

(H.B. 3239)
(Conference)
(Reconsidered)

(No. 125)

(Approved September 21, 2007)

AN ACT

To amend subsection (A) of Section 6 of Article VI of Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” (ASES, Spanish acronym) in order to clarify the scope of the uniform coverage of public medical-hospital policies; to add a subsection (5) to Section 19.030 of Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico,” so as to order private insurers to include, as part of their coverage, services for those patients who require, through a medical prescription, some kind of technological equipment whose use may be necessary to maintain the user alive.

STATEMENT OF MOTIVES

Our Constitution guarantees the right to life to all citizens and in acknowledging that right all citizens are thus guaranteed proper access to health services. The government has the obligation of ensuring compliance with these basic guarantees for their survival. According to the preceding it is logical to conclude that health is not a privilege; that it is the right of all citizens of the Island.

The World Health Organization (OMS, Spanish acronym) defines health positively as a state of “physical, mental and social well-being, not merely the absence of disease or infirmity.” Since then health has been

defined in a broader sense to be understood in relation to the environment, nutrition, nourishment, work and living conditions. Thus, said definition also encompasses poverty and the distribution of income.

Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act” (ASES), creates the latter and makes it responsible for implementing, administering and negotiating, through contracts with insurers, a health insurance system which would eventually provide all Island residents with access to quality medical-hospital care regardless of the financial condition and ability to pay of those who require the same.

Act No. 482 of September 23, 2004, which at the same time amended Act No. 72, *supra*, was approved in order to provide special coverage for those persons who require the assistance of some kind of technological equipment for their survival. These persons need the assistance of specialized personnel as well as the use of other sophisticated equipment and need to have electric power plants available since failure of the electric power service could cause the loss of life of a patient.

At present the government health plan provides no uniform coverage for these patients and thus makes it difficult for them to receive the services they need. In order to surmount this deficiency it is necessary to amend subsection (A) of Section 6 of Article VI of Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act” (ASES), so as to clarify the scope of the uniform coverage of public medical-hospital policies for those patients who require, through a medical prescription, a ventilator to stay alive.

The information gathered gives evidence of the fact that at present there is a population of around seventy-five (75) children in Puerto Rico

with this condition. As may be noted this is not a considerable number of patients and so approval of this measure will not have a substantial impact on the funds of the insurers. Furthermore, we are convinced that the well-being of these children justifies the approval of the amendments proposed in this legislative measure.

At present, there is no uniformity either in the services which the private insurers provide to those patients who require the assistance of some kind of technological equipment for their survival. The condition of these patients requires constant and specialized care since their lives depend on the care they receive at home after they leave a hospital institution. It is necessary to amend the law so as to give uniformity to the services the medical insurance plans provide for these patients.

The purpose of this Act is also to add a subsection (5) to Section 19.030 of Act No. 77 of June 19, 1957, as amended, known as the "Insurance Code of Puerto Rico," so as to order all private insurers to include, as part of their coverage, services for those patients who require, through a medical prescription, some kind of technological equipment whose use may be necessary to maintain the user alive.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.-Subsection (A) of Section 6 of Article VI of Act No. 72 of September 7, 1993, as amended, is hereby amended to read as follows:

“Article VI

Health Plan

Section 6.-Coverage and Minimum Benefits

The Administration shall establish a coverage of benefits to be offered by the contracted insurers or the participating purveyors. The coverage shall include, among other benefits, the following: out-patient

services, hospitalization, dental health, mental health, studies, tests and equipment for beneficiaries who require the use of technological equipment when needed to maintain the user alive, a minimum of one (1) daily eight (8) hour shift per patient, nursing services provided by skilled nurses knowledgeable in respiratory therapy or specialists in respiratory therapy with nursing skills, the supplies needed to operate technological equipment, the physical and occupational therapy needed to develop the motor skills of these patients, laboratories, X-rays as well as medically prescribed medications which shall be dispensed at a participating pharmacy freely selected by the insured and authorized under the laws of Puerto Rico. The coverage shall provide for each beneficiary to have laboratory tests and immunizations appropriate to his/her age, sex and physical condition available, annually.

...”

Section 2.-A new subsection (5) is hereby added to Section 19.030 of Act No. 77 of June 19, 1957, as amended, to read as follows:

“Section 19.030.-Authorization required

- (1)
- (2)
- (3)
- (4)

(5) Every health services organization that renders health services shall include as part of its coverage, if medically justified according to the criteria established in the protocols created by the Department of Health and according to the home care plan, for those persons who require a ventilator in order to stay alive, a minimum of one daily shift of eight (8) hours skilled nurses with knowledge of respiratory therapy.”

Section 3.-For the purposes of this Act the following terms shall have the meaning included below:

a. Personal Assistants- Refers to a Nurse or Respiratory Therapist duly prepared to provide services to those patients who require, through medical prescription, some kind of technological equipment whose use may be necessary to maintain the user alive.

b. Health Services Organizations- Means any person who offers or is bound to provide to one or more health care plans.

c. Private Health Plan- Includes all plans subject to the authority of the Insurance Commissioner.

d. Health Insurance- Is the insurance for expenses incurred due to bodily injury, disability or illness, according to the definition of 'disability insurance', provided in the Insurance Code.

Section 4.-All public and private health plans must include as part of their coverage, the technological equipment whose use may be necessary to maintain the user alive, a minimum of one (1) daily eight (8) hour shift of nursing services provided by skilled nurses knowledgeable in respiratory therapy or specialists in respiratory therapy with nursing skills, the supplies needed to operate technological equipment and the physical and occupational therapy needed to develop the motor skills of these patients. All of the preceding subject to having the need established by a doctor's order and according to the written home care plan for the patient.

Section 5.-In order to determine the technological equipment to be covered pursuant to this Act, the Department of Health shall approve the pertinent regulations based on the guidelines according to the Official Statements of the American Thoracic Society, Child with a Chronic Tracheotomy, and shall furthermore establish the guidelines to be able to

discharge a patient from a hospital to include at least the following: a written home care plan, written documentation of the training of parents or tutors, evidence of patient stability during hospitalization for at least a week, low oxygen requirements, evidence of training in the care of the tracheotomy and assisted equipment, evidence of availability of personnel for home care, evidence of certification of safe home (space, electric power), evidence of training in cardiopulmonary resuscitation, evidence of equipment at the home before discharge of patient from hospital and evidence of outpatient management plan.

Section 6.-For the purposes of this Act a beneficiary shall be understood to be a person under twenty-one (21) years of age who uses medical technology whose functions depend on medical equipment, to wit, mechanical ventilator via tracheotomy, which supplies the vital functions of the human body and which requires the specialized daily care of nurses to prevent death or a greater degree of disability.

Section 7.-The Department of State shall have the obligation of establishing a Register of persons under twenty-one (21) years of age who use medical technology whose functions depend on medical equipment, to wit, mechanical ventilator via tracheotomy. For such a purpose the Department of Health is authorized to approve the regulations needed to comply with the terms of this Act. Provided, that in order to be a beneficiary of the services provided in this Act it shall be necessary to be included in the Register provided in this Section. The Department of Health shall be under the obligation of creating a Personal Assistants Program whose duty shall be to render the services provided in this Act. Until this Program begins operating, the Health Services Administration shall be responsible for

providing such services to the beneficiaries of the Health Plan of the Government of Puerto Rico.

Section 8.-This Act shall take effect July 1, 2007 or once ASES contracts with insurance health companies are renewed. The fiscal impact shall be attended to after the budgets of the year 2007-2008 and subsequent budgets.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 125 (H.B. 3239) (Conference) (Reconsidered) of the 6th Session of the 15th Legislature of Puerto Rico:

AN ACT to amend subsection (A) of Section 6 of Article VI of Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” (ASES, Spanish acronym) in order to clarify the scope of the uniform coverage of public medical-hospital policies; to add a subsection (5) to Section 19.030 of Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico,” so as to order private insurers to include, as part of their coverage, services for those patients who require, through a medical prescription, some kind of technological equipment whose use may be necessary to maintain the user alive,

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

In San Juan, Puerto Rico, today 28th of December of 2007.

Francisco J. Domenech
Director