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DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 147

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO LIABILITY FOR CERTAIN
HEALTH CARE TREATMENT DECISIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 18 of the Delaware Code by adding a new Chapter 68A, to read as
2 follows:

3 “CHAPTER 68 A. HEALTH INSURER LIABILITY

4 Section 6801A. Definitions.

5 As used in this Chapter:

6 (1) ‘Appropriate and medically necessary’ means the standard for health care services as
7 determined by physicians and health care providers in accordance with the prevailing practices and
8 standards of the medical profession and community.

9 (2) ‘Enrollee’ means an individual who is enrolled in a health care plan, including
10 covered dependents.

11 (3) ‘Health care plan’ means any plan, policy, or contract whereby any person
12 undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

13 (4) ‘Health care provider’ means a person or entity as defined in Section 6801(5) of this
14 Title.

15 (5) ‘Health care treatment decision’ means:

16 a. A determination made when medical services are actually provided by the health care plan; or

17 b. A decision which affects the quality of the diagnosis, care, or treatment provided to the health
18 care plan’s enrollees.

(6) 'Health insurance carrier' means an authorized insurance company that issues policies of accident and sickness insurance under Chapter 33 or Chapter 35 of this Title.

(7) 'Health maintenance organization' means an organization as defined in §6402 of this Title.

(8) 'Managed care entity' means any entity which delivers, administers, or assumes risk for health care services with systems or techniques to control or influence the quality, accessibility, utilization, or costs and prices of such services to a defined enrollee population, but does not include any employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer or a pharmacy licensed by the State Board of Pharmacy.

(9) 'Physician' means:

(A) an individual licensed to practice medicine in this state; or

(B) any business entity wholly owned by physicians.

(10) 'Ordinary care' means, in the case of a health insurance carrier, health maintenance organization, or managed care entity, that degree of care that a health insurance carrier, health maintenance organization, or managed care entity of ordinary prudence would use under the same or similar circumstances. In the case of a person who is an employee, agent, ostensible agent, or representative of a health insurance carrier, health maintenance organization, or managed care entity, "ordinary care" means that degree of care that a person of ordinary prudence in the same profession, specialty, or area of practice as such person would use in the same or similar circumstances.

Section 6802A. APPLICATION.

(a) A health insurance carrier, health maintenance organization, or other managed care entity for a health care plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an enrollee proximately caused by its failure to exercise such ordinary care.

(b) A health insurance carrier, health maintenance organization, or other managed care entity for a health care plan is also liable for damages for harm to an enrollee proximately caused by the health care treatment decisions made by its:

(1) employees;

(2) agents;

(3) ostensible agents; or

(4) representatives who are acting on its behalf and over whom it has the right to exercise influence or control or has actually exercised influence or control which result in the failure to exercise ordinary care.

(c) It shall be a defense to any action asserted against a health insurance carrier, health maintenance organization, or other managed care entity for a health care plan that:

(1) neither the health insurance carrier, health maintenance organization, or other managed care entity, nor any employee, agent, ostensible agent, or representative for whose conduct such health insurance carrier, health maintenance organization, or other managed care entity is liable under Subsection (b), controlled, influenced, or participated in the health care treatment decision; and

(2) the health insurance carrier, health maintenance organization, or other managed care entity did not deny or delay payment for any treatment prescribed or recommended by a healthcare provider to the enrollee.

(d) The standards in Subsections (a) and (b) create no obligation on the part of the health insurance carrier, health maintenance organization, or other managed care entity to provide to an enrollee treatment which is not covered by the health care plan of such individual or entity.

(e) This Chapter does not create liability on the part of an employer, or an employer group purchasing organization that purchases coverage or assumes risk on behalf of its employees.

(f) A health insurance carrier, health maintenance organization, or managed care entity shall not remove a physician or health care provider from its plan or refuse to renew the physician or health care provider with its plan for advocating on behalf of an enrollee for appropriate and medically necessary health care for the enrollee.

(g) A health insurance carrier, health maintenance organization, or other managed care entity may not enter into a contract with a physician, hospital, or other health care provider or pharmaceutical company that includes an indemnification or hold harmless clause for the acts or conduct of the health insurance carrier, health maintenance organization, or other managed care entity. Any such indemnification or hold harmless clause in an existing contract is hereby declared severable and void.

75 (h) Nothing in any law of this state prohibiting a health insurance carrier, health maintenance
76 organization, or other managed care entity from practicing medicine or being licensed to practice medicine
77 may be asserted as a defense by such health insurance carrier, health maintenance organization, or other
78 managed care entity in an action brought against it pursuant to this section or any other law.

79 (i) In an action against a health insurance carrier, health maintenance organization, or managed
80 care entity, a finding that a physician or other health care provider is an employee, agent, ostensible agent,
81 or representative of such health insurance carrier, health maintenance organization, or managed care entity
82 shall not be based solely on proof that such person's name appears in a listing of approved physicians or
83 health care providers made available to enrollees under a health care plan.

84 (j) This Chapter does not apply to workers' compensation insurance coverage, or liability
85 coverage.

86 §6803A. Attorney's fees.

87 The Court, upon rendering judgment against any insurer pursuant to this Chapter, shall
88 allow the plaintiff a reasonable sum as attorney's fees to be taxed as part of the costs."

89 Section 2. If any provision of this Act or the application thereof to any person, thing or
90 circumstance is held invalid, such invalidity shall not affect the provisions, or applications of this Act that
91 can be given effect without the invalid provision(s) or application(s), and to this end the provisions of this
92 Act are declared to be severable.

SYNOPSIS

This Bill provides a cause of action for individuals suffering harm because of health insurers' negligent participation in the health care decision making process. It also permits a legal cause of action if a health insurance company negligently denies payment of contractually provided treatment.

Author: Senator Sokola