

SENATE BILL No. 293

DIGEST OF SB 293 (Updated January 26, 1998 1:34 pm - DI 88)

Citations Affected: IC 27-8; noncode.

Synopsis: Liability for decisions affecting health care. Provides that a managed care entity interferes with the independent medical judgment of a physician when an action, policy, or other requirement of the managed care entity causes the physician to reasonably believe that the physician will suffer an economic penalty unless the physician reduces the amount or quality of medical care for a patient that the physician would otherwise consider appropriate for the patient. Establishes a cause of action for damages to a patient that result from the interference with the independent medical judgment of a physician by a managed care entity. Provides that a law prohibiting a managed care entity from practicing medicine may not be asserted as a defense by a managed care entity for a cause of action for interference with the independent medical judgment of a physician. Prohibits a managed care entity from removing a physician from its health care plan or
(Continued next page)

Effective: July 1, 1998.

Miller, Landske

January 8, 1998, read first time and referred to Committee on Health and Environmental Affairs.
January 26, 1998, amended, reported favorably — Do Pass.

SB 293—LS 7060/DI 97



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Digest Continued

refusing to renew the status of a physician with the health care plan for advocating on behalf of a patient with respect to an alleged interference by the managed care entity with the independent medical judgment of the physician.

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January 27, 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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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. Interference With the Independent Medical**
5 **Judgment of a Physician**

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

8 **Sec. 2. As used in this chapter, "economic penalty" means any**
9 **of the following:**

- 10 (1) A reduction in compensation or other financial penalty.
11 (2) The failure to renew a physician's contract with a
12 managed care entity.

13 **Sec. 3. "Health care plan" means a plan under which a person**
14 **undertakes to:**

- 15 (1) arrange for;

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(2) pay for; or
(3) reimburse any part of the cost of;
health care services through a managed care entity.

Sec. 4. (a) As used in this chapter, "managed care entity" means any of the following:

- (1) A health maintenance organization (as defined in IC 27-13-1-19).
- (2) An insurer (as defined in IC 27-8-11-1) that has entered into a reimbursement agreement under IC 27-8-11-3, or that offers a health care plan for sale in Indiana.

Sec. 5. As used in this chapter, "physician" has the meaning set forth in IC 25-27.5-2-9.

Sec. 6. A managed care entity interferes with the independent medical judgment of a physician if:

- (1) an action, policy, or other requirement of the managed care entity; or
- (2) an employee or agent of the managed care entity;

causes the physician to reasonably believe that the physician will suffer an economic penalty unless the physician reduces the amount or quality of medical care for a patient that the physician would otherwise consider appropriate for the patient.

Sec. 7. A managed care entity that interferes with the independent medical judgment of a physician is liable for damages for harm to a patient proximately caused by the reduction of the amount or quality of medical care received by a patient.

Sec. 8. In an action based under section 7 of this chapter, it is a defense that:

- (1) neither:
 - (A) the managed care entity; nor
 - (B) an employee or agent of the managed care entity; controlled, influenced, or participated in the medical judgment in question; and
- (2) the health insurance carrier, health maintenance managed care entity did not deny or delay payment for any treatment prescribed or recommended by a physician for the patient.

Sec. 9. This chapter does not obligate a managed care entity to provide to an insured or enrollee treatment that is not covered by the applicable health care plan.

Sec. 10. This chapter does not create any liability on the part of an employer that purchases coverage or assumes risk on behalf of its employees.

Sec. 11. A managed care entity may not:

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1 **(1) remove a physician from its health care plan; or**
 2 **(2) refuse to renew the status of a physician with the health**
 3 **care plan;**
 4 **for advocating on behalf of an insured or enrollee with respect to**
 5 **an alleged interference by the managed care entity with the**
 6 **independent medical judgment of the physician.**
 7 **Sec. 12. (a) A managed care entity may not enter into a contract**
 8 **with a physician that includes an indemnification or hold harmless**
 9 **clause applying to the acts or conduct of the managed care entity**
 10 **for interference with the physician's independent medical**
 11 **judgment under this chapter.**
 12 **(b) An indemnification or hold harmless clause described in**
 13 **subsection (a) is void.**
 14 **Sec. 13. A law prohibiting a managed care entity from**
 15 **practicing medicine or being licensed to practice medicine may not**
 16 **be asserted as a defense by a managed care entity in an action**
 17 **brought under this chapter.**
 18 **SECTION 2. [EFFECTIVE JULY 1, 1998] IC 27-8-27, as added**
 19 **by this act, applies to causes of action arising after June 30, 1998.**

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SENATE MOTION

Mr. President: I move that Senator Landske be added as coauthor of
Senate Bill 293.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Environmental Affairs, to which was referred Senate Bill 293, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, delete "Confirmation of Denial by Insurer's Medical" and insert "**Interference With the Independent Medical Judgment of a Physician**".

Page 1, delete lines 5 through 15.

Page 2, delete lines 1 through 18.

Page 2, delete lines 21 through 33, begin a new paragraph and insert:

"Sec. 2. As used in this chapter, "economic penalty" means any of the following:

- (1) **A reduction in compensation or other financial penalty.**
- (2) **The failure to renew a physician's contract with a managed care entity."**

Page 2, line 34, delete "5" and insert "3".

Page 2, line 39, delete "health insurance carrier, a health".

Page 2, line 40, delete "maintenance organization, or another".

Page 2, delete lines 41 through 42, begin a new paragraph and insert:

"Sec. 4. (a) As used in this chapter, "managed care entity" means any of the following:

- (1) **A health maintenance organization (as defined in IC 27-13-1-19).**
- (2) **An insurer (as defined in IC 27-8-11-1) that has entered into a reimbursement agreement under IC 27-8-11-3, or that offers a health care plan for sale in Indiana.**

Sec. 5. As used in this chapter, "physician" has the meaning set forth in IC 25-27.5-2-9.

Sec. 6. A managed care entity interferes with the independent medical judgment of a physician if:

- (1) **an action, policy, or other requirement of the managed care entity; or**
- (2) **an employee or agent of the managed care entity;**

causes the physician to reasonably believe that the physician will suffer an economic penalty unless the physician reduces the amount or quality of medical care for a patient that the physician would otherwise consider appropriate for the patient.

Sec. 7. A managed care entity that interferes with the independent medical judgment of a physician is liable for damages



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for harm to a patient proximately caused by the reduction of the amount or quality of medical care received by a patient."

Delete page 3.

Page 4, delete lines 1 through 32.

Page 4, line 33, delete "3" and insert "**8**".

Page 4, line 33, delete "2" and insert "**7**".

Page 4, line 33, delete "on a" and insert ",".

Page 4, delete lines 34 through 36.

Page 4, line 37, delete "care entity".

Page 4, line 39, delete "health insurance carrier, health maintenance".

Page 4, line 40, delete "organization, or other".

Page 4, line 41, delete "the" and insert "**an**".

Page 4, line 41, delete ", agent, ostensible agent, or representative" and insert "**or agent of the**".

Page 4, delete line 42.

Page 5, line 1, delete "maintenance organization, or other".

Page 5, line 1, delete "is" and insert ";".

Page 5, delete line 2.

Page 5, line 3, delete "health care" and insert "**medical judgment in question; and**".

Page 5, delete line 4.

Page 5, line 5, delete "health insurance carrier, health maintenance".

Page 5, line 6, delete "organization, or other".

Page 5, line 8, delete "health care provider to the insured or enrollee in" and insert "**physician for the patient**".

Page 5, delete line 9.

Page 5, line 10, delete "4" and insert "**9**".

Page 5, line 10, delete "Sections 1 and 2 of this" and insert "**This**".

Page 5, line 10, delete "do" and insert "**does**".

Page 5, line 10, delete "health".

Page 5, delete line 11.

Page 5, line 13, after "the" insert "**applicable**".

Page 5, delete lines 14 through 42, begin a new paragraph and insert:

"Sec. 10. This chapter does not create any liability on the part of an employer that purchases coverage or assumes risk on behalf of its employees.

Sec. 11. A managed care entity may not:

- (1) remove a physician from its health care plan; or**
- (2) refuse to renew the status of a physician with the health care plan;**



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for advocating on behalf of an insured or enrollee with respect to an alleged interference by the managed care entity with the independent medical judgment of the physician.

Sec. 12. (a) A managed care entity may not enter into a contract with a physician that includes an indemnification or hold harmless clause applying to the acts or conduct of the managed care entity for interference with the physician's independent medical judgment under this chapter.

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

Sec. 13. A law prohibiting a managed care entity from practicing medicine or being licensed to practice medicine may not be asserted as a defense by a managed care entity in an action brought under this chapter."

Page 6, delete lines 1 through 12.

Page 6, line 13, delete "IC 27-14" and insert "IC 27-8-27".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to Senate Bill 293 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 6, Nays 2.

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