

1 AN ACT concerning liability for the provision of health  
2 care.

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

5 Section 1. Short title. This Act may be cited as the  
6 Health Care Entity Liability Act.

7 Section 5. Definitions. In this Act:

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

13 "Enrollee" means an individual who is enrolled in a  
14 health 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  
19 defined in Section 2-1003 of the Code of Civil Procedure.

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

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

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

30 "Managed care entity" means any entity that delivers,  
31 administers, or assumes risk for health care services with

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

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

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

25 Section 10. Duty of care; liability; applicability.

26 (a) 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 (b) A health insurance carrier, health maintenance  
33 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 (c) The standards in subsections (a) and (b) 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 (d) 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 (e) 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 (f) 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 (g) 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 (h) This Act does not apply to workers' compensation  
14 insurance coverage subject to the Workers' Compensation Act.

15 (i) This Act applies only causes of action that accrue  
16 on or after the effective date of this Act.

17 Section 15. Determination of medical necessity;  
18 liability.

19 (a) The determination of whether a procedure or  
20 treatment is medically necessary must be made by a physician.

21 (b) If the physician determines that a procedure or  
22 treatment is medically necessary, the health care plan must  
23 pay for the procedure or treatment.

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.