

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 208 AND SENATE BILL 499

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING AND ENACTING SECTIONS OF
THE NEW MEXICO INSURANCE CODE TO PROVIDE NEW STANDARDS IN
REVIEW OF FILINGS OF HEALTH INSURANCE RATES; PROVIDING FOR
ADMINISTRATIVE HEARINGS AND APPEAL TO THE SUPREME COURT OF
DETERMINATIONS IN HEALTH INSURANCE AND HEALTH CARE PLAN RATE
MATTERS; PROVIDING FOR RULEMAKING BY THE SUPERINTENDENT OF
INSURANCE; PROVIDING FOR POOLING OF CLOSED BLOCKS OF BUSINESS.

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

SECTION 1. Section 59A-4-15 NMSA 1978 (being Laws 1984,
Chapter 127, Section 59, as amended) is amended to read:

"59A-4-15. HEARINGS--IN GENERAL.--

A. The superintendent may hold a hearing, without
request by others, for any purpose within the scope of the
Insurance Code.

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1 B. The superintendent shall hold a hearing:
2 (1) if required by any other provision of the
3 Insurance Code; or

4 (2) upon written request for a hearing by a
5 person aggrieved by any act, threatened act or failure of the
6 superintendent to act or by any report, rule, regulation or
7 order of the superintendent, other than an order for the
8 holding of a hearing or order on hearing or pursuant to such an
9 order on a hearing of which such person had notice.

10 C. The request for a hearing shall briefly state
11 the respects in which the applicant is so aggrieved, the relief
12 to be sought and the grounds to be relied upon as basis for
13 relief.

14 D. If the superintendent finds that the request is
15 made in good faith, that the applicant would be so aggrieved if
16 the stated grounds are established and that such grounds
17 otherwise justify the hearing, the superintendent shall
18 commence the hearing within [~~ninety~~] thirty days after filing
19 of the request, unless postponed by mutual consent. No
20 postponement shall be later than ninety days after the filing
21 of the request.

22 E. Pending the hearing and decision [~~thereon~~], the
23 superintendent may suspend or postpone the effective date of
24 the action as to which the hearing is requested. If upon
25 request the superintendent refuses to grant [~~such~~] the

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1 suspension or postponement, the person requesting the hearing
 2 may apply no later than twenty days from the superintendent's
 3 refusal to the district court of Santa Fe county for a stay of
 4 the superintendent's action or proposed action pending the
 5 hearing and the superintendent's order [~~thereon~~].

6 F. Except as otherwise expressly provided, this
 7 section does not apply to hearings relative to matters arising
 8 under Chapter 59A, Article 17 NMSA 1978.

9 G. The superintendent may appoint a hearing officer
 10 to preside over hearings on reconsideration of rate filings.
 11 The hearing officer shall provide the superintendent with a
 12 recommended decision on the matter assigned to the hearing
 13 officer, including findings of fact and conclusions of law."

14 SECTION 2. Section 59A-18-12 NMSA 1978 (being Laws 1984,
 15 Chapter 127, Section 342, as amended) is amended to read:

16 "59A-18-12. FILING OF FORMS AND CLASSIFICATIONS--REVIEW
 17 OF EFFECT UPON INSURED.--

18 A. An insurance policy, health care plan or annuity
 19 contract shall not be delivered or issued for delivery in this
 20 state, nor shall an assumption certificate, endorsement, rider
 21 or application that becomes a part of a policy or health care
 22 plan be used, until a copy of the form and the classification
 23 of risks pertaining to the policy [~~have~~] or health care plan
 24 has been filed with the superintendent. Except for a filing
 25 for health insurance or health care plan rates, a filing shall

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1 be made at least sixty days before its proposed effective date.
2 A filing made pursuant to this section shall not become
3 effective nor shall it be used until approved by the
4 superintendent pursuant to Section 59A-18-14 NMSA 1978, at
5 which time it may be used. A filing related to health
6 insurance or health care plan or rates shall be subject to the
7 provisions of Section 5 of this 2011 act. A filing for any
8 kind of insurance other than life insurance, health care plans
9 or health insurance, as defined in the Insurance Rate
10 Regulation Law, shall be deemed to meet the requirements of
11 Chapter 59A, Article 18 NMSA 1978 to become effective unless
12 disapproved pursuant to Section 59A-18-14 NMSA 1978 by the
13 superintendent before the expiration of the waiting period or
14 an extension of the waiting period; provided, that:

15 (1) this subsection shall not apply as to
16 policies, contracts, endorsements or riders of unique and
17 special character not for general use or offering but designed
18 and used solely as to a particular insured or risk;

19 (2) if the superintendent has exempted a
20 person or a class of persons or a market segment from a part or
21 all of the provisions of the Insurance Rate Regulation Law
22 pursuant to Subsection C of Section 59A-17-2 NMSA 1978, the
23 superintendent also may exempt by rule that person, class of
24 persons or market segment from a part or all of the provisions
25 of this subsection;

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1 (3) an insurer subject to the Insurance Rate
2 Regulation Law may authorize an advisory organization to file
3 policy forms, endorsements and other contract language and
4 related attachment rules on its behalf. Reference filings
5 shall be made prior to their use or by other methods the
6 superintendent may allow by rule; and

7 (4) the superintendent may, by rule, exempt
8 various lines and kinds of commercial insurance, as defined in
9 the Insurance Rate Regulation Law, from some or all of the
10 requirements of this subsection.

11 B. A workers' compensation insurance policy
12 covering a risk arising from the employment of a worker
13 performing work for an employer in New Mexico when that
14 employer is not domiciled in New Mexico shall not be issued or
15 become effective, nor shall any endorsement or rider covering
16 such a risk be issued or become effective, until a copy of the
17 form and the classification of risks pertaining thereto have
18 been filed with the superintendent.

19 C. An insured, a beneficiary or, in the public
20 interest of the state, the attorney general, may in writing
21 request the insurer to review the manner in which its filing
22 has been applied as to insurance or health care plan afforded
23 the insured, the beneficiary, or the attorney general. If the
24 insurer fails to make a review and grant appropriate relief
25 within thirty days after the request is received, the insured,

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1 the beneficiary or the attorney general may file a written
2 complaint and request for a hearing with the superintendent
3 stating grounds relied upon. If the complaint charges a
4 violation of the Insurance Code and the superintendent finds
5 that the complaint was made in good faith and that the insured,
6 the beneficiary or the attorney general would be aggrieved if
7 the violation is proved, the superintendent shall hold a
8 hearing, with notice to the insured, the beneficiary or the
9 attorney general and insurer stating the grounds of complaint.
10 If upon the hearing the superintendent finds the complaint
11 justified, the superintendent shall order the insurer to
12 correct the matter complained of within a reasonable time
13 specified but not less than twenty days after a copy of the
14 order was mailed to or served upon the insurer.

15 D. All filings submitted pursuant to this section
16 shall be filed electronically. The superintendent may
17 designate an entity to receive the electronic filings submitted
18 pursuant to this section."

19 **SECTION 3.** Section 59A-18-13 NMSA 1978 (being Laws 1984,
20 Chapter 127, Section 343, as amended) is amended to read:

21 "59A-18-13. APPROVAL OR DISAPPROVAL OF HEALTH INSURANCE
22 FORMS.--

23 A. With policy, endorsement, rider and application
24 forms and classification of risks filed by the insurer with the
25 superintendent under Section 59A-18-12 NMSA 1978 as to health

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1 insurance and health care plans, the insurer shall also file
2 with the superintendent its [~~premium~~] rates applicable to such
3 health insurance forms. An insurer shall not use any [~~such~~]
4 form [~~or premium~~] that has not been approved by the
5 superintendent or that is not in effect in accordance with
6 Section 59A-18-14 NMSA 1978.

7 [~~B. An increase in a health insurance premium shall~~
8 ~~not be effective without sixty days' written notice to the~~
9 ~~policyholder.~~

10 ~~G.]~~ B. All filings submitted pursuant to this
11 section shall be filed electronically. The superintendent may
12 designate an entity to receive the electronic filings submitted
13 pursuant to this section."

14 **SECTION 4.** Section 59A-18-14 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 344, as amended) is amended to read:

16 "59A-18-14. GROUNDS, PROCEDURE FOR DISAPPROVAL.--

17 A. The superintendent shall review any filing,
18 except any filing by a health insurance issuer for a change in
19 rate, made pursuant to Section 59A-18-12 or 59A-18-13 NMSA 1978
20 within sixty days of the filing date. The superintendent shall
21 approve any form [~~or rate~~] if [~~he~~] the superintendent finds
22 that it complies with the Insurance Code and shall disapprove
23 any form, classification of risks or rate only on [~~any~~] one or
24 more of the following grounds:

25 (1) if the form is in any respect in violation

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1 of or does not comply with the Insurance Code;

2 (2) if the form contains, or incorporates by
3 reference where such incorporation is otherwise permissible,
4 any inconsistent, ambiguous or misleading clauses or exceptions
5 and conditions [~~which~~] that deceptively affect the risk
6 purported to be assumed in the general coverage of the
7 contract, or [~~which encourages~~] that encourage
8 misrepresentation of the policy or its benefits;

9 (3) if the benefits offered are unreasonably
10 restricted in relation to the premium charged;

11 (4) if the form has [~~any~~] a title, heading or
12 other indication of its provisions [~~which~~] that is misleading
13 or if the form is printed in such type or manner of
14 reproduction as to be difficult to read; or

15 (5) if purchase of the form is being solicited
16 by advertising, communication or dissemination of information
17 [~~which~~] that is deceptive or misleading.

18 B. If the superintendent disapproves any [~~such~~]
19 form during the sixty-day review period, [~~he~~] the
20 superintendent shall give the insurer written notice of the
21 disapproval, stating the grounds [~~therefor~~] for the
22 disapproval.

23 C. After expiration of the sixty-day review period
24 referred to in Subsection A of this section [~~59A-18-13 NMSA~~
25 ~~1978~~] or at any time after having approved a form, the

1 superintendent may, after a hearing thereon, disapprove a form
2 or withdraw a previous approval on any of the grounds stated in
3 Subsection A of this section. The superintendent's order
4 issued on such hearing shall state the grounds for disapproval
5 or withdrawal of previous approval and the date, not less than
6 twenty days after the date of the order, when disapproval or
7 withdrawal of approval shall become effective.

8 D. Any filing for a rate by a health insurance
9 issuer shall be reviewed pursuant to the provisions of Section
10 6 of this 2011 act."

11 SECTION 5. A new section of Chapter 59A, Article 18 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] HEALTH INSURANCE--HEALTH CARE PLAN RATES
14 FILING REQUIREMENTS.--

15 A. All health insurance or health care plan rates
16 filed by an insurer with the superintendent pursuant to Section
17 59A-18-12 NMSA 1978 shall include all related forms.

18 B. An insurer shall not use a rate without prior
19 approval of the superintendent pursuant to Section 6 of this
20 2011 act and compliance with the provisions of that act.

21 C. Upon making a filing pursuant to Subsection A of
22 this section, an insurer shall provide written notice to
23 policyholders and beneficiaries potentially affected by the
24 insurer's filing. The language of the notice shall meet the
25 minimum language simplification standards in the Policy

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1 Language Simplification Law. The insurer shall provide, at a
2 minimum, the following in its notice:

- 3 (1) a summary of the rates, including any
4 percentage changes in the rates;
5 (2) a summary of all related form changes;
6 (3) an explanation of form and rate changes;

7 and

8 (4) the policyholder or beneficiary rights
9 under the Insurance Code, including the right to comment on the
10 filing for the thirty days following the posting on the
11 division's web site as required by Subsection D of this
12 section.

13 D. Within twelve days of the filing, the
14 superintendent shall make available on the division's web site
15 in language that shall meet the minimum language simplification
16 standards in the Policy Language Simplification Law the
17 following information provided by the insurer that relates to
18 each block of business included in the filing:

- 19 (1) the information required by Subsection C
20 of this section;
21 (2) the proposed rates;
22 (3) a brief description of how the revised
23 rates were determined, including the general description and
24 source of each assumption used;
25 (4) the expected medical loss ratio and, for

1 blocks of business in existence for at least three years, the
2 medical loss ratio for the three years preceding the date of
3 filing, accompanied by supporting information as to how the
4 blocks of business will meet the requirements for medical loss
5 ratio in state and federal law;

6 (5) if medical costs, including utilization
7 and compensation rates, are alleged to justify a rate increase,
8 the filing shall identify in the aggregate the types of
9 expenditures in those categories that support the premium rate
10 increase in the geographic area covered;

11 (6) for blocks of business in existence for at
12 least three years, premium revenues, claims history, losses and
13 reserves for the three years preceding the date of filing,
14 accompanied by supporting documentation; and

15 (7) whether the insurer has ceased to actively
16 offer or sell to new applicants a block of business for which
17 it seeks a rate increase.

18 E. Regarding an insurer's overall insurance
19 operations in the state for the three years preceding the date
20 of filing, the superintendent shall make available on the
21 division's web site, at a minimum, the following information
22 that the insurer provides:

23 (1) a list detailing which blocks of business
24 are open and which are closed to new enrollment;

25 (2) reserves and surpluses for all product

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1 lines sold in the state and a reasonable estimate of the
2 expected reserves and surpluses; and

3 (3) changes in total medical and
4 administrative costs over the previous three years.

5 F. The superintendent shall post a link on the
6 division's web site to the most recent annual financial
7 statement and actuarial memorandum that the insurer has filed
8 with the division.

9 G. Notwithstanding any other provision of this
10 section, upon request by an insurer, the superintendent may
11 exempt from disclosure any part of the filing that the
12 superintendent determines to contain proprietary information
13 and that would, if disclosed, harm competition. Pending the
14 superintendent's determination under this subsection, the
15 superintendent shall not disclose the part of a filing that is
16 the subject of an insurer's request.

17 H. On the date that the superintendent posts a
18 filing pursuant to Subsection D of this section, the
19 superintendent shall open a thirty-day public comment period
20 for policyholders and the general public, during which the
21 policyholders and the general public may make comments online
22 or in writing. The superintendent shall post on the division's
23 web site in a manner easily accessible to the public all
24 comments made during the thirty-day public comment period.

25 I. All filings submitted pursuant to this section

1 shall be filed electronically. The superintendent may
2 designate an entity to receive the electronic filings submitted
3 pursuant to this section."

4 SECTION 6. A new section of Chapter 59A, Article 18 NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] HEALTH INSURANCE FILINGS--GROUNDS AND
7 PROCEDURE FOR APPROVAL OR DISAPPROVAL.--

8 A. The superintendent shall issue a final order
9 within sixty days of the filing date for health insurance
10 filings made on rates. The superintendent shall consider any
11 public comment made pursuant to Subsection H of Section 5 of
12 this 2011 act. The superintendent shall issue findings and
13 shall approve any rates on the following grounds:

14 (1) the proposed rate is in compliance with
15 federal law and the Insurance Code;

16 (2) the proposed rate does not contain, or
17 incorporate by reference, any inconsistent, ambiguous or
18 misleading clause, exception or condition that deceptively
19 affects the risk purported to be assumed in the general
20 coverage of the contract, or that encourages misrepresentation
21 of the policy or its benefits;

22 (3) the proposed rate is actuarially sound and
23 is supported by the actuarial memorandum submitted;

24 (4) the proposed rate is reasonable, not
25 excessive or inadequate and not unfairly discriminatory; and

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1 (5) the proposed rate is based upon
2 administrative expenses that are permitted by federal and state
3 law.

4 B. In order to determine whether the proposed rates
5 are reasonable, actuarially sound and based on reasonable
6 administrative expenses, the superintendent shall consider, at
7 a minimum:

8 (1) the financial position of the insurer's
9 insurance operations in the state, including surplus and
10 reserves as reported in the latest three years' financial
11 statements filed by the insurer;

12 (2) information provided to the superintendent
13 for calculation of the amount of the insurer's direct services
14 reimbursement pursuant to Section 59A-22-50, 59A-23C-10,
15 59A-46-51 or 59A-47-46 NMSA 1978;

16 (3) any anticipated change in the number of
17 enrollees if the proposed rate is approved;

18 (4) changes to covered benefits or health
19 benefit plan design;

20 (5) the insurer's compliance with all federal
21 and state requirements for pooling risk and for participation
22 in risk adjustment programs in effect under federal and state
23 law; and

24 (6) the reliability and accuracy of the
25 information provided in order to assure a meaningful review.

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1 C. No final order shall be issued until after the
2 close of the public comment period pursuant to Subsection H of
3 Section 5 of this 2011 act.

4 D. In rate filings for which the superintendent
5 holds a hearing on reconsideration pursuant to Section 59A-4-15
6 NMSA 1978, the superintendent shall issue a final order within
7 sixty days of the hearing.

8 E. A final order of the superintendent under this
9 section may be appealed to the commission pursuant to the
10 provisions of Section 7 of this 2011 act within twenty days."

11 SECTION 7. A new section of Chapter 59A, Article 18 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] REVIEW OF HEALTH INSURANCE OR PLAN RATES--
14 APPEAL--COMMISSION--HEARING--HEARING EXAMINER--FINDINGS.--

15 A. A hearing conducted pursuant to an appeal to the
16 public regulation commission filed following a final order of
17 the superintendent under Section 6 of this 2011 act shall be a
18 hearing conducted:

19 (1) within forty days after the date a request
20 for appeal was filed;

21 (2) in accordance with Sections 8-8-16 through
22 8-8-18 NMSA 1978;

23 (3) by a hearing examiner that the commission
24 appoints pursuant to Section 8-8-14 NMSA 1978; and

25 (4) as a hearing on the record as a whole.

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1 B. On appeal, the commission shall set aside the
2 superintendent's final order and remand the matter to the
3 superintendent only if:

4 (1) after evaluation of the record of evidence
5 as a whole, it finds that the superintendent's decision was not
6 based on substantial evidence as to whether the proposed rates
7 are reasonable, actuarially sound and based on reasonable
8 administrative expenses;

9 (2) it finds that the superintendent's
10 decision was arbitrary, capricious or an abuse of discretion;
11 or

12 (3) it finds that the superintendent's
13 decision is otherwise not in accordance with law.

14 C. The commission shall render a decision within
15 ninety days of a hearing held pursuant to this section."

16 **SECTION 8.** A new section of Chapter 59A, Article 18 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] REVIEW OF HEALTH INSURANCE OR PLAN RATES--
19 APPEAL TO SUPREME COURT FROM COMMISSION.--

20 A. In a matter arising from an order of the
21 commission on appeal pursuant to Section 7 of this 2011 act, an
22 aggrieved party may appeal to the supreme court.

23 B. The supreme court shall consider the
24 commission's order on appeal and reverse the commission's order
25 on appeal only if the supreme court determines:

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1 (1) after evaluation of the record of evidence
2 as a whole, that the superintendent's decision was not based on
3 substantial evidence as to whether the proposed rates are
4 reasonable, actuarially sound and based on reasonable
5 administrative expenses;

6 (2) that the commission's decision was
7 arbitrary, capricious or an abuse of discretion; or

8 (3) that the commission's decision on appeal
9 is otherwise not in accordance with law."

10 SECTION 9. A new section of Chapter 59A, Article 18 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] POOLING OF CLOSED BLOCKS OF BUSINESS.--For
13 the purpose of determining the rate of any policy within a
14 closed block of business, the superintendent may require an
15 insurer to pool the experience of a closed block of business
16 with all appropriate blocks of business that are not closed in
17 accordance with Section 59A-18-13.1 NMSA 1978. An insurer
18 shall not apply a rate penalty or surcharge beyond that which
19 reflects the experience of a pool combined in accordance with
20 this section."

21 SECTION 10. A new section of Chapter 59A, Article 18 NMSA
22 1978 is enacted to read:

23 "[NEW MATERIAL] CLOSED BLOCK OF BUSINESS.--As used in
24 Chapter 59A, Article 18 NMSA 1978, "closed block of business"
25 means a policy or group of policies that division rules

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1 identify as closed because an insurer no longer markets or
2 sells the policy or group of policies or because the policy's
3 or group of policies' enrollment has decreased."

4 SECTION 11. A new section of Chapter 59A, Article 18 NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] "BLOCK OF BUSINESS" DEFINED.--As used in
7 Chapter 59A, Article 18 NMSA 1978, "block of business" means a
8 particular policy or pool that provides health insurance, that
9 an insurer issues to one or more individuals and that includes
10 distinct benefits, services and terms."

11 SECTION 12. A new section of Chapter 59A, Article 18 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] HEALTH INSURANCE OR HEALTH PLAN FORM AND
14 RATE FILINGS--SUPERINTENDENT--RULEMAKING--COMPLIANCE WITH
15 FEDERAL LAW.--The superintendent shall adopt rules:

16 A. to define terms used regarding forms, rates,
17 reviews and blocks of business that an insurer or health care
18 plan submits in filing matters;

19 B. to govern any additional filing requirements the
20 superintendent deems appropriate;

21 C. to provide notice of hearings and the grounds on
22 which the hearings have been requested;

23 D. to meet criteria for review in accordance with
24 federal law; and

25 E. that the superintendent deems appropriate to

1 carry out the provisions of Chapter 59A, Article 18 NMSA 1978."

2 SECTION 13. Section 59A-4-20 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 67, as amended) is amended to read:

4 "59A-4-20. APPEAL TO COURT.--

5 A. Except in matters arising from Sections 6 and 7
6 of this 2011 act, a party may appeal from an order of the
7 superintendent made after an informal hearing or an
8 administrative hearing. The appeal shall be taken to the
9 district court pursuant to the provisions of Section 39-3-1.1
10 NMSA 1978.

11 B. This section shall not apply as to matters
12 arising pursuant to Chapter 59A, Article 17 NMSA 1978."

13 SECTION 14. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is January 1, 2012.

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