HOUSE BILL 214

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

EDWARD C. SANDOVAL

FOR THE HEALTH AND WELFARE REFORM COMMITTEE

AN ACT

RELATING TO INSURANCE; ENACTING THE PATIENT PROTECTION ACT; PROVIDING PROTECTIONS FOR PERSONS IN MANAGED HEALTH CARE PLANS; APPLYING PATIENT PROTECTIONS TO MEDICAID MANAGED CARE; IMPOSING A CIVIL PENALTY; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Patient Protection Act"."

Section 2. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] PURPOSE OF ACT.--The purpose of the Patient Protection Act is to regulate aspects of health

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insurance by specifying patient and provider rights and confirming and clarifying the authority of the department to adopt regulations to provide protections to persons enrolled in managed health care plans. The insurance protections should ensure that managed health care plans treat patients fairly and fulfill their primary obligation to deliver good quality health care services."

Section 3. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Patient Protection Act:

A. "continuous quality improvement" means an ongoing and systematic effort to measure, evaluate and improve a managed health care plan's operations in order to improve continually the quality of health care services provided to enrollees;

B. "covered person", "enrollee", "patient" or "consumer" means an individual who is entitled to receive health care benefits from a managed health care plan;

C. "department" means the insurance department;

D. "emergency care" means a health care procedure, treatment or service delivered to a covered person after the sudden onset of what appears to be a medical condition that manifests itself by symptoms of sufficient severity that the absence of immediate medical attention could be expected by a

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reasonable layperson to result in jeopardy to a person's health, serious impairment of bodily functions, serious dysfunction of a body part or disfigurement to a person;

E. "health care facility" means an institution providing health care services, including a hospital or other licensed inpatient center; an ambulatory surgical or treatment center; a skilled nursing center; a residential treatment center; a home health agency; a diagnostic, laboratory or imaging center; and a rehabilitation or other therapeutic health setting;

F. "health care insurer" means a person who has a valid certificate of authority in good standing pursuant to the Insurance Code to act as an insurer, health maintenance organization, nonprofit health care plan or prepaid dental plan;

G. "health care professional" means a physician or other health care practitioner, including a pharmacist, who is licensed, certified or otherwise authorized by the state to provide health care services consistent with state law;

H. "health care provider" or "provider" means a person licensed or otherwise authorized by the state to furnish health care services and includes health care professionals and health care facilities;

I. "health care services" includes physical health or community-based mental health or developmental disability

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services, including services for developmental delay;

J. "managed health care plan" or "plan" means a health benefit plan of a health care insurer or a provider service network that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with or employed by the health care insurer. "Managed health care plan" or "plan" does not include a traditional fee-for-service indemnity plan, a student health plan or a plan that covers only short-term travel or accident-only, limited benefit or specified disease policies;

K. "person" means an individual or other legal entity;

L. "point-of-service plan" or "open plan" means a managed health care plan that allows enrollees to use health care providers other than providers under direct contract with the plan, even if the plan provides incentives, including financial incentives, for covered persons to use the plan's designated participating providers;

M. "primary health care clinic" means a nonprofit community-based entity established to provide the first level of basic or general health care needs, including diagnostic and treatment services, for residents of a health care underserved area as that area is defined in regulation adopted by the department of health and includes an entity that serves

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primarily low-income populations;

N. "provider service network" means two or more health care providers affiliated for the purpose of providing health care services to covered persons on a capitated or similar prepaid flat-rate basis;

O. "superintendent" means the superintendent of insurance; and

P. "utilization review" means a system for reviewing the appropriate and efficient allocation of health care services, including hospitalization, given or proposed to be given to a patient or group of patients."

Section 4. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] PATIENT RIGHTS--DISCLOSURES--RIGHTS TO BASIC AND COMPREHENSIVE HEALTH CARE SERVICES--GRIEVANCE PROCEDURE--UTILIZATION REVIEW PROGRAM--CONTINUOUS QUALITY PROGRAM.--

A. Each covered person enrolled in a managed health care plan has the right to be treated fairly. A managed health care plan shall deliver good quality and appropriate health care services to enrollees. The department shall adopt regulations to implement the provisions of the Patient Protection Act and shall monitor and oversee a managed health care plan to ensure that each covered person enrolled in a plan is treated fairly and is accorded the rights

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necessary or appropriate to protect patient interests. In adopting regulations to implement the provisions of Subparagraphs (a) and (b) of Paragraph (3) and Paragraphs (5) and (6) of Subsection B of this section regarding health care standards and specialists, utilization review programs and continuous quality improvement programs, the department shall cooperate with and seek advice from the department of health.

B. The regulations adopted by the department to protect patient rights shall provide at a minimum that:

(1) a managed health care plan shall provide oral and written summaries, policies and procedures that explain, prior to or at the time of enrollment and at subsequent periodic times as appropriate, in a clear, conspicuous and readily understandable form, full and fair disclosure of the plan's benefits, terms, conditions, prior authorization requirements, enrollee financial responsibility for payments, grievance procedures, appeal rights and the patient rights generally available to all covered persons;

(2) a managed health care plan shall provide each covered person with appropriate basic and comprehensive health care services that are reasonably accessible and available in a timely manner to each covered person;

(3) in providing the right to reasonably accessible health care services that are available in a timely manner, a managed health care plan shall ensure that:

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(a) the plan offers sufficient numbers and types of safe and adequately staffed health care providers at reasonable hours of service to meet the health needs of the enrollee population, and takes into account cultural aspects of the enrollee population;

(b) health care providers that are specialists may act as primary care providers for patients with chronic medical conditions, provided the specialists offer all reasonable primary care services required by a managed health care plan;

(c) reasonable access is provided to out-of-network health care providers; and

(d) emergency care is immediately available without prior authorization requirements, and appropriate out-of-network emergency care is not subject to additional costs;

(4) a managed health care plan shall adopt and implement a prompt and fair grievance procedure for resolving patient complaints and addressing patient questions and concerns regarding any aspect of the plan, including the quality of and access to health care, the choice of health care provider or treatment and the adequacy of the plan's provider network. The grievance procedures shall notify patients of their statutory appeal rights, including the option of seeking immediate relief in court, and shall provide

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for a prompt and fair appeal of a plan's decision to the superintendent, including special provisions to govern emergency appeals to the superintendent in health emergencies;

(5) a managed health care plan shall adopt and implement a comprehensive utilization review program. The basis of a decision to approve or deny care shall be disclosed to an affected enrollee. The decision to approve or deny care to a patient shall be made in a timely manner, and the final decision shall be made by a qualified health care professional. A plan's utilization review program shall ensure that enrollees have proper access to health care services, including referrals to necessary specialists. A decision made in a plan's utilization review program shall be subject to the plan's grievance procedure and appeal to the superintendent; and

(6) a managed health care plan shall adopt and implement a continuous quality improvement program that monitors the quality and appropriateness of the health care services provided by the plan."

Section 5. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] CONSUMER ASSISTANCE--CONSUMER ADVISORY BOARDS--OMBUDSMAN OFFICE--REPORTS TO CONSUMERS--SUPERINTENDENT'S ORDERS TO PROTECT CONSUMERS.--

A. Each health care insurer that offers a managed

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health care plan shall establish and adequately staff a consumer assistance office. The purpose of the consumer assistance office is to respond to consumer questions and concerns and assist patients in exercising their rights and protecting their interests as consumers of health care.

B. Each health care insurer that offers a managed health care plan shall establish a consumer advisory board. The board shall meet at least quarterly and shall advise the insurer about the plan's general operations from the perspective of the enrollee as a consumer of health care. The board shall also oversee the plan's consumer assistance office.

C. The department shall establish and adequately staff a managed care ombudsman office, either within the department or by contract. The purpose of the managed care ombudsman office shall be to assist patients in exercising their rights and help advocate for and protect patient interests. The department's managed care ombudsman office shall work in conjunction with each insurer's consumer assistance office and shall independently evaluate the effectiveness of the insurer's consumer assistance office. The department's managed care ombudsman office may require an insurer's consumer assistance office to adopt measures to ensure that the plan operates effectively to protect patient rights and inform consumers of the information to which they

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are entitled.

D. The department shall prepare an annual report assessing the operations of managed health care plans subject to the department's oversight, including information about consumer complaints.

E. A person may file a complaint with the superintendent regarding a violation of the Patient Protection Act. Prior to issuing any remedial order regarding violations of the Patient Protection Act or its regulations, the superintendent shall hold a hearing in accordance with the provisions of Chapter 59A, Article 4 NMSA 1978. The superintendent may issue any order he deems necessary or appropriate, including ordering the delivery of appropriate care, to protect consumers and enforce the provisions of the Patient Protection Act. The superintendent shall adopt special procedures to govern the submission of emergency appeals to him in health emergencies."

Section 6. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] FAIRNESS TO HEALTH CARE PROVIDERS--GAG RULES PROHIBITED--GRIEVANCE PROCEDURE FOR PROVIDERS.--

A. No managed health care plan may:

(1) adopt a gag rule or practice that prohibits a health care provider from discussing a treatment option with an enrollee even if the plan does not approve of

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the option;

(2) include in any of its contracts with health care providers any provisions that offers an inducement, financial or otherwise, to provide less than medically necessary services to an enrollee; or

(3) require a health care provider to violate the ethical duties of his profession or place his license in jeopardy.

B. A health care insurer that proposes to terminate a health care provider from the insurer's managed health care plan shall explain in writing the rationale for its proposed termination and deliver reasonable advance written notice to the provider prior to the proposed effective date of the termination.

C. A managed health care plan shall adopt and implement a prompt and fair grievance procedure for resolving health care provider complaints and addressing provider questions and concerns regarding any aspect of the plan, including the quality of and access to health care, the choice of health care provider or treatment and the adequacy of the plan's provider network. The grievance procedures shall notify providers of their statutory appeal rights, including the option of seeking immediate relief in court, and shall provide for a prompt and fair appeal of a plan's decision to the superintendent, including special provisions to govern

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emergency appeals to the superintendent in health emergencies."

Section 7. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] POINT-OF-SERVICE OPTION PLAN.--The department may require a health care insurer that offers a point-of-service plan or open plan to include in any managed health care plan it offers an option for a point-of-service plan or open plan."

Section 8. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] ADMINISTRATIVE COSTS AND BENEFIT COSTS DISCLOSURES.--The department shall adopt regulations to ensure that both the administrative costs and the direct costs of providing health care services of each managed health care plan are fully and fairly disclosed to consumers in a uniform manner that allows meaningful cost comparisons among plans."

Section 9. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] PRIVATE REMEDIES TO ENFORCE PATIENT AND PROVIDER INSURANCE RIGHTS--ENROLLEE AS THIRD-PARTY BENEFICIARY TO ENFORCE RIGHTS.--

A. A person who suffers a loss as a result of a violation of a right protected pursuant to the provisions of the Patient Protection Act, its regulations or a managed

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health care plan may bring an action to recover actual damages or the sum of one hundred dollars ($100), whichever is greater.

B. A person likely to be damaged by a denial of a right protected pursuant to the provisions of the Patient Protection Act, its regulations or a managed health care plan may be granted an injunction under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage or intent to violate a right is not required.

C. To protect and enforce an enrollee's rights in a managed health care plan, an individual enrollee participating in or eligible to participate in a managed health care plan shall be treated as a third-party beneficiary of the managed health care plan contract between the health care insurer and the party with which the health care insurer directly contracts. An individual enrollee may sue to enforce the rights provided in the contract that governs the managed health care plan.

D. The relief provided pursuant to this section is in addition to other remedies available against the same conduct under the common law or other statutes of this state.

E. In any class action filed pursuant to this section, the court may award damages to the named plaintiffs as provided in this section and may award members of the class the actual damages suffered by each member of the class as a

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result of the unlawful practice."

Section 10. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] APPLICATION OF ACT TO MEDICAID PROGRAM.--The provisions of the Patient Protection Act apply to the medicaid program operation in the state. A managed health care plan offered through the medicaid program shall grant enrollees and providers the same rights and protections as are granted to enrollees and providers in any other managed health care plan subject to the provisions of the Patient Protection Act."

Section 11. A new section of the New Mexico Insurance Code is enacted to read:

"[NEW MATERIAL] PENALTY.--In addition to any other penalties provided by law, a civil administrative penalty of up to twenty-five thousand dollars ($25,000) may be imposed for each violation of the Patient Protection Act. An administrative penalty shall be imposed by written order of the superintendent made after holding a hearing as provided for in Chapter 59A, Article 4 NMSA 1978."

Section 12. Section 59A-1-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 16) is amended to read:

"59A-1-16. EXEMPTED FROM CODE.--In addition to organizations and businesses otherwise exempt, the Insurance Code shall not apply [~~as~~] to:

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A. a labor organization [~~which~~] that incidental only to operations as a labor organization issues benefit certificates to members or maintains funds to assist members and their families in times of illness, injury or need, and not for profit;

B. the credit union share insurance corporation, as identified in [~~Article 58-12~~] Chapter 58, Article 12 NMSA 1978, and similar corporations and funds for protection of depositors, shareholders or creditors of financial institutions and businesses other than insurers; or

C. the risk management division of the general services department [~~of finance and administration of New Mexico~~] or [~~as~~] to insurance of public property or public risks by any agency of government not otherwise engaged in the business of insurance, except the provisions of the patient protection act shall apply to the risk management division and any managed health care plan it offers."

Section 13. Section 59A-46-30 NMSA 1978 (being Laws 1993, Chapter 266, Section 29, as amended) is amended to read:

"59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS.--

A. The provisions of the Insurance Code other than Chapter 59A, Article 46 NMSA 1978 shall not apply to health maintenance organizations except as expressly provided in the Insurance Code and that article. To the extent reasonable and

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not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health maintenance organizations and their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives. For the purposes of such applicability, a health maintenance organization may [~~therein~~] be referred to as an "insurer":

(1) Chapter 59A, Article 1 NMSA 1978;

(2) Chapter 59A, Article 2 NMSA 1978;

(3) Chapter 59A, Article 3 NMSA 1978;

(4) Chapter 59A, Article 4 NMSA 1978;

(5) Subsection C of Section 59A-5-22 NMSA 1978;

(6) Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

(7) Chapter 59A, Article 8 NMSA 1978;

(8) Chapter 59A, Article 10 NMSA 1978;

(9) Section 59A-12-22 NMSA 1978;

(10) Chapter 59A, Article 16 NMSA 1978;

(11) Chapter 59A, Article 18 NMSA 1978;

(12) Chapter 59A, Article 19 NMSA 1978;

(13) Section 59A-22-14 NMSA 1978;

[~~(13)~~] (14) Chapter 59A, Article 23B NMSA 1978;

[~~(14)~~] (15) Sections 59A-34-9 through

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59A-34-13, 59A-34-17, 59A-34-23, 59A-34-36 and 59A-34-37 NMSA 1978; [~~and~~

~~(15)~~] (16) Chapter 59A, Article 37 NMSA 1978; and

(17) The Patient Protection Act.

B. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed as violating any provision of law relating to solicitation or advertising by health professionals, but health professionals shall be individually subject to the laws, rules, regulations and ethical provisions governing their individual professions.

C. Any health maintenance organization authorized under the provisions of the Health Maintenance Organization Law shall not be deemed to be practicing medicine and shall be exempt from the provisions of laws relating to the practice of medicine."

Section 14. Section 59A-47-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.32, as amended by Laws 1997, Chapter 7, Section 4 and by Laws 1997, Chapter 248, Section 3 and also by Laws 1997, Chapter 255, Section 4) is amended to read:

"59A-47-33. OTHER PROVISIONS APPLICABLE.--The provisions of the Insurance Code other than Chapter 59A, Article 47 NMSA 1978 shall not apply to health care plans except as expressly

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provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health care plans, their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives; and, for the purposes of such applicability, a health care plan may [~~therein~~] be referred to as an "insurer":

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978;

D. Subsection C of Section 59A-5-22 NMSA 1978;

E. Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

F. Section 59A-7-11 NMSA 1978;

G. Chapter 59A, Article 8 NMSA 1978;

H. Chapter 59A, Article 10 NMSA 1978;

I. Section 59A-12-22 NMSA 1978;

J. Chapter 59A, Article 16 NMSA 1978;

K. Chapter 59A, Article 18 NMSA 1978;

L. Chapter 59A, Article 19 NMSA 1978;

M. Subsections B through E of Section 59A-22-5 NMSA 1978;

N. Section 59A-22-14 NMSA 1978;

[~~N.~~] O. Section 59A-22-34.1 NMSA 1978;

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[~~O.~~] P. Section 59A-22-39 NMSA 1978;

[~~P.~~] Q. Section 59A-22-40 NMSA 1978;

[~~Q.~~] R. Section 59A-22-41 NMSA 1978;

[~~R.~~] S. Sections 59A-34-9 through 59A-34-13 and 59A-34-23 NMSA 1978;

[~~S.~~] T. Chapter 59A, Article 37 NMSA 1978, except Section 59A-37-7 NMSA 1978; [~~and~~

~~T.~~] U. Section 59A-46-15 NMSA 1978; and

V. the Patient Protection Act."

Section 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1998.

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