

AN ACT

RELATING TO PUBLIC ASSISTANCE; PROVIDING FOR REVIEW AND
REGULATION OF MEDICAID PROVIDERS; PROVIDING ADMINISTRATIVE
PENALTIES.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Medicaid Provider Act".

Section 2. DEFINITIONS. -- As used in the Medicaid
Provider Act:

A. "department" means the human services
department;

B. "managed care organization" means a person
eligible to enter into risk-based prepaid capitation
agreements with the department to provide health care and
related services;

C. "medicaid" means the medical assistance
program established pursuant to Title 19 of the federal
Social Security Act and regulations issued pursuant to that
act;

D. "medicaid provider" means a person, including
a managed care organization, operating under contract with
the department to provide medicaid-related services to
recipients;

E. "person" means an individual or other legal

entity;

F. "recipient" means a person whom the department has determined to be eligible to receive medicaid-related services;

G. "secretary" means the secretary of human services; and

H. "subcontractor" means a person who contracts with a medicaid provider to provide medicaid-related services to recipients.

Section 3. REVIEW OF MEDICAID PROVIDERS-- CONTRACT REMEDIES-- PENALTIES. --

A. Consistent with the terms of any contract between the department and a medicaid provider, the secretary shall have the right to be afforded access to such of the medicaid provider's records and personnel, as well as its subcontracts and that subcontractor's records and personnel, as may be necessary to ensure that the medicaid provider is complying with the terms of its contract with the department.

B. Upon not less than seven days written notice to a medicaid provider, the secretary may, consistent with the provisions of the Medicaid Provider Act and rules issued pursuant to that act, carry out an administrative investigation or conduct administrative proceedings to determine whether a medicaid provider has:

- (1) materially breached its obligation to

furnish medicaid-related services to recipients, or any other duty specified in its contract with the department;

(2) violated any provision of the Public Assistance Act or the Medicaid Provider Act or any rules issued pursuant to those acts;

(3) intentionally or with reckless disregard made any false statement with respect to any report or statement required by the Public Assistance Act, or the Medicaid Provider Act, rules issued pursuant to either of those acts or a contract with the department;

(4) intentionally or with reckless disregard advertised or marketed, or attempted to advertise or market, its services to recipients in a manner as to misrepresent its services or capacity for services, or engaged in any deceptive, misleading or unfair practice with respect to advertising or marketing;

(5) hindered or prevented the secretary from performing any duty imposed by the Public Assistance Act, the Human Services Department Act or the Medicaid Provider Act or any rules issued pursuant to those acts; or

(6) fraudulently procured or attempted to procure any benefit from medicaid.

C. Subject to the provisions of Subsection D of this section, after affording a medicaid provider written notice of hearing not less than ten days before the hearing

date and an opportunity to be heard, and upon making appropriate administrative findings, the secretary may take any or any combination of the following actions against the provider:

(1) impose an administrative penalty of not more than five thousand dollars (\$5,000) for engaging in any practice described in Paragraphs (1) through (7) of Subsection B of this section; provided that each separate occurrence of such practice shall constitute a separate offense;

(2) issue an administrative order requiring the provider to:

(a) cease or modify any specified conduct or practices engaged in by it or its employees, subcontractors or agents;

(b) fulfill its contractual obligations in the manner specified in the order;

(c) provide any service that has been denied;

(d) take steps to provide or arrange for any service that it has agreed or is otherwise obligated to make available; or

(e) enter into and abide by the terms of a binding or nonbinding arbitration proceeding, if agreed to by any opposing party, including the secretary; or

(3) suspend or revoke the contract between the provider and the department pursuant to the terms of that contract.

D. If a contract between the department and a medicaid provider explicitly specifies a dispute resolution mechanism for use in resolving disputes over performance of that contract, the dispute resolution mechanism specified in the contract shall be used to resolve such disputes in lieu of the mechanism set forth in Subsection C of this section.

E. If a medicaid provider's contract so specifies the medicaid provider shall have the right to seek de novo review in district court of any decision by the secretary regarding a contractual dispute.

Section 4. RETENTION AND PRODUCTION OF RECORDS. --

A. Medicaid providers and their subcontractors shall retain, for a period of at least six years from the date of creation, all medical and business records that are necessary to verify the:

(1) treatment or care of any recipient for which the medicaid provider received payment from the department to provide that benefit or service;

(2) services or goods provided to any recipient for which the medicaid provider received payment from the department to provide that benefit or service;

(3) amounts paid by medicaid or the medicaid

provider on behalf of any recipient; and

(4) records required by medicaid under any contract between the department and the medicaid provider.

B. Upon written request by the department to a medicaid provider or any subcontractor for copies or inspection of records pursuant to the Public Assistance Act, the medicaid provider or subcontractor shall provide the copies or permit the inspection, as applicable, within five business days after the date of the request unless the records are held by a subcontractor, agent or satellite office, in which case the records shall be made available within ten business days after the date of the request.

C. Failure to provide copies or to permit inspection of records requested pursuant to this section shall constitute a violation of the Medicaid Provider Act within the meaning of Paragraph (3) of Subsection B of Section 3 of that act.

Section 5. RULES.--The secretary shall adopt and promulgate rules appropriate to administer, carry out and enforce the provisions of the Medicaid Provider Act.

Section 6. EFFECTIVE DATE.--

A. The provisions of the Medicaid Provider Act shall become effective for all initial contracts between the department and a managed care organization that are executed following any managed care procurement performed by the

department that takes place on or after July 1, 1998.

B. For all contracts between the department and any medicaid provider that is not a managed care organization, the provisions of the Medicaid Provider Act shall become effective on July 1, 1998. _____
