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HOUSE BILL 351

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY  
JOSE R. ABEYTA

FOR THE HEALTH CARE 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. "enrollee", "patient" or "consumer" means an  
individual who is entitled to receive health care benefits from  
a managed health care plan;

B. "essential community provider" means a person  
that provides a significant portion of its health or  
health-related services to medically needy indigent patients,  
including uninsured, underserved or special needs populations;

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

8           D. "health care insurer" means a person that has a  
9 valid certificate of authority in good standing under the New  
10 Mexico Insurance Code to act as an insurer, a health maintenance  
11 organization, a nonprofit health care plan or a prepaid dental  
12 plan;

13           E. "health care professional" means a physician or  
14 other health care practitioner, including a pharmacist, who is  
15 licensed, certified or otherwise authorized by the state to  
16 provide health services consistent with state law;

17           F. "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, health care facilities and essential community  
21 providers;

22           G. "health care services" includes physical health  
23 services or community-based mental health or developmental  
24 disability services, including services for developmental delay;

25           H. "managed health care plan" or "plan" means a  
health benefit plan of a health care insurer or a provider

1 service network that either requires an enrollee to use, or  
2 creates incentives, including financial incentives, for an  
3 enrollee to use health care providers managed, owned, under  
4 contract with or employed by the health care insurer. "Managed  
5 health care plan" or "plan" includes a plan that provides  
6 comprehensive health care services to enrollees on a prepaid,  
7 capitated basis and includes the health care services offered by  
8 a health maintenance organization, a preferred provider  
9 organization, an individual practice organization, a competitive  
10 medical plan, an exclusive provider organization, an integrated  
11 delivery system, an independent physician-provider organization,  
12 a physician hospital-provider organization and a managed care  
13 services organization. "Managed health care plan" or "plan"  
14 does not include a traditional fee-for-service indemnity plan or  
15 a plan that covers only short-term travel, accident-only,  
16 limited benefit or specified disease policies;

17 I. "person" means an individual or other legal  
18 entity;

19 J. "primary health care clinic" means a nonprofit  
20 community-based entity established to provide the first level of  
21 basic or general health care needs, including diagnostic and  
22 treatment services, for residents of a health care underserved  
23 area as that area is defined in regulation adopted by the  
24 department of health; and

25 K. "provider service network" means two or more  
health care providers affiliated for the purpose of providing

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1 health care services to enrollees on a capitated or similar  
2 prepaid, flat-rate basis.

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

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

15 B. No managed health care plan offered through the  
16 medicaid program may directly recruit new members for enrollment  
17 into the medicaid program. All recruiting and enrollment of  
18 eligible persons into the medicaid program shall be arranged  
19 directly by the human services department. The department may  
20 provide for enrollment directly at hospitals or other health  
21 care or government facilities.

22 C. The human services department shall regulate the  
23 marketing activities of managed health care plans offered  
24 through the medicaid program and prevent administrative abuses  
25 in the operation of the plans.

D. No managed health care plan offered through the

Underscored material = new  
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1     medicaid program shall be allowed to earn profits in excess of  
2     eight and one-half percent. The human services department  
3     shall, in cooperation with the department of insurance, adopt  
4     regulations to administer the provisions of this subsection.  
5     The human services department shall enforce the provisions of  
6     this subsection. Any profits earned in excess of eight and one-  
7     half percent shall be returned to the human services department,  
8     deposited by the department into an appropriate state fund and  
9     expended for the purpose of expanding access to health care for  
10    the uninsured or underinsured.

11           Section 4. SPECIALIZED HEALTH CARE PROGRAMS-- ESSENTIAL  
12    COMMUNITY PROVIDERS.--Until January 1, 2000, no managed health  
13    care plan offered through the medicaid program shall offer  
14    specialized behavioral or developmental disability health  
15    services. The provisions of this section apply to the  
16    specialized health care services needed for a person treated for  
17    a developmental disability, a developmental delay, a seriously  
18    disabling mental illness, a serious emotional disturbance,  
19    physical or sexual abuse or neglect, substance abuse or other  
20    behavioral health problem as defined in regulation adopted by  
21    the department of health. Such specialized behavioral or  
22    developmental disability health services shall instead be  
23    provided, until January 1, 2000, only by providers, including  
24    essential community providers, that have been determined  
25    pursuant to regulation adopted by the department of health or  
   the children, youth and families department to be qualified to

Underscored material = new  
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1 offer specialized behavioral or developmental disability health  
2 services.

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

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

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

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

23 C. In providing payments to a primary health care  
24 clinic participating in a medicaid managed health care plan, the  
25 human services department shall administer a program and provide  
direct payments to ensure that a primary health care clinic that

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1 was a federally qualified health center in 1996 under applicable  
2 federal law receives for at least the same amount and type of  
3 services rendered in all subsequent years at least the same  
4 amount of total payments under the medicaid program that the  
5 primary care clinic received in the calendar year ending  
6 December 31, 1996.

7 D. The human services department and each managed  
8 health care plan that contracts with a primary health care  
9 clinic shall provide timely payments at least quarterly to each  
10 primary care clinic participating in the plan.

11 Section 7. INDIAN HEALTH SERVICE. -- A Native American  
12 eligible to receive health care services from the federal Indian  
13 health service shall be given the option of participating in a  
14 managed health care plan offered through the medicaid program or  
15 receiving services directly from the Indian health service. If  
16 an eligible Native American chooses to participate in a managed  
17 health care plan, the Native American shall at all times retain  
18 the option of receiving services directly from the Indian health  
19 service. In that event, the managed health care plan shall  
20 ensure that the Indian health service receives the same payment  
21 it would have received for the services rendered if the patient  
22 did not participate in the plan.

23 Section 8. UNIVERSITY OF NEW MEXICO HEALTH SCIENCES  
24 CENTER. --

25 A. A managed health care plan offered through the  
medicaid program shall include participation by the university

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1 of New Mexico health sciences center. The human services  
2 department shall administer a program to ensure the  
3 participation includes delivery of primary care and tertiary  
4 care services so that the medicaid patient population served by  
5 the university of New Mexico health sciences center remains at  
6 least at a level similar to that served by the university of New  
7 Mexico health sciences center prior to implementation of the  
8 medicaid managed health care program.

9 B. A managed health care plan offered through the  
10 medicaid program shall provide payments to the university of New  
11 Mexico health sciences center at rates that are reasonable and  
12 adequate to meet costs incurred by efficiently and economically  
13 operated facilities, taking into account the disproportionately  
14 greater severity of illness and injury experienced by the  
15 patient population served.

16 C. The human services department shall administer a  
17 program and cooperate with the university of New Mexico health  
18 sciences center to ensure an adequate and diverse patient  
19 population necessary to preserve the health sciences center's  
20 educational programs. The human services department shall also  
21 assure continuity of general support under the state medicaid  
22 program to the university of New Mexico health sciences center  
23 for medical education and for serving a disproportionately large  
24 indigent patient population.

25 Section 9. PUBLIC NONPROFIT HOSPITALS. --

A. A managed health care plan offered through the

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1     medicaid program shall be required to use under reasonable terms  
2     and conditions any public nonprofit hospital that elects to  
3     participate in the plan, if the hospital meets all reasonable  
4     quality of care and service payment requirements imposed by the  
5     plan. The terms shall be no less favorable than those offered  
6     by any other provider, and they shall provide payments that are  
7     reasonable and adequate to meet costs incurred by efficiently  
8     and economically operated facilities, taking into account the  
9     disproportionately greater severity of illness and injury  
10    experienced by the patient population served.

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

14             Section 10. LAS VEGAS MEDICAL CENTER. --A managed health  
15    care plan offered through the medicaid program shall include  
16    participation by the Las Vegas medical center for hospitalized  
17    care of mental health patients and other health services the  
18    center provides. A plan shall provide payments to the Las Vegas  
19    medical center under reasonable terms and conditions. The terms  
20    shall be no less favorable than those offered any other  
21    provider, and they shall provide payments that are reasonable  
22    and adequate to meet costs incurred by efficiently and  
23    economically operated facilities, taking into account the  
24    disproportionately greater severity of illness and injury  
25    experienced by the patient population served.

Section 11. AUTHORIZATION FOR MEDICAID MANAGED CARE

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1       CONTRACTS DIRECTLY WITH PUBLIC AGENCIES, HOSPITALS, ESSENTIAL  
2       COMMUNITY PROVIDERS AND PROVIDER SERVICE NETWORKS. -- In  
3       administering the medicaid program or a managed health care  
4       system for the program, the human services department may  
5       contract directly with a government agency or public body,  
6       public nonprofit hospital, the university of New Mexico health  
7       sciences center, an essential community provider or a provider  
8       service network. In doing so, the human services department is  
9       not required to contract with any such entity only through  
10      arrangements with a health care insurer.

11             Section 12.   ENFORCEMENT OF THE MEDICAID MANAGED CARE  
12      ACT. --

13             A.   The human services department or a person who  
14      suffers a loss as a result of a violation of a provision in the  
15      Medicaid Managed Care Act may bring an action to recover actual  
16      damages or the sum of one hundred dollars (\$100), whichever is  
17      greater. When the trier of fact finds that the party charged  
18      with the violation acted willfully, the court may award up to  
19      three times actual damages or three hundred dollars (\$300),  
20      whichever is greater, to the party complaining of the violation.

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

            C.   To protect and enforce an enrollee's or a health

1 care provider's rights in a managed health care plan offered  
2 through the medicaid program, an enrollee and a health care  
3 provider participating in or eligible to participate in a  
4 medicaid managed health care plan shall each be treated as a  
5 third party beneficiary of the managed health care plan contract  
6 between the health care insurer and the party with which the  
7 insurer directly contracts. An enrollee or a health care  
8 provider may sue to enforce the rights provided in the contract  
9 that governs the managed health care plan.

10 D. The court shall award attorney fees and costs to  
11 the party complaining of a violation of a right protected in the  
12 Medicaid Managed Care Act if the party prevails substantially in  
13 the lawsuit.

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

17 F. In any class action filed under this section, the  
18 court may award damages to the named plaintiffs as provided in  
19 this section and may award members of the class the actual  
20 damages suffered by each member of the class as a result of the  
21 unlawful practice.

22 G. A person shall not be required to complete  
23 available grievance procedures or exhaust administrative  
24 remedies prior to seeking relief in court regarding a complaint  
25 that may be filed under this section.

Section 13. PENALTY. -- In addition to any other penalties

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1 provided by law, the secretary of human services may impose a  
2 civil administrative penalty of up to twenty-five thousand  
3 dollars (\$25,000) for each violation of the Medicaid Managed  
4 Care Act. An administrative penalty shall be imposed by written  
5 order of the secretary after holding a hearing as provided for  
6 in the Administrative Procedures Act.

7 Section 14. REGULATIONS. --The human services department  
8 may adopt regulations it deems necessary or appropriate to  
9 administer the provisions of the Medicaid Managed Care Act.

10 Section 15. EFFECTIVE DATE. --The effective date of the  
11 provisions of this act is July 1, 1997.

**State of New Mexico  
House of Representatives**

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

**February 18, 1997**

**Mr. Speaker:**

**Your LABOR AND HUMAN RESOURCES COMMITTEE, to  
whom has been referred**

**HOUSE BILL 351**

**has had it under consideration and reports same with  
recommendation that it DO NOT PASS, but that**

**HOUSE LABOR AND HUMAN RESOURCES COMMITTEE  
SUBSTITUTE FOR HOUSE BILL 351**

**DO PASS, amended as follows:**

- 1. On page 12, strike lines 10 through 13 in their entirety  
and reletter the succeeding subsection accordingly.,  
and thence referred to the JUDICIARY COMMITTEE.**

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Respectfully submitted,

\_\_\_\_\_  
Rick Mi era, Chai rman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chi ef Clerk)

(Chi ef Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 2 Against

Yes: 5

No: Macko, Roberts

Excused: Marquardt

Absent: None

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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

February 28, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE LABOR AND HUMAN RESOURCES COMMITTEE  
SUBSTITUTE FOR HOUSE BILL 351, as amended

has had it under consideration and reports same  
with recommendation that it DO PASS, amended as follows:

1. On page 5, line 3, after "E." strike the remainder of the  
line, strike all of lines 4 through 13 and insert in lieu thereof:

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

and thence referred to the APPROPRIATIONS AND FINANCE  
COMMITTEE.

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HLHRCs/HB 351

Page 16

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Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, King, Larranaga, Mallory, Rios, Sanchez

Absent: None

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Underscored material = new  
[bracketed material] = delete

HOUSE LABOR AND HUMAN RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 351

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

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:

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"Medicaid Managed Care Act".

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

A. "enrollee", "patient" or "consumer" means an  
individual who is entitled to receive health care benefits from  
a managed health care plan;

B. "essential community provider" means a person  
that provides a significant portion of its health or  
health-related services to medically needy indigent patients,  
including uninsured, underserved or special needs populations;

C. "health care facility" means an institution

1 providing health care services, including a hospital or other  
2 licensed inpatient center, an ambulatory surgical or treatment  
3 center, a skilled nursing center, a residential treatment  
4 center, a home health agency, a diagnostic, laboratory or  
5 imaging center and a rehabilitation or other therapeutic health  
6 setting;

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

12 E. "health care professional" means a physician or  
13 other health care practitioner, including a pharmacist, who is  
14 licensed, certified or otherwise authorized by the state to  
15 provide health services consistent with state law;

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

21 G. "health care services" includes physical health  
22 services or community-based mental health or developmental  
23 disability services, including services for developmental delay;

24 H. "managed health care plan" or "plan" means a  
25 health benefit plan of a health care insurer or a provider

1 service network that either requires an enrollee to use, or creates  
 2 incentives, including financial incentives, for an enrollee to use  
 3 health care providers managed, owned, under contract with or  
 4 employed by the health care insurer. "Managed health care plan" or  
 5 "plan" does not include a traditional fee-for-service indemnity  
 6 plan or a plan that covers only short-term travel, accident-only,  
 7 limited benefit, student health plan or specified disease policies;

8 I. "person" means an individual or other legal entity;

9 J. "primary health care clinic" means a nonprofit  
 10 community-based entity established to provide the first level of  
 11 basic or general health care needs, including diagnostic and  
 12 treatment services, for residents of a health care underserved area  
 13 as that area is defined in regulation adopted by the department of  
 14 health; and

15 K. "provider service network" means two or more health  
 16 care providers affiliated for the purpose of providing health care  
 17 services to enrollees on a capitated or similar prepaid, flat-rate  
 18 basis.

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

21 A. Except as otherwise provided in the Medicaid Managed  
 22 Care Act, the human services department shall monitor each managed  
 23 health care plan offered through the medicaid program and take all  
 24 reasonable steps necessary to ensure that each plan operates fairly  
 25 and efficiently, protects patient interests and fulfills the plan's

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1 primary obligation to deliver good quality health care services.  
2 The human services department, in cooperation with the department  
3 of health, shall be responsible for quality assurance and  
4 utilization review oversight of medicaid managed health care plans.

5 B. No managed health care plan offered through the  
6 medicaid program may directly recruit new members for enrollment  
7 into the medicaid program. All enrollment of eligible persons into  
8 the medicaid program shall be arranged directly by the human  
9 services department.

10 C. The human services department, through its own  
11 offices and employees, joint powers agreements with other state  
12 agencies or by contract with one or more brokering agencies  
13 independent of any managed health care provider, shall fully inform  
14 medicaid eligible persons of their choices for enrollment into a  
15 managed health care plan. The department shall ensure that the  
16 enrollment process includes adequate time and information for  
17 enrollees to make informed choices about a plan. No managed health  
18 care plan offered through the medicaid program shall enroll  
19 medicaid recipients into its managed health care plan unless the  
20 enrollment is in accordance with arrangements approved by the  
21 department.

22 D. The human services department shall regulate the  
23 marketing activities of managed health care plans offered through  
24 the medicaid program and prevent administrative abuses in the  
25 operation of the plans.

1           E. No managed health care plan offered through the  
 2           medicaid program shall be allowed to earn profits in excess of  
 3           eight and one-half percent. The human services department shall,  
 4           in cooperation with the department of insurance, adopt regulations  
 5           to administer the provisions of this subsection. The human  
 6           services department shall enforce the provisions of this  
 7           subsection. Any profits earned in excess of eight and one-half  
 8           percent shall be returned to the human services department,  
 9           deposited by the department into an appropriate state fund and  
 10          expended for the purpose of expanding access to health care for the  
 11          uninsured or underinsured.

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

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1 determined pursuant to regulation adopted by the department of  
2 health or the children, youth and families department to be  
3 qualified to offer specialized behavioral or developmental  
4 disability health services.

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

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

11 A. A managed health care plan offered through the  
12 medicaid program shall be required to use under reasonable terms  
13 and conditions any primary health care clinic that elects to  
14 participate in the plan, if the primary health care 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 managed health care plan offered through the  
23 medicaid program may not limit the number or location of primary  
24 health care clinics that elect to participate in the plan.

25 C. In providing payments under the medicaid program,

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

25 Section 7. INDIAN HEALTH SERVICE. --A Native American

1 enrolled in a managed health care plan offered through the medicaid  
2 program shall be given the option of leaving that plan and  
3 receiving services directly from the Indian health service or  
4 health services provided by tribes under the federal Indian Self-  
5 Determination and Education Assistance Act, the federal urban  
6 Indian health program or the federal Indian children's program. If  
7 an eligible Native American chooses to participate in a managed  
8 health care plan, the Native American shall at all times retain the  
9 option of receiving services directly from the Indian health  
10 service or health services provided by tribes under the federal  
11 Indian Self-Determination and Education Assistance Act, the federal  
12 urban Indian health program or the federal Indian children's  
13 program. In that event, the managed health care plan shall ensure  
14 that the Indian health service receives the same payment it would  
15 have received for the services rendered if the patient did not  
16 participate in the plan.

17 Section 8. UNIVERSITY OF NEW MEXICO HEALTH SCIENCES  
18 CENTER. --

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

1 health sciences center remains at least at a level similar to that  
2 served by the university of New Mexico health sciences center prior  
3 to implementation of the medicaid managed health care program

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

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

20 Section 9. PUBLIC NONPROFIT HOSPITALS. --

21 A. A managed health care plan offered through the  
22 medicaid program shall be required to use under reasonable terms  
23 and conditions any public nonprofit hospital that elects to  
24 participate in the plan, if the hospital meets all reasonable  
25 quality of care and service payment requirements imposed by the

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1 plan. The terms shall be no less favorable than those offered by  
2 any other provider, and they shall provide payments that are  
3 reasonable and adequate to meet costs incurred by efficiently and  
4 economically operated facilities, taking into account the  
5 disproportionately greater severity of illness and injury  
6 experienced by the patient population served.

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

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

22 Section 11. AUTHORIZATION FOR MEDICAID MANAGED CARE  
23 CONTRACTS DIRECTLY WITH PUBLIC AGENCIES, HOSPITALS, ESSENTIAL  
24 COMMUNITY PROVIDERS AND PROVIDER SERVICE NETWORKS. -- In  
25 administering the medicaid program or a managed health care system

1 for the program, the human services department may contract  
 2 directly with a government agency or public body, public nonprofit  
 3 hospital, the university of New Mexico health sciences center, an  
 4 essential community provider or a provider service network. In  
 5 doing so, the human services department is not required to contract  
 6 with any such entity only through arrangements with a health care  
 7 insurer.

8 Section 12. ENFORCEMENT OF THE MEDICAID MANAGED CARE  
 9 ACT. --

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

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

23 C. To protect and enforce an enrollee's or a health  
 24 care provider's rights in a managed health care plan offered  
 25 through the medicaid program, an enrollee and a health care

1 provider participating in or eligible to participate in a medicaid  
2 managed health care plan shall each be treated as a third party  
3 beneficiary of the managed health care plan contract between the  
4 health care insurer and the party with which the insurer directly  
5 contracts. An enrollee or a health care provider may sue to  
6 enforce the rights provided in the contract that governs the  
7 managed health care plan.

8 D. The court shall award attorney fees and costs to the  
9 party complaining of a violation of a right protected in the  
10 Medicaid Managed Care Act if the party prevails substantially in  
11 the lawsuit.

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

15 F. In any class action filed under this section, the  
16 court may award damages to the named plaintiffs as provided in this  
17 section and may award members of the class the actual damages  
18 suffered by each member of the class as a result of the unlawful  
19 practice.

20 G. A person shall not be required to complete available  
21 grievance procedures or exhaust administrative remedies prior to  
22 seeking relief in court regarding a complaint that may be filed  
23 under this section.

24 Section 13. PENALTY. --In addition to any other penalties  
25 provided by law, the secretary of human services may impose a civil

1 administrative penalty of up to twenty-five thousand dollars  
2 (\$25,000) for each violation of the Medicaid Managed Care Act. An  
3 administrative penalty shall be imposed by written order of the  
4 secretary after holding a hearing as provided for in the Public  
5 Assistance Appeals Act.

6 Section 14. REGULATIONS. --The human services department may  
7 adopt regulations it deems necessary or appropriate to administer  
8 the provisions of the Medicaid Managed Care Act.

9 Section 15. EFFECTIVE DATE. --The effective date of the  
10 provisions of this act is July 1, 1997.

HLC/HB 351

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 16, 1997

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

HOUSE LABOR AND HUMAN RESOURCES  
COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 351, as amended

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

Respectfully submitted,

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Shannon Robinson, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boitano, Garcia, Ingle, Rodarte

Absent: None

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Underscored material = new  
[bracketed material] = delete