

MAR 19 2001
COMMERCE AND REGULATION

HOUSE FILE 650
BY JOCHUM

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

A BILL FOR

1 An Act relating to health care including inspection and
2 duplication of health care records, requirements relating to
3 health care services policies and contracts, and the third-
4 party payor liability.

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

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 Section 1. NEW SECTION. 135.29A HEALTH CARE PROVIDER
2 RECORDS -- DUPLICATION FOR PROVISION TO PATIENT.

3 1. For the purposes of this section:

4 a. "Health care provider" means a person licensed to
5 practice medicine and surgery pursuant to chapter 148,
6 physical therapy pursuant to chapter 148A, occupational
7 therapy pursuant to chapter 148B, acupuncture pursuant to
8 chapter 148E, podiatry pursuant to chapter 149, osteopathy
9 pursuant to chapter 150, osteopathic medicine and surgery
10 pursuant to chapter 150A, chiropractic pursuant to chapter
11 151, nursing pursuant to chapter 152, dietetics pursuant to
12 chapter 152A, respiratory care pursuant to chapter 152B,
13 massage therapy pursuant to chapter 152C, dentistry pursuant
14 to chapter 153, optometry pursuant to chapter 154, psychology
15 pursuant to chapter 154B, social work pursuant to chapter
16 154C, behavioral science pursuant to chapter 154D, or licensed
17 as a physician assistant pursuant to chapter 148C, a hospital
18 licensed pursuant to chapter 135B, or a health care facility
19 licensed pursuant to chapter 135C.

20 b. "Health care record" includes but is not limited to
21 evaluations, diagnoses, prognoses, treatment, history, charts,
22 pictures, laboratory reports, X rays, prescriptions, and other
23 technical information used in assessing a patient's condition.

24 2. Upon the written request of a patient, a health care
25 provider shall allow the patient to inspect and shall provide
26 the patient with a duplicate of the health care record of the
27 patient. The health care provider may charge a fee, as
28 established by rule of the department, for duplication of the
29 record.

30 3. A health care provider may withhold the record from the
31 patient if the provider reasonably determines that the
32 information is detrimental to the physical or mental health of
33 the patient or is likely to cause the patient to harm the
34 patient or another person. If a record is withheld from the
35 patient under this subsection, the health care provider may

1 provide access to the record or a duplicate of the record to
2 the patient's attorney or personal physician upon request of
3 the patient.

4 4. The department shall adopt rules pursuant to chapter
5 17A prescribing uniform fees, based upon the actual cost of
6 duplication, that a health care provider may charge for
7 duplication of health care records requested by a patient
8 under this section. The rules may provide for an additional
9 fee based upon the actual costs for postage or other means of
10 delivery and may provide for an annual increase based upon the
11 annual rate of inflation for the preceding calendar year as
12 determined by the consumer price index published by the bureau
13 of labor statistics of the United States department of labor.

14 Sec. 2. NEW SECTION. 514C.21 HEALTH CARE SERVICES POLICY
15 OR CONTRACT -- PRIMARY CARE PROVIDER -- OBSTETRICIAN --
16 GYNECOLOGIST.

17 Notwithstanding section 514C.6, a person who provides an
18 individual or group policy of accident or health insurance or
19 an individual or group hospital or health care services
20 contract issued pursuant to chapter 509, 509A, 514, or 514A,
21 or an individual or group health maintenance organization
22 contract issued and regulated under chapter 514B, which is
23 delivered, amended, or renewed on or after July 1, 2001, and
24 which requires, in the policy or contract, that an insured,
25 subscriber, or enrollee use, or which creates incentives for
26 an insured, subscriber, or enrollee to use, a provider who is
27 under contract with or who is managed, owned, or employed by
28 the entity providing the contract or policy, shall provide
29 that a female insured, subscriber, or enrollee may select an
30 obstetrician or gynecologist as the insured's, subscriber's,
31 or enrollee's primary care provider.

32 Sec. 3. NEW SECTION. 514C.22 HEALTH CARE SERVICES POLICY
33 OR CONTRACT -- PRIMARY CARE PROVIDER -- SPECIALIST.

34 Notwithstanding section 514C.6, a person who provides an
35 individual or group policy of accident or health insurance or

1 an individual or group hospital or health care services
2 contract issued pursuant to chapter 509, 509A, 514, or 514A,
3 or an individual or group health maintenance organization
4 contract issued and regulated under chapter 514B, which is
5 delivered, amended, or renewed on or after July 1, 2001, and
6 which requires, in the policy or contract, that an insured,
7 subscriber, or enrollee use, or which creates incentives for
8 an insured, subscriber, or enrollee to use, a provider who is
9 under contract with or who is managed, owned, or employed by
10 the entity providing the contract or policy, shall provide
11 that an insured, a subscriber, or an enrollee who has a
12 serious illness or disability may select a specialist as the
13 insured's, subscriber's, or enrollee's primary care provider.

14 Sec. 4. NEW SECTION. 514C.23 HEALTH CARE SERVICES POLICY
15 OR CONTRACT -- STANDING REFERRALS.

16 Notwithstanding section 514C.6, a person who provides an
17 individual or group policy of accident or health insurance or
18 an individual or group hospital or health care services
19 contract issued pursuant to chapter 509, 509A, 514, 514A, or
20 an individual or group health maintenance organization
21 contract issued and regulated under chapter 514B, which is
22 delivered, amended, or renewed on or after July 1, 2001, and
23 which requires, in the policy or contract, that an insured,
24 subscriber, or enrollee use, or which creates incentives for
25 an insured, subscriber, or enrollee to use, a provider who is
26 under contract with or who is managed, owned, or employed by
27 the entity providing the contract or policy, shall provide a
28 procedure by which an insured, subscriber, or enrollee who has
29 an ongoing special condition that requires ongoing care from a
30 specialist may receive a standing referral to the specialist
31 for the treatment of the special condition. For the purposes
32 of this section, "special condition" means a condition or
33 disease that is life-threatening, degenerative, or disabling,
34 and that requires specialized medical care over an ongoing
35 period of time.

1 Sec. 5. NEW SECTION 514C.24 HEALTH CARE SERVICES POLICY
2 OR CONTRACT -- PRESCRIPTION DRUG FORMULARY -- EXCEPTIONS.

3 Notwithstanding section 514C.6, a person who provides an
4 individual or group policy of accident or health insurance or
5 individual or group hospital or health care services contract
6 issued pursuant to chapter 509, 509A, 514, 514A, or an
7 individual or group health maintenance organization contract
8 issued and regulated under chapter 514B, which is delivered,
9 amended, or renewed on or after July 1, 2001, that provides
10 coverage for prescription drugs on an outpatient basis and
11 that applies a formulary to the prescription drug benefits
12 provided, shall establish and maintain an expeditious process
13 and procedure that allows an insured, subscriber, or enrollee
14 to obtain, without penalty or additional cost-sharing beyond
15 that provided for in the insured's, subscriber's, or
16 enrollee's covered benefits, coverage for a specific,
17 medically necessary and appropriate nonformulary prescription
18 drug, as determined by the provider, without prior approval.

19 Sec. 6. NEW SECTION. 514C.25 HEALTH CARE SERVICES POLICY
20 OR CONTRACT -- PROHIBITIONS -- FINANCIAL INCENTIVES.

21 The commissioner shall issue rules to establish standards
22 that prohibit inappropriate financial incentives that result
23 in the denial or reduction of necessary health care services
24 for individual or group policies of accident or health
25 insurance or individual or group hospital or health care
26 services contracts issued pursuant to chapter 509, 509A, 514,
27 or 514A, or an individual or group health maintenance
28 organization contract issued and regulated under chapter 514B.

29 Sec. 7. NEW SECTION. 514L.1 TITLE.

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

32 Sec. 8. NEW SECTION. 514L.2 DEFINITIONS.

33 As used in this chapter, unless the context otherwise
34 requires:

35 1. "Appropriate and medically necessary" means the

1 standard for health care services as determined by a physician
2 or health care provider consistent with accepted practices and
3 standards of care provided by the medical profession in the
4 community.

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

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

10 4. "Health care provider" means a person licensed or
11 certified under chapter 147, 148, 148A, 148C, 149, 150, 150A,
12 151, 152, 153, 154, 154B, or 155A to provide in this state
13 professional health care services to an individual during that
14 individual's medical care, treatment, or confinement.

15 5. "Health care treatment decision" means a determination
16 made when health care services are actually provided under the
17 health care plan and a decision which affects the quality of
18 the diagnosis, care, or treatment provided to the plan's
19 insureds or enrollees.

20 6. "Health insurance carrier" means an entity subject to
21 the insurance laws and regulations of this state, or subject
22 to the jurisdiction of the commissioner of insurance, that
23 contracts or offers to contract, or that subcontracts or
24 offers to subcontract, to provide, deliver, arrange for, pay
25 for, or reimburse any of the costs of providing health care
26 services, including an insurance company offering sickness and
27 accident plans, a health maintenance organization, a nonprofit
28 health service corporation, or any other entity providing a
29 plan of health insurance, health benefits, or health services.

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

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

34 9. "Managed care entity" means an entity that provides a
35 health care plan that selects and contracts with health care

1 providers; manages and coordinates health care services
2 delivery; monitors necessity, appropriateness, and quality of
3 health care services delivered by health care providers; and
4 performs utilization review and cost control.

5 10. "Ordinary care" means, in the case of a third-party
6 payor, that degree of care that a third-party of ordinary
7 prudence would provide under the same or similar
8 circumstances. In the case of a person who is an employee,
9 agent, or representative of a third-party payor, "ordinary
10 care" means that degree of care that a person of ordinary
11 prudence in the same profession, specialty, or area of
12 practice as such person would use in the same or similar
13 circumstances.

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

16 12. "Physician" means an individual licensed under chapter
17 148, 150, or 150A to practice medicine and surgery,
18 osteopathy, or osteopathic medicine and surgery.

19 13. "Third-party payor" means a health insurance carrier,
20 health maintenance organization, managed care entity, or
21 organized delivery system.

22 Sec. 9. NEW SECTION. 514L.3 THIRD-PARTY PAYOR DUTY TO
23 EXERCISE ORDINARY CARE -- LIABILITY.

24 1. A third-party payor has the duty to exercise ordinary
25 care when making health care treatment decisions and is liable
26 for damages for harm to an insured or enrollee proximately
27 caused by the third-party payor's failure to exercise such
28 ordinary care.

29 2. A third-party payor is also liable for damages for harm
30 to an insured or enrollee proximately caused by the health
31 care services treatment decisions made by an employee, agent,
32 or representative of the third-party payor who is acting on
33 behalf of the third-party payor and over whom the third-party
34 payor has the right to exercise influence or control or has
35 actually exercised influence or control if such decision

1 results in the failure to exercise ordinary care.

2 3. It is a defense in an action brought pursuant to this
3 section against a third-party payor that neither the third-
4 party payor, nor an employee, agent, or representative of the
5 third-party payor controlled, influenced, or participated in
6 the health care services treatment decision; or that the
7 third-party payor did not deny or delay payment for any health
8 care services prescribed or recommended by a health care
9 provider to the insured or enrollee.

10 4. Subsections 1 and 2 do not create an obligation on the
11 part of the third-party payor to provide any health care
12 services to an insured or enrollee that are not covered by the
13 health care plan offered by the third-party payor.

14 5. This chapter does not create any liability on the part
15 of an employer or an employer group purchasing organization
16 that purchases health care services coverage or assumes risk
17 on behalf of its employees for providing health care services.

18 6. A third-party payor shall not remove a health care
19 provider from its plan or refuse to renew the participation of
20 a health care provider under its plan for advocating
21 appropriate and medically necessary health care services for
22 an insured or enrollee.

23 7. A third-party payor shall not enter into a contract
24 with a hospital or health care provider or pharmaceutical
25 company which includes an indemnification or hold harmless
26 clause for the acts or conduct of the third-party payor. Any
27 such indemnification or hold harmless clause in an existing
28 contract is void.

29 8. A provision under state law prohibiting a third-party
30 payor from practicing medicine or being licensed to practice
31 medicine shall not be asserted as a defense by such third-
32 party payor in an action brought against it pursuant to this
33 section or any other applicable law.

34 9. In an action against a third-party payor, a finding
35 that a health care provider is an employee, agent, or

1 representative of such third-party payor shall not be based
2 solely on proof that such a health care provider's name
3 appears in a listing of approved health care providers made
4 available to an insured or enrollee under a health care plan.
5 10. This chapter does not apply to workers' compensation
6 coverages.

7 EXPLANATION

8 This bill relates to health care including inspection and
9 duplication of health care records, the requiring of certain
10 provisions under health care services policies or contracts,
11 and third-party payors.

12 The bill requires a health care provider to allow a patient
13 to inspect the patient's health care record and to provide the
14 patient with a duplicate of the patient's health care record
15 upon written request of the patient. The bill provides that
16 if the health care provider reasonably determines that the
17 information is detrimental to the physical or mental health of
18 the patient, or is likely to cause the patient to harm the
19 patient or another person, the health care provider may
20 withhold the record and instead may provide the record to the
21 patient's attorney or personal physician upon the request of
22 the patient. The bill requires the Iowa department of public
23 health to adopt rules to establish a uniform fee which may be
24 charged for duplication of the records.

25 The bill requires a provider of an individual or group
26 policy of accident or health insurance, hospital or health
27 care services contract, or health maintenance organization
28 contract, which is delivered, amended, or renewed on or after
29 July 1, 2001, to provide in the policy or contract that a
30 female insured, subscriber, or enrollee may choose an
31 obstetrician or gynecologist as the insured's, subscriber's,
32 or enrollee's primary care provider if the policy or contract
33 requires or creates incentives for the insured, subscriber, or
34 enrollee to use a provider who is managed, owned, or employed
35 by or under contract with the entity.

1 The bill also requires a provider of an individual or group
2 policy of accident or health insurance, hospital or health
3 care services contract or health maintenance organization
4 contract, which is delivered, amended, or renewed on or after
5 July 1, 2001, to provide in the policy or contract that an
6 insured, subscriber, or enrollee who has a serious illness or
7 disability may select a specialist as the insured's,
8 subscriber's, or enrollee's primary care provider if the
9 policy or contract requires or creates incentives for the
10 insured, subscriber, or enrollee to use a provider who is
11 managed, owned, or employed by or under contract with the
12 entity.

13 The bill also requires a provider of an individual or group
14 policy of accident or health insurance, hospital or health
15 care services contract, or health maintenance organization
16 contract, which is delivered, amended, or renewed on or after
17 July 1, 2001, to provide in the policy or contract a procedure
18 by which an insured, subscriber, or enrollee who has an
19 ongoing special condition that requires ongoing care from a
20 specialist to receive a standing referral to the specialist
21 for the treatment of the special condition, if the policy or
22 contract requires or creates incentives for the insured,
23 subscriber, or enrollee to use a provider who is managed,
24 owned, or employed by or under contract with the entity.

25 The bill also requires a provider of an individual or group
26 policy of accident or health insurance, hospital or health
27 care services contract, or health maintenance organization
28 contract, which is delivered, amended, or renewed on or after
29 July 1, 2001, that provides coverage for prescription drugs on
30 an outpatient basis and that applies a formulary to the
31 prescription drug benefits provided, to establish and maintain
32 an expeditious process and procedure that allows an insured,
33 subscriber, or enrollee to obtain, without penalty or
34 additional cost-sharing coverage for a specific, medically
35 necessary and appropriate nonformulary prescription drug, as

1 determined by the provider, without prior approval.

2 The bill directs the commissioner of insurance to issue
3 rules to establish standards that prohibit inappropriate
4 financial incentives that result in the denial or reduction of
5 necessary health care services for individual or group
6 policies of accident or health insurance, or individual or
7 group hospital or health care services contracts, or an
8 individual or group health maintenance organization contract.

9 The bill creates new Code chapter 514L. The bill provides
10 that a third-party payor has the duty to exercise ordinary
11 care when making health care treatment decisions and is liable
12 for damages for harm to an insured or enrollee proximately
13 caused by its failure to exercise such ordinary care. The
14 bill establishes certain defenses to such an action for
15 failure to use ordinary care and provides that the duty to
16 exercise ordinary care does not create an obligation on the
17 part of the third-party payor to provide health care services
18 to an insured or enrollee which are not covered by the health
19 care plan offered by the third-party payor. The bill defines
20 "third-party payor" as a health insurance carrier, health
21 maintenance organization, managed care entity, or organized
22 delivery system.

23
24
25
26
27
28
29
30
31
32
33
34
35