HOUSE BILL 339

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO HEALTH CARE; ENACTING THE HEALTH SECURITY ACT TO PROVIDE FOR COMPREHENSIVE STATEWIDE HEALTH CARE; PROVIDING FOR HEALTH CARE PLANNING; ESTABLISHING PROCEDURES TO CONTAIN HEALTH CARE COSTS; CREATING A COMMISSION; PROVIDING FOR ITS POWERS AND DUTIES; PROVIDING FOR HEALTH CARE DELIVERY REGIONS AND REGIONAL COUNCILS; DIRECTING AND AUTHORIZING THE DEVELOPMENT OF A STATE HEALTH SECURITY PLAN; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the "Health Security Act".

Section 2. PURPOSES OF ACT.--The purposes of the Health Security Act are to:

A. create a program that ensures health care

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coverage to all New Mexicans through a combination of public and private financing;

B. control escalating health care costs; and

C. improve the health care of all New Mexicans.

Section 3. DEFINITIONS.--As used in the Health Security Act:

A. "beneficiary" means a person eligible for health care and benefits pursuant to the health security plan;

B. "budget" means the total of all categories of dollar amounts of expenditures for a stated period authorized for an entity or a program;

C. "capital budget" means that portion of a budget that establishes expenditures for:

(1) acquisition or addition of substantial improvements to real property; or

(2) acquisition of tangible personal property;

D. "case management" means a comprehensive program designed to meet an individual's need for care by coordinating and linking the components of health care;

E. "commission" means the health care commission created pursuant to the Health Security Act;

F. "consumer price index for medical care prices" means that index as published by the bureau of labor statistics of the federal department of labor;

G. "controlling interest" means:

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(1) a five percent or greater ownership interest, direct or indirect, in the person controlled; or

(2) a financial interest, direct or indirect, and, because of business or personal relationships, having the power to influence important decisions of the person controlled;

H. "financial interest" means an ownership interest of any amount, direct or indirect;

I. "group practice" means an association of health care providers that provides one or more specialized health care services or a tribal or urban Indian coalition in partnership or under contract with the federal Indian health service that is authorized under federal law to provide health care to Native American populations in the state;

J. "health care" means health care provider services and health facility services;

K. "health care provider" means:

(1) a person licensed or certified and authorized to provide health care in New Mexico;

(2) an individual licensed or certified by a nationally recognized professional organization and designated as a health care provider by the commission; or

(3) a person that is a group practice of licensed providers or a transportation service;

L. "health facility" means a school-based clinic,

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an Indian health service facility, a tribally operated health care facility, a state-operated health care facility, a general hospital, a special hospital, an outpatient facility, a psychiatric hospital, a primary clinic pursuant to the Rural Primary Health Care Act, a laboratory, a skilled nursing facility or a nursing facility; provided that the health facility is authorized to receive state or federal reimbursement;

M. "health security plan" means the program that is created and administered by the commission for provision of health care pursuant to the Health Security Act;

N. "major capital expenditure" means construction or renovation of facilities or the acquisition of diagnostic, treatment or transportation equipment by a health care provider or health facility that costs more than an amount recommended and established by the commission;

O. "operating budget" means the budget of a health facility exclusive of the facility's capital budget;

P. "person" means an individual or any other legal entity;

Q. "primary care provider" means a health care provider who is a physician, osteopathic physician, nurse practitioner, physician assistant, osteopathic physician's assistant, pharmacist clinician or other health care provider certified by the commission;

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R. "provider budget" means the authorized expenditures pursuant to payment mechanisms established by the commission to pay for health care furnished by health care providers participating in the health security plan; and

S. "transportation service" means a person providing the services of an ambulance, helicopter or other conveyance that is equipped with health care supplies and equipment and is used to transport patients to other health care providers or health facilities.

Section 4. HEALTH CARE COMMISSION CREATED--GOVERNMENTAL INSTRUMENTALITY.--The "health care commission" is created as a public body, politic and corporate, constituting a governmental instrumentality. The commission consists of fifteen members.

Section 5. CREATION OF HEALTH CARE COMMISSION MEMBERSHIP NOMINATING COMMITTEE--MEMBERSHIP, TERMS AND DUTIES OF COMMITTEE.--

A. The "health care commission membership nominating committee" is created consisting of twelve members, to reflect the geographic diversity of the state, as follows:

(1) two members appointed by the governor;

(2) three members appointed by the speaker of the house of representatives;

(3) three members appointed by the president pro tempore of the senate;

(4) two members appointed by the minority

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leader of the house of representatives; and

(5) two members appointed by the minority leader of the senate.

B. At the first meeting of the committee it shall elect a chair from its membership. The chair shall vote only in the case of a tie vote.

C. Members shall serve four-year terms; provided, however, that the first twelve members appointed to the committee shall serve staggered terms as follows:

(1) the governor shall appoint the first two appointees to three-year terms;

(2) the speaker of the house of representatives shall appoint the first three appointees so that one serves for two years, one for three years and one for four years;

(3) the president pro tempore of the senate shall appoint the first three appointees so that one serves for two years, one for three years and one for four years;

(4) the minority leader of the house of representatives shall appoint the first two members so that one serves for two years and one serves for four years; and

(5) the minority leader of the senate shall appoint the first two members so that one serves for two years and one serves for four years.

D. A member shall serve until the member's

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successor is appointed and qualified. Successor members shall be appointed by the appointing authority that made the initial appointment to the committee. A state employee who is exempt from the Personnel Act is not eligible to serve on the committee. A member shall be eligible for or enrolled in the health security plan. An elected official shall not serve on the committee. Sufficient public notice shall be provided to allow members of the public to request consideration of appointment to the committee.

E. Appointed members of the committee shall have substantial knowledge of the health care system as demonstrated by education or experience. A person shall not be appointed to the committee if, currently or within the previous thirty-six months, the person or a member of the person's household is employed by, an officer of or has a controlling interest in a person providing health care or health insurance, directly or as an agent of a health insurer.

F. The committee shall take appropriate action to ensure that adequate prior notice of its meetings is advertised and reported in media outlets throughout the state in addition to publication of a legal notice in major newspapers. Publication of the legal notice shall occur once each week for the two weeks immediately preceding the date of a meeting. Meetings of the committee shall be open to the public, and public comment shall be allowed. A majority of the committee

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shall constitute a quorum. The committee may allow members' participation in meetings by telephone or other electronic media that allows full participation. Meetings may be closed only for discussion of candidates prior to selection. Final selection of candidates shall be by vote of the members and shall be conducted in a public meeting.

G. The committee shall hold its first meeting on or before June 15, 2010. The committee shall actively solicit, accept and evaluate applications from qualified persons for membership on the commission subject to the requirements for commission membership qualifications pursuant to Section 6 of the Health Security Act.

H. No later than September 15, 2010, the committee shall submit to the governor the names of persons recommended for appointment to the commission by a majority of the committee. Immediately after receiving committee nominations, the governor may make one request of the committee for submission of additional names. If a majority of the committee finds that additional persons would be qualified, the committee shall promptly submit additional names and recommend those persons for appointment to the commission. The committee shall submit no more than three names for a membership position for each initial or additional appointment.

I. Appointed committee members shall be reimbursed pursuant to the Per Diem and Mileage Act for expenses incurred

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in fulfilling their duties.

J. Staff to assist the committee in its duties until a commission is appointed shall be furnished by the department of health. Thereafter, commission staff shall assist the committee in its duties.

Section 6. APPOINTMENT OF COMMISSION MEMBERS--QUALIFICATIONS--TERMS.--

A. From the nominees submitted by the health care commission membership nominating committee, the governor shall appoint fifteen members to the commission, and the initial commission shall be in place by November 1, 2010.

B. The terms of the initial commission members appointed shall be chosen by lot: five members shall be appointed for terms of four years; five members shall be appointed for terms of three years; and five members shall be appointed for terms of two years. Thereafter, all members shall be appointed for terms of four years. After initial terms are served, no member shall serve more than three consecutive four-year terms. A member may serve until a successor is appointed.

C. A person who served on the health care commission membership nominating committee shall not be nominated for or serve on the commission within thirty-six months from the time served on the committee. A state employee who is exempt from the Personnel Act is not eligible to serve

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on the commission. An elected official shall not serve on the commission. A commission member shall be eligible for or enrolled in the health security plan.

D. When a vacancy occurs in the membership of the commission, the health care commission membership nominating committee shall meet and act within thirty days of the occurrence of the vacancy. From the nominees submitted, the governor shall fill the vacancy within thirty days after receiving final nominations.

E. Members of the commission shall include five persons who represent either health care providers or health facilities and ten persons who represent consumer and employer interests, the majority of whom shall represent consumer interests.

F. Except for persons appointed to represent health facilities or health care providers, a person shall be disqualified for appointment to the commission if, currently or during the previous thirty-six months, the person or a member of the person's household is employed by, an officer of or has a controlling interest in a person providing health care or health insurance, directly or as an agent of a health insurer.

G. Persons appointed who do not represent health care providers or health facilities must have a knowledge of the health care system as demonstrated by experience or education. To ensure fair representation of all areas of the

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state, members shall be appointed from each of the public education commission districts as follows:

(1) two from public education commission district 1;

(2) one from public education commission district 2;

(3) one from public education commission district 3;

(4) two from public education commission district 4;

(5) two from public education commission district 5;

(6) one from public education commission district 6;

(7) two from public education commission district 7;

(8) two from public education commission district 8;

(9) one from public education commission district 9; and

(10) one from public education commission district 10.

H. A member may be removed from the commission by a majority vote of the members present at a meeting where a quorum is duly constituted. The commission shall set standards

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for attendance and may remove a member for incompetence, lack of attendance, neglect of duty or malfeasance in office. A member shall not be removed without proceedings consisting of at least one notice of hearing and an opportunity to be heard. Removal proceedings shall be before the commission and in accordance with rules adopted by the commission.

I. A majority of the commission's members constitutes a quorum for the transaction of business. The commission may allow members' participation in meetings by telephone or other electronic media that allows full participation. Annually, the commission shall elect its chair and any other officers it deems necessary.

J. A member may receive per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act. Additionally, members shall be compensated at the rate of two hundred dollars ($200) for each meeting actually attended not to exceed compensation for one hundred twenty meetings for a two-year period occurring in a term.

Section 7. CONFLICT OF INTEREST--DISCLOSURE BY MEMBERS AND DISQUALIFICATION FROM VOTING ON CERTAIN MATTERS.--

A. The commission shall adopt a conflict-of-interest disclosure statement for use by all members that requires disclosure of a financial interest, whether or not a controlling interest, of the member or a member of the member's household in a person providing health care or health

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insurance.

B. A member representing health facilities or health care providers may vote on matters that pertain generally to health facilities or health care providers.

C. If there is a question about a conflict of interest of a commission member, the other members shall vote on whether to allow the member to vote.

Section 8. CODE OF CONDUCT TO BE ADOPTED BY COMMISSION.--

A. The commission shall adopt a general code of conduct for commission members and employees subject to the commission's control. The code of conduct shall include at least those matters and activities proscribed by the Governmental Conduct Act.

B. Violation of a provision of the adopted code of conduct is grounds for removal of a commission member and grounds for suspension, termination or other disciplinary action of an employee.

Section 9. APPLICATION OF CERTAIN STATE LAWS TO COMMISSION.--The commission and regional councils created pursuant to the Health Security Act shall be subject to and shall comply with the provisions of the:

A. Open Meetings Act;

B. State Rules Act;

C. Inspection of Public Records Act; and

D. Public Records Act.

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Section 10. CHIEF EXECUTIVE OFFICER--STAFF--CONTRACTS--BUDGETS.--

A. The commission shall appoint and set the salary of a "chief executive officer". The chief executive officer shall serve at the pleasure of the commission and has authority to carry on the day-to-day operations of the commission and the health security plan.

B. The chief executive officer shall employ those persons necessary to administer and implement the provisions of the Health Security Act.

C. The chief executive officer and the chief executive officer's staff shall implement the Health Security Act in accordance with that act and the rules adopted by the commission. The chief executive officer may delegate authority to employees and may organize the staff into units to facilitate its work.

D. If the chief executive officer determines that the commission staff or a state agency does not have the resources or expertise to perform a necessary task, the chief executive officer may contract for performance from a person who has a demonstrated capability to perform the task. The commission shall establish the standards and requirements by which a contract is executed by the commission or the chief executive officer. A contract shall be reviewed by the commission or the chief executive officer to ensure that it

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meets the criteria, performance standards, expectations and needs of the commission.

E. The chief executive officer shall prepare and submit an annual budget request and plan of operation to the commission for its approval. The chief executive officer shall provide at least quarterly status reports on the budget and advise of a potential shortfall as soon as practically possible.

F. A contract for claims processing functions shall require that all work for claims processing, customer service, medical and utilization review, financial audit and reimbursement and related claims adjudication functions be performed entirely in New Mexico. To the extent practicable, all other work shall be performed in New Mexico.

Section 11. COMMISSION--GENERAL DUTIES.--The commission shall:

A. adopt a five-year plan for the initial implementation of the provisions of the Health Security Act, update that plan and adopt other long- and short-range plans to provide continuity and development of the state's health care system;

B. design the health security plan to fulfill the purposes of and conform with the provisions of the Health Security Act;

C. provide a program to educate the public, health

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care providers and health facilities about the health security plan and the persons eligible to receive its benefits;

D. study and adopt as provisions of the health security plan cost-effective methods of providing quality health care to all beneficiaries, according high priority to increased reliance on:

(1) preventive and primary care that includes immunization and screening examinations;

(2) providing health care in rural or underserved areas of the state;

(3) in-home and community-based alternatives to institutional health care; and

(4) case management services when appropriate;

E. establish compensation methods for health care providers and health facilities and adopt standards and procedures for negotiating and entering into contracts with participating health care providers and health facilities;

F. annually, and for those projected future periods the commission believes appropriate, establish health security plan budgets;

G. establish capital budgets for health facilities, limited to capital expenditures subject to the Health Security Act, and include and adopt in establishing those budgets:

(1) standards and procedures for determining the budgets; and

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(2) a requirement for prior approval by the commission for major capital expenditures by a health facility;

H. negotiate and enter into health care reciprocity agreements with other states and negotiate and enter into health care agreements with out-of-state health care providers and health facilities;

I. develop claims and payment procedures for health care providers, health facilities and claims administrators and include provisions to ensure timely payments and provide for payment of interest when reimbursable claims are not paid within a reasonable time;

J. establish, in conjunction with other state agencies similarly charged, a system to collect and analyze health care data and other data necessary to improve the quality, efficiency and effectiveness of health care and to control costs of health care in New Mexico, which system shall include data on:

(1) mortality, including accidental causes of death, and natality;

(2) morbidity;

(3) health behavior;

(4) physical and psychological impairment and disability;

(5) health care system costs and health care availability, utilization and revenues;

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(6) environmental factors;

(7) availability, adequacy and training of health care personnel;

(8) demographic factors;

(9) social and economic conditions affecting health; and

(10) other factors determined by the commission;

K. standardize data collection and specific methods of measurement across databases and use scientific sampling or complete enumeration for reporting health information;

L. establish a health care delivery system that is efficient to administer and that eliminates unnecessary administrative costs;

M. adopt rules necessary to implement and monitor a preferred drug list, bulk purchasing or other mechanism to provide prescription drugs and a pricing procedure for nonprescription drugs, durable medical equipment and supplies, eyeglasses, hearing aids and oxygen;

N. establish a pharmacy and therapeutics committee to:

(1) conduct concurrent, prospective and retrospective drug utilization review;

(2) conduct pharmacoeconomic research and analysis of clinical safety, efficacy and effectiveness of

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drugs;

(3) consult with specialists in appropriate fields of medicine for therapeutic classes of drugs;

(4) recommend therapeutic classes of drugs, including specific drugs within each class to be included in the preferred drug list;

(5) identify appropriate exclusions from the preferred drug list; and

(6) conduct periodic clinical reviews of preferred, nonpreferred and new drugs;

O. study and evaluate the adequacy and quality of health care furnished pursuant to the Health Security Act, the cost of each type of service and the effectiveness of cost-containment measures in the health security plan;

P. study and monitor the migration of persons to New Mexico to determine if persons with costly health care needs are moving to New Mexico to receive health care and, if migration appears to threaten the financial stability of the health security plan, recommend to the legislature changes in eligibility requirements, premiums or other changes that may be necessary to maintain the financial integrity of the health security plan;

Q. study and evaluate the cost of health care provider professional liability insurance and its impact on the price of health care services and recommend changes to the

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legislature as necessary;

R. establish and approve changes in coverage benefits and benefit standards in the health security plan;

S. conduct necessary investigations and inquiries;

T. adopt rules necessary to implement, administer and monitor the operation of the health security plan;

U. adopt rules to establish a procurement process for services and property;

V. meet as needed, but no less often than once every month;

W. report annually to the legislature and the governor on the commission's activities and the operation of the health security plan and include in the annual report:

(1) a summary of information about health care needs, health care services, health care expenditures, revenues received and projected revenues and other relevant issues relating to the health security plan, the initial five-year plan and future updates of that plan and other long- and short-range plans; and

(2) recommendations on methods to control health care costs and improve access to and the quality of health care for state residents, as well as recommendations for legislative action; and

X. provide annual training for its members on health care coverage, policy and financing.

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Section 12. COMMISSION--AUTHORITY.--The commission has the authority necessary to carry out the powers and duties pursuant to the Health Security Act. The commission retains responsibility for its duties but may delegate authority to the chief executive officer. However, the authority to take the following actions is expressly reserved to the commission:

A. approve the commission's budget and plan of operation;

B. approve the health security plan and make changes in the health security plan, but only after legislative approval of those changes specified in Section 30 of the Health Security Act;

C. make rules and conduct both rulemaking and adjudicatory hearings in person or by use of a hearing officer;

D. issue subpoenas to persons to appear and testify before the commission and to produce documents and other information relevant to the commission's inquiry and enforce this subpoena power through an action in a state district court;

E. make reports and recommendations to the legislature;

F. subject to the prohibitions and restrictions of Section 21 of the Health Security Act, apply for program waivers from any governmental entity if the commission determines that the waivers are necessary to ensure the

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participation by the greatest possible number of beneficiaries;

G. apply for and accept grants, loans and donations;

H. acquire or lease real property and make improvements on it and acquire by lease or by purchase tangible and intangible personal property;

I. dispose of and transfer personal property, but only at public sale after adequate notice;

J. appoint and prescribe the duties of employees, fix their compensation, pay their expenses and provide an employee benefit program;

K. establish and maintain banking relationships, including establishment of checking and savings accounts;

L. participate as a qualified entity in the programs of the New Mexico finance authority; and

M. enter into agreements with an employer, group or other plan to provide health care services for the employer's employees or retirees; provided, however, that nothing in the Health Security Act shall be construed to reduce or eliminate benefits to which the employee or retiree is entitled.

Section 13. ADVISORY BOARDS.--

A. The commission shall establish a "health care provider advisory board" and a "health facility advisory board". It may establish additional advisory boards to assist it in performing its duties. Advisory boards shall assist the

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commission in matters requiring the expertise and knowledge of the advisory boards' members.

B. The commission may appoint not more than two commission members and up to five additional persons to serve on an advisory board it creates. Advisory board members shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

C. Except for the health care provider advisory board and the health facility advisory board, no more than two advisory board members shall have a controlling interest, direct or indirect, in a person providing health care or a person providing health insurance.

D. Staff and technical assistance for an advisory board shall be provided by the commission as necessary.

Section 14. HEALTH CARE DELIVERY REGIONS.--The commission shall establish health care delivery regions in the state, based on geography and health care resources. The regions may have differential fee schedules, budgets, capital expenditure allocations or other features to encourage the provision of health care in rural and other underserved areas or to tailor otherwise the delivery of health care to fit the needs of a region or a part of a region.

Section 15. REGIONAL COUNCILS.--

A. The commission shall designate regional councils in the designated health care delivery regions. In selecting

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persons to serve as members of regional councils, the commission shall consider the comments and recommendations of persons in the region who are knowledgeable about health care and the economic and social factors affecting the region.

B. The regional councils shall be composed of the commission members who live in the region and five other members who live in the region and are appointed by the commission. No more than two noncommission council members shall have a controlling interest, direct or indirect, in a person providing health care or a person providing health insurance.

C. Members of a regional council shall be paid per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

D. The regional councils shall hold public hearings to receive comments, suggestions and recommendations from the public regarding regional health care needs. The councils shall report to the commission at times specified by the commission to ensure that regional concerns are considered in the development and update of the five-year plan, other short- and long-range plans and projections, fee schedules, budgets and capital expenditure allocations.

E. Staff technical assistance for the regional councils shall be provided by the commission.

Section 16. RULEMAKING.--

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A. The commission shall adopt rules necessary to carry out the duties of the commission and the provisions of the Health Security Act.

B. The commission shall not adopt, amend or repeal any rule affecting a person outside the commission without a public hearing on the proposed action before the commission or a hearing officer designated by the commission. The hearing officer may be a member of the commission's staff. The hearing shall be held in a county that the commission determines would be in the interest of those affected. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule or an amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation in the state and shall also be published in an informative nonlegal format in one newspaper published in each health care delivery region and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing.

C. All rules adopted by the commission shall be filed in accordance with the State Rules Act.

Section 17. HEALTH SECURITY PLAN.--

A. After notice and public hearing, including

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taking public comment and the reports of the regional councils, the commission, in conjunction with other state agencies, shall adopt a five-year health security plan and review it at regular intervals for possible revision.

B. The health security plan shall be designed to provide comprehensive, necessary and appropriate health care benefits, including preventive health care and primary, secondary and tertiary health care for acute and chronic conditions. The health security plan may provide for certain health care services to be phased in as the health security plan budget allows.

C. Pursuant to the phase-in provisions of Subsection B of this section, the commission shall provide for coverage of the following health care services:

(1) preventive health services;

(2) health care provider services;

(3) health facility inpatient and outpatient services;

(4) laboratory tests and radiology procedures;

(5) hospice care;

(6) in-home, community-based and institutional long-term care services;

(7) prescription drugs;

(8) inpatient and outpatient mental and behavioral health services;

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(9) drug and other substance abuse services;

(10) preventive and prophylactic dental services, including an annual dental examination and cleaning;

(11) vision appliances, including medically necessary contact lenses;

(12) medical supplies, durable medical equipment and selected assistive devices, including hearing and speech assistive devices; and

(13) experimental or investigational procedures or treatments as specified by the commission.

D. Covered health care shall not include:

(1) surgery for cosmetic purposes other than for reconstructive purposes;

(2) medical examinations and medical reports prepared for purchasing or renewing life insurance or participating as a plaintiff or defendant in a civil action for the recovery or settlement of damages; and

(3) orthodontic services and cosmetic dental services except those cosmetic dental services necessary for reconstructive purposes.

E. The health security plan shall specify the health care to be covered and the amount, scope and duration of benefits.

F. The health security plan shall contain provisions to control health care costs so that beneficiaries

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receive comprehensive, high-quality health care consistent with available revenue and budget constraints.

G. The health security plan shall phase in beneficiaries as their participation becomes possible through contracts, waivers or federal legislation. The health security plan may provide for certain preventive health care to be offered to all New Mexicans regardless of a person's eligibility to participate as a beneficiary.

H. The five-year plan as well as other long- and short-range plans adopted by the commission shall be reviewed by the regional councils and the commission annually and revised as necessary. Revisions shall be adopted by the commission in accordance with Section 11 of the Health Security Act. In projecting services under the health security plan, the commission shall take all reasonable steps to ensure that long-term care and dental care are provided at the earliest practical times consistent with budget constraints.

Section 18. LONG-TERM CARE.--

A. Long-term care may include:

(1) home- and community-based services, including personal assistance and attendant care; and

(2) institutional care.

B. No later than one year after the effective date of the operation of the health security plan, the commission shall appoint an advisory "long-term care committee" made up of

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representatives of health care consumers, providers and administrators to develop a plan for integrating long-term care into the health security plan. The committee shall report its plan to the commission no later than one year from its appointment. Committee members shall receive per diem and mileage as provided in the Per Diem and Mileage Act.

C. The long-term care component of the health security plan shall provide for case management and noninstitutional services when appropriate.

D. Nothing in this section affects long-term care services paid through private insurance or state or federal programs subject to the provisions of Sections 40 and 41 of the Health Security Act.

E. Nothing in this section precludes the commission from including long-term care services from the inception of the health security plan.

Section 19. MENTAL AND BEHAVIORAL HEALTH SERVICES.--

A. No later than one year after appointment of the chief executive officer, the commission shall appoint an advisory "mental and behavioral health services committee" made up of representatives of mental and behavioral health care consumers, providers and administrators to develop a plan for coordinating mental and behavioral health services within the health security plan. The committee shall report its plan to the commission no later than one year from its appointment.

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Committee members may receive per diem and mileage as provided in the Per Diem and Mileage Act.

B. The mental and behavioral health services component of the health security plan shall provide for case management and noninstitutional services where appropriate.

C. The health security plan shall not impose treatment limitations or financial requirements on the provision of mental and behavioral health benefits if identical limitations or requirements are not imposed on coverage of benefits for other conditions.

D. Nothing in this section limits mental and behavioral health services paid through private insurance or state or federal programs subject to the provisions of Sections 40 and 41 of the Health Security Act.

Section 20. MEDICAID COVERAGE--AGREEMENTS.--The commission may enter into appropriate agreements with the human services department or other state agency for the purpose of furthering the goals of the Health Security Act. These agreements may provide for certain services provided pursuant to the medicaid program under Title 19 and Title 21 of the federal Social Security Act to be administered by the commission to implement the health security plan.

Section 21. HEALTH SECURITY PLAN COVERAGE--CONDITIONS OF ELIGIBILITY FOR BENEFICIARIES--EXCLUSIONS.--

A. An individual is eligible as a beneficiary of

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the health security plan if the individual has been physically present in New Mexico for one year prior to the date of application for enrollment in the health security plan and if the individual has a current intention to remain in New Mexico and not to reside elsewhere. A dependent of an eligible individual is included as a beneficiary.

B. Individuals covered under the following governmental programs shall not be brought into coverage:

(1) federal retiree health plan beneficiaries;

(2) active duty and retired military personnel; and

(3) individuals covered by the federal active and retired military health programs.

C. Federal Indian health service or tribally operated health care program beneficiaries shall not be brought into coverage except through agreements with:

(1) Indian nations, tribes or pueblos;

(2) consortia of tribes or pueblos; or

(3) a federal Indian health service agency subject to the approval of the tribes or pueblos located in that agency.

D. If an individual is ineligible due to the residence requirement, the individual may become eligible by paying the premium required by the health security plan for coverage for the period of time up to the date the individual

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fulfills that requirement if the individual is an employee who physically resides and intends to reside in the state because of employment offered to the individual in New Mexico while the individual was residing elsewhere as demonstrated by furnishing that evidence of those facts required by rule adopted by the commission.

E. An employer, group or other plan that provides health care benefits for its employees after retirement, including coverage for payment of health care supplementary coverage if the retiree is eligible for medicare, may agree to participate in the health security plan; provided, however, that there is no loss of benefits under the retiree health benefit coverage. An employer that participates in the health security plan shall contribute to the health security plan for the benefit of the retiree and the agreement shall ensure that the health benefit coverage for the retiree shall be restored in the event of the retiree's ineligibility for health security plan coverage.

F. The commission shall prescribe by rule conditions under which other persons in the state may be eligible for coverage pursuant to the health security plan.

Section 22. HEALTH SECURITY PLAN COVERAGE OF NONRESIDENT STUDENTS.--

A. Except as provided in Subsection B of this section, an educational institution shall purchase coverage

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under the health security plan for its nonresident students through fees assessed to those students. The governing body of an educational institution shall set the fees at the amount determined by the commission.

B. A nonresident student at an educational institution may satisfy the requirement for health care coverage by proof of coverage under a policy or plan in another state that is acceptable to the commission. The student shall not be assessed a fee in that case.

C. The commission shall adopt rules to determine proof of an individual's eligibility for the health security plan or a student's proof of nonresident health care coverage.

Section 23. REMOVING INELIGIBLE PERSONS.--The commission shall adopt rules to provide procedures for removing persons no longer eligible for coverage.

Section 24. ELIGIBILITY CARD--USE--PENALTIES FOR MISUSE.--

A. A beneficiary shall receive a card as proof of eligibility. The card shall be electronically readable and shall contain a picture or electronic image, information that identifies the beneficiary for treatment and billing, payment and other information the commission deems necessary. The use of a beneficiary's social security number as an identification number is not permitted.

B. The eligibility card is not transferable. A

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beneficiary who lends the beneficiary's card to another and an individual who uses another's card shall be jointly and severally liable to the commission for the full cost of the health care provided to the user. The liability shall be paid in full within one year of final determination of liability. Liabilities created pursuant to this section shall be collected in a manner similar to that used for collection of delinquent taxes.

C. A beneficiary who lends the beneficiary's card to another or an individual who uses another's card after being determined liable pursuant to Subsection B of this section of a previous misuse is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. A third or subsequent conviction is a fourth degree felony, and the offender shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

Section 25. PRIMARY CARE PROVIDER--RIGHT TO CHOOSE--ACCESS TO SERVICES.--

A. Except as provided in the Workers' Compensation Act, a beneficiary has the right to choose a primary care provider.

B. The primary care provider is responsible for providing health care provider services to the patient except for:

(1) services in medical emergencies; and

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(2) services for which a primary care provider determines that specialist services are required, in which case the primary care provider shall advise the patient of the need for and the type of specialist services.

C. Except as otherwise provided in this section, health care provider specialists shall be paid pursuant to the health security plan only if the patient has been referred by a primary care provider. Nothing in this subsection prevents a beneficiary from obtaining the services of a health care provider specialist and paying the specialist for services provided.

D. The commission shall by rule specify when and under what circumstances a beneficiary may self-refer, including self-referral to a chiropractic physician, a doctor of oriental medicine, mental and behavioral health service providers and other health care providers who are not primary care providers.

E. The commission shall by rule specify the conditions under which a beneficiary may select a specialist as a primary care provider.

Section 26. DISCRIMINATION PROHIBITED.--A health care provider or health facility shall not discriminate against or refuse to furnish health care to a beneficiary on the basis of age, race, color, income level, national origin, religion, gender, sexual orientation, disabling condition or payment

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status. Nothing in this section shall require a health care provider or health facility to provide services to a beneficiary if the provider or facility is not qualified to provide the needed services or does not offer them to the general public.

Section 27. CLAIMS REVIEW.--

A. The commission shall adopt rules to provide a comprehensive claims review program. The procedures and standards used in the program shall be disclosed in writing to applicants, beneficiaries, health care providers and health facilities at the time of application to or participation in the health security plan.

B. The decision to approve or deny a claim based on a technicality shall be made in a timely manner and shall not exceed time limits established by rule of the commission. A final decision to deny payment for services based on medical necessity or utilization shall be based on a recommendation made by a health care professional having appropriate and adequate qualifications to make the recommendation. A denial of a claim for payment of a medical specialty service based on medical necessity or utilization shall be made only after a written recommendation for denial is made by a member of that medical specialty with credentials equivalent to those of the provider.

C. The fact of and the specific reasons for a

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denial of a health care claim shall be communicated promptly in writing to both the provider and the beneficiary involved.

Section 28. QUALITY OF CARE--HEALTH CARE PROVIDER AND HEALTH FACILITIES--PRACTICE STANDARDS.--

A. The commission shall adopt rules to establish and implement a quality improvement program that monitors the quality and appropriateness of health care provided by the health security plan, including evidence-based medicine, best practices, outcome measurements, consumer education and patient safety. The commission shall set standards and review benefits to ensure that effective, cost-efficient, high-quality and appropriate health care is provided under the health security plan.

B. The commission shall review and adopt professional practice guidelines developed by state and national medical and specialty organizations, federal agencies for health care policy and research and other organizations as it deems necessary to promote the quality and cost-effectiveness of health care provided through the health security plan.

C. The quality improvement program shall include an ongoing system for monitoring patterns of practice. The commission shall appoint a "health care practice advisory committee" consisting of health care providers, health facilities and other knowledgeable persons to advise the

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commission and staff on health care practice issues. The committee may appoint subcommittees and task forces to address practice issues of a specific health care provider discipline or a specific kind of health facility; provided, however, that the subcommittee or task force includes providers of substantially similar specialties or types of facilities. The advisory committee shall provide to the commission recommended standards and guidelines to be followed in making determinations on practice issues.

D. With the advice of the health care practice advisory committee, the commission shall establish a system of peer education for health care providers or health facilities determined to be engaging in aberrant patterns of practice pursuant to Subsection B of this section. If the commission determines that peer education efforts have failed, the commission may refer the matter to the appropriate licensing or certifying board.

E. The commission shall provide by rule the procedures for recouping payments or withholding payments for health care determined by the commission with the advice of the health care practice advisory committee or subcommittee to be medically unnecessary.

F. The commission may provide by rule for the assessment of administrative penalties for up to three times the amount of excess payments if it finds that excessive

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billings were part of an aberrant pattern of practice. Administrative penalties shall be deposited in the current school fund.

G. After consultation with the health care practice advisory committee, the commission may suspend or revoke a health care provider's or health facility's privilege to be paid for health care provided under the health security plan based upon evidence clearly supporting a determination by the commission that the provider or facility engages in aberrant patterns of practice, including inappropriate utilization, attempts to unbundle health care services or other practices that the commission deems a violation of the Health Security Act or rules adopted pursuant to that act. As used in this subsection, "unbundle" means to divide a service into components in an attempt to increase, or with the effect of increasing, compensation from the health security plan.

H. The commission shall report a suspension or revocation of the privilege to be paid for health care pursuant to the Health Security Act to the appropriate licensing or certifying board.

I. The commission shall report cases of suspected fraud by a health care provider or a health facility to the attorney general or to the district attorney of the county where the health care provider or health facility operates for investigation and prosecution.

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Section 29. DISPUTE RESOLUTION.--A person specifically and directly aggrieved by a decision of the commission has the right to judicial review of the decision by a state district court. As a prerequisite to judicial review, the person aggrieved must exhaust administrative remedies available through procedures for dispute resolution established by rule of the commission, including mandatory participation in mediation in a good-faith effort to resolve a dispute. The commission shall include in its rules for dispute resolution provisions for adequate notice to the disputants, opportunities to be heard in informal conferences prior to mediation and all procedural due process safeguards.

Section 30. HEALTH SECURITY PLAN BUDGET.--

A. Annually, the commission shall develop and submit to the legislature a health security plan budget. The budget shall be the commission's recommendation for the total amount to be spent by the plan for covered health care services in the next fiscal year.

B. Unless otherwise provided in the general appropriation act or other act of the legislature, the health security plan budget shall be within projected annual revenues. After the legislative review and approval, the commission shall implement the health security plan budget. Without specific legislative approval, the commission shall not change the level of premium charged and used to project revenue or change the

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employer contributions under the health security plan. The legislature may base its approval on the findings and recommendations of an independent audit or actuarial study.

C. In developing the health security plan budget, the commission shall provide that credit be taken in the budget for all revenues produced for health care in the state pursuant to any law other than the Health Security Act.

D. The health security plan shall include a maximum amount or percentage for administrative costs, and this maximum, if a percentage, may change in relation to the total costs of services provided under the health security plan. For the sixth and subsequent calendar years of operation of the health security plan, administrative costs shall not exceed five percent of the health security plan budget.

Section 31. PAYMENTS TO HEALTH CARE PROVIDERS--CO-PAYMENTS.--

A. The commission shall prepare a provider budget. Consistent with the provider budget, the health security plan shall provide payment for all covered health care rendered by health care providers. A variety of payment plans, including fee-for-service, may be adopted by the commission. Payment plans shall be negotiated with providers as provided by rule. In the event that negotiation fails to develop an acceptable payment plan, the disputing parties shall submit the dispute for resolution pursuant to Section 29 of the Health Security

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B. Supplemental payment rates may be adopted to provide incentives to help ensure the delivery of needed health care in rural and other underserved areas throughout the state.

C. An annual percentage increase in the amount allocated for provider payments in the budget shall be no greater than the annual percentage increase in the consumer price index for medical care prices published by the bureau of labor statistics of the federal department of labor using the year prior to the year in which the health security plan is implemented as the baseline year. The annual limitation in this subsection may be adjusted up or down by the commission based on a showing of special and unusual circumstances in a hearing before the commission.

D. Payment, or the offer of payment whether or not that offer is accepted, to a health care provider for services covered by the health security plan shall be payment in full for those services. A health care provider shall not charge a beneficiary an additional amount for services covered by the plan.

E. The commission may establish a co-payment schedule if a required co-payment is determined to be an effective cost-control measure. A co-payment shall not be required for preventive health care. When a co-payment is required, the health care provider shall not waive it and if it

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remains uncollected, the health care provider shall demonstrate a good-faith effort to have collected the co-payment.

Section 32. PAYMENTS TO HEALTH FACILITIES--CO-PAYMENTS.--

A. A health facility shall negotiate an annual operating budget with the commission. The operating budget shall be based on a base operating budget of past performance and projected changes upward or downward in costs and services anticipated for the next year. If a negotiated annual operating budget is not agreed upon, a health facility shall submit the budget to dispute resolution pursuant to Section 29 of the Health Security Act. An annual percentage increase in the amount allocated for a health facility operating budget shall be no greater than the change in the annual consumer price index for medical care prices, published annually by the bureau of labor statistics of the federal department of labor. The annual limitation in this subsection may be adjusted up or down by the commission based on a showing of special and unusual circumstances in a hearing before the commission.

B. Supplemental payment rates may be adopted to provide incentives to help ensure the delivery of needed health care services in rural and other underserved areas throughout the state.

C. Each health care provider employed by a health facility shall be paid from the facility's operating budget in a manner determined by the health facility.

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D. The commission may establish a co-payment schedule if a required co-payment is determined to be an effective cost-control measure. A co-payment shall not be required for preventive care. When a co-payment is required, the health facility shall not waive it and if it remains uncollected, the health facility shall demonstrate a good-faith effort to have collected the co-payment.

Section 33. HEALTH RESOURCE CERTIFICATE--COMMISSION RULES--REQUIREMENT FOR REVIEW.--

A. The commission shall adopt rules stating when a health facility or health care provider participating in the health security plan shall apply for a health resource certificate, how the application will be reviewed, how the certificate will be granted, how an expedited review is conducted and other matters relating to health resource projects.

B. Except as provided in Subsection F of this section, a health facility or health care provider participating in the health security plan shall not make or obligate itself to make a major capital expenditure without first obtaining a health resource certificate.

C. A health facility or health care provider shall not acquire through rental, lease or comparable arrangement or through donation all or a part of a capital project that would have required review if the acquisition had been by purchase

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unless the project is granted a health resource certificate.

D. A health facility or health care provider shall not engage in component purchasing in order to avoid the provisions of this section.

E. The commission shall grant a health resource certificate for a major capital expenditure or a capital project undertaken pursuant to Subsection C of this section only when the project is determined to be needed.

F. This section does not apply to:

(1) the purchase, construction or renovation of office space for health care providers;

(2) expenditures incurred solely in preparation for a capital project, including architectural design, surveys, plans, working drawings and specifications and other related activities, but those expenditures shall be included in the cost of a project for the purpose of determining whether a health resource certificate is required;

(3) acquisition of an existing health facility, equipment or practice of a health care provider that does not result in a new service being provided or in increased bed capacity;

(4) major capital expenditures for nonclinical services when the nonclinical services are the primary purpose of the expenditure; and

(5) the replacement of equipment with equipment

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that has the same function and that does not result in the offering of new services.

G. No later than January 1, 2012, the commission shall report to the appropriate committees of the legislature on the capital needs of health facilities, including facilities of state and local governments, with a focus on underserved geographic areas with substantially below-average health facilities and investment per capita as compared to the state average. The report shall also describe geographic areas where the distance to health facilities imposes a barrier to care. The report shall include a section on health care transportation needs, including capital, personnel and training needs. The report shall make recommendations for legislation to amend the Health Security Act that the commission determines necessary and appropriate.

Section 34. ACTUARIAL REVIEW--AUDITS.--

A. The commission shall provide for an annual independent actuarial review of the health security plan and any funds of the commission or the plan.

B. The commission shall provide by rule requirements for independent financial audits of health care providers and health facilities.

C. The commission, through its staff or by contract, shall perform announced and unannounced audits, including financial, operational, management and electronic data

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processing audits of health care providers and health facilities. Audit findings shall be reported directly to the commission. The state auditor may be asked by the commission to review preliminary findings or to consult with audit staff before the findings are reported to the commission.

D. Actuarial reviews, financial audits and internal audits are public documents after they have been released by the commission, provided that the reports protect private and confidential information of a patient or provider. Copies of reviews, audits and other reports shall be transmitted to the governor, the legislature and appropriate interim committees of the legislature as well as made available via the internet.

Section 35. STANDARD CLAIM FORMS FOR INSURANCE PAYMENT.--The commission shall adopt standard claim forms and electronic formats that shall be used by all health care providers and health facilities that seek payment through the health security plan or from private persons, including private insurance companies, for health care services rendered in the state. Each claim form or electronic format may indicate whether a person is eligible for federal or other insurance programs for payment. To the extent practicable, the commission shall require the use of existing, nationally accepted standardized forms, formats and systems.

Section 36. COMPUTERIZED SYSTEM.--The commission shall require that all participating health care providers and health

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facilities participate in the health security plan's computer network that provides for electronic transfer of payments to health care providers and health facilities; transmittal of reports, including patient data and other statistical reports; billing data, with specificity as to procedures or services provided to individual patients; and any other information required or requested by the commission. To the extent practicable, the commission shall require the use of existing, nationally accepted standardized forms, formats and systems.

Section 37. REPORTS REQUIRED--CONFIDENTIAL INFORMATION.--

A. The commission, through the state health information system, shall require reports by all health care providers and health facilities of information needed to allow the commission to evaluate the health security plan, cost-containment measures, utilization review, health facility operating budgets, health care provider fees and any other information the commission deems necessary to carry out its duties pursuant to the Health Security Act.

B. The commission shall establish uniform reporting requirements for health care providers and health facilities.

C. Information confidential pursuant to other provisions of law shall be confidential pursuant to the Health Security Act. Within the constraints of confidentiality, reports of the commission are public documents.

Section 38. CONSUMER, PROVIDER AND HEALTH FACILITY

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ASSISTANCE PROGRAM.--

A. The commission shall establish a consumer, health care provider and health facility assistance program to take complaints and to provide timely and knowledgeable assistance to:

(1) eligible persons and applicants about their rights and responsibilities and the coverages provided in accordance with the Health Security Act; and

(2) health care providers and health facilities about the status of claims, payments and other pertinent information relevant to the claims payment process.

B. The commission shall establish a toll-free telephone line for the consumer, health care provider and health facility assistance program and shall have persons available throughout the state to assist beneficiaries, applicants, health care providers and health facilities in person.

Section 39. REIMBURSEMENT FOR OUT-OF-STATE SERVICES--HEALTH SECURITY PLAN'S RIGHT TO SUBROGATION AND PAYMENT FROM OTHER INSURANCE PLANS.--

A. A beneficiary may obtain health care services covered by the health security plan out of state; provided, however, that the services shall be paid at the same rate that would apply if the services were received in New Mexico. Higher charges for those services shall not be paid by the health security plan unless the commission negotiates a reciprocity or

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other agreement with the other state or with the out-of-state health care provider or health facility.

B. The health security plan shall make reasonable efforts to ascertain any legal liability of third parties who are or may be liable to pay all or part of the health care services costs of injury, disease or disability of a beneficiary.

C. When the health security plan makes payments on behalf of a beneficiary, the health security plan is subrogated to any right of the beneficiary against a third party for recovery of amounts paid by the health security plan.

D. By operation of law, an assignment to the health security plan of the rights of a beneficiary:

(1) is conclusively presumed to be made of:

(a) a payment for health care services from any person, firm or corporation, including an insurance carrier; and

(b) a monetary recovery for damages for bodily injury, whether by judgment, contract for compromise or settlement;

(2) shall be effective to the extent of the amount of payments by the health security plan; and

(3) shall be effective as to the rights of any other beneficiaries whose rights can legally be assigned by the beneficiary.

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Section 40. PRIVATE HEALTH INSURANCE COVERAGE LIMITED.--

A. After the date the health security plan is operating, no person shall provide private health insurance to a beneficiary for health care that is covered by the health security plan except for retiree health insurance plans that do not enter into contracts with the health security plan. A beneficiary may purchase supplemental benefits.

B. Nothing in this section affects insurance coverage pursuant to the federal Employee Retirement Income Security Act of 1974 unless the state obtains a congressional exemption or a waiver from the federal government. Health coverage plans that are covered by the provisions of that act may elect to participate in the health security plan.

Section 41. HEALTH SECURITY PLAN FUND CREATED--FEDERAL HEALTH INSURANCE PROGRAM WAIVERS--REIMBURSEMENT TO HEALTH SECURITY PLAN FROM FEDERAL AND OTHER HEALTH INSURANCE PROGRAMS.--

A. The "health security plan fund" is created in the state treasury. All revenues received pursuant to the Health Security Act shall be deposited in the fund.

B. The commission shall provide for the collection of premiums from eligible beneficiaries, employers, state and federal agencies and other entities, which money when combined with other money appropriated to the fund shall be sufficient to provide the required health care services and to pay the

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expenses of the commission and its administrative functions. All premiums and other money appropriated to the fund shall be credited to the fund.

C. The fund shall be maintained in actuarially sound condition as evidenced by the annual written certification of a qualified independent actuary contracted by the commission.

D. The commission shall:

(1) in conjunction with the human services department, apply to the United States department of health and human services for all waivers of requirements under health care programs established pursuant to the federal Social Security Act that are necessary to enable the state to deposit federal payments for services covered by the health security plan into the health security plan fund and to be the supplemental payer of benefits for persons receiving medicare benefits;

(2) except for those programs designated in Subsection B of Section 21 of the Health Security Act, identify other federal programs that provide federal funds for payment of health care services to individuals and apply for any waivers or enter into any agreements that are necessary to enable the state to deposit federal payments for health care services covered by the health security plan into the health security plan fund; provided, however, agreements negotiated with the federal Indian health service shall not impair treaty obligations of the United States government and other agreements negotiated shall not

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impair portability or other aspects of the health care coverage;

(3) seek an amendment to the federal Employee Retirement Income Security Act of 1974 to exempt New Mexico from the provisions of that act that relate to health care services or health insurance, or the commission shall apply to the appropriate federal agency for waivers of any requirements of that act if congress provides for waivers to enable the commission to extend coverage through the Health Security Act to as many New Mexicans as possible; provided, however, that the amendment or waiver requested shall not impair portability or other aspects of the health care coverage; and

(4) work with the counties to determine the expenditure of funds generated pursuant to the Indigent Hospital and County Health Care Act and the Statewide Health Care Act.

E. The commission shall seek payment to the health security plan from medicaid, medicare or any other federal or other insurance program for any reimbursable payment provided under the plan.

F. The commission shall seek to maximize federal contributions and payments for health care services provided in New Mexico and shall ensure that the contributions of the federal government for health care services in New Mexico will not decrease in relation to other states as a result of any waivers, exemptions or agreements.

G. The commission shall maintain sufficient reserves

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in the fund to provide for catastrophic and unforeseen expenditures.

Section 42. VOLUNTARY PURCHASE OF OTHER INSURANCE.--Nothing in the Health Security Act shall be construed to prohibit the voluntary purchase of insurance coverage for health care services not covered by the health security plan or for individuals not eligible for coverage under the health security plan.

Section 43. INSURANCE RATES--SUPERINTENDENT OF INSURANCE DUTIES.--

A. The superintendent of insurance shall work closely with the legislative finance committee pursuant to Section 44 of the Health Security Act to identify premium costs associated with health care coverage in workers' compensation and automobile medical coverage. The superintendent of insurance shall develop an estimate of expected reduction in those costs based upon assumptions of health care services coverage in the health security plan, and shall report the findings to the legislative finance committee to determine the financing of the health security plan.

B. The superintendent of insurance shall ensure that workers' compensation and automobile insurance premiums on insurance policies written in New Mexico reflect a lower rate to account for the medical payment component to be assumed by the health security plan.

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Section 44. FINANCING THE HEALTH SECURITY PLAN.--

A. The legislative finance committee shall determine financing options for the health security plan. In making its determinations, the committee shall be guided by the following requirements and assumptions:

(1) health care services to be included and for which costs are to be projected in determining the financing options shall be no less than the health care coverage afforded state employees; and

(2) options may set minimum and maximum levels of a beneficiary's income-based premium payments, sliding scale premium payments and medicare credits and employer contributions, and an employer may cover all or part of an employee's premium provided that a collective bargaining agreement is not violated.

B. The legislative finance committee shall prepare a report of its determinations with the specific options and recommendations no later than December 15, 2009. The report shall be submitted for consideration for legislative implementation to the second session of the forty-ninth legislature.

Section 45. TEMPORARY PROVISION--TRANSITION PERIOD ARRANGEMENTS--PUBLICLY FUNDED HEALTH CARE SERVICE PLANS.--A person who, on the date benefits are available under the Health Security Act's health security plan, receives health care

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benefits under private contract or collective bargaining agreement entered into prior to July 1, 2012 shall continue to receive those benefits until the contract or agreement expires or unless the contract or agreement is renegotiated to provide participation in the health security plan.

Section 46. TEMPORARY PROVISION.--

A. If the forty-ninth legislature approves implementation and financing of the health security plan, the health security plan shall be operational by July 1, 2012.

B. If the forty-ninth legislature fails to implement the recommendations of the legislative finance committee or otherwise fails to determine and approve financing of the health security plan, then the health security plan shall not become effective.

Section 47. APPROPRIATION.--Five hundred thousand dollars ($500,000) is appropriated from the general fund to the legislative finance committee for expenditure in fiscal year 2010 to determine the financing options of the health security plan, contingent upon enactment of the Health Security Act during the first session of the forty-ninth legislature. Any unexpended or unencumbered balance remaining at the end of fiscal year 2010 shall revert to the general fund.

Section 48. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

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