

1 payor from practicing medicine or being licensed to practice
2 medicine shall not be asserted as a defense by such third-
3 party payor in an action brought against it pursuant to this
4 section or any other applicable law.

5 9. In an action against a third-party payor, a finding
6 that a physician or other health care provider is an employee,
7 agent, or representative of such third-party payor shall not
8 be based solely on proof that such person's name appears in a
9 listing of approved physicians or health care providers made
10 available to an insured or enrollee under a health care plan.

11 10. This chapter does not apply to workers' compensation
12 coverage.

13 EXPLANATION

14 This bill creates new Code chapter 514I. The bill provides
15 that a third-party payor has the duty to exercise ordinary
16 care when making health care treatment decisions and is liable
17 for damages for harm to an insured or enrollee proximately
18 caused by its failure to exercise such ordinary care. The
19 bill establishes certain defenses to such action and provides
20 that the duty to exercise ordinary care does not create an
21 obligation on the part of the third-party payor to provide
22 treatment to an insured or enrollee which is not covered by
23 the health care plan offered by the third-party payor. The
24 bill defines "third-party payor" as a health insurance
25 carrier, health maintenance organization, managed care entity,
26 or organized delivery system.

27

28

29

30

31

32

33

34

35

1 Section 1. NEW SECTION. 514I.1 TITLE.

2 This chapter shall be known and may be cited as "Third-
3 party Payor Liability Act".

4 Sec. 2. NEW SECTION. 514I.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Appropriate and medically necessary" means the
8 standard for health care services as determined by a physician
9 or health care provider consistent with accepted practices and
10 standards of care provided by the medical profession in the
11 community.

12 2. "Enrollee" means an individual who is enrolled in a
13 health care plan, including covered dependents.

14 3. "Health care plan" means a plan under which a person
15 undertakes to provide, arrange for, pay for, or reimburse any
16 part of the cost of any health care services.

17 4. "Health care provider" means a person licensed or
18 certified under chapter 147, 148, 148A, 148C, 149, 150, 150A,
19 151, 152, 153, 154, 154B, or 155A to provide in this state
20 professional health care service to an individual during that
21 individual's medical care, treatment, or confinement.

22 5. "Health care treatment decision" means a determination
23 made when medical services are actually provided by the health
24 care plan and a decision which affects the quality of the
25 diagnosis, care, or treatment provided to the plan's insureds
26 or enrollees.

27 6. "Health insurance carrier" means an entity subject to
28 the insurance laws and regulations of this state, or subject
29 to the jurisdiction of the commissioner of insurance, that
30 contracts or offers to contract, or that subcontracts or
31 offers to subcontract, to provide, deliver, arrange for, pay
32 for, or reimburse any of the costs of health care services,
33 including an insurance company offering sickness and accident
34 plans, a health maintenance organization, a nonprofit health
35 service corporation, or any other entity providing a plan of

1 health insurance, health benefits, or health services.

2 7. "Health maintenance organization" means a health
3 maintenance organization as defined in section 514B.1.

4 8. "Insured" means an individual who is covered by a
5 health care plan provided by a health insurance carrier.

6 9. "Managed care entity" means an entity that provides a
7 health care plan that selects and contracts with health care
8 providers; manages and coordinates health care delivery;
9 monitors necessity, appropriateness, and quality of health
10 care delivered by health care providers; and performs
11 utilization review and cost control.

12 10. "Ordinary care" means, in the case of a third-party
13 payor, that degree of care that a third-party of ordinary
14 prudence would provide under the same or similar
15 circumstances. In the case of a person who is an employee,
16 agent, or representative of a third-party payor, "ordinary
17 care" means that degree of care that a person of ordinary
18 prudence in the same profession, specialty, or area of
19 practice as such person would use in the same or similar
20 circumstances.

21 11. "Organized delivery system" means an organized
22 delivery system as licensed by the director of public health.

23 12. "Physician" means an individual licensed under the
24 provisions of chapter 148, 150, or 150A to practice medicine
25 and surgery, osteopathy, or osteopathic medicine and surgery.

26 13. "Third-party payor" means a health insurance carrier,
27 health maintenance organization, managed care entity, or
28 organized delivery system.

29 Sec. 3. NEW SECTION. 514I.3 THIRD-PARTY PAYOR LIABILITY.

30 1. A third-party payor has the duty to exercise ordinary
31 care when making health care treatment decisions and is liable
32 for damages for harm to an insured or enrollee proximately
33 caused by the third-party payor's failure to exercise such
34 ordinary care.

35 2. A third-party payor is also liable for damages for harm

1 to an insured or enrollee proximately caused by the health
2 care treatment decisions made by an employee, agent, or
3 representative of the third-party payor who is acting on
4 behalf of the third-party payor and over whom the third-party
5 payor has the right to exercise influence or control or has
6 actually exercised influence or control if such decision
7 results in the failure to exercise ordinary care.

8 3. It is a defense in an action brought pursuant to this
9 section against a third-party payor that neither the third-
10 party payor, nor an employee, agent, or representative of the
11 third-party payor controlled, influenced, or participated in
12 the health care treatment decision; or that the third-party
13 payor did not deny or delay payment for any treatment
14 prescribed or recommended by a health care provider to the
15 insured or enrollee.

16 4. Subsections 1 and 2 do not create an obligation on the
17 part of the third-party payor to provide treatment to an
18 insured or enrollee which is not covered by the health care
19 plan offered by the third-party payor.

20 5. This chapter does not create any liability on the part
21 of an employer, or an employer group purchasing organization
22 that purchases coverage or assumes risk on behalf of its
23 employees.

24 6. A third-party payor shall not remove a physician or
25 health care provider from its plan or refuse to renew the
26 physician or health care provider under its plan for
27 advocating appropriate and medically necessary health care for
28 the insured or enrollee.

29 7. A third-party payor shall not enter into a contract
30 with a physician, hospital, or other health care provider or
31 pharmaceutical company which includes an indemnification or
32 hold harmless clause for the acts or conduct of the third-
33 party payor. Any such indemnification or hold harmless clause
34 in an existing contract is void.

35 8. A provision under state law prohibiting a third-party

1 payor from practicing medicine or being licensed to practice
2 medicine shall not be asserted as a defense by such third-
3 party payor in an action brought against it pursuant to this
4 section or any other applicable law.

5 9. In an action against a third-party payor, a finding
6 that a physician or other health care provider is an employee,
7 agent, or representative of such third-party payor shall not
8 be based solely on proof that such person's name appears in a
9 listing of approved physicians or health care providers made
10 available to an insured or enrollee under a health care plan.

11 10. This chapter does not apply to workers' compensation
12 coverage.

13 EXPLANATION

14 This bill creates new Code chapter 514I. The bill provides
15 that a third-party payor has the duty to exercise ordinary
16 care when making health care treatment decisions and is liable
17 for damages for harm to an insured or enrollee proximately
18 caused by its failure to exercise such ordinary care. The
19 bill establishes certain defenses to such action and provides
20 that the duty to exercise ordinary care does not create an
21 obligation on the part of the third-party payor to provide
22 treatment to an insured or enrollee which is not covered by
23 the health care plan offered by the third-party payor. The
24 bill defines "third-party payor" as a health insurance
25 carrier, health maintenance organization, managed care entity,
26 or organized delivery system.

27
28
29
30
31
32
33
34
35