

SENATE BILL No. 333

March 22, 2005, Introduced by Senators BRATER, PRUSI, JACOBS, SCHAUER and CLARKE and referred to the Committee on Health Policy.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding sections 3575 and 3577.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3575. (1) A HEALTH MAINTENANCE ORGANIZATION SHALL
2 EXERCISE ORDINARY CARE WHEN MAKING A HEALTH CARE TREATMENT DECISION
3 AND IS LIABLE FOR DAMAGES FOR HARM TO AN ENROLLEE PROXIMATELY
4 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

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

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

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

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

21 (5) THIS SECTION DOES NOT CREATE ANY LIABILITY ON THE PART OF
22 AN EMPLOYER OR EMPLOYER PURCHASING GROUP THAT PURCHASES COVERAGE OR
23 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 600.9947, THIS SECTION DOES NOT CREATE A
26 MEDICAL MALPRACTICE CAUSE OF ACTION.

27 (7) AS USED IN THIS SECTION:

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

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

15 SEC. 3577. A HEALTH MAINTENANCE ORGANIZATION SHALL NOT ENTER
16 INTO A CONTRACT WITH A HEALTH PROFESSIONAL OR HEALTH FACILITY THAT
17 INCLUDES AN INDEMNIFICATION OR HOLD HARMLESS CLAUSE FOR THE ACTS OR
18 CONDUCT OF THE HEALTH MAINTENANCE ORGANIZATION.

19 Enacting section 1. Section 3575 of the insurance code of
20 1956, 1956 PA 218, MCL 500.3575, as added by this amendatory act,
21 applies only to causes of action that are filed on or after the
22 effective date of this amendatory act.