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COMMERCE AND REGULATION

HOUSE FILE 626  
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Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to third-party payor liability for health care  
2 treatment decisions, and prohibiting certain acts by third-  
3 party payors.

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

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HF 626

1 Section 1. NEW SECTION. 514L.1 TITLE.

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

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

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

7 1. "Appropriate and medically necessary" means with  
8 respect to a health care service, treatment decision, or  
9 benefit a health care service, treatment decision, or benefit  
10 that is consistent with generally accepted principles of  
11 professional practice.

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 service.

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. 514L.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 liable for damages for harm to  
2 an insured or enrollee proximately caused by the health care  
3 services treatment decision made by an employee, agent, or  
4 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. In an action brought against a third-party payor  
10 pursuant to this section, any of the following shall be  
11 defenses:

12     a. That neither the third-party payor, nor an employee,  
13 agent, or representative of the third-party payor controlled,  
14 influenced, or participated in the health care treatment  
15 decision.

16     b. That the third-party payor did not deny or delay  
17 payment for any health care services prescribed or recommended  
18 by a health care provider to the insured or enrollee.

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

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

28     Sec. 4. NEW SECTION. 514L.4 THIRD-PARTY PAYOR  
29 PROHIBITIONS.

30     1. A third-party payor shall not remove a health care  
31 provider from its plan or refuse to renew the participation of  
32 a health care provider under its plan for advocating  
33 appropriate and medically necessary health care services for  
34 an insured or enrollee.

35     2. A third-party payor shall not enter into a contract

1 with a hospital or health care provider or pharmaceutical  
2 company which includes an indemnification or hold harmless  
3 clause for the acts or conduct of the third-party payor. Any  
4 such indemnification or hold harmless clause in an existing  
5 contract is void.

6 3. 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 Sec. 5. NEW SECTION. 514L.5 EXCLUSIONS.

13 1. This chapter does not apply to workers' compensation  
14 coverages.

15 2. This chapter does not create any liability on the part  
16 of an employer or an employer group purchasing organization  
17 that purchases health care services coverage or assumes risk  
18 on behalf of its employees for providing health care services.

19 EXPLANATION

20 This bill creates new Code chapter 514L, the third-party  
21 payor liability Act, regarding third-party payor liability for  
22 health care treatment decisions, and prohibiting certain other  
23 acts by third-party payors.

24 New Code section 514L.2 contains definitions for the new  
25 chapter. "Third-party payor" is defined as a health insurance  
26 carrier, health maintenance organization, managed care entity,  
27 or organized delivery system. "Appropriate and medically  
28 necessary" is defined as a health care service, treatment  
29 decision, or benefit that is consistent with generally  
30 accepted principles of professional practice. Code section  
31 514L.2 also defines the terms "enrollee", "health care plan",  
32 "health care provider", "health care treatment decision",  
33 "health insurance carrier", "health maintenance organization",  
34 "insured", "managed care entity", "ordinary care", "organized  
35 delivery system", and "physician".

1 New Code section 514L.3 requires a third-party payor to  
2 exercise a duty of ordinary care when making health care  
3 treatment decisions, and imposes liability for damages  
4 proximately caused by the failure to exercise that duty of  
5 care. A third-party payor is also liable for damages  
6 proximately caused to an insured or enrollee because of  
7 treatment decisions made by an employee, agent, or  
8 representative of the third-party payor where the third-party  
9 payor's exercise of influence or control over such party has  
10 resulted in a failure to exercise ordinary care.

11 A third-party payor may assert the following as defenses to  
12 an action based on failure to exercise ordinary care: that  
13 the third-party payor did not influence, control, or  
14 participate in the health care treatment decision, or that the  
15 third-party payor did not deny or delay payment for prescribed  
16 or recommended health care services. Code section 514L.3 also  
17 provides that the third-party payor may not assert as a  
18 defense that state law prohibits a third-party payor from  
19 practicing medicine.

20 New Code section 514L.4 provides that third-party payors  
21 may not remove or refuse to renew the participation of a  
22 health care provider for advocating appropriate and medically  
23 necessary health care services, and may not include an  
24 indemnification or hold-harmless clause for the acts of the  
25 third-party payor in its contract with a health care provider.

26 Finally, new Code section 514L.5 provides that the chapter  
27 does not apply to workers' compensation coverage, and does not  
28 create liability for employers who purchase or provide health  
29 care coverage.

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