

HOUSE BILL No. 1275

DIGEST OF HB 1275 (Updated February 2, 1998 8:02 pm - DI 97)

Citations Affected: IC 27-4; noncode.

Synopsis: Medical complaint review. Establishes that causing a physician, contrary to the physician's independent medical judgement and standards of care, to provide substandard care is an unfair claim settlement practice. Provides for the commissioner of the department of insurance to appoint or contract with a medical complaint professional for review of allegations of substandard care. Requires the commissioner to submit reports to the legislative council concerning retention of a medical complaint professional, number of complaints filed alleging substandard care, and the nature and number of penalties assessed for unfair claims settlement practices relating to allegations of substandard care.

Effective: July 1, 1998.

Goeglein, Crosby, Becker, Budak

January 13, 1998, read first time and referred to Committee on Public Health.
January 28, 1998, amended, reported — Do Pass.
February 2, 1998, read second time, amended, ordered engrossed.



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Reprinted
February 3, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

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HOUSE BILL No. 1275

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 27-4-1-4.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4.5. The following are
3 unfair claim settlement practices:
- 4 (1) Misrepresenting pertinent facts or insurance policy provisions
5 relating to coverages at issue.
 - 6 (2) Failing to acknowledge and act reasonably promptly upon
7 communications with respect to claims arising under insurance
8 policies.
 - 9 (3) Failing to adopt and implement reasonable standards for the
10 prompt investigation of claims arising under insurance policies.
 - 11 (4) Refusing to pay claims without conducting a reasonable
12 investigation based upon all available information.
 - 13 (5) Failing to affirm or deny coverage of claims within a
14 reasonable time after proof of loss statements have been
15 completed.

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- 1 (6) Not attempting in good faith to effectuate prompt, fair, and
2 equitable settlements of claims in which liability has become
3 reasonably clear.
- 4 (7) Compelling insureds to institute litigation to recover amounts
5 due under an insurance policy by offering substantially less than
6 the amounts ultimately recovered in actions brought by such
7 insureds.
- 8 (8) Attempting to settle a claim for less than the amount to which
9 a reasonable man would have believed he was entitled by
10 reference to written or printed advertising material accompanying
11 or made part of an application.
- 12 (9) Attempting to settle claims on the basis of an application
13 which was altered without notice to or knowledge or consent of
14 the insured.
- 15 (10) Making claims payments to insureds or beneficiaries not
16 accompanied by a statement setting forth the coverage under
17 which the payments are being made.
- 18 (11) Making known to insureds or claimants a policy of appealing
19 from arbitration awards in favor of insureds or claimants for the
20 purpose of compelling them to accept settlements or compromises
21 less than the amount awarded in arbitration.
- 22 (12) Delaying the investigation or payment of claims by requiring
23 an insured, claimant, or the physician of either to submit a
24 preliminary claim report and then requiring the subsequent
25 submission of formal proof of loss forms, both of which
26 submissions contain substantially the same information.
- 27 (13) Failing to promptly settle claims, where liability has become
28 reasonably clear, under one (1) portion of the insurance policy
29 coverage in order to influence settlements under other portions of
30 the insurance policy coverage.
- 31 (14) Failing to promptly provide a reasonable explanation of the
32 basis in the insurance policy in relation to the facts or applicable
33 law for denial of a claim or for the offer of a compromise
34 settlement.
- 35 (15) In negotiations concerning liability insurance claims,
36 ascribing a percentage of fault to a person seeking to recover from
37 an insured party, in spite of an obvious absence of fault on the
38 part of that person.
- 39 (16) The unfair claims settlement practices defined in
40 IC 27-4-1.5.
- 41 **(17) Causing a physician, contrary to the physician's**
42 **independent medical judgment and standards of care, to**

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1 **provide substandard care.**

2 SECTION 2. IC 27-4-1-5.7 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 1998]: **Sec. 5.7. (a) A complaint filed under section 5.6 of this**
5 **chapter involving an alleged unfair claims settlement practice**
6 **under section 4.5(17) of this chapter shall be forwarded to the**
7 **medical complaint professional employed under section 15(b) of**
8 **this chapter.**

9 **(b) The medical complaint professional shall, within five (5)**
10 **business days after the complaint is filed:**

11 **(1) make a determination of appropriateness of the allegation**
12 **based on information gathered from the complaining party,**
13 **the health maintenance organization, the attending physician,**
14 **and any additional information that the medical complaint**
15 **professional considers necessary and appropriate; and**

16 **(2) submit the medical complaint professional's determination**
17 **to the commissioner.**

18 **If the medical complaint professional needs additional time to**
19 **investigate before submitting findings to the commissioner, the**
20 **medical complaint professional shall advise the commissioner of**
21 **the need for additional time.**

22 **(c) The commissioner shall consider the medical complaint**
23 **professional's determination in any action taken by the**
24 **commissioner on a complaint filed under section 5.6 of this chapter**
25 **involving an alleged unfair claims settlement practice under section**
26 **4.5(17) of this chapter.**

27 SECTION 3. IC 27-4-1-15 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 15. (a) For the purpose**
29 **of maintaining the affirmative, active, and definite administration of the**
30 **provisions of this chapter, the commissioner, with the approval of the**
31 **governor, may appoint such additional actuaries, agents, deputies,**
32 **examiners, assistants, stenographers, reporters, and other employees in**
33 **the department as may be found necessary to carry out the provisions**
34 **of this chapter. Except as otherwise provided in this chapter, such**
35 **additional deputies, examiners, assistants, reporters, and employees so**
36 **appointed shall be chosen for their fitness, either professional or**
37 **practical, as the nature of the position may require, irrespective of their**
38 **political beliefs or affiliations. The technical or professional**
39 **qualifications of any applicant shall be determined by examination,**
40 **professional rating, or otherwise, as the commissioner with the**
41 **approval of the governor may determine. Subject to the approval of the**
42 **governor and the state budget director, the salaries of such additional**



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1 actuaries, agents, deputies, examiners, assistants, stenographers,
 2 reporters, and other employees shall be fixed by the commissioner. Any
 3 actuary agent, deputy, examiner, assistant, stenographer, or employee
 4 so employed may be removed at any time by the commissioner.

5 **(b) The commissioner shall appoint or enter into a contract for**
 6 **services with a physician licensed under IC 25-22.5 for all**
 7 **complaints filed under section 5.6 of this chapter regarding alleged**
 8 **unfair claims settlement practices under section 4.5(17) of this**
 9 **chapter.**

10 ~~(b)~~ (c) In the absence of the commissioner, he may, by written order,
 11 designate a deputy to conduct any hearing, and, in such case, such
 12 deputy commissioner shall possess and may exercise all powers of the
 13 commissioner with respect to the matter in hearing.

14 ~~(c)~~ (d) Neither the commissioner nor any actuary, deputy, examiner,
 15 assistant, or employee in the department shall be liable in their
 16 individual capacity, except to the state of Indiana, for any act done or
 17 omitted in connection with the performance of their respective duties
 18 under the provisions of this chapter.

19 SECTION 4. [EFFECTIVE JULY 1, 1998] (a) **The commissioner**
 20 **of insurance shall submit two (2) reports to the legislative council**
 21 **concerning the following:**

22 (1) **The manner in which the commissioner complies with**
 23 **IC 27-4-1-15(b), as added by this act, concerning the retention**
 24 **of the services of a medical complaint professional.**

25 (2) **The number of complaints filed under IC 27-4-1-5.6**
 26 **concerning alleged unfair claims settlement practices**
 27 **described under IC 27-4-1-4.5(17), as amended by this act.**

28 (3) **The nature and number of all penalties assessed against**
 29 **insurers or health maintenance organizations for unfair**
 30 **claims settlement practices described under IC 27-4-1-4.5(17),**
 31 **as amended by this act.**

32 (b) **The first report required under subsection (a) must cover**
 33 **the period of July 1, 1998, through June 30, 1999 and shall be**
 34 **submitted to the legislative council not later than August 1, 1999.**

35 (c) **The second report required under subsection (a) shall cover**
 36 **the period of July 1, 1999, through June 30, 2000 and shall be**
 37 **submitted to the legislative council not later than August 1, 2000.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1275, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 11, delete "a medical complaint professional who is:".

Page 4, delete line 12.

Page 4, line 13, delete "(2)".

Page 4, line 13, delete ";".

Page 4, run in lines 11 through 14.

and when so amended that said bill do pass.

(Reference is to House Bill 1275 as introduced.)

C. BROWN, Chair

Committee Vote: yeas 11, nays 4.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1275 be amended to read as follows:

Page 2, line 41, delete "An adverse:" and insert "**Causing a physician, contrary to the physician's independent medical judgment and standards of care, to provide substandard care.**".

Page 2, delete line 42.

Page 3, delete lines 1 through 5.

Page 3, line 15, delete "utilization" and insert "**allegation**".

Page 3, delete line 16.

Page 3, line 21, delete "findings" and insert "**determination**".

Page 3, line 28, delete "findings" and insert "**determination**".

Page 4, between lines 23 and 24, begin a new paragraph and insert:
"SECTION 4. [EFFECTIVE JULY 1, 1998] (a) The commissioner of insurance shall submit two (2) reports to the legislative council concerning the following:

(1) The manner in which the commissioner complies with IC 27-4-1-15(b), as added by this act, concerning the retention of the services of a medical complaint professional.

(2) The number of complaints filed under IC 27-4-1-5.6 concerning alleged unfair claims settlement practices described under IC 27-4-1-4.5(17), as amended by this act.

(3) The nature and number of all penalties assessed against insurers or health maintenance organizations for unfair claims settlement practices described under IC 27-4-1-4.5(17), as amended by this act.

(b) The first report required under subsection (a) must cover the period of July 1, 1998, through June 30, 1999 and shall be submitted to the legislative council not later than August 1, 1999.

(c) The second report required under subsection (a) shall cover the period of July 1, 1999, through June 30, 2000 and shall be submitted to the legislative council not later than August 1, 2000."

Page 4, delete lines 24 through 42.

Delete pages 5 through 6.

Re-number all SECTIONS consecutively.

(Reference is to House Bill 1275 as printed January 29, 1998.)

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