

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 101

**53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

AN ACT

RELATING TO HEALTH CARE; ENACTING THE HEALTH SECURITY ACT TO  
PROVIDE FOR COMPREHENSIVE STATEWIDE HEALTH CARE; PROVIDING FOR  
HEALTH CARE PLANNING; ESTABLISHING PROCEDURES TO CONTAIN HEALTH  
CARE COSTS; CREATING A COMMISSION; PROVIDING FOR ITS POWERS AND  
DUTIES; PROVIDING FOR HEALTH CARE DELIVERY REGIONS AND REGIONAL  
COUNCILS; DIRECTING AND AUTHORIZING THE DEVELOPMENT OF A HEALTH  
SECURITY PLAN; PROVIDING PENALTIES; AMENDING A SECTION OF THE  
TORT CLAIMS ACT; ENACTING A NEW SECTION OF THE UNFAIR PRACTICES  
ACT TO BAN THE SALE OF REDUNDANT HEALTH COVERAGE; PROVIDING FOR  
DELAYED REPEAL.

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

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 45 of this act may be cited as the "Health Security  
Act".

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1           SECTION 2. [NEW MATERIAL] PURPOSES OF ACT.--The purposes  
2 of the Health Security Act are to:

- 3           A. ensure health care coverage to all New Mexicans;
- 4           B. control escalating health care costs; and
- 5           C. improve the health care of all New Mexicans.

6           SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
7 Health Security Act:

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

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

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

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

17                   (2) acquisition of tangible personal property;

18           D. "care coordination" means a comprehensive,  
19 multidisciplinary program designed to meet an individual's need  
20 for care by coordinating health services, patient needs and  
21 information to better achieve the goals of treatment and care;

22           E. "commission" means the health care commission;

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

1 G. "controlling interest" means:

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

4 (2) a financial interest, direct or indirect,  
5 that, because of business or personal relationships, has the  
6 power to influence important decisions of the person  
7 controlled;

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

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

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

18 K. "health care provider" means:

19 (1) a person or network of persons licensed or  
20 certified and authorized to provide health care;

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

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

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1           L. "health facility" means a school-based clinic,  
2 an Indian health service facility, a tribally operated health  
3 care facility, a state-operated health care facility, a general  
4 hospital, a special hospital, an outpatient facility, a  
5 psychiatric hospital, a primary clinic pursuant to the Rural  
6 Primary Health Care Act, a laboratory, a skilled nursing  
7 facility or a nursing facility or other type of facility  
8 identified in commission rules; provided that the health  
9 facility is authorized to receive state or federal  
10 reimbursement;

11           M. "health resource certification" means a system  
12 of approval for major capital expenditures to be determined by  
13 commission rules;

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

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

22           P. "medicare offset" means a reimbursement that the  
23 federal government makes pursuant to the federal Health  
24 Insurance for the Aged Act, Title 18 of the Social Security  
25 Amendments of 1965, as then constituted or later amended;

1 Q. "operating budget" means the budget of a health  
2 facility exclusive of the facility's capital budget;

3 R. "person" means an individual or any other legal  
4 entity;

5 S. "primary care provider" means a health care  
6 provider who is a physician, osteopathic physician,  
7 gynecologist, nurse practitioner, physician assistant,  
8 osteopathic physician's assistant, pharmacist clinician or  
9 other health care provider certified by the commission to  
10 provide the first level of basic health care, including  
11 diagnostic and treatment services; services delivered at a  
12 primary clinic, telehealth site or a school-based health  
13 center; and behavioral health services if those services are  
14 integrated into the provider's service array;

15 T. "provider budget" means the authorized  
16 expenditures pursuant to payment mechanisms established by the  
17 commission to pay for health care furnished by health care  
18 providers participating in the health security plan;

19 U. "service" means a health care service or product  
20 offered or provided to an individual for the purpose of  
21 preventing, alleviating, curing or healing human physical or  
22 mental illness or injury or substance use disorder;

23 V. "superintendent" means the superintendent of  
24 insurance; and

25 W. "transportation service" means a person

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1 providing the services of an ambulance, helicopter or other  
2 conveyance that is used to transport patients to or from health  
3 care providers or health facilities.

4 SECTION 4. [NEW MATERIAL] HEALTH CARE COMMISSION  
5 CREATED--GOVERNMENTAL INSTRUMENTALITY.--As of December 2, 2019  
6 the "health care commission" is created as a public body,  
7 politic and corporate, constituting a governmental  
8 instrumentality. The commission consists of fifteen members.

9 SECTION 5. [NEW MATERIAL] CREATION OF HEALTH CARE  
10 COMMISSION MEMBERSHIP NOMINATING COMMITTEE--MEMBERSHIP, TERMS  
11 AND DUTIES.--

12 A. As of May 6, 2019, the "health care commission  
13 membership nominating committee" is created, consisting of ten  
14 members, to reflect the geographic diversity of the state, as  
15 follows:

16 (1) three members appointed by the speaker of  
17 the house of representatives;

18 (2) three members appointed by the president  
19 pro tempore of the senate;

20 (3) two members appointed by the minority  
21 floor leader of the house of representatives; and

22 (4) two members appointed by the minority  
23 floor leader of the senate.

24 B. By April 15, 2019, the legislative council  
25 service shall provide the public with public notice to allow

1 members of the public to request consideration of appointment  
2 to the nominating committee. The notice shall be advertised  
3 and reported on a publicly accessible website that the  
4 nominating committee establishes and maintains, in media  
5 outlets throughout the state and through publication of a legal  
6 notice in major newspapers. Publication of the legal notice  
7 shall occur once each week for the two weeks preceding April  
8 15, 2019.

9 C. At the first meeting of the nominating  
10 committee, it shall elect a chair and any other officers it  
11 deems necessary from its membership. The chair shall vote only  
12 in the case of a tie vote.

13 D. Members shall serve two-year terms.

14 E. A member shall serve until the member's  
15 successor is appointed and qualified. Successor members shall  
16 be appointed by the appointing authority that made the initial  
17 appointment to the nominating committee. A member shall be  
18 eligible for or enrolled in the health security plan. A person  
19 shall not serve on the nominating committee if that person:

20 (1) currently or within the previous thirty-  
21 six months:

22 (a) serves or has served as a member of  
23 the commission; or

24 (b) has, or is a member of the household  
25 of a person who has, been employed by, served as an agent or

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1 officer of or had a controlling interest in a person that is  
2 licensed to provide health insurance;

3 (2) is a state employee who is exempt from the  
4 Personnel Act; or

5 (3) is an elected official.

6 F. Appointed members of the nominating committee  
7 shall have substantial knowledge of the health care system as  
8 demonstrated by education or experience.

9 G. The nominating committee shall advertise and  
10 report notice of its meetings and agendas at least seventy-two  
11 hours before each meeting on a publicly accessible website that  
12 the commission establishes and maintains, in media outlets  
13 throughout the state and through publication of a legal notice  
14 in major newspapers. Publication of the legal notice shall  
15 occur once each week for the two weeks immediately preceding  
16 the date of a meeting. Meetings of the nominating committee  
17 shall be open to the public, and public comment shall be  
18 allowed.

19 H. A majority of the nominating committee  
20 constitutes a quorum. The nominating committee may allow  
21 members' participation in meetings by telephone or other  
22 electronic media that allow full participation. Meetings may  
23 be closed only for discussion of candidates prior to selection.  
24 Final selection of candidates shall be by vote of the members  
25 and shall be conducted in a public meeting.



1 I. The New Mexico legislative council shall convene  
2 the first meeting of the nominating committee on or before May  
3 15, 2019 and thereafter at the call of the chair.

4 J. The nominating committee shall actively solicit,  
5 accept and evaluate applications from qualified persons for  
6 membership on the commission subject to the qualification  
7 requirements for commission membership pursuant to Section 6 of  
8 the Health Security Act.

9 K. No later than October 1, 2019, the nominating  
10 committee shall submit to the governor the names of the persons  
11 recommended for appointment to the commission by a majority of  
12 the nominating committee. Immediately after receiving the  
13 nominating committee's nominations, the governor may make one  
14 request of the nominating committee for submission of  
15 additional names. If a majority of the nominating committee  
16 finds additional persons that would be qualified, the  
17 nominating committee shall promptly submit the additional names  
18 and recommend those persons for appointment to the commission.  
19 The nominating committee shall submit no more than three names  
20 for a membership position for each initial or additional  
21 appointment.

22 L. Appointed nominating committee members may be  
23 reimbursed pursuant to the Per Diem and Mileage Act for  
24 expenses incurred in fulfilling their duties.

25 M. The legislative council service shall provide

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1 staff to assist the nominating committee.

2 SECTION 6. [NEW MATERIAL] APPOINTMENT OF COMMISSION  
3 MEMBERS--MEETINGS--QUALIFICATIONS--TERMS.--

4 A. From the nominees submitted by the health care  
5 commission membership nominating committee, the governor shall  
6 appoint fifteen members to the commission, and the initial  
7 commission shall be in place by December 2, 2019. In the event  
8 that the governor does not appoint a member to a commission  
9 membership slot by December 2, 2019, the nominating committee  
10 shall make that appointment.

11 B. The New Mexico legislative council shall convene  
12 a first meeting of the commission by January 6, 2020. At the  
13 first meeting of the commission, the members shall elect from  
14 their membership a chair and a vice chair and any other  
15 officers they deem necessary. The chair, vice chair and any  
16 other officers shall serve for terms of two years.

17 C. After the first meeting of the commission, the  
18 commission shall meet at the call of the chair as the chair  
19 deems necessary and at least once each month.

20 D. The terms of the initial commission members  
21 appointed shall be chosen by lot: five members shall be  
22 appointed for terms of four years; five members shall be  
23 appointed for terms of three years; and five members shall be  
24 appointed for terms of two years. Thereafter, all members  
25 shall be appointed for terms of four years. After initial

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1 terms are served, no member shall serve more than two  
2 consecutive four-year terms. A member may serve until a  
3 successor is appointed.

4 E. A person shall not serve on the commission if  
5 that person:

6 (1) within the previous thirty-six months has  
7 served as a member of the nominating committee;

8 (2) has, or is a member of the household of a  
9 person who has, during the previous thirty-six months been  
10 employed by, served as an agent or officer of or had a  
11 controlling interest in a person that is licensed to provide  
12 health insurance;

13 (3) is a state employee who is exempt from the  
14 Personnel Act;

15 (4) is an elected official; or

16 (5) is not eligible for or enrolled in the  
17 health security plan.

18 F. When a vacancy occurs in the membership of the  
19 commission, the health care commission membership nominating  
20 committee shall meet and nominate a member to fill the vacancy  
21 within thirty days of the occurrence of the vacancy. From the  
22 nominees submitted, the governor shall fill the vacancy within  
23 thirty days after receiving final nominations. In the event  
24 that the governor does not appoint a member to the vacancy  
25 within thirty days, the nominating committee shall appoint a

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1 member to fill the vacancy.

2 G. The fifteen members of the commission shall  
3 include:

4 (1) five persons who represent either health  
5 care providers or health facilities;

6 (2) six persons who represent consumer  
7 interests; and

8 (3) four persons who represent employer  
9 interests; provided that a person who represents a health care  
10 provider or a health facility shall not serve as a member who  
11 represents employer interests.

12 H. A person appointed to the commission who does  
13 not represent a health care provider or a health facility shall  
14 have a knowledge of the health care system as demonstrated by  
15 experience or education.

16 I. To ensure fair representation of all areas of  
17 the state, members shall be appointed from each of the public  
18 education commission districts as follows:

19 (1) two from public education commission  
20 district 1;

21 (2) one from public education commission  
22 district 2;

23 (3) one from public education commission  
24 district 3;

25 (4) two from public education commission

1 district 4;  
 2 (5) two from public education commission  
 3 district 5;  
 4 (6) one from public education commission  
 5 district 6;  
 6 (7) two from public education commission  
 7 district 7;  
 8 (8) two from public education commission  
 9 district 8;  
 10 (9) one from public education commission  
 11 district 9; and  
 12 (10) one from public education commission  
 13 district 10.

14 J. The presence of a majority of the commission's  
 15 members constitutes a quorum for the transaction of business.  
 16 The commission may allow members' participation in meetings by  
 17 telephone or other electronic media that allow full  
 18 participation.

19 K. A member may receive per diem and mileage at a  
 20 rate equal to the rate at which state legislators are  
 21 reimbursed in accordance with the provisions of the Per Diem  
 22 and Mileage Act for expenses incurred in fulfilling their  
 23 duties. Additionally, members shall be compensated at the rate  
 24 of two hundred dollars (\$200) for each day of a meeting or  
 25 training event actually attended not to exceed compensation for

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1 one hundred twenty meetings for a two-year period occurring in  
2 a term.

3 L. The commission shall establish an electronic  
4 mail or "email" system for use by members in the conduct of  
5 commission business. Commission business shall be exclusively  
6 conducted on the commission's email system.

7 SECTION 7. [NEW MATERIAL] CONFLICT OF INTEREST--  
8 DISCLOSURE BY MEMBERS AND DISQUALIFICATION FROM VOTING ON  
9 CERTAIN MATTERS.--

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

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

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

22 SECTION 8. [NEW MATERIAL] COMMISSION CODE OF CONDUCT--  
23 MEMBER DISCIPLINE--REMOVAL.--The commission shall adopt and  
24 promulgate a code of conduct and procedures to be observed by  
25 members in the execution of their duties. The commission may

1 remove a member for a violation of the commission code of  
 2 conduct or a violation of the Health Security Act by a two-  
 3 thirds' majority vote of all of the members at a meeting where  
 4 all members, except the member who is the subject of the vote,  
 5 are present. A member shall not be removed without proceedings  
 6 consisting of at least one ten-day notice of hearing and an  
 7 opportunity to be heard. Removal proceedings shall be before  
 8 the commission and in accordance with procedures the commission  
 9 has adopted and promulgated.

10 SECTION 9. [NEW MATERIAL] APPLICATION OF CERTAIN STATE  
 11 LAWS TO COMMISSION.--The commission and regional councils  
 12 created pursuant to the Health Security Act:

13 A. shall be subject to and shall comply with the  
 14 provisions of the:

- 15 (1) Open Meetings Act;
- 16 (2) State Rules Act;
- 17 (3) Inspection of Public Records Act;
- 18 (4) Public Records Act;
- 19 (5) Financial Disclosure Act;
- 20 (6) Accountability in Government Act;
- 21 (7) Gift Act; and
- 22 (8) Tort Claims Act; and

23 B. shall not be subject to the provisions of the  
 24 Procurement Code or the Personnel Act.

25 SECTION 10. [NEW MATERIAL] CHIEF EXECUTIVE OFFICER--

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1 STAFF--CONTRACTS--BUDGETS.--

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

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

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

16 D. If the chief executive officer determines that  
17 the commission staff or a state agency does not have the  
18 resources or expertise to perform a necessary task, the chief  
19 executive officer may contract for performance from a person  
20 who has a demonstrated capability to perform the task. The  
21 commission shall establish the standards and requirements by  
22 which a contract is executed by the commission or the chief  
23 executive officer. A contract shall be reviewed by the  
24 commission or the chief executive officer to ensure that it  
25 meets the criteria, performance standards, expectations and

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1 needs of the commission.

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

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

14 SECTION 11. [NEW MATERIAL] COMMISSION--GENERAL DUTIES.--

15 The commission shall:

16 A. adopt a transition plan to ensure the seamless  
17 transition of health security plan beneficiaries from other  
18 sources of coverage, public and private. The transition plan  
19 shall ensure the proper assignment and payment of claims  
20 incurred on behalf of beneficiaries before the implementation  
21 of the health security plan;

22 B. by February 10, 2020, obtain legal counsel to  
23 advise the commission in the execution of its duties;

24 C. by April 1, 2020, adopt and promulgate rules for  
25 the procurement of goods and services. With the exception of

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1 audit-related services, rules relating to the procurement of  
2 goods and services shall provide for a preference for New  
3 Mexico vendors;

4 D. propose health security plan premium rates and  
5 employer contribution rates to the superintendent;

6 E. pursuant to federal law, apply for any federal  
7 waiver that the commission deems necessary to implement the  
8 health security plan;

9 F. design the health security plan to fulfill the  
10 purposes of and conform with the provisions of the Health  
11 Security Act;

12 G. provide a program to educate the public, health  
13 care providers and health facilities about the health security  
14 plan and the persons eligible to receive its benefits;

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

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

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

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

25 (4) care coordination services when

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1 appropriate;

2 I. establish annual health security plan budgets  
3 and budgets for those projected future periods that the  
4 commission believes appropriate;

5 J. establish and maintain sufficient reserves to  
6 provide for catastrophic and unforeseen expenditures;

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

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

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

14 L. negotiate and enter into health care reciprocity  
15 agreements with out-of-state health care providers and  
16 negotiate and enter into other health care agreements with out-  
17 of-state health care providers and health facilities;

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

23 N. establish, in conjunction with state agencies  
24 similarly charged, a comprehensive system to collect and  
25 analyze health care data, including claims data and other data,

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1 necessary to improve the quality, efficiency and effectiveness  
2 of health care and to control costs of health care in New  
3 Mexico, which system shall include data on:

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

6 (2) morbidity;

7 (3) health behavior;

8 (4) physical and psychological impairment and  
9 disability;

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

12 (6) environmental factors;

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

15 (8) demographic factors;

16 (9) social and economic conditions affecting  
17 health; and

18 (10) other factors determined by the  
19 commission;

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

23 P. foster a health care delivery system that is  
24 efficient to administer and that eliminates unnecessary  
25 administrative costs;

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

6           R. establish a pharmacy and therapeutics committee  
7 to:

8                   (1) research federal and state incentives and  
9 discount programs for the purchase, manufacture or supply of  
10 drugs, biologics and medical equipment and supplies to maximize  
11 the health security plan's savings potential through these  
12 incentives and programs;

13                   (2) establish a formulary of drugs and  
14 biologics that is in accordance with clinical best practices  
15 for safety, efficacy and effectiveness while, in strict  
16 observance of those best practices, maximizing fiscal  
17 soundness;

18                   (3) conduct concurrent, prospective and  
19 retrospective drug utilization review;

20                   (4) consult with specialists in appropriate  
21 fields of medicine for therapeutic classes of drugs;

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

25                   (6) identify appropriate exclusions from the

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1 preferred drug list; and

2 (7) conduct periodic clinical reviews of  
3 preferred, nonpreferred and new drugs;

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

8 T. in conjunction with the human services  
9 department, apply to the United States department of health and  
10 human services for all waivers of requirements under health  
11 care programs established pursuant to the federal Social  
12 Security Act that are necessary to enable the health security  
13 plan to receive federal payments for services rendered to  
14 medicaid or medicare beneficiaries;

15 U. except for those programs designated in  
16 Subsection B of Section 21 of the Health Security Act, identify  
17 other federal programs that provide federal funds for payment  
18 of health care services to individuals and apply for any  
19 waivers or enter into any agreements that are necessary for  
20 services covered by the health security plan; provided,  
21 however, that agreements negotiated with the federal Indian  
22 health service or tribal governments shall not impair treaty  
23 obligations of the United States government and that other  
24 agreements negotiated shall not impair portability or other  
25 aspects of the health care coverage;

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

11           W. analyze developments in federal law and  
12 regulation relevant to the health security plan, and provide  
13 updates and any legislative recommendations to the legislature  
14 that the commission deems necessary pursuant to those  
15 developments;

16           X. work with the counties to determine the  
17 expenditure of funds generated pursuant to the Indigent  
18 Hospital and County Health Care Act and the Statewide Health  
19 Care Act;

20           Y. seek to maximize federal contributions and  
21 payments for health care services provided in New Mexico and  
22 ensure that the contributions of the federal government for  
23 health care services in New Mexico will not decrease in  
24 relation to other states as a result of any health care  
25 efficiencies or improvements or savings;

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

9           AA. collaborate with state agencies and experts to  
10 study and evaluate health care work force data and research,  
11 and information solicited from health care providers and health  
12 care work force experts, on the effect of the health security  
13 plan on the state's provider community. This shall include the  
14 study and evaluation of the supply of health care providers in  
15 the state and providers' ability to provide high-quality health  
16 care under the health security plan;

17           BB. study and evaluate the cost of health care  
18 provider professional liability insurance and its impact on the  
19 price of health care services and recommend changes to the  
20 legislature as necessary;

21           CC. establish and approve changes in coverage  
22 services and service standards in the health security plan in  
23 compliance with federal and state law;

24           DD. conduct necessary investigations and inquiries;

25           EE. adopt rules necessary to implement, administer



1 and monitor the operation of the health security plan;

2 FF. designate a Native American liaison who shall:

3 (1) serve on the Native American advisory  
4 board established pursuant to Subsection A of Section 13 of the  
5 Health Security Act;

6 (2) assist the commission in developing and  
7 ensuring implementation of communication and collaboration  
8 between the commission and Native Americans in the state;

9 (3) serve as a contact person between the  
10 commission and New Mexico Indian nations, tribes and pueblos;  
11 and

12 (4) ensure that training is provided to the  
13 staff of the commission, which may include training in:

14 (a) cultural competency;

15 (b) state and federal law relating to  
16 Indian health; and

17 (c) other matters relating to the  
18 functions of the health security plan with respect to Native  
19 Americans in the state;

20 GG. report at least once annually to the  
21 legislature and the governor on the commission's activities and  
22 the operation of the health security plan and include in the  
23 annual report:

24 (1) a summary of information about health care  
25 needs, health care services, health care expenditures, revenues

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1 received and projected revenues and other relevant issues  
2 relating to the health security plan; and

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

7 HH. provide at least one annual training for its  
8 members on health care coverage, policy and financing.

9 SECTION 12. [NEW MATERIAL] COMMISSION--AUTHORITY.--The  
10 commission has the authority necessary to carry out the powers  
11 and duties pursuant to the Health Security Act. The commission  
12 retains responsibility for its duties but may delegate  
13 authority to the chief executive officer; provided, however,  
14 that only the commission may:

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

17 B. approve the health security plan and make  
18 changes in the health security plan;

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

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

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1           E. make reports and recommendations to the  
2 legislature;

3           F. subject to the prohibitions and restrictions of  
4 Section 21 of the Health Security Act, apply for program  
5 waivers from any governmental entity if the commission  
6 determines that the waivers are necessary to ensure the  
7 participation by the greatest possible number of beneficiaries;

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

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

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

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

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

20          L. sue and be sued;

21          M. participate as a qualified entity in the  
22 programs of the New Mexico finance authority;

23          N. enter into agreements with an employer, group or  
24 other plan to provide health care services for the employer's  
25 employees or retirees; provided, however, that nothing in the

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1 Health Security Act shall be construed to reduce or eliminate  
2 services to which the employee or retiree is entitled; and

3 O. enter into contracts with similar entities or  
4 other states of the United States for the performance of common  
5 administrative functions.

6 SECTION 13. [NEW MATERIAL] ADVISORY BOARDS.--

7 A. The commission shall establish the following in  
8 matters requiring the expertise and knowledge of the advisory  
9 boards' members:

10 (1) a "health care provider advisory board"  
11 made up of health care providers;

12 (2) a "health facility advisory board" made up  
13 of representatives of health facilities; and

14 (3) a "Native American advisory board" made up  
15 of Native Americans, some of whom live on a reservation and  
16 some of whom do not live on a reservation, and the Native  
17 American liaison established pursuant to Subsection DD of  
18 Section 11 of the Health Security Act. The Native American  
19 advisory board shall make recommendations to the commission on:

20 (a) matters relating to Native American  
21 beneficiaries; and

22 (b) agreements between the commission  
23 and tribal governments.

24 B. The commission may establish advisory boards in  
25 addition to the advisory boards established pursuant to

1 Subsection A of this section to assist the commission in  
2 performing its duties.

3 C. The commission shall not appoint to an advisory  
4 board:

- 5 (1) more than two members of the commission;  
6 (2) more than five persons who are not members  
7 of the commission; or  
8 (3) a person who represents or who has a  
9 controlling interest, direct or indirect, in a person licensed  
10 to provide health insurance in the state.

11 D. Except for the members of the health care  
12 provider advisory board and the health facility advisory board,  
13 no more than two members of any advisory board shall represent  
14 or have a controlling interest, direct or indirect, in a health  
15 care provider or a health facility.

16 E. Advisory board members may be paid per diem and  
17 mileage equal to the rate at which state legislators are  
18 reimbursed in accordance with the provisions of the Per Diem  
19 and Mileage Act.

20 F. Staff and technical assistance for advisory  
21 boards shall be provided by the commission as necessary.

22 SECTION 14. [NEW MATERIAL] HEALTH CARE DELIVERY

23 REGIONS.--The commission shall establish health care delivery  
24 regions in the state, based on geography and health care  
25 resources. The regions may have differential fee schedules,

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1 budgets, capital expenditure allocations or other features to  
2 encourage the provision of health care in rural and other  
3 underserved areas or to tailor otherwise the delivery of health  
4 care to fit the needs of a region or a part of a region.

5 SECTION 15. [NEW MATERIAL] REGIONAL COUNCILS.--

6 A. The commission shall designate regional councils  
7 in the designated health care delivery regions. In selecting  
8 persons to serve as members of regional councils, the  
9 commission shall consider the comments and recommendations of  
10 persons in the region who are knowledgeable about health care  
11 and the economic and social factors affecting the region.

12 B. The regional councils shall be composed of the  
13 commission members who live in the region and five other  
14 members who live in the region and are appointed by the  
15 commission. No more than two noncommission council members  
16 shall have a controlling interest, direct or indirect, in a  
17 person providing health care. The commission shall not appoint  
18 to a regional council an individual who is, or whose household  
19 contains an individual who is, employed by or an officer of or  
20 who has a controlling interest in a person licensed to  
21 provide health insurance, directly or as an agent of a health  
22 insurer.

23 C. Members of a regional council may be paid per  
24 diem and mileage equal to the rate at which state legislators  
25 are reimbursed in accordance with the provisions of the Per

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1 Diem and Mileage Act.

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

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

12 SECTION 16. [NEW MATERIAL] RULEMAKING.--

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

16 B. The commission shall not adopt, amend or repeal  
17 any rule affecting a person outside the commission without a  
18 public hearing on the proposed action before the commission or  
19 a hearing officer designated by the commission. The hearing  
20 officer may be a member of the commission's staff. The hearing  
21 shall be held in a county that the commission determines would  
22 be in the interest of those affected. Notice of the subject  
23 matter of the rule, the action proposed to be taken, the time  
24 and place of the hearing, the manner in which interested  
25 persons may present their views and the method by which copies

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1 of the proposed rule or an amendment or repeal of an existing  
2 rule may be obtained shall be published once at least thirty  
3 days prior to the hearing date on a publicly accessible website  
4 that the commission establishes and maintains and in media  
5 outlets throughout the state. Notice shall also be published  
6 in an informative nonlegal format in one newspaper published in  
7 each health care delivery region and mailed at least thirty  
8 days prior to the hearing date to all persons who have made a  
9 written request for advance notice of hearing.

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

12 SECTION 17. [NEW MATERIAL] HEALTH SECURITY PLAN.--

13 A. The commission shall design the health security  
14 plan to provide comprehensive, necessary and appropriate health  
15 care services, including the "minimum essential health  
16 benefits" required under federal and state law. The commission  
17 may establish additional preventive health care and primary,  
18 secondary and tertiary health care for acute and chronic  
19 conditions.

20 B. Covered health care services shall not include:

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

23 (2) medical examinations and medical reports  
24 prepared for purchasing or renewing life insurance or  
25 participating as a plaintiff or defendant in a civil action for



1 the recovery or settlement of damages; and

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

5 C. The health security plan shall specify the  
6 health care to be covered and the amount, scope and duration of  
7 services.

8 D. The health security plan shall contain  
9 provisions to control health care costs.

10 E. The health security plan shall ensure that  
11 beneficiaries receive comprehensive, high-quality health care  
12 consistent with available revenue and budget constraints.

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

19 **SECTION 18. [NEW MATERIAL] LONG-TERM CARE.--**

20 A. No later than one year after the effective date  
21 of the operation of the health security plan, the commission  
22 shall appoint an advisory "long-term care committee" made up of  
23 representatives of health care consumers, family members of  
24 consumers, providers and administrators to develop a plan for  
25 integrating a continuum of long-term care services and supports

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1 into the health security plan, including home-based care  
2 settings as well as facility-based care settings. The  
3 committee shall report its plan to the commission no later than  
4 one year from its appointment. Committee members may receive  
5 per diem and mileage as provided in the Per Diem and Mileage  
6 Act.

7 B. The long-term care component of the health  
8 security plan shall provide for care coordination and  
9 noninstitutional services when appropriate.

10 C. Nothing in this section affects long-term care  
11 services paid through private insurance or state or federal  
12 programs subject to the provisions of Section 40 of the Health  
13 Security Act.

14 SECTION 19. [NEW MATERIAL] MENTAL AND BEHAVIORAL HEALTH  
15 SERVICES--PARITY.--

16 A. No later than one year after the effective date  
17 of the operation of the health security plan, the commission  
18 shall appoint an advisory "mental and behavioral health  
19 services committee" made up of representatives of mental and  
20 behavioral health care consumers, family members of consumers,  
21 providers and administrators to develop a plan for coordinating  
22 mental and behavioral health services within the health  
23 security plan. The committee shall report its plan to the  
24 commission no later than one year from its appointment.  
25 Committee members may receive per diem and mileage as provided

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1 in the Per Diem and Mileage Act.

2 B. The commission shall ensure that the health  
3 security plan conforms to federal and state mental and  
4 behavioral health services parity laws.

5 C. The mental and behavioral health services  
6 component of the health security plan shall provide, where  
7 appropriate, for:

- 8 (1) inpatient crisis evaluation services;  
9 (2) inpatient residential substance abuse  
10 treatment services without a step therapy requirement; and  
11 (3) care coordination and noninstitutional  
12 services.

13 D. Nothing in this section limits mental and  
14 behavioral health services paid through private insurance or  
15 state or federal programs subject to the provisions of Section  
16 39 of the Health Security Act.

17 **SECTION 20. [NEW MATERIAL] MEDICAID COVERAGE--**  
18 **AGREEMENTS.--**The commission shall enter into appropriate  
19 agreements with the human services department, another state  
20 agency or a federal agency for the purpose of furthering the  
21 goals of the Health Security Act. These agreements may provide  
22 for certain services provided pursuant to the medicaid program  
23 under Title 19 or Title 21 of the federal Social Security Act  
24 and any waiver or provision of that act to be administered by  
25 the commission to implement the health security plan.

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1           SECTION 21.   ~~[NEW MATERIAL]~~ HEALTH SECURITY PLAN  
2 COVERAGE--CONDITIONS OF ELIGIBILITY FOR BENEFICIARIES--  
3 EXCLUSIONS.--

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

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

- 13                       (1) federal retiree health plan beneficiaries;  
14                       (2) active duty and retired military  
15 personnel; and  
16                       (3) individuals covered by the federal active  
17 and retired military health programs.

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

- 21                       (1) Indian nations, tribes or pueblos;  
22                       (2) consortia of tribes or pueblos; or  
23                       (3) a federal Indian health service agency  
24 subject to the approval of the tribes or pueblos located in  
25 that agency.

1           D. If an individual is ineligible due to the  
2 residence requirement, the individual may become eligible by  
3 paying the premium required by the health security plan for  
4 coverage for the period of time up to the date the individual  
5 fulfills that requirement if the individual is an employee who  
6 physically resides and intends to reside in the state because  
7 of employment offered to the individual in New Mexico while the  
8 individual was residing elsewhere as demonstrated by furnishing  
9 that evidence of those facts required by rule adopted by the  
10 commission.

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

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

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1           **SECTION 22. [NEW MATERIAL] HEALTH SECURITY PLAN COVERAGE**  
2           **OF NONRESIDENT STUDENTS.--**

3           A. Except as provided in Subsection B of this  
4           section, an educational institution shall purchase coverage  
5           under the health security plan for its nonresident students  
6           through fees assessed to those students. The governing body of  
7           an educational institution shall set the fees at the amount  
8           determined by the commission.

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

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

17          **SECTION 23. [NEW MATERIAL] REMOVING INELIGIBLE PERSONS.--**  
18          The commission shall adopt rules to provide procedures for  
19          removing persons no longer eligible for coverage.

20          **SECTION 24. [NEW MATERIAL] ELIGIBILITY CARD--USE--**  
21          **PENALTIES FOR MISUSE.--**

22          A. A beneficiary shall receive a card as proof of  
23          eligibility. The card shall be electronically readable and  
24          shall contain a photograph or electronic image of the  
25          beneficiary, information that identifies the beneficiary for

1 treatment and billing, payment and other information the  
 2 commission deems necessary. The use of a beneficiary's social  
 3 security number as an identification number is not permitted.

4 B. The eligibility card is not transferable. A  
 5 beneficiary who lends the beneficiary's card to another and an  
 6 individual who uses another's card shall be jointly and  
 7 severally liable to the commission for the full cost of the  
 8 health care provided to the user. The liability shall be paid  
 9 in full within one year of final determination of liability.  
 10 Liabilities created pursuant to this section shall be collected  
 11 in a manner similar to that used for collection of delinquent  
 12 taxes.

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

21 SECTION 25. [NEW MATERIAL] PRIMARY CARE PROVIDER--RIGHT  
 22 TO CHOOSE--ACCESS TO SERVICES.--

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

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

- 4                   (1) services in medical emergencies; and
- 5                   (2) services for which a primary care provider
- 6 determines that specialist services are required, in which case
- 7 the primary care provider shall advise the patient of the need
- 8 for and the type of specialist services.

9           C. Nothing in this section prevents a beneficiary  
10 from obtaining the services of a health care provider  
11 specialist and paying the specialist for services.

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

15           E. The commission shall establish by rule the  
16 circumstances under which a beneficiary may not self-refer;  
17 provided that commission rules shall allow a beneficiary to  
18 self-refer to a chiropractic physician, a doctor of oriental  
19 medicine or a mental and behavioral health service provider.

20           **SECTION 26. [NEW MATERIAL] DISCRIMINATION PROHIBITED.--A**  
21 health care provider or health facility shall not discriminate  
22 against or refuse to furnish health care to a beneficiary on  
23 the basis of age, race, color, income level, national origin,  
24 religion, gender, sexual orientation, disabling condition or  
25 payment status. Nothing in this section shall require a health



1 care provider or health facility to provide services to a  
 2 beneficiary if the provider or facility is not qualified to  
 3 provide the needed services or does not offer them to the  
 4 general public.

5 SECTION 27. [NEW MATERIAL] BENEFICIARY RIGHTS--CLAIMS  
 6 REVIEW--INTERNAL APPEALS--EXTERNAL APPEALS--GRIEVANCES.--

7 A. The commission shall adopt and promulgate rules  
 8 to provide for:

9 (1) a system of service claim review pursuant  
 10 to which any final decision shall be made by a health  
 11 professional qualified and legally authorized to make the  
 12 determination. The service claim review system shall include  
 13 an internal and external appeals process for adverse  
 14 determinations of service claims, including:

15 (a) a determination that a service is  
 16 not medically necessary;

17 (b) a denial of coverage for a service  
 18 because it is determined to be experimental, investigational or  
 19 inappropriate; and

20 (c) any other determination that results  
 21 in a denial of, or partial payment for, a service claim;

22 (2) expedited appeals of adverse  
 23 determinations of service claims, including the grounds for  
 24 expedited appeals and the time lines for hearing and decisions  
 25 on expedited appeals;

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1 (3) procedures and evidentiary rules relating  
2 to the internal appeals process;

3 (4) a beneficiary's right to continue to  
4 receive services that are the subject of an appeal and that the  
5 beneficiary was receiving before the beneficiary filed the  
6 appeal; and

7 (5) a beneficiary's right to emergency  
8 services that are immediately available without prior  
9 authorization requirements and appropriate out-of-state  
10 emergency services that are not subject to additional cost to  
11 the beneficiary.

12 B. The commission shall adopt and promulgate rules  
13 to provide beneficiaries with a prompt and fair grievance  
14 procedure for resolving patient complaints and for addressing  
15 patient questions and concerns relating to any aspect of the  
16 health security plan not relating to the service claim review  
17 system.

18 C. Within a reasonable time after enrollment and at  
19 subsequent periodic times as the commission deems appropriate,  
20 the health security plan shall provide beneficiaries with  
21 written materials that contain, in a clear, conspicuous and  
22 readily understandable form, a full disclosure of:

23 (1) the health security plan's covered  
24 services, limitations and exclusions;

25 (2) conditions of eligibility;

- 1 (3) prior authorization requirements;
- 2 (4) rights to appeals of adverse service claim
- 3 determinations and to grievance procedures, including:
- 4 (a) a beneficiary's right to have a
- 5 service claim denial, reduction or termination communicated
- 6 promptly in writing;
- 7 (b) a beneficiary's right to review the
- 8 beneficiary's file and to present evidence and testimony as
- 9 part of the appeals and grievance processes;
- 10 (c) the availability of the office of
- 11 the ombudsman at the office of superintendent of insurance to
- 12 assist beneficiaries with appeals and grievances;
- 13 (d) a beneficiary's right to continue to
- 14 receive services that are the subject of an appeal and that the
- 15 beneficiary was receiving before the beneficiary filed the
- 16 appeal; and
- 17 (e) a beneficiary's right to have the
- 18 outcome of an appeal or grievance communicated promptly in
- 19 writing; and
- 20 (5) a beneficiary's right to emergency
- 21 services that are immediately available without prior
- 22 authorization requirements and appropriate out-of-state
- 23 emergency services that are not subject to additional costs to
- 24 the beneficiary.

25 D. The superintendent shall adopt and promulgate

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1 rules to establish an external appeals process for review of  
2 beneficiary service claim appeals in accordance with the  
3 provisions of the Health Security Act.

4 E. The superintendent shall appoint one or more  
5 qualified individuals to review external service claim appeals.  
6 The superintendent shall fix the reasonable compensation of  
7 each appointee based upon compensation amounts suggested by  
8 national or state legal or medical professional societies,  
9 organizations or associations. The commission shall pay the  
10 compensation directly to each appointee who participated in the  
11 external grievance appeal review.

12 F. Upon completion of the external service claim  
13 appeal review, the superintendent shall prepare a detailed  
14 statement of compensation due each appointee and shall present  
15 the statement to the beneficiary and the commission.

16 G. The decision to approve or deny a service claim  
17 based on a technicality shall be made in a timely manner and  
18 shall not exceed time limits established by rule of the  
19 commission.

20 H. The fact of and the specific reasons for a  
21 denial of a service claim shall be communicated promptly in  
22 writing to both the provider and the beneficiary involved.

23 SECTION 28. [NEW MATERIAL] QUALITY OF CARE--HEALTH CARE  
24 PROVIDER AND HEALTH FACILITIES--PRACTICE STANDARDS.--

25 A. The commission shall adopt rules to establish

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

9 B. The commission shall establish a quality  
10 improvement program. The quality improvement program shall  
11 include an ongoing system for monitoring patterns of practice  
12 that do not supplant an individual facility's quality  
13 improvement program. Pursuant to the quality improvement  
14 program, the commission shall review and adopt professional  
15 practice guidelines developed by state and national medical and  
16 specialty organizations, federal agencies for health care  
17 policy and research and other organizations as it deems  
18 necessary to promote the quality and cost-effectiveness of  
19 health care provided through the health security plan.

20 C. The commission shall appoint a "health care  
21 practice advisory committee" consisting of health care  
22 providers, health facilities and other knowledgeable persons to  
23 advise the commission and staff on health care practice issues.  
24 The committee shall include both health care providers and  
25 health facilities from counties having eighty thousand or fewer

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1 inhabitants as of the most recent federal decennial census and  
2 health care providers and health facilities from counties  
3 having more than eighty thousand inhabitants as of the most  
4 recent federal decennial census. The committee may appoint  
5 subcommittees and task forces to address practice issues of a  
6 specific health care provider discipline or a specific kind of  
7 health facility; provided that the subcommittee or task force  
8 includes providers of substantially similar specialties or  
9 types of facilities. The advisory committee shall provide to  
10 the commission recommended standards and guidelines to be  
11 followed in making determinations on practice trends.

12 D. With the advice of the health care practice  
13 advisory committee, the commission shall establish a system of  
14 peer education for health care providers or health facilities  
15 determined to be engaging in patterns of practice that do not  
16 meet professional practice guidelines established pursuant to  
17 Subsection B of this section. If the commission determines  
18 that peer education efforts have failed, the commission may  
19 refer the matter to the appropriate licensing or certifying  
20 board.

21 E. The commission may provide by rule for the  
22 assessment of administrative penalties for up to three times  
23 the amount of excess payments upon a finding that excessive  
24 billing has occurred. Administrative penalties shall be  
25 deposited in the current school fund.

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1           F. After consultation with the health care practice  
 2 advisory committee, the commission may suspend or revoke a  
 3 health care provider's or health facility's authorization to be  
 4 paid for health care provided under the health security plan  
 5 based upon evidence clearly supporting a determination by the  
 6 commission that the provider or facility engages in patterns of  
 7 practice, including inappropriate utilization, that do not meet  
 8 professional practice guidelines established pursuant to  
 9 Subsection B of this section.

10           G. The commission shall report a suspension or  
 11 revocation of the authorization to be paid for health care  
 12 pursuant to the Health Security Act to the appropriate  
 13 licensing or certifying board.

14           H. The commission shall report cases of suspected  
 15 fraud by a health care provider or a health facility to the  
 16 attorney general for investigation and prosecution. The office  
 17 of the attorney general has independent authority to  
 18 investigate and prosecute suspected fraud without a prior  
 19 commission report of fraud.

20           **SECTION 29. [NEW MATERIAL] HEALTH CARE PROVIDER AND**  
 21 **HEALTH FACILITY RIGHTS--DISPUTE RESOLUTION--GRIEVANCE**  
 22 **PROCEDURES--RULEMAKING.--**

23           A. The health security plan shall not:

24                   (1) adopt a gag rule or practice that  
 25 prohibits a health care provider or health facility from

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1 discussing a treatment option with a beneficiary even if the  
2 health security plan does not approve of the option;

3 (2) include in any of its contracts with  
4 health care providers or health facilities any provisions that  
5 offer an inducement, financial or otherwise, to provide less  
6 than medically necessary services to a beneficiary; or

7 (3) require a health care provider or health  
8 facility to violate any recognized fiduciary duty of the health  
9 care provider's profession or place the health care provider's  
10 or health facility's license in jeopardy.

11 B. If the health security plan proposes to make an  
12 adverse determination affecting the participation of a health  
13 care provider or health care facility in the health security  
14 plan, it shall explain in writing the rationale for its  
15 proposed adverse determination and deliver reasonable advance  
16 written notice to the provider or facility prior to the  
17 proposed effective date of the termination.

18 C. The commission shall adopt and promulgate rules  
19 to implement a dispute resolution system, and include in each  
20 contract with a health care provider or a health facility a  
21 dispute resolution provision, to permit the provider or  
22 facility to dispute:

23 (1) a denial of, or partial payment for, a  
24 service that the health care provider or health facility has  
25 rendered to a beneficiary; or

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1 (2) the existence of adequate cause to  
 2 terminate the provider's or facility's participation in the  
 3 plan when the termination is made for cause.

4 D. The commission shall adopt and promulgate rules  
 5 to implement procedures pursuant to which a health care  
 6 provider or a health facility may file a grievance relating to  
 7 administration of the plan. The rules shall provide, at a  
 8 minimum, the provider or facility with the right to present to  
 9 the commission a grievance and evidence to support that  
 10 grievance. A grievance may relate to:

11 (1) the quality of and access to health care  
 12 services; or

13 (2) the choice of health care providers and  
 14 health facilities under the plan.

15 E. As used in this section, "adverse determination"  
 16 means any of the following actions against a health care  
 17 provider or health facility:

18 (1) restriction of or termination from  
 19 participation in the health security plan;

20 (2) the recoupment of payment; or

21 (3) the assessment of an administrative  
 22 penalty.

23 SECTION 30. [NEW MATERIAL] HEALTH SECURITY PLAN BUDGET--  
 24 PREMIUM RATES--EMPLOYER CONTRIBUTIONS.--

25 A. Annually, the commission shall develop a health

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1 security plan budget. The budget shall be the commission's  
2 recommendation for the total amount to be spent by the plan for  
3 covered health care services in the next fiscal year.

4 B. The superintendent shall adopt and promulgate  
5 rules for the review of proposed health security plan premium  
6 rates and employer contribution rates proposed by the  
7 commission. The rules shall include, at a minimum, provisions  
8 for:

9 (1) the transparency of rate filings;

10 (2) grounds for the establishment or  
11 modification of rates;

12 (3) the issuance of findings by the  
13 superintendent;

14 (4) procedures pursuant to which the  
15 commission or a member of the public may obtain a  
16 redetermination of the superintendent's findings; and

17 (5) procedures pursuant to which the  
18 commission or a member of the public may appeal a  
19 redetermination of the superintendent's findings in a court of  
20 competent jurisdiction.

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

25 D. The health security plan shall include a maximum

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

7 SECTION 31. [NEW MATERIAL] PAYMENTS TO HEALTH CARE  
8 PROVIDERS.--

9 A. The commission shall prepare a budget to provide  
10 payment for all covered health care services rendered by health  
11 care providers. The commission may adopt a variety of payment  
12 systems. The commission shall negotiate payment with providers  
13 as provided by rule and in accordance with federal antitrust  
14 law. In the event that negotiation fails to develop an  
15 acceptable payment plan and except as otherwise provided in  
16 federal law, the disputing parties shall submit the dispute for  
17 resolution pursuant to Section 29 of the Health Security Act.

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

21 C. An annual percentage increase in the amount  
22 allocated for provider payments in the budget shall be no  
23 greater than the annual percentage increase in the consumer  
24 price index for medical care prices published by the bureau of  
25 labor statistics of the federal department of labor using the

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1 year prior to the year in which the health security plan is  
2 implemented as the baseline year. The annual limitation in  
3 this subsection may be adjusted up or down by the commission  
4 based on a showing of special and unusual circumstances in a  
5 hearing before the commission.

6 D. Payment to a health care provider with a  
7 negotiated agreement for services covered by the health  
8 security plan shall be payment in full for those services. A  
9 health care provider shall not charge a beneficiary an  
10 additional amount for services covered by the plan.

11 SECTION 32. [NEW MATERIAL] PAYMENTS TO HEALTH  
12 FACILITIES--COPAYMENTS.--

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

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1 down by the commission based on a showing of special and  
2 unusual circumstances in a hearing before the commission.

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

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

10 SECTION 33. [NEW MATERIAL] BENEFICIARY COPAYMENTS--  
11 PREVENTIVE SERVICES--OUT-OF-STATE SERVICES--THIRD-PARTY  
12 PAYMENTS--ASSIGNMENT OF CLAIMS.--

13 A. The commission may establish a copayment  
14 schedule if a required copayment is determined to be an  
15 effective cost-control measure. A copayment shall not be  
16 required for preventive health care services, as the commission  
17 defines "preventive health care services" by rule in accordance  
18 with state and federal law. When a copayment is required, a  
19 health care provider or health facility shall not waive it, and  
20 if it remains uncollected, the provider or facility shall  
21 demonstrate a good-faith effort to collect the copayment.

22 B. A beneficiary may obtain health care services  
23 covered by the health security plan out of state; provided,  
24 however, that the services shall be reimbursed at:

25 (1) the same rate that would apply if those

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1 services had been received in New Mexico; or

2 (2) a rate higher than the reimbursement rate  
3 the health security plan would have paid if the services had  
4 been received in New Mexico if the commission negotiates a  
5 reimbursement agreement or other agreement with:

6 (a) the state in which the health care  
7 services were received; or

8 (b) the health care provider or health  
9 facility rendering the services.

10 C. The health security plan shall make reasonable  
11 efforts to ascertain any legal liability of third-party persons  
12 that are or may be liable to pay all or part of the health care  
13 services costs of injury, disease or disability of a  
14 beneficiary.

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

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

21 (1) is conclusively presumed to be made of:

22 (a) a payment for health care services  
23 from any person, including an insurance carrier; and

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

1 settlement;

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

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

7 SECTION 34. [NEW MATERIAL] STANDARD CLAIM FORMS FOR  
8 INSURANCE PAYMENT.--The commission shall adopt standard claim  
9 forms and electronic formats that shall be used by all health  
10 care providers and health facilities that seek payment through  
11 the health security plan or from private persons, including  
12 private insurance companies, for health care services rendered  
13 in the state. Each claim form or electronic format may  
14 indicate whether a person is eligible for federal or other  
15 insurance programs for payment. To the extent practicable, the  
16 commission shall require the use of existing, nationally  
17 accepted standardized forms, formats and systems.

18 SECTION 35. [NEW MATERIAL] HEALTH RESOURCE CERTIFICATE--  
19 COMMISSION RULES--REQUIREMENT FOR REVIEW.--

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

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1 projects.

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

7 C. A health facility or health care provider shall  
8 not acquire through rental, lease or comparable arrangement or  
9 through donation all or a part of a capital project that would  
10 have required review if the acquisition had been by purchase  
11 unless the project is granted a health resource certificate.

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

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

19 F. This section does not apply to:

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

22 (2) expenditures incurred solely in  
23 preparation for a capital project, including architectural  
24 design, surveys, plans, working drawings and specifications and  
25 other related activities, but those expenditures shall be

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1 included in the cost of a project for the purpose of  
2 determining whether a health resource certificate is required;

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

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

10 (5) the replacement of equipment with  
11 equipment that has the same function and that does not result  
12 in the offering of new services.

13 G. No later than November 2, 2020, the commission  
14 shall report to the appropriate committees of the legislature  
15 on the capital needs of health facilities, including facilities  
16 of state and local governments, with a focus on underserved  
17 geographic areas with substantially below-average health  
18 facilities and investment per capita as compared to the state  
19 average. The report shall also describe geographic areas where  
20 the distance to health facilities imposes a barrier to care.  
21 The report shall include a section on health care  
22 transportation needs, including capital, personnel and training  
23 needs. The report shall make recommendations for legislation  
24 to amend the Health Security Act that the commission determines  
25 necessary and appropriate.

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1           **SECTION 36. [NEW MATERIAL] FISCAL AND ACTUARIAL REVIEWS--**  
2           **AUDITS.--**

3                   A. The commission shall provide for annual  
4           independent fiscal and actuarial reviews of the health security  
5           plan and any funds of the commission or the plan.

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

9                   C. The commission, through its staff or by  
10          contract, shall perform announced and unannounced reviews,  
11          including financial management and electronic data processing  
12          reviews of health care providers and health facilities. Review  
13          findings shall be reported directly to the commission. The  
14          commission may request the state auditor to review preliminary  
15          findings or to consult with review staff before the findings  
16          are reported to the commission.

17                  D. Actuarial review, fiscal reviews, financial  
18          audits and internal audits are public documents after they have  
19          been released by the commission; provided that the reports  
20          protect private and confidential information of a patient or  
21          provider. Copies of reviews, audits and other reports shall be  
22          transmitted to the governor, the legislature, appropriate  
23          interim committees of the legislature and the office of the  
24          state auditor as well as made available via the internet.

25           **SECTION 37. [NEW MATERIAL] INFORMATION TECHNOLOGY**

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1 NETWORK.--The commission shall establish guidelines for  
2 maximizing participation of health care providers and health  
3 facilities in the health security plan's information technology  
4 network that provides for electronic transfer of payments to  
5 health care providers and health facilities; transmittal of  
6 reports, including patient data and other statistical reports;  
7 billing data, with specificity as to procedures or services  
8 provided to individual patients; and any other information  
9 required or requested by the commission. To the extent  
10 practicable, the commission shall require the use of existing,  
11 nationally accepted standardized forms, formats and systems.

12 SECTION 38. [NEW MATERIAL] REPORTS REQUIRED--CONFIDENTIAL  
13 INFORMATION.--

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

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

23 C. Information confidential pursuant to other  
24 provisions of law shall be confidential pursuant to the Health  
25 Security Act. Within the constraints of confidentiality,

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1 reports of the commission are public documents.

2 SECTION 39. [NEW MATERIAL] CONSUMER, PROVIDER AND HEALTH  
3 FACILITY ASSISTANCE PROGRAM.--

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

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

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

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

20 SECTION 40. [NEW MATERIAL] VOLUNTARY PURCHASE OF OTHER  
21 INSURANCE.--

22 A. After the date on which the health security plan  
23 begins operating, a beneficiary may purchase supplemental  
24 health insurance benefits.

25 B. Nothing in this section affects insurance

1 coverage pursuant to the federal Employee Retirement Income  
 2 Security Act of 1974 unless the state obtains a congressional  
 3 exemption or a waiver from the federal government. Health  
 4 coverage plans that are covered by the provisions of that act  
 5 may elect to participate in the health security plan.

6 C. Nothing in the Health Security Act shall be  
 7 construed to prohibit the voluntary purchase of insurance  
 8 coverage for health care services not covered by the health  
 9 security plan or for individuals not eligible for coverage  
 10 under the health security plan.

11 SECTION 41. [NEW MATERIAL] AUTOMOBILE MEDICAL  
 12 COVERAGE--WORKERS' COMPENSATION--RATES--SUPERINTENDENT  
 13 DUTIES.--

14 A. The superintendent shall work closely with the  
 15 legislative finance committee pursuant to Section 42 of the  
 16 Health Security Act to identify premium costs associated with  
 17 health care coverage in workers' compensation and automobile  
 18 medical coverage. The superintendent shall develop an estimate  
 19 of expected reduction in those costs based upon assumptions of  
 20 health care services coverage in the health security plan and,  
 21 by September 14, 2018, shall report the findings to the  
 22 legislative finance committee to determine the financing of the  
 23 health security plan.

24 B. The superintendent shall ensure that workers'  
 25 compensation and automobile insurance premiums on insurance

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1 policies written in New Mexico reflect a lower rate to account  
2 for the medical payment component to be assumed by the health  
3 security plan.

4 SECTION 42. [NEW MATERIAL] PROPOSED HEALTH SECURITY  
5 PLAN--FISCAL ANALYSIS.--

6 A. The legislative finance committee shall obtain a  
7 fiscal analysis relating to the first five years of the  
8 establishment and operation of the proposed health security  
9 plan, including an analysis of the provisions of Sections 17  
10 through 22, 25, 31 through 33, 35 and 39 through 41 of the  
11 Health Security Act. The fiscal analysis shall include a  
12 projection of plan costs and a review of financing options for  
13 the proposed health security plan.

14 B. The fiscal analysis performed pursuant to  
15 Subsection A of this section shall be guided by the following  
16 requirements and assumptions:

17 (1) before estimating beneficiary and employer  
18 contributions to the health security plan budget, the committee  
19 shall identify and estimate the amount of public finances that  
20 may be contributed to the budget;

21 (2) health care services to be included and  
22 for which costs are to be projected in determining the  
23 financing options shall be no less than the health care  
24 services afforded to state employees pursuant to the Health  
25 Care Purchasing Act;

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1 (3) financing options may set minimum and  
 2 maximum levels of costs to a beneficiary based on the following  
 3 factors, as they apply to a given beneficiary:

- 4 (a) the beneficiary's income;
- 5 (b) federal premium tax credits;
- 6 (c) federal cost-sharing subsidies; and
- 7 (d) medicare offsets; and

8 (4) financing options may set minimum and  
 9 maximum levels of employer contributions, taking into  
 10 consideration an employer's payroll and number of employees.

11 C. The legislative finance committee shall:

12 (1) make projections regarding the impact of  
 13 the health security plan upon the state budget;

14 (2) project the costs of establishing and  
 15 administering the health security plan;

16 (3) prepare a report of its determinations  
 17 with the specific options and recommendations no later than  
 18 October 1, 2018; and

19 (4) submit its report prepared pursuant to  
 20 Paragraph (3) of this subsection to the appropriate interim  
 21 legislative committees for consideration by the fifty-fourth  
 22 legislature.

23 SECTION 43. [NEW MATERIAL] FISCAL ANALYSIS--GRANT FUNDING  
 24 AND OTHER RESOURCES--PARTNERSHIPS.--The legislative finance  
 25 committee shall seek partnerships among state agencies and

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1 private nonprofit persons to identify and apply for available  
2 grant funding and other in-kind and financial resources for its  
3 fiscal analysis conducted pursuant to Section 42 of the Health  
4 Security Act. Any amounts that the legislative finance  
5 committee receives in grant funds or from other financial  
6 resources shall first be used to offset any state funds that  
7 the legislature appropriates or allocates for the fiscal  
8 analysis. Any grant funds or other financial resources  
9 received in excess of legislative appropriations or allocations  
10 shall be used for the study of financing options for the health  
11 security plan.

12 SECTION 44. [NEW MATERIAL] REIMBURSEMENT TO HEALTH  
13 SECURITY PLAN FROM FEDERAL AND OTHER HEALTH INSURANCE  
14 PROGRAMS.--

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

19 B. The commission shall seek to maximize federal  
20 contributions and payments for health care services provided in  
21 New Mexico and shall ensure that the contributions of the  
22 federal government for health care services in New Mexico will  
23 not decrease in relation to other states as a result of any  
24 health care efficiencies or improvements or other savings.

25 SECTION 45. [NEW MATERIAL] TRANSITION PERIOD



1 ARRANGEMENTS--PRIVATE CONTRACT--COLLECTIVE BARGAINING.--A  
2 person who, on the date benefits are available under the Health  
3 Security Act's health security plan, receives health care  
4 benefits under a private contract or collective bargaining  
5 agreement entered into prior to July 1, 2020 shall continue to  
6 receive those benefits until the contract or agreement expires  
7 or unless the contract or agreement is renegotiated to provide  
8 participation in the health security plan.

9 SECTION 46. Section 41-4-3 NMSA 1978 (being Laws 1976,  
10 Chapter 58, Section 3, as amended) is amended to read:

11 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

12 A. "board" means the risk management advisory  
13 board;

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

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

21 D. "law enforcement officer" means a full-time  
22 salaried public employee of a governmental entity, or a  
23 certified part-time salaried police officer employed by a  
24 governmental entity, whose principal duties under law are to  
25 hold in custody any person accused of a criminal offense, to

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1 maintain public order or to make arrests for crimes, or members  
2 of the national guard when called to active duty by the  
3 governor;

4 E. "maintenance" does not include:

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

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

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

19 (1) elected or appointed officials;

20 (2) law enforcement officers;

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

24 (4) licensed foster parents providing care for  
25 children in the custody of the human services department,

1 corrections department or department of health, but not  
2 including foster parents certified by a licensed child  
3 placement agency;

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

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

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

11 (8) members of the board of directors of the  
12 New Mexico medical insurance pool;

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

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

20 (11) members of the board of directors of the  
21 New Mexico educational assistance foundation;

22 (12) members of the board of directors of the  
23 New Mexico student loan guarantee corporation;

24 (13) members of the New Mexico mortgage  
25 finance authority;

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

3 (15) members of the board of directors of the  
4 small business investment corporation;

5 (16) health care providers licensed in New  
6 Mexico who render voluntary health care services without  
7 compensation in accordance with rules promulgated by the  
8 secretary of health. The rules shall include requirements for  
9 the types of locations at which the services are rendered, the  
10 allowed scope of practice and measures to ensure quality of  
11 care;

12 (17) an individual while participating in the  
13 state's adaptive driving program and only while using a  
14 special-use state vehicle for evaluation and training purposes  
15 in that program;

16 (18) the staff and members of the board of  
17 directors of the New Mexico health insurance exchange  
18 established pursuant to the New Mexico Health Insurance  
19 Exchange Act; ~~and~~

20 (19) members of the insurance nominating  
21 committee; and

22 (20) the staff and members of the health care  
23 commission established pursuant to the Health Security Act;

24 G. "scope of duty" means performing any duties that  
25 a public employee is requested, required or authorized to

1 perform by the governmental entity, regardless of the time and  
2 place of performance; and

3 H. "state" or "state agency" means the state of New  
4 Mexico or any of its branches, agencies, departments, boards,  
5 instrumentalities or institutions."

6 SECTION 47. Effective June 1, 2018, Section 41-4-3 NMSA  
7 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is  
8 repealed and a new Section 41-4-3 NMSA 1978 is enacted to read:

9 "41-4-3. [NEW MATERIAL] DEFINITIONS.--As used in the Tort  
10 Claims Act:

11 A. "board" means the risk management advisory  
12 board;

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

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

20 D. "law enforcement officer" means a full-time  
21 salaried public employee of a governmental entity, or a  
22 certified part-time salaried police officer employed by a  
23 governmental entity, whose principal duties under law are to  
24 hold in custody any person accused of a criminal offense, to  
25 maintain public order or to make arrests for crimes, or members

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1 of the national guard when called to active duty by the  
2 governor;

3 E. "maintenance" does not include:

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

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

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

18 (1) elected or appointed officials;

19 (2) law enforcement officers;

20 (3) persons acting on behalf or in service of  
21 a governmental entity in any official capacity, whether with or  
22 without compensation;

23 (4) licensed foster parents providing care for  
24 children in the custody of the human services department,  
25 corrections department or department of health, but not

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1 including foster parents certified by a licensed child  
2 placement agency;

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

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

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

10 (8) members of the board of directors of the  
11 New Mexico medical insurance pool;

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

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

19 (11) members of the board of directors of the  
20 New Mexico educational assistance foundation;

21 (12) members of the board of directors of the  
22 New Mexico student loan guarantee corporation;

23 (13) members of the New Mexico mortgage  
24 finance authority;

25 (14) volunteers, employees and board members

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1 of court-appointed special advocate programs;

2 (15) members of the board of directors of the  
3 small business investment corporation;

4 (16) health care providers licensed in New  
5 Mexico who render voluntary health care services without  
6 compensation in accordance with rules promulgated by the  
7 secretary of health. The rules shall include requirements for  
8 the types of locations at which the services are rendered, the  
9 allowed scope of practice and measures to ensure quality of  
10 care;

11 (17) an individual while participating in the  
12 state's adaptive driving program and only while using a  
13 special-use state vehicle for evaluation and training purposes  
14 in that program;

15 (18) the staff and members of the board of  
16 directors of the New Mexico health insurance exchange  
17 established pursuant to the New Mexico Health Insurance  
18 Exchange Act; and

19 (19) members of the insurance nominating  
20 committee;

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

25 H. "state" or "state agency" means the state of New



1 Mexico or any of its branches, agencies, departments, boards,  
2 instrumentalities or institutions."

3 SECTION 48. A new section of the Unfair Practices Act is  
4 enacted to read:

5 "[NEW MATERIAL] PRIVATE HEALTH INSURANCE--HEALTH CARE  
6 SERVICES PROVIDED UNDER THE HEALTH SECURITY ACT--UNFAIR  
7 PRACTICE.--

8 A. No person shall sell private health insurance to  
9 a beneficiary for a health care service that is covered by the  
10 health security plan established pursuant to the Health  
11 Security Act, except for the following types of coverage:

12 (1) transitional coverage, as provided in  
13 Section 45 of the Health Security Act; or

14 (2) coverage pursuant to a retiree health  
15 insurance plan that does not enter into a contract with the  
16 health security plan.

17 B. A violation of the provisions of this section  
18 shall constitute an unfair practice."

19 SECTION 49. TEMPORARY PROVISION--HEALTH CARE COMMISSION--  
20 REIMBURSEMENT FOR FISCAL ANALYSIS.--The health care commission  
21 shall reimburse the legislative finance committee for any state  
22 funds it expended in undertaking the fiscal analysis pursuant  
23 to Section 42 of the Health Security Act.

24 SECTION 50. DELAYED REPEAL.--Sections 1 through 46, 48  
25 and 49 of this act are repealed effective June 3, 2019.

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