

(H. B. 3039)

(No. 305)

(Approved December 26, 2006)

AN ACT

To amend subsection (f) of Section 2 of Act No. 11 of April 11, 2001, as amended, better known as the “Office of the Advocate for Patients Beneficiaries of the Health Reform Organic Act,” to clarify and harmonize the definition of “Patient” in accordance with the rule of law in effect.

STATEMENT OF MOTIVES

For the sake of visibly contributing to the formation of a better-informed, aware, responsible, and healthy public which would foster a more efficient use of the available resources, Act No. 194 of August 25, 2000, better known as the “Bill of Rights and Responsibilities of the Patient,” was approved.

In addition to the constant search for solutions to the changes brought about by the implementation of Act No. 72 of September 7, 1993, better known as the “Puerto Rico Health Insurance Administration Act,” and Act No. 194, supra, Act No. 11 of April 11, 2001, as amended, was approved “to create the position of the Advocate for Patients Beneficiaries of the Health Reform.”

Section 3 of Act No. 11, supra, the Bill of Rights and Responsibilities of the Patient establishes the responsibility of the Patients’ Advocate to ensure compliance for the patients that are beneficiaries of the Health Reform and to coordinate, address, and solve the problems, needs, and claims of said insured patients, users, and consumers of medical-hospital health services in Puerto Rico.

However, when the Office of the Advocate for Patients was created, no provision was made to clarify Section 2 of its Organic Act, since its subsection (f) limits the definition of the term “Patient,” indicating that it “refers to any

subscriber beneficiary of the Health Reform.” This definition is outright incomplete and incorrect since the statute in effect broadens said jurisdiction through Section 13 of Act No. 11, supra, which provided that “[a]s of April 1, 2005, the jurisdiction of the Advocate shall be extended to cover all patients in Puerto Rico.”

It should be noted that having a health plan does not define anyone as a patient. It does not quite turn out to be a proper definition of what a patient is, according to the current code of laws. A patient is not only a subscriber of a healthcare plan, but is also a person who is or shall be subject to receiving treatment for a physical or mental condition. A patient is a person “that with the sole purpose of obtaining medical treatment, or a preliminary diagnosis for such treatment, consults or submits to examination by a physician.” Compare to Rule 26 of Evidence, according to Ortiz García v. Meléndez, 2005 S.C. P.R. 19.

Furthermore, an interpretation of the statute could lead to the conclusion that those who do not have a health plan shall not be entitled to the rights created by the Bill of Rights and Responsibilities of the Patient, establishing an outright discrimination in obtaining a health plan because of his/her financial resources. It should be added that the Constitution of the Commonwealth of Puerto Rico, Article II, Section 2, provides that there shall be no discrimination on account of social origin or condition, among others. The Supreme Court of Puerto Rico has interpreted the provision that no discrimination shall be made on account of social origin or condition as referring to discrimination or classifications based on the financial and social position or condition of the person. The constitutional value that inspires it is that there shall be no ranking, favoritism or prejudice against a person on account of his/her socio-economic position. Pérez Vega v. Special Advocate for Family Relationships, 148 P.R.R. 201 (1999); also see concurring opinion in Molina v. C.R.U.V., 114 P.R.R. 295 (1983). That is to say, a person

who remains social and economically isolated is discriminated against, if she/he is thus maintained under a situation of legal inferiority by reason of said social condition, a presumably unconstitutional discrimination would be incurred.

Precisely, such discrimination contradicts the general objectives of equal access and treatment of the laws in effect with respect to the rights of the patient. The inappropriateness of the discrimination could be alleged, because if a person does not have a health plan, he/she does not have access to the representation and assistance that the Office of the Advocate for Patients could offer against the conduct by both public and private entities that is injurious to his/her rights.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Subsection (f) of Section 2 of Act No. 11 of April 11, 2001, as amended, is hereby amended to read as follows:

“Section 2.- Definitions

(a) ...

(b) ...

...

(f) “Patient”: refers to a person who is or shall receive health treatment, whether for a physical or mental condition, and consults or submits to examination by a health professional to obtain information in order to remain healthy, obtain a diagnosis of his/her health condition or health treatment for an illness or injury, including preventive diagnosis or treatment for the early detection of possible illnesses or complications of already diagnosed illnesses, and to extend his/her life and improve the quality of life of those who are already compromised, regardless of whether or not they are subscribers or beneficiaries of a public or private health plan.

(k) ...”

Section 2.- This Act shall take effect one hundred eighty (180) days after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 305 (H.B. 3039) of the 4th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsection (f) of Section 2 of Act No. 11 of April 11, 2001, as amended, better known as the “Office of the Advocate for Patients Beneficiaries of the Health Reform Organic Act,” to clarify and harmonize the definition of “Patient” in accordance with the rule of law in effect,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 15th of October of 2007.

Francisco J. Domenech
Director