F I S C A L I M P A C T R E P O R T

SPONSOR Papen **ORIGINAL DATE** 02/11/15 **LAST UPDATED** **HB**

SHORT TITLE Discrimination Against Health Providers **SB** 190

ANALYST Hanika Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See fiscal impact				

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
Office of the Superintendent of Insurance (OSI)
Public Regulation Commission
Human Services Department (HSD)
New Mexico Retiree Health Care Authority
New Mexico Medical Board

SUMMARY

Synopsis of Bill

Senate Bill 190 requires group health coverage, including any form of self-insurance offered, issued or renewed under the Health Care Purchasing Act, New Mexico Insurance Code, Health Maintenance Organization and Nonprofit Health Plan Law shall not discriminate with respect to participation under the plan or coverage against any health care provider acting within that provider's scope of license, certification or legal authority to practice.

The bill does not require the coverage or plan to contract with any willing health care provider nor prevents the plan from varying payment rates based on quality or performance measures.

The bill defines "health care provider" to mean any person licensed, certified or otherwise legally authorized to provide services related to physical or behavioral health care.

FISCAL IMPLICATIONS

Health insurance carriers may be able to reimburse providers previously unreimbursed.
This bill may improve access to health care, especially for rural areas, by allowing more

credentialed physical and behavioral health providers to be reimbursed by health plans.

HSD reports the changes do not apply directly to the Medicaid program.

SIGNIFICANT ISSUES

OSI notes the bill maintains the carrier's right to choose its own providers and the consumer's right to choose a hospital or health provider within those listed by the health insurance carrier.

The definition of "health care provider" is now broad and could lead to different interpretations.

HSD notes it seems likely under the new language that a health insurer would be prohibited from using additional criteria in their credentialing processes to enroll some providers and not others. Though not being required to enroll "every willing provider", the language of the bill would prohibit using criteria such as experience, additional training, prior performance, records of success and failures, and other criteria as a basis for choosing providers from which to contract.

PERFORMANCE IMPLICATIONS

HSD provided additional comments:

A Medicaid managed care organization primarily uses its commercial provider network to serve Medicaid recipients. If a HMO who is also a Medicaid managed care organization is not allowed to use criteria in their credentialing processes based on quality standards because the criteria are considered discriminatory, quality of care to Medicaid recipients would be negatively impacted.

The wording "shall not discriminate with respect to participation . . . against any health care provider who is acting within the scope of that provider's license, certification or other legal authority" removes the ability of the HMO to apply other criteria in enrolling providers that would help ensure highly qualified providers are enrolled to meet their provider network needs.

Instead, the wording that "nothing in this section shall be construed as preventing a health insurer from establishing varying reimbursement rates based on quality or performance measures" would mean they would not be able to refuse to contract with a provider despite a bad history but could only pay the provider less than someone who met quality or performance measures.

TECHNICAL ISSUES

HSD indicates in the sections being repealed, there were allowances that are not explicitly retained in the new sections related to non-discrimination: 1) a HMO may determine procedure codes that a doctor of oriental medicine is contracted to provide, 2) and a health care plan may have benefit differences based on differences in the scope of practice of health care practitioners.

The new provisions prohibit non-discrimination "with respect to participation" under the plan, however, also state that the health insurer is not required to enroll every willing provider.

AHO/bb