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**HOUSE BILL 638**

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

**INTRODUCED BY**

**Al Park**

**AN ACT**

**RELATING TO HEALTH INSURANCE; AMENDING THE PATIENT PROTECTION ACT TO PROVIDE THAT A PERSON WHO SUFFERS A LOSS AS A RESULT OF A VIOLATION OF A PROTECTED RIGHT MAY BRING AN ACTION FOR ACTUAL DAMAGES.**

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

**Section 1. Section 59A-57-9 NMSA 1978 (being Laws 1998, Chapter 107, Section 9) is amended to read:**

**"59A-57-9. PRIVATE REMEDIES TO ENFORCE PATIENT AND PROVIDER INSURANCE RIGHTS-- ENROLLEE AS THIRD-PARTY BENEFICIARY TO ENFORCE RIGHTS. --**

**A. A person who suffers a loss as a result of a violation of a right protected pursuant to the provisions of the Patient Protection Act, its regulations or a managed health care plan may bring an action to recover actual damages**

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1 ~~[or the sum of one hundred dollars (\$100), whichever is~~  
2 ~~greater].~~

3 B. A person likely to be damaged by a denial of a  
4 right protected pursuant to the provisions of the Patient  
5 Protection Act or its regulations may be granted an injunction  
6 under the principles of equity and on terms that the court  
7 considers reasonable. Proof of monetary damage or intent to  
8 violate a right is not required.

9 C. To protect and enforce an enrollee's rights in  
10 a managed health care plan, an individual enrollee  
11 participating in or eligible to participate in a managed  
12 health care plan shall be treated as a third-party beneficiary  
13 of the managed health care plan contract between the plan and  
14 the party with which the plan directly contracts. An  
15 individual enrollee may sue to enforce the rights provided in  
16 the contract that governs the managed health care plan;  
17 provided, however, that the plan and the party to the contract  
18 may amend the terms of, or terminate the provisions of, the  
19 contract without the enrollee's consent.

20 D. The relief provided pursuant to this section is  
21 in addition to other remedies available against the same  
22 conduct under the common law or other statutes of this state.

23 E. In any class action filed pursuant to this  
24 section, the court may award damages to the named plaintiffs  
25 as provided in this section and may award members of the class

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1 the actual damages suffered by each member of the class as a  
2 result of the unlawful practice.

3 F. Nothing in the Patient Protection Act is  
4 intended to make a plan vicariously liable for the actions of  
5 independent contractor health care providers. "

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