

HOUSE BILL No. 4127

February 2, 1999, Introduced by Reps. Baird, Martinez, Jacobs, Cherry, Schauer, Bob Brown, Vaughn, Brater, Jamnick, LaForge, Hanley, Bovin, Hansen, Gielegem, Switalski, Pestka, Bogardus, Minore, Dennis, Garza, Sheltroun, Rison, Kelly, Daniels, O'Neil, Clarke, Schermesser, Tesanovich, Price, Neumann, Wojno, Kilpatrick, Callahan, Spade, Quarles, Scott, Lockwood, Hardman, Clark, Woodward, Hale, Frank, Rivet, Prusi, Mans, Lemmons, DeHart, Basham and Reeves and referred to the Committee on Health Policy.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 21035A. A REQUEST BY AN ENROLLEE OF A HEALTH MAINTENANCE ORGANIZATION TO RECEIVE A COVERED TREATMENT OR SERVICE OR
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 DECISION AND IS LIABLE FOR DAMAGES FOR HARM TO AN ENROLLEE
8 SION AND IS LIABLE FOR DAMAGES FOR HARM TO AN ENROLLEE
9 PROXIMATELY CAUSED BY ITS FAILURE TO EXERCISE ORDINARY CARE.

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.

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.

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