

ASSEMBLY BILL

No. 2039

Introduced by Assembly Member Kuehl

February 18, 2000

An act to amend Section 3428 of the Civil Code, relating to health care services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2039, as introduced, Kuehl. Health care services: duty of care: liability.

Under existing law, a health care service plan or managed care entity has a duty of ordinary care to arrange to provide medically appropriate health care service to its subscribers and enrollees where the health care service is a benefit provided under the plan, and failure to do so results in liability if it caused the denial, delay, or modification of health care services, as specified, and the subscriber or enrollee suffered substantial harm.

This bill would recast this provision to refer to a covered benefit rather than a benefit provided under the plan.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3428 of the Civil Code is
2 amended to read:
3 3428. (a) For services rendered on or after January 1,
4 2001, a health care service plan or managed care entity,

1 as described in subdivision (f) of Section 1345 of the
2 Health and Safety Code, shall have a duty of ordinary care
3 to arrange for the provision of medically necessary health
4 care service to its subscribers and enrollees, where the
5 health care service is a *covered* benefit ~~provided under~~
6 ~~the plan~~, and shall be liable for any and all harm legally
7 caused by its failure to exercise that ordinary care when
8 both of the following apply:

9 (1) The failure to exercise ordinary care resulted in the
10 denial, delay, or modification of the health care service
11 recommended for, or furnished to, a subscriber or
12 enrollee.

13 (2) The subscriber or enrollee suffered substantial
14 harm.

15 (b) For purposes of this section: (1) substantial harm
16 means loss of life, loss or significant impairment of limb
17 or bodily function, significant disfigurement, severe and
18 chronic physical pain, or significant financial loss; (2)
19 health care services need not be recommended or
20 furnished by an in-plan provider, but may be
21 recommended or furnished by any health care provider
22 practicing within the scope of his or her practice; and (3)
23 health care services shall be recommended or furnished
24 at any time prior to the inception of the action, and the
25 recommendation need not be made prior to the
26 occurrence of substantial harm.

27 (c) Health care service plans and managed care
28 entities are not health care providers under any provision
29 of law, including, but not limited to, Section 6146 of the
30 Business and Professions Code, Sections 3333.1 or 3333.2
31 of this code, or Sections 340.5, 364, 425.13, 667.7, or 1295 of
32 the Code of Civil Procedure.

33 (d) A health care service plan or managed care entity
34 shall not seek indemnity, whether contractual or
35 equitable, from a provider for liability imposed under
36 subdivision (a). Any provision to the contrary in a
37 contract with providers is void and unenforceable.

38 (e) This section shall not create any liability on the
39 part of an employer or an employer group purchasing
40 organization that purchases coverage or assumes risk on



1 behalf of its employees or on behalf of self-funded
2 employee benefit plans.

3 (f) Any waiver by a subscriber or enrollee of the
4 provisions of this section is contrary to public policy and
5 shall be unenforceable and void.

6 (g) This section does not create any new or additional
7 liability on the part of a health care service plan or
8 managed care entity for harm caused that is attributable
9 to the medical negligence of a treating physician or other
10 treating health care provider.

11 (h) This section does not abrogate or limit any other
12 theory of liability otherwise available at law.

13 (i) This section shall not apply in instances where
14 subscribers or enrollees receive treatment by prayer,
15 consistent with the provisions of subdivision (a) of
16 Section 1270 of the Health and Safety Code, in lieu of
17 medical treatment.

18 (j) Damages recoverable for a violation of this section
19 include, but are not limited to, those set forth in Section
20 3333.

21 (k) (1) A person may not maintain a cause of action
22 pursuant to this section against any entity required to
23 comply with any independent medical review system or
24 independent review system required by law unless the
25 person or his or her representative has exhausted the
26 procedures provided by the applicable independent
27 review system.

28 (2) Compliance with paragraph (1) is not required in
29 a case where either of the following applies:

30 (A) Substantial harm, as defined in subdivision (b),
31 has occurred prior to the completion of the applicable
32 review.

33 (B) Substantial harm, as defined, in subdivision (b),
34 will imminently occur prior to the completion of the
35 applicable review.

36 (3) This subdivision shall become operative only if
37 Senate Bill 189 and Assembly Bill 55 of the 1999–2000
38 Regular Session are also enacted and enforceable.

39 (l) If any provision of this section or the application
40 thereof to any person or circumstance is held to be



1 unconstitutional or otherwise invalid or unenforceable,
2 the remainder of the section and the application of those
3 provisions to other persons or circumstances shall not be
4 affected thereby.

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