

HOUSE BILL No. 4538

April 8, 2003, Introduced by Reps. Condino, Minore, Sak, Clack, Vagnozzi, Hood, Smith, Tobocman, Murphy, Adamini, Brown, Byrum, Lipsey, Law and Gielegem and referred to the Committee on Insurance.

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
(MCL 500.100 to 500.8302) by adding sections 3575 and 3577.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3575. (1) A health maintenance organization shall
2 exercise ordinary care when making a health care treatment
3 decision and is liable for damages for harm to an enrollee
4 proximately caused by its failure to exercise ordinary care.

5 (2) A health maintenance organization is liable for damages
6 for harm to an enrollee proximately caused by a health care
7 treatment decision made by a health maintenance organization
8 employee, agent, ostensible agent, or representative acting on
9 behalf of the health maintenance organization and over whom the
10 health maintenance organization has the right to exercise
11 influence or control or has exercised influence or control that

HOUSE BILL No. 4538

1 resulted in the failure to exercise ordinary care. However, a
2 finding that a health professional is an employee, agent,
3 ostensible agent, or representative of a health maintenance
4 organization shall not be based solely on proof that the
5 individual's name appears in a listing of approved providers made
6 available to the health maintenance organization's enrollees.

7 (3) Both of the following are defenses in an action brought
8 pursuant to subsection (1) or (2):

9 (a) Neither the health maintenance organization nor its
10 employee, agent, ostensible agent, or representative controlled,
11 influenced, or participated in the health care treatment
12 decision.

13 (b) The health maintenance organization did not deny or delay
14 payment for any treatment prescribed or recommended by a provider
15 to the enrollee.

16 (4) This section does not create an obligation for a health
17 maintenance organization to provide to an enrollee treatment that
18 is not covered by the health maintenance organization contract
19 with the enrollee.

20 (5) This section does not create any liability on the part of
21 an employer or employer purchasing group that purchases coverage
22 or assumes risk on behalf of its employees.

23 (6) For purposes of the revised judicature act of 1961, 1961
24 PA 236, MCL 600.101 to 600.9948, this section does not create a
25 medical malpractice cause of action.

26 (7) As used in this section:

27 (a) "Health care treatment decision" means either a

1 determination as to when the health maintenance organization
2 actually provides medical services or a decision that affects the
3 quality of the diagnosis, care, or treatment provided to the
4 health maintenance organization's enrollees.

5 (b) "Ordinary care" means for a health maintenance
6 organization that degree of care that a health maintenance
7 organization of ordinary prudence would use under the same or
8 similar circumstances. For an employee, agent, ostensible agent,
9 or representative acting on behalf of the health maintenance
10 organization, ordinary care means that degree of care that a
11 person of ordinary prudence in the same profession, specialty, or
12 area of practice as that person would use under the same or
13 similar circumstances.

14 Sec. 3577. A health maintenance organization shall not
15 enter into a contract with a health professional or health
16 facility that includes an indemnification or hold harmless clause
17 for the acts or conduct of the health maintenance organization.

18 Enacting section 1. Section 3575 of the insurance code of
19 1956, 1956 PA 218, MCL 500.3575, as added by this amendatory act,
20 applies only to causes of action that are filed on or after the
21 effective date of this amendatory act.