F I S C A L I M P A C T R E P O R T

SPONSOR Munoz **ORIGINAL DATE** 02/10/11 **LAST UPDATED** 02/16/11 **HB**

SHORT TITLE Enact "New Mexico Health Insurance Exchange Act" **SB** 370/aSPAC

ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	**FY12**		
N/A	N/A	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

SB370 relates to HB33/HCPAC, New Mexico Health Insurance Exchange Act; SB38, New Mexico Health Insurance Exchange Act; HB257, LFC Perform FIR on Health Care Reform Designs

SOURCES OF INFORMATION
LFC Files

Responses Received From
Human Services Department (HSD)
Department of Health (DOH)
Health Policy Commission (HPC)
Public Regulation Commission (PRC)
Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill as amended by Senate Public Affairs Committee

The Senate Public Affairs Committee amendments to Senate Bill 370 (SB370) clarify responsibility for actions; include additional language concerning what does and does not qualify as a conflict of interest; add language requiring that Native American representation include non-reservation residents; add reporting requirements and due dates; specify the involvement of the Human Services Department or any other state agency receiving relevant funding; and requires the Division of Insurance's cooperation in information sharing.

Section by section Summary of Senate Public Affairs Committee Amendments to Senate Bill 370:

Section 1 – No change. The short title of this bill is the "New Mexico Health Insurance

Exchange Act" (Act).

Section 2 – Changes definition of "qualified health plan" to require that the board make the determination, instead of the superintendent of insurance. (page 4, lines 6-7)

Section 3 - Changes the conflict of interest section to include managerial and full-time employees of the Exchange and recognizes the affiliation and presumed absence of conflict of board members appointed from the NMHIA and the NMMIP. (page 7, line 6)

Section 4 – typographical correction made - Contractors performing certain functions of the Exchange may not be carriers. (page 12, line 4; page 12, line 7)

Section 5 – No change – Plan of Operation.

Section 6 – Added reporting and recommendation requirements, by January 1, 2012, on how to avoid adverse selection, whether to define "small employer" up to 100 FTEs any time prior to the federal deadline of January 1, 2016, and a transition plan for that change. (page 14, between lines 24 and 25); and by July 1, 2016, on whether to continue limiting qualified employer status to small employers, and if qualified employers include large employers, whether to combine the large employer risk pool with the small group market. Recommendations must also include whether to combine the individual, small group and large group markets into a single risk pool, and whether to enter into an Exchange with other states or share resources and responsibilities with other states to enhance the affordability of operating the Exchange. (page 15, between lines 4 and 5).

Sections 7 through 8 - No changes.

Section 9 adds a requirement that HSD or any other state agency with federal funds for Exchange planning and implementation contract with the board to provide the funds to the Exchange. (page 16, between lines 15 and 16)

Section 10. No change.

A new Section 11 is added, requiring the Division of Insurance to cooperate with the Exchange to share information and assist in the implementation of the functions of the Exchange. (page 16, between lines 23 and 24), with renumbering of subsequent sections.

Synopsis of Original Bill

Senate Bill 370 provides for a health insurance Exchange (Exchange) in New Mexico in accordance with the federal Patient Protection and Affordable Care Act (PPACA) (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152). In addition to following the requirements of the PPACA, the bill makes explicit the need for cooperation between the Exchange and the Medical Assistance Division of the New Mexico Human Services Department (HSD), the Superintendent of Insurance (superintendent), the New Mexico Health Insurance Alliance (NMHIA) and the New Mexico Medical Insurance Pool (NMMIP) in areas of plan certification, dispute resolution, funding, and transitioning from one type of health care coverage to another. In addition, the bill provides for Native American involvement in the decision-making process of the Exchange through creation of a Native American advisory committee. Board makeup, "as a whole," must assure representation of the state's Native American population, and ethnic, cultural and geographic

diversity.

FISCAL IMPLICATIONS

It is unclear if the provisions of SB370 will repeal the statutes governing the NM Medical Insurance Pool and the Health Insurance Alliance. Of particular concern is the premium tax credit and how SB370 will treat continued assessing of the premium tax credit for insurers. The disposition of this assessment and tax credit could have potential general fund impact.

The federal Patient Protection and Affordable Care Act of 2010 authorizes State Planning and Establishment Grants to help states establish Health Insurance Exchanges, and requires that State Exchanges to be self-sustaining. States are required to demonstrate they are capable of running an Exchange by January1, 2013.

On July 29, 2010, the Department of Health and Human Services (DHHS) issued a grant solicitation publicizing the availability of the first round of funding for the State Planning and Establishment Grants for Exchanges. These grants were up to $1 million for each State and the District of Columbia. These grants are intended to give states the resources to conduct the research and planning needed to build a better health insurance marketplace and determine how their Exchanges will be operated and governed.

The State of New Mexico has been awarded the $1,000,000 Planning and Establishment Grant and work is already underway to conduct the necessary market research and planning. The Grant is being used to:

- Develop a fiscal, actuarial and population tool based on the current environment that can provide ongoing information as adjustments are made to reflect policy decisions related to the Exchange(s).
- Assess current information technology (IT) systems and determine any Exchange IT needs;
- Gather data regarding New Mexico's current health insurance market;
- Gather input from off-reservation leaders, providers and consumers to guide the Exchange planning process.

It is anticipated that in Spring 2011 an additional grant solicitation will be released by the U.S. DHHS for Exchange implementation funds. The amount and exact timing of this grant is unknown at this time.

IT Impact. A health insurance exchange system to support transaction tasks would be required to meet a variety of service requirements to enable processing of enrollments. This includes determining eligibility, calculating quotes, processing enrollments and payments, and communicating enrollments to carriers. It also includes exchange administration of the activities to include website, benefit, premium collection, carrier payment, and enrollment administration. This would function across multiple computer systems at state, federal, and carrier levels.

Currently, HSD outsources certain IT aspects of Medicaid operations. These include approximately 60% health claims payment functions and the balance for member tracking, website, eligibility, etc. The current costs related to this system are split 55% for Information Technology and 45% for Operations. Based on these splits at $12 million per year, or $1 million

per month, the cost of the exchange could be estimated at $400,000 per month, or $4.8 million per year for an outsourced contractor.
The cost for a new Medicaid system averages $58 million dollars (based on a recent Medical Assistance Review of a sampling of states). Consistent with the above portions, a start up Health Insurance Exchange system may cost approximately $24 million (40% of the build costs of a $58 million Medicaid type system).

Other states costs range from $600,000 for a limited system in Utah to $25 million in Massachusetts. Overall, it is reported that states will spend $595 million for health exchanges which nets out to an average $12 million per state.

In summary, while estimates are that it may cost $12 million per state for health insurance exchanges, based on a summary comparison of similar operations in HSD, it may cost approximately $24 million to set up an exchange with an estimated $400,000 per month operating cost. These costs will also be incurred by the exchange and not have an impact on HSD.

It should be noted that if an Exchange is run by a not-for-profit quasi-governmental agency, the operating costs would be incurred by that entity.

SIGNIFICANT ISSUES

Senate Bill 370 establishes a nonprofit public corporation to govern and operate the Exchange. It should be noted that quasi-governmental public corporations are not subject to the Legislature's appropriating and oversight authority.

Section by Section Analysis of SB370:

Section 1 provides the short title is "New Mexico Health Insurance Exchange Act" (Act).

Section 2 contains definitions specific to the Act.

Section 3 creates a Board of Directors (Board) for the Exchange. This Board will consist of eleven (11) voting members, including the secretary of human services serving as an ex-officio voting member, while the superintendent of insurance would serve as a nonvoting ex-officio member. The Bill specifically states that board members and Exchange employees have a fiduciary duty to the Exchange. While serving on the board, members must not affiliate with or derive any income as an employee, contractor or consultant from a health care provider, the health care services finance sector, the health care services coverage sector, or as a provider. The board is subject to and shall comply with the provisions of the Governmental Conduct Act, the Inspection of Public Records Act, the Financial Disclosure Act, and the Open Meetings Act. The Bill further states that the board is not subject to the Procurement Code or the Personnel Act.

Board members must have demonstrated knowledge or experience in at least one (1) of the following areas: purchasing coverage in the individual market; purchasing coverage in the small employer market; health care finance; health care economics; health care policy; or the enrollment of underserved residents in health care coverage.

The Governor will appoint three (3) members from the New Mexico health insurance alliance

(NMHIA) board who represent qualified employers. If NMHIA ceases to exist, then Governor-appointees must be from officers, general partners or proprietors of qualified employers. The superintendent shall appoint three (3) members from the New Mexico medical insurance pool (NMMIP) board, who shall represent individual consumers in the health insurance market. If the NMMIP ceases to exist, then superintendent-appointees must be chosen from individuals who are not professionally affiliated with a carrier, and who have purchased coverage in the Exchange.

Finally, the New Mexico legislative council shall appoint four members. No further requirements, other than the general requirements stated above, are provided to describe these appointed members.

The bill requires that the first meeting occur within 60 days of the effective date of the Act; it contains further provisions on terms, voting, vacancies, removals, and other board details. The board must create and consider recommendations from at least eight (8) different advisory stakeholder committees; carriers, health care consumers, health care providers, health care practitioners, brokers, qualified employer representatives, advocates for low-income or underserved residents, and Native Americans.

Section 4 of the Bill provides for Board powers, including many ways in which to seek and receive funding. The board may also create ad hoc advisory councils in addition to the required committees, above, and may seek assistance, enter into contracts and information-sharing agreements, with a wide range of other entities to accomplish the Exchange duties. The board is prohibited from entering into a contractor with a carrier.

The Board may be sued and the Board has the authority to sue.

Section 5 requires that the board create a Plan of Operation, which is subject to the approval of the superintendent. The Plan of Operation must at least include procedures for:

- how to determine the qualified plans that will be offered through the Exchange;
- handling and accounting for funds;
- scheduling meetings;
- dissemination of information to the public;
- consumer complaint and grievances;
- alternative dispute resolution between the exchange and contractors or carriers; and
- conflict of interest policies and procedures.

Section 6 contains reporting and transparency duties; including quarterly reports up to January 1, 2014 to the legislature, the governor and the superintendent, with at least annual reports thereafter. By July 1, 2013 the board must report at least to the legislative finance committee (LFC) on mechanisms for funding and a plan for achieving self-sufficiency, including use of assessments or fees. Other transparency requirements include audits, publication of administrative costs, and cooperation with other state agencies.

Section 7 requires the superintendent to adopt rules to implement the provisions of this Act.

Section 8 exempts the Exchange from payment of all fees and taxes levied by New Mexico or its political subdivisions.

Section 9 designates the Exchange as the entity to receive any federal funds allocated, appropriated or granted to the state for purposes of funding the planning, implementation or operation of a health insurance exchange.

Section 10 requires the medical assistance division of the human services department to cooperate with the Exchange to share information and facilitate enrollment transitions between state programs and the Exchange.

Section 11 amends the Tort Claims Act to include members of the board of directors and staff of the Exchange as public employees.

Section 12 authorizes resources from the NMHIA and the NMMIP be to establish the Exchange, through cooperative agreements, and NMHIA and the NMMIP may fund staff and other operating expenses through their respective existing funding mechanisms, provided that if federal funds are available, they shall be used to reimburse the NMHIA and the NMMIP for such expenditures. The boards of the Exchange, the NMHIA and the NMMIP are also required to meet to develop a portability plan and report to the First Session of the Fifty-First (51st) Legislature on recommendations for transition of functions currently held by the NMHIA and the NMMIP to the Exchange, and for future expansion of health care coverage options for state residents.

Section 13 declares an emergency and requires that this act take effect immediately.

ADMINISTRATIVE IMPLICATIONS

It should be noted that if an Exchange is run by a not-for-profit quasi-governmental agency, the operating costs would be incurred by that entity.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB370 relates to HB 257 which would require the Legislative Finance Committee (LFC) to perform a fiscal impact analysis (FIR) and report to the Legislature by November 1, 2011 on the comparative costs and coverage opportunities under three health benefits Exchange options, and requires that any agency that received federal funding for the planning or establishment of a health benefits Exchange pursuant to the federal PPACA (Patient Protection and Affordable Care Act) to provide an unspecified amount of funding to assist the LFC in carrying out the provisions as contained in this bill.

Though not exactly identical, SB 370 relates to, and is similar to, HCAPAC Substitute for HB 33 and SB 38. Significantly, SB 370 differs from HCAPAC Substitute for HB 33 and SB 38, by requiring appointments to the board from the boards of the NMHIA and the NMMIP, should those entities be in existence at the time of the board formation. It also specifically states that the Exchange is the entity to receive any federal funds allocated, appropriated or granted to the state for purposes of funding the planning, implementation or operation of a health insurance exchange.

Other notable differences include:

- SB 38 would create a board with only nine voting members instead of 11 members, found

in HCAPAC Substitute for HB 33 and SB 370. Only SB 38 includes the superintendent of insurance as a voting member. Unlike SB 38, HCAPAC Substitute for HB 33 and SB 370 do not specifically require Native American board membership.

- HCAPAC Substitute for HB 33 and SB 38 requires the superintendent to promulgate rules to avoid adverse selection against the Exchange; this provision is not included in SB 370.

SB370/aSPAC also relates to the following:

- HB245 (Health Insurance Purchasing Cooperative),
- HB246 (Amend Health Insurance Alliance Act),
- HB257 (LFC Perform FIR on Health Care Reform Designs),
- HB323 ("Interstate Health Care Freedom Compact"),
- SB5 (Health Security Act),
- SB89 (Private Health Insurance Purchasing Co-Op Act),
- SB90 (Health Insurance Access for Large Employers),
- SB208 (Health Insurance Rate Increase Review),
- SB227 (Benchmark Usual & Customary Rates),
- SB386 (LFC to Conduct FIRs on Health Care Designs), and
- SJR5 (State Health Care System, CA).

TECHNICAL ISSUES

Senate Bill 38 establishes a nonprofit public corporation to govern and operate the Exchange. It should be noted that quasi-governmental public corporations are not subject to the Legislature's appropriating and oversight authority. A fund in the New Mexico treasury could be created to collect funds assessed by the Exchange and these funds could then be appropriated by the New Mexico Legislature.

OTHER SUBSTANTIVE ISSUES

HSD indicates various legal challenges have been brought against the PPACA. Final judicial resolution of these challenges is likely to take years.

The New Mexico Center on Law and Poverty indicates the federal government estimates that nearly 250,000 New Mexicans and over 20,000 small businesses could qualify for tax credits to purchase health insurance through an Exchange when it is fully operational in 2014.

By federal law, the federal government is committed to paying the full costs for states to establish Exchanges, and will continue to pay these costs until January 1, 2015. Thus, there is no fiscal impact on New Mexico for developing an Exchange. New Mexico also stands to gain significant financial benefits by establishing an Exchange because the State will become eligible for 90% federal matching funds to develop its Medicaid computer eligibility systems. One important condition for receiving this enhanced match is that the Medicaid system must effectively coordinate enrollment with an Exchange. When federal funding for the Exchange ceases in January 1, 2015, the Exchange may continue to be self-sufficient by assessing charges or user fees from participating health insurers, and obtaining local or philanthropic grants.

The sooner that New Mexico establishes its Exchange, the more likely the state will meet these

benchmarks and receive sufficient funding to fully develop its Exchange by 2014. In fact, HHS has developed a worksheet of example milestones that states should attempt to meet each year; it suggests that states should draft enabling legislation and develop a governance structure for the Exchange in the year 2011.[1] If New Mexico adopts legislation this year, the State would be on track to achieve the milestones for federal funding.

Federal funding will pay the full costs of developing a computer system for the Exchange and will provide 90% matching funds to Medicaid programs to develop systems that interact with the Exchange.

In summary:

1. Federal law mandates the federal government to pay the full costs for states to establish Exchanges.
2. Federal funding is already available for planning and will be increased according to state performance.
3. Federal funding will pay the full costs of developing a computer system for the Exchange and will provide 90% matching funds to Medicaid programs to develop systems that interact with the Exchange.
4. The Exchange may assess fees and apply for grants to become self-sufficient after January 1, 2015.
5. By developing models for the Exchange, the federal government can reduce costs and afford the full costs to fund state initiatives to establish Exchanges.
6. New Mexico must be capable of meeting benchmarks for progress to receive federal grant awards and avoid the federal government taking over operations of an Exchange for the State.
7. Delaying legislation may interfere with the effectiveness of the Exchange in carrying out its duties.
8. Medicaid IT system will receive significantly enhanced federal funding if it meets conditions to coordinate with an Exchange. Establishing the Exchange will be necessary for meeting this requirement.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If New Mexico does not demonstrate, in early 2013, the it will be ready to run an Exchange by January 1, 2014, the federal government will implement and run an Exchange in the state.

RAE/bym:mew

[1] Department of Health and Human Services, *Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges*, at p. 6 (Jan. 20, 2011) (hereinafter "HHS Cooperative Agreement"), http://apply07.grants.gov/apply/opportunities/instructions/oppIE-HBE-11-004-cfda93.525-cidIE-HBE-11-004-012241-instructions.pdf.