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HOUSE BILL 771

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Lisa L. Lutz

AN ACT

RELATING TO PUBLIC ASSISTANCE; AMENDING THE MEDICAID PROVIDER ACT; CHANGING THE NOTICE TO MEDICAID PROVIDERS.

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

Section 1. Section 27-11-3 NMSA 1978 (being Laws 1998, Chapter 30, Section 3) is amended to read:

"27-11-3. REVIEW OF MEDICAID PROVIDERS-- CONTRACT REMEDIES-- PENALTIES. --

A. Consistent with the terms of any contract between the department and a medicaid provider, the secretary shall have the right to be afforded access to such of the medicaid provider's records and personnel, as well as its subcontracts and that subcontractor's records and personnel, as may be necessary to ensure that the medicaid provider is complying with the terms of its contract with the department.

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1 B. [~~Upon not less than seven days' written notice~~
2 ~~to a medicaid provider~~] The secretary may, consistent with the
3 provisions of the Medicaid Provider Act and rules issued
4 pursuant to that act, carry out an administrative
5 investigation or conduct administrative proceedings to
6 determine whether a medicaid provider has:

7 (1) materially breached its obligation to
8 furnish medicaid-related services to recipients, or any other
9 duty specified in its contract with the department;

10 (2) violated any provision of the Public
11 Assistance Act or the Medicaid Provider Act or any rules
12 issued pursuant to those acts;

13 (3) intentionally or with reckless disregard
14 made any false statement with respect to any report or
15 statement required by the Public Assistance Act or the
16 Medicaid Provider Act, rules issued pursuant to either of
17 those acts or a contract with the department;

18 (4) intentionally or with reckless disregard
19 advertised or marketed, or attempted to advertise or market,
20 its services to recipients in a manner as to misrepresent its
21 services or capacity for services, or engaged in any
22 deceptive, misleading or unfair practice with respect to
23 advertising or marketing;

24 (5) hindered or prevented the secretary from
25 performing any duty imposed by the Public Assistance Act, the

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1 Human Services Department Act or the Medicaid Provider Act or
2 any rules issued pursuant to those acts; or

3 (6) fraudulently procured or attempted to
4 procure any benefit from medicaid.

5 C. Subject to the provisions of Subsection D of
6 this section, after affording a medicaid provider written
7 notice of hearing not less than ten days before the hearing
8 date and an opportunity to be heard, and upon making
9 appropriate administrative findings, the secretary may take
10 any or any combination of the following actions against the
11 provider:

12 (1) impose an administrative penalty of not
13 more than five thousand dollars (\$5,000) for engaging in any
14 practice described in Paragraphs (1) through [~~(7)~~] (6) of
15 Subsection B of this section; provided that each separate
16 occurrence of such practice shall constitute a separate
17 offense;

18 (2) issue an administrative order requiring
19 the provider to:

20 (a) cease or modify any specified
21 conduct or practices engaged in by it or its employees,
22 subcontractors or agents;

23 (b) fulfill its contractual obligations
24 in the manner specified in the order;

25 (c) provide any service that has been

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1 denied;

2 (d) take steps to provide or arrange
3 for any service that it has agreed or is otherwise obligated
4 to make available; or

5 (e) enter into and abide by the terms
6 of a binding or nonbinding arbitration proceeding, if agreed
7 to by any opposing party, including the secretary; or

8 (3) suspend or revoke the contract between
9 the provider and the department pursuant to the terms of that
10 contract.

11 D. If a contract between the department and a
12 medicaid provider explicitly specifies a dispute resolution
13 mechanism for use in resolving disputes over performance of
14 that contract, the dispute resolution mechanism specified in
15 the contract shall be used to resolve such disputes in lieu of
16 the mechanism set forth in Subsection C of this section.

17 E. If a medicaid provider's contract so specifies,
18 the medicaid provider shall have the right to seek de novo
19 review in district court of any decision by the secretary
20 regarding a contractual dispute. "

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2 FIRST SESSION, 1999
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6 February 25, 1999
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8 Mr. Speaker:
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10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
11 whom has been referred

12 HOUSE BILL 771
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:
16

17 1. On page 4, between lines 20 and 21, insert the
18 following new section:

19 "Section 2. Section 27-11-4 NMSA 1978 (being Laws
20 1998, Chapter 30, Section 4) is amended to read:
21

22 "27-11-4. RETENTION AND PRODUCTION OF RECORDS. --
23

24 A. Medicaid providers and their subcontractors
25 shall retain, for a period of at least six years from the

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999

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4
5 date of creation, all medical and business records that are
6 necessary to verify the:

7 (1) treatment or care of any recipient for
8 which the medicaid provider received payment from the
9 department to provide that benefit or service;

10
11 (2) services or goods provided to any
12 recipient for which the medicaid provider received payment
13 from the department to provide that benefit or service;

14 (3) amounts paid by medicaid or the medicaid
15 provider on behalf of any recipient; and

16
17 (4) records required by medicaid under any
18 contract between the department and the medicaid provider.

19
20 B. Upon ~~written~~ request by the department to a
21 medicaid provider or any subcontractor for copies or
22 inspection of records pursuant to the Public Assistance Act,
23 the medicaid provider or subcontractor shall provide the
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5 copies or permit the inspection, as applicable [~~within five~~
6 ~~business days after the date of the request unless the~~
7 ~~records are held by a subcontractor, agent or satellite~~
8 ~~office, in which case the records shall be made available~~
9 ~~within ten business days after the date of the request].~~

10 C. Failure to provide copies or to permit
11 inspection of records requested pursuant to this section
12 shall constitute a violation of the Medicaid Provider Act
13 within the meaning of Paragraph (3) of Subsection B of
14 Section [~~3 of that act~~] 27-11-3 NMSA 1978. " ". ,

15 and thence referred to the APPROPRIATIONS & FINANCE
16 COMMI TTEE.

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18 Respectfully submitted,

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23 Patsy Trujillo Knauer,
24 Chairwoman
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5 Adopted _____ Not Adopted _____
6 (Chief Clerk) (Chief Clerk)

7 Date _____
8

9 The roll call vote was 4 For 0 Against

10 Yes: 4

11 Excused: Hamilton, Hawkins, Vigil

12 Absent: None
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J: \99BillSWP\H0771
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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

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4 March 2, 1999

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7 Mr. Speaker:

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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
10 whom has been referred

11 HOUSE BILL 771, as amended

12
13 has had it under consideration and reports same with
14 recommendation that it DO PASS.

15
16 Respectfully submitted,

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20 _____
21 Max Coll, Chairman
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FIRST SESSION, 1999

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 1 Against

Yes: 10

No: Abeyta

Excused: Buffett, Heaton, Marquardt, Taylor, Townsend, Watchman

Absent: None

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