

1 AN ACT concerning managed care plans.

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
5 Act is amended by adding Section 47 as follows:

6 (215 ILCS 134/47 new)

7 Section 47. Health care entity liability.

8 (a) In this Section:

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

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

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

19 "Health care provider" means a person or entity as
20 defined in Section 2-1003 of the Code of Civil Procedure.

21 "Health care treatment decision" means a determination
22 made when medical services are actually provided by the
23 health care plan and a decision that affects the quality of
24 the diagnosis, care, or treatment provided to the plan's
25 insureds or enrollees.

26 "Health insurance carrier" means an authorized insurance
27 company that issues policies of accident and health insurance
28 under the Illinois Insurance Code.

29 "Health maintenance organization" means an organization
30 licensed under the Health Maintenance Organization Act.

31 "Managed care entity" means any entity that delivers,

1 administers, or assumes risk for health care services with
2 systems or techniques to control or influence the quality,
3 accessibility, utilization, or costs and prices of those
4 services to a defined enrollee population, but does not
5 include an employer purchasing coverage or acting on behalf
6 of its employees or the employees of one or more subsidiaries
7 or affiliated corporations of the employer.

8 "Physician" means: (1) an individual licensed to practice
9 medicine in this State; (2) a professional association,
10 professional service corporation, partnership, medical
11 corporation, or limited liability company, entitled to
12 lawfully engage in the practice of medicine; or (3) another
13 person wholly owned by physicians.

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

26 (b) A health insurance carrier, health maintenance
27 organization, or other managed care entity for a health care
28 plan has the duty to exercise ordinary care when making
29 health care treatment decisions and is liable for damages for
30 harm to an insured or enrollee proximately caused by its
31 failure to exercise such ordinary care.

32 (c) A health insurance carrier, health maintenance
33 organization, or other managed care entity for a health care
34 plan is also liable for damages for harm to an insured or

1 enrollee proximately caused by the health care treatment
2 decisions made by its:

- 3 (1) employees;
- 4 (2) agents;
- 5 (3) ostensible agents; or
- 6 (4) representatives who are acting on its behalf
7 and over whom it has the right to exercise influence or
8 control or has actually exercised influence or control
9 that results in the failure to exercise ordinary care.

10 (d) The standards in subsections (b) and (c) create no
11 obligation on the part of the health insurance carrier,
12 health maintenance organization, or other managed care entity
13 to provide to an insured or enrollee treatment that is not
14 covered by the health care plan of the entity.

15 (e) A health insurance carrier, health maintenance
16 organization, or managed care entity may not remove a
17 physician or health care provider from its plan or refuse to
18 renew the physician or health care provider with its plan for
19 advocating on behalf of an enrollee for appropriate and
20 medically necessary health care for the enrollee.

21 (f) A health insurance carrier, health maintenance
22 organization, or other managed care entity may not enter into
23 a contract with a physician, hospital, or other health care
24 provider or pharmaceutical company which includes an
25 indemnification or hold harmless clause for the acts or
26 conduct of the health insurance carrier, health maintenance
27 organization, or other managed care entity. Any such
28 indemnification or hold harmless clause in an existing
29 contract is hereby declared void.

30 (g) Nothing in any law of this State prohibiting a
31 health insurance carrier, health maintenance organization, or
32 other managed care entity from practicing medicine or being
33 licensed to practice medicine may be asserted as a defense by
34 the health insurance carrier, health maintenance

1 organization, or other managed care entity in an action
2 brought against it pursuant to this Section or any other law.

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

12 (i) This Section does not apply to workers' compensation
13 insurance coverage subject to the Workers' Compensation Act.

14 (j) This Section does not apply to actions seeking only
15 a review of an adverse utilization review determination.
16 This Section applies only to causes of action that accrue on
17 or after the effective date of this amendatory Act of the
18 92nd General Assembly. An insured or enrollee seeking damages
19 under this Section has the right and duty to submit the claim
20 to arbitration in accordance with the Uniform Arbitration
21 Act. No agreement between the parties to submit the claim to
22 arbitration is necessary. A health insurance carrier, health
23 maintenance organization, or managed care entity shall have
24 no liability under this Section unless the claim is first
25 submitted to arbitration in accordance with the Uniform
26 Arbitration Act. The award in matters arbitrated pursuant to
27 this Section shall be made within 30 days after notification
28 of the arbitration is provided to all parties.

29 (k) The determination of whether a procedure or
30 treatment is medically necessary must be made by a physician.

31 (l) If the physician determines that a procedure or
32 treatment is medically necessary, the health care plan must
33 pay for the procedure or treatment.

34 (m) This Section does not apply to licensed insurance

1 agents.

2 Section 99. Effective date. This Act takes effect upon

3 becoming law.