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SENATE BILL 51

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

Carrol H. Leavell

AN ACT

RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS OF THE  
WORKERS' COMPENSATION ACT TO DIRECT THE WORKERS' COMPENSATION  
ADMINISTRATION TO ESTABLISH A FEE SCHEDULE FOR INTRASTATE AIR  
AMBULANCE SERVICES; ESTABLISHING PEER GROUP UTILIZATION REVIEW  
FOR INTRASTATE AIR AMBULANCE SERVICES.

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

**SECTION 1.** Section 52-4-1 NMSA 1978 (being Laws 1983,  
Chapter 116, Section 1, as amended by Laws 2007, Chapter 325,  
Section 11 and by Laws 2007, Chapter 327, Section 1 and also by  
Laws 2007, Chapter 328, Section 3) is amended to read:

"52-4-1. DEFINITION--HEALTH CARE PROVIDER.--As used in  
Chapter 52 NMSA 1978, "health care provider" means:

A. a hospital maintained by the state or a  
political subdivision of the state or any place currently

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1 licensed as a hospital by the department of health that has:

2 (1) accommodations for resident bed patients;

3 (2) a licensed professional registered nurse  
4 always on duty or call;

5 (3) a laboratory; and

6 (4) an operating room where surgical  
7 operations are performed;

8 B. an optometrist licensed pursuant to the  
9 provisions of Chapter 61, Article 2 NMSA 1978;

10 C. a chiropractic physician licensed pursuant to  
11 the provisions of Chapter 61, Article 4 NMSA 1978;

12 D. a dentist licensed pursuant to the provisions of  
13 Chapter 61, Article [5] 5A NMSA 1978;

14 E. a physician licensed pursuant to the provisions  
15 of Chapter 61, Article 6 NMSA 1978;

16 F. a podiatrist licensed pursuant to the provisions  
17 of Chapter 61, Article 8 NMSA 1978;

18 G. an osteopathic physician licensed pursuant to  
19 the provisions of Chapter 61, Article 10 NMSA 1978;

20 H. a physician assistant licensed pursuant to the  
21 provisions of Section 61-6-7 NMSA 1978;

22 I. a certified nurse practitioner licensed pursuant  
23 to Section 61-3-23.2 NMSA 1978;

24 J. a physical therapist licensed pursuant to the  
25 provisions of Chapter 61, Article 12 NMSA 1978;

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1 K. an occupational therapist licensed pursuant to  
2 the provisions of Chapter 61, Article 12A NMSA 1978;

3 L. a doctor of oriental medicine licensed pursuant  
4 to the provisions of Chapter 61, Article 14A NMSA 1978;

5 M. an athletic trainer licensed pursuant to the  
6 provisions of Chapter 61, Article 14D NMSA 1978;

7 N. a psychologist who is duly licensed or certified  
8 in the state where the service is rendered, holding a doctorate  
9 degree in psychology and having at least two years of clinical  
10 experience in a recognized health setting, or who has met the  
11 standards of the national register of health [~~services~~  
12 ~~providers in psychology~~] service psychologists;

13 O. a certified nurse-midwife licensed by the board  
14 of nursing as a registered nurse and registered with the  
15 [~~behavioral health services~~] public health division of the  
16 [~~human services~~] department of health as a certified nurse-  
17 midwife;

18 [~~or~~] P. a pharmacist licensed pursuant to the  
19 provisions of Chapter 61, Article 11 NMSA 1978; [~~or~~]

20 Q. an air ambulance provider that:

21 (a) does not provide proof to the director  
22 that it operates as an interstate air carrier under a  
23 certificate of authority from the United States federal  
24 aviation administration; and

25 (b) is certified as an air ambulance by the

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1 department of health; or

2 [P-] R. any person or facility that provides  
3 health-related services in the health care industry, as  
4 approved by the director."

5 SECTION 2. Section 52-4-2 NMSA 1978 (being Laws 1990 (2nd  
6 S.S.), Chapter 2, Section 50, as amended) is amended to read:

7 "52-4-2. UTILIZATION REVIEW--PENALTIES.--

8 A. The director shall establish a system of peer  
9 group utilization review of selected outpatient and inpatient  
10 health care provider services to workers claiming benefits  
11 under the Workers' Compensation Act or the New Mexico  
12 Occupational Disease Disablement Law. Subject to the  
13 provisions of this section, the decisions issued pursuant to  
14 the utilization review system shall be binding on the affected  
15 health care providers, workers, employers, insurers and their  
16 representatives.

17 B. As used in this section, "utilization review"  
18 means an evaluation of the necessity, appropriateness,  
19 efficiency and quality of health care services provided to an  
20 injured or disabled worker based on medically accepted  
21 standards and an objective evaluation of the health care  
22 services provided.

23 C. The director shall also establish a system of  
24 pre-admission review of all hospital admissions, except for  
25 emergency services. Utilization review shall commence within

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1 one working day of all emergency hospital admissions.

2 D. Air ambulance services shall be subject to  
3 utilization review.

4 [~~D.~~] E. The director may contract with an  
5 independent utilization review organization to provide  
6 utilization review, including peer review.

7 [~~E.~~] F. Nothing in this section shall prevent an  
8 employer from electing to provide [~~his~~] the employer's own  
9 utilization review; however, if the worker, provider or any  
10 other party not contractually bound to the employer's  
11 utilization review program disagrees with that employer's  
12 utilization review, [~~then~~] that worker, provider or other party  
13 shall have recourse to the workers' compensation  
14 administration's utilization review program.

15 [~~F.~~] G. Pursuant to utilization review conducted by  
16 the director, including providing an opportunity for a hearing,  
17 any health care provider who imposes excessive charges or  
18 renders inappropriate services shall be subject to:

19 (1) a forfeiture of the right to payment for  
20 those services that are found to be excessive or inappropriate  
21 or payment of excessive charges;

22 (2) a fine of not less than one hundred  
23 dollars (\$100) or more than one thousand dollars (\$1,000); or

24 (3) a temporary or permanent suspension of the  
25 right to provide health care services for workers' compensation

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1 or occupational disease disablement claims if the health care  
2 provider has established a pattern of violations."

3 SECTION 3. Section 52-4-5 NMSA 1978 (being Laws 1990 (2nd  
4 S.S.), Chapter 2, Section 52, as amended) is amended to read:

5 "52-4-5. FEE SCHEDULE.--

6 A. The director shall adopt and promulgate  
7 regulations establishing a schedule of maximum charges as  
8 deemed necessary for treatment or attendance, service, devices,  
9 apparatus or medicine provided by a health care provider. The  
10 rates in the schedules of maximum charges shall not fall below  
11 the sixtieth percentile or above the eightieth percentile of  
12 current rates for health care providers. In determining  
13 current rates for health care providers, the director shall  
14 utilize a variety of health care provider charges, including  
15 the charges of those providers serving low-income, medicare and  
16 medicaid patients.

17 B. A health care provider shall be paid ~~[his]~~ the  
18 provider's usual and customary fee for services rendered or the  
19 maximum charge established pursuant to Subsection A of this  
20 section, whichever is less. However, in no case shall the  
21 usual and customary fee exceed the maximum charge allowable.

22 C. The fee schedule shall be revised annually by  
23 the director.

24 D. No amount in excess of the amount required by  
25 Subsection B of this section for a service shall be paid by the

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1 employer, the employer's insurer, the worker, a representative  
2 of the worker or any other person to a health care provider for  
3 rendering that service in connection with an injury or  
4 disablement within the purview of the Workers' Compensation Act  
5 or the New Mexico Occupational Disease Disablement Law.

6 E. If it is determined by the person primarily  
7 responsible for payment that the charges of a health care  
8 provider exceed the amount established pursuant to Subsection B  
9 of this section or that a health care provider over-utilized or  
10 otherwise rendered or ordered inappropriate health care or  
11 health care services, and payment is withheld on those grounds,  
12 the health care provider may appeal to the director regarding  
13 that determination. The director shall establish by regulation  
14 procedures for an appeal by a health care provider.

15 F. The director shall establish an advisory  
16 committee that shall:

17 (1) be appointed and serve at the pleasure of  
18 the director;

19 (2) consist of members, a majority of whom  
20 represent health care providers;

21 (3) reflect the diversity of authorized  
22 licensed health care providers available for workers'  
23 compensation and occupational disease disablement cases;

24 (4) assist in establishing the schedules of  
25 maximum charges ~~[under]~~ pursuant to provisions of Subsection A

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1 of this section for any fees that are payable to health care  
2 providers;

3 (5) assist the director in adopting  
4 regulations for employers' utilization review procedures and  
5 the establishment and conduct of utilization review boards; and

6 (6) report its findings, upon request, to the  
7 director and the advisory council on workers' compensation.

8 G. The schedule of maximum charges specified in  
9 this section shall not apply to hospital charges. The director  
10 shall establish a separate schedule of maximum charges for  
11 hospital charges no later than April 1, 1991.

12 H. The director shall establish a fee schedule for  
13 air ambulance services. The maximum reasonable fee for air  
14 ambulance services shall not exceed the fee specified in the  
15 fee schedule.

16 [~~H.~~] I. Nothing in this section shall prevent an  
17 employer from contracting with a health care provider for fees  
18 less than the maximum charges allowable."