

SENATE BILL NO. 42

January 26, 1999, Introduced by Senator A. SMITH 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 21051a and
21051b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 21051A. (1) A HEALTH MAINTENANCE ORGANIZATION SHALL
2 EXERCISE ORDINARY CARE WHEN MAKING A HEALTH CARE TREATMENT DECI-
3 SION AND IS LIABLE FOR DAMAGES FOR HARM TO AN ENROLLEE PROXI-
4 MATELY CAUSED BY ITS FAILURE TO EXERCISE ORDINARY CARE.
5 (2) A HEALTH MAINTENANCE ORGANIZATION IS LIABLE FOR DAMAGES
6 FOR HARM TO AN ENROLLEE PROXIMATELY CAUSED BY A HEALTH CARE
7 TREATMENT DECISION MADE BY A HEALTH MAINTENANCE ORGANIZATION
8 EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REPRESENTATIVE ACTING ON
9 BEHALF OF THE HEALTH MAINTENANCE ORGANIZATION AND OVER WHOM THE
10 HEALTH MAINTENANCE ORGANIZATION HAS THE RIGHT TO EXERCISE

1 INFLUENCE OR CONTROL OR HAS EXERCISED INFLUENCE OR CONTROL THAT
2 RESULTED IN THE FAILURE TO EXERCISE ORDINARY CARE. HOWEVER, A
3 FINDING THAT A HEALTH PROFESSIONAL IS AN EMPLOYEE, AGENT, OSTEN-
4 SIBLE AGENT, OR REPRESENTATIVE OF A HEALTH MAINTENANCE ORGANIZA-
5 TION SHALL NOT BE BASED SOLELY ON PROOF THAT THE INDIVIDUAL'S
6 NAME APPEARS IN A LISTING OF APPROVED PROVIDERS MADE AVAILABLE TO
7 THE HEALTH MAINTENANCE ORGANIZATION'S ENROLLEES.

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

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

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

17 (4) THIS SECTION DOES NOT CREATE AN OBLIGATION FOR A HEALTH
18 MAINTENANCE ORGANIZATION TO PROVIDE TO AN ENROLLEE TREATMENT THAT
19 IS NOT COVERED BY THE HEALTH MAINTENANCE ORGANIZATION CONTRACT
20 WITH THE ENROLLEE.

21 (5) THIS SECTION DOES NOT CREATE ANY LIABILITY ON THE PART
22 OF AN EMPLOYER OR EMPLOYER PURCHASING GROUP THAT PURCHASES COVER-
23 AGE OR ASSUMES RISK ON BEHALF OF ITS EMPLOYEES.

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

1 (7) AS USED IN THIS SECTION:

2 (A) "HEALTH CARE TREATMENT DECISION" MEANS EITHER A
3 DETERMINATION AS TO WHEN THE HEALTH MAINTENANCE ORGANIZATION
4 ACTUALLY PROVIDES MEDICAL SERVICES OR A DECISION THAT AFFECTS THE
5 QUALITY OF THE DIAGNOSIS, CARE, OR TREATMENT PROVIDED TO THE
6 HEALTH MAINTENANCE ORGANIZATION'S ENROLLEES.

7 (B) "ORDINARY CARE" MEANS FOR A HEALTH MAINTENANCE ORGANIZA-
8 TION THAT DEGREE OF CARE THAT A HEALTH MAINTENANCE ORGANIZATION
9 OF ORDINARY PRUDENCE WOULD USE UNDER THE SAME OR SIMILAR
10 CIRCUMSTANCES. FOR AN EMPLOYEE, AGENT, OSTENSIBLE AGENT, OR REP-
11 RESENTATIVE ACTING ON BEHALF OF THE HEALTH MAINTENANCE ORGANIZA-
12 TION, ORDINARY CARE MEANS THAT DEGREE OF CARE THAT A PERSON OF
13 ORDINARY PRUDENCE IN THE SAME PROFESSION, SPECIALTY, OR AREA OF
14 PRACTICE AS THAT PERSON WOULD USE UNDER THE SAME OR SIMILAR
15 CIRCUMSTANCES.

16 SEC. 21051B. A HEALTH MAINTENANCE ORGANIZATION SHALL NOT
17 ENTER INTO A CONTRACT WITH A HEALTH PROFESSIONAL OR HEALTH FACIL-
18 ITY THAT INCLUDES AN INDEMNIFICATION OR HOLD HARMLESS CLAUSE FOR
19 THE ACTS OR CONDUCT OF THE HEALTH MAINTENANCE ORGANIZATION.

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