

**SUBSTITUTE FOR
HOUSE BILL NO. 5221**

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding sections 21035a, 21051a,
[] 21051b [, and 21051c].

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 21035A. A REQUEST BY AN ENROLLEE OF A HEALTH MAINTEN-
2 NANCE ORGANIZATION TO RECEIVE A COVERED TREATMENT OR SERVICE OR
3 TO SEE A PHYSICIAN SPECIALIST FOR A TREATMENT OR SERVICE THAT IS
4 COVERED UNDER THE HEALTH MAINTENANCE ORGANIZATION CONTRACT WITH
5 THE ENROLLEE SHALL NOT BE UNREASONABLY DENIED.

6 SEC. 21051A. (1) A HEALTH MAINTENANCE ORGANIZATION SHALL
7 EXERCISE ORDINARY CARE WHEN MAKING A HEALTH CARE TREATMENT DECI-
8 SION AND IS LIABLE FOR DAMAGES FOR HARM TO AN ENROLLEE
9 PROXIMATELY CAUSED BY ITS FAILURE TO EXERCISE ORDINARY CARE.

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1 (2) A HEALTH MAINTENANCE ORGANIZATION IS LIABLE FOR DAMAGES
2 FOR HARM TO AN ENROLLEE PROXIMATELY CAUSED BY A HEALTH CARE
3 TREATMENT DECISION MADE BY A HEALTH MAINTENANCE ORGANIZATION
4 EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REPRESENTATIVE ACTING ON
5 BEHALF OF THE HEALTH MAINTENANCE ORGANIZATION AND OVER WHOM THE
6 HEALTH MAINTENANCE ORGANIZATION HAS THE RIGHT TO EXERCISE INFLU-
7 ENCE OR CONTROL OR HAS EXERCISED INFLUENCE OR CONTROL THAT
8 RESULTED IN THE FAILURE TO EXERCISE ORDINARY CARE. HOWEVER, A
9 FINDING THAT A HEALTH PROFESSIONAL IS AN EMPLOYEE, AGENT, OSTEN-
10 SIBLE AGENT, OR REPRESENTATIVE OF A HEALTH MAINTENANCE ORGANIZA-
11 TION SHALL NOT BE BASED SOLELY ON PROOF THAT THE INDIVIDUAL'S
12 NAME APPEARS IN A LISTING OF APPROVED PROVIDERS MADE AVAILABLE TO
13 THE HEALTH MAINTENANCE ORGANIZATION'S ENROLLEES.

14 (3) BOTH OF THE FOLLOWING ARE DEFENSES IN AN ACTION BROUGHT
15 PURSUANT TO SUBSECTION (1) OR (2):

16 (A) NEITHER THE HEALTH MAINTENANCE ORGANIZATION NOR ITS
17 EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REPRESENTATIVE CONTROLLED,
18 INFLUENCED, OR PARTICIPATED IN THE HEALTH CARE TREATMENT
19 DECISION.

20 (B) THE HEALTH MAINTENANCE ORGANIZATION DID NOT DENY OR
21 DELAY PAYMENT FOR ANY TREATMENT PRESCRIBED OR RECOMMENDED BY A
22 PROVIDER TO THE ENROLLEE.

23 (4) THIS SECTION DOES NOT CREATE AN OBLIGATION FOR A HEALTH
24 MAINTENANCE ORGANIZATION TO PROVIDE TO AN ENROLLEE TREATMENT THAT
25 IS NOT COVERED BY THE HEALTH MAINTENANCE ORGANIZATION CONTRACT
26 WITH THE ENROLLEE.

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1 (5) THIS SECTION DOES NOT CREATE ANY LIABILITY ON THE PART
2 OF AN EMPLOYER, EMPLOYER PURCHASING GROUP, WELFARE BENEFIT PLAN,
3 OR OTHER ENTITY THAT PURCHASES COVERAGE OR ASSUMES RISK ON BEHALF
4 OF ITS EMPLOYEES OR PARTICIPANTS.

5 (6) FOR PURPOSES OF THE REVISED JUDICATURE ACT OF 1961, 1961
6 PA 236, MCL 600.101 TO 600.9948, THIS SECTION DOES NOT CREATE A
7 MEDICAL MALPRACTICE CAUSE OF ACTION.

8 (7) AS USED IN THIS SECTION:

9 (A) "HEALTH CARE TREATMENT DECISION" MEANS EITHER A DETERMI-
10 NATION AS TO WHEN THE HEALTH MAINTENANCE ORGANIZATION ACTUALLY
11 PROVIDES MEDICAL SERVICES OR A DECISION THAT AFFECTS THE QUALITY
12 OF THE DIAGNOSIS, CARE, OR TREATMENT PROVIDED TO THE HEALTH MAIN-
13 TENANCE ORGANIZATION'S ENROLLEES.

14 (B) "ORDINARY CARE" MEANS FOR A HEALTH MAINTENANCE ORGANIZA-
15 TION THAT DEGREE OF CARE THAT A HEALTH MAINTENANCE ORGANIZATION
16 OF ORDINARY PRUDENCE WOULD USE UNDER THE SAME OR SIMILAR
17 CIRCUMSTANCES. FOR AN EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REP-
18 RESENTATIVE ACTING ON BEHALF OF THE HEALTH MAINTENANCE ORGANIZA-
19 TION, ORDINARY CARE MEANS THAT DEGREE OF CARE THAT A PERSON OF
20 ORDINARY PRUDENCE IN THE SAME PROFESSION, SPECIALTY, OR AREA OF
21 PRACTICE AS THAT PERSON WOULD USE UNDER THE SAME OR SIMILAR
22 CIRCUMSTANCES.

23 SEC. 21051B. A HEALTH MAINTENANCE ORGANIZATION SHALL NOT
24 ENTER INTO A CONTRACT WITH A HEALTH PROFESSIONAL OR HEALTH FACIL-
25 ITY THAT INCLUDES AN INDEMNIFICATION OR HOLD HARMLESS CLAUSE FOR
26 THE ACTS OR CONDUCT OF THE HEALTH MAINTENANCE ORGANIZATION.

[SEC. 21051C. (1) A HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER THAT PROVIDES COVERAGE UNDER A PRUDENT PURCHASER ARRANGEMENT SHALL EXERCISE ORDINARY CARE WHEN MAKING A HEALTH CARE TREATMENT DECISION UNDER THE PRUDENT PURCHASER ARRANGEMENT AND IS LIABLE FOR DAMAGES FOR HARM TO A PERSON COVERED UNDER THE PRUDENT PURCHASER ARRANGEMENT PROXIMATELY CAUSED BY ITS FAILURE TO EXERCISE ORDINARY CARE.

(2) A HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER DESCRIBED UNDER SUBSECTION (1) IS LIABLE FOR DAMAGES FOR

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HARM TO THE PERSON COVERED UNDER THE PRUDENT PURCHASER ARRANGEMENT

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PROXIMATELY CAUSED BY A HEALTH CARE TREATMENT DECISION MADE BY AN EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REPRESENTATIVE ACTING ON BEHALF OF THE HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER AND OVER WHOM THE HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER HAS THE RIGHT TO EXERCISE INFLUENCE OR CONTROL OR HAS EXERCISED INFLUENCE OR CONTROL THAT RESULTED IN THE FAILURE TO EXERCISE ORDINARY CARE. HOWEVER, A FINDING THAT A HEALTH PROFESSIONAL IS AN EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REPRESENTATIVE OF A HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION OR INSURER SHALL NOT BE BASED SOLELY ON PROOF THAT THE INDIVIDUAL'S NAME APPEARS IN A LISTING OF APPROVED PROVIDERS MADE AVAILABLE TO THE HEALTH MAINTENANCE ORGANIZATION'S, HEALTH CARE CORPORATION'S, OR INSURER'S ENROLLEES, MEMBERS, OR INSUREDS.

(3) BOTH OF THE FOLLOWING ARE DEFENSES IN AN ACTION BROUGHT PURSUANT TO SUBSECTION (1) OR (2):

(A) NEITHER THE HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER NOR ITS EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REPRESENTATIVE CONTROLLED, INFLUENCED, OR PARTICIPATED IN THE HEALTH CARE TREATMENT DECISION.

(B) THE HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER DID NOT DENY OR DELAY PAYMENT FOR ANY TREATMENT PRESCRIBED OR RECOMMENDED BY A PROVIDER TO THE ENROLLEE, MEMBER, OR INSURED.

(4) THIS SECTION DOES NOT CREATE AN OBLIGATION FOR A HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER TO PROVIDE TO AN ENROLLEE, MEMBER, OR INSURED TREATMENT THAT IS NOT COVERED UNDER THE HEALTH MAINTENANCE ORGANIZATION'S, HEALTH CARE CORPORATION'S, OR INSURER'S PRUDENT PURCHASER ARRANGEMENT.

(5) THIS SECTION DOES NOT CREATE ANY LIABILITY ON THE PART OF AN EMPLOYER, EMPLOYER PURCHASING GROUP, WELFARE BENEFIT PLAN, OR OTHER ENTITY THAT PURCHASES COVERAGE OR ASSUMES RISK ON BEHALF OF ITS EMPLOYEES OR PARTICIPANTS.

(6) FOR PURPOSES OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.101 TO 600.9948, THIS SECTION DOES NOT CREATE A MEDICAL MALPRACTICE CAUSE OF ACTION.

(7) AS USED IN THIS SECTION:

(A) "HEALTH CARE TREATMENT DECISION" MEANS EITHER A DETERMINATION AS TO WHEN THE HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER ACTUALLY PROVIDES MEDICAL SERVICES OR A DECISION THAT AFFECTS THE QUALITY OF THE DIAGNOSIS, CARE, OR TREATMENT PROVIDED TO THE HEALTH MAINTENANCE ORGANIZATION'S, HEALTH CARE CORPORATION'S, OR INSURER'S ENROLLEES, MEMBERS, OR INSUREDS.

(B) "ORDINARY CARE" MEANS FOR A HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER THAT DEGREE OF CARE THAT A HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER OF ORDINARY PRUDENCE WOULD USE UNDER THE SAME OR SIMILAR CIRCUMSTANCES. FOR AN EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REPRESENTATIVE ACTING ON BEHALF OF THE HEALTH MAINTENANCE ORGANIZATION, HEALTH CARE CORPORATION, OR INSURER, ORDINARY CARE MEANS THAT DEGREE OF CARE THAT A PERSON OF ORDINARY PRUDENCE IN THE SAME PROFESSION, SPECIALTY, OR AREA OF PRACTICE AS THAT PERSON WOULD USE UNDER THE SAME OR SIMILAR CIRCUMSTANCES.]

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- 1 Enacting section 1. [Sections 21051a and 21051c] of the public health
- 2 code, 1978 PA 368, MCL 333.21051a [and 333.21051c], as added by this amendatory
- 3 act, [apply] only to causes of action that are filed on or after
- 4 the effective date of this amendatory act.