



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2435

by Rep. Mary E. Flowers - LaToya Greenwood

SYNOPSIS AS INTRODUCED:

215 ILCS 134/87 new

Amends the Managed Care Reform and Patient Rights Act. Provides that a health insurance carrier, health maintenance organization, or other managed care entity for a health care plan and its employees and other representatives are liable for damages for harm to an enrollee proximately caused by their failure to exercise ordinary care. Prohibits a health insurance carrier, health maintenance organization, or other managed care entity from removing a provider from its health care plan for advocating on behalf of an enrollee for appropriate and medically necessary health care. Prohibits a health insurance carrier, health maintenance organization, or other managed care entity from entering into a contract with a provider that indemnifies the health insurance carrier, health maintenance organization, or other managed care entity. Provides that an insured or enrollee seeking damages has the right and duty to submit the claim to arbitration in accordance with the Uniform Arbitration Act. Provides that the provisions do not apply to workers' compensation insurance coverage, actions seeking only a review of an adverse utilization review determination, and licensed insurance agents.

LRB101 02846 SMS 50300 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Managed Care Reform and Patient Rights Act
5 is amended by adding Section 87 as follows:

6 (215 ILCS 134/87 new)

7 Sec. 87. Health care entity liability.

8 (a) As used in this Section:

9 "Appropriate and medically necessary" means the standard
10 for health care services as determined by physicians and health
11 care providers in accordance with the prevailing practices and
12 standards of the medical profession and community.

13 "Enrollee" means an individual who is enrolled in a health
14 care plan, including covered dependents.

15 "Health care plan" means any plan whereby any person
16 undertakes to provide, arrange for, pay for, or reimburse any
17 part of the cost of any health care services.

18 "Health care provider" means a person or entity as defined
19 in Section 10.

20 "Health care treatment decision" means a determination
21 made when medical services are actually provided by the health
22 care plan and a decision that affects the quality of the
23 diagnosis, care, or treatment provided to the health care

1 plan's insureds or enrollees.

2 "Health insurance carrier" means an authorized insurance
3 company that issues policies of accident and health insurance
4 under the Illinois Insurance Code.

5 "Health maintenance organization" means an organization
6 licensed under the Health Maintenance Organization Act.

7 "Managed care entity" means any entity that delivers,
8 administers, or assumes risk for health care services with
9 systems or techniques to control or influence the quality,
10 accessibility, utilization, or costs and prices of those
11 services to a defined enrollee population. "Managed care
12 entity" does not include an employer purchasing coverage or
13 acting on behalf of its employees or the employees of one or
14 more subsidiaries or affiliated corporations of the employer.

15 "Physician" means: (1) an individual licensed to practice
16 medicine in all its branches in this State; (2) a professional
17 association, professional service corporation, partnership,
18 medical corporation, or limited liability company entitled to
19 lawfully engage in the practice of medicine; or (3) another
20 person wholly owned by physicians.

21 "Ordinary care" means, in the case of a health insurance
22 carrier, health maintenance organization, or managed care
23 entity, that degree of care that a health insurance carrier,
24 health maintenance organization, or managed care entity of
25 ordinary prudence would use under the same or similar
26 circumstances. In the case of a person who is an employee,

1 agent, ostensible agent, or representative of a health
2 insurance carrier, health maintenance organization, or managed
3 care entity, "ordinary care" means that degree of care that a
4 person of ordinary prudence in the same profession, specialty,
5 or area of practice as such person would use in the same or
6 similar circumstances.

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

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

18 (1) employees;

19 (2) agents;

20 (3) ostensible agents; or

21 (4) representatives who are acting on its behalf and
22 over whom it has the right to exercise influence or control
23 or has actually exercised influence or control that results
24 in the failure to exercise ordinary care.

25 (d) The standards in subsections (b) and (c) create no
26 obligation on the part of the health insurance carrier, health

1 maintenance organization, or other managed care entity to
2 provide to an insured or enrollee treatment that is not covered
3 by the health care plan of the entity.

4 (e) The determination of whether a procedure or treatment
5 is medically necessary must be made by a physician.

6 (f) If the physician determines that a procedure or
7 treatment is medically necessary, the health care plan must pay
8 for the procedure or treatment.

9 (g) A health insurance carrier, health maintenance
10 organization, or managed care entity may not remove a physician
11 or health care provider from its health care plan or refuse to
12 renew the physician or health care provider with its health
13 care plan for advocating on behalf of an enrollee for
14 appropriate and medically necessary health care for the
15 enrollee.

16 (h) A health insurance carrier, health maintenance
17 organization, or other managed care entity may not enter into a
18 contract with a physician, hospital, or other health care
19 provider or pharmaceutical company that includes an
20 indemnification or hold harmless clause for the acts or conduct
21 of the health insurance carrier, health maintenance
22 organization, or other managed care entity. Any such
23 indemnification or hold harmless clause in an existing contract
24 is hereby declared void.

25 (i) Nothing in any law of this State prohibiting a health
26 insurance carrier, health maintenance organization, or other

1 managed care entity from practicing medicine or being licensed
2 to practice medicine may be asserted as a defense by the health
3 insurance carrier, health maintenance organization, or other
4 managed care entity in an action brought against it under this
5 Section or any other law.

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

15 (k) This Section applies only to causes of action that
16 accrue on or after the effective date of this amendatory Act of
17 the 101st General Assembly. An insured or enrollee seeking
18 damages under this Section has the right and duty to submit the
19 claim to arbitration in accordance with the Uniform Arbitration
20 Act. No agreement between the parties to submit the claim to
21 arbitration is necessary. A health insurance carrier, health
22 maintenance organization, or managed care entity shall have no
23 liability under this Section unless the claim is first
24 submitted to arbitration in accordance with the Uniform
25 Arbitration Act. The award in matters arbitrated under this
26 Section shall be made within 30 days after notification of the

1 arbitration is provided to all parties.

2 (1) This Section does not apply to:

3 (1) workers' compensation insurance coverage subject
4 to the Workers' Compensation Act;

5 (2) licensed insurance agents; or

6 (3) actions seeking only a review of an adverse
7 utilization review determination.