

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 281

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO INSURANCE; PROVIDING FOR REGULATION OF CONTROLLED
INSURANCE PLANS; AMENDING THE WORKERS' COMPENSATION ACT;
PROVIDING A PENALTY.

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

Section 1. Section 52-1-1.1 NMSA 1978 (being Laws 1986,
Chapter 22, Section 26, as amended) is amended to read:

"52-1-1.1. DEFINITIONS.--As used in Chapter 52, Articles
1 through 6 NMSA 1978:

A. "controlled insurance plan" means a plan of
insurance coverage that is established by an owner or principal
contractor that requires participation by contractors or
subcontractors who are engaged in the construction project,
including coverage plans that are for a fixed term of coverage
on a single construction site;

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1 ~~[A.]~~ B. "director" means the director of the
2 workers' compensation administration;

3 ~~[B.]~~ C. "division" means the workers' compensation
4 administration;

5 D. "rolling wrap-up or consolidated insurance plan"
6 means coverage for an ongoing project or series of projects in
7 which the common insurance program remains in place
8 indefinitely and contracted work is simply added as it occurs
9 under the control of one owner or principal contractor;

10 ~~[C.]~~ E. "workers' compensation judge" means an
11 individual appointed by the director to act as a workers'
12 compensation judge in the administration of the Workers'
13 Compensation Act or the New Mexico Occupational Disease
14 Disablement Law;

15 ~~[D.]~~ F. "workman" or "workmen" means worker or
16 workers;

17 ~~[E.]~~ G. "Workmen's Compensation Act" means the
18 Workers' Compensation Act; and

19 ~~[F.]~~ H. "workmen's compensation administration" or
20 "administration" means the workers' compensation administration
21 administratively attached to the labor department. "

22 Section 2. A new section of the Workers' Compensation Act
23 is enacted to read:

24 "[NEW MATERIAL] CONTROLLED INSURANCE PLAN--PENALTY. --

25 A. An owner or the principal contractor of a

1 construction project may establish and administer a controlled
 2 insurance plan, provided the covered project is a construction
 3 project, a plant expansion or real property improvements within
 4 New Mexico with an aggregate construction value in excess of
 5 one hundred fifty million dollars (\$150,000,000) expended
 6 within a five-year period. As used in this section, "aggregate
 7 construction value" includes design, utilities, site
 8 excavation, construction costs of improvements to real property
 9 and acquisition of equipment and furnishings but does not
 10 include the cost of fees or charges associated with financing
 11 the construction project.

12 B. Rolling wrap-ups are prohibited. Controlled
 13 insurance plans covering non-contiguous construction sites are
 14 prohibited.

15 C. The owner shall include in any request for
 16 proposals for bids a notice that participation in a controlled
 17 insurance plan is a requirement of the bid and shall provide a
 18 copy of the specifications of the controlled insurance plan.
 19 The specifications shall include a statement of the bidding
 20 contractor's or subcontractor's responsibilities relative to
 21 the plan.

22 D. A dispute regarding which workers' compensation
 23 coverage or insurer is responsible shall be resolved by the
 24 administration. An administrative or judicial finding shall
 25 include appropriate reimbursement of benefit payments and

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1 expenses. For disputed cases as described herein, initial
2 benefits shall be provided by the controlled insurance plan
3 until such time as the coverage dispute is resolved.

4 E. An owner or principal contractor who enters into
5 a contract for a controlled insurance plan shall file a copy of
6 the contract and evidence of compliance with the requirements
7 of this section with the superintendent of insurance at least
8 thirty days before the date on which the owner is to begin
9 receiving bids or requests for proposals on the project.

10 F. An owner or principal contractor using a
11 controlled insurance plan shall distribute any project
12 performance-based refunded premium or dividend to each
13 participating contractor and subcontractor on a proportional
14 basis if provided in the construction contract.

15 G. An owner or principal contractor shall provide
16 for the safety of an employee engaged in the construction
17 project when the employee is present at the construction
18 project site. The owner or principal contractor of the
19 construction project shall develop and carry out a health and
20 safety program approved by the superintendent of insurance.
21 The plan shall include a protocol that encourages return to
22 work guidelines pursuant to the Workers' Compensation Act.

23 H. The owner or principal contractor of a
24 construction project that uses a controlled insurance plan
25 shall:

1 (1) establish a method for timely reporting of
2 job-related injuries to the employer, the insured and the
3 administration;

4 (2) provide modifier experienced units
5 statistical rating information and any other statistical
6 information required by the superintendent of insurance for all
7 contractors and subcontractors, including losses and payroll,
8 to the appropriate rating service within six months following
9 the end of the annual policy period;

10 (3) provide contractors or subcontractors or
11 their representatives with actual and specific payroll audit
12 data generated under the controlled insurance plan, as would be
13 customarily provided by an employer to a non-controlled
14 insurance plan; and

15 (4) provide the same access to information on
16 injured employees as would customarily be available to the
17 employer from a non-controlled insurance plan.

18 I. In addition to any other penalties provided
19 under the law, a person found to have violated any requirement
20 of this section shall be subject to a penalty pursuant to
21 Section 59A-1-18 NMSA 1978. "

22 Section 3. Section 52-5-4 NMSA 1978 (being Laws 1986,
23 Chapter 22, Section 30, as amended) is amended to read:

24 "52-5-4. AUTHORITY TO ADOPT RULES, REGULATIONS AND FEE
25 SCHEDULES. --

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1 A. The director is authorized to adopt reasonable
2 rules and regulations, after notice and public hearing, for
3 effecting the purposes of the Workers' Compensation Act or the
4 New Mexico Occupational Disease Disablement Law. Such rules
5 and regulations shall include provisions for procedures in the
6 nature of conferences or other techniques to dispose of cases
7 informally or to expedite claim adjudication, narrow issues and
8 simplify the methods of proof at hearings. All rules and
9 regulations shall be published upon adoption and be made
10 available to the public and, if not inconsistent with law,
11 shall be binding on the administration of the Workers'
12 Compensation Act or the New Mexico Occupational Disease
13 Disablement Law. All rules and regulations adopted shall be
14 filed in accordance with the State Rules Act.

15 ~~[B. Such rules and regulations shall include~~
16 ~~provisions for procedures in the nature of conferences or other~~
17 ~~techniques to dispose of cases informally or to expedite claim~~
18 ~~adjudication, narrow issues and simplify the methods of proof~~
19 ~~at hearings.]~~

20 ~~C.]~~ B. The director shall promulgate and enforce
21 schedules of reimbursement for such nonprofessional services as
22 providing testimony and depositions, the production of records
23 or the completion of medical capacity forms to health care
24 providers as defined in Section 52-4-1 NMSA 1978 as he deems
25 appropriate and necessary in the administration of the Workers'

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1 Compensation Act or the New Mexico Occupational Disease
2 Disablement Law.

3 C. The director shall adopt rules for approval and
4 establishment of controlled insurance plans, including
5 performance standards compliance enforcement. The director
6 shall provide for the participation of the following
7 stakeholders in the rulemaking process, one each representing:

8 (1) general contractors;

9 (2) subcontractors;

10 (3) organized labor;

11 (4) municipalities;

12 (5) counties; and

13 (6) business."

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