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SENATE BILL 311

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

INTRODUCED BY

LINDA M LOPEZ

FOR THE HEALTH AND WELFARE REFORM COMMITTEE

AN ACT

RELATING TO HEALTH CARE; ENACTING THE MEDICAID MANAGED CARE ACT; PROVIDING REQUIREMENTS FOR MEDICAID MANAGED HEALTH CARE PLANS; IMPOSING A CIVIL PENALTY.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Medicaid Managed Care Act".

Section 2. DEFINITIONS. -- As used in the Medicaid Managed Care Act:

- A. "department" means the human services department;
- B. "enrollee", "patient" or "consumer" means a person who is entitled to receive health care benefits from a managed health care plan;
- C. "essential community provider" means a person

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1 that provides a significant portion of its health or  
2 health-related services to medically needy indigent patients,  
3 including uninsured, underserved or special needs populations;

4 D. "health care facility" means an institution  
5 providing health care services, including a hospital or other  
6 licensed inpatient center, an ambulatory surgical or treatment  
7 center, a skilled nursing center, a residential treatment  
8 center, a home health agency, a diagnostic, laboratory or  
9 imaging center and a rehabilitation or other therapeutic  
10 health setting;

11 E. "health care insurer" means a person that has a  
12 valid certificate of authority in good standing pursuant to  
13 the New Mexico Insurance Code to act as an insurer, a health  
14 maintenance organization, a nonprofit health care plan or a  
15 prepaid dental plan;

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

20 G. "health care provider" or "provider" means a  
21 person that is licensed or otherwise authorized by the state  
22 to furnish health care services and includes health care  
23 professionals, health care facilities and essential community  
24 providers;

25 H. "health care services" includes physical health

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1 services or community-based mental health or developmental  
2 disability services, including services for developmental  
3 delay;

4 I. "managed health care plan" or "plan" means a  
5 health benefit plan of a health care insurer or a provider  
6 service network that either requires an enrollee to use, or  
7 creates incentives, including financial incentives, for an  
8 enrollee to use health care providers managed, owned, under  
9 contract with or employed by the health care insurer.

10 "Managed health care plan" or "plan" does not include a  
11 traditional fee-for-service indemnity plan or a plan that  
12 covers only short-term travel, accident-only, limited benefit,  
13 student health plan or specified disease policies;

14 J. "person" means an individual or other legal  
15 entity;

16 K. "primary health care clinic" or "clinic" means  
17 a nonprofit community-based entity established to provide the  
18 first level of basic or general health care needs, including  
19 diagnostic and treatment services, for residents of an  
20 underserved health care area as defined in rules adopted by  
21 the department of health; and

22 L. "provider service network" means two or more  
23 health care providers affiliated for the purpose of providing  
24 health care services to enrollees on a capitated or similar  
25 prepaid, flat-rate basis.

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1           Section 3.   MEDICAID MANAGED HEALTH CARE PLAN OPERATIONS--  
2   ENROLLMENT RESTRICTIONS-- ADMINISTRATIVE ABUSES-- PROFITS LIMITED. --

3           A.   Except as otherwise provided in the Medicaid  
4   Managed Care Act, the department shall monitor each managed health  
5   care plan offered through the medicaid program and take all  
6   reasonable steps necessary to ensure that each plan operates  
7   fairly and efficiently, protects patient interests and fulfills  
8   the plan's primary obligation to deliver high-quality health care  
9   services.  The department, in cooperation with the department of  
10   health, shall be responsible for quality assurance and utilization  
11   review oversight of medicaid managed health care plans.

12           B.   No managed health care plan offered through the  
13   medicaid program may directly recruit new members for enrollment  
14   into the medicaid program.  All enrollment of eligible persons  
15   into the medicaid program shall be arranged directly by the  
16   department.

17           C.   The department, through its own offices and  
18   employees, joint powers agreements with other state agencies or by  
19   contract with one or more brokering agencies independent of any  
20   managed health care provider, shall fully inform medicaid-eligible  
21   persons of their choices for enrollment into a managed health care  
22   plan.  The department shall ensure that the enrollment process  
23   includes adequate time and information for enrollees to make  
24   informed choices about a plan.  No plan offered through the  
25   medicaid program shall enroll medicaid recipients into its managed

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1 health care plan unless the enrollment is in accordance with  
2 arrangements approved by the department.

3 D. The department shall regulate the marketing  
4 activities of managed health care plans offered through the  
5 medicaid program and prevent administrative abuses in the  
6 operation of the plans.

7 E. A plan offered through the medicaid program shall  
8 be required to maintain a medical loss ratio of at least ninety  
9 percent, so that, at a minimum, ninety percent of all premium  
10 dollars collected are paid for the direct provision of health care  
11 services. The department of insurance shall adopt rules to define  
12 the medical loss ratio consistent with the provisions of this  
13 subsection.

14 Section 4. SPECIALIZED HEALTH CARE PROGRAMS-- ESSENTIAL  
15 COMMUNITY PROVIDERS.-- Except as otherwise provided in the Medicaid  
16 Managed Care Act, until January 1, 2000, no plan offered through  
17 the medicaid program shall offer specialized behavioral or  
18 developmental disability health services. The provisions of this  
19 section apply to the specialized health care services needed for a  
20 person treated for a developmental disability, a developmental  
21 delay, a seriously disabling mental illness, a serious emotional  
22 disturbance, physical or sexual abuse or neglect, substance abuse  
23 or other behavioral health problem as defined in rules adopted by  
24 the department of health. Those specialized behavioral or  
25 developmental disability health services shall instead be

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1 provided, until January 1, 2000, only by providers, including  
2 essential community providers, that have been determined pursuant  
3 to rules adopted by the department of health or the children,  
4 youth and families department to be qualified to offer specialized  
5 behavioral or developmental disability health services.

6 Section 5. HEALTH CARE PROVIDER PARTICIPATION. --A health  
7 care provider that meets a medicaid managed health care plan's  
8 reasonable qualification requirements and that is willing to  
9 participate in the plan under its established reasonable terms and  
10 conditions shall be allowed to participate in the plan.

11 Section 6. PRIMARY HEALTH CARE CLINICS PARTICIPATION. --

12 A. A plan offered through the medicaid program shall  
13 be required to use under reasonable terms and conditions any  
14 clinic that elects to participate in the plan, if the clinic meets  
15 all reasonable quality-of-care and service payment requirements  
16 imposed by the plan. The terms shall be no less favorable than  
17 those offered any other provider, and they shall provide payments  
18 that are reasonable and adequate to meet costs incurred by  
19 efficiently and economically operated facilities, taking into  
20 account the disproportionately greater severity of illness and  
21 injury experienced by the patient population served.

22 B. A plan offered through the medicaid program may not  
23 limit the number or location of primary health care clinics that  
24 elect to participate in the plan.

25 C. In providing payments under the medicaid program,

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1 the department shall ensure that a clinic that was or would have  
2 qualified as a federally qualified health center in 1996 under the  
3 federal Medicaid Act, as defined in 42 U.S.C. Section 1396d(1)(2),  
4 shall receive one hundred percent reasonable cost-based  
5 reimbursement for services, as was provided in the federal  
6 Medicaid Act during 1996 for the centers pursuant to the  
7 provisions of 42 U.S.C. Section 1396a(a)(13)(E).

8 D. In administering the medicaid program, the  
9 department shall ensure that any program offering managed care  
10 for participants, whether implemented through a federal waiver,  
11 block grant or otherwise, shall require each plan to permit  
12 contracting with each clinic in its service area that was or would  
13 have qualified as a federally qualified health center in 1996  
14 under the federal Medicaid Act, as defined in 42 U.S.C. Section  
15 1396d(1)(2), for delivery of covered services at terms no less  
16 favorable than those offered to other providers in the plan for  
17 equivalent services. The department shall provide timely payments  
18 at least quarterly to federally qualified health centers to cover  
19 the difference between their one hundred percent reasonable costs,  
20 as was provided in the federal Medicaid Act during 1996 for the  
21 centers pursuant to the provisions of 42 U.S.C. Section  
22 1396a(a)(13)(E), and the payments under medicaid managed care that  
23 are received by the federally qualified health centers.

24 Section 7. INDIAN HEALTH SERVICE. -- A Native American  
25 enrolled in a managed health care plan offered through the

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1       medicaid program shall retain the option of withdrawing  
2       participation in that plan at any time and may receive services  
3       directly from the Indian health service or health services  
4       provided by tribes under the federal Indian Self-Determination and  
5       Education Assistance Act, the federal urban Indian health program  
6       or the federal Indian children's program. If an eligible Native  
7       American chooses the option of receiving services directly from  
8       the Indian health service or health services provided by tribes  
9       under the federal Indian Self-Determination and Education  
10       Assistance Act, the federal urban Indian health program or the  
11       federal Indian children's program, the managed health care plan  
12       shall ensure that the Indian health service receives the same  
13       payment it would have received for the services rendered if the  
14       patient did not participate in the plan.

15               Section 8.    UNIVERSITY OF NEW MEXICO HEALTH SCIENCES  
16       CENTER. --

17               A.    A managed health care plan offered through the  
18       medicaid program shall include participation by the university of  
19       New Mexico health sciences center. The department shall  
20       administer a program to ensure the participation includes delivery  
21       of primary care and tertiary care services and to attempt to  
22       ensure, to the extent permitted by federal law, that the medicaid  
23       patient population served by the university of New Mexico health  
24       sciences center remains at least at a level similar to that served  
25       by the university of New Mexico health sciences center prior to

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1 implementation of the medicaid managed health care program.

2 B. A plan offered through the medicaid program shall  
3 provide payments to the university of New Mexico health sciences  
4 center at rates that are reasonable and adequate to meet costs  
5 incurred by efficiently and economically operated facilities,  
6 taking into account the disproportionately greater severity of  
7 illness and injury experienced by the patient population served.

8 C. The department shall administer a program and  
9 cooperate with the university of New Mexico health sciences center  
10 to ensure an adequate and diverse patient population necessary to  
11 preserve the health sciences center's educational programs. The  
12 department shall also ensure continuity of general support under  
13 the state medicaid program to the university of New Mexico health  
14 sciences center for medical education and for serving a  
15 disproportionately large indigent patient population.

16 Section 9. PUBLIC NONPROFIT HOSPITALS. --

17 A. A plan offered through the medicaid program shall  
18 be required to use under reasonable terms and conditions any  
19 public nonprofit hospital that elects to participate in the plan,  
20 if the hospital meets all reasonable quality-of-care and service  
21 payment requirements imposed by the plan. The terms shall be no  
22 less favorable than those offered by any other provider, and they  
23 shall provide payments that are reasonable and adequate to meet  
24 costs incurred by efficiently and economically operated  
25 facilities, taking into account the disproportionately greater

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1 severity of illness and injury experienced by the patient  
2 population served.

3 B. A managed health care plan offered through the  
4 medicaid program may not limit the number or location of public  
5 nonprofit hospitals that elect to participate in the plan.

6 Section 10. LAS VEGAS MEDICAL CENTER. --A plan offered  
7 through the medicaid program that offers mental health services  
8 shall include participation by the Las Vegas medical center for  
9 hospitalized care of mental health patients and other health care  
10 services the center provides. A plan shall provide payments to  
11 the Las Vegas medical center under reasonable terms and  
12 conditions. For medicaid-eligible populations, the terms shall be  
13 no less favorable than those offered any other provider, and they  
14 shall provide payments that are reasonable and adequate to meet  
15 costs incurred by efficiently and economically operated  
16 facilities, taking into account the disproportionately greater  
17 severity of illness and injury experienced by the patient  
18 population served.

19 Section 11. AUTHORIZATION FOR MEDICAID MANAGED CARE  
20 CONTRACTS DIRECTLY WITH PUBLIC AGENCIES, HOSPITALS, ESSENTIAL  
21 COMMUNITY PROVIDERS AND PROVIDER SERVICE NETWORKS. --In  
22 administering the medicaid program or a managed health care plan  
23 for the program, the department may contract directly with a  
24 government agency or public body, public nonprofit hospital, the  
25 university of New Mexico health sciences center, an essential

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1 community provider or a provider service network. In doing so,  
2 the department is not required to contract with any such entity  
3 only through arrangements with a health care insurer.

4 Section 12. ENFORCEMENT OF THE MEDICAID MANAGED CARE  
5 ACT. --

6 A. The department or a person who suffers a loss as a  
7 result of a violation of a provision in the Medicaid Managed Care  
8 Act may bring an action to recover actual damages or the sum of  
9 one hundred dollars (\$100), whichever is greater. When the trier  
10 of fact finds that the party charged with the violation acted  
11 willfully, the court may award up to three times actual damages or  
12 three hundred dollars (\$300), whichever is greater, to the party  
13 complaining of the violation.

14 B. A person likely to be damaged by a denial of a  
15 right protected in the Medicaid Managed Care Act may be granted an  
16 injunction under the principles of equity and on terms that the  
17 court considers reasonable. Proof of monetary damage or intent to  
18 violate a right is not required.

19 C. To protect and enforce an enrollee's or a health  
20 care provider's rights in a plan offered through the medicaid  
21 program, an enrollee and a health care provider participating in  
22 or eligible to participate in a medicaid managed health care plan  
23 shall each be treated as a third party beneficiary of the managed  
24 health care plan contract between the health care insurer and the  
25 party with which the insurer directly contracts. An enrollee or a

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1 health care provider may sue to enforce the rights provided in the  
2 contract that governs the managed health care plan.

3 D. The court shall award attorney fees and costs to  
4 the party complaining of a violation of a right protected in the  
5 Medicaid Managed Care Act if the party prevails substantially in  
6 the lawsuit.

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

10 F. In a class action filed under this section, the  
11 court may award damages to the named plaintiffs as provided in  
12 this section and may award members of the class the actual damages  
13 suffered by each member of the class as a result of the unlawful  
14 practice.

15 G. A person shall not be required to complete  
16 available grievance procedures or exhaust administrative remedies  
17 prior to seeking relief in court regarding a complaint that may be  
18 filed under this section.

19 Section 13. PENALTY.--In addition to other penalties  
20 provided by law, the secretary of human services may impose a  
21 civil administrative penalty of up to twenty-five thousand dollars  
22 (\$25,000) for each violation of the Medicaid Managed Care Act. An  
23 administrative penalty shall be imposed by written order of the  
24 secretary after holding a hearing as provided for in the Public  
25 Assistance Appeals Act.

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Section 14. RULES.--The department may adopt rules it deems necessary or appropriate to administer the provisions of the Medicaid Managed Care Act.

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

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
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6 February 4, 1998  
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8 Mr. President:  
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10 Your COMMITTEES' COMMITTEE, to whom has been referred  
11

12 SENATE BILL 311  
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14 has had it under consideration and finds same to be GERMANE, in  
15 accordance with constitutional provisions, and thence referred to the  
16 PUBLIC AFFAIRS COMMITTEE.  
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19 Respectfully submitted,  
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Manny M. Aragon, Chairman

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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