

By Senator Steube

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1                                   A bill to be entitled  
 2           An act relating to health insurance; amending s.  
 3           641.19, F.S.; revising definitions; amending s.  
 4           641.51, F.S.; deleting a provision that provides that  
 5           health maintenance organizations are not vicariously  
 6           liable for certain medical negligence except under  
 7           certain circumstances; amending s. 641.3917, F.S.;  
 8           authorizing specified persons to bring a civil action  
 9           against a health maintenance organization for certain  
 10          violations; providing for construction; specifying a  
 11          health maintenance organization's liability for such  
 12          violations; repealing s. 768.0981, F.S., relating to a  
 13          limitation on actions against insurers, prepaid  
 14          limited health service organizations, health  
 15          maintenance organizations, or prepaid health clinics;  
 16          providing applicability; providing an effective date.

17  
 18 Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1. Subsections (11), (12), and (18) of section  
 21   641.19, Florida Statutes, are amended to read:

22           641.19 Definitions.—As used in this part, the term:

23           (11) "Health maintenance contract" means any contract  
 24   entered into by a health maintenance organization with a  
 25   subscriber or group of subscribers to provide ~~coverage for~~  
 26   comprehensive health care services in exchange for a prepaid per  
 27   capita or prepaid aggregate fixed sum.

28           (12) "Health maintenance organization" means any  
 29   organization authorized under this part which:

30           (a) Provides, ~~through arrangements with other persons,~~  
 31   emergency care; inpatient hospital services; physician care,  
 32   including care provided by physicians licensed under chapters

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33 458, 459, 460, and 461;7 ambulatory diagnostic treatment;7 and  
34 preventive health care services.

35 (b) Provides, either directly or through arrangements with  
36 other persons, health care services to persons enrolled with  
37 such organization, on a prepaid per capita or prepaid aggregate  
38 fixed-sum basis.

39 (c) Provides, either directly or through arrangements with  
40 other persons, comprehensive health care services which  
41 subscribers are entitled to receive pursuant to a contract.

42 (d) Provides physician services, by physicians licensed  
43 under chapters 458, 459, 460, and 461, directly through  
44 physicians who are either employees or partners of such  
45 organization or under arrangements with a physician or any group  
46 of physicians.

47 (e) If offering services through a managed care system, has  
48 a system in which a primary physician licensed under chapter  
49 458, chapter 459, chapter 460, or chapter 461 is designated for  
50 each subscriber upon request of a subscriber requesting service  
51 by a physician licensed under any of those chapters, and is  
52 responsible for coordinating the health care of the subscriber  
53 of the respectively requested service and for referring the  
54 subscriber to other providers of the same discipline when  
55 necessary. Each female subscriber may select as her primary  
56 physician an obstetrician/gynecologist who has agreed to serve  
57 as a primary physician and is in the health maintenance  
58 organization's provider network.

59  
60 ~~Except in cases in which the health care provider is an employee~~  
61 ~~of the health maintenance organization, the fact that the health~~

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62 ~~maintenance organization arranges for the provision of health~~  
63 ~~care services under this chapter does not create an actual~~  
64 ~~agency, apparent agency, or employer-employee relationship~~  
65 ~~between the health care provider and the health maintenance~~  
66 ~~organization for purposes of vicarious liability for the medical~~  
67 ~~negligence of the health care provider.~~

68 (18) "Subscriber" means an entity or individual who has  
69 contracted, or on whose behalf a contract has been entered into,  
70 with a health maintenance organization for health care services  
71 ~~coverage~~ or other persons who also receive health care services  
72 ~~coverage~~ as a result of the contract.

73 Section 2. Subsection (3) of section 641.51, Florida  
74 Statutes, is amended to read:

75 641.51 Quality assurance program; second medical opinion  
76 requirement.-

77 (3) The health maintenance organization shall not have the  
78 right to control the professional judgment of a physician  
79 licensed under chapter 458, chapter 459, chapter 460, or chapter  
80 461 concerning the proper course of treatment of a subscriber.  
81 However, this subsection shall not be considered to restrict a  
82 utilization management program established by an organization or  
83 to affect an organization's decision as to payment for covered  
84 services. ~~Except in cases in which the health care provider is~~  
85 ~~an employee of the health maintenance organization, the health~~  
86 ~~maintenance organization shall not be vicariously liable for the~~  
87 ~~medical negligence of the health care provider, whether such~~  
88 ~~claim is alleged under a theory of actual agency, apparent~~  
89 ~~agency, or employer-employee relationship.~~

90 Section 3. Section 641.3917, Florida Statutes, is amended

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91 to read:

92 641.3917 Civil liability.—

93 (1) The provisions of this part are cumulative to rights  
94 under the general civil and common law, and no action of the  
95 department or office shall abrogate such rights to damage or  
96 other relief in any court.

97 (2) Any person to whom a duty is owed may bring a civil  
98 action against a health maintenance organization when such  
99 person suffers damages as a result of the health maintenance  
100 organization's:

101 (a) Violation of s. 641.3155, s. 641.3903(5), (10), (12),  
102 (13), or (14), or s. 641.51; or

103 (b) Failure to provide a covered service, when the health  
104 maintenance organization in good faith should have provided such  
105 service had it acted fairly and reasonably toward the subscriber  
106 or enrollee and with due regard for his or her interests, and  
107 such service is medically reasonable or necessary in the  
108 independent medical judgment of a treating physician under  
109 contract with, or another physician authorized by, the health  
110 maintenance organization.

111  
112 A person bringing an action under this subsection need not prove  
113 that such act was committed or performed with such frequency as  
114 to indicate a general business practice.

115 (3) The health maintenance organization is liable for all  
116 of the claimant's damages or \$500 per violation, whichever is  
117 greater. The court may also award compensatory damages,  
118 including, but not limited to, damages for mental anguish, loss  
119 of dignity, and any other intangible injuries, and punitive

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120 damages. In an action or proceeding brought under this  
121 subsection, the court shall award a prevailing plaintiff  
122 reasonable attorney fees as part of the costs.

123 Section 4. Section 768.0981, Florida Statutes, is repealed.

124 Section 5. The amendments to ss. 641.19, 641.51, and  
125 641.3917, Florida Statutes, made by this act and the repeal of  
126 s. 768.0981, Florida Statutes, by this act apply to causes of  
127 action accruing on or after the effective date of this act.

128 Section 6. This act shall take effect October 1, 2017.