

AMENDED IN ASSEMBLY SEPTEMBER 8, 1999

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 and Assembly Member
Kuehl
(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 *that* a health care service plan or managed care entity, for services rendered on or after January 1, 2000 2001, ~~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 and 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 *in specified circumstances*.

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 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.~~

This bill would also require that a person may not maintain a cause of action against a health care service plan unless he or she has exhausted the procedures provided by any applicable independent medical review system or independent review system, with certain exceptions. This provision would only become operative if either SB 189 and AB 55, are enacted on or before January 1, 2000.

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 *SECTION 1. This act shall be known and may be cited*
- 3 *as the Managed Health Care Insurance Accountability*
- 4 *Act of 1999.*
- 5 *SEC. 2. (a) The Legislature finds and declares as*
- 6 *follows:*
- 7 *(1) Based on the fundamental nature of the*
- 8 *relationships involved, a health care service plan and all*
- 9 *other managed care entities regulated under the Health*
- 10 *and Safety Code are engaged in the business of insurance*
- 11 *in this state as that term is defined for purposes of the*
- 12 *McCarran-Ferguson Act (15 U.S.C. Sec. 1011 and*
- 13 *following). Nothing in this act shall be construed to*
- 14 *impose the regulatory requirements of the Insurance*
- 15 *Code on health care service plans regulated by the Health*
- 16 *and Safety Code.*
- 17 *(2) The state's interest in regulating the business of*
- 18 *insurance as provided in this act is to protect insurance*
- 19 *purchasers and their beneficiaries, including employees,*



1 *their dependents and families, and any other patients*
2 *covered by private employer-sponsored health and*
3 *disability insurance, from the harm that may occur when*
4 *insurance entities, including managed health care*
5 *insurance entities, act improperly. To this end, health*
6 *care providers rather than health care service plans and*
7 *managed care entities are in charge of patient care.*

8 *(b) It is the intent of the Legislature in enacting this*
9 *act to ensure that adequate state law remedies exist for all*
10 *persons who are subject to the wrongful acts of those*
11 *entities that contract to provide insurance for the life,*
12 *health, and disability of California citizens. The existence*
13 *of these remedies and the deterrent effects of these*
14 *remedies are necessary to protect the health and safety*
15 *of the residents of this state.*

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

18
19 *TITLE 7. DUTY OF HEALTH CARE SERVICE*
20 *PLANS AND MANAGED CARE ENTITIES*

21
22 *3428. (a) For services rendered on or after January 1,*
23 *2001, a health care service plan or managed care entity,*
24 *as described in subdivision (f) of Section 1345 of the*
25 *Health and Safety Code, shall have a duty of ordinary care*
26 *to arrange for the provision of medically necessary health*
27 *care service to its subscribers and enrollees, where the*
28 *health care service is a benefit provided under the plan,*
29 *and shall be liable for any and all harm legally caused by*
30 *its failure to exercise that ordinary care when both of the*
31 *following apply:*

32 *(1) The failure to exercise ordinary care resulted in the*
33 *denial, delay, or modification of the health care service*
34 *recommended for, or furnished to, a subscriber or*
35 *enrollee.*

36 *(2) The subscriber or enrollee suffered substantial*
37 *harm.*

38 *(b) For purposes of this section: (1) substantial harm*
39 *means loss of life, loss or significant impairment of limb*
40 *or bodily function, significant disfigurement, severe and*



1 *chronic physical pain, or significant financial loss; (2)*
2 *health care services need not be recommended or*
3 *furnished by an in-plan provider, but may be*
4 *recommended or furnished by any health care provider*
5 *practicing within the scope of his or her practice; and (3)*
6 *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*
9 *occurrence of substantial harm.*

10 *(c) Health care service plans and managed care*
11 *entities are not health care providers under any provision*
12 *of law, including, but not limited to, Section 6146 of the*
13 *Business and Professions Code, Sections 3333.1 or 3333.2*
14 *of this code, or Sections 340.5, 364, 425.13, 667.7, or 1295 of*
15 *the Code of Civil Procedure.*

16 *(d) A health care service plan or managed care entity*
17 *shall not seek indemnity, whether contractual or*
18 *equitable, from a provider for liability imposed under*
19 *subdivision (a). Any provision to the contrary in a*
20 *contract with providers is void and unenforceable.*

21 *(e) This section shall not create any liability on the*
22 *part of an employer or an employer group purchasing*
23 *organization that purchases coverage or assumes risk on*
24 *behalf of its employees or on behalf of self-funded*
25 *employee benefit plans.*

26 *(f) Any waiver by a subscriber or enrollee of the*
27 *provisions of this section is contrary to public policy and*
28 *shall be unenforceable and void.*

29 *(g) This section does not create any new or additional*
30 *liability on the part of a health care service plan or*
31 *managed care entity for harm caused that is attributable*
32 *to the medical negligence of a treating physician or other*
33 *treating health care provider.*

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

36 *(i) This section shall not apply in instances where*
37 *subscribers or enrollees receive treatment by prayer,*
38 *consistent with the provisions of subdivision (a) of*
39 *Section 1270 of the Health and Safety Code, in lieu of*
40 *medical treatment.*



1 (j) Damages recoverable for a violation of this section
2 include, but are not limited to, those set forth in Section
3 3333.

4 (k) (1) A person may not maintain a cause of action
5 pursuant to this section against any entity required to
6 comply with any independent medical review system or
7 independent review system required by law unless the
8 person or his or her representative has exhausted the
9 procedures provided by the applicable independent
10 review system.

11 (2) Compliance with paragraph (1) is not required in
12 a case where either of the following applies:

13 (A) Substantial harm, as defined in subdivision (b),
14 has occurred prior to the completion of the applicable
15 review.

16 (B) Substantial harm, as defined, in subdivision (b),
17 will imminently occur prior to the completion of the
18 applicable review.

19 (3) This subdivision shall become operative only if
20 Senate Bill 189 and Assembly Bill 55 of the 1999–2000
21 Regular Session are also enacted and enforceable.

22 (l) If any provision of this section or the application
23 thereof to any person or circumstance is held to be
24 unconstitutional or otherwise invalid or unenforceable,
25 the remainder of the section and the application of those
26 provisions to other persons or circumstances shall not be
27 affected thereby.

28 SEC. 4. No reimbursement is required by this act
29 pursuant to Section 6 of Article XIII B of the California
30 Constitution because the only costs that may be incurred
31 by a local agency or school district will be incurred
32 because this act creates a new crime or infraction,
33 eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section
35 17556 of the Government Code, or changes the definition
36 of a crime within the meaning of Section 6 of Article
37 XIII B of the California Constitution.

38 ~~as the Managed Health Care Insurance Accountability~~
39 ~~Act of 1999.~~



1 ~~SEC. 2. (a) The Legislature finds and declares as~~
2 ~~follows:~~

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

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

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

26
27
28
29
30
31
32

**All matter omitted in this version of the
bill appears in the bill as amended in the
Assembly, July 6, 1999 (JR 11)**

