

1 SENATE BILL 279

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO HEALTH CARE; ENACTING THE HEALTH SECURITY ACT TO  
12 PROVIDE FOR COMPREHENSIVE STATEWIDE HEALTH CARE; PROVIDING FOR  
13 HEALTH CARE PLANNING; ESTABLISHING PROCEDURES TO CONTAIN HEALTH  
14 CARE COSTS; CREATING A COMMISSION; PROVIDING FOR ITS POWERS AND  
15 DUTIES; PROVIDING FOR HEALTH CARE DELIVERY REGIONS AND REGIONAL  
16 COUNCILS; DIRECTING AND AUTHORIZING THE DEVELOPMENT OF A HEALTH  
17 SECURITY PLAN; PROVIDING PENALTIES; AMENDING A SECTION OF THE  
18 TORT CLAIMS ACT; ENACTING A NEW SECTION OF THE UNFAIR PRACTICES  
19 ACT TO BAN THE SALE OF REDUNDANT HEALTH COVERAGE; ENACTING  
20 TEMPORARY PROVISIONS OF LAW TO REQUIRE A FISCAL ANALYSIS OF THE  
21 HEALTH SECURITY PLAN BEFORE ENACTMENT OF THE HEALTH SECURITY  
22 ACT; PROVIDING FOR DELAYED REPEAL; MAKING AN APPROPRIATION.  
23

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

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

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1 through 42 of this act may be cited as the "Health Security  
2 Act".

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

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

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

10 A. "behavioral health services" includes mental  
11 health and substance use disorder treatment and rehabilitation  
12 services;

13 B. "beneficiary" means a person eligible for health  
14 care and benefits pursuant to the health security plan;

15 C. "budget" means the total of all categories of  
16 dollar amounts of expenditures for a stated period authorized  
17 for an entity or a program;

18 D. "capital budget" means that portion of a budget  
19 that establishes expenditures for acquisition:

20 (1) or addition of substantial improvements to  
21 real property; or

22 (2) of tangible personal property;

23 E. "care coordination" means a comprehensive,  
24 multidisciplinary program designed to meet an individual's need  
25 for care by coordinating health services, patient needs and

1 information to better achieve the goals of treatment and care;

2 F. "commission" means the health care commission;

3 G. "consumer price index for medical care prices"  
4 means that index as published by the bureau of labor statistics  
5 of the federal department of labor;

6 H. "controlling interest" means:

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

9 (2) an interest, direct or indirect, that,  
10 because of financial or personal relationships, has the power  
11 to influence important decisions of the person controlled;

12 I. "financial interest" means an ownership interest  
13 of any amount, direct or indirect;

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

20 K. "health care" means health care provider  
21 services and health facility services;

22 L. "health care provider" means any of the  
23 following persons that is not a health facility and that is:

24 (1) a person or network of persons licensed or  
25 certified and authorized to provide health care in the state;

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

4 (3) a person that is a group practice of  
5 licensed providers or a medical transportation service;

6 M. "health facility" means a school-based clinic,  
7 an Indian health service facility, a tribal or tribal entity  
8 health care facility, a state-operated health care facility, a  
9 general hospital, a special hospital, an outpatient facility, a  
10 psychiatric hospital, a primary clinic pursuant to the Rural  
11 Primary Health Care Act, a laboratory, a freestanding birthing  
12 facility, a skilled nursing facility or a nursing facility or  
13 other type of facility licensed as a health facility by the  
14 department of health and identified in commission rules;  
15 provided that the health facility is authorized to receive  
16 state or federal reimbursement;

17 N. "health resource certification" means a system  
18 of approval for major capital expenditures to be determined by  
19 commission rules;

20 O. "health security plan" means the program that is  
21 created and administered by the commission for provision of  
22 health care pursuant to the Health Security Act;

23 P. "major capital expenditure" means construction  
24 or renovation of facilities or the acquisition of diagnostic,  
25 treatment or transportation equipment by a health care provider

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1 or health facility that costs more than an amount recommended  
2 and established by the commission;

3 Q. "medicare offset" means a reimbursement that the  
4 federal government makes pursuant to the federal Health  
5 Insurance for the Aged Act, Title 18 of the Social Security  
6 Amendments of 1965, as then constituted or later amended;

7 R. "operating budget" means the budget of a health  
8 facility exclusive of the facility's capital budget;

9 S. "person" means an individual or any other legal  
10 entity;

11 T. "primary care provider" means a health care  
12 provider who is a physician, osteopathic physician, nurse  
13 practitioner, physician assistant, osteopathic physician's  
14 assistant, pharmacist clinician or other health care provider  
15 certified by the commission to provide the first level of basic  
16 health care, including diagnostic and treatment services;  
17 services delivered at a primary clinic, telehealth site or  
18 school-based health center; and behavioral health services if  
19 those services are integrated into the provider's service  
20 array;

21 U. "provider budget" means the authorized  
22 expenditures pursuant to payment mechanisms established by the  
23 commission to pay for health care furnished by health care  
24 providers participating in the health security plan;

25 V. "service" means a health care service or product

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1 offered or provided to an individual for the purpose of  
2 preventing, alleviating, curing or healing human physical or  
3 mental illness or injury or substance use disorder;

4 W. "specialist" means a physician who is certified  
5 to practice in a medical subspecialty by the American board of  
6 medical specialties;

7 X. "superintendent" means the superintendent of  
8 insurance; and

9 Y. "transportation service" means a person  
10 providing the services of an ambulance, helicopter or other  
11 conveyance that is used to transport patients to or from health  
12 care providers or health facilities.

13 SECTION 4. [NEW MATERIAL] HEALTH CARE COMMISSION  
14 CREATED--GOVERNMENTAL INSTRUMENTALITY.--As of December 1, 2021,  
15 the "health care commission" is created as a public body,  
16 politic and corporate, constituting a governmental  
17 instrumentality. The commission consists of fifteen members.

18 SECTION 5. [NEW MATERIAL] CREATION OF HEALTH CARE  
19 COMMISSION MEMBERSHIP NOMINATING COMMITTEE--MEMBERSHIP, TERMS  
20 AND DUTIES.--

21 A. As of May 6, 2021, the "health care commission  
22 membership nominating committee" is created, consisting of ten  
23 members, to reflect the geographic diversity of the state, as  
24 follows:

25 (1) three members appointed by the speaker of

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1 the house of representatives;

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

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

6 (4) two members appointed by the minority  
7 floor leader of the senate.

8 B. By April 15, 2021, the legislative council  
9 service shall provide the public with public notice to allow  
10 members of the public to request consideration of appointment  
11 to the nominating committee. The notice shall be advertised  
12 and reported on a publicly accessible website that the  
13 nominating committee establishes and maintains, in media  
14 outlets throughout the state and through publication of a legal  
15 notice in major newspapers. Publication of the legal notice  
16 shall occur once each week for the two weeks preceding April  
17 15, 2021.

18 C. At the first meeting of the nominating  
19 committee, it shall elect a chair and any other officers it  
20 deems necessary from its membership.

21 D. Members shall serve two-year terms.

22 E. A member shall serve until the member's  
23 successor is appointed and qualified. Successor members shall  
24 be appointed by the appointing authority that made the initial  
25 appointment to the nominating committee. A member shall be

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1 eligible for or enrolled in the health security plan. A person  
2 shall not serve on the nominating committee if that person:

3 (1) currently or within the previous twenty-  
4 four months:

5 (a) serves or has served as a member of  
6 the commission; or

7 (b) has, or is a member of the household  
8 of a person who has, been employed by, served as an agent or  
9 officer of or had a controlling interest in a person that is  
10 licensed to provide health insurance;

11 (2) is a state employee who is appointed by  
12 the governor and confirmed by the senate;

13 (3) is an elected official;

14 (4) is a health care provider; or

15 (5) is an owner or operator of a health  
16 facility.

17 F. Appointed members of the nominating committee  
18 shall have substantial knowledge of the health care system as  
19 demonstrated by education or experience.

20 G. The nominating committee shall advertise and  
21 report notice of its meetings and agendas at least seventy-two  
22 hours before each meeting on a publicly accessible website that  
23 the commission establishes and maintains, in media outlets  
24 throughout the state and through publication of a legal notice  
25 in major newspapers. Publication of the legal notice shall

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1 occur once each week for the two weeks immediately preceding  
2 the date of a meeting. Meetings of the nominating committee  
3 shall be open to the public, and public comment shall be  
4 allowed.

5 H. A majority of the nominating committee  
6 constitutes a quorum. The nominating committee may allow  
7 members' participation in meetings by telephone or other  
8 electronic media that allow full participation. Meetings may  
9 be closed only for discussion of candidates prior to selection.  
10 Final selection of candidates shall be by vote of the members  
11 and shall be conducted in a public meeting.

12 I. The New Mexico legislative council shall convene  
13 the first meeting of the nominating committee on or before May  
14 14, 2021 and thereafter at the call of the chair.

15 J. The nominating committee shall actively solicit,  
16 accept and evaluate applications from qualified persons for  
17 membership on the commission subject to the qualification  
18 requirements for commission membership pursuant to Section 6 of  
19 the Health Security Act.

20 K. No later than October 1, 2021, the nominating  
21 committee shall submit to the governor the names of the persons  
22 recommended for appointment to the commission by a majority of  
23 the nominating committee. Immediately after receiving the  
24 nominating committee's nominations, the governor may make one  
25 request of the nominating committee for submission of

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1 additional names. If a majority of the nominating committee  
2 finds additional persons that would be qualified, the  
3 nominating committee shall promptly submit the additional names  
4 and recommend those persons for appointment to the commission.  
5 The nominating committee shall submit no more than three names  
6 for a membership position for each initial or additional  
7 appointment.

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

11 M. The legislative council service shall provide  
12 staff to assist the nominating committee.

13 SECTION 6. [NEW MATERIAL] APPOINTMENT OF COMMISSION  
14 MEMBERS--MEETINGS--QUALIFICATIONS--TERMS.--

15 A. From the nominees submitted by the health care  
16 commission membership nominating committee, the governor shall  
17 appoint fifteen members to the commission, and the initial  
18 commission shall be in place by December 2, 2021. In the event  
19 that the governor does not appoint a member to a commission  
20 membership slot by December 2, 2021, the nominating committee  
21 shall make that appointment.

22 B. The New Mexico legislative council shall convene  
23 a first meeting of the commission by January 6, 2022. At the  
24 first meeting of the commission, the members shall elect from  
25 their membership a chair and a vice chair and any other

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1 officers they deem necessary. The chair, vice chair and any  
2 other officers shall serve for terms of two years.

3 C. After the first meeting of the commission, the  
4 commission shall meet at the call of the chair as the chair  
5 deems necessary and at least once each month.

6 D. The terms of the initial commission members  
7 appointed shall be chosen by lot: five members shall be  
8 appointed for terms of four years; five members shall be  
9 appointed for terms of three years; and five members shall be  
10 appointed for terms of two years. Thereafter, all members  
11 shall be appointed for terms of four years. After initial  
12 terms are served, no member shall serve more than two  
13 consecutive four-year terms. A member may serve until a  
14 successor is appointed.

15 E. A person shall not serve on the commission if  
16 that person:

17 (1) has, within the previous twenty-four  
18 months, served as a member of the nominating committee;

19 (2) has, or is a member of the household of a  
20 person who has, during the previous twenty-four months, been  
21 employed by, served as an agent or officer of or had a  
22 controlling interest in a person that is licensed to provide  
23 health insurance;

24 (3) is a state employee who is appointed by  
25 the governor and confirmed by the senate;

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1 (4) is an elected official; or

2 (5) is not enrolled in the health security

3 plan.

4 F. When a vacancy occurs in the membership of the  
5 commission, the health care commission membership nominating  
6 committee shall meet and nominate a member to fill the vacancy  
7 within thirty days of the occurrence of the vacancy. From the  
8 nominees submitted, the governor shall fill the vacancy within  
9 thirty days after receiving final nominations. In the event  
10 that the governor does not appoint a member to the vacancy  
11 within thirty days, the nominating committee shall appoint a  
12 member to fill the vacancy.

13 G. The fifteen members of the commission shall  
14 include:

15 (1) five persons who represent either health  
16 care providers or health facilities;

17 (2) six persons who represent consumer  
18 interests; and

19 (3) four persons who represent employer  
20 interests; provided that a person who represents a health care  
21 provider or a health facility shall not serve as a member who  
22 represents employer interests.

23 H. A person appointed to the commission who does  
24 not represent a health care provider or a health facility shall  
25 have a knowledge of the health care system as demonstrated by

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1 experience or education.

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

5 (1) two from public education commission  
6 district 1;

7 (2) one from public education commission  
8 district 2;

9 (3) one from public education commission  
10 district 3;

11 (4) two from public education commission  
12 district 4;

13 (5) two from public education commission  
14 district 5;

15 (6) one from public education commission  
16 district 6;

17 (7) two from public education commission  
18 district 7;

19 (8) two from public education commission  
20 district 8;

21 (9) one from public education commission  
22 district 9; and

23 (10) one from public education commission  
24 district 10.

25 J. The presence of a majority of the commission's

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1 members constitutes a quorum for the transaction of business.  
2 The commission may allow members' participation in meetings by  
3 telephone or other electronic media that allow full  
4 participation.

5 K. A member may receive per diem and mileage at a  
6 rate equal to the rate at which state legislators are  
7 reimbursed in accordance with the provisions of the Per Diem  
8 and Mileage Act for expenses incurred in fulfilling their  
9 duties. Additionally, members shall be compensated at the rate  
10 of two hundred dollars (\$200) for each day of a meeting or  
11 training event actually attended not to exceed compensation for  
12 one hundred twenty meetings for a two-year period occurring in  
13 a term.

14 L. The commission shall establish an electronic  
15 mail or "email" system for use by members in the conduct of  
16 commission business. Commission business shall be exclusively  
17 conducted on the commission's email system.

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

21 A. The commission shall adopt a conflict-of-  
22 interest disclosure statement for use by all members that  
23 requires disclosure of a financial interest, whether or not a  
24 controlling interest, of the member or a member of the member's  
25 household in a person providing health care or health

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1 insurance.

2 B. A member representing health facilities or  
3 health care providers may vote on matters that pertain  
4 generally to health facilities or health care providers.

5 C. If there is a question about a conflict of  
6 interest of a commission member, the other members shall vote  
7 on whether to allow the member to vote.

8 SECTION 8. [NEW MATERIAL] COMMISSION CODE OF CONDUCT--  
9 MEMBER DISCIPLINE--REMOVAL.--The commission shall adopt and  
10 promulgate a code of conduct and procedures to be observed by  
11 members in the execution of their duties. The commission may  
12 remove a member for a violation of the commission code of  
13 conduct or a violation of the Health Security Act by a two-  
14 thirds' majority vote of all of the members at a meeting where  
15 all members, except the member who is the subject of the vote,  
16 are present. A member shall not be removed without proceedings  
17 consisting of at least one ten-day notice of hearing and an  
18 opportunity to be heard. Removal proceedings shall be before  
19 the commission and in accordance with procedures the commission  
20 has adopted and promulgated.

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

24 A. shall be subject to and shall comply with the  
25 provisions of the:

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- 1 (1) Open Meetings Act;
- 2 (2) State Rules Act;
- 3 (3) Inspection of Public Records Act;
- 4 (4) Public Records Act;
- 5 (5) Financial Disclosure Act;
- 6 (6) Accountability in Government Act;
- 7 (7) Gift Act;
- 8 (8) Tort Claims Act; and
- 9 (9) State-Tribal Collaboration Act; and

10 B. shall not be subject to the provisions of the  
11 Procurement Code or the Personnel Act.

12 SECTION 10. [NEW MATERIAL] CHIEF EXECUTIVE OFFICER--  
13 STAFF--CONTRACTS--BUDGETS.--

14 A. The commission shall appoint and set the salary  
15 of a "chief executive officer". The chief executive officer  
16 shall serve at the pleasure of the commission and has authority  
17 to carry on the day-to-day operations of the commission and the  
18 health security plan.

19 B. The chief executive officer shall employ those  
20 persons necessary to administer and implement the provisions of  
21 the Health Security Act.

22 C. The chief executive officer and the chief  
23 executive officer's staff shall implement the Health Security  
24 Act in accordance with that act and the rules adopted by the  
25 commission. The chief executive officer may delegate authority

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1 to employees and may organize the staff into units to  
2 facilitate its work.

3 D. If the chief executive officer determines that  
4 the commission staff or a state agency does not have the  
5 resources or expertise to perform a necessary task, the chief  
6 executive officer may contract for performance from a person  
7 who has a demonstrated capability to perform the task. The  
8 commission shall establish the standards and requirements by  
9 which a contract is executed by the commission or the chief  
10 executive officer. A contract shall be reviewed by the  
11 commission or the chief executive officer to ensure that it  
12 meets the criteria, performance standards, expectations and  
13 needs of the commission.

14 E. The chief executive officer shall prepare and  
15 submit an annual budget request and plan of operation to the  
16 commission for its approval. The chief executive officer shall  
17 provide at least quarterly status reports on the budget and  
18 advise of a potential shortfall as soon as practicably  
19 possible.

20 F. A contract for claims processing functions shall  
21 require that all work for claims processing, customer service,  
22 medical and utilization review, financial audit and  
23 reimbursement and related claims adjudication functions be  
24 performed entirely in New Mexico. To the extent practicable,  
25 all other work shall be performed in New Mexico.

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1           SECTION 11.   ~~[NEW MATERIAL]~~ COMMISSION--GENERAL DUTIES.--

2           The commission shall:

3                   A.   adopt a transition plan to ensure the seamless  
4                   transition of health security plan beneficiaries from other  
5                   sources of coverage, public and private.  The transition plan  
6                   shall ensure the proper assignment and payment of claims  
7                   incurred on behalf of beneficiaries before the implementation  
8                   of the health security plan;

9                   B.   by February 10, 2022, obtain legal counsel to  
10                  advise the commission in the execution of its duties;

11                  C.   by April 1, 2022, adopt and promulgate rules for  
12                  the procurement of goods and services.  With the exception of  
13                  audit-related services, rules relating to the procurement of  
14                  goods and services shall provide for a preference for New  
15                  Mexico vendors;

16                  D.   propose health security plan premium rates and  
17                  employer contribution rates to the superintendent;

18                  E.   pursuant to federal law, apply for any federal  
19                  waiver that the commission deems necessary to implement the  
20                  health security plan;

21                  F.   design the health security plan to fulfill the  
22                  purposes of and conform with the provisions of the Health  
23                  Security Act;

24                  G.   provide a program to educate the public, health  
25                  care providers and health facilities about the health security

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1 plan and the persons eligible to receive its benefits;

2 H. study and adopt as provisions of the health  
3 security plan cost-effective methods of providing quality  
4 health care to all beneficiaries, according high priority to  
5 increased reliance on:

6 (1) preventive and primary care that includes  
7 immunization and screening examinations;

8 (2) providing health care in rural or  
9 underserved areas of the state;

10 (3) in-home and community-based alternatives  
11 to institutional health care; and

12 (4) care coordination services when  
13 appropriate;

14 I. establish annual health security plan budgets  
15 and budgets for those projected future periods that the  
16 commission believes appropriate;

17 J. establish and maintain sufficient reserves to  
18 provide for catastrophic and unforeseen expenditures;

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

22 (1) standards and procedures for determining  
23 the budgets; and

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

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1 L. negotiate and enter into health care reciprocity  
2 agreements with out-of-state health care providers and  
3 negotiate and enter into other health care agreements with out-  
4 of-state health care providers and health facilities;

5 M. develop claims and payment procedures for health  
6 care providers, health facilities and claims administrators and  
7 include provisions to ensure timely payments and provide for  
8 payment of interest when reimbursable claims are not paid  
9 within a reasonable time;

10 N. establish, in conjunction with state agencies  
11 similarly charged, a comprehensive system to collect and  
12 analyze health care data, including claims data and other data,  
13 necessary to improve the quality, efficiency and effectiveness  
14 of health care and to control costs of health care in New  
15 Mexico, which system shall include data on:

16 (1) mortality, including accidental causes of  
17 death, and natality;

18 (2) morbidity;

19 (3) health behavior;

20 (4) physical and psychological impairment and  
21 disability;

22 (5) health care system costs and health care  
23 availability, utilization and revenues;

24 (6) environmental factors;

25 (7) availability, adequacy and training of

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1 health care personnel;

2 (8) demographic factors;

3 (9) social and economic conditions affecting  
4 health; and

5 (10) other factors determined by the  
6 commission;

7 O. standardize data collection and specific methods  
8 of measurement across databases and use scientific sampling or  
9 complete enumeration for reporting health information;

10 P. foster a health care delivery system that is  
11 efficient to administer and that eliminates unnecessary  
12 administrative costs;

13 Q. adopt rules necessary to implement and monitor a  
14 preferred drug list, bulk purchasing or other mechanism to  
15 provide prescription drugs and a pricing procedure for  
16 nonprescription drugs, durable medical equipment and supplies,  
17 eyeglasses, hearing aids and oxygen;

18 R. establish a pharmacy and therapeutics committee  
19 to:

20 (1) research federal and state incentives and  
21 discount programs for the purchase, manufacture or supply of  
22 drugs, biologics and medical equipment and supplies to maximize  
23 the health security plan's savings potential through these  
24 incentives and programs;

25 (2) establish a formulary of drugs and

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1 biologics that is in accordance with clinical best practices  
2 for safety, efficacy and effectiveness while, in strict  
3 observance of those best practices, maximizing fiscal  
4 soundness;

5 (3) conduct concurrent, prospective and  
6 retrospective drug utilization review;

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

9 (5) recommend therapeutic classes of drugs,  
10 including specific drugs within each class to be included in  
11 the preferred drug list;

12 (6) identify appropriate exclusions from the  
13 preferred drug list; and

14 (7) conduct periodic clinical reviews of  
15 preferred, nonpreferred and new drugs;

16 S. study and evaluate the adequacy and quality of  
17 health care furnished pursuant to the Health Security Act, the  
18 cost of each type of service and the effectiveness of cost-  
19 containment measures in the health security plan;

20 T. in conjunction with the human services  
21 department, apply to the United States department of health and  
22 human services for all waivers of requirements under health  
23 care programs established pursuant to the federal Social  
24 Security Act that are necessary to enable the health security  
25 plan to receive federal payments for services rendered to

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1       medicaid or medicare beneficiaries;

2               U.   except for those health coverage programs  
3       designated in Subsection B of Section 21 of the Health Security  
4       Act, identify other federal programs that provide federal funds  
5       for payment of health care services to individuals and apply  
6       for any waivers or enter into any agreements that are necessary  
7       for services covered by the health security plan; provided,  
8       however, that agreements negotiated with the federal Indian  
9       health service or tribal governments shall not impair treaty  
10      obligations of the United States government and that other  
11      agreements negotiated shall not impair portability or other  
12      aspects of the health care coverage;

13              V.   seek an amendment to the federal Employee  
14      Retirement Income Security Act of 1974 to exempt New Mexico  
15      from the provisions of that act that relate to health care  
16      services or health insurance, or apply to the appropriate  
17      federal agency for waivers of any requirements of that act if  
18      congress provides for waivers to enable the commission to  
19      extend coverage through the Health Security Act to as many New  
20      Mexicans as possible; provided, however, that the amendment or  
21      waiver requested shall not impair portability or other aspects  
22      of the health care coverage;

23              W.   analyze developments in federal law and  
24      regulation relevant to the health security plan, and provide  
25      updates and any legislative recommendations to the legislature

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1 that the commission deems necessary pursuant to those  
2 developments;

3 X. work with the counties to determine the  
4 expenditure of funds generated pursuant to the Indigent  
5 Hospital and County Health Care Act and the Statewide Health  
6 Care Act;

7 Y. seek to maximize federal contributions and  
8 payments for health care services provided in New Mexico and  
9 ensure that the contributions of the federal government for  
10 health care services in New Mexico will not decrease in  
11 relation to other states as a result of any health care  
12 efficiencies or improvements or savings;

13 Z. study and monitor the migration of persons to  
14 New Mexico to determine if persons with costly health care  
15 needs are moving to New Mexico to receive health care and, if  
16 migration appears to threaten the financial stability of the  
17 health security plan, recommend to the legislature changes in  
18 eligibility requirements, premiums or other changes that may be  
19 necessary to maintain the financial integrity of the health  
20 security plan;

21 AA. collaborate with state agencies and experts to  
22 study and evaluate health care workforce data and research, and  
23 information solicited from health care providers and health  
24 care workforce experts, on the effect of the health security  
25 plan on the state's provider community. This shall include the

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1 study and evaluation of the supply of health care providers in  
2 the state and providers' ability to provide high-quality health  
3 care under the health security plan;

4 BB. study and evaluate the cost of health care  
5 provider professional liability insurance and its impact on the  
6 price of health care services and recommend changes to the  
7 legislature as necessary;

8 CC. establish and approve changes in coverage  
9 services and service standards in the health security plan in  
10 compliance with federal and state law;

11 DD. conduct necessary investigations and inquiries;

12 EE. adopt rules necessary to implement, administer  
13 and monitor the operation of the health security plan;

14 FF. designate a Native American liaison who shall:

15 (1) serve on the Native American advisory  
16 board established pursuant to Subsection A of Section 13 of the  
17 Health Security Act;

18 (2) assist the commission in developing and  
19 ensuring implementation of communication and collaboration  
20 between the commission and New Mexico Indian nations, tribes  
21 and pueblos in the state;

22 (3) serve as a contact person between the  
23 commission and New Mexico Indian nations, tribes and pueblos;  
24 and

25 (4) ensure that training is provided to the

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1 staff of the commission, which may include training in:  
2 (a) cultural competency;  
3 (b) state and federal law relating to  
4 Indian health; and

5 (c) other matters relating to the  
6 functions of the health security plan with respect to Native  
7 Americans in the state;

8 GG. report at least once annually to the  
9 legislature and the governor on the commission's activities and  
10 the operation of the health security plan and include in the  
11 annual report:

12 (1) a summary of information about health care  
13 needs, health care services, health care expenditures, revenues  
14 received and projected revenues and other relevant issues  
15 relating to the health security plan; and

16 (2) recommendations on methods to control  
17 health care costs and improve access to and the quality of  
18 health care for state residents, as well as recommendations for  
19 legislative action; and

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

22 SECTION 12. [NEW MATERIAL] COMMISSION--AUTHORITY.--The  
23 commission has the authority necessary to carry out the powers  
24 and duties pursuant to the Health Security Act. The commission  
25 retains responsibility for its duties but may delegate

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1 authority to the chief executive officer; provided, however,  
2 that only the commission may:

3 A. approve the commission's budget and plan of  
4 operation;

5 B. approve the health security plan and make  
6 changes in the health security plan;

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

9 D. issue subpoenas to persons to appear and testify  
10 before the commission and to produce documents and other  
11 information relevant to the commission's inquiry and enforce  
12 this subpoena power through an action in a state district  
13 court;

14 E. make reports and recommendations to the  
15 legislature;

16 F. subject to the prohibitions and restrictions of  
17 Section 21 of the Health Security Act, apply for program  
18 waivers from any governmental entity if the commission  
19 determines that the waivers are necessary to ensure the  
20 participation by the greatest possible number of beneficiaries;

21 G. apply for and accept grants, loans and  
22 donations;

23 H. acquire or lease real property and make  
24 improvements on it and acquire by lease or by purchase tangible  
25 and intangible personal property;

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

3 J. appoint and prescribe the duties of employees,  
4 fix their compensation, pay their expenses and provide an  
5 employee benefit program;

6 K. establish and maintain banking relationships,  
7 including establishment of checking and savings accounts;

8 L. sue and be sued;

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

11 N. enter into agreements with an employer, group or  
12 other plan to provide health care services for the employer's  
13 employees or retirees; provided, however, that nothing in the  
14 Health Security Act shall be construed to reduce or eliminate  
15 services to which the employee or retiree is entitled; and

16 O. enter into contracts with similar entities or  
17 other states of the United States for the performance of common  
18 administrative functions.

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

20 A. The commission shall establish the following in  
21 matters requiring the expertise and knowledge of the advisory  
22 boards' members:

23 (1) at least three health care provider  
24 advisory boards, composed of health care providers to reflect  
25 the diversity of health care professions and subspecialties,

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1 including one primary care provider advisory board;

2 (2) at least three health facility advisory  
3 boards, composed of representatives of health facilities; and

4 (3) the following advisory boards, for which  
5 the Native American liaison established pursuant to Subsection  
6 FF of Section 11 of the Health Security Act shall serve as  
7 facilitator, which boards shall make recommendations to the  
8 commission on matters relating to Indian nation, tribal and  
9 pueblo beneficiaries:

10 (a) a tribal government advisory board,  
11 composed of representatives of the governments of New Mexico  
12 Indian nations, tribes and pueblos, to make recommendations to  
13 the commission regarding agreements between the commission and  
14 tribal governments; and

15 (b) at least one advisory board composed  
16 of members of Indian nations, tribes and pueblos living in New  
17 Mexico tribal jurisdictions and those living off-reservation.

18 B. In addition to the advisory boards established  
19 pursuant to Subsection A of this section, the commission may  
20 establish additional advisory boards to assist the commission  
21 in performing its duties.

22 C. Except for the tribal government advisory board  
23 established pursuant to Subparagraph (a) of Paragraph (3) of  
24 Subsection A of this section, the commission shall not appoint  
25 to an advisory board:

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

7 D. Except for the members of the health care  
8 provider advisory board, the health facility advisory board and  
9 the advisory boards established pursuant to Paragraph (3) of  
10 Subsection A of this section, no more than two members of any  
11 advisory board shall represent or have a controlling interest,  
12 direct or indirect, in a health care provider or a health  
13 facility.

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

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

20 SECTION 14. [NEW MATERIAL] HEALTH CARE DELIVERY  
21 REGIONS.--The commission shall establish health care delivery  
22 regions in the state, based on geography and health care  
23 resources. The regions may have differential fee schedules,  
24 budgets, capital expenditure allocations or other features to  
25 encourage the provision of health care in rural and other

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1 underserved areas or to tailor otherwise the delivery of health  
2 care to fit the needs of a region or a part of a region.

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

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

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

20 C. Members of a regional council may be paid per  
21 diem and mileage equal to the rate at which state legislators  
22 are reimbursed in accordance with the provisions of the Per  
23 Diem and Mileage Act.

24 D. The regional councils shall hold public hearings  
25 to receive comments, suggestions and recommendations from the

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1 public regarding regional health care needs. The councils  
2 shall report to the commission at times specified by the  
3 commission to ensure that regional concerns are considered in  
4 the development and update of short- and long-range plans and  
5 projections, fee schedules, budgets and capital expenditure  
6 allocations.

7 E. Staff technical assistance for the regional  
8 councils shall be provided by the commission.

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

10 A. The commission shall adopt rules necessary to  
11 carry out the duties of the commission and the provisions of  
12 the Health Security Act.

13 B. The commission shall not adopt, amend or repeal  
14 any rule affecting a person outside the commission without a  
15 public hearing on the proposed action before the commission or  
16 a hearing officer designated by the commission. The hearing  
17 officer may be a member of the commission's staff. The hearing  
18 shall be held in a county whose location the commission  
19 determines would be in the interest of those affected. Notice  
20 of the subject matter of the rule, the action proposed to be  
21 taken, the time and place of the hearing, the manner in which  
22 interested persons may present their views and the method by  
23 which copies of the proposed rule or an amendment or repeal of  
24 an existing rule may be obtained shall be published once at  
25 least thirty days prior to the hearing date on a publicly

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

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

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

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

18 B. Covered health care services shall not include:

19 (1) surgery for cosmetic purposes other than  
20 for reconstructive purposes;

21 (2) medical examinations and medical reports  
22 prepared for purchasing or renewing life insurance or  
23 participating as a plaintiff or defendant in a civil action for  
24 the recovery or settlement of damages; and

25 (3) orthodontic services and cosmetic dental

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1 services except those cosmetic dental services necessary for  
2 reconstructive purposes.

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

6 D. The health security plan shall contain  
7 provisions to control health care costs.

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

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

17 SECTION 18. [NEW MATERIAL] LONG-TERM CARE.--

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

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1 committee shall report its plan to the commission no later than  
2 one year from its appointment. Committee members may receive  
3 per diem and mileage as provided in the Per Diem and Mileage  
4 Act.

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

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

12 SECTION 19. [NEW MATERIAL] BEHAVIORAL HEALTH SERVICES--  
13 PARITY.--

14 A. The commission shall appoint an advisory  
15 "behavioral health services committee" made up of  
16 representatives of behavioral health care consumers, family  
17 members of consumers, providers and administrators to develop a  
18 systemic plan for coordinating behavioral health services  
19 within the health security plan. The committee shall report  
20 its plan to the commission no later than one year from its  
21 appointment. Committee members may receive per diem and  
22 mileage as provided in the Per Diem and Mileage Act.

23 B. The commission shall ensure that the health  
24 security plan conforms to federal and state behavioral health  
25 services parity laws.

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1 C. The behavioral health services component of the  
2 health security plan shall provide, where appropriate, for:

- 3 (1) inpatient crisis evaluation services;  
4 (2) inpatient residential substance abuse  
5 treatment services without a step therapy requirement; and  
6 (3) care coordination and noninstitutional  
7 services.

8 D. Nothing in this section limits behavioral health  
9 services paid through private insurance or state or federal  
10 health coverage programs.

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

20 SECTION 21. [NEW MATERIAL] HEALTH SECURITY PLAN  
21 COVERAGE--CONDITIONS OF ELIGIBILITY FOR BENEFICIARIES--  
22 EXCLUSIONS.--

23 A. An individual is eligible as a beneficiary of  
24 the health security plan if the individual has been physically  
25 present in New Mexico for one year prior to the date of

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1 application for enrollment in the health security plan and if  
2 the individual has a current intention to remain in New Mexico  
3 and not to reside elsewhere. A dependent of an eligible  
4 individual is included as a beneficiary.

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

7 (1) federal retiree health plan beneficiaries;

8 (2) active duty and retired military  
9 personnel; and

10 (3) individuals covered by the federal active  
11 and retired military health programs.

12 C. Federal Indian health service or tribally  
13 operated health care agreements, contracts and programs shall  
14 not be brought into coverage except through agreements with:

15 (1) an Indian nation, tribe or pueblo;

16 (2) a consortium of Indian nations, tribes or  
17 pueblos; or

18 (3) a federal Indian health service agency  
19 subject to the approval of any Indian nation, tribe or pueblo  
20 that the agency serves.

21 D. If an individual is ineligible due to the  
22 residence requirement, the individual may become eligible by  
23 paying the premium required by the health security plan for  
24 coverage for the period of time up to the date the individual  
25 fulfills that requirement if the individual is an employee who

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1 physically resides and intends to reside in the state because  
2 of employment offered to the individual in New Mexico while the  
3 individual was residing elsewhere as demonstrated by furnishing  
4 that evidence of those facts required by rule adopted by the  
5 commission.

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

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

21 SECTION 22. [NEW MATERIAL] HEALTH SECURITY PLAN COVERAGE  
22 OF NONRESIDENT STUDENTS.--

23 A. Except as provided in Subsection B of this  
24 section, an educational institution shall purchase coverage  
25 under the health security plan for its nonresident students

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1 through fees assessed to those students covered under the  
2 health security plan. The governing body of an educational  
3 institution shall set the fees at the amount determined by the  
4 commission.

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

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

13 SECTION 23. [NEW MATERIAL] REMOVING INELIGIBLE PERSONS.--  
14 The commission shall adopt rules to provide procedures for  
15 removing persons no longer eligible for coverage.

16 SECTION 24. [NEW MATERIAL] ELIGIBILITY CARD--USE--  
17 PENALTIES FOR MISUSE.--

18 A. A beneficiary shall receive a card as proof of  
19 eligibility. The card shall be electronically readable and  
20 shall contain a photograph or electronic image of the  
21 beneficiary, information that identifies the beneficiary for  
22 treatment and billing, payment and other information the  
23 commission deems necessary. The use of a beneficiary's social  
24 security number as an identification number is not permitted.

25 B. The eligibility card is not transferable. A

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1 beneficiary who lends the beneficiary's card to another and an  
2 individual who uses another's card shall be jointly and  
3 severally liable to the commission for the full cost of the  
4 health care provided to the user. The liability shall be paid  
5 in full within one year of final determination of liability.  
6 Liabilities created pursuant to this section shall be collected  
7 in a manner similar to that used for collection of delinquent  
8 taxes.

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

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

19 A. Except as provided in the Workers' Compensation  
20 Act, a beneficiary has the right to choose a primary care  
21 provider.

22 B. The primary care provider is responsible for  
23 providing health care provider services to the patient except  
24 for services:

25 (1) in medical emergencies; and

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1 (2) for which a primary care provider  
2 determines that specialist services are required, in which case  
3 the primary care provider shall advise the patient of the need  
4 for and the type of specialist services.

5 C. Nothing in this section prevents a beneficiary  
6 from obtaining the services of a health care provider  
7 specialist and paying the specialist for services.

8 D. The commission shall specify by rule the  
9 conditions under which a beneficiary may select a specialist as  
10 a primary care provider.

11 E. The commission shall establish by rule the  
12 circumstances under which a beneficiary may not self-refer;  
13 provided that commission rules shall allow a beneficiary to  
14 self-refer to a chiropractic physician, a doctor of oriental  
15 medicine or a behavioral health service provider.

16 SECTION 26. [NEW MATERIAL] DISCRIMINATION PROHIBITED.--A  
17 health care provider or health facility shall not discriminate  
18 against or refuse to furnish health care to a beneficiary on  
19 the basis of age, race, color, income level, national origin,  
20 religion, gender, sexual orientation, disabling condition or  
21 payment status. Nothing in this section shall require a health  
22 care provider or health facility to provide services to a  
23 beneficiary if the provider or facility is not qualified to  
24 provide the needed services or does not offer them to the  
25 general public.

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1           SECTION 27.   ~~[NEW MATERIAL]~~ BENEFICIARY RIGHTS--CLAIMS  
2 REVIEW--INTERNAL APPEALS--EXTERNAL APPEALS--GRIEVANCES.--

3           A.   The commission shall adopt and promulgate rules  
4 to provide for:

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

11                               (a)   a determination that a service is  
12 not medically necessary;

13                               (b)   a denial of coverage for a service  
14 because it is determined to be experimental, investigational or  
15 inappropriate; and

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

18                       (2)   expedited appeals of adverse  
19 determinations of service claims, including the grounds for  
20 expedited appeals and the time lines for hearing and decisions  
21 on expedited appeals;

22                               (3)   procedures and evidentiary rules relating  
23 to the internal appeals process;

24                               (4)   a beneficiary's right to continue to  
25 receive services that are the subject of an appeal and that the

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1 beneficiary was receiving before the beneficiary filed the  
2 appeal; and

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

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

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

- 19 (1) the health security plan's covered  
20 services, limitations and exclusions;
- 21 (2) conditions of eligibility;
- 22 (3) prior authorization requirements;
- 23 (4) rights to appeals of adverse service claim  
24 determinations and to grievance procedures, including:

25 (a) a beneficiary's right to have a

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1 service claim denial, reduction or termination communicated  
2 promptly in writing;

3 (b) a beneficiary's right to review the  
4 beneficiary's file and to present evidence and testimony as  
5 part of the appeals and grievance processes;

6 (c) the availability of the office of  
7 superintendent of insurance to assist beneficiaries with  
8 appeals and grievances;

9 (d) a beneficiary's right to continue to  
10 receive services that are the subject of an appeal and that the  
11 beneficiary was receiving before the beneficiary filed the  
12 appeal; and

13 (e) a beneficiary's right to have the  
14 outcome of an appeal or grievance communicated promptly in  
15 writing; and

16 (5) a beneficiary's right to emergency  
17 services that are immediately available without prior  
18 authorization requirements and appropriate out-of-state  
19 emergency services that are not subject to additional costs to  
20 the beneficiary.

21 D. The superintendent shall adopt and promulgate  
22 rules to establish an external appeals process for review of  
23 beneficiary service claim appeals in accordance with the  
24 provisions of the Health Security Act.

25 E. The superintendent shall appoint one or more

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

8 F. Upon completion of the external service claim  
9 appeal review, the superintendent shall prepare a detailed  
10 statement of compensation due each appointee and shall present  
11 the statement to the beneficiary and the commission.

12 G. The decision to approve or deny a service claim  
13 based on a technicality shall be made in a timely manner and  
14 shall not exceed time limits established by rule of the  
15 commission.

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

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

21 A. The commission shall adopt rules to establish  
22 and implement a quality improvement program that monitors the  
23 quality and appropriateness of health care provided by the  
24 health security plan, including evidence-based medicine, best  
25 practices, outcome measurements, consumer education and patient

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1 safety. The commission shall set standards and review benefits  
2 to ensure that effective, high-quality, cost-efficient and  
3 appropriate health care is provided under the health security  
4 plan.

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

16 C. The commission shall appoint a "health care  
17 practice advisory committee" consisting of health care  
18 providers, health facilities and other knowledgeable persons to  
19 advise the commission and staff on health care practice issues.  
20 The committee shall include both health care providers and  
21 health facilities from counties having eighty thousand or fewer  
22 inhabitants as of the most recent federal decennial census and  
23 health care providers and health facilities from counties  
24 having more than eighty thousand inhabitants as of the most  
25 recent federal decennial census. The committee may appoint

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1 subcommittees and task forces to address practice issues of a  
2 specific health care provider discipline or a specific kind of  
3 health facility; provided that the subcommittee or task force  
4 includes providers of substantially similar specialties or  
5 types of facilities. The advisory committee shall provide to  
6 the commission recommended standards and guidelines to be  
7 followed in making determinations on practice trends.

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

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

22 F. After consultation with the health care practice  
23 advisory committee, the commission may suspend or revoke a  
24 health care provider's or health facility's authorization to be  
25 paid for health care provided under the health security plan

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1 based upon evidence clearly supporting a determination by the  
2 commission that the provider or facility engages in patterns of  
3 practice, including inappropriate utilization, that do not meet  
4 professional practice guidelines established pursuant to  
5 Subsection B of this section.

6 G. The commission shall report a suspension or  
7 revocation of the authorization to be paid for health care  
8 pursuant to the Health Security Act to the appropriate  
9 licensing or certifying board.

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

16 SECTION 29. [NEW MATERIAL] HEALTH CARE PROVIDER AND  
17 HEALTH FACILITY RIGHTS--DISPUTE RESOLUTION--GRIEVANCE  
18 PROCEDURES--RULEMAKING.--

19 A. The health security plan shall not:  
20 (1) adopt a gag rule or practice that  
21 prohibits a health care provider or health facility from  
22 discussing a treatment option with a beneficiary even if the  
23 health security plan does not approve of the option;  
24 (2) include in any of its contracts with  
25 health care providers or health facilities any provisions that



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1 offer an inducement, financial or otherwise, to provide less  
2 than medically necessary services to a beneficiary; or

3 (3) require a health care provider or health  
4 facility to violate any recognized fiduciary duty of the health  
5 care provider's profession or place the health care provider's  
6 or health facility's license in jeopardy.

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

14 C. The commission shall adopt and promulgate rules  
15 to implement a dispute resolution system and include in each  
16 contract with a health care provider or a health facility a  
17 dispute resolution provision to permit the provider or facility  
18 to dispute:

19 (1) a denial of, or partial payment for, a  
20 service that the health care provider or health facility has  
21 rendered to a beneficiary; or

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

25 D. The commission shall adopt and promulgate rules

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

7 (1) the quality of and access to health care  
8 services; or

9 (2) the choice of health care providers and  
10 health facilities under the plan.

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

14 (1) restriction of or termination from  
15 participation in the health security plan;

16 (2) the recoupment of payment; or

17 (3) the assessment of an administrative  
18 penalty.

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

21 A. Annually, the commission shall develop a health  
22 security plan budget. The budget shall be the commission's  
23 recommendation for the total amount to be spent by the plan for  
24 covered health care services in the next fiscal year.

25 B. The superintendent shall adopt and promulgate

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1 rules for the review of proposed health security plan premium  
2 rates and employer contribution rates proposed by the  
3 commission. The rules shall include, at a minimum, provisions  
4 for:

- 5 (1) the transparency of rate filings;
- 6 (2) grounds for the establishment or  
7 modification of rates;
- 8 (3) the issuance of findings by the  
9 superintendent;
- 10 (4) procedures pursuant to which the  
11 commission or a member of the public may obtain a  
12 redetermination of the superintendent's findings; and
- 13 (5) procedures pursuant to which the  
14 commission or a member of the public may appeal a  
15 redetermination of the superintendent's findings in a court of  
16 competent jurisdiction.

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

21 D. The health security plan shall include a maximum  
22 amount or percentage for administrative costs, and this  
23 maximum, if a percentage, may change in relation to the total  
24 costs of services provided under the health security plan. For  
25 the sixth and subsequent calendar years of operation of the

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1 health security plan, administrative costs shall not exceed  
2 five percent of the health security plan budget.

3 SECTION 31. [NEW MATERIAL] PAYMENTS TO HEALTH CARE  
4 PROVIDERS.--

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

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

17 C. An annual percentage increase in the amount  
18 allocated for provider payments in the budget shall be no  
19 greater than the annual percentage increase in the consumer  
20 price index for medical care prices published by the bureau of  
21 labor statistics of the federal department of labor using the  
22 year prior to the year in which the health security plan is  
23 implemented as the baseline year. The annual limitation in  
24 this subsection may be adjusted up or down by the commission  
25 based on a showing of special and unusual circumstances in a

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1 hearing before the commission.

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

7 SECTION 32. [NEW MATERIAL] PAYMENTS TO HEALTH  
8 FACILITIES.--

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

24 B. Supplemental payment rates may be adopted to  
25 provide incentives to help ensure the delivery of needed health

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1 care services in rural and other underserved areas throughout  
2 the state.

3 C. Each health care provider employed by a health  
4 facility shall be paid from the facility's operating budget in  
5 a manner determined by the health facility.

6 SECTION 33. [NEW MATERIAL] BENEFICIARY COPAYMENTS--  
7 PREVENTIVE SERVICES--OUT-OF-STATE SERVICES--THIRD-PARTY  
8 PAYMENTS--ASSIGNMENT OF CLAIMS.--

9 A. The commission may establish a copayment  
10 schedule if a required copayment is determined to be an  
11 effective cost-control measure; provided that the commission  
12 shall not require a member of an Indian nation, tribe or pueblo  
13 to make copayments. A copayment shall not be required for  
14 preventive health care services, as the commission defines  
15 "preventive health care services" by rule in accordance with  
16 state and federal law. When a copayment is required, a health  
17 care provider or health facility shall not waive it, and if it  
18 remains uncollected, the provider or facility shall demonstrate  
19 a good-faith effort to collect the copayment.

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

23 (1) the same rate that would apply if those  
24 services had been received in New Mexico; or

25 (2) a rate higher than the reimbursement rate

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1 the health security plan would have paid if the services had  
2 been received in New Mexico if the commission negotiates a  
3 reimbursement agreement or other agreement with the:

4 (a) state in which the health care  
5 services were received; or

6 (b) health care provider or health  
7 facility rendering the services.

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

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

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

19 (1) is conclusively presumed to be made of a:

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

22 (b) monetary recovery for damages for  
23 bodily injury, whether by judgment, contract for compromise or  
24 settlement;

25 (2) shall be effective to the extent of the

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1 amount of payments by the health security plan; and

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

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

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

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

25 B. Except as provided in Subsection F of this



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1 section, a health facility or health care provider  
2 participating in the health security plan shall not make or  
3 obligate itself to make a major capital expenditure without  
4 first obtaining a health resource certificate.

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

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

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

17 F. This section does not apply to:

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

20 (2) expenditures incurred solely in  
21 preparation for a capital project, including architectural  
22 design, surveys, plans, working drawings and specifications and  
23 other related activities, but those expenditures shall be  
24 included in the cost of a project for the purpose of  
25 determining whether a health resource certificate is required;

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

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

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

11 G. No later than November 2, 2022, the commission  
12 shall report to the appropriate committees of the legislature  
13 on the capital needs of health facilities, including facilities  
14 of state and local governments, with a focus on underserved  
15 geographic areas with substantially below-average health  
16 facilities and investment per capita as compared to the state  
17 average. The report shall also describe geographic areas where  
18 the distance to health facilities imposes a barrier to care.  
19 The report shall include a section on health care  
20 transportation needs, including capital, personnel and training  
21 needs. The report shall make recommendations for legislation  
22 to amend the Health Security Act that the commission determines  
23 necessary and appropriate.

24 SECTION 36. [NEW MATERIAL] FISCAL AND ACTUARIAL REVIEWS--  
25 AUDITS.--

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

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

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

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

23           **SECTION 37. [NEW MATERIAL] INFORMATION TECHNOLOGY**  
24 **NETWORK.--**The commission shall establish guidelines for  
25 maximizing participation of health care providers and health

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

10 SECTION 38. [NEW MATERIAL] REPORTS REQUIRED--CONFIDENTIAL  
11 INFORMATION.--

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

19 B. The commission shall establish uniform reporting  
20 requirements for health care providers and health facilities.

21 C. Information confidential pursuant to other  
22 provisions of law shall be confidential pursuant to the Health  
23 Security Act. Within the constraints of confidentiality,  
24 reports of the commission are public documents.

25 SECTION 39. [NEW MATERIAL] CONSUMER, PROVIDER AND HEALTH

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1 FACILITY ASSISTANCE PROGRAM.--

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

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

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

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

18 SECTION 40. [NEW MATERIAL] VOLUNTARY PURCHASE OF OTHER  
19 INSURANCE.--

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

23 B. Nothing in this section affects insurance  
24 coverage pursuant to the federal Employee Retirement Income  
25 Security Act of 1974 unless the state obtains a congressional

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1 exemption or a waiver from the federal government. Health  
2 coverage plans that are covered by the provisions of that act  
3 may elect to participate in the health security plan.

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

9 SECTION 41. [NEW MATERIAL] REIMBURSEMENT TO HEALTH  
10 SECURITY PLAN FROM FEDERAL AND OTHER HEALTH INSURANCE  
11 PROGRAMS.--

12 A. The commission shall seek payment to the health  
13 security plan from medicaid, medicare or any other federal or  
14 other insurance program for any reimbursable payment provided  
15 under the plan. The commission shall seek approval from a  
16 tribal government for payments to the health security plan for  
17 health security plan coverage of beneficiaries under that  
18 tribal government's jurisdiction from a tribal health agency; a  
19 federal Indian health service agency; or a consortium of Indian  
20 nations, tribes or pueblos.

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

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1 health care efficiencies or improvements or other savings.

2 SECTION 42. [NEW MATERIAL] TRANSITION PERIOD

3 ARRANGEMENTS--PRIVATE CONTRACT--COLLECTIVE BARGAINING.--A  
4 person who, on the date benefits are available under the Health  
5 Security Act's health security plan, receives health care  
6 benefits under a private contract or collective bargaining  
7 agreement entered into prior to July 1, 2022 shall continue to  
8 receive those benefits until the contract or agreement expires  
9 or unless the contract or agreement is renegotiated to provide  
10 participation in the health security plan.

11 SECTION 43. Section 41-4-3 NMSA 1978 (being Laws 1976,  
12 Chapter 58, Section 3, as amended) is amended to read:

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

- 14 A. "board" means the risk management advisory  
15 board;
- 16 B. "governmental entity" means the state or any  
17 local public body as defined in Subsections C and H of this  
18 section;
- 19 C. "local public body" means all political  
20 subdivisions of the state and their agencies, instrumentalities  
21 and institutions and all water and natural gas associations  
22 organized pursuant to Chapter 3, Article 28 NMSA 1978;
- 23 D. "law enforcement officer" means a full-time  
24 salaried public employee of a governmental entity, or a  
25 certified part-time salaried police officer employed by a

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

6 E. "maintenance" does not include:

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

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

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

21 (1) elected or appointed officials;

22 (2) law enforcement officers;

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



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

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

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

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

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

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

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

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

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

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1 (13) members of the New Mexico mortgage  
2 finance authority;

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

5 (15) members of the board of directors of the  
6 small business investment corporation;

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

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

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

22 (19) members of the insurance nominating  
23 committee; and

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

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

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

8           **SECTION 44.** Effective June 1, 2020, Section 41-4-3 NMSA  
9 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is  
10 repealed and a new Section 41-4-3 NMSA 1978 is enacted to read:

11           "41-4-3. [NEW MATERIAL] DEFINITIONS.--As used in the Tort  
12 Claims Act:

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

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

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

22           D. "law enforcement officer" means a full-time  
23 salaried public employee of a governmental entity, or a  
24 certified part-time salaried police officer employed by a  
25 governmental entity, whose principal duties under law are to

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1 hold in custody any person accused of a criminal offense, to  
2 maintain public order or to make arrests for crimes, or members  
3 of the national guard when called to active duty by the  
4 governor;

5 E. "maintenance" does not include:

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

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

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

20 (1) elected or appointed officials;

21 (2) law enforcement officers;

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

25 (4) licensed foster parents providing care for

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

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

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

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

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

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

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

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

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

25 (13) members of the New Mexico mortgage

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1 finance authority;

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

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

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

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

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

21 (19) members of the insurance nominating  
22 committee;

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

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1 place of performance; and

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

5 SECTION 45. A new section of the Unfair Practices Act is  
6 enacted to read:

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

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

14 (1) transitional coverage, as provided in  
15 Section 42 of the Health Security Act; or

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

19 B. A violation of the provisions of this section  
20 shall constitute an unfair practice."

21 SECTION 46. TEMPORARY PROVISION--AUTOMOBILE MEDICAL  
22 COVERAGE--WORKERS' COMPENSATION--RATES--SUPERINTENDENT  
23 DUTIES.--

24 A. The superintendent of insurance shall work  
25 closely with the legislative finance committee on the fiscal

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1 analysis performed pursuant to Subsection A of Section 47 of  
2 this 2019 act to identify premium costs associated with health  
3 care coverage in workers' compensation and automobile medical  
4 coverage. The superintendent shall consult with the workers'  
5 compensation administration and develop an estimate of expected  
6 reduction in those costs based upon assumptions of health care  
7 services coverage in the health security plan established  
8 pursuant to the Health Security Act and, by September 14, 2020,  
9 shall report the findings to the legislative finance committee  
10 as the committee considers financing for the health security  
11 plan.

12 B. The superintendent of insurance shall ensure  
13 that workers' compensation and automobile insurance premiums on  
14 insurance policies written in New Mexico reflect a lower rate  
15 to account for the medical payment component to be assumed by  
16 the health security plan established pursuant to the Health  
17 Security Act.

18 **SECTION 47. TEMPORARY PROVISION--PROPOSED HEALTH SECURITY**  
19 **PLAN--FISCAL ANALYSIS--REIMBURSEMENT.--**

20 A. The legislative finance committee shall obtain a  
21 fiscal analysis relating to the first five years of the  
22 establishment and operation of the proposed health security  
23 plan established pursuant to the Health Security Act, including  
24 an analysis of the provisions of Sections 17 through 22, 25, 31  
25 through 33, 35, 39 and 40 of the Health Security Act and

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1 Section 46 of this 2019 act. The fiscal analysis shall include  
2 a projection of plan costs and a review of financing options  
3 for the proposed health security plan.

4 B. The fiscal analysis performed pursuant to  
5 Subsection A of this section shall be guided by the following  
6 requirements and assumptions:

7 (1) before estimating beneficiary and employer  
8 contributions to the health security plan budget established  
9 pursuant to the Health Security Act, the legislative finance  
10 committee shall identify and estimate the amount of public  
11 finances, including any contribution from the federal  
12 government or a tribal entity, that may be contributed to the  
13 budget;

14 (2) health care services to be included and  
15 for which costs are to be projected in determining the  
16 financing options shall be no less than the health care  
17 services afforded to state employees pursuant to the Health  
18 Care Purchasing Act;

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

- 22 (a) the beneficiary's income;
- 23 (b) federal premium tax credits;
- 24 (c) federal cost-sharing subsidies; and
- 25 (d) medicare offsets; and

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

4 C. The fiscal analysis performed pursuant to  
5 Subsection A of this section shall:

6 (1) include projections regarding the impact  
7 of the health security plan established pursuant to the Health  
8 Security Act upon the state budget; and

9 (2) project the costs of establishing and  
10 administering the health security plan.

11 D. The legislative finance committee shall:

12 (1) prepare a report of its determinations  
13 with the specific options and recommendations no later than  
14 October 1, 2020; and

15 (2) submit its report prepared pursuant to  
16 Paragraph (1) of this subsection to the appropriate interim  
17 legislative committees for consideration by the fifty-fifth  
18 legislature.

19 E. The health care commission established pursuant  
20 to the Health Security Act shall reimburse the legislative  
21 finance committee for any state funds it expended in  
22 undertaking the fiscal analysis pursuant to Subsection A of  
23 this section.

24 **SECTION 48. TEMPORARY PROVISION--FISCAL ANALYSIS--GRANT**  
25 **FUNDING AND OTHER RESOURCES--PARTNERSHIPS.--**The legislative

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1 finance committee shall seek partnerships among state agencies  
2 and private nonprofit persons to identify and apply for  
3 available grant funding and other in-kind and financial  
4 resources for its fiscal analysis conducted pursuant to Section  
5 47 of this 2019 act. Any amounts that the legislative finance  
6 committee receives in grant funds or from other financial  
7 resources shall first be used to offset any state funds that  
8 the legislature appropriates or allocates for the fiscal  
9 analysis. Any grant funds or other financial resources  
10 received in excess of legislative appropriations or allocations  
11 shall be used for the study of financing options for the health  
12 security plan established pursuant to the Health Security Act.

13 **SECTION 49. APPROPRIATION.**--Three hundred seventy-five  
14 thousand dollars (\$375,000) is appropriated from the general  
15 fund to the legislative finance committee for expenditure in  
16 fiscal year 2021 to fund the legislative finance committee's  
17 performance of the fiscal analysis, in accordance with Section  
18 47 of this 2019 act, of the health security plan established  
19 pursuant to the Health Security Act. Any unexpended or  
20 unencumbered balance remaining at the end of fiscal year 2021  
21 shall revert to the general fund.

22 **SECTION 50. DELAYED REPEAL.**--Sections 1 through 42 and 45  
23 through 48 of this act are repealed effective June 1, 2021.

24 **SECTION 51. EFFECTIVE DATE.**--The effective date of the  
25 provisions of this act is July 1, 2019.

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