

# HOUSE BILL No. 1332

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-13-36-1; IC 27-14.

**Synopsis:** Medical director liability. Requires a health maintenance organization to appoint a medical director who has an unlimited license to practice medicine in Indiana. (Current law allows a health maintenance organization to appoint a medical director who has an unlimited license to practice medicine in Indiana or an equivalent license issued by another state.) Provides for a duty of ordinary care for the medical director of a health insurance carrier, health maintenance organization, or other managed care entity when making health care treatment decisions involving covered services. Makes the medical director of a health insurance carrier, a health maintenance organization, or other managed care entity liable for harm resulting  
(Continued next page)

**Effective:** July 1, 1999.

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January 12, 1999, read first time and referred to Committee on Insurance, Corporations and Small Business.

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Digest Continued

from health care treatment decisions made without exercising ordinary care.

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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. 1332

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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 27-13-36-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Each health  
3 maintenance organization shall appoint a medical director who has an  
4 unlimited license to practice medicine under IC 25-22.5. ~~or an~~  
5 ~~equivalent license issued by another state.~~  
6 (b) The medical director is responsible for oversight of treatment  
7 policies, protocols, quality assurance activities, and utilization  
8 management decisions of the health maintenance organization.  
9 (c) A health maintenance organization shall contract with or employ  
10 at least one (1) individual who holds an unlimited license to practice  
11 medicine under IC 25-22.5 to do the following:  
12 (1) Develop, in consultation with a group of appropriate  
13 providers, the health maintenance organization's treatment  
14 policies, protocols, and quality assurance activities.  
15 (2) Consult with the treating provider before an adverse



1 utilization review decision is made.

2 (d) Compliance with the most current standards or guidelines  
3 developed by the National Committee on Quality Assurance or a  
4 successor organization is sufficient to meet the requirements of this  
5 section.

6 SECTION 2. IC 27-14 IS ADDED TO THE INDIANA CODE AS  
7 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
8 1999]:

9 **ARTICLE 14. LIABILITY FOR CERTAIN HEALTH CARE**  
10 **TREATMENT DECISIONS**

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

12 **Sec. 1. The definitions in this chapter apply throughout this**  
13 **article.**

14 **Sec. 2. "Enrollee" means the following:**

15 (1) **With respect to a health maintenance organization, a:**

16 (A) **subscriber; or**

17 (B) **dependent of a subscriber;**

18 **who is covered by the health maintenance organization.**

19 (2) **With respect to a managed care entity that is not a health**  
20 **maintenance organization:**

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

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

24 **Sec. 3. "Carrier" means a health insurance carrier, health**  
25 **maintenance organization, or a managed care entity through which**  
26 **a health care plan is operated.**

27 **Sec. 4. "Health care plan" means a plan under which a person**  
28 **undertakes to:**

29 (1) **arrange for;**

30 (2) **pay for; or**

31 (3) **reimburse any part of the cost of;**

32 **health care services through a carrier.**

33 **Sec. 5. "Health care provider" has the meaning set forth in**  
34 **IC 34-18-2-14.**

35 **Sec. 6. "Health care treatment decision" means a determination**  
36 **that:**

37 (1) **is made when medical services are provided by a health**  
38 **care plan; and**

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

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



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

3           **Sec. 9. "Health maintenance organization"** has the meaning set  
4 forth in IC 27-13-1-19.

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

7           (1) delivers health care services to a defined enrollee  
8 population;

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

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

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

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

15           (A) its employees; or

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

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

20           **Sec. 11. "Ordinary care"** means the following:

21           (1) With respect to the medical director of a carrier, the  
22 degree of care that a medical director of ordinary prudence  
23 would use under the same or similar circumstances.

24           (2) With respect to a person who is an employee, an agent, an  
25 ostensible agent, or a representative of the medical director of  
26 a carrier, the degree of care that a person of ordinary  
27 prudence in the same profession, specialty, or area of practice  
28 as the person would use under the same or similar  
29 circumstances.

30           **Sec. 12. "Person"** means an individual, a corporation, a  
31 partnership, a limited liability company, an unincorporated  
32 association, the state, or a political subdivision (as defined in  
33 IC 36-1-2-13).

34           **Chapter 2. The Duty of Ordinary Care**

35           **Sec. 1. (a)** This chapter does not apply to a carrier that is wholly  
36 owned by a provider (as defined in IC 27-13-1-28).

37           **(b)** This chapter does not apply to worker's compensation  
38 insurance coverage under IC 22-3-2 through IC 22-3-6.

39           **Sec. 2. The medical director of a carrier:**

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

42           (2) is liable for damages in compensation for harm to an

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- 1           insured or enrollee that is proximately caused by the failure  
2           of the medical director to exercise ordinary care.
- 3           **Sec. 3. The medical director of a carrier is liable for damages in**  
4           **compensation for harm to an insured or enrollee proximately**  
5           **caused by a health care treatment decision made by an employee,**  
6           **an agent, an ostensible agent, or a representative of the medical**  
7           **director if, at the time the decision is made:**
- 8                 (1) the employee, agent, ostensible agent, or representative is  
9                 acting on behalf of the medical director; and
- 10                (2) the medical director:
- 11                   (A) has the right to exercise influence or control over the  
12                   employee, agent, ostensible agent, or representative; or
- 13                   (B) is actually exercising influence or control over the  
14                   employee, agent, ostensible agent, or representative;  
15                 resulting in the failure to exercise ordinary care.
- 16           **Sec. 4. In an action based under section 3 of this chapter on a**  
17           **health care treatment decision allegedly made by an employee, an**  
18           **agent, an ostensible agent, or a representative of a medical director**  
19           **of a carrier, it is a defense that:**
- 20                 (1) neither:
- 21                   (A) the medical director; nor
- 22                   (B) the employee, agent, ostensible agent, or representative  
23                   for whose conduct the medical director is allegedly liable;  
24                   controlled, influenced, or participated in the health care  
25                   treatment decision in question; and
- 26                 (2) the medical director did not deny or delay payment for  
27                 any treatment prescribed or recommended by a health care  
28                 provider to the insured or enrollee in question.
- 29           **Sec. 5. Sections 2 and 3 of this chapter do not obligate a carrier**  
30           **to provide to an insured or enrollee treatment that is not covered**  
31           **by the health care plan.**
- 32           **Sec. 6. This chapter does not create 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. 7. A law prohibiting a carrier from practicing medicine or**  
39           **being licensed to practice medicine may not be asserted as a**  
40           **defense by the medical director of a carrier in an action brought**  
41           **under this chapter.**
- 42           **Sec. 8. In an action against the medical director of a carrier**

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1 under this chapter, a finding that a physician or another health  
2 care provider is an employee, an agent, an ostensible agent, or a  
3 representative of the carrier may not be based solely on proof that  
4 the name of the physician or other health care provider appears in  
5 a listing of approved physicians or health care providers made  
6 available to insureds or enrollees under a health care plan.  
7 Sec. 9. A person who brings an action under this chapter must  
8 comply with IC 34-18.  
9 SECTION 3. [EFFECTIVE JULY 1, 1999] IC 27-14, as added by  
10 this act, applies only to causes of action arising after June 30, 1999.

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