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HOUSE BILL 1073

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

INTRODUCED BY

TERRY T. MARQUARDT

AN ACT

RELATING TO PUBLIC ASSISTANCE; PROVIDING FOR REVIEW AND
REGULATION OF MEDICAID PROVIDERS; PROVIDING ADMINISTRATIVE
PENALTIES.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Medicaid Provider Act".

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

- A. "department" means the human services department;
- B. "managed care organization" means a person
eligible to enter into risk-based prepaid capitation agreements
with the department to provide health care and related services;
- C. "medicaid" means the medical assistance program
established pursuant to Title 19 of the federal Social Security,

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1 Act, as amended from time to time, and regulations issued
2 pursuant to that act;

3 D. "medicaid provider" means a person, including a
4 managed care organization, operating under contract with the
5 department to provide medicaid-related services to recipients;

6 E. "person" means an individual or other legal
7 entity;

8 F. "recipient" means a person whom the department
9 has determined to be eligible to receive medicaid-related
10 services;

11 G. "secretary" means the secretary of human
12 services; and

13 H. "subcontractor" means a person that contracts
14 with a medicaid provider to provide medicaid-related services to
15 recipients. "

16 Section 3. REVIEW OF MEDICAID PROVIDERS--CONTRACT
17 REMEDIES--PENALTIES. --

18 A. The secretary may review the operations of a
19 medicaid provider, and shall have the right of and be afforded
20 full access to the medicaid provider's records, personnel and
21 facilities for that purpose at all times.

22 B. The secretary may, consistent with the provisions
23 of the Medicaid Provider Act and regulations issued pursuant to
24 that act, carry out an administrative investigation or conduct
25 administrative proceedings to determine whether a medicaid

1 provider has:

2 (1) operated in a manner that materially
3 violates its organizational documents;

4 (2) materially breached its obligation to
5 furnish medicaid-related services to recipients, or any other
6 duty specified in its contract with the department;

7 (3) violated any provision of the Public
8 Assistance Act or the Medicaid Provider Act or any regulations
9 issued pursuant to those acts;

10 (4) made any false statement with respect to
11 any report or statement required by the Public Assistance Act,
12 or the Medicaid Provider Act, regulations issued pursuant to
13 either of those acts or a contract with the department;

14 (5) advertised or marketed, or attempted to
15 advertise or market, its services to recipients in such a manner
16 as to misrepresent its services or capacity for services, or
17 engaged in any deceptive, misleading or unfair practice with
18 respect to advertising or marketing;

19 (6) hindered or prevented the secretary from
20 performing any duty imposed by the Public Assistance Act, the
21 Human Services Department Act or the Medicaid Provider Act or
22 any regulations issued pursuant to those acts; or

23 (7) fraudulently procured or attempted to
24 procure any benefit from medicaid.

25 C. After affording a medicaid provider written

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1 notice of hearing not less than ten days before the hearing date
2 and an opportunity to be heard, and upon making appropriate
3 administrative findings, the secretary may take any or any
4 combination of the following actions against the provider:

5 (1) impose an administrative penalty of not
6 more than ten thousand dollars (\$10,000) for engaging in any
7 practice described in Paragraphs (1) through (7) of Subsection B
8 of this section; provided, that each occurrence of each practice
9 shall constitute a separate offense;

10 (2) issue an administrative order requiring the
11 provider to:

12 (a) cease or modify any specified conduct
13 or practices engaged in by it, its employees, subcontractors or
14 agents;

15 (b) fulfill its contractual obligations
16 in the manner specified in the order;

17 (c) provide any service that has been
18 denied;

19 (d) take steps to provide or arrange for
20 any service that it has agreed or is otherwise obligated to make
21 available; or

22 (e) enter into and abide by the terms of
23 a binding or non-binding arbitration proceeding, if agreed to by
24 any opposing party, including the secretary; or

25 (3) suspend or revoke the contract between the

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1 provider and the department, in which case the provider:

2 (a) during the period of any suspension,
3 shall not enroll or treat additional recipients, except newborn
4 children or other newly acquired dependents of existing enrolled
5 recipients, and shall not engage in any advertising, marketing
6 or solicitation for enrollment or treatment of additional
7 recipients; and

8 (b) immediately following the effective
9 date of any revocation, shall proceed expeditiously to wind up
10 its affairs under its contract with the department, and shall
11 not conduct further business except as may be essential to the
12 orderly conclusion of its medicaid-related affairs and transfer
13 to other medicaid providers of its recipients and their records;
14 provided, that the secretary may, by written order, permit such
15 further operation of the medicaid provider's medicaid-related
16 services as the secretary finds to be in the best interest of
17 recipients, to the end that they will be afforded the greatest
18 practical opportunity to obtain continuous medicaid-related
19 coverage. "

20 Section 4. RETENTION AND PRODUCTION OF RECORDS. --

21 A. Medicaid providers and their subcontractors shall
22 retain, for a period of at least five years from the date of
23 creation, all medical and business records relating to:

- 24 (1) treatment or care of any recipient;
25 (2) services or goods provided to any

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1 recipient;

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

4 (4) records required by medicaid or used for
5 its administration.

6 B. Upon written request by medicaid or the
7 department to a medicaid provider or any subcontractor for
8 copies or inspection of records pursuant to the Public
9 Assistance Act, the medicaid provider or subcontractor shall
10 provide the copies or permit the inspection, as applicable,
11 within five business days after the date of the request.

12 C. Failure to provide copies or to permit inspection
13 of records requested pursuant to this section shall constitute a
14 violation of the Medicaid Provider Act within the meaning of
15 Paragraph (3) of Subsection B of Section 3 of that act. "

16 Section 5. REGULATIONS. --The secretary shall adopt and
17 promulgate regulations appropriate to administer, carry out and
18 enforce the provisions of the Medicaid Provider Act.

State of New Mexico
House of Representatives

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 1, 1997

Mr. Speaker:

**Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
whom has been referred**

HOUSE BILL 1073

**has had it under consideration and reports same with
recommendation that it DO PASS, and thence referred to the
JUDICIARY COMMITTEE.**

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

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Respectfully submitted,

Gary King, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

Excused: Heaton, Rios, Vaughn, Vigil

Absent: None

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**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 21, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 1073

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

1. On page 2, line 20, strike "personnel and" and strike
line 21 and insert in lieu thereof "as are necessary to fully
disclose the extent of services provided to recipients under Title
19 of the federal Social Security Act, including patient and
employee records and any information regarding payments claimed by
the medicaid provider for furnishing services under the medicaid
program". ,

and thence referred to the APPROPRIATIONS AND FINANCE
COMMITTEE.

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

HJC/HB 1073

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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 2 Against

Yes: 7

No: M P. Garcia, Pederson

Excused: Alwin, Rios, Sanchez, Foy

Absent: None

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