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SENATE BILL 497

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Gerald Ortiz y Pino

AN ACT

RELATING TO MANAGED HEALTH CARE; ENACTING THE MANAGED HEALTH CARE OMBUDSMAN ACT; CREATING A MANAGED HEALTH CARE OMBUDSMAN OFFICE; ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

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

SECTION 2. DEFINITIONS.--As used in the Managed Health Care Ombudsman Act:

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

B. "health care facility" means an institution providing health care services, including a hospital or other licensed inpatient center; an ambulatory surgical or treatment

1 center; a skilled nursing center; a residential treatment
2 center; a home health agency; a laboratory; a diagnostic or
3 imaging center; and a rehabilitation or other therapeutic
4 health setting;

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

10 D. "health care professional" means a physician or
11 other health care practitioner, including a pharmacist,
12 certified nurse practitioner in advanced practice as provided
13 in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 and certified
14 nurse-midwife, who is licensed, certified or otherwise
15 authorized by the state to provide health care services
16 consistent with state law;

17 E. "health care provider" or "provider" means a
18 person that is licensed or otherwise authorized by the state to
19 furnish health care services and includes health care
20 professionals and health care facilities;

21 F. "managed health care plan" or "plan" means a
22 health care insurer or a health care provider service network
23 that, when offering a benefit, either requires a covered person
24 to use or creates incentives, including financial incentives,
25 for a covered person to use health care providers managed,

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1 owned, under contract with or employed by the health care
2 insurer or health care provider service network, including
3 networks offering medicaid services. "Managed health care
4 plan" or "plan" does not include a health care insurer or
5 health care provider service network offering a traditional
6 fee-for-service indemnity benefit or a benefit that covers only
7 short-term travel, accident-only, limited benefit or specified
8 disease policies; or student health plans;

9 G. "ombudsman program" means the ombudsman program
10 created by the Managed Health Care Ombudsman Act or any
11 authorized representative of that program;

12 H. "patient" means an individual who is entitled to
13 receive health care benefits provided by a managed health care
14 plan;

15 I. "serious mental illness" means a diagnosable
16 disorder of a person's emotional process, thoughts or cognition
17 resulting in functional impairment that substantially
18 interferes with or limits one or more major life activities,
19 but "serious mental illness" does not mean a developmental
20 disability; and

21 J. "superintendent" means the superintendent of
22 insurance.

23 SECTION 3. MANAGED HEALTH CARE OMBUDSMAN OFFICE.--

24 A. The division shall establish and operate a
25 "managed health care ombudsman office".

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1 B. The superintendent shall designate the managed
2 health care ombudsman.

3 C. The ombudsman shall serve on a full-time basis
4 and shall, personally or through representatives of the office:

5 (1) identify, investigate and resolve
6 complaints by patients and health care providers as they relate
7 to the patients' and health care providers' rights as set forth
8 in the Patient Protection Act;

9 (2) work with each managed health care plan's
10 consumer assistance office, evaluate the effectiveness of the
11 plan's consumer assistance office and require the plan's
12 consumer assistance office to adopt measures to ensure that the
13 plan operates effectively to protect both patients' and health
14 care providers' rights under the Patient Protection Act;

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

23 (4) research and identify ways to improve
24 treatment of persons who are covered by a managed health care
25 plan and are diagnosed with serious mental illness, including

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1 providing ongoing training, education and support to health
2 care providers who provide health care services to such
3 persons; and

4 (5) prepare an annual report that:

5 (a) describes the activities carried out
6 by the office in the year for which the report is prepared;

7 (b) contains and analyzes data
8 collected;

9 (c) evaluates the problems experienced
10 by and the complaints made by or on behalf of patients and
11 health care providers; and

12 (d) provides policy, regulatory and
13 legislative recommendations to solve identified problems, to
14 resolve complaints, to improve the quality of care of patients
15 and to ensure that a managed health care plan's administrative
16 practices do not unduly burden health care providers.

17 D. The ombudsman program shall maintain sufficient
18 numbers of staff, qualified by training and experience, to
19 perform the functions of the ombudsman program. Staff may
20 include employees, independent contractors performing services
21 pursuant to contract and volunteers.

22 SECTION 4. OPERATIONS OF THE OMBUDSMAN PROGRAM THROUGH
23 CONTRACTUAL RELATIONSHIP.--

24 A. The division shall contract with one or more
25 independent organizations or consortia of organizations to

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1 operate the ombudsman program. The contractor has authority to
2 enter into subcontracts for performance of any part of the
3 duties required by the contract. The ombudsman program shall
4 operate independently of any state agency or health care plan.

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

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

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

14 C. A person contracting to perform ombudsman
15 program functions shall not:

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

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

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

25 (4) have the right to receive remuneration

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1 under a compensation arrangement with an owner or operator of a
2 health care facility, health care plan or health care provider.

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

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

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

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

21 **SECTION 5. ACCESS TO INFORMATION.--**

22 A. When the assistance of the ombudsman program has
23 been requested on behalf of a patient or health care provider,
24 the ombudsman program shall be granted access to the medical
25 and administrative records relevant to the issue presented;

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1 provided that the ombudsman program has the permission of the
2 patient involved or the patient's designated representative.

3 B. The ombudsman program shall have access to the
4 administrative records, policies and documents of managed
5 health care plans to the extent that the materials are not
6 proprietary or privileged.

7 C. The ombudsman program shall have access to
8 licensing and data reporting records with respect to managed
9 health care plans reported to the state, the federal government
10 or private accrediting agencies, to the extent that the
11 information is not proprietary or privileged under the federal
12 Health Insurance Portability and Accountability Act of 1996 or
13 any other applicable law.

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

23 E. Communications between the ombudsman program and
24 a person requesting the assistance of the ombudsman program are
25 privileged. The case files and records of the ombudsman

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1 program are confidential and may be disclosed only as provided
2 in this subsection for purposes of fulfilling the duties of the
3 ombudsman program. Those files and records are not subject to
4 subpoena and are exempt from disclosure under the Inspection of
5 Public Records Act. The ombudsman program shall not disclose
6 the identity of or any confidential information regarding any
7 individual who has requested the assistance of the ombudsman
8 program, unless:

9 (1) the patient, health care provider or the
10 patient or provider's designated representative consents to the
11 disclosure; or

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

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

21 **SECTION 6. PROHIBITION ON INTERFERENCE WITH OMBUDSMAN**
22 **PROGRAM OR RETALIATION.--**

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

25 B. No person shall engage in discriminatory,

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1 disciplinary, retaliatory or other adverse action against any
2 person for contacting the managed health care ombudsman office,
3 requesting the assistance of the ombudsman program, providing
4 information to the ombudsman program or otherwise cooperating
5 with the ombudsman program.

6 SECTION 7. IMMUNITY FROM LIABILITY.--No representative of
7 the ombudsman program is liable for the good-faith performance
8 of the functions of the ombudsman program pursuant to the
9 Managed Health Care Ombudsman Act.

10 SECTION 8. AUTHORITY NOT EXCLUSIVE.--The authority
11 granted the ombudsman program under the Managed Health Care
12 Ombudsman Act is in addition to the authority granted under the
13 provisions of any other statute or rule. The authority granted
14 to the ombudsman program does not limit or affect any rights or
15 remedies of managed health care plan enrollees.

16 SECTION 9. SURCHARGE--MANAGED HEALTH CARE OMBUDSMAN
17 FUND--CREATED.--

18 A. To ensure adequate funding for the operations of
19 the ombudsman program, a surcharge is assessed on premiums
20 received by insurers offering managed health care plans. The
21 surcharge is in the amount of one-tenth of one percent of the
22 dollar amount of premiums collected by the insurer for coverage
23 of enrollees in the insurer's health care plans, whether for
24 privately paid insurance or for publicly funded programs,
25 including the medicaid program.

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B. There is created in the state treasury a "managed health care ombudsman fund". All money collected pursuant to the provisions of Subsection A of this section shall be deposited in the managed health care ombudsman fund. Balances in the fund and interest earned on money in the fund are appropriated to the division for the purpose of administering and contracting for the ombudsman program as provided in the Managed Health Care Ombudsman Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert.

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.