AN ACT

RELATING TO MANAGED HEALTH CARE; CREATING THE MANAGED CARE OMBUDSMAN PROGRAM.

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

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

Section 2. PURPOSE AND LEGISLATIVE INTENT.--The legislature recognizes that in a managed health care environment, consumers' choices of providers and treatments are limited, and a third party, the insurer, is involved in medical decision-making that was once a matter between patients and their physicians or other health care providers. The purpose of the Managed Care Ombudsman Act is to establish an ombudsman program to assist consumers in navigating complex managed care systems and in resolving problems encountered in obtaining appropriate health care. In enacting that act, it is the legislature's intent that the ombudsman program operate independently of government agencies and health plans and that its services be available to all managed health care consumers.

Section 3. DEFINITIONS.--As used in the Managed Care Ombudsman Act:

A. "department" means the insurance division of the public regulation commission;

B. "enrollee" means an individual who is entitled to receive health care benefits provided by a managed health plan;

C. "health care facility" means an institution providing health care services;

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

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

F. "ombudsman" means the ombudsman program created by the Managed Care Ombudsman Act or any authorized representative of that program;

G. "prospective enrollee" means:

(1) in the case of an individual who is a

member of a group, an individual eligible for enrollment in a health plan through that individual's group; or

(2) in the case of an individual who is not a member of a group or whose group has not purchased or does not intend to buy a health plan, an individual who has expressed an interest in purchasing individual plan coverage and is eligible for coverage by the plan;

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

I. "provider service network" means two or more providers affiliated for the purpose of providing health care services to covered persons on a capitated or similar prepaid flat-rate basis, that hold a certificate of authority pursuant to the Provider Service Network Act.

Section 4. MANAGED CARE OMBUDSMAN PROGRAM CREATED--FUNCTIONS AND DUTIES OF THE OMBUDSMAN PROGRAM.--

A. The "managed care ombudsman program" is created. The function of the ombudsman program is to assist patients in exercising their rights and to help advocate for and protect consumer interests.

B. The ombudsman has the authority to:

(1) educate consumers about their rights and responsibilities as enrollees of health plans;

(2) assist enrollees and prospective enrollees in resolving concerns or disputes with their health plans;

(3) attempt to resolve disputes through advice, counseling, negotiation or other informal strategies if possible, before proceeding to formal administrative remedies; formal administrative remedies shall be pursued before litigation is initiated, but the requirements of this paragraph do not apply when, in the judgment of the ombudsman, the medical or other exigencies of the case require expedited action to prevent harm to the consumer;

(4) upon the request of a consumer or the consumer's designated legal representative, pursue all available administrative, legal and other appropriate remedies on behalf of the consumer; and

(5) recommend systemic or policy changes that will improve the operations of managed care in this state and participate in rulemaking proceedings and other forms of state or federal policy development as a spokesperson for the interests of health care consumers.

C. The ombudsman shall maintain sufficient numbers and types of staff, qualified by training and experience, to perform the functions of the ombudsman. Staff may include employees, independent contractors performing services pursuant to contract and volunteers.

Section 5. OPERATIONS OF THE OMBUDSMAN THROUGH CONTRACTUAL RELATIONSHIP.--

A. The department shall contract with one or more independent organizations or consortia of organizations to operate the ombudsman. The contractor has authority to enter into subcontracts for performance of any part of the duties required by the contract. The ombudsman shall operate independently of any state agency or health plan.

B. The criteria used in selecting a contractor or contractors to operate the ombudsman shall include preference for:

(1) private, not-for-profit organizations representing a broad spectrum of consumer interests in New Mexico; and

(2) organizations that have, or whose principals have, demonstrated interest and expertise in health care issues and a background in consumer advocacy.

C. No person contracting to perform ombudsman functions may:

(1) be directly involved in the licensing, certification or accreditation of health care facilities, health plans or health care providers;

(2) have a direct ownership or investment interest in a health care facility, health plan or health care provider;

(3) be employed by or participate in the management of a health care facility, health plan or health care provider; or

(4) have the right to receive remuneration under a compensation arrangement with an owner or operator of a health care facility, health plan or health care provider.

D. The ombudsman shall exercise its powers and duties independently of any state agency or health plan. To assure the independence of the ombudsman, the contract to operate the ombudsman shall be awarded as a multi-term contract for three-year terms. The contract shall not be terminated by the department before its scheduled expiration date except for lack of available funds or for significant deficiencies in contract performance. Before the contract may be terminated by the department on the basis of deficiencies in contract performance, the department shall:

(1) give the contractor notice of the proposed termination and a detailed written statement of deficiencies in contract performance;

(2) give the contractor a reasonable opportunity to respond to and correct the identified deficiencies; and

(3) give timely public notice and an opportunity for public comment on the proposed termination.

Section 6. ACCESS TO INFORMATION.--

A. When the assistance of the ombudsman has been requested on behalf of an individual, the ombudsman shall be granted access to the individual's medical and administrative records relevant to the issue presented, but the ombudsman must have the permission of the individual or the individual's designated representative.

B. The ombudsman shall have access to the administrative records, policies and documents of health plans to the extent the materials are not proprietary or privileged.

C. The ombudsman shall have access to licensing and data reporting records with respect to health plans reported to the state, the federal government or private accrediting agencies, to the extent the information is not proprietary or privileged.

D. Health plans, state agencies and health care providers shall provide cooperation, assistance, data and access to records necessary to enable the ombudsman to perform its duties under the Managed Care Ombudsman Act and under other applicable federal and state law. Charges for copies of documents provided to the ombudsman by a state agency, health plan or health care provider shall be the lesser of actual costs, not to exceed the prevailing community market rates for photocopying, or fifty cents ($.50) a page.

E. Communications between the ombudsman and a person requesting the assistance of the ombudsman are privileged. The case files and records of the ombudsman are confidential and may be disclosed only as provided in this subsection, for purposes of fulfilling the duties of the ombudsman. Those files and records are not subject to subpoena and are exempt from disclosure under the Inspection of Public Records Act. The ombudsman shall not disclose the identity of or any confidential information regarding any individual who has requested the assistance of the ombudsman, unless:

(1) the individual or his designated representative consents to the disclosure; or

(2) disclosure is ordered by a court of competent jurisdiction.

F. Reports by the ombudsman on operations of the ombudsman office or systemic issues in managed health care shall be prepared in a manner to ensure that the identities of individuals served by the ombudsman are not disclosed and information shall be presented in a report in such a way as to prevent identification of individuals served by the ombudsman.

Section 7. NOTICE OF AVAILABILITY OF OMBUDSMAN.--Health plans shall advise enrollees of the availability of the ombudsman and shall provide enrollees and prospective

enrollees, upon request, with information about how they may contact the ombudsman.

Section 8. PROHIBITION ON INTERFERENCE WITH OMBUDSMAN OR RETALIATION.--

A. No person shall willfully interfere with the lawful actions of the ombudsman.

B. No person shall engage in discriminatory, disciplinary, retaliatory or other adverse action against any person for contacting the ombudsman, requesting the assistance of the ombudsman, providing information to the ombudsman or otherwise cooperating with the ombudsman.

Section 9. IMMUNITY FROM LIABILITY.--No representative of the ombudsman is liable for the good-faith performance of the functions of the ombudsman pursuant to the Managed Care Ombudsman Act.

Section 10. AUTHORITY NOT EXCLUSIVE.--The authority granted the ombudsman under the Managed Care Ombudsman Act is in addition to the authority granted under the provisions of any other statute or rule. The authority granted to the ombudsman does not limit or affect any rights or remedies of managed care enrollees.

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999.