

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 221

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE NEW MEXICO HEALTH
INSURANCE EXCHANGE ACT; CREATING THE NEW MEXICO HEALTH
INSURANCE EXCHANGE; PROVIDING FOR THE APPOINTMENT, POWERS AND
DUTIES OF A BOARD OF DIRECTORS FOR THE EXCHANGE; PROVIDING THE
SUPERINTENDENT OF INSURANCE WITH RULEMAKING POWERS RELATING TO
THE EXCHANGE; ENACTING A TEMPORARY PROVISION TO PROVIDE FOR
TRANSFER OF NEW MEXICO HEALTH INSURANCE ALLIANCE PERSONNEL,
PERSONAL PROPERTY, CONTRACTS AND REFERENCES IN LAW TO THE NEW
MEXICO HEALTH INSURANCE EXCHANGE; PROVIDING FOR THE DELAYED
REPEAL OF THE NEW MEXICO HEALTH INSURANCE ALLIANCE ACT;
AMENDING A SECTION OF THE TORT CLAIMS ACT TO PROVIDE FOR
COVERAGE OF THE EXCHANGE STAFF AND BOARD UNDER THE NEW MEXICO
HEALTH INSURANCE EXCHANGE ACT; AMENDING A SECTION OF THE NEW
MEXICO HEALTH INSURANCE ALLIANCE ACT TO PROVIDE FOR OPERATION
OF THE ALLIANCE BY THE EXCHANGE BOARD OF DIRECTORS; AMENDING,

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1 REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; RECONCILING
2 MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009;
3 DECLARING AN EMERGENCY.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
7 through 10 of this act may be cited as the "New Mexico Health
8 Insurance Exchange Act".

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

11 A. "agent" means a person appointed by a carrier
12 authorized to transact business in this state to act as its
13 representative in any given locality;

14 B. "board" means the board of directors of the
15 exchange;

16 C. "broker" means a person licensed as a broker
17 pursuant to the New Mexico Insurance Code;

18 D. "carrier" means a person that is subject to
19 licensure by the superintendent or subject to the provisions of
20 the New Mexico Insurance Code and that provides one or more
21 health benefits or insurance plans in the state;

22 E. "child" means an individual who is less than
23 twenty-six years of age;

24 F. "dependent" means "dependent" as defined in
25 Section 152 of the federal Internal Revenue Code of 1986;

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1 G. "director" means an individual who serves on the
2 board;

3 H. "employee" means an individual hired by another
4 individual or entity for a wage or fixed payment in exchange
5 for personal services and who does not provide the services as
6 part of an independent business;

7 I. "exchange" means a health insurance exchange
8 entity established pursuant to federal law to provide qualified
9 health plans to qualified individuals and qualified employers
10 on the individual, small group or large group health insurance
11 market, that uses an internet web site through which applicants
12 may obtain standardized comparative information about qualified
13 health plans and that offers enrollment assistance through
14 navigators and a toll-free telephone hotline;

15 J. "health care provider" means an individual who
16 is licensed, certified or otherwise authorized or permitted by
17 law pursuant to Chapter 61 NMSA 1978 to provide health care in
18 the ordinary course of business or practice of a profession;

19 K. "health care services, finance or coverage
20 sector" means a business sector that includes carriers and
21 other health insurance issuers; health maintenance or managed
22 care organizations; nonprofit health plans; self-insured group
23 health plans; trade associations of carriers; producers;
24 persons licensed or otherwise authorized to provide health care
25 in the regular course of business; and health care facilities;

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1 L. "Native American" means:

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

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

9 M. "navigator" means an entity that, in a manner
10 culturally and linguistically appropriate to the state's
11 diverse populations, conducts public education, distributes tax
12 credit and qualified health plan enrollment information,
13 facilitates enrollment in qualified health plans and public
14 health coverage programs or provides referrals to consumer
15 assistance or ombudsman services. "Navigator" does not mean a
16 carrier or a person that receives any consideration, directly
17 or indirectly, from any carrier in connection with the
18 enrollment of a qualified individual in a qualified health plan
19 or any other health coverage; provided that a broker may be a
20 navigator if the broker receives no consideration, directly or
21 indirectly, from any carrier in connection with the enrollment
22 of a qualified individual or qualified employer in a qualified
23 health plan, an approved health plan or any other health
24 coverage;

25 N. "producer" means an agent or broker licensed

1 pursuant to the applicable provisions of the New Mexico
2 Insurance Code;

3 O. "qualified dental plan" means a stand-alone
4 dental plan that includes the essential pediatric dental
5 benefits prescribed pursuant to federal law, or any other
6 dental benefits that the board has determined meets the
7 requirement in federal law for a qualified dental plan to be
8 offered through the exchange;

9 P. "qualified employer" means a small employer that
10 elects to make its full-time employees and, at the option of
11 the employer, some or all of its part-time employees eligible
12 for one or more qualified health plans offered in the small
13 group market through the exchange; provided that the employer
14 elects to provide coverage through the exchange to all of its
15 eligible employees who are principally employed in the state;

16 Q. "qualified health plan" means health insurance
17 coverage or a group health plan that the superintendent has
18 determined as meeting the requirements in federal law for
19 coverage to be offered through the exchange;

20 R. "qualified individual" means an individual who:
21 (1) seeks to enroll or who participates in a
22 qualified health plan offered through the exchange and who
23 meets one of the following residency requirements:

24 (a) the individual is a resident of the
25 state and is, and continues to be, legally domiciled and

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1 physically residing on a full-time basis in a place of
2 habitation in the state that remains the person's principal
3 residence and from which the person is absent only for a
4 temporary or transitory purpose;

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

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

12 (d) the individual, whether a resident
13 or not, is a dependent; or

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

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

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

25 S. "small employer" means a person that is actively

1 engaged in a business that employs at least one employee on the
2 first day of a plan year and that:

3 (1) employs on at least fifty percent of its
4 working days during the preceding calendar year:

5 (a) at least one and not more than fifty
6 full-time employees before January 1, 2016; and

7 (b) at least one and not more than one
8 hundred full-time employees after December 31, 2015;

9 (2) shall be considered to be a small employer
10 in the case of an employer that was not in existence throughout
11 a preceding calendar year if the number of employees that the
12 employer is reasonably expected to employ on working days in
13 the current calendar year is:

14 (a) at least one and not more than fifty
15 full-time employees before January 1, 2016; and

16 (b) at least one and not more than one
17 hundred full-time employees after December 31, 2015;

18 (3) elects to make all full-time employees
19 eligible for one or more qualified health plans offered in the
20 small group market through the exchange;

21 (4) shall be counted as one small employer if
22 the employer constitutes a group of affiliated persons that are
23 eligible to file a combined tax return for the purposes of
24 state income taxation; and

25 (5) is not a self-insured entity; and

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1 T. "superintendent" means the superintendent of
2 insurance.

3 SECTION 3. [NEW MATERIAL] NEW MEXICO HEALTH INSURANCE
4 EXCHANGE CREATED--BOARD CREATED.--

5 A. The "New Mexico health insurance exchange" is
6 created as a nonprofit public corporation to provide qualified
7 individuals and qualified employers with increased access to
8 health insurance in the state and shall be governed by a board
9 of directors constituted pursuant to the provisions of the New
10 Mexico Health Insurance Exchange Act.

11 B. The "board of directors of the New Mexico health
12 insurance exchange" is created. The exchange shall operate
13 subject to the supervision and approval of the board. The
14 board shall be composed of:

15 (1) eleven voting members appointed pursuant
16 to the provisions of Subsection F of this section;

17 (2) the secretary of human services or the
18 secretary's designee, who shall be a voting, ex-officio member;
19 and

20 (3) the superintendent or the superintendent's
21 designee, who shall be a nonvoting ex-officio member, except
22 when the superintendent's vote is necessary to break a tie.

23 C. Managerial and full-time employees of the
24 exchange and appointed directors, while serving on the board,
25 shall not have any affiliation with, any income derived from

1 current or active employment in, a contract with or
2 consultation for the health care services, finance or coverage
3 sectors; provided that the directors' administration and
4 offering of approved health plans in accordance with the
5 directors' duties pursuant to the Health Insurance Alliance Act
6 shall not be considered to violate the provisions of this
7 section.

8 D. The board shall be composed, as a whole, to
9 assure representation of the state's Native American
10 population, ethnic diversity, cultural diversity and geographic
11 diversity. Members shall have demonstrated knowledge or
12 experience in at least one of the following areas:

- 13 (1) purchasing health coverage in the
14 individual market;
- 15 (2) purchasing health coverage in the small
16 employer market;
- 17 (3) health care finance;
- 18 (4) health care economics;
- 19 (5) health care policy;
- 20 (6) the enrollment of underserved residents in
21 health care coverage; or
- 22 (7) administering private or public health
23 care insurance.

24 E. A maximum of one director whom the governor
25 appoints and one director whom the New Mexico legislative

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1 council appoints may be exempt from the qualifications provided
2 in Paragraphs (1) through (7) of Subsection D of this section.

3 F. Eleven members of the board shall be appointed
4 as follows and shall include:

5 (1) six directors, who shall be qualified
6 individuals or members, owners, officers, general partners or
7 proprietors of small employers, one director of which shall
8 represent a nonprofit corporation. These directors shall be
9 appointed as follows:

10 (a) three shall be appointed by the
11 governor, including the member representing a nonprofit
12 corporation;

13 (b) one shall be appointed by the
14 president pro tempore of the senate;

15 (c) one shall be appointed by the
16 speaker of the house of representatives; and

17 (d) one shall be appointed by the New
18 Mexico legislative council;

19 (2) four directors, who shall be employees of
20 small employers. These directors shall be appointed as
21 follows:

22 (a) two shall be appointed by the
23 governor;

24 (b) one shall be appointed by the
25 minority floor leader of the senate; and

1 (c) one shall be appointed by the
2 minority floor leader of the house of representatives; and

3 (3) one director, appointed by the governor,
4 who shall be a consumer advocate.

5 G. The governor shall appoint no more than four
6 directors who belong to the same political party.

7 H. The superintendent shall serve as chair of the
8 board unless the superintendent declines, in which event the
9 superintendent shall appoint the chair.

10 I. The directors appointed by legislators shall be
11 appointed for initial terms of three years or less, staggered
12 so that the term of at least one director expires on June 30 of
13 each year. The directors appointed by the governor shall be
14 appointed for initial terms of three years or less, staggered
15 so that the term of at least one director expires on June 30 of
16 each year. Following the initial terms, directors shall be
17 appointed for terms of three years. A director whose term has
18 expired shall continue to serve until a successor is appointed
19 and qualified.

20 J. Whenever a vacancy on the board occurs, the
21 appointing authority of the position that is vacant shall fill
22 the vacancy by appointing an individual to serve the balance of
23 the unexpired term. The individual appointed to fill a vacancy
24 shall meet the requirements for initial appointment to that
25 position.

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1 K. A director may be removed from the board by a
2 majority vote of two-thirds of the directors. The board shall
3 set standards for attendance and may remove a director for lack
4 of attendance, neglect of duty or malfeasance in office. A
5 director shall not be removed without proceedings consisting of
6 at least one ten-day notice of hearing and an opportunity to be
7 heard. Removal proceedings shall be before the board and in
8 accordance with procedures adopted by the board.

9 L. The exchange, including the board, is a
10 governmental entity for purposes of the Tort Claims Act and
11 shall operate consistently with the provisions of the
12 Governmental Conduct Act, the Inspection of Public Records Act,
13 the Financial Disclosure Act and the Open Meetings Act and
14 shall not be subject to the Personnel Act.

15 M. Appointed members may receive per diem and
16 mileage in accordance with the Per Diem and Mileage Act,
17 subject to the travel policy set by the board. Appointed
18 members shall receive no other compensation, perquisite or
19 allowance.

20 SECTION 4. [NEW MATERIAL] NEW MEXICO HEALTH INSURANCE
21 EXCHANGE--BOARD DUTIES--BOARD POWERS.--

22 A. The board shall:

23 (1) ensure that the exchange:

24 (a) beginning October 1, 2013, or in
25 accordance with a schedule approved or provided by the federal

1 center for consumer information and insurance oversight,
 2 accepts applications from qualified individuals and qualified
 3 employers to purchase qualified health plans on the exchange;

4 (b) beginning October 1, 2013, or in
 5 accordance with a schedule approved or provided by the federal
 6 center for consumer information and insurance oversight, makes
 7 available navigator services for persons applying for medicaid
 8 or to purchase qualified health plans through the exchange; and

9 (c) beginning January 1, 2014, or in
 10 accordance with a schedule approved or provided by the federal
 11 center for consumer information and insurance oversight, offers
 12 qualified health plans for purchase by qualified individuals
 13 and qualified employers;

14 (2) by October 1, 2013, or in accordance with
 15 a schedule approved or provided by the federal center for
 16 consumer information and insurance oversight, in accordance
 17 with rules that the superintendent has promulgated, shall
 18 establish a dispute resolution process for applicants that have
 19 been denied:

- 20 (a) qualified health plan status;
- 21 (b) qualified individual status;
- 22 (c) qualified employer status;
- 23 (d) a premium tax credit subsidy;
- 24 (e) a cost-sharing subsidy for a
 25 qualified health plan; or

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1 (f) exemption from the federal
2 requirement to purchase health insurance;

3 (3) establish at least one walk-in customer
4 service center where persons may apply for any status, credit
5 or exemption listed in Paragraph (2) of this subsection and, if
6 eligible, enroll in qualified health plans or public coverage
7 programs;

8 (4) establish a navigator program;

9 (5) cooperate with the medical assistance
10 division of the human services department to share information
11 and facilitate transitions in enrollment between the exchange
12 and medicaid;

13 (6) between October 1, 2013 and January 1,
14 2015, provide quarterly reports to the legislature, the
15 governor and the superintendent on the implementation of the
16 exchange and report annually and upon request thereafter;

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

23 (8) create an advisory committee made up of
24 Native Americans, some of whom live on a reservation and some
25 of whom do not live on a reservation, to advise the board on

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1 the implementation of the provisions of the New Mexico Health
2 Insurance Exchange Act and to guide the implementation of the
3 Native American-specific provisions of the federal Patient
4 Protection and Affordable Care Act and the federal Indian
5 Health Care Improvement Act;

6 (9) designate a Native American liaison, who
7 shall assist the board in developing and ensuring
8 implementation of communication and collaboration between the
9 exchange and Native Americans in the state. The tribal liaison
10 shall serve as a contact person between the exchange and New
11 Mexico Indian nations, tribes and pueblos and shall ensure that
12 training is provided to the staff of the exchange;

13 (10) be subject to and responsible for
14 examination by the superintendent. No later than March 1 of
15 each year, the board shall submit to the superintendent an
16 audited financial report for the preceding calendar year in a
17 form approved by the superintendent;

18 (11) consider the unique needs of rural New
19 Mexicans as they pertain to access, affordability and choice in
20 purchasing health insurance;

21 (12) consider the affordability and cost in
22 the context of quality care and increased access to purchasing
23 health insurance;

24 (13) select an executive director, who shall
25 be responsible for the operation of the exchange, including the

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1 hiring of staff and such other duties as the board may
2 delegate. The board shall select the executive director based
3 on criteria established by the board that shall include:

4 (a) proven ability to administer health
5 insurance programs; and

6 (b) ability to administer the exchange
7 in a cost-efficient manner;

8 (14) negotiate with carriers to determine
9 which affordable, qualified health plans shall be offered
10 through the exchange in accordance with the New Mexico Health
11 Insurance Exchange Act. The exchange shall offer these
12 qualified health plans to qualified individuals and qualified
13 employers for purchase through the exchange;

14 (15) assign a rating to each qualified health
15 plan offered through the exchange on the basis of relative
16 quality, price and actuarial value in accordance with criteria
17 established by the federal secretary of health and human
18 services in consultation with the superintendent. On the basis
19 of that rating, and if offering the qualified health plan
20 through the exchange is in the interest of the qualified
21 individuals and qualified employers in the state, the exchange
22 shall determine which qualified health plans that have been
23 certified by the superintendent will be offered through the
24 exchange;

25 (16) establish and make available by

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1 electronic means a calculator to determine the actual cost of
2 health coverage for a qualified individual after applying any
3 premium tax credit and cost-sharing reductions for which the
4 qualified individual is eligible;

5 (17) provide language interpretation services;

6 (18) consult with representatives of New
7 Mexico Indian nations, tribes and pueblos and develop and
8 implement policies that:

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

14 (b) promote cultural competency in
15 providing effective services to Native Americans;

16 (19) by January 1, 2015, present findings to
17 the governor, the superintendent, the legislative health and
18 human services committee and the legislative finance committee
19 about whether adverse selection is happening in the exchange
20 and make recommendations on how to minimize adverse selection;

21 (20) by January 1, 2015, report to the
22 legislative health and human services committee, the
23 legislative finance committee and the governor on how to ensure
24 that the plans offered through the exchange are of high quality
25 and value to New Mexicans, with a particular emphasis on

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1 providing health care to low-income New Mexicans; and

2 (21) by January 1, 2015, report findings to
3 the governor, the superintendent, the legislative health and
4 human services committee and the legislative finance committee
5 about whether individuals with incomes below two hundred
6 percent of the federal poverty level are experiencing barriers
7 to enrollment in qualified health plans due to the
8 affordability of qualified health plans, including whether
9 these individuals are disproportionately enrolling in bronze
10 level coverage. The board shall make recommendations
11 regarding:

12 (a) whether the state would benefit from
13 the establishment of a basic health program pursuant to federal
14 law to cover low-income individuals who are not eligible for
15 medicaid; and

16 (b) other potential affordability
17 solutions for this population.

18 B. The board may:

19 (1) seek and receive grant funding from
20 federal, state or local governments or private philanthropic
21 organizations to defray the costs of operating the exchange;

22 (2) create ad hoc advisory councils;

23 (3) request assistance from other boards,
24 commissions, departments, agencies and organizations as
25 necessary to provide appropriate expertise to accomplish the

1 board's duties with respect to the exchange;

2 (4) enter into contracts with persons or other
3 organizations as necessary or proper to carry out the
4 provisions and purposes of the New Mexico Health Insurance
5 Exchange Act, including the authority to contract or employ
6 staff for the performance of administrative, legal, actuarial,
7 accounting and other functions, provided that any contractor
8 shall be subject to the conflict-of-interest provisions set
9 forth in Subsection C of Section 3 of the New Mexico Health
10 Insurance Exchange Act;

11 (5) enter into contracts with similar
12 exchanges of other states for the joint performance of common
13 administrative functions;

14 (6) enter into information-sharing agreements
15 with federal and state agencies and other state exchanges to
16 carry out its responsibilities; provided that these agreements
17 include adequate protections of the confidentiality of the
18 information to be shared and comply with all state and federal
19 laws and regulations;

20 (7) sue or be sued or otherwise take any
21 necessary or proper legal action in the execution of its duties
22 and powers;

23 (8) appoint board committees, which may
24 include non-board members, to provide technical assistance in
25 the operation of the exchange and any other function within the

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1 authority of the exchange;

2 (9) conduct periodic audits to assure the
3 general accuracy of the financial data submitted to the
4 exchange; and

5 (10) charge assessments or user fees to
6 carriers, qualified employers or producers or otherwise
7 generate funding necessary to support exchange operations;
8 provided that assessments shall be limited solely to the
9 reasonable administration costs of the exchange; provided that
10 no assessment or user fee shall be imposed upon a carrier that
11 exclusively offers policies, plans or contracts intended to
12 supplement major medical coverage such as medicare supplement,
13 long-term care, disability income, specified disease,
14 accident-only, hospital indemnity or any other limited-benefit
15 health insurance policy.

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

17 A. Within thirty days of the effective date of the
18 New Mexico Health Insurance Exchange Act, the board shall
19 submit a plan of operation to the superintendent and any
20 amendments to the plan necessary or suitable to assure the
21 fair, reasonable and equitable administration of the exchange.

22 B. The superintendent shall, after notice and
23 hearing, approve the plan of operation if it is determined to
24 assure the fair, reasonable and equitable administration of the
25 exchange. The plan of operation shall become effective upon

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1 written approval of the superintendent consistent with the date
2 on which health insurance coverage through the exchange
3 pursuant to the provisions of the New Mexico Health Insurance
4 Exchange Act is made available. A plan of operation adopted by
5 the superintendent shall continue in force until modified by
6 the superintendent or superseded by a subsequent plan of
7 operation submitted by the board and approved by the
8 superintendent.

9 C. The plan of operation shall:

10 (1) establish procedures for the handling and
11 accounting of assets of the exchange;

12 (2) establish regular times and places for
13 meetings of the board;

14 (3) establish procedures for records to be
15 kept of all financial transactions and for annual fiscal
16 reporting to the superintendent;

17 (4) establish the amount of and the method for
18 collecting assessments pursuant to the New Mexico Health
19 Insurance Exchange Act;

20 (5) establish penalties for nonpayment of
21 assessments by carriers;

22 (6) establish procedures for alternative
23 dispute resolution of disputes between carriers and insureds;

24 (7) contain additional provisions necessary
25 and proper for the execution of the powers and duties of the

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1 exchange;

2 (8) provide for the following events:

3 (a) by October 1, 2013, or in accordance
4 with a schedule approved or provided by the federal center for
5 consumer information and insurance oversight, the acceptance of
6 applications from qualified individuals and qualified employers
7 to purchase qualified health plans on the exchange;

8 (b) by October 1, 2013, or in accordance
9 with a schedule approved or provided by the federal center for
10 consumer information and insurance oversight, the availability
11 of navigator services for persons applying for medicaid or to
12 purchase qualified health plans through the exchange; and

13 (c) by January 1, 2014, or in accordance
14 with a schedule approved or provided by the federal center for
15 consumer information and insurance oversight, the sale of
16 qualified health plans to qualified individuals and qualified
17 employers;

18 (9) establish procedures to implement the
19 provisions of the New Mexico Health Insurance Exchange Act
20 consistent with state law and federal law, including:

21 (a) determination of which plan designs
22 for qualified health plans will be offered through the
23 exchange;

24 (b) eligibility determination for
25 purchasing qualified health plans on the exchange, for federal

1 cost-sharing subsidies, tax credits, medicaid, exemption from
 2 the federal requirement for certain individuals to have health
 3 coverage and eligibility for related public programs as
 4 provided by rules adopted by the superintendent; and

5 (c) enrollment of qualified individuals
 6 and qualified employers;

7 (10) establish a program to publicize the
 8 existence of the exchange and qualified health plans offered by
 9 the exchange and the eligibility requirements and procedures
 10 for enrollment in a qualified health plan, premium assistance
 11 subsidies, tax credits or other public health coverage programs
 12 and to maintain public awareness of the exchange; and

13 (11) establish conflict-of-interest policies
 14 and procedures.

15 SECTION 6. [NEW MATERIAL] SUPERINTENDENT OF INSURANCE--
 16 RULEMAKING.--The superintendent shall:

17 A. adopt and promulgate rules that provide for
 18 disclosure by carriers of the availability of qualified health
 19 plans; and

20 B. adopt rules to carry out the provisions of the
 21 New Mexico Health Insurance Exchange Act.

22 SECTION 7. [NEW MATERIAL] QUALIFIED HEALTH PLANS.--

23 A. A qualified health plan shall conform to federal
 24 and state law governing qualified health plans and the
 25 exchange's qualified health plan design criteria. A carrier

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1 offering a qualified health plan shall:

2 (1) be licensed and in good standing to offer
3 health insurance in the state;

4 (2) offer through the exchange at least one
5 qualified health plan in the silver level of coverage and at
6 least one plan in the gold level of coverage, pursuant to the
7 levels of coverage as described in rules the superintendent has
8 promulgated pursuant to federal law;

9 (3) charge the same premium for each qualified
10 health plan within each level of coverage without regard to
11 whether the plan is offered through the exchange directly from
12 the carrier or through an agent or broker; and

13 (4) comply with the regulations that the
14 federal secretary of health and human services has promulgated
15 and any other requirement that the board or the superintendent
16 has established.

17 B. If a qualified health plan design approved by
18 the board is not offered by any carrier already offering a
19 qualified health plan, but a carrier offers a substantially
20 similar plan design outside the exchange, the board may request
21 the carrier to offer that plan design as a qualified health
22 plan through the exchange.

23 C. A carrier offering a qualified health plan may
24 withdraw the plan after the date notice of future withdrawal is
25 given to the board.

1 D. The following items and services, as defined by
2 federal and state law and rules the superintendent has
3 promulgated, are essential benefits that shall be included in
4 any health insurance certified as a qualified health plan:

- 5 (1) ambulatory patient services;
- 6 (2) emergency services;
- 7 (3) hospitalization;
- 8 (4) maternity and newborn care;
- 9 (5) mental health and substance abuse disorder
10 services, including behavioral health treatment;
- 11 (6) prescription drugs;
- 12 (7) rehabilitative and habilitative services
13 and devices;
- 14 (8) laboratory services;
- 15 (9) preventive and wellness services and
16 chronic disease management; and
- 17 (10) pediatric services, including oral and
18 vision care.

19 E. A qualified health plan shall not be required to
20 offer the essential pediatric dental benefit specified in
21 Paragraph (10) of Subsection D of this section, so long as the
22 exchange offers at least one qualified dental plan meeting the
23 standards set forth in federal and state law and rules that the
24 superintendent has promulgated for benefits to be offered on
25 the health insurance exchange.

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1 SECTION 8. ~~[NEW MATERIAL]~~ ENROLLMENT--QUALIFIED HEALTH
2 PLANS.--

3 A. An individual is eligible for a qualified health
4 plan if on the effective date of coverage or renewal the
5 individual meets the definition of a qualified individual under
6 Subsection R of Section 2 of the New Mexico Health Insurance
7 Exchange Act. An employer is eligible for a qualified health
8 plan if on the effective date of coverage or renewal the
9 employer meets the definition of a qualified employer under
10 Subsection P of Section 2 of the New Mexico Health Insurance
11 Exchange Act.

12 B. If a child's coverage ended or did not begin for
13 the reasons set forth in this section, a qualified health plan
14 shall provide the child an opportunity to enroll in a qualified
15 health plan for which coverage continues for at least sixty
16 days and shall provide written notice of the opportunity to
17 enroll no later than the first day of the plan year. A written
18 notice of the opportunity for special enrollment provided
19 pursuant to this section shall include a statement that a child
20 whose coverage ended, who was denied coverage or who was not
21 eligible for coverage because dependent coverage of children
22 was unavailable before the child reached twenty-six years of
23 age is eligible to enroll in a qualified health plan or other
24 health coverage. This notice may be provided to a principal
25 insured on behalf of the principal insured's child. For an

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underscoring material = new
~~[bracketed material]~~ = delete

1 individual who enrolls in a qualified health plan, the coverage
2 shall take effect not later than the first day of the first
3 plan or policy year.

4 C. For qualified health plans offered on the
5 exchange, the exchange shall provide for an initial open
6 enrollment period from October 1, 2013 through February 28,
7 2014, or in accordance with a schedule approved or provided by
8 the federal center for consumer information and insurance
9 oversight. Thereafter, the exchange shall provide for annual
10 open enrollment periods for qualified health plans, as provided
11 in federal law and by rules that the superintendent has
12 promulgated. Except as provided pursuant to Subsections B and
13 E of this section, new employees and their dependents may
14 enroll in their qualified employer's qualified health plan
15 within thirty-one days of completion of their employer's
16 eligibility period. If application for enrollment is not made
17 during this period, the new employee and the new employee's
18 dependents may be required to submit evidence of eligibility
19 for a special enrollment period pursuant to Section 9801 of the
20 federal Internal Revenue Code of 1986.

21 D. An insured shall notify the exchange at least
22 thirty-one days before the insured's yearly anniversary date of
23 the qualified health plan of the insured's intent to switch
24 coverage to another qualified health plan.

25 E. The exchange shall provide a monthly opportunity

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1 to enroll or switch enrollment between qualified health plans
2 to any individual who is a Native American.

3 SECTION 9. [NEW MATERIAL] ELIGIBILITY--GUARANTEED ISSUE--
4 PROHIBITION OF PREEXISTING CONDITION EXCLUSIONS.--

5 A. An individual is eligible for a qualified health
6 plan if on the effective date of coverage or renewal the
7 individual meets the definition of a qualified individual under
8 Subsection R of Section 2 of the New Mexico Health Insurance
9 Exchange Act. An employer is eligible for a qualified health
10 plan if on the effective date of coverage or renewal the
11 employer meets the definition of a qualified employer under
12 Subsection P of Section 2 of the New Mexico Health Insurance
13 Exchange Act.

14 B. A qualified health plan shall provide in
15 substance that attainment of the limiting age by a child or
16 dependent individual does not operate to terminate coverage
17 when the individual continues to be incapable of
18 self-sustaining employment by reason of developmental
19 disability or physical handicap and the individual is primarily
20 dependent for support and maintenance upon the employee. Proof
21 of incapacity and dependency shall be furnished to the exchange
22 and the carrier that offered the qualified health plan within
23 one hundred twenty days of attainment of the limiting age. The
24 board may require subsequent proof annually after a two-year
25 period following attainment of the limiting age.

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1 C. A qualified health plan shall provide that the
2 health insurance benefits applicable for eligible children are
3 payable with respect to a newly born child of the family member
4 or the individual in whose name the contract is issued from the
5 moment of birth, including the necessary care and treatment of
6 medically diagnosed congenital defects and birth abnormalities.
7 If payment of a specific premium is required to provide
8 coverage for the child, the contract may require that
9 notification of the birth of a child and payment of the
10 required premium shall be furnished to the carrier within
11 thirty-one days after the date of birth in order to have the
12 coverage from birth. A qualified health plan shall provide
13 that the health insurance benefits applicable for eligible
14 children are payable for an adopted child in accordance with
15 the provisions of Section 59A-22-34.1 NMSA 1978.

16 D. A qualified health plan issued to a qualified
17 individual shall not contain any preexisting condition
18 exclusion.

19 E. As used in this section, "preexisting condition
20 exclusion" means a limitation or exclusion of benefits relating
21 to a condition based on the fact that the condition was present
22 before the date of enrollment for coverage for the benefits
23 whether or not any medical advice, diagnosis, care or treatment
24 was recommended or received before that date, but genetic
25 information is not included as a preexisting condition for the

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1 purposes of limiting or excluding benefits in the absence of a
2 diagnosis of the condition related to the genetic information.

3 SECTION 10. [NEW MATERIAL] FUNDING.--

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

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

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

19 "[NEW MATERIAL] OFFICE OF SUPERINTENDENT OF INSURANCE--
20 COOPERATION WITH NEW MEXICO HEALTH INSURANCE EXCHANGE.--The
21 office of superintendent of insurance shall cooperate with the
22 New Mexico health insurance exchange to share information and
23 assist in the implementation of the functions of the exchange."

24 SECTION 12. Section 41-4-3 NMSA 1978 (being Laws 1976,
25 Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,

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1 Section 2 and by Laws 2009, Chapter 129, Section 2 and also by
2 Laws 2009, Chapter 249, Section 2) is amended to read:

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

4 A. "board" means the risk management advisory
5 board;

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

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

13 D. "law enforcement officer" means a full-time
14 salaried public employee of a governmental entity, or a
15 certified part-time salaried police officer employed by a
16 governmental entity, whose principal duties under law are to
17 hold in custody any person accused of a criminal offense, to
18 maintain public order or to make arrests for crimes, or members
19 of the national guard when called to active duty by the
20 governor;

21 E. "maintenance" does not include:

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

25 (2) an activity or event relating to a public

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1 building or public housing project that was not foreseeable;

2 F. "public employee" means an officer, employee or
3 servant of a governmental entity, excluding independent
4 contractors except for individuals defined in Paragraphs (7),
5 (8), (10), (14) and (17) of this subsection, or of a
6 corporation organized pursuant to the Educational Assistance
7 Act, the Small Business Investment Act or the Mortgage Finance
8 Authority Act or a licensed health care provider, who has no
9 medical liability insurance, providing voluntary services as
10 defined in Paragraph (16) of this subsection and including:

11 (1) elected or appointed officials;

12 (2) law enforcement officers;

13 (3) persons acting on behalf or in service of
14 a governmental entity in any official capacity, whether with or
15 without compensation;

16 (4) licensed foster parents providing care for
17 children in the custody of the human services department,
18 corrections department or department of health, but not
19 including foster parents certified by a licensed child
20 placement agency;

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

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

25 (7) licensed medical, psychological or dental

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1 arts practitioners providing services to the corrections
2 department pursuant to contract;

3 (8) members of the board of directors of the
4 New Mexico medical insurance pool;

5 (9) individuals who are members of medical
6 review boards, committees or panels established by the
7 educational retirement board or the retirement board of the
8 public employees retirement association;

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

12 (11) members of the board of directors of the
13 New Mexico educational assistance foundation;

14 (12) members of the board of directors of the
15 New Mexico student loan guarantee corporation;

16 (13) members of the New Mexico mortgage
17 finance authority;

18 (14) volunteers, employees and board members
19 of court-appointed special advocate programs;

20 (15) members of the board of directors of the
21 small business investment corporation;

22 (16) health care providers licensed in New
23 Mexico who render voluntary health care services without
24 compensation in accordance with rules promulgated by the
25 secretary of health. The rules shall include requirements for

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1 the types of locations at which the services are rendered, the
2 allowed scope of practice and measures to ensure quality of
3 care; ~~and~~

4 (17) an individual while participating in the
5 state's adaptive driving program and only while using a
6 special-use state vehicle for evaluation and training purposes
7 in that program; and

8 (18) the staff and members of the board of
9 directors of the New Mexico health insurance exchange
10 established pursuant to the New Mexico Health Insurance
11 Exchange Act;

12 G. "scope of duty" means performing any duties that
13 a public employee is requested, required or authorized to
14 perform by the governmental entity, regardless of the time and
15 place of performance; and

16 H. "state" or "state agency" means the state of New
17 Mexico or any of its branches, agencies, departments, boards,
18 instrumentalities or institutions."

19 **SECTION 13.** Section 59A-56-4 NMSA 1978 (being Laws 1994,
20 Chapter 75, Section 4, as amended) is amended to read:

21 "59A-56-4. ALLIANCE CREATED--BOARD CREATED.--

22 A. The "New Mexico health insurance alliance" is
23 created as a nonprofit public corporation for the purpose of
24 providing increased access to health insurance in the state.
25 All insurance companies authorized to transact health insurance

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1 business in this state, nonprofit health care plans, health
2 maintenance organizations and self-insurers not subject to
3 federal preemption shall organize and be members of the
4 alliance as a condition of their authority to offer health
5 insurance in this state, except for an insurance company that
6 is licensed under the Prepaid Dental Plan Law or a company that
7 is solely engaged in the sale of dental insurance and is
8 licensed under a provision of the Insurance Code.

9 B. The alliance shall be governed by ~~[a board of~~
10 ~~directors constituted pursuant to the provisions of this~~
11 ~~section. The board is a governmental entity for purposes of~~
12 ~~the Tort Claims Act, but neither the board nor the alliance~~
13 ~~shall be considered a governmental entity for any other~~
14 ~~purpose.~~

15 G. ~~Each member shall be entitled to one vote in~~
16 ~~person or by proxy at each meeting.~~

17 D. ~~The alliance shall operate subject to the~~
18 ~~supervision and approval of the board. The board shall consist~~
19 ~~of:~~

20 (1) ~~five directors, elected by the members,~~
21 ~~who shall be officers or employees of members and shall consist~~
22 ~~of two representatives of health maintenance organizations and~~
23 ~~three representatives of other types of members;~~

24 (2) ~~five directors, appointed by the governor,~~
25 ~~who shall be officers, general partners or proprietors of small~~

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1 ~~employers, one director of which shall represent nonprofit~~
2 ~~corporations;~~

3 ~~(3) four directors, appointed by the governor,~~
4 ~~who shall be employees of small employers; and~~

5 ~~(4) the superintendent or the superintendent's~~
6 ~~designee, who shall be a nonvoting member, except when the~~
7 ~~superintendent's vote is necessary to break a tie.~~

8 ~~E. The superintendent shall serve as chairman of~~
9 ~~the board unless the superintendent declines, in which event~~
10 ~~the superintendent shall appoint the chairman.~~

11 ~~F. The directors elected by the members shall be~~
12 ~~elected for initial terms of three years or less, staggered so~~
13 ~~that the term of at least one director expires on June 30 of~~
14 ~~each year. The directors appointed by the governor shall be~~
15 ~~appointed for initial terms of three years or less, staggered~~
16 ~~so that the term of at least one director expires on June 30 of~~
17 ~~each year. Following the initial terms, directors shall be~~
18 ~~elected or appointed for terms of three years. A director~~
19 ~~whose term has expired shall continue to serve until a~~
20 ~~successor is elected or appointed and qualified.~~

21 ~~G. Whenever a vacancy on the board occurs, the~~
22 ~~electing or appointing authority of the position that is vacant~~
23 ~~shall fill the vacancy by electing or appointing an individual~~
24 ~~to serve the balance of the unexpired term; provided when a~~
25 ~~vacancy occurs in one of the director's positions elected by~~

1 ~~the members, the superintendent is authorized to appoint a~~
 2 ~~temporary replacement director until the next scheduled~~
 3 ~~election of directors elected by the members is held. The~~
 4 ~~individual elected or appointed to fill a vacancy shall meet~~
 5 ~~the requirements for initial election or appointment to that~~
 6 ~~position.~~

7 H. ~~Directors may be reimbursed by the alliance as~~
 8 ~~provided in the Per Diem and Mileage Act for nonsalaried public~~
 9 ~~officers but shall receive no other compensation, perquisite or~~
 10 ~~allowance from the alliance] the board of directors of the New~~
 11 ~~Mexico health insurance exchange appointed pursuant to the New~~
 12 ~~Mexico Health Insurance Exchange Act."~~

13 SECTION 14. TEMPORARY PROVISION--NEW MEXICO HEALTH
 14 INSURANCE ALLIANCE--NEW MEXICO HEALTH INSURANCE EXCHANGE--
 15 TRANSFER OF PERSONNEL, FUNDS AND PERSONAL PROPERTY--REFERENCES
 16 IN LAW--CONTRACTS.--

17 A. On June 15, 2013:

18 (1) all personnel, appropriations, money,
 19 records, equipment, supplies and other personal property of the
 20 New Mexico health insurance alliance shall transfer to the New
 21 Mexico health insurance exchange;

22 (2) all contracts of the New Mexico health
 23 insurance alliance shall be binding and effective on the New
 24 Mexico health insurance exchange; and

25 (3) all references in law to the New Mexico

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1 health insurance alliance shall be deemed to be references to
2 the New Mexico health insurance exchange.

3 B. As used in this section:

4 (1) "personal property" means property other
5 than real property; and

6 (2) "real property" means an estate or
7 interest in, over or under land and other things or interests,
8 including minerals, water, structures and fixtures that by
9 custom, usage or law pass with a transfer of land even if the
10 estate or interest is not described or mentioned in the
11 contract of sale or instrument of conveyance and, if
12 appropriate to the context, the land in which the estate or
13 interest is claimed.

14 SECTION 15. TEMPORARY PROVISION.--On the effective date
15 of this act, the board of directors of the New Mexico health
16 insurance alliance, appointed pursuant to the Health Insurance
17 Alliance Act prior to the effective date of the New Mexico
18 Health Insurance Exchange Act, shall cease to exist and the New
19 Mexico health insurance alliance shall be governed pursuant to
20 the Health Insurance Alliance Act by the board of directors of
21 the New Mexico health insurance exchange appointed pursuant to
22 the New Mexico Health Insurance Exchange Act. In exercising
23 its duties, the board of directors of the New Mexico health
24 insurance exchange shall neither apply any provisions of the
25 Health Insurance Alliance Act to the New Mexico health

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1 insurance exchange nor apply any provisions of the New Mexico
2 Health Insurance Exchange Act to the New Mexico health
3 insurance alliance.

4 SECTION 16. DELAYED REPEAL.--On January 1, 2015, Sections
5 59A-56-1 through 59A-56-25 NMSA 1978 (being Laws 1994, Chapter
6 75, Sections 1 through 25, as amended) are repealed.

7 SECTION 17. SEVERABILITY.--If any part or application of
8 this act is held invalid, the remainder or its application to
9 other situations or persons shall not be affected.

10 SECTION 18. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect immediately.

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underscored material = new
~~[bracketed material]~~ = delete