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**HOUSE BILL 936**

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

**INTRODUCED BY**

**Al Park**

**AN ACT**

**RELATING TO HEALTH MAINTENANCE ORGANIZATIONS; PROVIDING FOR  
PRIVATE REMEDIES AGAINST HEALTH MAINTENANCE ORGANIZATIONS IN  
CERTAIN CIRCUMSTANCES.**

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

**Section 1. Section 59A-46-25 NMSA 1978 (being Laws 1993,  
Chapter 266, Section 25) is amended to read:**

**"59A-46-25. PENALTIES AND ENFORCEMENT--PRIVATE REMEDY. --**

**A. The superintendent may, in lieu of suspension  
or revocation of a certificate of authority pursuant to the  
provisions of Section 59A-46-20 NMSA 1978, levy an  
administrative penalty in an amount up to five thousand  
dollars (\$5,000), except that if the violation is willful or  
intentional, the administrative penalty may be up to ten  
thousand dollars (\$10,000). The superintendent may augment**

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1 this penalty by an amount equal to the sum that he calculates  
2 to be the damages suffered by enrollees or other members of  
3 the public.

4 B. If the superintendent [~~shall~~] for any reason  
5 [~~have~~] has cause to believe that any violation of the  
6 provisions of the Health Maintenance Organization Law has  
7 occurred or is threatened, the superintendent may give notice  
8 to the health maintenance organization and to the  
9 representatives or other persons who appear to be involved in  
10 [~~such~~] the suspected violation to arrange a conference with  
11 the alleged violators or their authorized representatives for  
12 the purpose of attempting to ascertain the facts relating to  
13 [~~such~~] the suspected violation and, in the event it appears  
14 that any violation has occurred or is threatened, to arrive at  
15 an adequate and effective means of correcting or preventing  
16 [~~such~~] the violation.

17 C. A conference arranged under the provisions of  
18 Subsection B of this section shall not be governed by any  
19 formal procedural requirements and may be conducted in such  
20 manner as the superintendent [~~may deem~~] deems appropriate  
21 under the circumstances.

22 D. The superintendent may issue an order directing  
23 a health maintenance organization or a representative of a  
24 health maintenance organization to cease and desist from  
25 engaging in any act or practice in violation of the provisions

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1 of the Health Maintenance Organization Law. Within thirty  
2 days after service of the cease and desist order, the  
3 respondent may request a hearing on the question of whether  
4 acts or practices in violation of that law have occurred.  
5 Such hearings shall be governed by the provisions of Chapter  
6 59A, Article 4 NMSA 1978.

7 E. In the case of any violation of the provisions  
8 of the Health Maintenance Organization Law, if the  
9 superintendent elects not to issue a cease and desist order or  
10 in the event of noncompliance with a cease and desist order  
11 issued pursuant to Subsection D of this section, the  
12 superintendent may institute a proceeding to obtain injunctive  
13 or other appropriate relief in the Santa Fe county district  
14 court.

15 F. Notwithstanding any other provisions of the  
16 Health Maintenance Organization Law, if a health maintenance  
17 organization fails to comply with the net worth requirement of  
18 that law, the superintendent is authorized to take appropriate  
19 action to assure that the continued operation of the health  
20 maintenance organization will not be hazardous to its  
21 enrollees.

22 G. In addition to any other relief that may be  
23 available under law, an enrollee who suffers a loss as a  
24 result of a violation of a provision of the Health Maintenance  
25 Organization Law or regulations adopted pursuant to that act

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1 may bring an action to recover actual damages."

2 Section 2. Section 59A-46-30 NMSA 1978 (being Laws 1993,  
3 Chapter 266, Section 29, as amended) is amended to read:

4 "59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO  
5 OTHER LAWS. --

6 A. The provisions of the Insurance Code other than  
7 Chapter 59A, Article 46 NMSA 1978 shall not apply to health  
8 maintenance organizations except as expressly provided in the  
9 Insurance Code and that article. To the extent reasonable and  
10 not inconsistent with the provisions of that article, the  
11 following articles and provisions of the Insurance Code shall  
12 also apply to health maintenance organizations and their  
13 promoters, sponsors, directors, officers, employees, agents,  
14 solicitors and other representatives. For the purposes of  
15 such applicability, a health maintenance organization may  
16 therein be referred to as an "insurer":

17 (1) Chapter 59A, Article 1 NMSA 1978;

18 (2) Chapter 59A, Article 2 NMSA 1978;

19 (3) Chapter 59A, Article 4 NMSA 1978;

20 (4) Subsection C of Section 59A-5-22 NMSA  
21 1978;

22 (5) Sections 59A-6-2 through 59A-6-4 and  
23 59A-6-6 NMSA 1978;

24 (6) Chapter 59A, Article 8 NMSA 1978;

25 (7) Chapter 59A, Article 10 NMSA 1978;

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1 (8) Section 59A-12-22 NMSA 1978;  
2 (9) Chapter 59A, Article 16 NMSA 1978;  
3 (10) Chapter 59A, Article 18 NMSA 1978;  
4 (11) [~~Chapter 59A, Article 19 NMSA 1978~~] the  
5 Policy Language Simplification Law;

6 [~~(12) Section 59A-22-2.1 NMSA 1978;~~  
7 ~~(13)~~] (12) Section 59A-22-14 NMSA 1978;  
8 [~~(14)~~] (13) Chapter 59A, Article 23B NMSA  
9 1978;

10 [~~(15)~~] (14) Sections 59A-34-2, 59A-34-7  
11 through 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-36,  
12 59A-34-37, 59A-34-40 through 59A-34-42 and 59A-34-44 through  
13 59A-34-46 NMSA 1978;

14 [~~(16) Chapter 59A, Article 37 NMSA 1978~~] (15)  
15 The Insurance Holding Company Law; and

16 [~~(17)~~] (16) the Patient Protection Act.

17 B. Solicitation of enrollees by a health  
18 maintenance organization granted a certificate of authority,  
19 or its representatives, shall not be construed as violating  
20 any provision of law relating to solicitation or advertising  
21 by health professionals, but health professionals shall be  
22 individually subject to the laws, rules, regulations and  
23 ethical provisions governing their individual professions.

24 [C. ~~Any health maintenance organization authorized~~  
25 ~~under the provisions of the Health Maintenance Organization~~

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1 ~~Law shall not be deemed to be practicing medicine and shall be~~  
2 ~~exempt from the provisions of laws relating to the practice of~~  
3 ~~medicine.] "~~

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