

HOUSE BILL No. 1207

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-14.

Synopsis: Liability for health care treatment decisions. Provides for a duty of ordinary care for health insurance carriers, health maintenance organizations, or other managed care entities when making health care treatment decisions. Makes a health insurance carrier, a health maintenance organization, or other managed care entity liable for harm resulting from health care treatment decisions made without exercising ordinary care. Prohibits a health insurance carrier, a health maintenance organization, or other managed care entity from removing a health care provider from, or renewing the status of the health care
(Continued next page)

Effective: July 1, 1998.

T. Brown

January 8, 1998, read first time and referred to Committee on Public Health.

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Digest Continued

provider with, the health care plan for advocating on behalf of the insured or enrollee for appropriate and medically necessary care. Prohibits contract indemnification or hold harmless clauses 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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HOUSE BILL No. 1207



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 27-14 IS ADDED TO THE INDIANA CODE AS
 2 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 3 1998]:
 4 ARTICLE 14. LIABILITY FOR CERTAIN HEALTH CARE
 5 TREATMENT DECISIONS
 6 Chapter 1. General Provisions and Definitions
 7 Sec. 1. This chapter does not apply to worker's compensation
 8 insurance coverage under IC 22-3-2 through IC 22-3-6.
 9 Sec. 2. The definitions in this chapter apply throughout this
 10 article.
 11 Sec. 3. "Enrollee" means the following:
 12 (1) With respect to a health maintenance organization a:
 13 (A) subscriber; or
 14 (B) dependent of a subscriber;
 15 who is covered by the health maintenance organization.



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

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

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

5 Sec. 4. "Health care plan" means a plan under which a person
6 undertakes to:

7 (1) arrange for;

8 (2) pay for; or

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

10 health care services through a health insurance carrier, a health
11 maintenance organization, or another managed care entity.

12 Sec. 5. "Health care provider" has the meaning set forth in
13 IC 27-12-2-14.

14 Sec. 6. "Health care treatment decision" means a determination
15 that:

16 (1) is made when medical services are provided by a health
17 care plan; and

18 (2) affects the quality of the diagnosis, care, or treatment
19 provided to an insured or enrollee of the health care plan.

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

22 Sec. 8. "Health insurance carrier" means an insurer (as defined
23 in IC 27-1-2-3) that provides health insurance.

24 Sec. 9. "Health maintenance organization" has the meaning set
25 forth in IC 27-13-1-19.

26 Sec. 10. (a) "Managed care entity" means an entity that, on
27 behalf of or as part of a health care plan:

28 (1) delivers health care services to a defined enrollee
29 population;

30 (2) administers the delivery of health care services to a
31 defined enrollee population; or

32 (3) assumes the risk for the delivery of health care services to
33 a defined enrollee population.

34 (b) The term does not include:

35 (1) an employer purchasing coverage or acting on behalf of:

36 (A) its employees; or

37 (B) the employees of one (1) or more subsidiaries or
38 corporations affiliated with the employer; or

39 (2) a pharmacy that holds a pharmacy permit issued by the
40 Indiana board of pharmacy under IC 25-26-13.

41 Sec. 11. "Ordinary care" means the following:

42 (1) With respect to:

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- 1 (A) a health insurance carrier;
 2 (B) a health maintenance organization; or
 3 (C) another managed care entity;
 4 the degree of care that a health insurance carrier, health
 5 maintenance organization, or managed care entity of ordinary
 6 prudence would use under the same or similar circumstances.
 7 (2) With respect to a person who is an employee, an agent, an
 8 ostensible agent, or a representative of:
 9 (A) a health insurance carrier;
 10 (B) a health maintenance organization; or
 11 (C) another managed care entity;
 12 the degree of care that a person of ordinary prudence in the
 13 same profession, specialty, or area of practice as the person
 14 would use under the same or similar circumstances.
 15 **Sec. 12. "Person" means an individual, a corporation, a**
 16 **partnership, a limited liability company, an unincorporated**
 17 **association, the state, or a political subdivision (as defined in**
 18 **IC 36-1-2-13).**
 19 **Chapter 2. The Duty of Ordinary Care**
 20 **Sec. 1. A health insurance carrier, a health maintenance**
 21 **organization, or another managed care entity through which a**
 22 **health care plan is operated:**
 23 (1) has the duty to exercise ordinary care when making health
 24 care treatment decisions; and
 25 (2) is liable for damages in compensation for harm to an
 26 insured or enrollee that is proximately caused by the failure
 27 of the health insurance carrier, health maintenance
 28 organization, or managed care entity to exercise ordinary
 29 care.
 30 **Sec. 2. A health insurance carrier, a health maintenance**
 31 **organization, or another managed care entity through which a**
 32 **health care plan is operated is liable for damages in compensation**
 33 **for harm to an insured or enrollee proximately caused by a health**
 34 **care treatment decision made by an employee, an agent, an**
 35 **ostensible agent, or a representative of the health insurance**
 36 **carrier, health maintenance organization, or managed care entity**
 37 **if, at the time the decision is made:**
 38 (1) the employee, agent, ostensible agent, or representative is
 39 acting on behalf of the health insurance carrier, health
 40 maintenance organization, or managed care entity; and
 41 (2) the health insurance carrier, health maintenance
 42 organization, or other managed care entity;

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1 (A) has the right to exercise influence or control over the
2 employee, an agent, an ostensible agent, or a
3 representative; or

4 (B) is actually exercising influence or control over the
5 employee, agent, ostensible agent, or representative,
6 resulting in the failure to exercise ordinary care.

7 **Sec. 3. In an action based under section 2 of this chapter on a**
8 **health care treatment decision allegedly made by an employee, an**
9 **agent, an ostensible agent, or a representative of a health insurance**
10 **carrier, a health maintenance organization, or another managed**
11 **care entity through which a health care plan is operated, it is a**
12 **defense that:**

13 (1) neither:

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

16 (B) the employee, agent, ostensible agent, or representative
17 for whose conduct the health insurance carrier, health
18 maintenance organization, or other managed care entity is
19 allegedly liable;

20 controlled, influenced, or participated in the health care
21 treatment decision in question; and

22 (2) the health insurance carrier, health maintenance
23 organization, or other managed care entity did not deny or
24 delay payment for any treatment prescribed or recommended
25 by a health care provider to the insured or enrollee in
26 question.

27 **Sec. 4. Sections 1 and 2 of this chapter do not obligate a health**
28 **insurance carrier, a health maintenance organization, or other**
29 **managed care entity through which a health care plan is operated**
30 **to provide to an insured or enrollee treatment that is not covered**
31 **by the health care plan.**

32 **Sec. 5. This chapter does not create any liability on the part of:**

33 (1) an employer;

34 (2) an employer purchasing group; or

35 (3) a pharmacy that holds a pharmacy permit issued by the
36 Indiana board of pharmacy under IC 25-26-13;

37 that purchases coverage or assumes risk on behalf of its employees.

38 **Sec. 6. A health insurance carrier, a health maintenance**
39 **organization, or another managed care entity may not:**

40 (1) remove a physician or other health care provider from its
41 health care plan; or

42 (2) refuse to renew the status of a physician or other health

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1 care provider with the health care plan;
2 for advocating on behalf of an insured or enrollee for appropriate
3 and medically necessary health care for the insured or enrollee.

4 **Sec. 7. (a) A health insurance carrier, a health maintenance**
5 **organization, or another managed care entity may not enter into**
6 **a contract with a:**

7 (1) physician, hospital, or other health care provider; or

8 (2) pharmaceutical company;

9 **that includes an indemnification or hold harmless clause applying**
10 **to the acts or conduct of the health insurance carrier, health**
11 **maintenance organization, or other managed care entity.**

12 **(b) An indemnification or hold harmless clause described in**
13 **subsection (a) is void.**

14 **Sec. 8. A law prohibiting a health insurance carrier, a health**
15 **maintenance organization, or another managed care entity from**
16 **practicing medicine or being licensed to practice medicine may not**
17 **be asserted as a defense by a health insurance carrier, a health**
18 **maintenance organization, or another managed care entity in an**
19 **action brought under this chapter.**

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

29 **Sec. 10. This chapter does not apply to worker's compensation**
30 **insurance coverage under IC 22-3-2 through IC 22-3-6.**

31 **Sec. 11. A person who brings an action under this chapter must**
32 **comply with IC 27-12.**

33 **SECTION 2. [EFFECTIVE JULY 1, 1998] IC 27-14, as added by**
34 **this act, applies to causes of action arising after June 30, 1998.**

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