House
Legislative
Analysis
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LET PATIENTS SUE HMOS FOR NEGLIGENCE

House Bill 4314
Sponsor: Rep. Paula K. Zelenko
Committee: Health Policy

Complete to 3-15-01

A SUMMARY OF HOUSE BILL 4314 AS INTRODUCED 2-20-01

The bill would amend the Insurance Code to:

- make health maintenance organizations (HMOs) liable for harm caused to an enrollee by the HMO's negligence in health care treatment decisions regarding that enrollee;

- prohibit health care maintenance organizations (HMOs) 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; and

- prohibit HMOs from entering into contracts with health professionals or health facilities that included an indemnification or "hold harmless" clause for the HMO's acts or conduct.

HMO liability. More specifically, the bill would require HMOs to exercise "ordinary care" when making a "health care treatment decision" (defined in the bill to mean either a determination as to when the HMO actually provided medical services or a decision that affected the quality of the diagnosis, care, or treatment provided to the HMO's enrollees). The HMO would be liable for damages for harm to an enrollee proximately caused by the HMO's failure to exercise "ordinary care." An HMO also would be responsible for the negligent treatment decisions of its employees, agents, ostensible agents, or representatives acting on its behalf and over whom it 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 the HMO's approved providers 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.

(The bill would define "ordinary care" to mean, for an HMO, "that degree of care that a health maintenance organization of ordinary prudence would use under the same or similar circumstances," and, for its employees and agents, "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.")

Defenses. An HMO accused of negligence in its treatment decisions could offer both of the following defenses: (1) that neither the HMO nor its employees, agents, ostensible agents, or representatives controlled, influenced, or participated in the health care treatment decision; and (2) that the HMO did not deny or delay payment for any treatment prescribed or recommended by a provider to the enrollee. However, an HMO could not avoid liability for negligent treatment

decisions by entering into a contract with a health professional or facility that included an indemnification or "hold harmless" clause for the HMO's acts.

Other provisions. The bill would not create an obligation for an HMO to provide treatment that wasn't covered by the HMO contract with its enrollees. The bill also would not create any liability on the part of an employer, employer purchasing group, welfare benefit plan, or other entity that bought coverage or assumed risk on behalf of its employees or participants. Finally, the bill would not create a medical malpractice cause of action.

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

MCL 500.3575, 500.3577, and 500.3579

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