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HOUSE BILL 287

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

TERRY T. MARQUARDT

FOR THE HEALTH AND WELFARE REFORM COMMITTEE

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;

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1 C. "medicaid" means the medical assistance program  
2 established pursuant to Title 19 of the federal Social  
3 Security Act and regulations issued pursuant to that act;

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

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

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

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

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

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

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

23 B. The secretary may, consistent with the  
24 provisions of the Medicaid Provider Act and rules issued  
25 pursuant to that act, carry out an administrative

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1 investigation or conduct administrative proceedings to  
2 determine whether a medicaid provider has:

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

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

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

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

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

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

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

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C. After affording a medicaid provider written notice of hearing not less than ten days before the hearing date and an opportunity to be heard, and upon making appropriate administrative findings, the secretary may take any or any combination of the following actions against the provider:

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

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

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

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

(c) provide any service that has been denied;

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

(e) enter into and abide by the terms of a binding or nonbinding arbitration proceeding, if agreed

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1 to by any opposing party, including the secretary; or

2 (3) suspend or revoke the contract between  
3 the provider and the department, in which case the provider:

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

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

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

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

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to:

(1) treatment or care of any recipient;

(2) services or goods provided to any

recipient;

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

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

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

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

Section 5. RULES.--The secretary shall adopt and promulgate rules appropriate to administer, carry out and enforce the provisions of the Medicaid Provider Act.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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4  
5  
6 February 5, 1998

7  
8 Mr. Speaker:

9  
10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
11 been referred

12  
13 HOUSE BILL 287

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

17 1. On page 2, strike lines 19 through 22 and insert in  
18 lieu thereof:

19  
20 "A. Consistent with the terms of any contract  
21 between the department and a medicaid provider, the secretary  
22 shall have the right to be afforded access to such of the  
23 medicaid provider's records and personnel, as well as its  
24 subcontracts and that subcontractor's records and personnel, as  
25 may be necessary to ensure that the medicaid provider is  
complying with the terms of its contract with the department."

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2 SECOND SESSION, 1998

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4 2. On page 2, line 23, strike "The" and insert in lieu  
5 thereof "Upon not less than seven days written notice to a  
6 medicaid provider, the".

7  
8 3. On page 3, strike lines 3 and 4.

9  
10 4. Renumber succeeding paragraphs accordingly.

11 5. On page 3, line 11, after "(4)" insert "intentionally  
12 or with reckless disregard".

13  
14 6. On page 3, line 15, after "(5)" insert "intentionally  
15 or with reckless disregard".

16  
17 7. On page 4, line 1, strike "After" and insert in lieu  
18 thereof "Subject to the provisions of Subsection D of this  
19 section, after".

20 8. On page 4, line 8, strike "ten thousand dollars  
21 (\$10,000)" and insert in lieu thereof "five thousand dollars  
22 (\$5,000)".

23  
24 9. On page 4, line 10, strike "occurrence of each" and  
25 insert in lieu thereof "separate occurrence of such".

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2 SECOND SESSION, 1998

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4 10. On page 5, line 3, strike ", in which case the  
5 provider:" and insert in lieu thereof "pursuant to the terms of  
6 that contract."

7  
8 11. On page 5, strike lines 4 through 21 and insert in  
9 lieu thereof:

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

16  
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."

21 12. On page 5, line 24, strike "five" and insert in lieu  
22 thereof "six".

23  
24 13. On page 5, line 25, and page 6, line 1, strike  
25 "relating to" and insert in lieu thereof "that are necessary to  
verify the".

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

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4 14. On page 6, line 2, after "recipient" insert "for  
5 which the medicaid provider received payment from the department  
6 to provide that benefit or service".

7  
8 15. On page 6, line 4, after "recipient" insert "for  
9 which the medicaid provider received payment from the department  
10 to provide that benefit or service".

11 16. On page 6, lines 7 and 8, strike "or used for its  
12 administration" and insert in lieu thereof "under any contract  
13 between the department and the medicaid provider".

14  
15 17. On page 6, line 9, strike "medicaid or".

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19 18. On page 6, line 14, after "request" insert "unless  
20 the records are held by a subcontractor, agent or satellite  
21 office, in which case the records shall be made available within  
22 ten business days after the date of the request".

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24 19. On page 6, between lines 22 and 23, insert the  
25 following new section:

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4 "Section 6. EFFECTIVE DATE. --

5  
6 A. The provisions of the Medicaid Provider Act shall  
7 become effective for all initial contracts between the  
8 department and a managed care organization that are executed  
9 following any managed care procurement performed by the  
10 department that takes place on or after July 1, 1998.

11 B. For all contracts between the department and any  
12 Medicaid provider that is not a managed care organization, the  
13 provisions of the Medicaid Provider Act shall become effective  
14 on July 1, 1998.".,

15  
16 and thence referred to the JUDICIARY COMMITTEE.

17  
18 Respectfully submitted,

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23 \_\_\_\_\_  
Fred Luna, Chairman

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HVEC\HB 287

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

6  
7 Date \_\_\_\_\_

8  
9 The roll call vote was 9 For 0 Against

10 Yes: 9

11 Excused: Alwin, Hobbs, J. G. Taylor

12 Absent: Getty

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1 **FORTY-THIRD LEGISLATURE**  
2 **SECOND SESSION, 1998**

3  
4 **February 14, 1998**

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6  
7 **Mr. Speaker:**

8  
9 **Your JUDICIARY COMMITTEE, to whom has been referred**

10 **HOUSE BILL 287, as amended**

11  
12 **has had it under consideration and reports same with**  
13 **recommendation that it DO PASS.**

14  
15 **Respectfully submitted,**

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20 **Thomas P. Foy, Chairman**

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 Page 14

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

5  
6 (Chief Clerk)

(Chief Clerk)

7  
8 Date \_\_\_\_\_

9  
10 The roll call vote was 10 For 0 Against

11 Yes: 10

12 Excused: King, Larranaga, Pederson

13 Absent: None

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SECOND SESSION, 1998

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

February 17, 1998

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to  
whom has been referred

HOUSE BILL 287, as amended

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

Respectfully submitted,

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Roman M. Maes, III, Chairman

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

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 1 Against

Yes: 9

No: Robinson

Excused: None

Absent: None

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