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HOUSE BILL 651

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Peter Wirth

AN ACT

RELATING TO INSURANCE; CLARIFYING EXCEPTIONS TO CERTAIN
DISCLOSURES BY HEALTH MAINTENANCE ORGANIZATIONS.

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

Section 1. Section 59A-46-27 NMSA 1978 (being Laws 1993,
Chapter 266, Section 27) is amended to read:

"59A-46-27. CONFIDENTIALITY OF MEDICAL INFORMATION AND
LIMITATION OF LIABILITY.--

A. Any data or information pertaining to the
diagnosis, treatment or health of any enrollee or applicant
obtained from such person or from any provider by any health
maintenance organization shall be held in confidence and shall
not be disclosed to any person except:

(1) to the extent that it may be necessary to
carry out the purposes of the Health Maintenance Organization

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underscored material = new
[bracketed material] = delete

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[bracketed material] = delete

1 Law;

2 (2) upon the express consent of the enrollee
3 or applicant;

4 (3) as authorized by federal or state statute
5 or rule, including the privacy standard promulgated pursuant to
6 the federal Health Insurance Portability and Accountability Act
7 of 1996;

8 [~~(3)~~] (4) pursuant to [~~statute or~~] court order
9 for the production of evidence or the discovery thereof; or

10 [~~(4)~~] (5) in the event of claim or litigation
11 between [~~such~~] the person and the health maintenance
12 organization in which [~~such~~] the data or information is
13 pertinent.

14 B. A health maintenance organization shall be
15 entitled to claim any statutory privileges against disclosure
16 of information described in Subsection A of this section that
17 the provider who furnished the information to the health
18 maintenance organization is entitled to claim.

19 C. A person who in good faith and without malice
20 takes any action or makes any decision or recommendation as a
21 member, agent or employee of a health care review committee or
22 who furnishes any records, information or assistance to such a
23 committee shall not be subject to liability for civil damages
24 or any legal action in consequence of such action, nor shall
25 the health maintenance organization that established [~~such~~] the

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[bracketed material] = delete

1 committee or the officers, directors, employees or agents of
2 [~~such~~] the health maintenance organization be liable for the
3 activities of any such person. The provisions of this
4 subsection do not relieve any person of liability arising from
5 treatment of a patient.

6 D. The information considered by a health care
7 review committee and the records of [~~their~~] its actions and
8 proceedings shall be confidential and not subject to subpoena
9 or order to produce except in proceedings before the
10 appropriate state licensing or certifying agency or in an
11 appeal, if permitted, from the committee's findings or
12 recommendations. No member of a health care review committee
13 or officer, director or other member of a health maintenance
14 organization or its staff engaged in assisting [~~such~~] the
15 committee, or any person assisting or furnishing information to
16 [~~such~~] the committee may be subpoenaed to testify in any
17 judicial or quasi-judicial proceeding if [~~such~~] the subpoena is
18 based solely on such activities.

19 E. Information considered by a health care review
20 committee and the records of its actions and proceedings that
21 are used pursuant to Subsection D of this section by a state
22 licensing or certifying agency or in an appeal shall be kept
23 confidential and shall be subject to the same provision
24 concerning discovery and use in legal actions as are the
25 original information and records in the possession and control

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1 of a health care review committee.

2 F. To fulfill its obligations under Section
3 59A-46-7 NMSA 1978, the health maintenance organization shall
4 have access to treatment records and other information
5 pertaining to the diagnosis, treatment or health status of any
6 enrollee."

7 Section 2. TEMPORARY PROVISION--PURPOSE--APPLICABILITY.--

8 A. The purpose of this act is to not change the
9 exceptions for disclosing information by health maintenance
10 organizations but to clarify the law and the intent of the law
11 as it existed prior to the effective date of this act.

12 B. This act applies to disclosures made both before
13 and after its effective date.

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