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HOUSE BILL 708

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

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO HEALTH; PROVIDING FOR LIABILITY OF MANAGED CARE HEALTH PLANS; AMENDING THE PATIENT PROTECTION ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 59A-57-1 NMSA 1978 (being Laws 1998, Chapter 107, Section 1) is amended to read:

"59A-57-1. SHORT TITLE. -- [~~Sections 1 through 11 of this act]~~ Chapter 59A, Article 57 NMSA 1978 may be cited as the "Patient Protection Act". "

Section 2. A new Section of Chapter 59A, Article 57 NMSA 1978 is enacted to read:

"NEW MATERIAL HEALTH CARE LIABILITY. --

A. A plan has the duty to exercise ordinary care when making health care treatment decisions and is liable for

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1 damages for harm to an enrollee proximately caused by the
2 plan's failure to exercise such ordinary care.

3 B. A plan is liable for damages for harm to an
4 enrollee proximately caused by the health care treatment
5 decisions made by its:

- 6 (1) employees;
- 7 (2) agents;
- 8 (3) apparent agents; or
- 9 (4) representatives who are acting on its
10 behalf and over whom it has the right to exercise influence or
11 control or has actually exercised influence or control that
12 results in the failure to exercise ordinary care.

13 C. It is a defense to an action asserted against a
14 plan that:

- 15 (1) neither the plan nor an employee, agent,
16 apparent agent or representative for whose conduct the plan is
17 liable pursuant to Subsection B of this section, controlled,
18 influenced or participated in the health care treatment
19 decision; and
- 20 (2) the plan did not deny or delay payment
21 for any treatment prescribed or recommended by a provider to
22 the enrollee.

23 D. The standards in Subsections A and B of this
24 section create no obligation on the part of the plan to
25 provide to an enrollee treatment that is not covered by the

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1 plan.

2 E. This section does not create liability of an
3 employer, an employer group purchasing organization or a
4 pharmacy licensed by the board of pharmacy that purchases
5 coverage or assumes risk on behalf of its employees.

6 F. A plan may not remove a health care provider
7 from its plan or refuse to renew the health care provider's
8 participation in its plan for advocating for appropriate and
9 medically necessary health care for an enrollee.

10 G. A plan may not enter into a contract with a
11 health care provider or pharmaceutical company that includes
12 an indemnification or hold harmless clause for the acts or
13 conduct of the plan.

14 H. In an action against a plan, a finding that a
15 health care provider is an employee, agent, apparent agent or
16 representative of the plan shall not be based solely on proof
17 that the person's name appears in a listing of approved health
18 care providers made available to enrollees under a plan.

19 I. No civil action against a plan may be brought
20 pursuant to this section unless the affected enrollee or the
21 enrollee's representative:

22 (1) has exhausted the administrative appeals
23 and review remedies available pursuant to the Patient
24 Protection Act; and

25 (2) before instituting the action:

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1 (a) gives written notice of the claim
2 as provided by Subsection J of this section; and

3 (b) agrees to submit the claim to a
4 review by the department as required by Subsection K of this
5 section.

6 J. The notice required by Paragraph (2) of
7 Subsection I of this section must be delivered or mailed to
8 the plan against whom the action is brought not later than the
9 thirtieth day before the date the civil action is filed.

10 K. The enrollee or the enrollee's representative
11 must submit the claim to a review by the department if the
12 plan against whom the claim is made requests the review not
13 later than the fourteenth day after the date the notice
14 pursuant to Subparagraph (a) of Paragraph (2) of Subsection I
15 of this section is received by the plan entity. If the plan
16 does not request the review within the period specified by
17 this subsection, the enrollee or the enrollee's representative
18 is not required to submit the claim to the department.

19 L. Subject to Subsection M of this section, if the
20 enrollee has not complied with Subsection I of this section,
21 an action pursuant to this section shall not be dismissed by
22 the court, but the court may, in its discretion, order the
23 parties to submit to an independent review or mediation or
24 other non-binding alternative dispute resolution and may abate
25 the action for a period of not to exceed thirty days for those

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1 purposes. Such an order of the court is the sole remedy
2 available to a party complaining of an enrollee's failure to
3 comply with Subsection I of this section.

4 M An enrollee is not required to comply with
5 Subsection K of this section, and no abatement or other order
6 pursuant to Subsection L of this section for failure to comply
7 shall be imposed if the enrollee has filed a pleading alleging
8 in substance that:

9 (1) harm to the enrollee has already occurred
10 because of the conduct of the plan or because of an act or
11 omission of an employee, agent, apparent agent or
12 representative of the plan for whose conduct it is liable
13 pursuant to this section; and

14 (2) the review would not be beneficial to the
15 enrollee, unless the court, upon motion by a defendant plan,
16 finds after hearing that the pleading was not made in good
17 faith in which case the court may enter an order pursuant to
18 Subsection L of this section.

19 0. If the enrollee or the enrollee's
20 representative seeks to exhaust the administrative appeals and
21 review available pursuant to the Patient Protection Act or
22 provides notice, as required by Subsection I of this section,
23 before the statute of limitations applicable to a claim
24 against a plan has expired, the limitations period is tolled
25 until the later of:

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(1) the thirtieth day after the date the enrollee or the enrollee's representative has exhausted the process for administrative appeals and review pursuant to the Patient Protection Act; or

(2) the fortieth day after the date the enrollee or enrollee's representative gives notice pursuant to Subparagraph (a) of Paragraph (2) of Subsection I of this section.

P. This section does not prohibit an enrollee from pursuing other appropriate remedies, including injunctive relief, a declaratory judgment or relief under law if the requirement of exhausting the administrative process for appeal and review places the enrollee's health in serious jeopardy. "

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 25, 1999
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8 Mr. Speaker:
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10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
11 whom has been referred
12

13 HOUSE BILL 708
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15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, thence referred to
17 the JUDICIARY COMMITTEE.

18 Respectfully submitted,
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22 _____
23 Patsy Trujillo Knauer,
24 Chairwoman
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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 4 For 3 Against

Yes: 4

No: Beam, King, Vaughn

Excused: None

Absent: None

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