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HOUSE BILL 299

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

John A. Heaton

AN ACT

**RELATING TO HEALTH CARE; ENACTING THE ANY WILLING PROVIDER
ACT; PROVIDING CRIMINAL AND CIVIL PENALTIES AND ENFORCEMENT.**

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

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

**Section 2. DEFINITIONS. --As used in the Any Willing
Provider Act:**

**A. "health care facility" means an institution
providing health care services, including a hospital or other
licensed inpatient center, an ambulatory surgical or treatment
center, a skilled nursing center, a residential treatment
center, a home health agency, a diagnostic, laboratory or
imaging center and a rehabilitation or other therapeutic
health setting;**

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1 B. "health care insurer" means a person that has a
2 valid certificate of authority in good standing pursuant to
3 the New Mexico Insurance Code to act as an insurer, health
4 maintenance organization, nonprofit health care plan or
5 prepaid dental plan;

6 C. "health care professional" means a physician or
7 other health care practitioner, including a pharmacist, who is
8 licensed, certified or otherwise authorized by the state to
9 provide health care services or medical equipment consistent
10 with state law;

11 D. "health care provider" means a person that is
12 licensed or otherwise authorized by the state to furnish
13 health care services or provide medical equipment and includes
14 health care professionals and health care facilities;

15 E. "health care services" includes physical health
16 services or community-based mental health or developmental
17 disability services; and

18 F. "provider service network" means two or more
19 health care providers affiliated for the purpose of providing
20 health care services to enrollees on a capitated or similar
21 prepaid flat-rate basis.

22 Section 3. ANY WILLING PROVIDER RULE. -- No individual or
23 group health insurance policy, health care plan or certificate
24 of health insurance delivered or issued for delivery in this
25 state shall:

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1 A. deny any health care provider the right to
2 participate as a provider under the policy, plan or
3 certificate, if the type of services or equipment offered by
4 the health care provider are covered, under the same terms and
5 conditions of the policy, plan or certificate as are offered
6 to any other health care provider;

7 B. prevent any person who is a party to or member
8 of the policy, plan or certificate from selecting a health
9 care provider of his choice to furnish the health care
10 services or medical equipment offered under the policy, plan
11 or certificate, under the same terms and conditions of the
12 policy, plan or certificate as those offered to any other
13 health care provider; or

14 C. permit or mandate any difference in coverage or
15 impose any different conditions or disincentives that would
16 cause a party to or member of the policy, plan or certificate
17 to choose one health care provider over another for health
18 care services or medical equipment that are covered under the
19 policy, plan or certificate.

20 Section 4. CRIMINAL PENALTY AND ENFORCEMENT.--

21 A. A health care insurer or provider service
22 network that violates the provisions of Section 3 of the Any
23 Willing Provider Act is guilty of a misdemeanor and shall be
24 punished, pursuant to Section 31-20-1 NMSA 1978, by a fine of
25 not more than five thousand dollars (\$5,000).

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1 B. Each violation of the provisions of Section 3
2 of the Any Willing Provider Act, as to each health care
3 provider and each refusal to comply, constitutes a separate
4 and distinct offense.

5 C. If the superintendent of insurance has reason
6 to believe that a person has violated a provision of the Any
7 Willing Provider Act, the superintendent shall refer the
8 matter to the attorney general or another appropriate law
9 enforcement official for enforcement proceedings pursuant to
10 the provisions of Section 59A-2-11 NMSA 1978.

11 Section 5. PRIVATE CIVIL ENFORCEMENT. --

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

20 B. A person likely to be injured by a violation of
21 the Any Willing Provider Act may seek and be granted an
22 injunction on terms that the court considers reasonable.
23 Proof of monetary damage or intent to violate a right is not
24 required.

25 C. The court shall award attorney fees and costs

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1 to the party complaining of a violation of the Any Willing
2 Provider Act if the party prevails substantially in the
3 lawsuit.

4 D. The relief provided in this section is in
5 addition to other remedies available against the same conduct
6 under the common law or other statutes of this state.

7 E. In a class action filed pursuant to this
8 section, the court may award damages to the named plaintiffs
9 as provided in this section and may award members of the class
10 the actual damages suffered by each member of the class as a
11 result of the unlawful practice.

12 Section 6. EFFECTIVE DATE. -- The effective date of the
13 provisions of this act is July 1, 2001.