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HOUSE BILL 593

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO MANAGED HEALTH CARE; CREATING THE MANAGED CARE
OMBUDSMAN PROGRAM; 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 Care Ombudsman Act".

Section 2. PURPOSE AND LEGISLATIVE INTENT. -- The
legislature recognizes that in a managed health care
environment, consumers' choices of providers and treatments
are limited, and a third party, the insurer, is involved in
medical decision-making that was once a matter between
patients and their physicians or other health care providers.
The purpose of the Managed Care Ombudsman Act is to establish
an ombudsman program to assist consumers in navigating complex
managed care systems and in resolving problems encountered in

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1 obtaining appropriate health care. In enacting that act, it
2 is the legislature's intent that the ombudsman program operate
3 independently of government agencies and health plans and that
4 its services be available to all managed health care
5 consumers.

6 Section 3. DEFINITIONS. -- As used in the Managed Care
7 Ombudsman Act:

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

10 B. "enrollee" means an individual who is entitled
11 to receive health care benefits provided by a managed health
12 plan;

13 C. "health care facility" means an institution
14 providing health care services;

15 D. "health plan" means a health care insurer or a
16 provider service network when offering a benefit that either
17 requires an enrollee to use, or creates incentives, including
18 financial incentives, for him to use health care providers
19 managed, owned, under contract with or employed by the health
20 care insurer or provider service network. "Health plan" does
21 not include an insurer or provider service network offering a
22 traditional fee-for-service indemnity benefit or a benefit
23 that covers only short-term travel, accident-only, limited
24 benefit, student health plan or specified disease policies;

25 E. "insurer" means a person that has a valid

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1 certificate of authority in good standing pursuant to the New
2 Mexico Insurance Code to act as an insurer, health maintenance
3 organization, nonprofit health care plan or prepaid dental
4 plan;

5 F. "ombudsman" means the ombudsman program created
6 by the Managed Care Ombudsman Act or any authorized
7 representative of that program;

8 G. "prospective enrollee" means:

9 (1) in the case of an individual who is a
10 member of a group, an individual eligible for enrollment in a
11 health plan through that individual's group; or

12 (2) in the case of an individual who is not a
13 member of a group or whose group has not purchased or does not
14 intend to buy a health plan, an individual who has expressed
15 an interest in purchasing individual plan coverage and is
16 eligible for coverage by the plan;

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

21 I. "provider service network" means two or more
22 providers affiliated for the purpose of providing health care
23 services to covered persons on a capitated or similar prepaid
24 flat-rate basis, that hold a certificate of authority pursuant
25 to the Provider Service Network Act.

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Section 4. MANAGED CARE OMBUDSMAN PROGRAM CREATED--
FUNCTIONS AND DUTIES OF THE OMBUDSMAN PROGRAM --
A. The "managed care ombudsman program" is
created. The function of the ombudsman program is to assist
patients in exercising their rights and to help advocate for
and protect consumer interests.
B. The ombudsman has the authority to:
(1) educate consumers about their rights and
responsibilities as enrollees of health plans;
(2) assist enrollees and prospective
enrollees in resolving concerns or disputes with their health
plans;
(3) attempt to resolve disputes through
advice, counseling, negotiation or other informal strategies
if possible, before proceeding to formal administrative
remedies; formal administrative remedies shall be pursued
before litigation is initiated, but the requirements of this
paragraph do not apply when, in the judgment of the ombudsman,
the medical or other exigencies of the case require expedited
action to prevent harm to the consumer;
(4) upon the request of a consumer or the
consumer's designated legal representative, pursue all
available administrative, legal and other appropriate remedies
on behalf of the consumer; and
(5) recommend systemic or policy changes that

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1 will improve the operations of managed care in this state and
2 participate in rulemaking proceedings and other forms of state
3 or federal policy development as a spokesperson for the
4 interests of health care consumers.

5 C. The ombudsman shall maintain sufficient numbers
6 and types of staff, qualified by training and experience, to
7 perform the functions of the ombudsman. Staff may include
8 employees, independent contractors performing services
9 pursuant to contract and volunteers.

10 Section 5. OPERATIONS OF THE OMBUDSMAN THROUGH
11 CONTRACTUAL RELATIONSHIP. --

12 A. The department shall contract with one or more
13 independent organizations or consortia of organizations to
14 operate the ombudsman. The contractor has authority to enter
15 into subcontracts for performance of any part of the duties
16 required by the contract. The ombudsman shall operate
17 independently of any state agency or health plan.

18 B. The criteria used in selecting a contractor or
19 contractors to operate the ombudsman shall include preference
20 for:

21 (1) private, not-for-profit organizations
22 representing a broad spectrum of consumer interests in New
23 Mexico; and

24 (2) organizations that have, or whose
25 principals have, demonstrated interest and expertise in health

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1 care issues and a background in consumer advocacy.

2 C. No person contracting to perform ombudsman
3 functions may:

4 (1) be directly involved in the licensing,
5 certification or accreditation of health care facilities,
6 health plans or health care providers;

7 (2) have a direct ownership or investment
8 interest in a health care facility, health plan or health care
9 provider;

10 (3) be employed by or participate in the
11 management of a health care facility, health plan or health
12 care provider; or

13 (4) have the right to receive remuneration
14 under a compensation arrangement with an owner or operator of
15 a health care facility, health plan or health care provider.

16 D. The ombudsman shall exercise its powers and
17 duties independently of any state agency or health plan. To
18 assure the independence of the ombudsman, the contract to
19 operate the ombudsman shall be awarded as a multi-term
20 contract for three-year terms. The contract shall not be
21 terminated by the department before its scheduled expiration
22 date except for lack of available funds or for significant
23 deficiencies in contract performance. Before the contract may
24 be terminated by the department on the basis of deficiencies
25 in contract performance, the department shall:

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

4 (2) give the contractor a reasonable
5 opportunity to respond to and correct the identified
6 deficiencies; and

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

9 Section 6. ACCESS TO INFORMATION. --

10 A. When the assistance of the ombudsman has been
11 requested on behalf of an individual, the ombudsman shall be
12 granted access to the individual's medical and administrative
13 records relevant to the issue presented, but the ombudsman
14 must have the permission of the individual or the individual's
15 designated representative.

16 B. The ombudsman shall have access to the
17 administrative records, policies and documents of health plans
18 to the extent the materials are not proprietary or privileged.

19 C. The ombudsman shall have access to licensing
20 and data reporting records with respect to health plans
21 reported to the state, the federal government or private
22 accrediting agencies, to the extent the information is not
23 proprietary or privileged.

24 D. Health plans, state agencies and health care
25 providers shall provide cooperation, assistance, data and

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1 access to records necessary to enable the ombudsman to perform
2 its duties under the Managed Care Ombudsman Act and under
3 other applicable federal and state law. Charges for copies of
4 documents provided to the ombudsman by a state agency, health
5 plan or health care provider shall be the lesser of actual
6 costs, not to exceed the prevailing community market rates for
7 photocopying, or fifty cents (\$.50) a page.

8 E. Communications between the ombudsman and a
9 person requesting the assistance of the ombudsman are
10 privileged. The case files and records of the ombudsman are
11 confidential and may be disclosed only as provided in this
12 subsection, for purposes of fulfilling the duties of the
13 ombudsman. Those files and records are not subject to
14 subpoena and are exempt from disclosure under the Inspection
15 of Public Records Act. The ombudsman shall not disclose the
16 identity of or any confidential information regarding any
17 individual who has requested the assistance of the ombudsman,
18 unless:

- 19 (1) the individual or his designated
20 representative consents to the disclosure; or
- 21 (2) disclosure is ordered by a court of
22 competent jurisdiction.

23 F. Reports by the ombudsman on operations of the
24 ombudsman office or systemic issues in managed health care
25 shall be prepared in a manner to ensure that the identities of

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1 individuals served by the ombudsman are not disclosed and
2 information shall be presented in a report in such a way as to
3 prevent identification of individuals served by the ombudsman.

4 Section 7. NOTICE OF AVAILABILITY OF OMBUDSMAN. -- Health
5 plans shall advise enrollees of the availability of the
6 ombudsman and shall provide enrollees and prospective
7 enrollees, upon request, with information about how they may
8 contact the ombudsman.

9 Section 8. PROHIBITION ON INTERFERENCE WITH OMBUDSMAN OR
10 RETALIATION. --

11 A. No person shall willfully interfere with the
12 lawful actions of the ombudsman.

13 B. No person shall engage in discriminatory,
14 disciplinary, retaliatory or other adverse action against any
15 person for contacting the ombudsman, requesting the assistance
16 of the ombudsman, providing information to the ombudsman or
17 otherwise cooperating with the ombudsman.

18 Section 9. IMMUNITY FROM LIABILITY. -- No representative
19 of the ombudsman is liable for the good-faith performance of
20 the functions of the ombudsman pursuant to the Managed Care
21 Ombudsman Act.

22 Section 10. AUTHORITY NOT EXCLUSIVE. -- The authority
23 granted the ombudsman under the Managed Care Ombudsman Act is
24 in addition to the authority granted under the provisions of
25 any other statute or rule. The authority granted to the

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1 ombudsman does not limit or affect any rights or remedies of
2 managed care enrollees.

3 Section 11. FUNDING. --

4 A. To ensure adequate funding for the operations
5 of the ombudsman program, a surcharge is assessed on premiums
6 received by insurers offering health plans. The surcharge is
7 in the amount of one-tenth of one percent of the dollar amount
8 of premiums collected by the insurer for coverage of enrollees
9 in the insurer's health plans, whether for privately paid
10 insurance or for publicly funded programs, including the
11 medicaid program.

12 B. There created in the state treasury a "managed
13 care ombudsman fund". All money collected pursuant to the
14 provisions of this section shall be deposited in the managed
15 care ombudsman fund. Balances in the fund and interest earned
16 on money in the fund are appropriated to the department for
17 the purpose of administering and contracting for the ombudsman
18 as provided in the Managed Care Ombudsman Act. Any unexpended
19 or unencumbered balance remaining at the end of a fiscal year
20 shall not revert.

21 Section 12. EFFECTIVE DATE. -- The effective date of the
22 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 12, 1999
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8 Mr. Speaker:
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10 Your APPROPRIATIONS AND FINANCE COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 593
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

- 17 1. On page 1, line 12, strike “; MAKING AN
18 APPROPRIATION”.
19
20 2. On page 10, strike Section 11 in its entirety.
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22 3. Renumber succeeding sections accordingly.
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Respectfully submitted,

Max Coll, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 16 For 0 Against

Yes: 16

Excused: Watchman

Absent: None

J: \99BillSWP\H0593

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FIRST SESSION, 1999

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

March 15, 1999

Mr. President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been
referred

HOUSE BILL 593, as amended

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

Respectfully submitted,

Shannon Robinson, Chairman

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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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, Ingle, Stockard, Smith

Absent: None

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