House
Legislative
Analysis
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NEGLIGENCE LIABILITY FOR HMO TREATMENT DECISIONS

House Bill 4127
Sponsor: Rep. Laura Baird
Committee: Health Policy

Complete to 2-11-99

A SUMMARY OF HOUSE BILL 4127 AS INTRODUCED 2-3-99

The bill would amend the Public Health Code to make a health maintenance organization (HMO) liable for harm caused to its enrollee due to the HMO's negligence in making its health care treatment decisions regarding that enrollee. In addition, the bill would bar an HMO from unreasonably denying an enrollee's request for a covered treatment or service or a request to see a physician specialist for a covered treatment or service.

More specifically, an HMO would be responsible when its decision regarding the provision of medical services or a decision affecting the quality of a diagnosis, care, or treatment of an enrollee failed to meet the standard of ordinary care. An HMO would also be responsible for the negligent treatment decisions of its employees, agents, ostensible agents, or representatives acting on behalf of the HMO over whom the HMO had the right to exercise influence or control or had exercised influence or control. However, the mere fact that a health professional's name appeared in a listing of approved providers made available to the HMO's enrollees would not be sufficient, in and of itself, to prove that the health professional was an employee, agent, ostensible agent, or representative of the HMO.

An HMO accused of negligence in its treatment decisions could offer the following defenses: that neither the HMO nor its employees or representatives controlled, influenced, or participated in the treatment decision that led to the enrollee's injury; or that the HMO had not denied or delayed payment for any treatment that had been prescribed or recommended by a provider to the enrollee.

An HMO could not avoid liability for negligent treatment decisions by entering a contract with a health professional or facility that included an indemnification or hold harmless clause for the acts of the HMO. However, the bill would not obligate an HMO to provide treatment that was not covered by the HMO's contract with the enrollee. Nor would it create a medical malpractice cause of action or create liability on the part of an employer, employer purchasing group, welfare benefit group, or other entity that purchased coverage or assumed risk on behalf of its employees or participants.

The bill would define ordinary care as the degree of care that an HMO of ordinary prudence would use under the same or similar circumstances. For employees or others acting on behalf of the HMO, ordinary care would be defined as the care that a person of ordinary prudence in the same profession, specialty, or area of practice would use under the same or similar circumstances.

The bill would only apply to causes of action that were filed on or after the bill's effective date.

MCL 333.21035a, 333.21051a and 333.21051b

Analyst: W. Flory

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.