BILL ANALYSIS

Senate Research Center

C.S.S.B. 386
By: Sibley
Economic Development
2-28-97
Committee Report (Substituted)

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 and will hold those entities liable for damages for harm to an insured or enrollee proximately caused by the health care entity's failure to exercise ordinary care.

PURPOSE

As proposed, C.S.S.B. 386 requires health benefit plans and managed care entities to exercise ordinary care when making health care treatment decisions and holds those entities liable for damages for harm to an insured or enrollee proximately caused by the health care entity's failure to exercise ordinary care.

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," "physician," and "ordinary care."

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 and is liable for damages for harm to an insured or enrollee proximately caused by its failure to exercise such ordinary care.

(b) Provides that 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 insured or enrollee proximately caused by the health care treatment decisions made by 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.

(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 to an insured or enrollee treatment 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.

(g) Prohibits a finding that a physician or other health care provider is an employee, agent, ostensible agent of certain health care entities from being based solely on proof that such person's name appears in a listing of approved physicians or health care providers made available to insureds or enrollees under a health care plan in an action against a health insurance carrier, health maintenance organization, or managed care entity.

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

SECTION 3. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1, Section 88.001, Civil Practice and Remedies Code, to redefine "managed care entity," and to define "ordinary care."

Amends SECTION 1, Section 88.002, Civil Practice and Remedies Code, to provide that a health care entity is liable for damages for harm to an insured or enrollee caused by its failure to exercise ordinary care. Provides that the health care entity is liable for damages for harm to an insured or enrollee caused by the entity's employees, agents, obstensible agents, or representatives acting on its behalf. Prohibits certain persons from being found an employee, agent, ostensible agent or representative of a health care entity solely because the person is an approved physician or health care provider. Makes nonsubstantive changes.