of this state.

30 (c) Address the harm caused to health care service
31 plan members and enrollees or other insureds by the failure or

1 refusal of the health care service plan or any other insurer
2 to timely approve members' requests for health care services
3 that are medically appropriate and that are otherwise provided
4 as benefits under the plan. When the health care services are
5 otherwise set forth as benefits to be provided under the plan,
6 the failure or refusal to provide those benefits when
7 medically appropriate constitutes a breach of the health care
8 service plan's or other insurer's duty of care to provide
9 health care services at a level of quality acceptable under
10 state law.

11 Section 3. Civil remedy.--

12 (1) As used in this section, the term:

13 (a) "Appropriate and medically necessary" means
14 according to the standard for health care services as
15 determined by physicians and health care providers in
16 accordance with the prevailing practices and standards of the
17 medical profession and community.

18 (b) "Enrollee" means an individual who is enrolled in
19 a health care plan, including covered dependents.

20 (c) "Health care plan" means any plan whereby any
21 person undertakes to provide, arrange for, pay for, or
22 reimburse any part of the cost of any health care services.

23 (d) "Health care provider" means any physician,
24 hospital, or other institution, organization, or person that
25 furnishes health care services and is licensed or otherwise
26 authorized to practice in the state.

27 (e) "Health care treatment decision" means a
28 determination made when medical services are actually provided
29 by the health care plan and a decision which affects the
30 quality of the diagnosis, care, or treatment provided to the
31 plan's insureds or enrollees.

- 1 (f) "Health insurance carrier" means an authorized
2 insurance company that issues policies of accident and
3 sickness insurance under chapter 627, Florida Statutes.
- 4 (g) "Health maintenance organization" means an
5 organization licensed under chapter 641, Florida Statutes.
- 6 (h) "Managed care entity" means any entity that
7 delivers, administers, or assumes risk for health care
8 services with systems or techniques to control or influence
9 the quality, accessibility, utilization, or costs and prices
10 of such services to a defined enrollee population, but does
11 not include an employer purchasing coverage or acting on
12 behalf of its employees or the employees of one or more
13 subsidiaries or affiliated corporations of the employer or a
14 pharmacy licensed by the Board of Pharmacy.
- 15 (i) "Physician" means an individual licensed to
16 practice medicine in this state pursuant to chapter 458 or
17 chapter 459, Florida Statutes.
- 18 (j) "Ordinary care" means:
- 19 1. In the case of a health insurance carrier, health
20 maintenance organization, or other managed care entity, that
21 degree of care that a health insurance carrier, health
22 maintenance organization, or other managed care entity of
23 ordinary prudence would use under the same or similar
24 circumstances; or
- 25 2. In the case of a person who is an employee, agent,
26 ostensible agent, or representative of a health insurance
27 carrier, health maintenance organization, or other managed
28 care entity, that degree of care that a person of ordinary
29 prudence in the same profession, specialty, or area of
30 practice as such person would use in the same or similar
31 circumstances.

1 (2) A health insurance carrier, health maintenance
2 organization, or other managed care entity shall be
3 responsible for ensuring patients that health care providers,
4 rather than the health care plan, are in charge of patient
5 care.

6 (3) A health insurance carrier, health maintenance
7 organization, or other managed care entity for a health care
8 plan has the duty to exercise ordinary care when making health
9 care treatment decisions and is liable for damages for harm to
10 an insured or enrollee proximately caused by its failure to
11 exercise such ordinary care.

12 (4) A health insurance carrier, health maintenance
13 organization, or other managed care entity for a health care
14 plan is liable for damages for harm to an insured or enrollee
15 proximately caused by the health care treatment decisions made
16 by its employees, agents, ostensible agents, or
17 representatives, who are acting on its behalf and over whom it
18 has the right to exercise influence or control or has actually
19 exercised influence or control which result in the failure to
20 exercise ordinary care.

21 (5) It shall be a defense to any action asserted
22 against a health insurance carrier, health maintenance
23 organization, or other managed care entity for a health care
24 plan that:

25 (a) Neither the health insurance carrier, health
26 maintenance organization, or other managed care entity, nor
27 any employee, agent, ostensible agent, or representative for
28 whose conduct such health insurance carrier, health
29 maintenance organization, or other managed care entity is
30 liable under subsection (4), controlled, influenced, or
31 participated in the health care treatment decision; and

1 (b) The health insurance carrier, health maintenance
2 organization, or other managed care entity did not deny or
3 delay payment for any treatment prescribed or recommended by a
4 provider to the insured or enrollee.

5 (6) A health insurance carrier, health maintenance
6 organization, or other managed care entity shall not seek
7 indemnity, whether contractual or equitable, from a provider
8 for liability imposed under this section. Any provision to the
9 contrary in a contract with providers is void and
10 unenforceable.

11 (7) Any waiver of the provisions of this section by a
12 member, subscriber, insured, or enrollee of a health insurance
13 carrier, health maintenance organization, or other managed
14 care entity is contrary to public policy and shall be void and
15 unenforceable.

16 (8) This section does not abrogate or limit any other
17 theory of liability otherwise available at law.

18 (9) The standards in this section create no obligation
19 on the part of the health insurance carrier, health
20 maintenance organization, or other managed care entity to
21 provide to an insured or enrollee treatment that is not
22 covered by the health care plan of the entity.

23 (10) This section does not create any liability on the
24 part of an employer, an employer group purchasing
25 organization, or a pharmacy licensed by the Board of Pharmacy
26 that purchases coverage or assumes risk on behalf of its
27 employees.

28 (11) Nothing in any law of this state prohibiting a
29 health insurance carrier, health maintenance organization, or
30 other managed care entity from practicing medicine or being
31 licensed to practice medicine may be asserted as a defense by

1 such health insurance carrier, health maintenance
2 organization, or other managed care entity in an action
3 brought against it pursuant to this section or any other law.

4 (12) In an action against a health insurance carrier,
5 health maintenance organization, or other managed care entity,
6 a finding that a physician or other health care provider is an
7 employee, agent, ostensible agent, or representative of such
8 health insurance carrier, health maintenance organization, or
9 other managed care entity shall not be based solely on proof
10 that such person's name appears in a listing of approved
11 physicians or health care providers made available to insureds
12 or enrollees under a health care plan.

13 (13) If any provision of this section or the
14 application thereof to any person or circumstance is held
15 invalid, the invalidity shall not affect other provisions or
16 applications of the section which can be given effect without
17 the invalid provision or application, and to this end the
18 provisions of this section are declared severable.

19 Section 4. The Legislature finds that this act
20 fulfills an important state interest.

21 Section 5. This act shall take effect July 1, 2001.

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23 HOUSE SUMMARY

24
25 Creates the "Managed Care Organization Accountability Act
26 of 2001." Provides legislative findings and intent with
27 respect to providing remedies in state law for insureds
28 and enrollees who suffer injuries due to wrongful acts or
29 failure to be provided services by a health insurance
30 carrier, health maintenance organization, or other
31 managed care entity. Provides definitions. Provides
certain liability and defenses thereto. Provides
limitations of the act.