

**ASSEMBLY, No. 1606**

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**STATE OF NEW JERSEY**

**208th LEGISLATURE**

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INTRODUCED FEBRUARY 10, 1998

**Sponsored by:**

**Assemblyman GUY F. TALARICO**

**District 38 (Bergen)**

**Assemblyman STEVE CORODEMUS**

**District 11 (Monmouth)**

**Co-Sponsored by:**

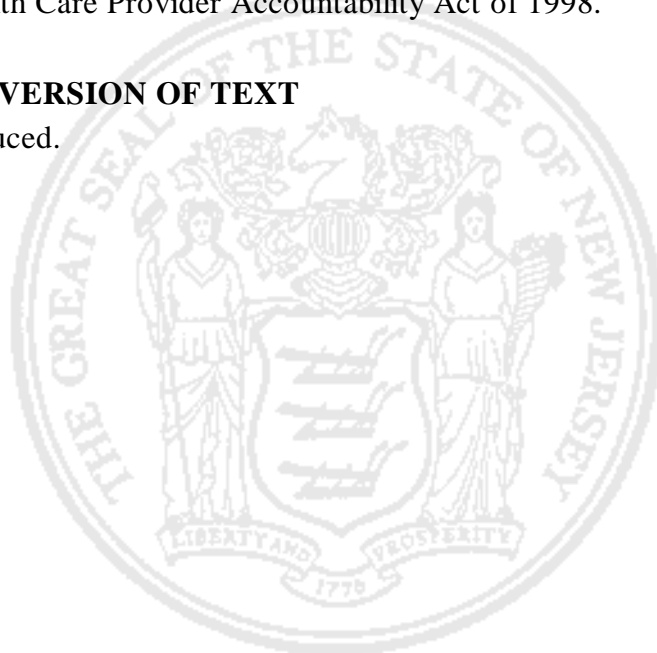
**Assemblymen Asselta, Luongo, LeFevre, Azzolina, Conaway, Arnone,  
Barnes, Blee, Assemblywoman Buono, Assemblymen Cohen, T.Smith,  
Wolfe, Doria, Conners, Assemblywomen Quigley, Cruz-Perez,  
Assemblymen Jones and Payne**

**SYNOPSIS**

The "Health Care Provider Accountability Act of 1998."

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 3/26/1999)**

1 AN ACT concerning liability for certain health care treatment  
2 decisions, amending P.L.1995, c.139 and P.L.1973, c.337 and  
3 supplementing Title 2A of the New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. (New section) This act shall be known and may be cited as the  
9 "Health Care Provider Accountability Act of 1998."

10  
11 2. (New section) The Legislature hereby finds and declares that:  
12 a. Health insurance companies, in particular health maintenance  
13 organizations and other managed care entities, have become  
14 increasingly involved in health care treatment decisions in an effort to  
15 reduce health care costs;

16 b. Many carriers have been reducing or denying health care  
17 treatments for their insured patients as part of these cost containment  
18 efforts;

19 c. Since the carriers are in many instances making medical  
20 decisions when they deny, delay, or diminish health care treatments,  
21 they should be held to the same level of legal responsibility as  
22 physicians and other health care providers who make decisions  
23 regarding the necessity and appropriateness of medical care;

24 d. It is fair and appropriate that insured patients have the  
25 opportunity to dispute carrier decisions in court, as well as in informal  
26 appeals procedures, so that these disputes may be quickly and  
27 efficiently resolved in ways that best accommodate the needs of the  
28 insured patient.

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30 3. (New section) As used in this act:

31 "Appropriate and medically necessary" means the standard for  
32 health care services as determined by health care providers in  
33 accordance with the prevailing practices and standards of the medical  
34 profession and the community.

35 "Carrier" means an insurance company, health service corporation,  
36 hospital service corporation, medical service corporation or health  
37 maintenance organization authorized to issue health benefits plans in  
38 this State.

39 "Covered person" means a person on whose behalf a carrier offering  
40 a health benefits plan is obligated to pay benefits or provide services  
41 pursuant to the plan.

42 "Covered service" means a health care service provided to a  
43 covered person under a health benefits plan for which the carrier is

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 obligated to pay benefits or provide services.

2 "Health benefits plan" means a benefits plan which pays or provides  
3 hospital and medical expense benefits for covered services, and is  
4 delivered or issued for delivery in this State by or through a carrier.  
5 Health benefits plan includes, but is not limited to, Medicare  
6 supplement coverage and risk contracts to the extent not otherwise  
7 prohibited by federal law. For the purposes of this act, health benefits  
8 plan shall not include coverage arising out of a workers' compensation  
9 or similar law.

10 "Health care provider" means an individual or entity which, acting  
11 within the scope of its licensure or certification, provides a covered  
12 service defined by the health benefits plan. Health care provider  
13 includes, but is not limited to, a physician and other health care  
14 professionals licensed pursuant to Title 45 of the Revised Statutes, and  
15 a hospital and other health care facilities licensed pursuant to Title 26  
16 of the Revised Statutes.

17 "Health care service" means a service or product provided by a  
18 health care provider to a covered person pursuant to a health benefits  
19 plan.

20 "Health care treatment decision" means a determination made at the  
21 time health care services are provided by a health benefits plan, which  
22 determination affects the quality of the diagnosis, care or treatment  
23 provided to a covered person.

24 "Independent utilization review organization" means an independent  
25 entity comprised of physicians and other health care professionals who  
26 are representative of the active practitioners in the area in which the  
27 organization will operate and which is under contract with the  
28 Department of Health and Senior Services to provide medical  
29 necessity or appropriateness of services appeal reviews pursuant to  
30 section 12 of the "Health Care Quality Act," P.L.1997, c.192  
31 (C.26:2S-12).

32 "Ordinary care" means, in the case of a carrier, the degree of care  
33 that a carrier of ordinary prudence would use under the same or  
34 similar circumstances, and, in the case of an employee, agent or other  
35 representative of the carrier, the degree of care that a person of  
36 ordinary prudence in the same profession, specialty or area of practice  
37 would use under the same or similar circumstances.

38

39 4. (New section) a. A carrier has the duty to exercise ordinary  
40 care when making health care treatment decisions and shall be liable  
41 for damages for harm to a covered person proximately caused by its  
42 failure to exercise ordinary care in making health care treatment  
43 decisions.

44 b. Notwithstanding the provisions of section 13 of the "Health  
45 Care Quality Act," P.L.1997, c.192 (C.26:2S-13) or any other law, a  
46 carrier shall be liable for damages for harm to a covered person

1 proximately caused by the health care treatment decisions of  
 2 employees, agents or other representatives of the carrier who act on  
 3 the carrier's behalf and over whom the carrier has the right to exercise  
 4 influence or control, or has actually exercised influence or control, and  
 5 who fail to exercise ordinary care in making health care treatment  
 6 decisions.

7 c. It shall be a defense to any action brought against a carrier that:

8 (1) neither the carrier nor any employee, agent or other  
 9 representative of the carrier, for whose conduct the carrier is liable  
 10 pursuant to subsection b. of this section, controlled, influenced or  
 11 participated in the health care treatment decision; and

12 (2) the carrier did not deny or delay payment for any treatment  
 13 prescribed or recommended to the covered person by a health care  
 14 provider.

15 d. The provisions of subsection a. and b. of this section shall not  
 16 be construed to:

17 (1) require a carrier to pay benefits or provide a health care service  
 18 that is not a covered service; or

19 (2) create any liability on the part of an employer or other entity  
 20 that purchases a contract for health care services or assumes risk on  
 21 behalf of its employees.

22 e. A carrier may not include a provision in a contract with a health  
 23 care provider that exempts the carrier from liability for the acts or  
 24 conduct of the carrier, and any such provision in an existing contract  
 25 shall be void as contrary to the public policy of this State.

26 f. The provisions of any State law that prohibit a carrier from  
 27 practicing medicine, or being licensed to practice medicine, may not  
 28 be asserted as a defense by a carrier in an action brought against it  
 29 pursuant to this act.

30 g. In an action brought against a carrier pursuant to this act, a  
 31 finding that a health care provider is an employee, agent or other  
 32 representative of the carrier shall not be based solely on proof that the  
 33 provider's name appears on a list of approved health care providers  
 34 made available to covered persons under a health benefits plan.

35 h. A covered person who brings an action against a carrier  
 36 pursuant to this act shall comply with the provisions of section 2 of  
 37 P.L.1995, c.139 (C.2A:53A-27) and any other law or court rule  
 38 applicable to a plaintiff in a medical malpractice action.

39  
 40 5. (New section) A covered person shall file an appeal of a carrier's  
 41 health care treatment decision under the carrier's internal patient  
 42 appeals process, if any, or with the Independent Health Care Appeals  
 43 Program created pursuant to section 11 of the "Health Care Quality  
 44 Act," P.L.1997, c.192 (C.26:2S-11), as appropriate, at the same time  
 45 that the covered person institutes an action against a carrier pursuant  
 46 to this act.

6. (New section) a. The court hearing the action authorized by this act may take judicial notice of the recommendation of the independent utilization review organization reviewing the internal patient appeal and other records of the Department of Health and Senior Services and the parties to the appeal. The court shall employ alternative dispute resolution methods, including, but not limited to mediation and binding arbitration, in order to expedite the action, accommodate the needs of the covered person, and achieve a solution that is fair and equitable to all the parties.

b. Nothing in this act shall prohibit a covered person from pursuing other appropriate remedies, including injunctive relief, a declaratory judgment or any other relief available under applicable law.

7. Section 1 of P.L.1995, c.139 (C.2A:53A-26) is amended as follows:

1. As used in this act, "licensed person" means any person who is licensed as:

- a. an accountant pursuant to P.L.1977, c.144 (C.45:2B-1 et seq.);
  - b. an architect pursuant to R.S.45:3-1 et seq.;
  - c. an attorney admitted to practice law in New Jersey;
  - d. a dentist pursuant to R.S.45:6-1 et seq.;
  - e. an engineer pursuant to P.L.1938, c.342 (C.45:8-27 et seq.);
  - f. a physician in the practice of medicine or surgery pursuant to R.S.45:9-1 et seq.;
  - g. a podiatrist pursuant to R.S.45:5-1 et seq.;
  - h. a chiropractor pursuant to P.L.1989, c.153 (C.45:9-41.17 et seq.);
  - i. a registered professional nurse pursuant to P.L.1947, c.262 (C.45:11-23 et seq.); **[and]**
  - j. a health care facility as defined in section 2 of P.L.1971, c.136 (C.26:2H-2); and
  - k. a carrier as defined in section 3 of P.L. , c. (C. )(pending before the Legislature as this bill).
- (cf: P.L.1995, c.139, s.1.)

8. Section 2 of P.L.1995, c.139 (C.2A:53A-27) is amended as follows:

2. In any action for damages for personal injuries, wrongful death or property damage resulting from an alleged act of malpractice or negligence by a licensed person in his profession or occupation, the plaintiff shall, within 60 days following the date of filing of the answer to the complaint by the defendant, provide each defendant with an affidavit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational

1 standards or treatment practices; except that if the defendant is a  
2 carrier, the affidavit shall be provided by a physician or other  
3 appropriate licensed natural person. The court may grant no more  
4 than one additional period, not to exceed 60 days, to file the affidavit  
5 pursuant to this section, upon a finding of good cause. The person  
6 executing the affidavit shall be licensed in this or any other state; have  
7 particular expertise in the general area or specialty involved in the  
8 action, as evidenced by board certification or by devotion of the  
9 person's practice substantially to the general area or specialty involved  
10 in the action for a period of at least five years. The person shall have  
11 no financial interest in the outcome of the case under review, but this  
12 prohibition shall not exclude the person from being an expert witness  
13 in the case.

14 (cf: P.L.1995, c.139, s.2.)

15

16 9. Section 25 of P.L.1973, c.337 (C.26:2J-25) is amended to read  
17 as follows:

18 25. Statutory construction and relationship to other laws.

19 a. Except as otherwise provided in this act, provisions of the  
20 insurance law and provisions of hospital **[or]**, medical or health  
21 service corporation laws shall not be applicable to any health  
22 maintenance organization granted a certificate of authority under this  
23 act. This provision shall not apply to an insurer or hospital **[or]**,  
24 medical or health service corporation licensed and regulated pursuant  
25 to the insurance laws or the hospital **[or]**, medical or health service  
26 corporation laws of this State except with respect to its health  
27 maintenance organization activities authorized and regulated pursuant  
28 to this act. Charges paid by or on behalf of enrollees of a health  
29 maintenance organization with respect to health care services shall not  
30 be subject to taxation by the State or any of its political subdivisions.

31 b. Solicitation of enrollees by a health maintenance organization  
32 granted a certificate of authority, or its representatives, shall not be  
33 construed to violate any provision of law relating to solicitation or  
34 advertising by health professionals.

35 c. Any health maintenance organization authorized under this act  
36 shall not be deemed to be practicing medicine and shall be exempt  
37 from the provision of chapter 9 of Title 45, Medicine and Surgery, of  
38 the Revised Statutes relating to the practice of medicine.

39 d. No person participating in the arrangements of a health  
40 maintenance organization other than the officers and employees of a  
41 health maintenance organization and the actual provider of health care  
42 services or supplies directly to enrollees and their families shall be  
43 liable for negligence, misfeasance, nonfeasance or malpractice in  
44 connection with the furnishings of such services and supplies.

45 (cf: P.L.1973, c.337, s.25)

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1 licensed to practice medicine.

2 Finally, the bill does not require carriers to pay benefits or provide  
3 services that are not covered, and also provides certain defenses for  
4 carriers.