

1 SENATE BILL 278

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO HEALTH INSURANCE; ENACTING THE NEW MEXICO HEALTH
12 INSURANCE EXCHANGE ACT; CREATING THE NEW MEXICO HEALTH
13 INSURANCE EXCHANGE; PROVIDING FOR THE APPOINTMENT, POWERS AND
14 DUTIES OF A BOARD OF DIRECTORS FOR THE EXCHANGE; PROVIDING THE
15 SUPERINTENDENT OF INSURANCE OF THE PUBLIC REGULATION COMMISSION
16 WITH RULEMAKING POWERS RELATING TO THE EXCHANGE; PROVIDING FOR
17 POWERS AND DUTIES OF THE EXCHANGE; PROVIDING FOR TRANSPARENCY
18 OF EXCHANGE FUNDING AND OPERATIONS; AMENDING THE TORT CLAIMS
19 ACT TO ADD EXCHANGE STAFF AND BOARD MEMBERS UNDER PUBLIC
20 EMPLOYEE PROTECTIONS; AMENDING AND ENACTING SECTIONS OF THE
21 NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION
22 OF LAW IN LAWS 2009; MAKING AN APPROPRIATION.

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

25 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1

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1 through 9 of this act may be cited as the "New Mexico Health
2 Insurance Exchange Act".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
4 New Mexico Health Insurance Exchange Act:

5 A. "board" means the board of directors of the
6 exchange;

7 B. "carrier" means a person that is subject to
8 licensure by the superintendent or subject to the provisions of
9 the New Mexico Insurance Code and that provides one or more
10 health benefits or insurance plans in the state;

11 C. "dependent" means "dependent" as defined in
12 Section 152 of the federal Internal Revenue Code of 1986;

13 D. "employee" means an individual hired by another
14 individual or entity for a wage or fixed payment in exchange
15 for personal services and who does not provide the services as
16 part of an independent business;

17 E. "exchange" means the New Mexico health insurance
18 exchange;

19 F. "health care provider" means an individual who
20 is licensed, certified or otherwise authorized or permitted by
21 law pursuant to Chapter 61 NMSA 1978 to provide health care in
22 the ordinary course of business or practice of a profession;

23 G. "member" means a person appointed to the board
24 of directors of the exchange;

25 H. "Native American" means:

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1 (1) an individual who is a member of any
2 federally recognized Indian nation, tribe or pueblo; or

3 (2) an individual who has been deemed eligible
4 for services and programs provided to Native Americans by the
5 United States public health service or the bureau of Indian
6 affairs;

7 I. "qualified employer" means a small employer that
8 elects to make its full-time employees, and, at the option of
9 the employer, some or all of its part-time employees, eligible
10 for one or more qualified health plans offered in the small
11 group market through the exchange; provided that the employer:

12 (1) has its principal place of business in the
13 state and elects to provide coverage through the exchange to
14 all of its eligible employees, wherever employed; or

15 (2) elects to provide coverage through the
16 exchange to all of its eligible employees who are principally
17 employed in the state;

18 J. "qualified health plan" means health insurance
19 coverage or a group health plan that the board has determined
20 as meeting the requirements in federal law for coverage to be
21 offered through the exchange;

22 K. "qualified individual" means an individual who:

23 (1) seeks to enroll or who participates in a
24 qualified health plan offered through the exchange and who
25 meets one of the following residency requirements:

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1 (a) the individual is a resident of the
2 state and is, and continues to be, legally domiciled and
3 physically residing on a full-time basis in a place of
4 habitation in the state that remains the person's principal
5 residence and from which the person is absent only for a
6 temporary or transitory purpose;

7 (b) the individual is a full-time
8 student attending an educational institution outside of the
9 state but, prior to attending the educational institution, met
10 the requirements of Subparagraph (a) of this paragraph;

11 (c) the individual is a full-time
12 student attending an institution of higher education located in
13 the state;

14 (d) the individual, whether a resident
15 or not, is a dependent; or

16 (e) the individual, whether a resident
17 or not, is an employee of a qualified employer;

18 (2) is not incarcerated at the time of
19 enrollment, other than incarceration pending the disposition of
20 charges; and

21 (3) is a citizen or national of the
22 United States or an alien lawfully present in the United
23 States, or who is reasonably expected to be a citizen or
24 national of the United States or an alien lawfully present in
25 the United States during the entire period for which enrollment

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1 in the exchange is sought;

2 L. "small employer" means a person that is actively
3 engaged in business that employed an average of at least one
4 but not more than fifty full-time-equivalent employees on
5 business days during the preceding calendar year and that
6 employs at least one employee in the first day of the plan
7 year; provided that:

8 (1) the small employer elects to make all
9 full-time employees eligible for one or more qualified health
10 plans offered in the small group market through the exchange;

11 (2) persons that are affiliated persons or
12 that are eligible to file a combined tax return for purposes of
13 state income taxation shall be considered one small employer;

14 (3) in the case of an employer that was not in
15 existence throughout a preceding calendar year, the
16 determination of whether the employer is a small employer shall
17 be based on the average number of employees that the employer
18 is reasonably expected to employ on working days in the current
19 calendar year; and

20 (4) the person is not a self-insured entity;
21 and

22 M. "superintendent" means the superintendent of
23 insurance of the insurance division of the public regulation
24 commission or the division's successor in interest.

25 SECTION 3. [NEW MATERIAL] NEW MEXICO HEALTH INSURANCE

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1 EXCHANGE CREATED--BOARD CREATED.--

2 A. The "New Mexico health insurance exchange" is
3 created as a nonprofit public corporation to provide qualified
4 individuals and qualified employers with increased access to
5 health insurance in the state and shall be governed by a board
6 of directors constituted pursuant to the provisions of the New
7 Mexico Health Insurance Exchange Act. The exchange is a
8 governmental entity for purposes of the Tort Claims Act, and
9 neither the exchange nor the board shall be considered a
10 governmental entity for any other purpose.

11 B. The "board of directors of the New Mexico health
12 insurance exchange" is created. The board consists of twelve
13 members: ten voting members and two nonvoting, ex-officio
14 members. One nonvoting ex-officio member is the secretary of
15 human services or the secretary's designee. One nonvoting
16 ex-officio member is the superintendent or the superintendent's
17 designee.

18 C. A member shall not be appointed if that member's
19 participation in the decisions of the board could benefit that
20 member's own financial interests or the financial interests of
21 an entity that member represents. A board member who develops
22 a conflict of interest shall resign or be removed from the
23 board.

24 D. Each board member and employee of the exchange
25 shall have a fiduciary duty to the exchange.

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1 E. The board shall be composed, as a whole, to
2 assure representation of the state's Native American
3 population, ethnic diversity, cultural diversity and geographic
4 diversity. Board members shall have demonstrated knowledge or
5 experience in at least one of the following areas:

- 6 (1) purchasing coverage in the individual
7 market;
8 (2) purchasing coverage in the small employer
9 market;
10 (3) health care finance;
11 (4) health care economics;
12 (5) health care policy;
13 (6) the enrollment of underserved residents in
14 health care coverage; or
15 (7) administering private or public health
16 care insurance.

17 F. Each of the ten appointed voting members shall
18 be a resident of the state. Selection of the ten appointed
19 voting members shall be as follows:

- 20 (1) the governor shall appoint two members as
21 follows:
22 (a) one member shall be an officer,
23 general partner or proprietor of a qualified employer; and
24 (b) one member shall be at large;
25 (2) the president pro tempore of the senate

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1 shall appoint two members as follows:

2 (a) one member shall be a representative
3 of consumers in the individual insurance market; and

4 (b) one member shall be at large;

5 (3) the senate minority floor leader shall
6 appoint two members as follows:

7 (a) one member shall be an employee of a
8 small business; and

9 (b) one member shall be at large;

10 (4) the speaker of the house of
11 representatives shall appoint two members as follows:

12 (a) one member shall be a consumer in
13 the individual insurance market; and

14 (b) one member shall be at large; and

15 (5) the minority floor leader of the house of
16 representatives shall appoint two members as follows:

17 (a) one member shall be an employee of a
18 small business; and

19 (b) one member shall be at large.

20 G. Voting members shall have initial terms chosen
21 by lot as follows: five shall serve four-year terms and five
22 shall serve three-year terms. Thereafter, members shall serve
23 three-year terms.

24 H. A member shall serve until the member's
25 successor is appointed by the respective appointing authority.

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1 I. The exchange and the board shall operate
2 consistent with provisions of the Governmental Conduct Act, the
3 Inspection of Public Records Act, the Financial Disclosure Act
4 and the Open Meetings Act and shall not be subject to the
5 Procurement Code or the Personnel Act.

6 J. A majority of members constitutes a quorum. The
7 board may allow members to attend meetings by telephone or
8 other electronic media. A decision by the board requires a
9 quorum and a majority of members in attendance voting in favor
10 of the decision.

11 K. Within sixty days of the effective date of the
12 New Mexico Health Insurance Exchange Act, the superintendent
13 shall convene the organizational meeting of the board, during
14 which the board shall elect a chair and vice chair from among
15 its members. Thereafter, every three years the board shall
16 elect in an open meeting a chair and vice chair from among its
17 members. The chair and vice chair shall serve no more than two
18 consecutive three-year terms as chair and vice chair.

19 L. A vacancy on the board shall be filled by
20 appointment by the original appointing authority for the
21 remainder of the member's unexpired term.

22 M. A member may be removed from the board by a
23 majority vote of the members. The board shall set standards
24 for attendance and may remove a member for conflict of interest
25 pursuant to Subsection C of this section, lack of attendance,

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1 neglect of duty or malfeasance in office. A member shall not
2 be removed without proceedings consisting of at least one
3 ten-day notice of hearing and an opportunity to be heard.
4 Removal proceedings shall be before the board and in accordance
5 with procedures adopted by the board.

6 N. Appointed members may receive per diem and
7 mileage in accordance with the Per Diem and Mileage Act,
8 subject to the travel policy set by the board. Appointed
9 members shall receive no other compensation, perquisite or
10 allowance.

11 O. The board shall meet at the call of the chair
12 and no less often than once per calendar quarter. There shall
13 be at least seven days' notice given to members prior to any
14 meeting. There shall be sufficient notice provided to the
15 public prior to meetings, consistent with the Open Meetings
16 Act.

17 P. The board shall create, make appointments to and
18 duly consider recommendations of an advisory committee or
19 committees made up of stakeholders, including carriers, health
20 care consumers, health care providers, health care
21 practitioners, brokers, qualified employer representatives and
22 advocates for low-income or underserved residents.

23 Q. The board shall create an advisory committee
24 made up of Native Americans, some of whom live on a reservation
25 and some of whom do not live on a reservation, to guide the

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1 implementation of the Native-American-specific provisions of
2 the federal Patient Protection and Affordable Care Act of 2010
3 and the federal Indian Health Care Improvement Act.

4 SECTION 4. [NEW MATERIAL] BOARD OF DIRECTORS--

5 POWERS.--The board may:

6 A. seek and receive grant funding from federal,
7 state or local governments or private philanthropic
8 organizations to defray the costs of operating the exchange;

9 B. generate funding, including but not limited to
10 charging assessments or fees, to support its operations in
11 accordance with provisions of the New Mexico Health Insurance
12 Exchange Act;

13 C. create ad hoc advisory councils;

14 D. request assistance from other boards,
15 commissions, departments, agencies and organizations as
16 necessary to provide appropriate expertise to accomplish the
17 exchange's duties;

18 E. enter into contracts with persons or other
19 organizations as necessary or proper to carry out the
20 provisions and purposes of the New Mexico Health Insurance
21 Exchange Act, including the authority to contract or employ
22 staff for the performance of administrative, legal, actuarial,
23 accounting and other functions, provided that no contractor
24 shall be a carrier;

25 F. enter into contracts with similar exchanges of

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1 other states for the joint performance of common administrative
2 functions;

3 G. enter into information-sharing agreements with
4 federal and state agencies and other state exchanges to carry
5 out its responsibilities; provided that these agreements
6 include adequate protections of the confidentiality of the
7 information to be shared and comply with all state and federal
8 laws and regulations;

9 H. sue or be sued or otherwise take any necessary
10 or proper legal action in the execution of its duties and
11 powers;

12 I. appoint board committees, which may include
13 non-board members, to provide technical assistance in the
14 operation of the exchange and any other function within the
15 authority of the exchange; and

16 J. conduct periodic audits to assure the general
17 accuracy of the financial data submitted to the exchange.

18 SECTION 5. [NEW MATERIAL] PLAN OF OPERATION.--

19 A. The board shall create a plan of operation
20 containing provisions to ensure the fair, reasonable and
21 equitable administration of the exchange.

22 B. The board shall provide for public notice and
23 hearing prior to approving the plan of operation.

24 C. The plan of operation shall:

25 (1) establish procedures to implement the

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1 provisions of the New Mexico Health Insurance Exchange Act
2 consistent with state law, approved waiver of federal law, the
3 federal Patient Protection and Affordable Care Act of 2010 and
4 other federal law, including:

5 (a) determination of which qualified
6 health plans will be offered through the exchange;

7 (b) eligibility determination for the
8 exchange and related public programs;

9 (c) enrollment of qualified individuals
10 and qualified employers; and

11 (d) administration of assessments and
12 fees;

13 (2) establish procedures for handling and
14 accounting for the exchange's assets and money;

15 (3) establish regular times and meeting places
16 for meetings of the board;

17 (4) establish a program to publicize the
18 existence of the exchange, the qualified health plans, the
19 eligibility requirements and procedures for enrollment in a
20 qualified health plan, medicaid or other public health coverage
21 program and to maintain public awareness of the exchange;

22 (5) establish consumer complaint and grievance
23 procedures for issues raised with the exchange;

24 (6) establish procedures for alternative
25 dispute resolution between the exchange and contractors or

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1 carriers;

2 (7) establish conflict of interest policies
3 and procedures; and

4 (8) contain additional provisions necessary
5 and proper for the execution of the powers and duties of the
6 board.

7 SECTION 6. [NEW MATERIAL] BOARD DUTIES--REPORTING.--The
8 board shall:

9 A. consult with representatives of New Mexico
10 Indian nations, tribes and pueblos and develop and implement
11 policies that:

12 (1) promote effective communication and
13 collaboration between the exchange and Indian nations, tribes
14 and pueblos, including communicating and collaborating on those
15 nations', tribes' and pueblos' plans for creating or
16 participating in health insurance exchanges; and

17 (2) promote cultural competency in providing
18 effective services to Native Americans;

19 B. designate a Native American liaison, who shall
20 assist the executive director of the exchange in developing and
21 ensuring implementation of communication and collaboration
22 between the exchange and Native Americans in the state. The
23 tribal liaison shall serve as a contact person between the
24 exchange and New Mexico Indian nations, tribes and pueblos and
25 shall ensure that training is provided to the staff of the

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1 exchange;

2 C. between July 1, 2012 and January 1, 2014 provide
3 quarterly reports to the legislature, the governor and the
4 superintendent on the implementation of the exchange and report
5 annually and upon request thereafter;

6 D. by July 1, 2013:

7 (1) report findings and submit recommendations
8 to the legislative health and human services committee, the
9 legislative finance committee and the superintendent on how to
10 avoid adverse selection and how to assess and improve the
11 quality and affordability of qualified health plans that will
12 be offered on the exchange; and

13 (2) provide legislative recommendations to the
14 legislative health and human services committee and the
15 legislative finance committee on whether to change the number
16 of full-time-equivalent employees in the definition of "small
17 employer" from fifty to one hundred before January 1, 2016.
18 The board shall recommend a transition plan for the exchange
19 and carriers to follow when changing the definition of "small
20 employer", whether the change occurs prior to or on January 1,
21 2016;

22 E. by July 1, 2013 provide recommendations to the
23 legislative finance committee and other appropriate interim
24 legislative committees on mechanisms for funding the operations
25 of the exchange and a plan for achieving self-sufficiency,

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1 including the use of any assessments or fees;

2 F. by July 1, 2016, provide legislative
3 recommendations to the legislative health and human services
4 committee and the legislative finance committee on whether to:

5 (1) continue limiting qualified employer
6 status to small employers and, if qualified employer status is
7 extended to large employers, whether to combine the large
8 employer risk pool with the small group market;

9 (2) combine the individual, small group and
10 the large employer markets into a single risk pool; and

11 (3) enter into an exchange with other states
12 or share resources or responsibilities to enhance the
13 affordability of operating the exchange;

14 G. keep an accurate accounting of all of the
15 activities, receipts and expenditures of the exchange and
16 submit this information annually to the superintendent and as
17 required by federal law to the federal secretary of health and
18 human services;

19 H. beginning with the first year of operation in
20 which access to health insurance coverage is provided, obtain
21 an annual audit of the exchange's operations from an
22 independent certified public accountant;

23 I. cooperate with the medical assistance division
24 of the human services department to share information and
25 facilitate transitions in enrollment between the exchange and

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1 medicaid, the state children's health insurance program or any
2 other state public health coverage program;

3 J. publish the administrative costs of the exchange
4 as required by state or federal law; and

5 K. discharge those duties required to implement and
6 operate the exchange in accordance with the provisions of the
7 New Mexico Health Insurance Exchange Act consistent with state
8 and federal law.

9 SECTION 7. [NEW MATERIAL] RULES--DISPUTE RESOLUTION.--

10 A. The superintendent shall promulgate rules
11 necessary to implement and carry out the provisions of the New
12 Mexico Health Insurance Exchange Act.

13 B. The superintendent shall promulgate rules for
14 resolving disputes arising from the operation of the exchange
15 in accordance with the provisions of the New Mexico Health
16 Insurance Exchange Act, including with respect to:

17 (1) the eligibility of an individual, employer
18 or carrier to participate in the exchange;

19 (2) receiving an exemption from any state or
20 federal individual requirement to retain minimum essential
21 coverage; and

22 (3) the exchange's collection and transmission
23 to the applicable qualified health plans any applications for
24 enrollment and all premium payments or contributions made by or
25 on behalf of qualified individuals or qualified employers

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1 participating in the exchange.

2 SECTION 8. [NEW MATERIAL] EXEMPTION.--The exchange is
3 exempt from payment of all fees and all taxes levied by this
4 state or any of its political subdivisions.

5 SECTION 9. [NEW MATERIAL] FUNDING.--

6 A. To fund the planning, implementation and
7 operation of the exchange, the board shall contract with the
8 human services department or any other state agency that
9 receives federal funds allocated, appropriated or granted to
10 the state for purposes of funding the planning, implementation
11 or operation of a health insurance exchange.

12 B. The human services department or any other state
13 agency that receives federal funds allocated, appropriated or
14 granted to the state for purposes of funding the planning,
15 implementation or operation of a health insurance exchange
16 shall contract with the board to provide those funds to the
17 exchange in consideration for its planning, implementation or
18 operation.

19 SECTION 10. [NEW MATERIAL] COOPERATION WITH THE NEW
20 MEXICO HEALTH INSURANCE EXCHANGE.--The medical assistance
21 division of the human services department, or its successor in
22 interest, shall cooperate with the New Mexico health insurance
23 exchange to share information and facilitate transitions in
24 enrollment between the exchange and medicaid, the state
25 children's health insurance program or any other state public

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1 health coverage program.

2 SECTION 11. A new section of the New Mexico Insurance
3 Code is enacted to read:

4 "[NEW MATERIAL] INSURANCE DIVISION--COOPERATION WITH NEW
5 MEXICO HEALTH INSURANCE EXCHANGE.--The insurance division, or
6 its successor in interest, shall cooperate with the New Mexico
7 health insurance exchange to share information and assist in
8 the implementation of the functions of the exchange."

9 SECTION 12. Section 41-4-3 NMSA 1978 (being Laws 1976,
10 Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,
11 Section 2 and by Laws 2009, Chapter 129, Section 2 and also by
12 Laws 2009, Chapter 249, Section 2) is amended to read:

13 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

14 A. "board" means the risk management advisory
15 board;

16 B. "governmental entity" means the state or any
17 local public body as defined in Subsections C and H of this
18 section;

19 C. "local public body" means all political
20 subdivisions of the state and their agencies, instrumentalities
21 and institutions and all water and natural gas associations
22 organized pursuant to Chapter 3, Article 28 NMSA 1978;

23 D. "law enforcement officer" means a full-time
24 salaried public employee of a governmental entity, or a
25 certified part-time salaried police officer employed by a

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1 governmental entity, whose principal duties under law are to
2 hold in custody any person accused of a criminal offense, to
3 maintain public order or to make arrests for crimes, or members
4 of the national guard when called to active duty by the
5 governor;

6 E. "maintenance" does not include:

7 (1) conduct involved in the issuance of a
8 permit, driver's license or other official authorization to use
9 the roads or highways of the state in a particular manner; or

10 (2) an activity or event relating to a public
11 building or public housing project that was not foreseeable;

12 F. "public employee" means an officer, employee or
13 servant of a governmental entity, excluding independent
14 contractors except for individuals defined in Paragraphs (7),
15 (8), (10), (14) and (17) of this subsection, or of a
16 corporation organized pursuant to the Educational Assistance
17 Act, the Small Business Investment Act or the Mortgage Finance
18 Authority Act or a licensed health care provider, who has no
19 medical liability insurance, providing voluntary services as
20 defined in Paragraph (16) of this subsection and including:

21 (1) elected or appointed officials;

22 (2) law enforcement officers;

23 (3) persons acting on behalf or in service of
24 a governmental entity in any official capacity, whether with or
25 without compensation;

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1 (4) licensed foster parents providing care for
2 children in the custody of the human services department,
3 corrections department or department of health, but not
4 including foster parents certified by a licensed child
5 placement agency;

6 (5) members of state or local selection panels
7 established pursuant to the Adult Community Corrections Act;

8 (6) members of state or local selection panels
9 established pursuant to the Juvenile Community Corrections Act;

10 (7) licensed medical, psychological or dental
11 arts practitioners providing services to the corrections
12 department pursuant to contract;

13 (8) members of the board of directors of the
14 New Mexico medical insurance pool;

15 (9) individuals who are members of medical
16 review boards, committees or panels established by the
17 educational retirement board or the retirement board of the
18 public employees retirement association;

19 (10) licensed medical, psychological or dental
20 arts practitioners providing services to the children, youth
21 and families department pursuant to contract;

22 (11) members of the board of directors of the
23 New Mexico educational assistance foundation;

24 (12) members of the board of directors of the
25 New Mexico student loan guarantee corporation;

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- 1 (13) members of the New Mexico mortgage
- 2 finance authority;
- 3 (14) volunteers, employees and board members
- 4 of court-appointed special advocate programs;
- 5 (15) members of the board of directors of the
- 6 small business investment corporation;
- 7 (16) health care providers licensed in New
- 8 Mexico who render voluntary health care services without
- 9 compensation in accordance with rules promulgated by the
- 10 secretary of health. The rules shall include requirements for
- 11 the types of locations at which the services are rendered, the
- 12 allowed scope of practice and measures to ensure quality of
- 13 care; ~~and~~
- 14 (17) an individual while participating in the
- 15 state's adaptive driving program and only while using a
- 16 special-use state vehicle for evaluation and training purposes
- 17 in that program; and
- 18 (18) the staff and members of the board of
- 19 directors of the New Mexico health insurance exchange;
- 20 G. "scope of duty" means performing any duties that
- 21 a public employee is requested, required or authorized to
- 22 perform by the governmental entity, regardless of the time and
- 23 place of performance; and
- 24 H. "state" or "state agency" means the state of New
- 25 Mexico or any of its branches, agencies, departments, boards,

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1 instrumentalities or institutions."

2 SECTION 13. SEVERABILITY.--If any part or application of
3 this act is held invalid, the remainder or its application to
4 other situations or persons shall not be affected.

5 SECTION 14. APPROPRIATION.--One hundred thousand dollars
6 (\$100,000) is appropriated from the general fund to the board
7 of directors of the New Mexico health insurance exchange for
8 expenditure in fiscal year 2013 to establish and operate a
9 health insurance exchange pursuant to the provisions of the New
10 Mexico Health Insurance Exchange Act. Any unexpended or
11 unencumbered balance remaining at the end of fiscal year 2013
12 shall revert to the general fund.

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