

HOUSE BILL No. 2503

By Representative Swenson

1-13

AN ACT concerning health care; establishing the managed care responsibility act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Appropriate and medically necessary" means the standard for health care services as determined by physicians and health care providers in accordance with the prevailing practices and standards of the medical profession.

(b) "Enrollee" means an individual who is enrolled in a health benefit plan, including covered dependents.

(c) "Health benefit plan" shall have the means ascribed to it in K.S.A. 40-4602, and amendments thereto.

(d) "Health care treatment decision" means a determination made when medical services are to be provided by the health care plan and a decision which affects the quality of the diagnosis, care or treatment provided to any insured or enrollee of such plan.

(e) "Health insurer" shall have the meaning ascribed to it in K.S.A. 40-4602, and amendments thereto.

(f) "Ordinary care" means, in the case of a health insurer, that degree of care that a health insurer 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 insurer, "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.

(g) "Physician" shall have the meaning ascribed to it in K.S.A. 40-4602, and amendments thereto.

(h) "Provider" shall have the meaning ascribed to it in K.S.A. 40-4602, and amendments thereto.

Sec. 2. (a) A health insurer for a health benefit plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for damages for harm to an insured or enrollee caused by its failure to exercise such ordinary care.

(b) A health insurer for a health benefit plan is also liable for damages

1 for harm to an insured or enrollee caused by the health care treatment
2 decisions made by its:

- 3 (1) Employees;
- 4 (2) agents;
- 5 (3) ostensible agents; or
- 6 (4) representatives who are acting on its behalf and over whom it has
7 the right to exercise influence or control or has actually exercised influ-
8 ence or control which result in the failure to exercise ordinary care.

9 (c) It shall be a defense to any action asserted against a health insurer
10 for a health benefit plan that:

11 (1) Neither the health insurer, nor any employee, agent, ostensible
12 agent, or representative for whose conduct such health insurer is liable
13 under subsection (b), controlled, influenced or participated in the health
14 care treatment decision; and

15 (2) the health insurer did not deny or delay any treatment prescribed
16 or recommended by a provider to the insured or enrollee.

17 (d) The standards in subsections (a) and (b) create no obligation on
18 the part of the health insurer to provide to an insured or enrollee treat-
19 ment which is not covered by the health care benefit plan of the entity.

20 (e) This act does not create any liability on the part of an employer,
21 an employer group purchasing organization, or a pharmacy licensed under
22 K.S.A. 65-1626 *et seq.*, and amendments thereto, that purchases coverage
23 or assumes risk on behalf of its employees.

24 (f) A health insurer may not remove a provider from its plan or refuse
25 to renew the provider with its plan for advocating on behalf of an enrollee
26 for appropriate and medically necessary health care for the enrollee.

27 (g) A health insurer shall not enter into a contract with a provider or
28 pharmaceutical company which includes an indemnification or hold
29 harmless clause for the acts or conduct of the health insurer. Any such
30 indemnification or hold harmless clause in an existing contract is hereby
31 declared void as being against public policy.

32 (h) Nothing in any law of this state prohibiting a health insurer from
33 practicing medicine or being licensed to practice medicine may be as-
34 serted as a defense by such health insurer in an action brought against it
35 pursuant to this section or any other law.

36 (i) In an action against a health insurer, a finding that a physician or
37 other health benefit plan is an employee, agent, ostensible agent, or rep-
38 resentative of such health insurer shall not be based solely on proof that
39 such person's name appears in a listing of participating providers made
40 available to any insured or enrollee under a health benefit plan.

41 (j) This act does not apply to workers compensation insurance cov-
42 erage as defined in K.S.A. 44-501 *et seq.*, and amendments thereto.

43 Sec. 3. (a) A person may not maintain a cause of action under this

1 act against a health insurer that is required to comply with the utilization
2 review requirements of K.S.A. 40-22a13 through 40-22a16, and amend-
3 ments thereto, unless the affected insured or enrollee or the insured's or
4 enrollee's representative:

5 (1) Has exhausted the appeals and review applicable under the util-
6 ization review requirements; or

7 (2) before instituting the action:

8 (A) Gives written notice of the claim as provided by subsection (b);
9 and

10 (B) agrees to submit the claim to a review by an independent review
11 organization under K.S.A. 40-22a13 through 40-22a16, and amendments
12 thereto, as required by subsection (c).

13 (b) The notice required by paragraph (2) of subsection (a) shall be
14 delivered or mailed to the health insurer against whom the action is made
15 not later than the 30th day before the date the claim is filed.

16 (c) The insured or enrollee or the insured's or enrollee's represen-
17 tative shall submit the claim to a review by an independent review or-
18 ganization if the health insurer against whom the claim is made requests
19 the review not later than the 14th day after the date notice under para-
20 graph (2) of subsection (a) is received by the health insurer. If the health
21 insurer does not request the review within the period specified by this
22 subsection, the insured or enrollee or the insured's or enrollee's repre-
23 sentative is not required to submit the claim to independent review before
24 maintaining the action.

25 (d) A review conducted under subsection (c) as requested by a health
26 insurer shall be performed in accordance with K.S.A. 40-22a13 through
27 40-22a16, and amendments thereto. The health insurer requesting the
28 review shall agree to comply with K.S.A. 40-22a13 through 40-22a16, and
29 amendments thereto.

30 (e) Subject to subsection (f), if the enrollee has not complied with
31 subsection (a), an action under this section shall not be dismissed by the
32 court, but the court may, in its discretion, order the parties to submit to
33 an independent review or mediation or other nonbinding alternative dis-
34 pute resolution and may abate the action for a period of not to exceed 30
35 days for such purposes. Such orders of the court shall be the sole remedy
36 available to a party complaining of an enrollee's failure to comply with
37 subsection (a).

38 (f) The enrollee is not required to comply with subsection (c) and no
39 abatement or other order pursuant to subsection (e) for failure to comply
40 shall be imposed if the enrollee has filed a pleading alleging in substance
41 that:

42 (1) Harm to the enrollee has already occurred because of the conduct
43 of the health insurer or because of an act or omission of an employee,

1 agent, ostensible agent, or representative of such health insurer, as set
2 forth in subsection (b) of section 2, and amendments thereto, for whose
3 conduct it is liable; and

4 (2) the review would not be beneficial to the enrollee, unless the
5 court, upon motion by a defendant health insurer finds after hearing that
6 such pleading was not made in good faith, in which case the court may
7 enter an order pursuant to subsection (d).

8 (g) If the insured or enrollee or the insured's or enrollee's represen-
9 tative seeks to exhaust the appeals and review or provides notice, as re-
10 quired by subsection (a), before the statute of limitations applicable to a
11 claim against a health insurer has expired, the limitations period is tolled
12 until the later of:

13 (1) The 30th day after the date the insured or enrollee or the insured's
14 or enrollee's representative has exhausted the process for appeals and
15 review applicable under the utilization review requirements; or

16 (2) the 40th day after the date the insured or enrollee or the insured's
17 or enrollee's representative gives notice under paragraph (2) of subsection
18 (a).

19 (h) This section does not prohibit an insured or enrollee from pur-
20 suing any other appropriate remedy or relief available under law, if the
21 requirement of exhausting the process for appeal and review places the
22 insured's or enrollee's health in serious jeopardy.

23 Sec. 4. The provisions of sections 1 through 3, and amendments
24 thereto, shall apply only to any cause of action which accrues on and after
25 the effective date of this act. Any action which accrued prior to the ef-
26 fective date of this act shall be governed by the law applicable to such
27 cause of action on the day preceding the effective date of this act.

28 Sec. 5. This act shall be known and may be cited as the managed
29 care responsibility act.

30 Sec. 6. This act shall take effect and be in force from and after its
31 publication in the statute book.

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