

FEB 18 1999

COMMERCE AND REGULATION

HOUSE FILE 325

BY KREIMAN

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to review of and liability for certain health  
2 care treatment decisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4

HOUSE FILE 325

H-1062

1 Amend House File 325 as follows:

2 1. Page 1, line 19, by inserting after the figure  
3 "154B," the following: "154C,".

By FOEGE of Linn

H-1062 FILED MARCH 9, 1999

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1 Section 1. NEW SECTION. 514J.1 TITLE.

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

4 Sec. 2. NEW SECTION. 514J.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 health care services are actually provided under the  
24 health care plan and a decision which affects the quality of  
25 the diagnosis, care, or treatment provided to the plan's  
26 insureds 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 providing health care  
33 services, including an insurance company offering sickness and  
34 accident plans, a health maintenance organization, a nonprofit  
35 health service corporation, or any other entity providing a

1 plan of 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 services  
9 delivery; monitors necessity, appropriateness, and quality of  
10 health care services delivered by health care providers; and  
11 performs 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 chapter  
24 148, 150, or 150A to practice medicine and surgery,  
25 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. 514J.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 health care  
14 services prescribed or recommended by a health care provider  
15 to the 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 any health care  
18 services to an insured or enrollee that are not covered by the  
19 health care 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 health care services coverage or assumes risk  
23 on behalf of its employees.

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

29 7. A third-party payor shall not enter into a contract  
30 with a hospital or health care provider or pharmaceutical  
31 company which includes an indemnification or hold harmless  
32 clause for the acts or conduct of the third-party payor. Any  
33 such indemnification or hold harmless clause in an existing  
34 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 health care provider is an employee, agent, or  
7 representative of such third-party payor shall not be based  
8 solely on proof that such a health care provider's name  
9 appears in a listing of approved 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 514J. 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 an action for  
20 failure to use ordinary care and provides that the duty to  
21 exercise ordinary care does not create an obligation on the  
22 part of the third-party payor to provide health care services  
23 to an insured or enrollee which is not covered by the health  
24 care plan offered by the third-party payor. The bill defines  
25 "third-party payor" as a health insurance carrier, health  
26 maintenance organization, managed care entity, or organized  
27 delivery system.

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