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AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE NEW MEXICO HEALTH INSURANCE EXCHANGE ACT; CREATING THE NEW MEXICO HEALTH INSURANCE EXCHANGE; PROVIDING FOR THE APPOINTMENT, POWERS AND DUTIES OF A BOARD OF DIRECTORS FOR THE EXCHANGE; PROVIDING THE SUPERINTENDENT OF INSURANCE WITH RULEMAKING POWERS RELATING TO THE EXCHANGE; PROVIDING FOR POWERS AND DUTIES OF THE EXCHANGE; PROVIDING FOR TRANSPARENCY OF EXCHANGE FUNDING AND OPERATIONS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009; DECLARING AN EMERGENCY.

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

SECTION 1. SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "New Mexico Health Insurance Exchange Act".

SECTION 2. DEFINITIONS.--As used in the New Mexico Health Insurance Exchange Act:

A. "agent" means a person appointed by a health insurance issuer authorized to transact business in this state to act as its representative in any given locality;

B. "board" means the board of directors of the exchange;

C. "broker" means a person licensed as a broker pursuant to the New Mexico Insurance Code;

1 D. "exchange" means the New Mexico health
2 insurance exchange, composed of an exchange for the
3 individual market and a small business health options program
4 or "SHOP" exchange under a single governance and
5 administrative structure;

6 E. "health insurance issuer" means an insurance
7 company, insurance service or insurance organization,
8 including a health maintenance organization, that is licensed
9 to engage in the business of insurance in the state;

10 F. "Native American" means:

11 (1) an individual who is a member of any
12 federally recognized Indian nation, tribe or pueblo or who is
13 an Alaska native; or

14 (2) an individual who has been deemed
15 eligible for services and programs provided to Native
16 Americans by the United States public health service or the
17 bureau of Indian affairs;

18 G. "navigator" means a person that, in a manner
19 culturally and linguistically appropriate to the state's
20 diverse populations, conducts public education, distributes
21 tax credit and qualified health plan enrollment information,
22 facilitates enrollment in qualified health plans or provides
23 referrals to consumer assistance or ombudsman services.

24 "Navigator" does not mean a health insurance issuer or a
25 person that receives any consideration, directly or

1 indirectly, from any health insurance issuer in connection
2 with the enrollment of a qualified individual in a qualified
3 health plan; provided that a broker or an agent may be a
4 navigator if the broker or the agent receives no
5 consideration, directly or indirectly, from any health
6 insurance issuer in connection with the enrollment of a
7 qualified individual or qualified employer in a qualified
8 health plan, an approved health plan or any other health
9 coverage; and

10 H. "superintendent" means the superintendent of
11 insurance.

12 SECTION 3. NEW MEXICO HEALTH INSURANCE EXCHANGE
13 CREATED--BOARD CREATED.--

14 A. The "New Mexico health insurance exchange" is
15 created as a nonprofit public corporation to provide
16 qualified individuals and qualified employers with increased
17 access to health insurance in the state and shall be governed
18 by a board of directors constituted pursuant to the
19 provisions of the New Mexico Health Insurance Exchange Act.
20 The exchange is a governmental entity for purposes of the
21 Tort Claims Act, and neither the exchange nor the board shall
22 be considered a governmental entity for any other purpose.

23 B. The exchange shall not duplicate, impair,
24 enhance, supplant, infringe upon or replace, in whole or in
25 any part, the powers, duties or authority of the

1 superintendent, including the superintendent's authority to
2 review and approve premium rates pursuant to the provisions
3 of the New Mexico Insurance Code.

4 C. The exchange shall not purchase qualified
5 health plans from insurance health issuers to offer for
6 purchase through the exchange.

7 D. All health insurance issuers and health
8 maintenance organizations authorized to conduct business in
9 this state and meeting the requirements of the rules
10 promulgated by the superintendent pursuant to Section 7 of
11 the New Mexico Health Insurance Exchange Act, as well as
12 meeting the rules under the federal act, shall be eligible to
13 participate in the exchange.

14 E. The "board of directors of the New Mexico
15 health insurance exchange" is created. The board consists of
16 thirteen voting directors as follows:

17 (1) one voting director is the
18 superintendent or the superintendent's designee;

19 (2) six voting directors appointed by the
20 governor, including the secretary of human services or the
21 secretary's designee, a health insurance issuer and a
22 consumer advocate; and

23 (3) six voting directors, three appointed by
24 the president pro tempore of the senate, including one health
25 care provider, and three appointed by the speaker of the

1 house of representatives, including one health insurance
2 issuer. One of the directors appointed by the president pro
3 tempore of the senate and one of the directors appointed by
4 the speaker of the house of representatives shall be from a
5 list of at least two candidates provided, respectively, by
6 the minority leader of the senate and by the minority leader
7 of the house of representatives.

8 F. Except as provided in Subsection G of this
9 section, managerial and full-time staff of the exchange shall
10 be subject to applicable provisions of the Governmental
11 Conduct Act and shall not have any direct or indirect
12 affiliation with any health care provider, health insurance
13 issuer or health care service provider.

14 G. Each director shall comply with the
15 conflict-of-interest provisions of Subsection F of this
16 section, except as follows:

17 (1) directors who may be appointed from the
18 boards of directors of the New Mexico medical insurance pool
19 and the New Mexico health insurance alliance shall not be
20 considered to have a conflict of interest with respect to
21 their association with those entities;

22 (2) the secretary of human services, or the
23 secretary's designee, shall not be considered to have a
24 conflict of interest with respect to the secretary's
25 performance of the secretary's duties as secretary of human

1 services;

2 (3) the director who is a health care
3 provider shall not be considered to have a conflict of
4 interest arising from that director's receipt of payment for
5 services as a health care provider; and

6 (4) directors who are representatives of
7 health insurance issuers shall not be considered to have a
8 conflict of interest with respect to those directors'
9 association with their respective health insurance issuers.

10 H. Each director and employee of the exchange
11 shall have a fiduciary duty to the exchange.

12 I. The board shall be composed, as a whole, to
13 assure representation of the state's Native American
14 population, ethnic diversity, cultural diversity and
15 geographic diversity.

16 J. Directors shall have demonstrated knowledge or
17 experience in at least one of the following areas:

18 (1) purchasing coverage in the individual
19 market;

20 (2) purchasing coverage in the small
21 employer market;

22 (3) health care finance;

23 (4) health care economics or health care
24 actuarial science;

25 (5) health care policy;

1 (6) the enrollment of underserved residents
2 in health care coverage;

3 (7) administration of a private or public
4 health care delivery system;

5 (8) information technology;

6 (9) starting a small business with fifty or
7 fewer employees; or

8 (10) provision of health care services.

9 K. The governor shall appoint no more than four
10 directors from the same political party.

11 L. Except for the secretary of human services, the
12 non-health insurance issuer directors appointed by the
13 governor shall be appointed for initial terms of three years
14 or less, staggered so that the term of at least one director
15 expires on June 30 of each year. The non-health insurance
16 insurer directors appointed by the legislature shall be
17 appointed for initial terms of three years or less, staggered
18 so that the term of at least one director expires on June 30
19 of each year. The health insurance issuers appointed to the
20 board shall, upon appointment, select one of them by lot to
21 have an initial term ending on June 30 following one year of
22 service and one to have an initial term ending on June 30
23 following two years of service. Following the initial terms,
24 health insurance issuer directors shall be appointed for
25 terms of two years. A director whose term has expired shall

1 continue to serve until a successor is appointed by the
2 respective appointing authority. Health insurance issuer
3 directors shall not serve two consecutive terms.

4 M. The exchange and the board shall operate
5 consistent with provisions of the Governmental Conduct Act,
6 the Inspection of Public Records Act, the Financial
7 Disclosure Act and the Open Meetings Act and shall not be
8 subject to the Procurement Code or the Personnel Act.

9 N. A majority of directors constitutes a quorum.
10 The board may allow members to attend meetings by telephone
11 or other electronic media. A decision by the board requires
12 a quorum and a majority of directors in attendance voting in
13 favor of the decision.

14 O. Within thirty days of the effective date of the
15 New Mexico Health Insurance Exchange Act, the board shall be
16 fully appointed and the superintendent shall convene an
17 organizational meeting of the board, during which the board
18 shall elect a chair and vice chair from among the directors.
19 Thereafter, every three years, the board shall elect in open
20 meeting a chair and vice chair from among the directors. The
21 chair and vice chair shall serve no more than two consecutive
22 three-year terms as chair and vice chair.

23 P. A vacancy on the board shall be filled by
24 appointment by the original appointing authority for the
25 remainder of the director's unexpired term.

1 Q. A director may be removed from the board by a
2 two-thirds majority vote of the directors. The board shall
3 set standards for attendance and may remove a director for
4 lack of attendance, neglect of duty or malfeasance in office.
5 A director shall not be removed without proceedings
6 consisting of at least one ten-day notice of hearing and an
7 opportunity to be heard. Removal proceedings shall be before
8 the board and in accordance with procedures adopted by the
9 board.

10 R. Appointed directors may receive per diem and
11 mileage in accordance with the Per Diem and Mileage Act,
12 subject to the travel policy set by the board. Appointed
13 directors shall receive no other compensation, perquisite or
14 allowance.

15 S. The board shall:

16 (1) meet at the call of the chair and no
17 less often than once per calendar quarter. There shall be at
18 least seven days' notice given to directors prior to any
19 meeting. There shall be sufficient notice provided to the
20 public prior to meetings pursuant to the Open Meetings Act;

21 (2) create, make appointments to and duly
22 consider recommendations of an advisory committee or
23 committees made up of stakeholders, including health
24 insurance issuers, health care consumers, health care
25 providers, health care practitioners, brokers, qualified

1 employer representatives and advocates for low-income or
2 underserved residents;

3 (3) create an advisory committee made up of
4 members insured through the New Mexico health insurance
5 alliance and the New Mexico medical insurance pool to make
6 recommendations to the board regarding the transition of each
7 organization's insured members into the exchange. The
8 advisory committee shall only exist until a transition plan
9 has been adopted by the board;

10 (4) create an advisory committee made up of
11 Native Americans, some of whom live on a reservation and some
12 of whom do not live on a reservation, to guide the
13 implementation of the Native American-specific provisions of
14 the federal Patient Protection and Affordable Care Act and
15 the federal Indian Health Care Improvement Act;

16 (5) designate a Native American liaison, who
17 shall assist the board in developing and ensuring
18 implementation of communication and collaboration between the
19 exchange and Native Americans in the state. The Native
20 American liaison shall serve as a contact person between the
21 exchange and New Mexico Indian nations, tribes and pueblos
22 and shall ensure that training is provided to the staff of
23 the exchange, which may include training in:

24 (a) cultural competency;

25 (b) state and federal law relating to

1 Indian health; and

2 (c) other matters relating to the
3 functions of the exchange with respect to Native Americans in
4 the state; and

5 (6) establish at least one walk-in customer
6 service center where persons may, if eligible, enroll in
7 qualified health plans or public coverage programs.

8 SECTION 4. BOARD OF DIRECTORS--POWERS.--The board may:

9 A. seek and receive grant funding from federal,
10 state or local governments or private philanthropic
11 organizations to defray the costs of operating the exchange;

12 B. generate funding, including charging
13 assessments or fees, to support its operations in accordance
14 with provisions of the New Mexico Health Insurance Exchange
15 Act solely for the reasonable administrative costs of the
16 exchange; provided that no assessment or user fee shall be
17 imposed upon a carrier that exclusively offers policies,
18 plans or contracts outside the exchange intended to
19 supplement major medical coverage, including medicare
20 supplement, long-term care, disability income, specified
21 disease, accident-only, hospital indemnity or other
22 limited-benefit health insurance policy;

23 C. establish a Native American service center to
24 ensure that the exchange:

25 (1) is accessible to Native Americans;

1 (2) complies with the provisions of the
2 federal Indian Health Care Improvement Act and
3 Indian-specific provisions of the federal Patient Protection
4 and Affordable Care Act; and

5 (3) facilitates meaningful, ongoing
6 consultation with Native Americans;

7 D. create ad hoc advisory councils;

8 E. request assistance from other boards,
9 commissions, departments, agencies and organizations as
10 necessary to provide appropriate expertise to accomplish the
11 exchange's duties;

12 F. enter into contracts with persons or other
13 organizations as necessary or proper to carry out the
14 provisions and purposes of the New Mexico Health Insurance
15 Exchange Act, including the authority to contract or employ
16 staff for the performance of administrative, legal,
17 actuarial, accounting and other functions; provided that no
18 contractor shall be a health insurance issuer or a producer;

19 G. enter into contracts with similar exchanges of
20 other states for the joint performance of common
21 administrative functions;

22 H. enter into information-sharing agreements with
23 federal and state agencies and other state exchanges to carry
24 out its responsibilities; provided that these agreements
25 include adequate protections of the confidentiality of the

1 information to be shared and comply with all state and
2 federal laws and regulations;

3 I. sue or be sued or otherwise take any necessary
4 or proper legal action in the execution of its duties and
5 powers;

6 J. appoint board committees, which may include
7 non-board members, to provide technical assistance in the
8 operation of the exchange and any other function within the
9 authority of the exchange; and

10 K. conduct periodic audits to assure the general
11 accuracy of the financial data submitted to the exchange.

12 SECTION 5. PLAN OF OPERATION.--

13 A. Within sixty days of the effective date of the
14 New Mexico Health Insurance Exchange Act, the board shall
15 create a preliminary plan of operation containing provisions
16 to ensure the fair, reasonable and equitable administration
17 of the exchange. Within six months of the effective date of
18 the New Mexico Health Insurance Exchange Act, the board shall
19 create and implement a final plan of operation containing
20 provisions to ensure the fair, reasonable and equitable
21 administration of the exchange.

22 B. The board shall provide for public notice and
23 hearing prior to approving the plan of operation.

24 C. The preliminary plan of operation shall:

25 (1) establish procedures to implement the

1 provisions of the New Mexico Health Insurance Exchange Act,
2 consistent with state and federal law;

3 (2) establish procedures for handling and
4 accounting for the exchange's assets and money; and

5 (3) establish regular times and meeting
6 places for meetings of the board.

7 D. The final plan of operation shall:

8 (1) establish a statewide consumer
9 assistance program, including a navigator program;

10 (2) establish consumer complaint and
11 grievance procedures for issues relating to the exchange;

12 (3) establish procedures for alternative
13 dispute resolution between the exchange and contractors or
14 health insurance issuers;

15 (4) develop and implement policies that:

16 (a) promote effective communication and
17 collaboration between the exchange and Indian nations, tribes
18 and pueblos, including communicating and collaborating on
19 those nations', tribes' and pueblos' plans for creating or
20 participating in health insurance exchanges; and

21 (b) promote cultural competency in
22 providing effective services to Native Americans;

23 (5) establish conflict-of-interest policies
24 and procedures; and

25 (6) contain additional provisions necessary

1 and proper for the execution of the powers and duties of the
2 board.

3 SECTION 6. BOARD DUTIES--REPORTING.--The board shall:

4 A. between July 1, 2013 and January 1, 2015,
5 provide quarterly reports to the legislature, the governor
6 and the superintendent on the implementation of the exchange
7 and report annually and upon request thereafter;

8 B. keep an accurate accounting of all of the
9 activities, receipts and expenditures of the exchange and
10 submit this information annually to the superintendent and as
11 required by federal law to the federal secretary of health
12 and human services;

13 C. beginning with the first year of operation in
14 which access to health insurance coverage is provided, obtain
15 an annual audit of the exchange's operations from an
16 independent certified public accountant;

17 D. publish the administrative costs of the
18 exchange as required by state or federal law; and

19 E. discharge those duties required to implement
20 and operate the exchange in accordance with the provisions of
21 the New Mexico Health Insurance Exchange Act consistent with
22 state and federal law.

23 SECTION 7. SUPERINTENDENT OF INSURANCE--RULEMAKING.--

24 The superintendent shall promulgate rules necessary to
25 implement and carry out the provisions of the New Mexico

1 Health Insurance Exchange Act, including rules to establish
2 the criteria for certification of qualified health plans.

3 SECTION 8. FUNDING.--

4 A. To fund the planning, implementation and
5 operation of the exchange, the board shall contract with the
6 human services department or any other state agency that
7 receives federal funds allocated, appropriated or granted to
8 the state for purposes of funding the planning,
9 implementation or operation of a health insurance exchange.

10 B. The human services department or any other
11 state agency that receives federal funds allocated,
12 appropriated or granted to the state for purposes of funding
13 the planning, implementation or operation of a health
14 insurance exchange shall contract with the board to provide
15 those funds to the exchange in consideration for its
16 planning, implementation or operation.

17 SECTION 9. COOPERATION WITH THE NEW MEXICO HEALTH
18 INSURANCE EXCHANGE.--The medical assistance division of the
19 human services department shall cooperate with the New Mexico
20 health insurance exchange to share information and facilitate
21 transitions in enrollment between the exchange and medicaid.

22 SECTION 10. A new section of the New Mexico Insurance
23 Code is enacted to read:

24 "OFFICE OF SUPERINTENDENT OF INSURANCE--COOPERATION WITH
25 NEW MEXICO HEALTH INSURANCE EXCHANGE.--The office of

1 superintendent of insurance shall cooperate with the New
2 Mexico health insurance exchange to share information and
3 assist in the implementation of the functions of the
4 exchange."

5 SECTION 11. Section 41-4-3 NMSA 1978 (being Laws 1976,
6 Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,
7 Section 2 and by Laws 2009, Chapter 129, Section 2 and also
8 by Laws 2009, Chapter 249, Section 2) is amended to read:

9 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

10 A. "board" means the risk management advisory
11 board;

12 B. "governmental entity" means the state or any
13 local public body as defined in Subsections C and H of this
14 section;

15 C. "local public body" means all political
16 subdivisions of the state and their agencies,
17 instrumentalities and institutions and all water and natural
18 gas associations organized pursuant to Chapter 3, Article 28
19 NMSA 1978;

20 D. "law enforcement officer" means a full-time
21 salaried public employee of a governmental entity, or a
22 certified part-time salaried police officer employed by a
23 governmental entity, whose principal duties under law are to
24 hold in custody any person accused of a criminal offense, to
25 maintain public order or to make arrests for crimes, or

1 members of the national guard when called to active duty by
2 the governor;

3 E. "maintenance" does not include:

4 (1) conduct involved in the issuance of a
5 permit, driver's license or other official authorization to
6 use the roads or highways of the state in a particular
7 manner; or

8 (2) an activity or event relating to a
9 public building or public housing project that was not
10 foreseeable;

11 F. "public employee" means an officer, employee or
12 servant of a governmental entity, excluding independent
13 contractors except for individuals defined in Paragraphs (7),
14 (8), (10), (14) and (17) of this subsection, or of a
15 corporation organized pursuant to the Educational Assistance
16 Act, the Small Business Investment Act or the Mortgage
17 Finance Authority Act or a licensed health care provider, who
18 has no medical liability insurance, providing voluntary
19 services as defined in Paragraph (16) of this subsection and
20 including:

21 (1) elected or appointed officials;

22 (2) law enforcement officers;

23 (3) persons acting on behalf or in service
24 of a governmental entity in any official capacity, whether
25 with or without compensation;

1 (4) licensed foster parents providing care
2 for children in the custody of the human services department,
3 corrections department or department of health, but not
4 including foster parents certified by a licensed child
5 placement agency;

6 (5) members of state or local selection
7 panels established pursuant to the Adult Community
8 Corrections Act;

9 (6) members of state or local selection
10 panels established pursuant to the Juvenile Community
11 Corrections Act;

12 (7) licensed medical, psychological or
13 dental arts practitioners providing services to the
14 corrections department pursuant to contract;

15 (8) members of the board of directors of the
16 New Mexico medical insurance pool;

17 (9) individuals who are members of medical
18 review boards, committees or panels established by the
19 educational retirement board or the retirement board of the
20 public employees retirement association;

21 (10) licensed medical, psychological or
22 dental arts practitioners providing services to the children,
23 youth and families department pursuant to contract;

24 (11) members of the board of directors of
25 the New Mexico educational assistance foundation;

1 (12) members of the board of directors of
2 the New Mexico student loan guarantee corporation;

3 (13) members of the New Mexico mortgage
4 finance authority;

5 (14) volunteers, employees and board members
6 of court-appointed special advocate programs;

7 (15) members of the board of directors of
8 the small business investment corporation;

9 (16) health care providers licensed in New
10 Mexico who render voluntary health care services without
11 compensation in accordance with rules promulgated by the
12 secretary of health. The rules shall include requirements
13 for the types of locations at which the services are
14 rendered, the allowed scope of practice and measures to
15 ensure quality of care;

16 (17) an individual while participating in
17 the state's adaptive driving program and only while using a
18 special-use state vehicle for evaluation and training
19 purposes in that program; and

20 (18) the staff and members of the board of
21 directors of the New Mexico health insurance exchange
22 established pursuant to the New Mexico Health Insurance
23 Exchange Act;

24 G. "scope of duty" means performing any duties
25 that a public employee is requested, required or authorized

1 to perform by the governmental entity, regardless of the time
2 and place of performance; and

3 H. "state" or "state agency" means the state of
4 New Mexico or any of its branches, agencies, departments,
5 boards, instrumentalities or institutions."

6 SECTION 12. Section 59A-56-4 NMSA 1978 (being Laws
7 1994, Chapter 75, Section 4, as amended) is amended to read:

8 "59A-56-4. ALLIANCE CREATED--BOARD CREATED.--

9 A. The "New Mexico health insurance alliance" is
10 created as a nonprofit public corporation for the purpose of
11 providing increased access to health insurance in the state.
12 All insurance companies authorized to transact health
13 insurance business in this state, nonprofit health care
14 plans, health maintenance organizations and self-insurers not
15 subject to federal preemption shall organize and be members
16 of the alliance as a condition of their authority to offer
17 health insurance in this state, except for an insurance
18 company that is licensed under the Prepaid Dental Plan Law or
19 a company that is solely engaged in the sale of dental
20 insurance and is licensed under a provision of the Insurance
21 Code.

22 B. The alliance shall be governed by the board of
23 directors of the New Mexico health insurance exchange
24 appointed pursuant to the New Mexico Health Insurance
25 Exchange Act."

1 SECTION 13. TEMPORARY PROVISION.--On the effective date
2 of this act, the board of directors of the New Mexico health
3 insurance alliance, appointed pursuant to the Health
4 Insurance Alliance Act prior to the effective date of this
5 act, shall cease to exist and the New Mexico health insurance
6 alliance shall be governed pursuant to the Health Insurance
7 Alliance Act by the board of directors of the New Mexico
8 health insurance exchange appointed pursuant to the New
9 Mexico Health Insurance Exchange Act. In exercising its
10 duties, the board of directors of the New Mexico health
11 insurance exchange shall neither apply any provisions of the
12 Health Insurance Alliance Act to the New Mexico health
13 insurance exchange nor apply any provisions of the New Mexico
14 Health Insurance Exchange Act to the New Mexico health
15 insurance alliance.

16 SECTION 14. TEMPORARY PROVISION--NEW MEXICO HEALTH
17 INSURANCE ALLIANCE--NEW MEXICO HEALTH INSURANCE
18 EXCHANGE--TRANSFER OF CONTRACTS.--On July 1, 2013, all
19 contracts of the New Mexico health insurance alliance
20 relating to the development and implementation of a health
21 insurance exchange shall be binding and effective on the New
22 Mexico health insurance exchange.

23 SECTION 15. DELAYED REPEAL.--Sections 59A-56-1 through
24 59A-56-25 NMSA 1978 (being Laws 1994, Chapter 75, Sections 1
25 through 25, as amended) are repealed effective

1 January 1, 2015.

2 SECTION 16. SEVERABILITY.--If any part or application
3 of this act is held invalid, the remainder or its application
4 to other situations or persons shall not be affected.

5 SECTION 17. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect
7 immediately.

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