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FISCAL IMPACT REPORT

SPONSOR: Coll DATE TYPED: 03/17/03 HB 809/aHBIC

SHORT TITLE: Medicaid Provider Requirements SB _____

ANALYST: Weber

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Fiscal Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 Human Services Department
 Department of Health

SUMMARY

Synopsis of HBIC Amendments

The House Business and Industry Committee amendment made the following changes to House Bill 809.

1. On page 1, line 12, strike "FAIR AND".
2. On page 1, line 22, strike "CHIROPRACTIC PHYSICIANS".
3. On page 1, line 23, strike the subsection designation "A."
4. On page 1, line 25, strike ", chiropractic physicians".
5. On page 2, lines 5 and 6, strike ", chiropractic physician".
6. On page 2, line 8, strike ", chiropractic physician".
7. On page 2, lines 11 through 15, strike the brackets and line-through and at the end of line 15 insert a closing quotation mark.
8. On page 2, strike lines 16 through 18.
9. On page 4, line 6, strike "FAIR AND".
10. On page 4, line 10, strike the colon, strike lines 11 through 23 and on line 24, strike the paragraph designation "(3)".
11. On page 5, line 4, strike "provisions of" and strike line 5 through the first occurrence of "of".

12. On page 5, line 10, after "damages" strike the remainder of the line and strike line 11 through "damages".

Significant Issues

The inclusion of chiropractic physicians is omitted. In addition, the reference to inclusion of managed care organizations for these provisions is omitted. The contract renewal provisions indicating relating to "preponderance of evidence" are also omitted.

Synopsis of Original Bill

House Bill 809 proposes that Medicaid providers are ensured fair and non-discriminatory practices in relationships with health care professionals in the Medicaid program including equal pay for equal services for physicians, dentists, optometrists, podiatrists, chiropractic physicians, and psychologists. The bill provides for the following:

- Adds chiropractors to the list of providers covered under the Medicaid Reimbursement--Equal Pay for Equal Services statute (Section 27-2-12.3). The equal pay provision is extended to the managed care organizations (MCO).
- Adds a new definition of "health care professional" to mean "a physician or other health care practitioner who is licensed, certified or otherwise authorized by the state to provide health care services consistent with state law."
- Amends the Medicaid Provider Act in a new section called, Fair and Nondiscriminatory Practices Required of Medicaid Providers. This language sets forth that, in its provision of services to Medicaid patients, a Medicaid provider, including a Medicaid managed care organization (MCO):
 - (1) shall not refuse to renew a contract with a health care professional if requested by the health care professional unless the medical provider can demonstrate by a preponderance of the evidence that good cause exists for the refusal;
 - (2) shall establish and implement rates of reimbursement for services rendered; and
 - (3) shall not discriminate against a contract health care professional based on the race, ethnicity, gender, religious beliefs or sexual orientation of the health care professional.

The statute also allows a health care professional who is damaged by a Medicaid provider's failure to comply with the above provisions a civil right of action against the provider, and if the health care professional prevails, such professional may be awarded:

1. compensatory damages;
2. up to treble punitive damages;
3. attorneys fees; and
4. costs and expenses.

HB 809 contains an emergency clause.

Significant Issues

Section 1 (page 1 and 2) proposes to provide equal pay for services rendered by chiropractic physicians. Currently, New Mexico Medicaid does not recognize chiropractors as eligible providers. In addition, physicians, dentists, optometrists, podiatrists, and psychologist's services are reimbursed equally when utilizing Current Procedural Terminology (CPT) codes.

Section 3 (page 2-4) adds a definition of "health care professional" as "a physician or other health care practitioner who is licensed, certified or otherwise authorized by the state to provide health care services consistent with state law". The health care professional term is used in Section 4. While Section 1 includes chiropractic services as a Medicaid provider, the definition of health care professional appears broader and may include other providers. It is unclear if this is intended or not.

With respect to reimbursement, there is no issue with Medicaid fee-for-service reimbursement rates. Medicaid fee-for-service reimburses physicians, dentists, optometrists, podiatrists or psychologists based on procedure billed with no regard to when the provider entered practice in New Mexico, entered into agreement or contract with Medicaid, or location in the state where the services are provided. HB 809 obligates the MCOs to reimburse with these same conditions inside their contractual agreements with direct providers. A provision of this nature hinders the MCOs ability to control costs and negates the value of the MCO business model. In addition, this impairs the MCO's ability to set rates depending on training, practice, national guidelines or market necessity. Limiting the opportunity to pay based on market necessity may lead to access issues in locations where little or no provider competition creates pockets of higher compensation.

Section 4 (page 4 and 5) states a Medicaid provider shall not refuse to renew a contract with a health care professional if requested by the health care professional unless the medical provider can demonstrate by a preponderance of the evidence that good cause exists for the refusal. The Department of Health (DOH) indicates this requirement will make it very difficult to not contract and discourage ending contracts with health care professionals of low or poor quality.

DOH continues that "good cause" requirement coupled with the civil penalties creates a threat of lawsuits that creates complications for contract administration. Further, the standards, e.g., "good cause" and "equal pay for equal or similar services", and the scope – as to what applies only to managed care and what applies to all Medicaid services inside and outside the managed care system are vague. Further, a group practice, or a health care facility, is treated within managed care the same as an individual health care professional (see, e.g., LVMC or the LVMC community based services), yet it in turn is a provider contracting with individuals. The administrative complications are potentially enormous.

HSD adds that currently, MCO's and their subcontractors provide due process to contracted health care professionals in their networks through internal grievance and appeals hearings processes. Providers who are dissatisfied with a particular aspect of the MCO or sub-contractors business practice can utilize this process. Subsequently, appeal can be made through the courts.

FISCAL IMPLICATIONS

Specific costs resulting from HB 809 are difficult to estimate, but it is reasonable to assume there will be additional recurring expenditures. These expenditures will result from the new form of medical practice, chiropractic, being included as a Medicaid provider. This service will be offered in both fee-for-service and Managed care. HSD estimated the cost at \$1.6 million recurring General Fund, but the assumptions were highly subjective. The MCO's will be obligated to pay health care professions the same rate as Medicaid fee-for-service. It is particularly difficult to project expenditure differentials for this provision since the MCO health care reimbursement rates are not known. The added complexity of dropping or changing health care professionals by Medicaid providers (MCO's or agencies) may foster inefficiencies and legal costs.

MW/prr