

FEB 21 2001

COMMERCE AND REGULATION

HOUSE FILE 340
BY SCHRADER

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the duty of care of third-party payors,
2 liability for breach of the duty, and certain other
3 prohibitions and exclusions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 340

1 Section 1. NEW SECTION. 514L.1 TITLE.

2 This chapter shall be known and may be cited as "Third-
3 party Payor Liability Act".

4 Sec. 2. NEW SECTION. 514L.2 DEFINITIONS.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "Appropriate and medically necessary" means the
8 standard for health care services as determined by a physician
9 or health care provider consistent with accepted practices and
10 standards of care provided by the medical profession in the
11 community.

12 2. "Enrollee" means an individual who is enrolled in a
13 health care plan, including covered dependents.

14 3. "Health care plan" means a plan under which a person
15 undertakes to provide, arrange for, pay for, or reimburse any
16 part of the cost of any health care services.

17 4. "Health care provider" means a person licensed or
18 certified under chapter 147, 148, 148A, 148C, 149, 150, 150A,
19 151, 152, 153, 154, 154B, or 155A to provide in this state
20 professional health care services to an individual during that
21 individual's medical care, treatment, or confinement.

22 5. "Health care treatment decision" means a determination
23 made when health care services are actually provided under the
24 health care plan and a decision that affects the quality of
25 the diagnosis, care, or treatment provided to the plan's
26 insureds or enrollees.

27 6. "Health insurance carrier" means an entity subject to
28 the insurance laws and regulations of this state, or subject
29 to the jurisdiction of the commissioner of insurance, that
30 contracts or offers to contract, or that subcontracts or
31 offers to subcontract, to provide, deliver, arrange for, pay
32 for, or reimburse any of the costs of providing health care
33 services, including an insurance company offering sickness and
34 accident plans, a health maintenance organization, a nonprofit
35 health service corporation, or any other entity providing a

1 plan of health insurance, health benefits, or health services.

2 7. "Health maintenance organization" means a health
3 maintenance organization as defined in section 514B.1.

4 8. "Insured" means an individual who is covered by a
5 health care plan provided by a health insurance carrier.

6 9. "Managed care entity" means an entity that provides a
7 health care plan that selects and contracts with health care
8 providers; manages and coordinates health care services
9 delivery; monitors necessity, appropriateness, and quality of
10 health care services delivered by health care providers; and
11 performs utilization review and cost control.

12 10. "Ordinary care" means, in the case of a third-party
13 payor, that degree of care that a third-party of ordinary
14 prudence would provide under the same or similar
15 circumstances. In the case of a person who is an employee,
16 agent, or representative of a third-party payor, "ordinary
17 care" means that degree of care that a person of ordinary
18 prudence in the same profession, specialty, or area of
19 practice as such person would use in the same or similar
20 circumstances.

21 11. "Organized delivery system" means an organized
22 delivery system as licensed by the director of public health.

23 12. "Physician" means an individual licensed under chapter
24 148, 150, or 150A to practice medicine and surgery,
25 osteopathy, or osteopathic medicine and surgery.

26 13. "Third-party payor" means a health insurance carrier,
27 health maintenance organization, managed care entity, or
28 organized delivery system.

29 Sec. 3. NEW SECTION. 514L.3 THIRD-PARTY PAYOR DUTY TO
30 EXERCISE ORDINARY CARE -- LIABILITY.

31 1. A third-party payor has the duty to exercise ordinary
32 care when making health care treatment decisions and is liable
33 for damages for harm to an insured or enrollee proximately
34 caused by the third-party payor's failure to exercise such
35 ordinary care.

1 2. A third-party payor is also liable for damages for harm
2 to an insured or enrollee proximately caused by the health
3 care services treatment decisions made by an employee, agent,
4 or representative of the third-party payor who is acting on
5 behalf of the third-party payor and over whom the third-party
6 payor has the right to exercise influence or control or has
7 actually exercised influence or control if such decision
8 results in the failure to exercise ordinary care.

9 3. Either of the following is a defense in an action
10 brought pursuant to this section against a third-party payor:

11 a. That neither the third-party payor, nor an employee,
12 agent, or representative of the third-party payor controlled,
13 influenced, or participated in the health care services
14 treatment decision.

15 b. That the third-party payor did not deny or delay
16 payment for any health care services prescribed or recommended
17 by a health care provider to the insured or enrollee.

18 4. A provision under state law prohibiting a third-party
19 payor from practicing medicine or being licensed to practice
20 medicine shall not be asserted as a defense by such third-
21 party payor in an action brought against it pursuant to this
22 section or any other applicable law.

23 5. In an action against a third-party payor, a finding
24 that a health care provider is an employee, agent, or
25 representative of such third-party payor shall not be based
26 solely on proof that such a health care provider's name
27 appears in a listing of approved health care providers made
28 available to an insured or enrollee under a health care plan.

29 Sec. 4. NEW SECTION. 514L.4 EXCLUSIONS.

30 1. Section 514L.3 does not create an obligation on the
31 part of the third-party payor to provide any health care
32 services to an insured or enrollee that are not covered by the
33 health care plan offered by the third-party payor.

34 2. This chapter does not create any liability on the part
35 of an employer or an employer group purchasing organization

1 that purchases health care services coverage or assumes risk
2 on behalf of its employees for providing health care services.

3 3. This chapter does not apply to workers' compensation
4 coverages.

5 Sec. 5. NEW SECTION. 514L.5 PROHIBITIONS.

6 1. A third-party payor shall not remove a health care
7 provider from its plan or refuse to renew the participation of
8 a health care provider under its plan for advocating
9 appropriate and medically necessary health care services for
10 an insured or enrollee.

11 2. A third-party payor shall not enter into a contract
12 with a hospital or health care provider or pharmaceutical
13 company which includes an indemnification or hold harmless
14 clause for the acts or conduct of the third-party payor. Any
15 such indemnification or hold harmless clause in an existing
16 contract is void.

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EXPLANATION

18 This bill creates new Code chapter 514L. The bill defines
19 "third-party payor" as a health insurance carrier, health
20 maintenance organization, managed care entity, or organized
21 delivery system.

22 New Code section 514L.3 provides that a third-party payor
23 has the duty to exercise ordinary care when making health care
24 treatment decisions and is liable for damages for harm to an
25 insured or enrollee proximately caused by its failure to
26 exercise such ordinary care. The bill establishes certain
27 defenses to such an action for failure to use ordinary care
28 and provides that the duty to exercise ordinary care does not
29 create an obligation on the part of the third-party payor to
30 provide health care services to an insured or enrollee which
31 is not covered by the health care plan offered by the third-
32 party payor.

33 New Code section 514L.4 contains a list of items which are
34 specifically excluded from this chapter's application. New
35 Code section 514L.5 lists certain acts third-party payors are

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1 prohibited from taking.

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