

# HOUSE BILL No. 1195

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-14.

**Synopsis:** Health maintenance organization liability. Provides for a duty of ordinary care for health insurance carriers, health maintenance organizations, and other managed care entities when making health care treatment decisions. Makes health insurance carriers, health maintenance organizations, and other managed care entities liable for harm resulting from health care treatment decisions that are 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 provider with, the health care plan for advocating on behalf of an insured or enrollee for appropriate and medically necessary care.  
(Continued next page)

**Effective:** July 1, 1999.

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**Pelath**

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January 11, 1999, read first time and referred to Committee on Insurance, Corporations and Small Business.

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Digest Continued

Prohibits contract indemnification or hold harmless clauses from applying to the acts or conduct of health insurance carriers, health maintenance organizations, and other managed care entities.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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## HOUSE BILL No. 1195



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 1999]:  
 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 a managed care entity other than a health  
2 maintenance organization:
- 3           (A) an individual who is enrolled in a health care plan; or  
4           (B) a dependent of an individual described in clause (A)  
5 who is covered by the health care plan.
- 6           Sec. 4. "Health care plan" means a plan under which a person  
7 assumes responsibility to:
- 8           (1) arrange for;  
9           (2) pay for; or  
10          (3) reimburse any part of the cost of;  
11 health care services through a health insurance carrier, a health  
12 maintenance organization, or another managed care entity.
- 13          Sec. 5. "Health care provider" has the meaning set forth in  
14 IC 34-18-2-14.
- 15          Sec. 6. "Health care treatment decision" means a determination  
16 that:
- 17          (1) is made when medical services are provided by a health  
18 care plan; and  
19          (2) affects the quality of the diagnosis, care, or treatment  
20 provided to an insured or enrollee of the health care plan.
- 21          Sec. 7. "Health insurance" means one (1) or more of the kinds  
22 of insurance described in Class 1(b) and 2(a) of IC 27-1-5-1.
- 23          Sec. 8. "Health insurance carrier" means an insurer (as defined  
24 in IC 27-1-2-3) that provides health insurance.
- 25          Sec. 9. "Health maintenance organization" has the meaning set  
26 forth in IC 27-13-1-19.
- 27          Sec. 10. (a) "Managed care entity" means an entity that, on  
28 behalf of or as part of a health care plan:
- 29           (1) delivers health care services to a defined enrollee  
30 population;  
31           (2) administers the delivery of health care services to a  
32 defined enrollee population; or  
33           (3) assumes the risk for the delivery of health care services to  
34 a defined enrollee population.
- 35          (b) The term does not include:
- 36           (1) an employer purchasing coverage or acting on behalf of:  
37           (A) its employees; or  
38           (B) the employees of one (1) or more subsidiaries or  
39 corporations affiliated with the employer; or  
40           (2) a pharmacy that holds a pharmacy permit issued by the  
41 Indiana board of pharmacy under IC 25-26-13.
- 42          Sec. 11. "Ordinary care" means the following:

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1 (1) With respect to:

- 2 (A) a health insurance carrier;  
 3 (B) a health maintenance organization; or  
 4 (C) another managed care entity;

5 the degree of care that a health insurance carrier, health  
 6 maintenance organization, or managed care entity of ordinary  
 7 prudence would use under the same or similar circumstances.

8 (2) With respect to a person who is an employee, an agent, an  
 9 ostensible agent, or a representative of:

- 10 (A) a health insurance carrier;  
 11 (B) a health maintenance organization; or  
 12 (C) another managed care entity;

13 the degree of care that a person of ordinary prudence in the  
 14 same profession, specialty, or area of practice as the person  
 15 would use under the same or similar circumstances.

16 Sec. 12. "Person" means an individual, a corporation, a  
 17 partnership, a limited liability company, an unincorporated  
 18 association, the state, or a political subdivision (as defined in  
 19 IC 36-1-2-13).

20 Chapter 2. The Duty of Ordinary Care

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

23 Sec. 2. A health insurance carrier, a health maintenance  
 24 organization, or another managed care entity through which a  
 25 health care plan is operated:

- 26 (1) has the duty to exercise ordinary care when making health  
 27 care treatment decisions; and  
 28 (2) is liable for damages in compensation for harm to an  
 29 insured or enrollee that is proximately caused by the failure  
 30 of the health insurance carrier, health maintenance  
 31 organization, or managed care entity to exercise ordinary  
 32 care.

33 Sec. 3. A health insurance carrier, a health maintenance  
 34 organization, or another managed care entity through which a  
 35 health care plan is operated is liable for damages in compensation  
 36 for harm to an insured or enrollee proximately caused by a health  
 37 care treatment decision made by an employee, an agent, an  
 38 ostensible agent, or a representative of the health insurance  
 39 carrier, health maintenance organization, or managed care entity  
 40 if, at the time the decision is made:

- 41 (1) the employee, agent, ostensible agent, or representative is  
 42 acting on behalf of the health insurance carrier, health

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

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

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

9 **Sec. 4.** In an action brought under section 3 of this chapter that  
 10 is based on a health care treatment decision allegedly made by an  
 11 employee, an agent, an ostensible agent, or a representative of a  
 12 health insurance carrier, a health maintenance organization, or  
 13 another managed care entity through which a health care plan is  
 14 operated, it is a defense that:

15 (1) neither:

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

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

22 controlled, influenced, or participated in the health care  
 23 treatment decision in question; and

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

29 **Sec. 5.** Sections 2 and 3 of this chapter do not obligate a health  
 30 insurance carrier, a health maintenance organization, or other  
 31 managed care entity through which a health care plan is operated  
 32 to provide to an insured or enrollee treatment that is not covered  
 33 by the health care plan.

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

36 (1) remove a physician or other health care provider from its  
 37 health care plan; or

38 (2) refuse to renew the status of a physician or other health  
 39 care provider with the health care plan;

40 for advocating on behalf of an insured or enrollee for appropriate  
 41 and medically necessary health care for the insured or enrollee.

42 **Sec. 7. (a)** A health insurance carrier, a health maintenance

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1 organization, or another managed care entity may not enter into  
2 a contract with a:

- 3 (1) physician, hospital, or other health care provider; or  
4 (2) pharmaceutical company;

5 that includes an indemnification or hold harmless clause applying  
6 to the acts or conduct of the health insurance carrier, health  
7 maintenance organization, or other managed care entity.

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

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

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

25 Sec. 10. A person who brings an action under this chapter must  
26 comply with IC 34-18.

27 Sec. 11. This chapter does not create any liability on the part of:

- 28 (1) an employer;  
29 (2) an employer purchasing group; or  
30 (3) a pharmacy that holds a pharmacy permit issued by the  
31 Indiana board of pharmacy under IC 25-26-13;

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

33 SECTION 2. [EFFECTIVE JULY 1, 1999] IC 27-14, as added by  
34 this act, applies to causes of action arising after June 30, 1999.

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