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FISCAL IMPACT REPORT

SPONSOR: Coll DATE TYPED: 02/27/01 HB 60/aHCPAC/aHJC
 SHORT TITLE: Amend Medicaid Provider Act SB _____
 ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Health Policy Commission

Human Services Department did not respond at the time the initial FIR was written. Therefore, a correction to the original FIR was necessary to include the department's comments

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment provides that a medical provider can refuse to renew a contract with a health care professional only if there is a "preponderance" of evidence that good cause exists for such refusal.

The new language places more of a burden on the provider to document all evidence for refusing to renew a contract.

In addition, when a health care professional prevails in a suit, the bill is amended to reflect that damages as described in the bill "may" be awarded as opposed to "shall" be awarded.

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment adds "chiropractors" to health care professionals identified in Section 27-2-12.3 A.

Technical Question: Should "chiropractors" be added to line 5 on page 2?

Synopsis of Original Bill

HB 60 amends certain Medicaid sections mandates that Medicaid providers conduct fair and non-discriminatory practices towards health care professionals regardless of the professional's length of time in New Mexico, race, gender, religious belief or sexual orientation. The bill contains an emergency clause.

Section 1 specifies that the provisions regarding equal rates apply to Medicaid patients who are outside of the Medicaid managed care system. It further strikes language regarding patients within the Medicaid managed care system and adds a section (B) specifying that the provisions of the Medicaid Provider Act apply to such patients.

Section 3 amends the Medicaid Provider Act:

“health care professional” means a physician or other practitioner who is licensed, certified, or otherwise authorized by the state to provide health care services consistent with state law.

Section 4 adds a new section to the Medicaid Provider Act:

Fair and Non-Discriminatory Practices Required of Medicaid Providers – Remedies for Violations

Section 4 item A specifies that Medicaid providers:

- cannot refuse to renew a contract with a health care professional without “demonstrated” good cause,
- must establish and implement equal reimbursement rates for all health care professionals for similar services regardless of time in New Mexico, date of Medicaid contract, or location, and
- cannot discriminate based on race, ethnicity, gender, religion, or sexual orientation.

Section 4 item B establishes that health care professionals damaged by the Medicaid provider's non-compliance with above can sue for punitive and compensatory damages and may be awarded attorney fees and costs.

Section 5 enacts an Emergency Clause stating that this Act would take effect immediately upon signing.

Significant Issues

Human Services Department listed the following issues:

As it relates to Fee for Service:

There are no significant issues, because there is no distinction with Medicaid fee for service reimbursement rates with respect to time that physician, dentist, optometrist, podiatrists or psychologist entered practice in the state of New Mexico, entered into agreement or contract with Medicaid, or location of state in which services are provided.

As it relates to Managed Care:

This legislation would have broad implications for the managed care program. The bill, if enacted, would undermine the role of the Managed Care Organization (MCO) in its efforts to control participation in its provider networks, manage utilization, oversee and assure quality health care, and control costs. The legislation would also permit health care professionals in dispute with an MCO to bring litigation against the MCO and seek remedies for damages.

Currently the Medicaid MCOs establish rates for their contracted and non-contracted providers. Health care professionals are reimbursed for provision of services to MCO members at a rate which is at least equal to the applicable Medicaid fee-for-service rate, absent other negotiated arrangements, which is protection to the health care professional and permits the MCO to manage costs.

As for contracts with health care professionals, the MCOs are required to establish and maintain a comprehensive network of providers capable of serving all members who are enrolled with the MCO. The MCOs must provide or arrange for the provision of services that are part of the Medicaid managed care benefit package. Forcing MCOs to renew all health professional contracts, as this bill would do, interferes with the MCOs' ability to manage participation in their provider networks, manage utilization and quality, and control costs.

In addition, there are quality standards related to utilization management that protect the Medicaid member while managing costs. By mandating reimbursement for services, the ability of the MCO to manage expenditures based upon voluntary contractual agreements between an MCO and providers is impaired. Cost increases could occur.

Finally, the MCOs provide due process to health care professionals in the MCO provider networks through the grievance, appeals and hearings process. Providers who are dissatisfied with a particular aspect of the MCOs' contractual business practices can use these processes. If enacted, this legislation would allow providers to bypass this process and bring a lawsuit against the MCO, again undermining the State's Medicaid managed care regulatory requirements.

ADMINISTRATIVE IMPLICATIONS

HSD indicates that current managed care contracts would have to be amended. HSD, also expressed concern over additional lawsuits that may occur as a result of this legislation.

FISCAL IMPLICATIONS

HSD reports the following fiscal implications:

As it relates to Fee for Service:

There will be no fiscal impact. Medicaid fee for service reimburses physicians, dentists, optometrists, podiatrists or psychologists equally based on procedures billed with no regard to when the provider entered practice in New Mexico, entered into agreement or contract with Medicaid, or location of state in which services are provided.

As it relates to Managed Care:

The legislation will adversely effect the MCOs' ability to control participation in their provider network, negotiate rates and control costs. In addition, permitting health care professionals who believe that they have been damaged by the MCOs' failure to comply with the provisions in the legislation will add costs to the MCOs, depending upon how the remedies for violations are interpreted and brought forth via litigation.

OTHER SUBSTANTIVE ISSUES

The Health Policy Commission notes that:

- c Some health care professionals have negotiated varying fees. This bill mandates that the Medicaid providers must give equal rates for all professionals for the same or similar services.
- c This extends provisions for equal rates for services provided to Medicaid patients who are not in the Medicaid managed care system, which may increase health care professionals' services to such Medicaid patients.
- c Health care professionals have been refused new contracts or have been dropped by Medicaid providers without sufficient documentation or cause, even though they have requested to renew their contracts. A lawsuit filed by a dentist under such circumstances is still pending. This legislation will give more protection to professionals and require sanctions to Medicaid providers who have unfair practices.
- c New Mexico not only has a shortage of health care professionals, which is critical in some professions and rural locations, but also has a dearth of professionals who accept Medicaid or wish to participate in either the managed care or the fee for service systems. Mandating fair and non-discriminatory practices by Medicaid providers (including MCOs) may result in additional health care professionals participating in the Medicaid program.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

HSD indicated the following concern:

As it relates to Managed Care:

A legal review is necessary to ensure that this legislation does not conflict with state and federal Medicaid statutes and regulations pertaining to remedies.

POSSIBLE QUESTIONS:

HSD discusses the difficulty of managing costs in managed care if the legislation is passed. However, no dollar amounts or impacts are mentioned. Is the implication that increased costs would be insignificant?