

By Representatives Sobel and Romeo

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 intent;
5 providing definitions; providing for
6 responsibility to patients; providing duty to
7 exercise ordinary care when making health care
8 treatment decisions; providing for liability;
9 providing certain defenses in actions against a
10 health insurance carrier, health maintenance
11 organization, or managed care entity; providing
12 severability; providing an effective date.

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

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16 Section 1. Short title.--This act may be cited as the
17 "Managed Care Organization Accountability Act of 2001."

18 Section 2. Legislative findings and intent.--The
19 Legislature finds and declares as follows:

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

27 (2) The state's interest in regulating the business of
28 insurance as provided in this act is to protect insurance
29 purchasers and their beneficiaries, including employees and
30 their dependents and families, and any other patients covered
31 by private employer-sponsored health and disability insurance,

1 from the harm that may occur when insurance entities,
2 including managed health care insurance entities, act
3 improperly.

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

11 (4) It is the intent of the Legislature in enacting
12 this act to do all of the following:

13 (a) To provide state law remedies to health care
14 service plan members and enrollees and other insureds when
15 they suffer injury, whether it is physical, mental, emotional,
16 or economic, as a result of the failure of a health care
17 service plan or a medical insurer to provide quality health
18 care services to patients.

19 (b) To ensure that adequate state law remedies exist
20 for all persons who are subject to the wrongful acts of those
21 entities that promise insurance for the life, health, and
22 disability of Florida citizens. The existence of these
23 remedies and the deterrent effects of these remedies is
24 necessary to protect the health and safety of the residents of
25 this state.

26 (c) To address the harm caused to health care service
27 plan members and enrollees or other insureds by the failure or
28 refusal of the health care service plan or any other insurer
29 to timely approve members' requests for health care services
30 that are medically appropriate and that are health care
31 services otherwise provided as benefits under the plan. When

1 the health care services are otherwise set forth as benefits
2 to be provided under the plan, the failure or refusal to
3 provide those benefits when they are medically appropriate
4 constitutes a breach of the health care service plan's or
5 other insurer's duty of care to provide health care services
6 at a level of quality acceptable in this act.

7 (5) The Legislature finds that this act will fulfill
8 an important state interest.

9 Section 3. Definitions; legal responsibility and duty
10 to exercise ordinary care; civil remedy.--

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

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

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

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

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

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

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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, in the case of a health
19 insurance carrier, health maintenance organization, or managed
20 care entity, that degree of care that a health insurance
21 carrier, health maintenance organization, or managed care
22 entity of ordinary prudence would use under the same or
23 similar circumstances. In the case of a person who is an
24 employee, agent, ostensible agent, or representative of a
25 health insurance carrier, health maintenance organization, or
26 managed care entity, "ordinary care" means that degree of care
27 that a person of ordinary prudence - in the same profession,
28 specialty, or area of practice as such person would use in the
29 same or similar circumstances.

30 (2) A health insurance carrier, health maintenance
31 organization, or other managed care entity shall be legally

1 responsible to patients to ensure that health care providers,
2 rather than the health care service plan, are in charge of
3 patient care.

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

10 (4) A health insurance carrier, health maintenance
11 organization, or other managed care entity or a health care
12 plan is also liable for damages for harm to an insured or
13 enrollee proximately caused by the health care treatment
14 decisions made by its:

15 (a) Employees;

16 (b) Agents;

17 (c) Ostensible agents; or

18 (d) Representatives,

19
20 who are acting on its behalf and over whom it has the right to
21 exercise influence or control or has actually exercised
22 influence or control which result in the failure to exercise
23 ordinary care.

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

28 (a) Neither the health insurance carrier, health
29 maintenance organization, or other managed care entity, nor
30 any employee, agent, ostensible agent, or representative for
31 whose conduct such health insurance carrier, health

1 maintenance organization, or other managed care entity is
2 liable under subsection (4), controlled, influenced, or
3 participated in the health care treatment decision.

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

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

14 (7) Any waiver of the provisions of this section by a
15 member, subscriber, or enrollee is contrary to public policy
16 and shall be unenforceable and void.

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

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

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

29 (11) Nothing in any law of this state prohibiting a
30 health insurance carrier, health maintenance organization, or
31 other managed care entity from practicing medicine or being

1 licensed to practice medicine may be asserted as a defense by
2 such health insurance carrier, health maintenance
3 organization, or other managed care entity in an action
4 brought against it pursuant to this section or any other law.

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

14 (13) If any provision of this section or the
15 application thereof to any person or circumstance is held to
16 be unconstitutional or otherwise invalid or unenforceable, the
17 remainder of the section and the application of those
18 provisions to other persons or circumstances shall not be
19 affected thereby.

20 Section 4. This act shall take effect July 1, 2001.

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23 HOUSE SUMMARY

24 Creates the "Managed Care Organization Accountability Act
25 of 2001." Provides legislative findings and intent.
26 Provides definitions. Provides that health insurance
27 carriers, health maintenance organizations, and other
28 managed care entities have certain legal responsibility
29 with respect to patient care. Providing for the duty to
30 exercise ordinary care when making health care treatment
31 decisions. Providing for liability for damages for harm
caused by treatment decisions made by employees and
agents of such entities and failure to exercise ordinary
care. Providing certain defenses in actions against such
entities.