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SENATE BILL 575

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

GARY DON REAGAN

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE INSURANCE CODE
PERTAINING TO HEALTH INSURANCE CONTRACTS AND GROUP HEALTH
INSURANCE; AMENDING THE SMALL GROUP RATE AND RENEWABILITY ACT;
REPEALING THE HEALTH INSURANCE ALLIANCE ACT AND CERTAIN SECTIONS
OF THE NMSA 1978.

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

Section 1. Section 59A-22-5 NMSA 1978 (being Laws 1984,
Chapter 127, Section 426, as amended) is amended to read:

"59A-22-5. TIME LIMIT ON CERTAIN DEFENSES. -- There shall be
a provision as follows:

A. After two years from the date of issue of this
policy, no misstatements, except fraudulent misstatements, made
by the applicant in the application for such policy shall be
used to void the policy or to deny a claim for loss incurred or

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1 disability (as defined in the policy) commencing after the
2 expiration of such two-year period.

3 (The foregoing policy provision shall not be so construed
4 as to affect any initial two-year period nor to limit the
5 application of Sections 59A-22-17 through 59A-22-19, 59A-22-21
6 and 59A-22-22 NMSA 1978 in the event of misstatement with
7 respect to age or occupation or other insurance.)

8 (A policy which the insured has the right to continue in
9 force subject to its terms by the timely payment of premium (1)
10 until at least age fifty or (2) in the case of a policy issued
11 after age forty-four, for at least five years from its date of
12 issue, may contain in lieu of the foregoing the following
13 provision (from which the clause in parentheses may be omitted
14 at the insurance company's option) under the caption
15 "Incontestable":

16 After this policy has been in force for a period of two
17 years during the lifetime of the insured (excluding any period
18 during which the insured is disabled), it shall become
19 incontestable as to the statements contained in the
20 application.)

21 B. [~~For individual policies that do not reimburse or~~
22 ~~pay as a result of hospitalization, medical or surgical~~
23 ~~expenses]~~ No claim for loss incurred or disability (as defined
24 in the policy) shall be reduced or denied on the ground that a
25 disease or physical condition disclosed on the application and

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1 not excluded from coverage by name or a specific description
2 effective on the date of loss had existed prior to the effective
3 date of coverage of this policy. ~~[As an alternative, those~~
4 ~~policies may contain provisions under which coverage may be~~
5 ~~excluded for a period of six months following the effective date~~
6 ~~of coverage as to a given covered insured for a preexisting~~
7 ~~condition, provided that:~~

8 (1) ~~the condition manifested itself within a~~
9 ~~period of six months prior to the effective date of coverage in~~
10 ~~such a manner as would cause a reasonably prudent person to seek~~
11 ~~diagnosis, care or treatment; or~~

12 (2) ~~medical advice or treatment relating to the~~
13 ~~condition was recommended or received within a period of six~~
14 ~~months prior to the effective date of coverage.]~~

15 C. An individual ~~[policies that reimburse or pay as~~
16 ~~a result of hospitalization, medical or surgical expenses]~~
17 policy may, in lieu of the provisions stated in Subsection B of
18 this section, contain provisions under which coverage is
19 excluded during a period of six months following the effective
20 date of coverage as to a given covered insured for a preexisting
21 condition, provided that:

22 (1) the condition manifested itself within a
23 period of six months prior to the effective date of coverage in
24 such a manner as would cause a reasonably prudent person to seek
25 diagnosis, care or treatment; or

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1 (2) medical advice or treatment relating to the
2 condition was recommended or received within a period of six
3 months prior to the effective date of coverage.

4 ~~[D. The preexisting condition exclusions authorized~~
5 ~~in Subsections B and C of this section shall be waived to the~~
6 ~~extent that similar conditions have been satisfied under any~~
7 ~~prior health insurance coverage if the application for new~~
8 ~~coverage is made not later than thirty one days following the~~
9 ~~termination of prior coverage. In that case, the new coverage~~
10 ~~shall be effective from the date on which the prior coverage~~
11 ~~terminated.~~

12 ~~E. Nothing in this section shall be construed to~~
13 ~~require the use of preexisting conditions or prohibit the use of~~
14 ~~preexisting conditions that are more favorable to the insured~~
15 ~~than those specified in this section]~~

16 D. The provisions in Subsection C of this section
17 shall not be construed to prohibit preexisting condition
18 provisions that are more favorable to the insured. "

19 Section 2. Section 59A-23-3 NMSA 1978 (being Laws 1984,
20 Chapter 127, Section 462, as amended) is amended to read:

21 "59A-23-3. GROUP HEALTH INSURANCE. --

22 A. Group health insurance is that form of health
23 insurance covering groups of persons, with or without their
24 dependents, and issued upon the following basis:

25 (1) under a policy issued to an employer, who

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1 shall be deemed the policyholder, insuring at least one employee
2 of such employer for the benefit of persons other than the
3 employer. The term "employees", as used in this section,
4 includes the officers, managers and employees of the employer,
5 the partners, if the employer is a partnership, the officers,
6 managers and employees of subsidiary or affiliated corporations
7 of a corporation employer, and the individual proprietors,
8 partners and employees of individuals and firms the business of
9 which is controlled by the insured employer through stock
10 ownership, contract or otherwise. The term "employer", as used
11 in this section, includes any municipal or governmental
12 corporation, unit, agency or department thereof and the proper
13 officers, as such, or any unincorporated municipality or
14 department thereof, as well as private individuals, partnerships
15 and corporations. A small employer shall also be subject to the
16 Small Group Rate and Renewability Act. A "small employer" means
17 any person, firm, corporation, partnership or association
18 actively engaged in business who, on at least fifty percent of
19 its working days during the preceding year, employed no more
20 than [~~fifty~~] twenty-five eligible employees. In determining the
21 number of eligible employees, companies that are affiliated
22 companies or that are eligible to file a combined tax return for
23 purposes of state taxation shall be considered one employer;

24 (2) under a policy issued to an association,
25 including a labor union and an agricultural association, which

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1 shall have a constitution and bylaws and which has been
2 organized and is maintained in good faith for purposes other
3 than that of obtaining insurance, insuring at least twenty-five
4 members of the association for the benefit of persons other than
5 the association or its officers or trustees, as such; or

6 (3) under a policy issued to any other
7 substantially similar group which, in the discretion of the
8 superintendent, may be subject to the issuance of a group
9 sickness and accident policy or contract.

10 B. Each policy, as provided by this section, shall
11 contain in substance the following provisions:

12 (1) a provision that the policy, the
13 application of the policyholder, if such application or copy
14 thereof is attached to such policy, and the individual
15 applications, if any, submitted in connection with such policy
16 by the employees or members shall constitute the entire contract
17 between the parties, and that all statements, in the absence of
18 fraud, made by any applicant or applicants shall be deemed
19 representations and not warranties, and that no such statement
20 shall void the insurance or reduce benefits thereunder unless
21 contained in a written application for such insurance;

22 (2) a provision that the insurer will furnish
23 to the policyholder, for delivery to each employee or member of
24 the insured group, an individual certificate setting forth in
25 summary form a statement of the essential features of the

1 insurance coverage of such employee or member and to whom
2 benefits thereunder are payable. If dependents are included in
3 the coverage, only one certificate need be issued for each
4 family unit; and

5 (3) a provision that to the group originally
6 insured may be added from time to time eligible new employees or
7 members or dependents, as the case may be, in accordance with
8 the terms of the policy.

9 C. For purposes of this section only, the directors
10 of a corporation shall be deemed to be employees of the
11 corporation. "

12 Section 3. Section 59A-23C-3 NMSA 1978 (being Laws 1991,
13 Chapter 153, Section 3, as amended) is amended to read:

14 "59A-23C-3. DEFINITIONS. --As used in the Small Group Rate
15 and Renewability Act:

16 A. "actuarial certification" means a written
17 statement by a member of the American academy of actuaries or
18 another individual acceptable to the superintendent that a small
19 employer carrier is in compliance with the provisions of Section
20 59A-23C-5 NMSA 1978, based upon the person's examination,
21 including a review of the appropriate records and of the
22 actuarial assumptions and methods [utilized] used by the carrier
23 in establishing premium rates for applicable health benefit
24 plans;

25 B. "base premium rate" means, for each class of

1 business as to a rating period, the lowest premium rate charged
2 under a rating system for that class of business by the small
3 employer carrier to small employers with similar case
4 characteristics for health benefit plans with the same or
5 similar coverage;

6 C. "carrier" means any person who provides health
7 insurance in this state. For the purposes of the Small Group
8 Rate and Renewability Act, "carrier" or "insurer" includes a
9 licensed insurance company, a licensed fraternal benefit
10 society, a prepaid hospital or medical service plan, a health
11 maintenance organization, a nonprofit health care organization,
12 a multiple employer welfare arrangement or any other person
13 providing a plan of health insurance subject to state insurance
14 regulation;

15 D. "case characteristics" means demographic or other
16 relevant characteristics of a small employer, as determined by a
17 small employer carrier, that are considered by the carrier in
18 the determination of premium rates for the small employer, but
19 [~~"case characteristics" does not include~~] claim experience,
20 health status and duration of coverage since issue are not "case
21 characteristics" for the purpose of the law;

22 E. "class of business" means all or a distinct
23 grouping of small employers as shown on the records of the small
24 employer carrier. A [~~separate class of business may~~] distinct
25 grouping may only be established by the small employer carrier

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1 on the basis that the applicable health benefit plans [~~have been~~
2 ~~acquired from another small employer carrier as a distinct~~
3 ~~grouping of plans~~]:

4 (1) are marketed and sold through individuals
5 and organizations that are not participating in the marketing or
6 sale of other distinct grouping of small employers for such
7 small employer carrier;

8 (2) have been acquired from another small
9 employer carrier as a distinct grouping of plans;

10 (3) are provided through an association with
11 membership of not fewer than three small employers that has been
12 formed for purposes other than obtaining insurance; or

13 (4) are in a class of business that meets the
14 requirements for exception to the restrictions related to
15 premium rates provided in Subparagraph (a) of Paragraph (1) of
16 Subsection A of Section 59A-23C-5 NMSA 1978;

17 F. "department" means the department of insurance;

18 G. "health benefit plan" or "plan" means any
19 hospital or medical expense incurred policy or certificate,
20 hospital or medical service plan contract or health maintenance
21 organization subscriber contract. "Health benefit plan" does
22 not include accident-only, credit, dental or disability income
23 insurance, medicare supplement coverage, coverage issued as a
24 supplement to liability insurance, workers' compensation or
25 similar insurance or automobile medical-payment insurance;

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1 H. "index rate" means, for each class of business
2 for small employers with similar case characteristics, the
3 arithmetic average of the applicable base premium rate and the
4 corresponding highest premium rate;

5 I. "new business premium rate" means, for each class
6 of business as to a rating period, the premium rate charged or
7 offered by the small employer carrier to small employers with
8 similar case characteristics for newly issued health benefit
9 plans with the same or similar coverage;

10 J. "rating period" means the calendar period for
11 which premium rates established by a small employer carrier are
12 assumed to be in effect, as determined by the small employer
13 carrier;

14 K. "small employer" means any person, firm,
15 corporation, partnership or association actively engaged in
16 business who, on at least fifty percent of its working days
17 during the preceding year, employed no less than two and no more
18 than [fifty] twenty-five eligible employees. [~~provided that:~~

19 (1)] In determining the number of eligible
20 employees, [~~the spouse or dependent of an employee may, at the~~
21 ~~employer's discretion, be counted as a separate employee; and~~

22 (2)] companies that are affiliated companies or
23 that are eligible to file a combined tax return for purposes of
24 state [income] taxation shall be considered one employer;

25 L. "small employer carrier" means any insurer that

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1 offers health benefit plans covering the employees of a small
2 employer; and

3 M "superintendent" means the superintendent of
4 insurance. "

5 Section 4. Section 59A-23C-5 NMSA 1978 (being Laws 1991,
6 Chapter 153, Section 5, as amended) is amended to read:

7 "59A-23C-5. RESTRICTIONS RELATING TO PREMIUM RATES. --

8 A. Premium rates for health benefit plans subject to
9 the Small Group Rate and Renewability Act shall be subject to
10 the following provisions:

11 (1) the index rate for a rating period for any
12 class of business shall not exceed the index rate for any other
13 class of business by more than twenty percent, provided that the
14 provisions of this paragraph shall not apply to a class of
15 business if:

16 (a) the class of business is one for
17 which the carrier does not reject, and never has rejected, small
18 employers included within the definition of employers eligible
19 for the class of business or otherwise eligible employees and
20 dependents who enroll on a timely basis, based upon their claim
21 experience or health status;

22 (b) the carrier does not involuntarily
23 transfer, and never has involuntarily transferred, a health
24 benefit plan into or out of the class of business; and

25 (c) the class of business is currently

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1 available for purchase;

2 (2) for a class of business, the premium rates
3 charged during a rating period to small employers with similar
4 case characteristics for the same or similar coverage, or the
5 rates that could be charged to those employers under the rating
6 system for that class of business, shall not vary from the index
7 rate by more than [~~twenty~~] twenty-five percent of the index
8 rate;

9 (3) the percentage increase in the premium rate
10 charged to a small employer for a new rating period may not
11 exceed the sum of the following:

12 (a) the percentage change in the new
13 business premium rate measured from the first day of the prior
14 rating period to the first day of the new rating period. In the
15 case of a class of business for which the small employer carrier
16 is not issuing new policies, the carrier shall use the
17 percentage change in the base premium rate;

18 (b) an adjustment, not to exceed ten
19 percent annually and adjusted pro rata for rating periods of
20 less than one year due to the claim experience, health status or
21 duration of coverage of the employees or dependents of the small
22 employer as determined from the carrier's rate manual for the
23 class of business; and

24 (c) any adjustment due to change in
25 coverage or change in the case characteristics of the small

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1 employer as determined from the carrier's rate manual for the
2 class of business; and

3 (4) in the case of health benefit plans issued
4 prior to the effective date of the Small Group Rate and
5 Renewability Act, a premium rate for a rating period may exceed
6 the ranges described in Paragraph (1) or (2) of this subsection
7 for a period of five years following the effective date of the
8 Small Group Rate and Renewability Act. In that case, the
9 percentage increase in the premium rate charged to a small
10 employer in that class of business for a new rating period may
11 not exceed the sum of the following:

12 (a) the percentage change in the new
13 business premium rate measured from the first day of the prior
14 rating period to the first day of the new rating period. In the
15 case of a class of business for which the small employer carrier
16 is not issuing new policies, the carrier shall use the
17 percentage change in the base premium rate; and

18 (b) any adjustment due to change in
19 coverage or change in the case characteristics of the small
20 employer as determined from the carrier's rate manual for the
21 class of business.

22 B. Nothing in this section is intended to affect the
23 use by a small employer carrier of legitimate rating factors
24 other than claim experience, health status or duration of
25 coverage in the determination of premium rates. Small employer

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1 carriers shall apply rating factors, including case
2 characteristics, consistently with respect to all small
3 employers in a class of business.

4 C. A small employer carrier shall not involuntarily
5 transfer a small employer into or out of a class of business. A
6 small employer carrier shall not offer to transfer a small
7 employer into or out of a class of business unless the offer is
8 made to transfer all small employers in the class of business
9 without regard to case characteristics, claim experience, health
10 status or duration since issue.

11 D. Prior to usage and [~~the effective date of the~~
12 ~~Small Group Rate and Renewability Act~~] June 14, 1991, each
13 carrier [~~shall~~] must file with the superintendent the rate
14 manuals and any updates thereto for each class of business. A
15 rate filing fee is payable under Subsection U of Section 59A-6-1
16 NMSA 1978 for the filing of each update. The superintendent
17 shall disapprove within sixty days of receipt of a complete
18 filing or the filing is deemed approved. If the superintendent
19 disapproves any such form during the sixty-day review period, he
20 shall give the carrier written notice of the disapproval stating
21 the ground thereof. At any time, the superintendent, after a
22 hearing thereof, may disapprove a form or withdraw a previous
23 approval. The superintendent's order on such hearing shall
24 state the grounds for disapproval or withdrawal of a previous
25 approval and the date not less than twenty days later when

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1 disapproval or withdrawal becomes effective."

2 Section 5. Section 59A-47-33 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 879.32, as amended by Laws 1994, Chapter
4 64, Section 10 and also by Laws 1994, Chapter 75, Section 34) is
5 amended to read:

6 "59A-47-33. OTHER PROVISIONS APPLICABLE. -- The provisions
7 of the Insurance Code other than Chapter 59A, Article 47 NMSA
8 1978 shall not apply to health care plans except as expressly
9 provided in the Insurance Code and that article. To the extent
10 reasonable and not inconsistent with the provisions of that
11 article, the following articles and provisions of the Insurance
12 Code shall also apply to health care plans, their promoters,
13 sponsors, directors, officers, employees, agents, solicitors and
14 other representatives; and, for the purposes of such
15 applicability, a health care plan may therein be referred to as
16 an "insurer":

- 17 A. Chapter 59A, Article 1 NMSA 1978;
- 18 B. Chapter 59A, Article 2 NMSA 1978;
- 19 C. Chapter 59A, Article 4 NMSA 1978;
- 20 D. Subsection C of Section 59A-5-22 NMSA 1978;
- 21 E. Sections 59A-6-2 through 59A-6-4 and
22 59A-6-6 NMSA 1978;
- 23 F. Section 59A-7-11 NMSA 1978;
- 24 G. Chapter 59A, Article 8 NMSA 1978;
- 25 H. Chapter 59A, Article 10 NMSA 1978;

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- 1 I. Section 59A-12-22 NMSA 1978;
2 J. Chapter 59A, Article 16 NMSA 1978;
3 K. Chapter 59A, Article 18 NMSA 1978;
4 L. Chapter 59A, Article 19 NMSA 1978;
5 [~~M. Subsections B through E of Section~~
6 ~~59A-22-5 NMSA 1978;~~
7 ~~N.]~~ M. Section 59A-22-34.1 NMSA 1978;
8 [~~0.]~~ N. Section 59A-22-39 NMSA 1978;
9 [~~P.]~~ O. Section 59A-22-40 NMSA 1978;
10 [~~Q.]~~ P. Sections 59A-34-9 through 59A-34-13 [~~NMSA~~
11 ~~1978]~~ and [~~Section]~~ 59A-34-23 NMSA 1978;
12 [~~R.]~~ Q. Chapter 59A, Article 37 NMSA 1978, except
13 Section 59A-37-7 NMSA 1978; and
14 [~~S.]~~ R. Section 59A-46-15 NMSA 1978. "
15 Section 6. REPEAL. -- Sections 59A-18-13.1, 59A-23C-5.1,
16 59A-23C-7.1 and 59A-56-1 through 59A-56-25 NMSA 1978 (being Laws
17 1994, Chapter 75, Sections 26, 33, 32 and 1 through 25) are
18 repealed.