

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1257 Session of  
1999

INTRODUCED BY DeLUCA, DERMODY, COLAFELLA, BEBKO-JONES,  
L. I. COHEN, M. COHEN, CORRIGAN, COSTA, CURRY, DALEY,  
DeWEESE, DONATUCCI, EACHUS, FREEMAN, GEORGE, GIGLIOTTI,  
GRUCELA, HALUSKA, HARHAI, HENNESSEY, JAMES, JOSEPHS,  
LAUGHLIN, MAHER, MANDERINO, MANN, MELIO, PESCI, PETRARCA,  
PISTELLA, ROBINSON, SAINATO, RUFFING, SOLOBAY, SURRA,  
TANGRETTI, THOMAS, TRAVAGLIO, TRELLO, WALKO, WILLIAMS,  
YOUNGBLOOD, YUDICHAK, OLIVER AND PLATTS, APRIL 13, 1999

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, OCTOBER 10, 2000

## AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An  
2 act relating to insurance; amending, revising, and  
3 consolidating the law providing for the incorporation of  
4 insurance companies, and the regulation, supervision, and  
5 protection of home and foreign insurance companies, Lloyds  
6 associations, reciprocal and inter-insurance exchanges, and  
7 fire insurance rating bureaus, and the regulation and  
8 supervision of insurance carried by such companies,  
9 associations, and exchanges, including insurance carried by  
10 the State Workmen's Insurance Fund; providing penalties; and  
11 repealing existing laws," ~~further providing for~~ <—  
12 ~~responsibilities of managed care plans; and providing for~~  
13 ~~managed care plan liability.~~

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 ~~Section 1. Section 2111 of the act of May 17, 1921 (P.L.682, <—~~  
17 ~~No.284), known as The Insurance Company Law of 1921, added June~~  
18 ~~17, 1998 (P.L.464, No.68), is amended to read:~~

19 ~~Section 2111. Responsibilities of Managed Care Plans. A~~  
20 ~~managed care plan shall do all of the following:~~

~~(1) Assure availability and accessibility of adequate health care providers in a timely manner, which enables enrollees to have access to quality care and continuity of health care services.~~

~~(1.1) Exercise ordinary care when making health care coverage decisions. A managed care plan may be held civilly liable in an action brought by an enrollee against the managed care plan for failure to exercise ordinary care.~~

~~(2) Consult with health care providers in active clinical practice regarding professional qualifications and necessary specialists to be included in the plan.~~

~~(3) Adopt and maintain a definition of medical necessity used by the plan in determining health care services.~~

~~(4) Ensure that emergency services are provided twenty four (24) hours a day, seven (7) days a week and provide reasonable payment or reimbursement for emergency services.~~

~~(5) Adopt and maintain procedures by which an enrollee can obtain health care services outside the plan's service area.~~

~~(6) Adopt and maintain procedures by which an enrollee with a life threatening, degenerative or disabling disease or condition shall, upon request, receive an evaluation and, if the plan's established standards are met, be permitted to receive:~~

~~(i) a standing referral to a specialist with clinical expertise in treating the disease or condition; or~~

~~(ii) the designation of a specialist to provide and coordinate the enrollee's primary and specialty care.~~

~~The referral to or designation of a specialist shall be pursuant to a treatment plan approved by the managed care plan in consultation with the primary care provider, the enrollee and, as appropriate, the specialist. When possible, the specialist~~

~~must be a health care provider participating in the plan.~~

~~(7) Provide direct access to obstetrical and gynecological services by permitting an enrollee to select a health care provider participating in the plan to obtain maternity and gynecological care, including medically necessary and appropriate follow up care and referrals for diagnostic testing related to maternity and gynecological care, without prior approval from a primary care provider. The health care services shall be within the scope of practice of the selected health care provider. The selected health care provider shall inform the enrollee's primary care provider of all health care services provided.~~

~~(8) Adopt and maintain a complaint process as set forth in subdivision (g).~~

~~(9) Adopt and maintain a grievance process as set forth in subdivision (i).~~

~~(10) Adopt and maintain credentialing standards for health care providers as set forth in subdivision (d).~~

~~(11) Ensure that there are participating health care providers that are physically accessible to people with disabilities and can communicate with individuals with sensory disabilities in accordance with Title III of the Americans with Disabilities Act of 1990 (Public Law 101 336, 42 U.S.C. § 12181 et seq.).~~

~~(12) Provide a list of health care providers participating in the plan to the department every two (2) years or as may otherwise be required by the department. The list shall include the extent to which health care providers in the plan are accepting new enrollees.~~

~~(13) Report to the department and the Insurance Department~~

~~in accordance with the requirements of this article. Such information shall include the number, type and disposition of all complaints and grievances filed with the plan.~~

~~Section 2. The act is amended by adding a section to read:~~

~~Section 2114. Managed Care Plan Liability.~~

~~(a) A managed care plan is prohibited from including~~

SECTION 1. THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS THE INSURANCE COMPANY LAW OF 1921, IS AMENDED BY ADDING SECTIONS TO READ:

SECTION 2114. MANAGED CARE PLAN LIABILITY.--(A) A MANAGED CARE PLAN IS PROHIBITED FROM INCLUDING provisions in contracts with providers holding the plan harmless from any liability.

(b) A plan is prohibited from including indemnity clauses, which transfer to providers by indemnification or otherwise any liability relating to activities or omissions of the managed care plan, in its contracts with providers.

SECTION 2115. EXERCISE OF ORDINARY CARE REQUIRED.--(A) A MANAGED CARE PLAN SHALL EXERCISE ORDINARY CARE WHEN MAKING HEALTH CARE COVERAGE DECISIONS. A MANAGED CARE PLAN MAY BE HELD CIVILLY LIABLE IN AN ACTION BROUGHT BY AN ENROLLEE AGAINST THE MANAGED CARE PLAN FOR FAILURE TO EXERCISE ORDINARY CARE WHEN BOTH OF THE FOLLOWING APPLY:

(1) THE FAILURE TO EXERCISE ORDINARY CARE RESULTED IN THE DENIAL, DELAY OR MODIFICATION OF THE HEALTH CARE SERVICE RECOMMENDED FOR, OR FURNISHED TO, AN ENROLLEE.

(2) THE ENROLLEE SUFFERED SUBSTANTIAL HARM.

(B) FOR PURPOSES OF THIS SECTION:

(1) THE TERM "SUBSTANTIAL HARM" MEANS LOSS OF LIFE, LOSS OR SIGNIFICANT IMPAIRMENT OF LIMB OR BODY FUNCTION, SIGNIFICANT DISFIGUREMENT, SEVERE AND CHRONIC PHYSICAL PAIN OR SIGNIFICANT

1 FINANCIAL LOSS.

2 (2) HEALTH CARE SERVICES NEED NOT BE RECOMMENDED OR  
3 FURNISHED BY AN IN-PLAN PROVIDER, BUT MAY BE RECOMMENDED OR  
4 FURNISHED BY ANY HEALTH CARE PROVIDER PRACTICING WITHIN THE  
5 SCOPE OF THE PROVIDER'S PRACTICE.

6 (3) HEALTH CARE SERVICES SHALL BE RECOMMENDED OR FURNISHED  
7 AT ANY TIME PRIOR TO THE INCEPTION OF THE ACTION, AND THE  
8 RECOMMENDATION NEED NOT BE MADE PRIOR TO THE OCCURRENCE OF  
9 SUBSTANTIAL HARM.

10 (C) THIS SECTION SHALL NOT CREATE ANY LIABILITY ON THE PART  
11 OF AN EMPLOYER OR AN EMPLOYER GROUP PURCHASING ORGANIZATION THAT  
12 PURCHASES COVERAGE OR ASSUMES RISK ON BEHALF OF ITS EMPLOYEES OR  
13 ON BEHALF OF SELF-FUNDED EMPLOYEE BENEFIT PLANS.

14 (D) THIS SECTION DOES NOT CREATE ANY NEW OR ADDITIONAL  
15 LIABILITY ON THE PART OF A HEALTH CARE SERVICE PLAN OR MANAGED  
16 CARE ENTITY FOR HARM CAUSED THAT IS ATTRIBUTABLE TO THE MEDICAL  
17 NEGLIGENCE OF A TREATING PHYSICIAN OR OTHER TREATING HEALTH CARE  
18 PROVIDER.

19 (E) (1) A PERSON MAY NOT MAINTAIN A CAUSE OF ACTION  
20 PURSUANT TO THIS SECTION AGAINST ANY MANAGED CARE PLAN UNLESS  
21 THE PERSON OR THE PERSON'S REPRESENTATIVE HAS EXHAUSTED THE  
22 REVIEW PROCEDURES PROVIDED UNDER THIS ARTICLE.

23 (2) COMPLIANCE WITH PARAGRAPH (1) IS NOT REQUIRED IN A CASE  
24 WHERE EITHER OF THE FOLLOWING APPLIES:

25 (I) SUBSTANTIAL HARM HAS OCCURRED PRIOR TO THE COMPLETION OF  
26 THE APPLICABLE REVIEW.

27 (II) SUBSTANTIAL HARM WILL IMMINENTLY OCCUR PRIOR TO THE  
28 COMPLETION OF THE APPLICABLE REVIEW.

29 Section 3 2. This act shall take effect in 60 days.

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