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HOUSE BILL 832

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

INTRODUCED BY

Gail C. Beam

AN ACT

**RELATING TO HEALTH INSURANCE; REVISING BOARD MEMBERSHIP AND
ELIGIBILITY CRITERIA FOR THE MEDICAL INSURANCE POOL; AMENDING
SECTIONS OF THE NMSA 1978.**

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

**Section 1. Section 59A-54-3 NMSA 1978 (being Laws 1987,
Chapter 154, Section 3, as amended) is amended to read:**

**"59A-54-3. DEFINITIONS. -- As used in the Medical Insurance
Pool Act:**

**A. "board" means the board of directors of the
pool;**

**B. "creditable coverage" means, with respect to an
individual, coverage of the individual pursuant to:**

- (1) a group health plan;**
- (2) health insurance coverage;**

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1 (3) Part A or Part B of Title 18 of the Social
2 Security Act;

3 (4) Title 19 of the Social Security Act except
4 coverage consisting solely of benefits pursuant to Section 1928
5 of that title;

6 (5) 10 USCA Chapter 55;

7 (6) a medical care program of the Indian
8 health service or of an Indian nation, tribe or pueblo;

9 (7) the Medical Insurance Pool Act;

10 (8) a health plan offered pursuant to 5 USCA
11 Chapter 89;

12 (9) a public health plan as defined in federal
13 regulations; or

14 (10) a health benefit plan offered pursuant to
15 Section 5(e) of the federal Peace Corps Act;

16 C. "federally defined eligible individual" means an
17 individual:

18 (1) for whom, as of the date on which the
19 individual seeks coverage under the Medical Insurance Pool Act,
20 the aggregate of the periods of creditable coverage is eighteen
21 or more months;

22 (2) whose most recent prior creditable
23 coverage was under a group health plan, government plan, church
24 plan or health insurance coverage offered in connection with
25 such a plan;

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1 (3) who is not eligible for coverage under a
2 group health plan, Part A or Part B of Title 18 of the Social
3 Security Act or a state plan under Title 19 or Title 21 of the
4 Social Security Act or a successor program and who does not
5 have other health insurance coverage;

6 (4) with respect to whom the most recent
7 coverage within the period of aggregate creditable coverage was
8 not terminated based on a factor relating to nonpayment of
9 premiums or fraud;

10 (5) who, if offered the option of continuation
11 of coverage under a continuation provision pursuant to the
12 Consolidated Omnibus Budget Reconciliation Act of 1985 or a
13 similar state program elected this coverage; and

14 (6) who has exhausted continuation coverage
15 under this provision or program, if the individual elected the
16 continuation coverage described in Paragraph (5) of this
17 subsection;

18 ~~[C.]~~ D. "health care facility" means any entity
19 providing health care services that is licensed by the
20 department of health;

21 ~~[D.]~~ E. "health care services" means any services
22 or products included in the furnishing to any individual of
23 medical care or hospitalization, or incidental to the
24 furnishing of such care or hospitalization, as well as the
25 furnishing to any person of any other services or products for

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1 the purpose of preventing, alleviating, curing or healing human
2 illness or injury;

3 ~~[E.]~~ F. "health insurance" means any hospital and
4 medical expense-incurred policy; nonprofit health care service
5 plan contract; health maintenance organization subscriber
6 contract; short-term, accident, fixed indemnity, specified
7 disease policy or disability income contracts; limited benefit
8 insurance; credit insurance; or as defined by Section 59A-7-3
9 NMSA 1978. "Health insurance" does not include insurance
10 arising out of the Workers' Compensation Act or similar law,
11 automobile medical payment insurance or insurance under which
12 benefits are payable with or without regard to fault and that
13 is required by law to be contained in any liability insurance
14 policy;

15 ~~[F.]~~ G. "health maintenance organization" means any
16 person who provides, at a minimum, either directly or through
17 contractual or other arrangements with others, basic health
18 care services to enrollees on a fixed prepayment basis and who
19 is responsible for the availability, accessibility and quality
20 of the health care services provided or arranged, or as defined
21 by Subsection M of Section 59A-46-2 NMSA 1978;

22 ~~[G.]~~ H. "health plan" means any arrangement by
23 which persons, including dependents or spouses, covered or
24 making application to be covered under the pool have access to
25 hospital and medical benefits or reimbursement, including group

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1 or individual insurance or subscriber contract; coverage
2 through health maintenance organizations, preferred provider
3 organizations or other alternate delivery systems; coverage
4 under prepayment, group practice or individual practice plans;
5 coverage under uninsured arrangements of group or group-type
6 contracts, including employer self-insured, cost-plus or other
7 benefits methodologies not involving insurance or not subject
8 to New Mexico premium taxes; coverage under group-type
9 contracts that are not available to the general public and can
10 be obtained only because of connection with a particular
11 organization or group; and coverage by medicare or other
12 governmental benefits. "Health plan" includes coverage through
13 health insurance;

14 [~~H.~~] I. "insured" means an individual resident of
15 this state who is eligible to receive benefits from any insurer
16 or other health plan;

17 [~~F.~~] J. "insurer" means an insurance company
18 authorized to transact health insurance business in this state,
19 a nonprofit health care plan, a health maintenance organization
20 and self-insurers not subject to federal preemption. "Insurer"
21 does not include an insurance company that is licensed under
22 the Prepaid Dental Plan Law or a company that is solely engaged
23 in the sale of dental insurance and is licensed not under that
24 act, but under another provision of the Insurance Code;

25 [~~J.~~] K. "medicare" means coverage under Part A or

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1 Part B of Title 18 of the Social Security Act, as amended;

2 ~~[K.]~~ L. "pool" means the New Mexico medical
3 insurance pool; ~~[and]~~

4 M. "preexisting condition" means a physical or
5 mental condition for which medical advice, medication,
6 diagnosis, care or treatment was recommended for or received by
7 an applicant within six months before the effective date of
8 coverage, except that pregnancy is not considered a preexisting
9 condition; and

10 ~~[L.]~~ N. "therapist" means a licensed physical,
11 occupational, speech or respiratory therapist. "

12 Section 2. Section 59A-54-4 NMSA 1978 (being Laws 1987,
13 Chapter 154, Section 4, as amended) is amended to read:

14 "59A-54-4. POOL CREATED-- BOARD. --

15 A. There is created a nonprofit entity to be known
16 as the "New Mexico medical insurance pool". All insurers shall
17 organize and remain members of the pool as a condition of their
18 authority to transact insurance business in this state. The
19 board is a governmental entity for purposes of the Tort Claims
20 Act.

21 B. The superintendent shall, within sixty days
22 after the effective date of the Medical Insurance Pool Act,
23 give notice to all insurers of the time and place for the
24 initial organizational meetings of the pool. Each member of
25 the pool shall be entitled to one vote in person or by proxy at

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1 the organizational meetings.

2 C. The pool shall operate subject to the
3 supervision and approval of the board. The board shall consist
4 of the superintendent or his designee, who shall serve as the
5 chairman of the board, four members appointed by the members of
6 the pool and [~~five~~] six members appointed by the
7 superintendent. The members appointed by the members of the
8 pool shall consist of [~~one representative of a nonprofit health~~
9 ~~care plan~~] one representative of a health maintenance
10 organization and [~~two~~] three representatives of other types of
11 members of the pool. The members appointed by the
12 superintendent shall consist of four citizens who are not
13 professionally affiliated with an insurer, at least two of whom
14 shall be individuals who are insured by the pool, who would
15 qualify for pool coverage if they were not eligible for
16 particular group coverage or who are a parent, guardian,
17 relative or spouse of such an individual. The superintendent's
18 fifth appointment shall be a representative of a statewide
19 health planning agency or organization. The superintendent's
20 sixth appointment shall be a representative of the medical
21 community.

22 D. The members of the board appointed by the
23 members of the pool shall be appointed for initial terms of
24 four years or less, staggered so that the term of one member
25 shall expire on June 30 of each year. The members of the board

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1 appointed by the superintendent shall be appointed for initial
2 terms of five years or less, staggered so that the term of one
3 member expires on June 30 of each year. Following the initial
4 terms, members of the board shall be appointed for terms of
5 three years. If the members of the pool fail to make the
6 initial appointments required by this subsection within sixty
7 days following the first organizational meeting, the
8 superintendent shall make those appointments. Whenever a
9 vacancy on the board occurs, the superintendent shall fill the
10 vacancy by appointing a person to serve the balance of the
11 unexpired term. The person appointed shall meet the
12 requirements for initial appointment to that position. Members
13 of the board may be reimbursed from the pool subject to the
14 limitations provided by the Per Diem and Mileage Act and shall
15 receive no other compensation, perquisite or allowance.

16 E. The board shall submit a plan of operation to
17 the superintendent and any amendments to it necessary or
18 suitable to assure the fair, reasonable and equitable
19 administration of the pool.

20 F. The superintendent shall, after notice and
21 hearing, approve the plan of operation, provided it is
22 determined to assure the fair, reasonable and equitable
23 administration of the pool and provides for the sharing of pool
24 losses on an equitable, proportionate basis among the members
25 of the pool. The plan of operation shall become effective upon

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1 approval in writing by the superintendent consistent with the
2 date on which coverage under the Medical Insurance Pool Act is
3 made available. If the board fails to submit a plan of
4 operation within one hundred eighty days after the appointment
5 of the board, or any time thereafter fails to submit necessary
6 amendments to the plan of operation, the superintendent shall,
7 after notice and hearing, adopt and promulgate such rules as
8 are necessary or advisable to effectuate the provisions of the
9 Medical Insurance Pool Act. Rules promulgated by the
10 superintendent shall continue in force until modified by him or
11 superseded by a subsequent plan of operation submitted by the
12 board and approved by the superintendent.

13 G. Any reference in law, rule, division bulletin,
14 contract or other legal document to the New Mexico
15 comprehensive health insurance pool shall be deemed to refer to
16 the New Mexico medical insurance pool."

17 Section 3. Section 59A-54-10 NMSA 1978 (being Laws 1987,
18 Chapter 154, Section 10, as amended) is amended to read:

19 "59A-54-10. ASSESSMENTS. --

20 A. Following the close of each fiscal year, the
21 pool administrator shall determine the net premium, being
22 premiums less administrative expense allowances, the pool
23 expenses and claim expense losses for the year, taking into
24 account investment income and other appropriate gains and
25 losses. The assessment for each insurer shall be determined by

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1 multiplying the total cost of pool operation by a fraction the
2 numerator of which equals that insurer's premium and subscriber
3 contract charges or their equivalent for health insurance
4 written in the state during the preceding calendar year and the
5 denominator of which equals the total of all premiums and
6 subscriber contract charges written in the state; provided that
7 premium income shall include receipts of medicaid managed care
8 premiums but shall not include any payments by the secretary of
9 health and human services pursuant to a contract issued under
10 Section 1876 of the Social Security Act, as amended. The board
11 may adopt other or additional methods of adjusting the formula
12 to achieve equity of assessments among pool members, including
13 assessment of health insurers and reinsurers based upon the
14 number of persons they cover through primary, excess and stop-
15 loss insurance in the state.

16 B. If assessments exceed actual losses and
17 administrative expenses of the pool, the excess shall be held
18 at interest and used by the board to offset future losses or to
19 reduce pool premiums. As used in this subsection, "future
20 losses" includes reserves for incurred but not reported claims.

21 C. The proportion of participation of each member
22 in the pool shall be determined annually by the board based on
23 annual statements and other reports deemed necessary by the
24 board and filed with it by the member. Any deficit incurred by
25 the pool shall be recouped by assessments apportioned among the

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1 members of the pool pursuant to the assessment formula provided
2 by Subsection A of this section; provided that the assessment
3 for any pool member shall be allowed as a thirty-percent credit
4 on the premium tax return for that member.

5 D. The board may abate or defer, in whole or in
6 part, the assessment of a member of the pool if, in the opinion
7 of the board, payment of the assessment would endanger the
8 ability of the member to fulfill its contractual obligation.
9 In the event an assessment against a member of the pool is
10 abated or deferred in whole or in part, the amount by which
11 such assessment is abated or deferred may be assessed against
12 the other members in a manner consistent with the basis for
13 assessments set forth in Subsection A of this section. The
14 member receiving the abatement or deferment shall remain liable
15 to the pool for the deficiency for four years. "

16 Section 4. Section 59A-54-12 NMSA 1978 (being Laws 1987,
17 Chapter 154, Section 12, as amended) is amended to read:

18 "59A-54-12. ELIGIBILITY--POLICY PROVISIONS.--

19 A. Except as provided in Subsection B of this
20 section, a person is eligible for a pool policy only if on the
21 effective date of coverage or renewal of coverage the person is
22 a New Mexico resident, and:

23 (1) is not eligible as an insured or covered
24 dependent for any health plan that provides coverage for
25 comprehensive major medical or comprehensive physician and

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1 hospital services;

2 (2) ~~[is only eligible for a health plan that~~
3 ~~is offered at a rate higher than that available from the pool]~~
4 is currently paying a rate for a health plan that is higher
5 than one hundred twenty-five percent of the pool's standard
6 rate;

7 (3) has been rejected for coverage for
8 comprehensive major medical or comprehensive physician and
9 hospital services;

10 (4) is only eligible for a health plan with a
11 rider, waiver or restrictive provision for that particular
12 individual based on a specific condition;

13 (5) has a medical condition that is listed on
14 the pool's pre-qualifying conditions;

15 [~~(5)~~] (6) has as of the date the individual
16 seeks coverage from the pool an aggregate of eighteen or more
17 months of creditable coverage, the most recent of which was
18 under a group health plan, governmental plan or church plan as
19 defined in Subsections P, N and D, respectively, of Section
20 59A-23E-2 NMSA 1978, except, for the purposes of aggregating
21 creditable coverage, a period of creditable coverage shall not
22 be counted with respect to enrollment of an individual for
23 coverage under the pool if, after that period and before the
24 enrollment date, there was a sixty-three-day or longer period
25 during all of which the individual was not covered under any

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1 creditable coverage; or

2 ~~[(6)]~~ (7) is entitled to continuation coverage
3 pursuant to Section 59A-23E-19 NMSA 1978.

4 B. Notwithstanding the provisions of Subsection A
5 of this section:

6 (1) a person's eligibility for a policy issued
7 under the Health Insurance Alliance Act shall not preclude a
8 person from remaining on or purchasing a pool policy; provided
9 that a self-employed person who qualifies for an approved
10 health plan under the Health Insurance Alliance Act by using a
11 dependent as the second employee may choose a pool policy in
12 lieu of the health plan under that act;

13 (2) a pool policyholder shall be eligible for
14 renewal of pool coverage even though the policyholder became
15 eligible for medicare or medicaid coverage while covered under
16 a pool policy; and

17 (3) if a pool policyholder becomes eligible
18 for any group health plan, the policyholder's pool coverage
19 shall not be involuntarily terminated until any preexisting
20 condition period imposed on the policyholder by the plan has
21 been exhausted.

22 C. Coverage under a pool policy is in excess of and
23 shall not duplicate coverage under any other form of health
24 insurance.

25 ~~[D. A pool policy shall provide that coverage of a~~

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1 ~~dependent unmarried person terminates when the person becomes~~
2 ~~nineteen years of age or, if the person is enrolled full time~~
3 ~~in an accredited educational institution, when he becomes~~
4 ~~twenty-five years of age. The policy shall also provide in~~
5 ~~substance that attainment of the limiting age does not operate~~
6 ~~to terminate coverage when the person is and continues to be:~~

7 ~~(1) incapable of self-sustaining employment~~
8 ~~by reason of developmental disability or physical handicap; and~~

9 ~~(2) primarily dependent for support and~~
10 ~~maintenance upon the person in whose name the contract is~~
11 ~~issued.~~

12 ~~Proof of incapacity and dependency shall be furnished to~~
13 ~~the insurer within one hundred twenty days of attainment of the~~
14 ~~limiting age and subsequently as required by the insurer but~~
15 ~~not more frequently than annually after the two-year period~~
16 ~~following attainment of the limiting age.~~

17 ~~E. A pool policy that provides coverage for a~~
18 ~~family member of the person in whose name the contract is~~
19 ~~issued shall, as to the coverage of the family member or the~~
20 ~~individual in whose name the contract was issued, provide that~~
21 ~~the health insurance benefits applicable for children are~~
22 ~~payable with respect to a newly born child of the family member~~
23 ~~or the person in whose name the contract is issued from the~~
24 ~~moment of coverage of injury or illness, including the~~
25 ~~necessary care and treatment of medically diagnosed congenital~~

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1 ~~defects and birth abnormalities. If payment of a specific~~
2 ~~premium is required to provide coverage for the child, the~~
3 ~~contract may require that notification of the birth of a child~~
4 ~~and payment of the required premium shall be furnished to the~~
5 ~~carrier within thirty-one days after the date of birth in order~~
6 ~~to have the coverage continued beyond the thirty-one day~~
7 ~~period.]~~

8 D. A policyholder's newborn child or newly adopted
9 child is automatically eligible for thirty-one consecutive
10 calendar days of coverage for an additional premium.

11 ~~[F.]~~ E. Except for a person eligible as provided in
12 Paragraph ~~[(5)]~~ (6) of Subsection A of this section, a pool
13 policy may contain provisions under which coverage is excluded
14 during a six-month period following the effective date of
15 coverage as to a given individual for preexisting conditions
16 ~~[as long as either of the following exists:~~

17 ~~(1) the condition has manifested itself within~~
18 ~~a period of six months before the effective date of coverage in~~
19 ~~such a manner as would cause an ordinarily prudent person to~~
20 ~~seek diagnoses or treatment; or~~

21 ~~(2) medical advice or treatment was~~
22 ~~recommended or received within a period of six months before~~
23 ~~the effective date of coverage].~~

24 ~~[G.]~~ E. The preexisting condition exclusions
25 described in Subsection ~~[F]~~ E of this section shall be waived

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1 to the extent to which similar exclusions have been satisfied
2 under any prior health insurance coverage that was
3 involuntarily terminated, if the application for pool coverage
4 is made not later than thirty-one days following the
5 involuntary termination. In that case, coverage in the pool
6 shall be effective from the date on which the prior coverage
7 was terminated. This subsection does not prohibit preexisting
8 conditions coverage in a pool policy that is more favorable to
9 the insured than that specified in this subsection.

10 ~~[H.]~~ G. An individual is not eligible for coverage
11 by the pool if:

12 (1) except as provided in Subsection ~~[J]~~ I of
13 this section, the individual is, at the time of application,
14 eligible for medicare or medicaid ~~[which]~~ that would provide
15 coverage for amounts in excess of limited policies such as
16 dread disease, cancer policies or hospital indemnity policies;

17 (2) the individual has voluntarily terminated
18 coverage by the pool within the past twelve months and did not
19 have other continuous coverage during that time, except that
20 this paragraph shall not apply to an applicant who is a
21 federally defined eligible individual;

22 (3) the individual is an inmate of a public
23 institution or is eligible for public programs for which
24 medical care is provided;

25 (4) the individual is eligible for coverage

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1 under a group health plan;

2 (5) the individual has health insurance
3 coverage as defined in Subsection R of Section 59A-23E-2 NMSA
4 1978;

5 (6) the most recent coverages within the
6 coverage period described in Paragraph [~~(5)~~] (6) of Subsection
7 A of this section were terminated as a result of nonpayment of
8 premium or fraud; or

9 (7) the individual has been offered the option
10 of continuation coverage under a federal COBRA continuation
11 provision as defined in Subsection F of Section 59A-23E-2 NMSA
12 1978 or under a similar state program and he has elected the
13 coverage and did not exhaust the continuation coverage under
14 the provision or program.

15 [~~F.~~] H. Any person whose health insurance coverage
16 from a qualified state health policy with similar coverage is
17 terminated because of nonresidency in another state may apply
18 for coverage under the pool. If the coverage is applied for
19 within thirty-one days after that termination and if premiums
20 are paid for the entire coverage period, the effective date of
21 the coverage shall be the date of termination of the previous
22 coverage.

23 [~~J.~~] I. The board may issue a pool policy for
24 individuals who:

25 (1) are enrolled in both Part A and Part B of

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medicare because of a disability; and
(2) except for the eligibility for medicare,
would otherwise be eligible for coverage pursuant to the
criteria of this section. "