

1 AN ACT concerning managed care.

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 97 as follows:

6 (215 ILCS 134/97 new)

7 Sec. 97. 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, skill, and proficiency that a person of ordinary
24 prudence in the same profession, specialty, or area of
25 practice as such person would use in the same or similar
26 circumstances.

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

33 (c) A health insurance carrier, health maintenance
34 organization, or other managed care entity for a health care

1 plan is also liable for damages for harm to an insured or
2 enrollee proximately caused by the health care treatment
3 decisions made by its:

4 (1) employees;

5 (2) agents;

6 (3) ostensible agents; or

7 (4) representatives who are acting on its behalf
8 and over whom it has the right to exercise influence or
9 control or has actually exercised influence or control
10 that results in the failure to exercise ordinary care.

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

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

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

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

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

13 (i) This Section does not preclude any person from
14 seeking appropriate relief otherwise available under law.

15 (j) This Section does not apply to workers' compensation
16 insurance coverage subject to the Workers' Compensation Act.

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

32 (l) The determination of whether a procedure or
33 treatment is medically necessary must be made by a physician.

34 (m) If the physician determines that a procedure or

1 treatment is medically necessary, the health care plan must
2 pay for the procedure or treatment.

3 (n) This Section does not apply to licensed insurance
4 agents.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.