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1999 SENATE BILL 258

October 20, 1999 – Introduced by Senators CLAUSING, ROBSON and WIRCH, cosponsored by Representatives WASSERMAN, POCAN, BOCK, RICHARDS, LA FAVE, SHERMAN, PLOUFF, BLACK, HASENOHRL, YOUNG, J. LEHMAN and KREUSER. Referred to Committee on Health, Utilities, Veterans and Military Affairs.

AN ACT ***to repeal*** 609.22 (4) (a) 2.; ***to amend*** 609.05 (3) and 609.22 (4) (a) 3.; ***to repeal and recreate*** 609.22 (4) (a) 1.; and ***to create*** 609.16 and 609.39 of the statutes; **relating to:** appealing managed care plan decisions, obtaining the services of specialist providers and suing managed care plans.

Analysis by the Legislative Reference Bureau

Under current law, a managed care plan must have an internal grievance procedure that allows an enrollee to file a written grievance with the plan and to have a panel investigate and make a determination on the enrollee's grievance. This bill allows an enrollee to appeal a decision of the internal grievance panel to a physician who is not a participating provider in the plan. The decision of the physician on the appeal is binding on the enrollee and the plan. The appeal procedure and how the physician is selected must be determined by the commissioner of insurance by rule.

Also under current law, a managed care plan must have a procedure for an enrollee to obtain a standing referral to a specialist provider if the plan requires enrollees to obtain referrals to specialist providers. However, even if an enrollee has a standing referral to a specialist provider, the plan may require the enrollee's primary provider to remain responsible for coordinating the enrollee's care and may require the specialist provider to obtain prior approval from the enrollee's primary provider before making secondary referrals. The bill eliminates these provisions regarding specialist providers and prohibits a managed care plan from requiring an enrollee to obtain a referral for coverage of the services of a specialist provider who is a participating provider in the plan.

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Under current law a person who is injured or dies as a result of medical malpractice may sue the health care provider that committed the malpractice. Medical malpractice is defined by the courts to mean the mistakes made in the medical diagnosis or treatment, or both, of a person. In *McEvoy v. Group Health Cooperative*, 213 Wis. 2d 507 (1997), the Wisconsin supreme court held that a patient of a managed care plan can recover damages for the denial of benefits by that managed care plan, based on the common law tort of bad faith. This draft does not change the current law regarding medical malpractice but does codify the *McEvoy* decision, allowing a person to sue a managed care plan in tort for a bad faith denial of coverage.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 609.05 (3) of the statutes is amended to read:

609.05 **(3)** Except as provided in ss. 609.22 (4), 609.65 and 609.655, a limited service health organization, preferred provider plan or managed care plan may require an enrollee to obtain a referral from the primary provider designated under sub. (2) to another participating provider prior to obtaining health care services from that participating provider.

SECTION 2. 609.16 of the statutes is created to read:

609.16 Appeals. (1) After using the procedure under s. 609.15, a grievant may appeal the decision of a managed care plan under s. 609.15. The appeal shall be made to a physician who is licensed under ch. 448, who is not a participating provider of the managed care plan and who specializes in the type of medical practice to which the grievance relates. The decision of the physician hearing the appeal is binding on the grievant and the managed care plan.

(2) A managed care plan must include information regarding the appeal procedure in policies or certificates provided to enrollees and must provide such information to an enrollee or prospective enrollee upon request.

(3) The commissioner shall promulgate rules for the appeal procedure under this section, including rules related to how an enrollee requests an appeal and how the physician hearing the appeal is selected.

SECTION 3. 609.22 (4) (a) 1. of the statutes is repealed and recreated to read:

609.22 **(4)** (a) 1. A managed care plan may not require an enrollee of the managed care plan to obtain a referral for coverage of services provided by a participating provider who is a physician licensed under ch. 448 and who specializes in a particular type of medical practice, regardless of whether the participating provider is the enrollee's primary provider.

SECTION 4. 609.22 (4) (a) 2. of the statutes is repealed.

SECTION 5. 609.22 (4) (a) 3. of the statutes is amended to read:

609.22 **(4)** (a) 3. A managed care plan must include information regarding ~~referral procedures~~ the requirement under subd. 1. in policies or certificates provided to enrollees and must provide such information to an enrollee or prospective enrollee upon request.

SECTION 6. 609.39 of the statutes is created to read:

609.39 Right to sue. A person may bring an action in tort against a managed care plan for a bad faith denial of coverage.

SECTION 7. Initial applicability.

(1) SPECIALIST PROVIDERS UNDER MANAGED CARE PLANS.

(a) Except as provided in paragraph (b), if a policy or certificate that is affected by the treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes contains terms or provisions that are inconsistent with the treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes, the treatment of sections

609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes first applies to that policy or certificate upon renewal.

(b) The treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes first applies to policies or group certificates covering employes who are affected by a collective bargaining agreement containing provisions that are inconsistent with the treatment of sections 609.05 (3) and 609.22 (4) (a) 1., 2. and 3. of the statutes that are issued or renewed on the earlier of the following:

1. The day on which the collective bargaining agreement expires.

2. The day on which the collective bargaining agreement is extended, modified or renewed.

(2) APPEALS OF DECISIONS OF MANAGED CARE PLANS.

(a) The treatment of section 609.16 (1) of the statutes first applies to grievances arising on September 1, 2000.

(b) The treatment of section 609.16 (2) of the statutes first applies to policies issued or renewed on September 1, 2000.

(3) LAWSUITS AGAINST MANAGED CARE PLANS. The treatment of section 609.39 of the statutes first applies to claims arising on the effective date of this subsection.

SECTION 8. Effective dates. This act takes effect on the day after publication, except as follows:

(1) APPEALS OF DECISIONS OF MANAGED CARE PLANS. The treatment of section 609.16 (1) and (2) of the statutes takes effect on September 1, 2000.

(END)