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DIRECTIVE NUMBER 142
HEALTH MAINTENANCE ORGANIZATIONS

ADMINISTRATIVE MEDICAL TREATMENT GUIDELINES
FOR MEDICAL CARE

THE PURPOSE OF THIS DIRECTIVE IS TO CLARIFY THE STATUTORY REQUIREMENTS FOR ADOPTION OF ADMINISTRATIVE TREATMENT GUIDELINES FOR MEDICAL CARE. UNDER LOUISIANA LAW, HEALTH MAINTENANCE ORGANIZATIONS ARE AUTHORIZED TO ESTABLISH PROCEDURES FOR THE REVIEW OF MEDICAL CARE AS WELL AS THE PERFORMANCE OF PROVIDERS IN DELIVERING APPROPRIATE MEDICAL CARE TO PLAN MEMBERS. TO ASSURE PROVISION OF HIGH QUALITY HEALTH CARE AND ELIMINATE UNNECESSARY OR INAPPROPRIATE PROCEDURES, THESE ENTITIES ARE AUTHORIZED TO ADOPT ADMINISTRATIVE TREATMENT GUIDELINES TO BE FOLLOWED BY PARTICIPATING HEALTH CARE PROVIDERS. HOWEVER, WITH THIS AUTHORITY THERE ARE SPECIFIC LIMITATIONS AND PROHIBITIONS INCLUDED IN THE LAW TO PROTECT THE GENERAL HEALTH AND WELL BEING OF PLAN MEMBERS.

LOUISIANA REVISED STATUTES 22:2021 STATES THE FOLLOWING:

> "EVERY HEALTH MAINTENANCE ORGANIZATION SHALL ESTABLISH PROCEDURES FOR CONTINUOUS REVIEW OF QUALITY OF CARE, PERFORMANCE OF PROVIDERS, UTILIZATION OF HEALTH SERVICES, FACILITIES, AND COSTS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THERE SHALL BE NO MONETARY LIABILITY ON THE PART OF, AND NO CAUSE OF ACTION FOR DAMAGES SHALL ARISE AGAINST ANY PERSON WHO PARTICIPATES IN QUALITY OF CARE OR UTILIZATION REVIEWS BY PEER REVIEW COMMITTEES FOR ANY ACT PERFORMED DURING SUCH REVIEWS IF SUCH PERSON ACTS WITHOUT MALICE, MAKES A REASONABLE EFFORT TO OBTAIN THE FACTS, AND BELIEVES THAT THE ACTION TAKEN IS WARRANTED BY THE FACTS. THE PEER REVIEW COMMITTEES SHALL NOT BE SUBJECT TO DISCOVERY, AND NO PERSON IN ATTENDANCE AT SUCH REVIEWS SHALL BE REQUIRED TO TESTIFY AS TO WHAT TRANSPIRED AT SUCH REVIEWS. THE UTILIZATION REVIEW REQUIREMENTS AND ADMINISTRATIVE TREATMENT GUIDELINES OF THE HEALTH MAINTENANCE ORGANIZATION SHALL NOT FALL BELOW THE APPROPRIATE STANDARD OF CARE AND SHALL NOT IMPINGE UPON THE INDEPENDENT MEDICAL JUDGMENT

OF THE TREATING HEALTH CARE PROVIDER. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT A HEALTH MAINTENANCE ORGANIZATION FROM CONDUCTING A UTILIZATION REVIEW AND QUALITY ASSURANCE PROGRAM."

THERE ARE TWO SPECIFIC PROHIBITIONS WHICH MUST BE FOLLOWED BY HEALTH MAINTENANCE ORGANIZATIONS IN ADOPTING ADMINISTRATIVE TREATMENT GUIDELINES. FIRST, THE STATUTE PROHIBITS THE ADOPTION OF ADMINISTRATIVE TREATMENT GUIDELINES WHICH IMPINGE UPON THE INDEPENDENT MEDICAL JUDGMENT OF A TREATING HEALTH CARE PROVIDER. THIS PROHIBITION DOES NOT ALLOW ESTABLISHMENT OF ANY REQUIREMENT WHICH WOULD LIMIT OPEN COMMUNICATION BETWEEN A HEALTH CARE PROVIDER AND A PATIENT. SUCH A REQUIREMENT WOULD IN EFFECT LIMIT THE PRACTITIONER'S ABILITY TO PROVIDE THE PATIENT WITH TREATMENT OPTIONS REGARDING A MEDICAL CONDITION AND THEREBY "IMPINGE UPON THE INDEPENDENT MEDICAL JUDGMENT OF THE TREATING HEALTH CARE PROVIDER". AS A RESULT, USE OF GAG CLAUSES IN HEALTH CARE PRACTITIONER CONTRACTS IS STRICTLY PROHIBITED UNDER LOUISIANA LAW.

SECOND, THE STATUTE PROHIBITS ADOPTION OF ADMINISTRATIVE TREATMENT GUIDELINES WHICH RESULT IN THE MEDICAL CARE RECEIVED BY A PATIENT BEING LESS THAN THE APPROPRIATE STANDARD OF CARE. THIS PROHIBITION HAS A DIRECT IMPACT ON THE ADOPTION AND USE OF MEDICAL TREATMENT GUIDELINES WHICH LIMIT THE COURSE AND SCOPE OF MEDICAL CARE. TO COMPLY WITH THE STATUTORY REQUIREMENT, THERE MUST BE AN AFFIRMATIVE FINDING REGARDING THE "APPROPRIATE STANDARD OF CARE". SUCH A STANDARD CAN BE DEMONSTRATED BY THE WIDE ACCEPTANCE AND USE BY HEALTH CARE PROVIDERS THROUGHOUT THE STATE, OR COMPELLING EMPIRICAL EVIDENCE THAT DEMONSTRATES THE APPROPRIATENESS OF THE STANDARD.

TO DATE THE DEPARTMENT OF INSURANCE HAS FOUND NEITHER EMPIRICAL EVIDENCE NOR DEMONSTRATION OF WIDE ACCEPTANCE OF ADMINISTRATIVE TREATMENT GUIDELINES WHICH LIMIT HOSPITALIZATIONS RELATED TO CHILD BIRTH TO 48-HOURS OR LIMIT TREATMENT FOR CONDITIONS REQUIRING MASTECTOMY TO OUT-PATIENT PROCEDURES.

THEREFORE, I HEREBY ORDER AND DIRECT THAT:

HEALTH MAINTENANCE ORGANIZATIONS LICENSED IN LOUISIANA ARE STRICTLY PROHIBITED FROM ADOPTING AND USING ADMINISTRATIVE TREATMENT GUIDELINES FOR MEDICAL CARE WHICH LIMIT HOSPITALIZATIONS RELATED TO CHILD BIRTH TO 48-HOURS OR LIMIT TREATMENT FOR CONDITIONS REQUIRING MASTECTOMY TO OUT-PATIENT PROCEDURES UNTIL EVIDENCE OF COMPLIANCE WITH THE STATUTORY REQUIREMENTS OF L.R.S. 22:2021 HAS BEEN PROVIDED TO THE LOUISIANA DEPARTMENT OF INSURANCE.

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