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THE STATE SENATE
Thursday, March 30, 2000

Committee Substitute for
ENGROSSED
House Bill No. 2710

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2710 - By: TOURE,
SETTLE, LINDLEY, ROACH, FRAME, BLACKBURN, COLLINS, CORN, LEIST,
NATIONS, OSTRANDER, PAULK, TAYLOR and WELLS of the House and HENRY
of the Senate.

An Act relating to health care; creating the Managed Health
Care Reform and Accountability Act and providing short
title; declaring purpose; defining terms; stating duty of
defined health care entities to exercise ordinary care in
health care treatment decisions; providing for liability for
damages; stating obligation to provide care; limiting
liability of specified employers and employer group
purchasing organizations; prohibiting removal of certain
health care providers for advocating appropriate and
medically necessary health care; prohibiting attempts to
obtain certain indemnification from health care providers;
declaring certain provisions of contracts to be void and
unenforceable; prohibiting certain defenses; stating that
section does not create new or additional liability for
certain entities for medical negligence of health care
providers; requiring insured and enrollee to comply with
certain requirements for civil actions; stating
prerequisites for civil actions; requiring specified notice;
providing for tolling of limitations; allowing specified
remedies under certain circumstances; providing for
codification; providing an effective date; and declaring an
emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 6591 of Title 36, unless there
is created a duplication in numbering, reads as follows:

1 A. This act shall be known and may be cited as the "Managed
2 Health Care Reform and Accountability Act".

3 B. The Legislature hereby declares that the public good and the
4 general welfare of the citizens of this state require the enactment
5 of this measure under the police power of the state as part of and
6 in furtherance of the regulation of the business of insurance.

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 6592 of Title 36, unless there
9 is created a duplication in numbering, reads as follows:

10 For purposes of this act:

11 1. "Enrollee" means an individual who is enrolled in a health
12 care plan, including covered dependents;

13 2. "Health care plan" means any arrangement whereby any person
14 undertakes to provide, arrange for, pay for, or reimburse any part
15 of the costs of any health care services for an enrollee;

16 3. "Health care provider" means a physician, hospital,
17 pharmaceutical company, pharmacy, laboratory, or other state-
18 licensed or state-recognized provider of health care services;

19 4. "Health care treatment decision" means a determination made
20 when medical services are rendered under a health care plan and a
21 decision is made which affects the quality of the diagnosis, care,
22 or treatment provided to the enrollee of the plan;

1 5. "Health insurance carrier" means an insurance company that
2 issues policies of accident and health insurance and is or should be
3 licensed to sell insurance in this state;

4 6. "Health maintenance organization" means an organization
5 which is or should be licensed by the State Department of Health
6 pursuant to Section 2501 et seq. of Title 63 of the Oklahoma
7 Statutes;

8 7. "Managed care entity" means any entity which delivers,
9 administers, or indemnifies health care services with systems or
10 techniques to control or influence the quality, accessibility,
11 utilization, or costs and prices of such services to a defined
12 enrollee population, but does not include an employer purchasing
13 coverage for or on behalf of its employees or the employees of one
14 or more subsidiaries or affiliated corporations of the employer;

15 8. "Medically necessary" means services or supplies provided by
16 a health care provider that are:

- 17 a. appropriate for the symptoms and diagnosis or
18 treatment of the enrollee's condition, illness,
19 disease, or injury,
20 b. in accordance with standards of good medical practice,
21 c. not primarily for the convenience of the enrollee or
22 the enrollee's health care provider, and

1 d. the most appropriate supply or level of service that
2 can safely be provided to the enrollee;

3 9. "Ordinary care" means, in the case of a health insurance
4 carrier, health maintenance organization, or managed care entity,
5 the degree of care that a health insurance carrier, health
6 maintenance organization, or managed care entity of reasonable
7 prudence would use under the same or similar circumstances. In the
8 case of a person who is an employee, agent, ostensible agent, or
9 representative of a health insurance carrier, health maintenance
10 organization, or managed care entity, "ordinary care" means the
11 degree of care that a reasonably prudent person in the same
12 profession, specialty, or field of practice as that person would use
13 in the same or similar circumstance. An employer which does not
14 make health care treatment decisions is not an employee, agent,
15 ostensible agent, or representative of a health insurance carrier,
16 health maintenance organization, or managed care entity; and

17 10. "Physician" means an individual licensed to practice
18 medicine in this state pursuant to Section 725.2 of Title 59 of the
19 Oklahoma Statutes.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 6593 of Title 36, unless there
22 is created a duplication in numbering, reads as follows:

1 A. A health insurance carrier, health maintenance organization,
2 or other managed care entity for a health care plan has the duty to
3 exercise ordinary care when making health care treatment decisions
4 and shall be liable for damages for harm to an enrollee proximately
5 caused by breach of the duty to exercise ordinary care if:

6 1. The failure to exercise ordinary care resulted in the
7 denial, significant delay, or modification of the health care
8 service recommended for, or furnished to, an insured or enrollee;
9 and

10 2. The insured or enrollee suffered harm.

11 B. A health insurance carrier, health maintenance organization,
12 or other managed care entity for a health care plan shall be liable
13 for damages for harm to an insured or enrollee proximately caused by
14 the health care treatment decisions made by its employees, agents,
15 ostensible agents, or representatives who are acting on its behalf
16 and over whom it has the right to exercise influence or control or
17 has actually exercised influence or control which result in the
18 failure to exercise ordinary care.

19 C. The standards in subsections A and B of this section create
20 no obligation on the part of the health insurance carrier, health
21 maintenance organization, or other managed care entity to provide
22 treatment to an insured or enrollee which is not covered by the
23 health care plan of the entity.

1 D. This act does not create any liability on the part of an
2 employer or an employer group purchasing organization that purchases
3 coverage or assumes risk on behalf of its employees.

4 E. A health care plan, health insurance carrier, health
5 maintenance organization, or managed care entity may not remove a
6 health care provider from its plan or refuse to renew the health
7 care provider with its plan for advocating on behalf of an enrollee
8 for appropriate and medically necessary health care for the
9 enrollee.

10 F. A health insurance carrier, health maintenance organization,
11 or other managed care entity shall not seek indemnification from a
12 health care provider, whether contractual or equitable, for
13 liability imposed by this act. Any provision in a contract to the
14 contrary is void and unenforceable.

15 G. Nothing in any law of this state prohibiting a health
16 insurance carrier, health maintenance organization, or other managed
17 care entity from practicing medicine or being licensed to practice
18 medicine may be asserted as a defense by a health insurance carrier,
19 health maintenance organization, or other managed care entity in an
20 action brought against it pursuant to this section or any other law
21 of this state.

22 H. This section shall not create any new or additional
23 liability on the part of a health insurance carrier, health

1 maintenance organization, or managed care entity for harm caused
2 that is attributable to the medical negligence of a health care
3 provider.

4 I. An insured or enrollee who files an action under this act
5 shall comply with all requirements relating to cost bonds, deposits,
6 and expert reports.

7 J. This act shall not apply to insurance agents licensed by the
8 Insurance Department.

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 6594 of Title 36, unless there
11 is created a duplication in numbering, reads as follows:

12 A. A person may not maintain a cause of action under this act
13 against a health insurance carrier, health maintenance organization,
14 or other managed care entity unless the affected insured or
15 enrollee, or the representative of the insured or enrollee, has
16 exhausted any appeal and review process applicable under the
17 utilization review requirements of the plan and any applicable
18 external review system of the health insurance carrier, health
19 maintenance organization, or managed care entity, and gives written
20 notice of the claim as provided in subsection B of this section.

21 B. The notice required by subsection A of this section shall be
22 delivered or mailed to the health insurance carrier, health
23 maintenance organization, or managed care entity against whom the

1 action will be brought at least thirty (30) days before the action
2 is filed.

3 C. If the insured or enrollee, or the representative of the
4 insured or enrollee, exhausts the appeal and review process and
5 gives notice as required by subsection A of this section before the
6 statute of limitations applicable to a claim against a managed care
7 entity has expired, the limitations period is tolled until thirty
8 (30) days after the date the insured or enrollee or the
9 representative of the insured or enrollee has exhausted the process
10 for appeal and review applicable under the utilization review
11 requirements of the plan.

12 D. The provisions of this section shall not prohibit an insured
13 or enrollee from pursuing other appropriate remedies, including
14 injunctive relief, a declaratory judgment, or other relief available
15 under law, if the requirement of exhausting the process for appeal
16 and review places the health of the insured or enrollee in serious
17 jeopardy.

18 SECTION 5. AMENDATORY Section 5, Chapter 160, O.S.L.
19 1999 (63 O.S. Supp. 1999, Section 2528.5), is amended to read as
20 follows:

21 Section 2528.5 A. 1. An insured person or the designee of an
22 insured person shall be required to pay Fifty Dollars (\$50.00) to
23 the health benefit plan toward the cost of an external review.

1 a. Such payment shall be due at the time the preliminary
2 screening is completed and the insured person or the
3 designee of the insured person is notified of a
4 decision by the independent review organization to
5 accept the appeal, pursuant to procedures specified in
6 the Oklahoma Managed Care External Review Act, for a
7 full external review.

8 b. At the completion of the external review, if the
9 insured person prevails, the payment shall be refunded
10 by the health benefit plan.

11 2. The health benefit plan shall be responsible for the
12 remaining costs related to the external review process.

13 ~~B. A determination in favor of the health benefit plan shall~~
14 ~~create a rebuttable presumption in any subsequent action at law that~~
15 ~~the plan's coverage determination was appropriate.~~

16 ~~C.~~ The number of appeals for an external review by an insured
17 person or a designee of the insured person shall be limited to one
18 appeal per authorization decision.

19 ~~D.~~ C. The health benefit plan may, at its discretion, determine
20 that additional information provided by the insured person or the
21 designee or physician of the insured person justifies a
22 reconsideration of the decision to deny coverage or reimbursement.
23 Upon notice to the insured person or the designee of the insured

1 person and the independent review organization, a subsequent
2 decision by the health benefit plan to grant coverage or
3 reimbursement based upon such reconsideration shall terminate the
4 external review.

5 ~~E.~~ D. Nothing in the Oklahoma Managed Care External Review Act
6 shall be construed to:

7 1. Create any new private right or cause of action for or on
8 behalf of any insured person; or

9 2. Render the health benefit plan liable for injuries or
10 damages arising from any act or omission of the independent review
11 organization.

12 ~~F.~~ E. Independent review organizations and expert reviewers
13 assigned by an independent review organization to conduct an
14 external review shall not be liable for injuries or damages arising
15 from decisions made pursuant to the Oklahoma Managed Care External
16 Review Act. This provision shall not apply to any act or omission
17 by independent review organizations or expert reviewers that is made
18 in bad faith or that involves gross negligence.

19 ~~G.~~ F. After an appeal has been accepted for external review by
20 an independent review organization, an informed consent form, signed
21 by the insured person or the designee of the insured person
22 acknowledging receipt of a copy of the terms and conditions of the
23 external review process as provided by this section and

1 acknowledging understanding of and consent to such terms and
2 conditions, shall be required prior to initiating a full external
3 review.

4 ~~H.~~ G. A health benefit plan shall not remove a physician from
5 its plan, refuse to renew a physician with the plan, or otherwise
6 discipline a physician for advocating on behalf of an insured person
7 in either an internal review or external review.

8 SECTION 6. This act shall become effective July 1, 2000.

9 SECTION 7. It being immediately necessary for the preservation
10 of the public peace, health and safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-28-00 - DO
14 PASS, As Amended.