

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1568

SPONSOR: Banking and Insurance Committee and Senator Sebesta

SUBJECT: Physicians-- Adverse Determinations

DATE: April 24, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Thomas</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Adverse determinations are decisions made by health maintenance organizations (HMOs) to modify, reduce, or terminate a course of treatment. Currently, only a Florida-licensed physician or osteopath or an out of state physician or osteopath with an active, unencumbered license comparable to a Florida license may make an adverse determination on behalf of an HMO.

Committee Substitute for Senate Bill 1568 provides that only those allopathic or osteopathic physicians with an active and unencumbered Florida license may render an adverse determination regarding a service provided by a Florida-licensed physician to a subscriber of an HMO or prepaid health clinic. Out of state physicians and physicians with inactive or encumbered Florida licenses could no longer make adverse determinations. Further, the bill clarifies that this provision does not create authority for either the Board of Medicine or the Board of Osteopathic Medicine to regulate an HMO or prepaid health clinic, however, such boards may continue to have jurisdiction over licensees of their respective boards.

This bill amends section 641.51, Florida Statutes.

II. Present Situation:

HMO and PHC Adverse Determinations

A “health maintenance organization” (HMO) is a risk-bearing health insurance provider for subscribers who prepay premiums for a health care plan under ss. 641.18 and 641.19(13), F.S. A “prepaid health clinic” (PHC) is any one of a variety of prepaid health care plans under ss. 641.401 and 641.402(5), F.S. Health maintenance organizations and PHCs are jointly

regulated by the Department of Insurance and the Agency for Health Care Administration (AHCA) under ss. 641.22, F.S., et seq. and ss. 641.405, F.S., et seq., respectively.

An “adverse determination” is a coverage decision made by an HMO or PHC either denying, reducing or terminating coverage of a plan subscriber’s prescribed course of treatment under s. 641.47(1), F.S. An HMO or PHC may make an adverse determination if the course of treatment is medically unnecessary, inappropriate, ineffective, or otherwise does not meet the HMO’s medical requirements.

Currently, only physicians licensed in Florida or physicians licensed in a state with licensing requirements similar to those of Florida may make adverse determination decisions on behalf of an HMO or PHC under s. 641.51(4), F.S. Florida law also allows both active and inactive Florida medical license holders, regardless of current encumbrances, to render adverse determinations on behalf of an HMO or PHC under s. 641.51(4), F.S.¹

Under present law, a physician may either hold an “active” license or an “inactive” license to practice medicine under chapters 458 and 459, F.S. An active license entitles a physician to care for patients in Florida and may only be held by physicians who continuously render medical services to patients in the state. An inactive license does not entitle a physician to provide medical care and is typically held by physicians who have either retired, re-located to another jurisdiction, or who elect to not practice.

The Florida Board of Medicine and the Florida Board of Osteopathic Medicine (Board or Boards) are the administrative bodies charged with regulating physician care. If a physician allegedly violates the rules regulating professional physician conduct, or has allegedly committed malpractice, the Board governing the physician’s license may pursue administrative action against the physician through an administrative hearing. The Board, if it determines that misconduct occurred, may discipline a physician by “encumbering” the physician’s license. Typical encumbrances include fining the physician or suspending the physician’s practice for a set time period under ss. 458.331(2) and 459.015(2), F.S. Encumbrances are removed when the administrative fine is paid or the disciplinary period ends under ss. 458.331(4) and 459.015(4), F.S.

Out-of-state physicians who do not hold a Florida license are not subject to regulation or disciplinary measures by the Boards. Allegations of misconduct or malpractice by Florida patients against out-of-state doctors must be brought before the appropriate regulatory entity in the physician’s state of licensure.

The current law requires that adverse determinations be sent to the subscriber within 2 working days of the decision, including the utilization review criteria or benefits provisions used in the adverse determination, the physician who rendered the adverse determination, and which must be signed by an authorized representative of the organization or physician who rendered the determination under s. 641.51(4), F.S.

¹ However, Florida has no reciprocity and does not allow physicians from other states to practice medicine in the state absent Florida licensure.

The internal processes that HMOs or PHCs utilize to review care decisions vary among organizations. The process typically begins with a primary care physician's treatment determination or referral to a specialist. After the initial decision is made regarding the subscriber's care, certain limitations in the subscriber's contract of service, or certain HMO or PHC policy decisions, may trigger review by the medical director or designee. Some procedures and treatment plans may require pre-authorization by the medical director before being performed. These decisions are made by the director on behalf of the HMO or PHC and can be made in consultation with a specialist in the field.

Every HMO and PHC must maintain an internal grievance procedure for subscribers under s. 641.511(1), F.S. The notice of adverse determination must contain information concerning the internal grievance process and a subscriber unsatisfied with an adverse determination may appeal under the grievance process within 30 days under s. 641.511(4)(a), F.S.

If the internal grievance process does not resolve the issue, the plan subscriber may appeal to the AHCA "Statewide Provider and Subscriber Assistance Program" (program). This review entity consists of 4 persons: a member of AHCA, a member of the Department of Insurance, a physician appointed by the Governor and other physicians as needed according to area of expertise, and a member of the consumer public appointed by the Governor under s. 408.7056(11), F.S. Health maintenance organizations and PHCs are required to give notice to the subscriber, in the adverse determination notification, that the subscriber may request review by the program under ss. 641.511(1) and (10), F.S. The subscriber must meet certain criteria to bring a case before the program, including a requirement of exhausting the organization's internal grievance process and of not filing a complaint in any court under s. 408.7056(2), F.S. Binding arbitration may be made available to the subscriber, if the contract of service so provides, as an alternative to an appeal to the program under s. 641.511(3), F.S.

III. Effect of Proposed Changes:

Section 1. Amends s. 641.51, F.S., to provide that only those physicians with an active and unencumbered Florida license may render an adverse determination regarding a service provided by a Florida-licensed physician to a subscriber of a health maintenance organization (HMOs) or prepaid health clinic. Physicians licensed in other states would no longer be authorized to make adverse determinations on behalf of an HMO. The bill clarifies that its provisions do not create authority for either the Board of Medicine or the Board of Osteopathic Medicine to regulate HMOs or prepaid health clinics, however, such boards may continue to have jurisdiction over licensees of their respective boards.

Section 2. Provides that the bill will be effective on January 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may increase physician review costs for HMOs and PHCs by limiting potential reviewers to only those physicians with Florida licenses. Health maintenance organizations or PHC subscribers will be assured that complaints regarding physicians rendering adverse determinations can be heard by one of the Florida regulatory boards. Physicians currently rendering adverse determinations that are not licensed in Florida will either be precluded from continuing to render adverse determinations, or must attain Florida licensure.

Representatives with HMOs state that adverse determinations in cases involving special treatments, placements in specialized out of state health care facilities, or complex procedures, are sometimes made by out of state specialist physicians who have expertise in the specific medical area. Therefore, this bill would greatly limit the ability of HMOs to utilize such medical experts. According to the Agency for Health Care Administration's ("AHCA's") HMO Section, only 1 out of the 10 largest HMOs operating in Florida makes all of its adverse determinations using physicians licensed outside of Florida.² Some HMOs use out of state experts for consultation purposes with Florida-based physicians.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

² Interview with Tom Warring, Section Chief, AHCA HMO Section (Thursday, April 12, 2001)

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
