

BILL ANALYSIS

Senate Research Center

S.B. 386
By: Sibley
Economic Development
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As Filed

DIGEST

Currently, Texas law prohibits the corporate practice of medicine. This prevents managed care organizations from being held legally accountable when making health care treatment decisions which affect the quality of the diagnosis, care and treatment of an enrollee of a health care plan. This bill will require health benefit plans and managed care entities to exercise ordinary care when making health care treatment decisions which affect the diagnosis, treatment, or quality of medical services provided to an enrollee and would hold the plan accountable for negligent decisions which result in injury.

PURPOSE

As proposed, S.B. 386 requires health benefit plans and managed care entities to exercise ordinary care when making health care treatment decisions which affect the diagnosis, treatment, or quality of medical services provided to an enrollee and would hold the plan accountable for negligent decisions which result in injury.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 88, as follows:

CHAPTER 88. HEALTH CARE LIABILITY

Sec. 88.001. DEFINITIONS. Defines "appropriate and medically necessary," "enrollee," "health care plan," "health care provider," "health care treatment decision," "health insurance carrier," "health maintenance organization," "managed care entity," and "physician."

Sec. 88.002. APPLICATION. (a) Provides that 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 which affect the diagnosis, care, or treatment of an enrollee.

(b) Provides that a health insurance carrier, health maintenance organization, or other managed care entity for a health care plan is also responsible for the decisions of its employees, agents, ostensible agents, or 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, respecting decisions which may affect the quality of the diagnosis, care, or treatment provided to its enrollees.

(c) Provides that 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 treatment to an enrollee which is not covered by the health care plan of the entity.

(d) Prohibits a health insurance carrier, health maintenance organization, or other managed

care entity from removing a physician or health care provider from its plan for advocating on behalf of an enrollee for appropriate and medically necessary health care for the enrollee.

(e) Prohibits a health insurance carrier, health maintenance organization, or other managed care entity from entering into a contract with a physician, hospital, or other health care provider or pharmaceutical company which 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. Provides that any such indemnification or hold harmless clause in an existing contract is hereby declared void.

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

SECTION 2. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 3. Emergency clause.