

1 AN ACT concerning insurance.

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 maintenance organization 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" has the meaning ascribed to that term
17 in Section 10 of this Act.

18 "Health care provider" has the meaning ascribed to that
19 term in Section 10 of this Act.

20 "Health care treatment decision" means a determination
21 made by the health care plan that affects the quality of the
22 care or treatment provided to the plan's insureds or
23 enrollees. The definition of "health care treatment
24 decision" shall not include coverage determinations or
25 decisions relating to the design, administration, or
26 operation of the health care plan.

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

29 "Physician" means: (1) an individual licensed to practice
30 medicine in all its branches in this State; (2) a
31 professional association, professional service corporation,

1 partnership, medical corporation, or limited liability
 2 company, entitled to lawfully engage in the practice of
 3 medicine; or (3) another person wholly owned by physicians.

4 "Ordinary care" means, in the case of a health
 5 maintenance organization, that degree of care that a health
 6 maintenance organization of ordinary prudence would use under
 7 the same or similar circumstances. In the case of a person
 8 who is an employee, agent, or ostensible agent of a health
 9 maintenance organization, "ordinary care" means that degree
 10 of care, skill, and proficiency that a person of ordinary
 11 prudence in the same profession, specialty, or area of
 12 practice as such person would use in the same or similar
 13 circumstances. Nothing in this Section affects the
 14 confidentiality of peer review or utilization review records
 15 as provided by law.

16 (b) A health maintenance organization is liable for
 17 damages for harm to an enrollee proximately caused by the
 18 failure to exercise ordinary care in health care treatment
 19 decisions made by its:

- 20 (1) employees;
- 21 (2) actual agents;
- 22 (3) ostensible agents.

23 (c) The standard in subsection (b) creates no obligation
 24 on the part of the health maintenance organization to provide
 25 to an enrollee treatment that is not covered by the health
 26 care plan, and the failure to provide treatment not covered
 27 by the health care plan cannot form the basis of liability
 28 under this Section.

29 (d) A health maintenance organization may not enter into
 30 a contract with a health care provider or pharmaceutical
 31 company which includes an indemnification or hold harmless
 32 clause for the acts or conduct of the health maintenance
 33 organization. Any such indemnification or hold harmless
 34 clause in an existing contract is hereby declared void.

1 Nothing in this subsection shall be construed to invalidate
2 provisions in contracts with providers indemnifying the
3 health maintenance organization for the acts or conduct of
4 the providers.

5 (e) Nothing in any law of this State prohibiting any
6 individual or entity from practicing medicine or being
7 licensed to practice medicine may be asserted as a defense by
8 the health maintenance organization in an action brought
9 against it pursuant to this Section or any other law.

10 (f) Neither the listing or designation of a physician or
11 other health care provider as an approved health care
12 provider in materials made available to enrollees under a
13 health care plan or efforts by the health maintenance
14 organization to comply with State or federally mandated
15 quality assurance requirements shall be evidence that the
16 provider is the actual, ostensible, or implied agent of the
17 health maintenance organization.

18 (g) This Section does not apply to workers' compensation
19 insurance coverage subject to the Workers' Compensation Act.

20 (h) This Section does not apply to actions seeking only
21 a review of an adverse utilization review determinations,
22 coverage decisions, or other decisions for which review under
23 Section 45 or 50 of this Act is available.

24 (i) This Section applies only to causes of action that
25 accrue on or after the effective date of this amendatory Act
26 of the 92nd General Assembly.

27 (j) This Section does not apply to licensed insurance
28 agents.

29 (k) This Section does not preclude any person from
30 seeking appropriate relief otherwise available under the law.

31 Section 99. Effective date. This Act takes effect upon
32 becoming law.