

AMENDED IN ASSEMBLY JULY 6, 1999

AMENDED IN SENATE APRIL 29, 1999

AMENDED IN SENATE APRIL 20, 1999

AMENDED IN SENATE MARCH 15, 1999

SENATE BILL

No. 21

**Introduced by Senator Figueroa
(Coauthor: Senator Escutia)**

December 7, 1998

An act to add Title 7 (commencing with Section 3428) to Part 1 of Division 4 of the Civil Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 21, as amended, Figueroa. Health care service plans: duty of care.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Commissioner of Corporations. Willful violation of those provisions is a crime.

This bill would require a health care service plan or managed care entity, for services rendered on or after January 1, 2000, to be legally responsible to patients to ensure that health care providers, rather than the plan, shall be in charge of patient care.

The bill would provide that a health care service plan or managed care entity shall have a duty of ordinary care to provide medically appropriate health care service to its

members, subscribers, or enrollees where the health care service is a benefit provided under the plan.

The bill would make a health care service plan or managed care entity liable for any and all harm legally caused by the failure to exercise ordinary care in the arranging for the provision of, or denial of, health care services.

The bill would set forth prohibitions regarding health care service plans or managed care entities seeking indemnity from the requirements of this provision and would make any provisions to the contrary in a contract with providers void and unenforceable. The bill would make any waiver of certain provisions in the bill contrary to public policy, unenforceable, and void.

Existing law provides for the regulation of insurance, administered by the Commissioner of Insurance. Existing law provides that the business of insurance is subject to the laws of California applicable to any other business, including, but not limited to, the Unruh Civil Rights Act in the Civil Code and the antitrust and unfair business practices laws in the Business and Professions Code.

This bill would provide that all persons or entities engaged in the business of insurance, as defined in the bill, in this state shall be held accountable ~~in a civil action~~ for all harm legally caused by the wrongful or unreasonable denial or delay of health care or disability benefits or services.

This bill would provide that health care service plans and managed care entities shall be subject to the laws of California applicable to any other business or business practice, including those applicable to the business of insurance.

Existing law provides that for the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by the Civil Code, is the amount that will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

This bill would provide that damages shall be recoverable, including under this provision, for certain violations of the provisions of the bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated



by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited
2 as the Managed Health Care Insurance Accountability
3 Act of 1999.

4 SEC. 2. (a) The Legislature finds and declares as
5 follows:

6 (1) Based on the fundamental nature of the
7 relationships involved, a health care service plan and all
8 other managed care entities regulated under the Health
9 and Safety Code are engaged in the business of insurance
10 in this state as that term is defined for purposes of the
11 McCarran-Ferguson Act (15 U.S.C. Sec. 1011 and
12 following).

13 (2) The state's interest in regulating the business of
14 insurance as provided in this act is to protect insurance
15 purchasers and their beneficiaries, including employees,
16 their dependents and families, and any other patients
17 covered by private employer-sponsored health and
18 disability insurance, from the harm that may occur when
19 insurance entities, including managed health care
20 insurance entities, act improperly.

21 (3) The conduct of managed health care and other
22 insurance entities intended to be regulated by this act
23 includes any failure or refusal to timely approve or
24 authorize appropriate health care services, the manner in
25 which decisions relating to the quality of care are made,
26 and the manner in which claims are handled, adjusted,
27 investigated, or resolved, as those practices relate to the
28 quality of medical care provided.

29 (4) The stated legislative goal of the Knox-Keene
30 Health Care Service Plan Act of 1975, Chapter 2.2
31 (commencing with Section 1340) of Division 2 of the



1 Health and Safety Code, is “Assuring the continued role
2 of the professional as the determiner of the patient’s
3 health needs which fosters the traditional relationship of
4 trust and confidence between the patient and the
5 professional” (subdivision (a) of Section 1342 of the
6 Health and Safety Code). However, undue influence by
7 a health care service plan or managed care entity based
8 upon financial interests interferes with the role of the
9 provider as the determiner of the patient’s health care
10 needs. A health care service plan, having established the
11 organizational structure that fosters this conduct, should
12 bear the liability for the injury resulting from that
13 conduct.

14 (b) It is the intent of the Legislature in enacting this
15 act to do all of the following:

16 (1) To provide state law remedies to health care
17 service plan members and enrollees and other insureds
18 when they suffer injury, whether it is physical, mental,
19 emotional, or economic, as a result of the failure of a
20 health care service plan or a medical insurer to provide
21 quality health care services to patients.

22 (2) To ensure that adequate state law remedies exist
23 for all persons who are subject to the wrongful acts of
24 those entities that promise insurance for the life, health,
25 and disability of California citizens. The existence of these
26 remedies and the deterrent effects of these remedies is
27 necessary to protect the health and safety of the residents
28 of this state.

29 (3) To address the harm caused to health care service
30 plan members and enrollees or other insureds by the
31 failure or refusal of the health care service plan or any
32 other insurer to timely approve members’ requests for
33 health care services that are medically appropriate and
34 that are health care services otherwise provided as
35 benefits under the plan. Where the health care services
36 are otherwise set forth as benefits to be provided under
37 the plan, the failure or refusal to provide those benefits
38 where they are medically appropriate constitutes a
39 breach of the health care service plan’s or other insurer’s



1 duty of care to provide health care services at a level of
2 quality acceptable in this state.

3 SEC. 3. Title 7 (commencing with Section 3428) is
4 added to Part 1 of Division 4 of the Civil Code, to read:

5

6 TITLE 7. DUTY OF HEALTH CARE SERVICE

7 PLANS AND MANAGED CARE ENTITIES

8

9 3428. (a) For services rendered on or after January 1,
10 2000, a health care service plan or managed care entity,
11 as described in subdivision (f) of Section 1345 of the
12 Health and Safety Code, shall be legally responsible to
13 patients to ensure that health care providers, rather than
14 the health care service plan or managed care entity, are
15 in charge of patient care.

16 (b) (1) A health care service plan or managed care
17 entity shall have a duty of ordinary care to arrange for the
18 provision of medically appropriate health care service to
19 its members, subscribers, or enrollees where the health
20 care service is a benefit provided under the plan.

21 (2) A health care service plan or managed care entity
22 shall be liable for any and all harm legally caused by the
23 *health care service plan's or managed care entity's* failure
24 to exercise ordinary care in arranging for the provision of,
25 or denial of, health care services including, but not
26 limited to, where the failure to provide those services
27 resulted from the fact that the health care service plan or
28 managed care entity interfered with, delayed, or
29 otherwise influenced the quality of medical care
30 provided.

31 (3) For purposes of this section, the existence of a
32 capitation or risk-sharing agreement between a health
33 care service plan or managed care entity and a provider
34 does not, alone, establish a violation of the duty of
35 ordinary care, but may be considered by the trier of fact
36 in determining whether influence on the part of the
37 health care service plan or managed care entity affected
38 the making of the health care treatment decision.

39 (c) Nothing in this section shall cause a health care
40 service plan or managed care entity to be defined as a



1 health care provider under any provision of law,
2 including, but not limited to, Section 6146 of the Business
3 and Professions Code, Sections 3333.1 or 3333.2 of this
4 code, or Sections 340.5, 364, 425.13, 667.7, or 1295 of the
5 Code of Civil Procedure.

6 (d) A health care service plan or managed care entity
7 shall not seek indemnity, whether contractual or
8 equitable, from a provider for liability imposed under
9 subdivision (b). Any provision to the contrary in a
10 contract with providers is void and unenforceable.

11 (e) This section shall not create any liability on the
12 part of an employer or an employer group purchasing
13 organization that purchases coverage or assumes risk on
14 behalf of its employees or on behalf of self-funded
15 employee benefit plans.

16 (f) Any waiver by a member, subscriber, or enrollee of
17 the provisions of this section is contrary to public policy
18 and shall be unenforceable and void.

19 (g) This section does not create any new or additional
20 liability on the part of a health care service plan or
21 managed care entity for ~~the sole harm caused that is~~
22 *attributable solely to the* medical negligence of a treating
23 *physician or other treating health care provider.*

24 (h) This section does not abrogate or limit any other
25 theory of liability otherwise available at law.

26 (i) This section shall not apply in instances where
27 members, subscribers, or enrollees receive treatment by
28 prayer, as authorized by Section 2063 of the Business and
29 Professions Code, or health care services, as authorized by
30 Section 2731 of the Business and Professions Code, or
31 subdivision (a) of Section 1270 of the Health and Safety
32 Code, nor does it impose medical requirements or
33 standards upon services rendered pursuant to these
34 provisions.

35 (j) If any provision of this section or the application
36 thereof to any person or circumstance is held to be
37 unconstitutional or otherwise invalid or unenforceable,
38 the remainder of the section and the application of those
39 provisions to other persons or circumstances shall not be
40 affected thereby.



1 3428.1. (a) All persons or entities engaged in the
2 business of insurance in this state shall be held
3 accountable ~~in a civil action~~ for all harm legally caused by
4 the wrongful or unreasonable denial or delay of health
5 care or disability benefits or services.

6 (b) For purposes of this section, “persons or entities
7 engaged in the business of insurance” are the following:

8 (1) Any and all entities regulated under the Insurance
9 Code to the extent those entities provide insurance for
10 life, health, medical, or disability risks.

11 (2) Any and all entities subject to regulation under
12 Chapter 2.2 (commencing with Section 1340) of Division
13 2 of the Health and Safety Code or any subsequent
14 legislation that replaces those provisions.

15 (c) Notwithstanding any other law, health care service
16 plans and managed care entities shall be subject to the
17 laws of California applicable to any other business or
18 business practice, including, but not limited to, those
19 specified in Section 1861.03 of the Insurance Code.

20 (d) Damages recoverable for violation of this section
21 include, but are not limited to, those set forth in Section
22 3333.

23 (e) Any waiver by a member, subscriber, or enrollee
24 of the provisions of this section is contrary to public policy
25 and shall be unenforceable and void.

26 (f) This section does not abrogate or limit any other
27 theory of liability otherwise available at law.

28 (g) If any provision of this section or the application
29 thereof to any person or circumstances is held to be
30 unconstitutional or otherwise invalid or unenforceable,
31 the remainder of the section and the application of those
32 provisions to other persons or circumstances shall not be
33 affected thereby.

34 SEC. 4. No reimbursement is required by this act
35 pursuant to Section 6 of Article XIII B of the California
36 Constitution because the only costs that may be incurred
37 by a local agency or school district will be incurred
38 because this act creates a new crime or infraction,
39 eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section



1 17556 of the Government Code, or changes the definition
2 of a crime within the meaning of Section 6 of Article
3 XIII B of the California Constitution.

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