

2463

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I N S E N A T E

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Introduced by Sens. LAVALLE, DIAZ, LARKIN, MORAHAN, SALAND, VOLKER --
read twice and ordered printed, and when printed to be committed to
the Committee on Judiciary

AN ACT to amend the general obligations law, the civil practice law and
rules and the public health law, in relation to holding health care
organizations accountable for the consequences of their decisions

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature finds that a wide
2 variety of entities are integrating the functions of paying for health
3 care, determining what health care is paid for, and providing the care.
4 This integration of functions is breaking down traditional distinctions.
5 Increasingly, payor determinations are governing health care and
6 controlling decisions that in the past were the exclusive domain of
7 health care professionals and patients. The legislature further finds
8 that this integration of functions makes it imperative that health care
9 organizations be held fully responsible for the consequences of their
10 decisions, much as health care professionals have been held accountable
11 for the consequences of their decisions.

12 S 2. The general obligations law is amended by adding two new sections
13 11-108 and 11-109 to read as follows:

14 S 11-108. ACCOUNTABILITY OF HEALTH CARE ORGANIZATIONS. 1. DEFI-
15 NITIONS. FOR PURPOSES OF THIS SECTION AND SECTION 11-109 OF THIS TITLE,
16 UNLESS THE CONTEXT CLEARLY REQUIRES OTHERWISE:

17 (A) "HEALTH CARE ORGANIZATION" MEANS AN ENTITY (OTHER THAN A HEALTH
18 CARE PROVIDER) THAT APPROVES, PROVIDES, ARRANGES FOR, OR PAYS FOR HEALTH
19 CARE SERVICES, INCLUDING BUT NOT LIMITED TO:

20 (I) A HEALTH MAINTENANCE ORGANIZATION LICENSED PURSUANT TO ARTICLE
21 FORTY-THREE OF THE INSURANCE LAW OR CERTIFIED PURSUANT TO ARTICLE
22 FORTY-FOUR OF THE PUBLIC HEALTH LAW,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (II) ANY OTHER ORGANIZATION CERTIFIED PURSUANT TO ARTICLE FORTY-FOUR
2 OF THE PUBLIC HEALTH LAW, OR

3 (III) AN INSURER OR CORPORATION SUBJECT TO THE INSURANCE LAW.

4 NO ENTITY OR PERSON SHALL BE DEEMED TO BE A HEALTH CARE ORGANIZATION
5 BECAUSE THE ENTITY OR PERSON PROCURES OR PAYS FOR HEALTH COVERAGE
6 THROUGH AN ENTITY ACTING UNDER THE INSURANCE LAW OR ARTICLE FORTY-FOUR
7 OF THE PUBLIC HEALTH LAW.

8 (B) "HEALTH CARE PROVIDER" MEANS AN ENTITY LICENSED OR CERTIFIED UNDER
9 ARTICLE TWENTY-EIGHT OR THIRTY-SIX OF THE PUBLIC HEALTH LAW, A PREFERRED
10 PROVIDER ORGANIZATION, A PARTICIPATING ENTITY THROUGH WHICH A HEALTH
11 MAINTENANCE ORGANIZATION OFFERS HEALTH SERVICES UNDER ARTICLE FORTY-FOUR
12 OF THE PUBLIC HEALTH LAW, AN ENTITY LICENSED OR CERTIFIED UNDER ARTICLE
13 SIXTEEN, THIRTY-ONE OR THIRTY-TWO OF THE MENTAL HYGIENE LAW, A HEALTH
14 CARE PRACTITIONER LICENSED, REGISTERED OR CERTIFIED UNDER TITLE EIGHT OF
15 THE EDUCATION LAW, OR A PROVIDER OF PHARMACEUTICAL PRODUCTS OR SERVICES
16 OR DURABLE MEDICAL EQUIPMENT.

17 (C) "HEALTH CARE SERVICE" MEANS HEALTH CARE SERVICES, TREATMENTS,
18 PRODUCTS OR EQUIPMENT PROVIDED BY A HEALTH CARE PROVIDER.

19 2. (A) WHENEVER A HEALTH CARE ORGANIZATION DELAYS, FAILS OR REFUSES TO
20 APPROVE, PROVIDE, ARRANGE FOR, OR PAY FOR, IN A TIMELY MANNER, ANY
21 HEALTH CARE SERVICE TO A PERSON TO THE EXTENT IT IS CONTRACTUALLY OR
22 LEGALLY OBLIGATED TO DO SO, IT SHALL BE LIABLE FOR ANY PERSONAL INJURY,
23 DEATH OR DAMAGES CAUSED BY THE DELAY, FAILURE OR REFUSAL.

24 (B) A HEALTH CARE ORGANIZATION SHALL BE LIABLE UNDER THIS SECTION,
25 UNDER OTHERWISE APPLICABLE RULES OF TORT AND CONTRACT LIABILITY, INCLUD-
26 ING BUT NOT LIMITED TO RULES RELATING TO AGENCY, VICARIOUS LIABILITY,
27 AND JOINT AND SEVERAL LIABILITY, FOR ANY ACT BY AN AGENT, CONTRACTOR,
28 PARTICIPATING ENTITY, OR HEALTH CARE PROVIDER, FOR WHICH THE HEALTH CARE
29 ORGANIZATION WOULD BE LIABLE IF IT WERE COMMITTED BY THE HEALTH CARE
30 ORGANIZATION.

31 3. THE FAILURE OF THE PERSON (OR OF ANY OTHER PERSON ACTING ON THE
32 PERSON'S BEHALF) TO SEEK AN ALTERNATIVE PROVIDER OF OR TO PAY FOR THE
33 HEALTH CARE SERVICE SHALL NOT DIMINISH THE HEALTH CARE ORGANIZATION'S
34 LIABILITY OR CONSTITUTE CULPABLE CONDUCT FOR THE PURPOSES OF SECTION
35 FOURTEEN HUNDRED ELEVEN OF THE CIVIL PRACTICE LAW AND RULES.

36 4. NOTHING IN THIS SECTION SHALL LIMIT ANY OTHER RIGHT, REMEDY OR
37 CAUSE OF ACTION THAT ANY PERSON MAY OTHERWISE HAVE.

38 5. NO CONTRACT OR AGREEMENT BETWEEN A HEALTH CARE ORGANIZATION AND A
39 HEALTH CARE PROVIDER SHALL:

40 (A) DIRECTLY OR INDIRECTLY REQUIRE A HEALTH CARE PROVIDER TO INDEMNIFY
41 OR HOLD HARMLESS THE HEALTH CARE ORGANIZATION FOR ANY LIABILITY RESULT-
42 ING FROM THE HEALTH CARE ORGANIZATION'S ACTS OR OMISSIONS; OR

43 (B) WAIVE, LIMIT, OR DELEGATE THE LIABILITY OF THE HEALTH CARE ORGAN-
44 IZATION UNDER THIS SECTION TO ANY HEALTH CARE PROVIDER.

45 6. NO CONTRACT OR AGREEMENT BETWEEN A HEALTH CARE ORGANIZATION AND ANY
46 PERSON SHALL WAIVE OR LIMIT ANY LIABILITY OF THE HEALTH CARE ORGANIZA-
47 TION UNDER THIS SECTION TO THE PERSON.

48 7. IF THE TIME IN WHICH A PLAINTIFF COULD HAVE COMMENCED AN ACTION FOR
49 PROFESSIONAL MALPRACTICE FOR THE ACT, ERROR OR OMISSION COMPLAINED OF
50 HAS EXPIRED PRIOR TO THE COMMENCEMENT OF AN ACTION BROUGHT PURSUANT TO
51 THIS SECTION AGAINST A HEALTH CARE ORGANIZATION, THE DEFENDANT IN SAID
52 ACTION SHALL BE BARRED FROM COMMENCING A THIRD-PARTY ACTION AGAINST A
53 PERSON NOT A PARTY WHO IS OR MAY BE LIABLE TO THAT DEFENDANT FOR ALL OR
54 PART OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT AND AGAINST WHOM THE
55 PLAINTIFF CANNOT COMMENCE AN ACTION FOR PROFESSIONAL MALPRACTICE DUE TO

1 THE EXPIRATION OF THE STATUTE OF LIMITATIONS PRIOR TO THE COMMENCEMENT
2 OF THE ACTION AGAINST THE DEFENDANT.

3 8. A HEALTH CARE ORGANIZATION SHALL EXERCISE REASONABLE CARE: (A)
4 WHEN MAKING DECISIONS WHICH AFFECT THE HEALTH CARE SERVICE OF AN ENROL-
5 LEE; AND (B) IN SELECTING AND EXERCISING INFLUENCE OR CONTROL OVER ITS
6 EMPLOYEES, AGENTS, OSTENSIBLE AGENTS, OR REPRESENTATIVES WHO ARE ACTING
7 ON ITS BEHALF, RESPECTING DECISIONS WHICH MAY AFFECT THE QUALITY OF THE
8 HEALTH CARE SERVICE PROVIDED TO ITS ENROLLEES.

9 9. THIS SECTION SHALL NOT BE CONSTRUED TO DIMINISH ANY CONTRACTUAL OR
10 LEGAL OBLIGATION OF THE HEALTH CARE ORGANIZATION, NOR TO CREATE AN OBLI-
11 GATION ON THE PART OF THE HEALTH CARE ORGANIZATION TO PROVIDE ANY HEALTH
12 CARE SERVICE TO AN ENROLLEE THAT IS NOT A COVERED BENEFIT.

13 S 11-109. PROTECTION OF HEALTH CARE PROVIDERS. 1. NO HEALTH CARE
14 ORGANIZATION OR HEALTH CARE PROVIDER SHALL, BY CONTRACT, POLICY OR
15 PROCEDURE:

16 (A) PROHIBIT OR RESTRICT ANY HEALTH CARE PROVIDER FROM FILING A
17 COMPLAINT;

18 (B) PROHIBIT OR RESTRICT ANY HEALTH CARE PROVIDER FROM MAKING A REPORT
19 OR COMMENTING TO THE APPROPRIATE GOVERNMENT AGENCY REGARDING THE POLI-
20 CIES OR PRACTICES OF THE ORGANIZATION WHICH MAY NEGATIVELY AFFECT THE
21 QUALITY OF OR ACCESS TO HEALTH CARE SERVICES; OR

22 (C) PROHIBIT OR RESTRICT ANY HEALTH CARE PROVIDER FROM DISCLOSING OR
23 COMMENTING ON POLICIES OR PRACTICES OF THE ORGANIZATION WHICH MAY NEGA-
24 TIVELY AFFECT THE QUALITY OF OR ACCESS TO HEALTH CARE SERVICES TO THE
25 PUBLIC.

26 THIS SUBDIVISION SHALL NOT BE CONSTRUED TO PERMIT A HEALTH CARE
27 PROVIDER TO DISCLOSE ANY INFORMATION REGARDING A PATIENT WHICH WOULD
28 OTHERWISE BE DEEMED CONFIDENTIAL OR PRIVILEGED, OR WHICH SHOULD NOT BE
29 DISCLOSED OR DISCUSSED ACCORDING TO LAW OR REASONABLE PROFESSIONAL STAN-
30 DARDS.

31 2. NO HEALTH CARE ORGANIZATION OR HEALTH CARE PROVIDER SHALL TERMINATE
32 A CONTRACT OR EMPLOYMENT OF A HEALTH CARE PROVIDER, OR REFUSE TO RENEW
33 SUCH A CONTRACT, OR PENALIZE A HEALTH CARE PROVIDER OR REDUCE OR LIMIT
34 THE COMPENSATION OF A HEALTH CARE PROVIDER SOLELY BECAUSE A HEALTH CARE
35 PROVIDER HAS:

36 (A) ADVOCATED FOR, RECOMMENDED OR PROVIDED A PARTICULAR HEALTH CARE
37 SERVICE TO A PATIENT, TO WHICH THE PATIENT WAS ENTITLED BY CONTRACT OR
38 LAW;

39 (B) TAKEN ANY ACTION UNDER SUBDIVISION ONE OF THIS SECTION;

40 (C) APPEALED OR ASSISTED IN APPEALING A DECISION OF THE HEALTH CARE
41 ORGANIZATION; OR

42 (D) REQUESTED A HEARING OR REVIEW TO WHICH THE PROVIDER WAS ENTITLED.

43 3. NO HEALTH CARE ORGANIZATION OR HEALTH CARE PROVIDER SHALL APPLY ANY
44 INCENTIVE, WHETHER MONETARY OR OTHERWISE, TO A HEALTH CARE PROVIDER
45 INTENDED OR HAVING THE EFFECT OF INDUCING THE HEALTH CARE PROVIDER TO
46 DELAY, FAIL OR REFUSE TO PROVIDE ANY HEALTH CARE SERVICE TO WHICH A
47 PATIENT IS ENTITLED BY CONTRACT OR LAW.

48 S 3. Section 1602 of the civil practice law and rules is amended by
49 adding a new subdivision 14 to read as follows:

50 14. NOT APPLY TO AN ACTION AGAINST A HEALTH CARE ORGANIZATION BROUGHT
51 PURSUANT TO SECTION 11-108 OF THE GENERAL OBLIGATIONS LAW.

52 S 4. Subdivision 1 of section 4410 of the public health law, as added
53 by chapter 938 of the laws of 1976, is amended to read as follows:

54 1. The provision of comprehensive health services directly or indi-
55 rectly, by a health maintenance organization through its comprehensive
56 health services plan shall not be considered the practice of the profes-

1 sion of medicine by such organization or plan. [However, each] EXCEPT
2 THAT:

3 (A) THIS SUBDIVISION SHALL NOT BE CONSTRUED TO LIMIT ANY LIABILITY THE
4 HEALTH MAINTENANCE ORGANIZATION OR ITS COMPREHENSIVE HEALTH SERVICES
5 PLAN WOULD OTHERWISE HAVE RELATING TO ANY PROFESSIONAL SERVICES RENDERED
6 BY, ON BEHALF OF, OR IN CONNECTION WITH THE ORGANIZATION OR PLAN.

7 (B) EACH member, employee or agent of such organization or plan shall
8 be fully and personally liable and accountable for any negligent or
9 wrongful act or misconduct committed by him OR HER or any person under
10 his OR HER direct supervision and control while rendering professional
11 services on behalf of [such] THE organization or plan.

12 (C) NO CONTRACT OR AGREEMENT BETWEEN A HEALTH MAINTENANCE ORGANIZATION
13 OR ITS COMPREHENSIVE HEALTH SERVICES PLAN AND ANY HEALTH CARE PROVIDER
14 SHALL DELEGATE THE LIABILITY OF THE HEALTH MAINTENANCE ORGANIZATION TO
15 ANY HEALTH CARE PROVIDER OR SHALL REQUIRE THE HEALTH CARE PROVIDER TO
16 INDEMNIFY OR HOLD HARMLESS THE ORGANIZATION OR PLAN FOR ANY LIABILITY
17 THE ORGANIZATION OR PLAN MAY INCUR.

18 S 5. If any provision of this act or the application thereof shall be
19 held to be invalid, such invalidity shall not affect other provisions or
20 other applications of any provision of this act which can be given
21 effect without the invalid provision or application, and to that end,
22 the provisions and application of this act are severable.

23 S 6. This act shall take effect immediately.