

SENATE BILL No. 293

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-8-27; IC 27-14.

Synopsis: Liability for decisions affecting health care. Requires an insurer that makes an adverse determination concerning coverage of a particular type of health care service for an insured to provide to the insured and to the insured's treating physician a written statement explaining the basis for the adverse determination, which must be signed by the medical director of the insurer. Provides that a health insurance carrier, a health maintenance organization, or another managed care entity has the duty to exercise ordinary care when making health care treatment decisions and is liable for harm to an
(Continued next page)

Effective: July 1, 1998.

Miller

January 7, 1998, read first time and referred to Committee on Health and Environmental Affairs.

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insured or enrollee that is proximately caused by the failure to exercise ordinary care. Provides that a health insurance carrier, a health maintenance organization, or another managed care entity is liable for harm to an insured or enrollee proximately caused by a health care treatment decision made by an employee, an agent, an ostensible agent, or a representative of the health insurance carrier, health maintenance organization, or managed care entity if: (1) at the time the decision is made, the employee, agent, ostensible agent, or representative is acting on behalf of the health insurance carrier, health maintenance organization, or managed care entity; and (2) the health insurance carrier, health maintenance organization, or other managed care entity: (A) has the right to exercise influence or control over the employee, agent, ostensible agent, or representative; or (B) is actually exercising influence or control over the employee, agent, ostensible agent, or representative, resulting in the failure to exercise ordinary care. Prohibits a health insurance carrier, a health maintenance organization, or another managed care entity from removing a physician from its health care plan or refusing to renew the status of a physician for advocating for appropriate and medically necessary health care for an insured or enrollee. Prohibits a health insurance carrier, a health maintenance organization, or another managed care entity from entering into a contract with a physician that includes an indemnification or hold harmless clause applying to the acts or conduct of the health insurance carrier, health maintenance organization, or other managed care entity.

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Introduced

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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SENATE BILL No. 293

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 27-8-27 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1998]:

4 **Chapter 27. Confirmation of Denial by Insurer's Medical**
5 **Director**

6 **Sec. 1. This chapter applies to every policy of accident and**
7 **sickness insurance (as defined in IC 27-8-5-1), whether written on**
8 **an individual basis, a group basis, a franchise basis, or a blanket**
9 **basis, that is issued, delivered, executed, or renewed in Indiana.**

10 **Sec. 2. As used in this chapter, "adverse determination" means**
11 **a determination by an insurer to deny coverage for a particular**
12 **health care service that has been recommended for an insured by**
13 **a physician.**

14 **Sec. 3. As used in this chapter, "physician" means an individual**
15 **licensed under IC 25-22.5 or the physician licensing statute of**



1 another state.

2 **Sec. 4. An insurer that makes an adverse determination**
 3 **affecting an insured who resides in Indiana shall, not more than**
 4 **sixty (60) days after making the adverse determination, provide to:**

5 (1) the insured; and

6 (2) the physician who:

7 (A) is treating the insured; and

8 (B) recommended the particular health care service for the
 9 insured;

10 a written statement explaining the basis for the adverse
 11 determination. The written statement must be signed by the
 12 medical director of the insurer, who must be a physician.

13 SECTION 2. IC 27-14 IS ADDED TO THE INDIANA CODE AS
 14 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 15 1998]:

16 **ARTICLE 14. LIABILITY FOR CERTAIN HEALTH CARE**
 17 **TREATMENT DECISIONS**

18 **Chapter 1. General Provisions and Definitions**

19 **Sec. 1. This chapter does not apply to worker's compensation**
 20 **insurance coverage under IC 22-3-2 through IC 22-3-6.**

21 **Sec. 2. The definitions in this chapter apply throughout this**
 22 **article.**

23 **Sec. 3. "Appropriate and medically necessary" means the**
 24 **standard for health care services as determined by physicians and**
 25 **health care providers in accordance with the prevailing practices**
 26 **and standards of the medical profession and community.**

27 **Sec. 4. "Enrollee" means the following:**

28 (1) With respect to a health maintenance organization, the
 29 term has the meaning set forth in IC 27-13-1-12.

30 (2) With respect to another managed care entity:

31 (A) an individual who is enrolled in a health care plan; or

32 (B) a dependent of an individual described in clause (A)
 33 who is covered by the health care plan.

34 **Sec. 5. "Health care plan" means a plan under which a person**
 35 **undertakes to:**

36 (1) arrange for;

37 (2) pay for; or

38 (3) reimburse any part of the cost of;

39 health care services through a health insurance carrier, a health
 40 maintenance organization, or another managed care entity.

41 **Sec. 6. "Health care provider" has the meaning set forth in**
 42 **IC 27-12-2-14.**



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1 **Sec. 7. "Health care treatment decision"** means a determination
2 **that:**

- 3 (1) is made when medical services are provided by a health
4 **care plan; and**
5 (2) affects the quality of the diagnosis, care, or treatment
6 **provided to an insured or enrollee of the health care plan.**

7 **Sec. 8. "Health insurance"** means one (1) or more of the kinds
8 **of insurance described in Class 1(b) and Class 2(a) of IC 27-1-5-1.**

9 **Sec. 9. "Health insurance carrier"** means an insurer (as defined
10 **in IC 27-1-2-3) that provides health insurance.**

11 **Sec. 10. "Health maintenance organization"** has the meaning set
12 **forth in IC 27-13-1-19.**

13 **Sec. 11. (a) "Managed care entity"** means an entity that, on
14 **behalf of or as part of a health care plan:**

- 15 (1) delivers health care services to a defined enrollee
16 **population;**
17 (2) administers the delivery of health care services to a
18 **defined enrollee population; or**
19 (3) assumes the risk for the delivery of health care services to
20 **a defined enrollee population.**

21 **(b) The term does not include:**

- 22 (1) an employer purchasing coverage or acting on behalf of:
23 (A) its employees; or
24 (B) the employees of one (1) or more subsidiaries or
25 **corporations affiliated with the employer; or**
26 (2) a pharmacy that holds a pharmacy permit issued by the
27 **Indiana board of pharmacy under IC 25-26-13.**

28 **Sec. 12. "Ordinary care"** means the following:

- 29 (1) With respect to:
30 (A) a health insurance carrier;
31 (B) a health maintenance organization; or
32 (C) another managed care entity;
33 **the degree of care that a health insurance carrier, health**
34 **maintenance organization, or managed care entity of ordinary**
35 **prudence would use under the same or similar circumstances.**
36 (2) With respect to a person who is an employee, an agent, an
37 **ostensible agent, or a representative of:**
38 (A) a health insurance carrier;
39 (B) a health maintenance organization; or
40 (C) another managed care entity;
41 **the degree of care that a person of ordinary prudence in the**
42 **same profession, specialty, or area of practice as the person**

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would use under the same or similar circumstances.

Sec. 13. "Person" means an individual, a corporation, a partnership, a limited liability company, an unincorporated association, the state, or a political subdivision (as defined in IC 36-1-2-13).

Chapter 2. The Duty of Ordinary Care

Sec. 1. A health insurance carrier, a health maintenance organization, or another managed care entity:

(1) has the duty to exercise ordinary care when making health care treatment decisions; and

(2) is liable for damages in compensation for harm to an insured or enrollee that is proximately caused by the failure of the health insurance carrier, health maintenance organization, or managed care entity to exercise ordinary care.

Sec. 2. A health insurance carrier, a health maintenance organization, or another managed care entity is liable for damages in compensation for harm to an insured or enrollee proximately caused by a health care treatment decision made by an employee, an agent, an ostensible agent, or a representative of the health insurance carrier, health maintenance organization, or managed care entity if, at the time the decision is made:

(1) the employee, agent, ostensible agent, or representative is acting on behalf of the health insurance carrier, health maintenance organization, or managed care entity; and

(2) the health insurance carrier, health maintenance organization, or other managed care entity:

(A) has the right to exercise influence or control over the employee, agent, ostensible agent, or representative; or

(B) is actually exercising influence or control over the employee, agent, ostensible agent, or representative;

resulting in the failure to exercise ordinary care.

Sec. 3. In an action based under section 2 of this chapter on a health care treatment decision allegedly made by an employee, an agent, an ostensible agent, or a representative of a health insurance carrier, a health maintenance organization, or another managed care entity, it is a defense that:

(1) neither:

(A) the health insurance carrier, health maintenance organization, or other managed care entity; nor

(B) the employee, agent, ostensible agent, or representative for whose conduct the health insurance carrier, health

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- 1 maintenance organization, or other managed care entity is
 2 allegedly liable;
 3 controlled, influenced, or participated in the health care
 4 treatment decision in question; and
 5 (2) the health insurance carrier, health maintenance
 6 organization, or other managed care entity did not deny or
 7 delay payment for any treatment prescribed or recommended
 8 by a health care provider to the insured or enrollee in
 9 question.
- 10 **Sec. 4.** Sections 1 and 2 of this chapter do not obligate a health
 11 insurance carrier, health maintenance organization, or other
 12 managed care entity to provide to an insured or enrollee treatment
 13 that is not covered by the health care plan.
- 14 **Sec. 5.** This chapter does not create any liability on the part of:
 15 (1) an employer;
 16 (2) an employer purchasing group; or
 17 (3) a pharmacy that holds a pharmacy permit issued by the
 18 Indiana board of pharmacy under IC 25-26-13;
 19 that purchases coverage or assumes risk on behalf of its employees.
- 20 **Sec. 6.** A health insurance carrier, a health maintenance
 21 organization, or another managed care entity may not:
 22 (1) remove a physician or other health care provider from its
 23 health care plan; or
 24 (2) refuse to renew the status of a physician or other health
 25 care provider with the health care plan;
 26 for advocating on behalf of an insured or enrollee for appropriate
 27 and medically necessary health care for the insured or enrollee.
- 28 **Sec. 7.** (a) A health insurance carrier, a health maintenance
 29 organization, or another managed care entity may not enter into
 30 a contract with a:
 31 (1) physician, hospital, or other health care provider; or
 32 (2) pharmaceutical company;
 33 that includes an indemnification or hold harmless clause applying
 34 to the acts or conduct of the health insurance carrier, health
 35 maintenance organization, or other managed care entity.
- 36 (b) An indemnification or hold harmless clause described in
 37 subsection (a) is void.
- 38 **Sec. 8.** A law prohibiting a health insurance carrier, a health
 39 maintenance organization, or another managed care entity from
 40 practicing medicine or being licensed to practice medicine may not
 41 be asserted as a defense by a health insurance carrier, a health
 42 maintenance organization, or another managed care entity in an

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action brought under this chapter.

Sec. 9. In an action against a health insurance carrier, health maintenance organization, or other managed care entity under this chapter, a finding that a physician or another health care provider is an employee, an agent, an ostensible agent, or a representative of the health insurance carrier, health maintenance organization, or other managed care entity may not be based solely on proof that the name of the physician or other health care provider appears in a listing of approved physicians or health care providers made available to the insureds or enrollees under a health care plan.

Sec. 10. A person who brings an action under this chapter must comply with IC 27-12.

SECTION 3. [EFFECTIVE JULY 1, 1998] IC 27-14, as added by this act, applies to causes of action arising after June 30, 1998.

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