

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, including care provided by physicians licensed under chapters
32 | 458, 459, 460, and 461; ambulatory diagnostic treatment; and
33 | preventive health care services.
34 |

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,
48 | has 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~~
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
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
 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
 124 repealed.

125 Section 5. The amendments to ss. 641.19, 641.51, and

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126 | 641.3917, Florida Statutes, made by this act and the repeal of
127 | s. 768.0981, Florida Statutes, by this act apply to causes of
128 | action accruing on or after the effective date of this act.

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