Senate Bill No. 21

CHAPTER 536

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.

[Approved by Governor September 27, 1999. Filed with Secretary of State September 28, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 21, 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, 2001, have a duty of ordinary care to provide medically appropriate health care service to its subscribers 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.

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 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.

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

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

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

(1) Based on the fundamental nature of the relationships involved, a health care service plan and all other managed care entities regulated under the Health and Safety Code are engaged in the business of insurance in this state as that term is defined for purposes of the McCarran-Ferguson Act (15 U.S.C. Sec. 1011 and following). Nothing in this act shall be construed to impose the regulatory requirements of the Insurance Code on health care service plans regulated by the Health and Safety Code.

(2) The state's interest in regulating the business of insurance as provided in this act is to protect insurance purchasers and their beneficiaries, including employees, their dependents and families, and any other patients covered by private employer-sponsored health and disability insurance, from the harm that may occur when insurance entities, including managed health care insurance entities, act improperly. To this end, health care providers rather than health care service plans and managed care entities are in charge of patient care.

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

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

TITLE 7. DUTY OF HEALTH CARE SERVICE PLANS AND MANAGED CARE ENTITIES

3428. (a) For services rendered on or after January 1, 2001, a health care service plan or managed care entity, as described in subdivision (f) of Section 1345 of the Health and Safety Code, shall have a duty of ordinary care to arrange for the provision of medically necessary health care service to its subscribers and enrollees, where the health care service is a benefit provided under the plan, and shall be liable for any and all harm legally caused by its failure to exercise that 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, a subscriber or enrollee.

(2) The subscriber or enrollee suffered substantial harm.

(b) For purposes of this section: (1) substantial harm means loss of life, loss or significant impairment of limb or bodily function, significant disfigurement, severe and chronic physical pain, or significant financial loss; (2) health care services need not be recommended or furnished by an in-plan provider, but may be recommended or furnished by any health care provider practicing within the scope of his or her practice; and (3) health care services shall be recommended or furnished at any time prior to the inception of the action, and the recommendation need not be made prior to the occurrence of substantial harm.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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