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Code: Section:

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DIVISION 4. GENERAL PROVISIONS [3274 - 9566] (*Heading of Division 4 amended by Stats. 1988, Ch. 160, Sec. 16.)*

PART 1. RELIEF [3274 - 3428] (*Part 1 enacted 1872.)*

TITLE 7. DUTY OF HEALTH CARE SERVICE PLANS AND MANAGED CARE ENTITIES [3428- 3428.] (*Title 7 added by Stats. 1999, Ch. 536, Sec. 3.)*

3428. (a) For services rendered on or after January 1, 2001, a health care service plan or managed care entity, as described in subdivision (f) of Section 1345 of the Health and Safety Code, shall have a duty of ordinary care to arrange for the provision of medically necessary health care service to its subscribers and enrollees, where the health care service is a benefit provided under the plan, and shall be liable for any and all harm legally caused by its failure to exercise that ordinary care when both of the following apply:

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

(2) The subscriber or enrollee suffered substantial harm.

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

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

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

(e) This section shall not create any liability on the part of an employer or an employer group purchasing organization that purchases coverage or assumes risk on behalf of its employees or on behalf of self-funded employee benefit plans.

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

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

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

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

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

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

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

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

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

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

(l) If any provision of this section or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid or unenforceable, the remainder of the section and the application of those provisions to other persons or circumstances shall not be affected thereby.

(Added by Stats. 1999, Ch. 536, Sec. 3. Effective January 1, 2000. Note: In the 1999 Statutes, AB 55 was enacted as Ch. 533 and SB 189 was enacted as Ch. 542.)