

FEB 24 1999

COMMERCE AND REGULATION

HOUSE FILE 362
BY OSTERHAUS, FOEGE, SCHRADER,
JOCHUM, MYERS, DOTZLER, and
MUNDIE

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 services treatment decisions.

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

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H-1063

HOUSE FILE 362

1 Amend House File 362 as follows:
2 1. Page 1, line 19, by inserting after the figure
3 "154B," the following: "154C,".

H-1063 FILED MARCH 9, 1999 By FOEGE of Linn

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HF 362

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 services 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 DUTY TO
30 EXERCISE ORDINARY CARE -- LIABILITY.

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

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

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

17 4. Subsections 1 and 2 do not create an obligation on the
18 part of the third-party payor to provide any health care
19 services to an insured or enrollee that are not covered by the
20 health care plan offered by the third-party payor.

21 5. This chapter does not create any liability on the part
22 of an employer or an employer group purchasing organization
23 that purchases health care services coverage or assumes risk
24 on behalf of its employees for providing health care services.

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

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

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

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

12 10. This chapter does not apply to workers' compensation
13 coverages.

14 EXPLANATION

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

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