

By Senator Campbell

32-139-03

1 A bill to be entitled
2 An act relating to managed health care;
3 providing a short title; prohibiting the
4 contract between a managed care plan and a
5 health care provider from containing provisions
6 allowing the managed care plan to change a
7 material term of the contract; providing
8 certain exceptions; requiring that a managed
9 care plan notify a provider within a specified
10 period of its intent to change a material term;
11 providing certain exceptions; prohibiting
12 additional provisions in the contract which
13 require a provider to accept additional
14 patients or comply with certain programs or
15 procedures without prior disclosure; providing
16 certain exceptions; prohibiting certain other
17 contract provisions that conflict with state
18 law or confidentiality requirements; providing
19 definitions; specifying acts and omissions
20 constituting grounds for which the Secretary of
21 Health Care Administration may take
22 disciplinary action against a managed care
23 plan; requiring that a proceeding under the act
24 comply with the requirements for notice and a
25 hearing provided in ch. 120, F.S.; providing an
26 effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Health Care Providers' Bill of Rights.--
31

1 (1) This section may be cited as the "Health Care
2 Providers' Bill of Rights."

3 (2) A contract issued, amended, or renewed on or after
4 January 1, 2004, between a managed care plan and a health care
5 provider for the provision of health care services to a plan
6 enrollee or subscriber may not contain any of the following
7 terms:

8 (a)1. Authority for the managed care plan to change a
9 material term of the contract, unless the change has first
10 been negotiated and agreed to by the provider and the managed
11 care plan or unless the change is necessary to comply with
12 state or federal law or any accreditation requirements of a
13 private accreditation organization. If a change is made by
14 amending a manual, policy, or procedure document that is
15 referenced in the contract, the managed care plan must provide
16 45 business days' notice to the provider and the provider has
17 the right to negotiate and agree to the change. If the managed
18 care plan and the provider cannot agree to the change to a
19 manual, policy, or procedure document, the provider may
20 terminate the contract prior to implementation of the change.
21 In any event, the managed care plan must provide at least 45
22 business days' notice of its intent to change a material term,
23 unless a change in state or federal law or any accreditation
24 requirements of a private accreditation organization require a
25 shorter timeframe for compliance. However, if the parties
26 mutually agree, the requirement for 45 business days' notice
27 may be waived. This subparagraph does not limit the ability of
28 the parties to mutually agree to the proposed change at any
29 time after the provider has received notice of the proposed
30 change.

1 2. If a contract between a provider and a managed care
2 plan provides benefits to enrollees or subscribers through a
3 preferred provider arrangement, the contract may contain
4 provisions permitting a material change to the contract by the
5 managed care plan if the plan provides at least 45 business
6 days' notice to the provider of the change and if the provider
7 has the right to terminate the contract prior to the
8 implementation of the change.

9 (b) A provision that requires a health care provider
10 to accept additional patients beyond the contracted number or
11 in the absence of a number if, in the reasonable professional
12 judgment of the provider, accepting additional patients would
13 endanger patients' access to, or continuity of, care.

14 (c) A requirement to comply with quality improvement
15 or utilization management programs or procedures of a managed
16 care plan, unless the requirement is fully disclosed to the
17 health care provider at least 15 business days prior to the
18 date the provider executes the contract. However, the managed
19 care plan may make a change to the quality improvement or
20 utilization management programs or procedures at any time if
21 the change is necessary to comply with state or federal law or
22 any accreditation requirements of a private accreditation
23 organization. A change to the quality improvement or
24 utilization management programs or procedures must be made
25 pursuant to paragraph (a).

26 (d) A provision that waives or conflicts with any
27 provision of chapter 641, Florida Statutes. A provision in the
28 contract that allows the managed care plan to provide
29 professional liability or other coverage or to assume the cost
30 of defending the provider in an action relating to

31

1 professional liability or in any other action does not
2 conflict with or violate this paragraph.

3 (e) A requirement to permit access to patient
4 information in violation of federal or state law concerning
5 the confidentiality of patient information.

6 (3) Any contract provision that violates subsection
7 (2) is void, unlawful, and unenforceable.

8 (4) This section may not be construed or applied as
9 setting the rate of payment to be included in contracts
10 between managed care plans and health care providers.

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

12 (a) "Health care provider" means any professional
13 person, medical group, independent practice association,
14 organization, health facility, or other person or institution
15 licensed or authorized by the Agency for Health Care
16 Administration to deliver or furnish health care services.

17 (b) "Material" means a provision in a contract to
18 which a reasonable person would attach importance in
19 determining the action to be taken upon the provision.

20 Section 2. Grounds for disciplinary action.--

21 (1) The Secretary of Health Care Administration may,
22 after appropriate notice and opportunity for a hearing, by
23 order suspend or revoke any license issued by the agency to a
24 managed care plan or assess administrative penalties if the
25 secretary finds that the licensee has committed any of the
26 acts or omissions constituting grounds for disciplinary
27 action.

28 (2) The following acts or omissions constitute grounds
29 for disciplinary action by the secretary:

30 (a) The managed care plan is operating at variance
31 with the basic organizational documents filed with the agency,

1 or with its published plan, or the managed care plan is
2 operating in any manner contrary to that described in, and
3 reasonably inferred from, its application for licensure and
4 annual report, or any modification thereof, unless amendments
5 allowing the variation have been submitted to, and approved
6 by, the secretary.

7 (b) The managed care plan has issued or uses, or
8 permits others to use, evidence of coverage or a schedule of
9 charges for health care services which do not comply with
10 those published in the latest evidence of coverage approved by
11 the agency.

12 (c) The managed care plan does not provide basic
13 health care services to its enrollees and subscribers as set
14 forth in the evidence of coverage. This paragraph does not
15 apply to a contract for specialized health care services.

16 (d) The continued operation of the managed care plan
17 will constitute a substantial risk to its subscribers and
18 enrollees.

19 (e) The managed care plan has violated, attempted to
20 violate, or conspired to violate, directly or indirectly, or
21 assisted in or abetted a violation of or conspiracy to violate
22 any provision of chapter 641, Florida Statutes, any rule
23 adopted by the agency under chapter 641, Florida Statutes, or
24 any order issued by the agency under chapter 641, Florida
25 Statutes.

26 (f) The managed care plan has engaged in any conduct
27 that constitutes an unfair method of competition or unfair or
28 deceptive act or practice, as defined in section 641.3903,
29 Florida Statutes.

30 (g) The managed care plan has permitted, or aided or
31 abetted, any violation by an employee or contractor who holds

1 a certificate, license, permit, registration, or exemption
2 which would constitute grounds for discipline against the
3 holder of the certificate, license, permit, registration, or
4 exemption.

5 (h) The managed care plan has permitted, or aided or
6 abetted, the commission of any illegal act.

7 (i) The managed care plan has engaged the services of
8 an officer, director, employee, associate, or provider of the
9 plan in violation of an order issued by the secretary.

10 (j) The managed care plan has engaged a solicitor or
11 supervisor of solicitation contrary to the provisions of an
12 order issued by the secretary.

13 (k) The managed care plan, its management company, or
14 any other affiliate of the plan, or any controlling person,
15 officer, director, or other person occupying a principal
16 management or supervisory position in the managed care plan,
17 management company, or affiliate, has been convicted of or has
18 pled nolo contendere to a crime, or committed any act
19 involving dishonesty, fraud, or deceit, which crime or act is
20 substantially related to the qualifications, functions, or
21 duties of a person engaged in business in accordance with
22 chapter 641, Florida Statutes.

23 (l) The managed care plan has been subject to a final
24 disciplinary action taken by this state, another state, an
25 agency of the federal government, or another country for any
26 act or omission that would constitute a violation of chapter
27 641, Florida Statutes.

28 (m) The managed care plan has violated any law
29 requiring that medical information be kept confidential.

30 (3)(a) The secretary may prohibit any person from
31 serving as an officer, director, employee, associate, or

1 provider of any managed care plan, or of any management
2 company of a managed care plan, if:

3 1. The prohibition is in the public interest and the
4 person has committed, caused, participated in, or had
5 knowledge of a violation of chapter 641, Florida Statutes, by
6 a managed care plan or management company.

7 2. The person was an officer, director, employee,
8 associate, or provider of a managed care plan, or of a
9 management company, whose license has been suspended or
10 revoked and the person had knowledge of, or participated in,
11 any of the prohibited acts for which the license was suspended
12 or revoked.

13 (b) A proceeding for issuing an order under this
14 subsection may be included as a part of a proceeding against a
15 managed care plan under this section or may constitute a
16 separate proceeding, subject in either case to subsection (4).

17 (4) A proceeding under this section requires notice
18 to, and the opportunity for a hearing with regard to, the
19 person affected in accordance with chapter 120, Florida
20 Statutes.

21 Section 3. This act shall take effect July 1, 2003.

22
23 *****

24 SENATE SUMMARY

25 Creates the "Health Care Providers' Bill of Rights."
26 Specifies various provisions that may not be included in
27 a contract between a managed care plan and a health care
28 provider. Prohibits provisions allowing the managed care
29 plan to change a material term of the contract without
30 notice. Prohibits provisions that require a provider to
31 accept additional patients or to comply with certain
programs or procedures without prior disclosure. Provides
exceptions if such changes are necessary to comply with
state or federal law or with a requirement for
accreditation. Specifies acts and omissions that
constitute grounds for disciplinary action against a
managed care plan by the Secretary of Health Care
Administration. (See bill for details.)