Insurance Code Legislation Needed to Implement and Enforce PPACA
- with links to web-based materials

Federal reform provisions	Analysis of whether and why the Insurance Code should be amended for effective state regulation.[1]	Legislation is Needed[2]
Annual and Lifetime Limits	Ban on lifetime limits with regulated limits on annual coverage. Regulations to follow on annual limits. There is nothing similar in the NM Insurance Code.	Yes.
Rescissions	New Mexico state law standards for rescissions provide the same standards as the federal law. Section 59A-16-12.1	No.
Coverage of Preventive Health Services	Preventive coverage regardless of deductibles.[3]	Yes.
Extension of Adult Dependent Coverage	Current law provides for coverage under a group health plan ***of unmarried adults*** up to age 25. PPACA extends this requirement to ***any*** adult **up to age 26,** unless, in the case of Grandfathered plans, coverage is offered by the dependent's employer. Current Law: 59A-22-30.1; 59A-23-7.3; 59A-47-40; 59A-46-38.3 Links to HHS - Health Care Insurance for Dependants 26 CFR Parts 54 and 206 29 CFR Dependent Children Age 26 Dependent - Sec Letter Expediting Dependent Covera ge - Fact Sheet 5-10-2010 Dependent Coverage - FAQ 5-10-2010 Dependents - Interim Final Rule 5-10-2010 IRS Notice n-10-38	Yes.
Preexisting Condition Exclusions	For children under 19, immediate reforms prohibit exclusions for preexisting conditions. New Mexico has no such provision in state law.	Yes.

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Eliminated Gender and Health Status as Rating Factors	In 2010, New Mexico passed legislation to eliminate gender as a rating factor; with a phase-in to be complete by 2014. By 2014, PPACA requires health insurers to issue coverage to everyone, regardless of health status, and with no pre-existing conditions exclusions.	Yes.
Age as a Rating Factor	NM allows age as a rating factor, with a rate band that allows for variance in rates based on age up to 250%. The PPACA allows the variance based on age to be as high as 300%, so NM law is different than federal law and should be evaluated as to whether this difference is allowed under PPACA or whether NM law must be changed to conform to the federal rate band.	Possibly.
Limit on out-of-pocket costs	The PPACA provides for cost-sharing reductions for individuals in individual coverage, up to 400% of FPL. The HHS will reimburse issuers for the cost-reductions made on behalf of the individuals.	Probably not.
Uniform Explanation of Coverage Documents and Standardized Definitions	With the help of the NAIC, HHS is to issue standards within 12 months of enactment.[4] Once these standards are adopted, then the DOI will evaluate the Code and accompanying rules to determine where changes are needed. Because the PPACA terms are subject to change following the interim final rules, it may be useful to have legislation that allowed for change through rulemaking. An example of this is now found in the Medicare Supplement context, which allows for adoption by reference of rule changes made on the federal level. Legislation could state something to the effect: "To ensure effective supervision and enforcement of any health care insurance rules required under federal law, the superintendent of insurance shall issue no later than six months following promulgation of guidance or rulemaking by the federal government, a notice of proposed rulemaking on said subject matter. "	Yes. The Insurance Code defines some coverage terms. If the PPACA terms conflict with these definitions, then the Code terms will need amendment.[5]

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	NM law, as in 59A-22-2(D), requires a summary, but does not require the policy to state whether the policy provides minimal essential coverage. Need for all relevant Ins. Code sections to conform to PPACA.	
Provision of Additional Information	PPACA requires qualified health plans not in the Exchange to report specified information (claims and enrollment data) to the Secy of HHS, the DOI and the public, but they do not need to report to the Exchange.	Yes.
Ensuring quality of Care	This provision awaits HHS guidance and rulemaking. The Insurance Code contains some quality of care requirements, with additional details contained in administrative rules. If the PPACA requirements expand upon or conflict with these requirements, then the Code terms will need amendment.	Possibly.
Bring Down the Cost of Health Care- MLR	PPACA requires the health insurer to reimburse for direct services at a level not less than 85% of premiums across for large employers and 80% in the small group and individual market. In 2010, New Mexico passed legislation that requires health insurers to meet minimum MLR levels for the individual and group markets; with the amount to be spent on direct services in the group market set at 85%, and at 80% in the individual market. New Mexico standards are stricter in the *small group market*, and may or may not be the same as federal requirements in the individual market, depending on the formulas that will be required under federal regulation to determine administrative costs as opposed to direct services. State law needs revision to conform to at least meet the federal standards in all respects.	Yes.
Appeals Process	HHS has adopted standards pursuant to PPACA; states are "encouraged" to adopt the new standards by July 2011. In almost all respects, the state's current appeals process, which is contained in administrative rules, is more consumer friendly than the outlines of the PPACA appeals process.	No, but proposed rulemaking should be expected.

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Patient Protections: PCP Designation to allow pediatricians, ER services w/o prior approval and OB/GYN.	New Mexico has a Patient Protection Act (PPA), at Section 59A, Chapter 57 that requires managed health care plans to include, at a minimum, a long list of patient protections, including the ER services standards and the use of the OB/GYN as a PCP.[6] Arguably, the PPA provides the Superintendent of Insurance general authority to extend the list of minimum requirements to include those required under federal law. The better practice would be to amend the PPA to specifically address those issues. These include extending the protections to include all plans. Currently, the PPA applies to around 99% of commercial plans regulated by DOI. It also should specifically include pediatricians as PCPs.	Yes. The Patient Protection Act should be amended to include all plans, and may want to clarify pediatricians as PCPs.
Health Insurance Consumer Assistance Offices and Ombudsmen	9/10 UPDATE: DOI has submitted its idea in its grant application for consumer assistance to the federal government. **Consumer Asst/Ombudsman Grant Application and Attachments** **NM Consumer Assitance Grant Application** **CA Program Abstract Final** **CA Project Narrative Final** **CA Timeline** DOI has applied for a $300,000 grant to broaden services. The use of awarded funds for this specific program would allow the DOI to provide new services, including assisting consumers with filing complaints and appeals, assisting consumers with enrollment into health coverage, and educating consumers on their rights and responsibilities with respect to group health plan and health insurance coverage. More comprehensive accommodations will be provided for people with limited English proficiency and disabilities that follow nationally recognized standards and measures. Additionally, the Bureau will collect data on consumer inquiries and complaints to help the Department of Health and Human Services Secretary identify problems in the marketplace and strengthen enforcement efforts. **The DOI proposes to create an ombudsman position that will:** • Collaborate with certified community advocates and volunteers	Yes.

	throughout the state to develop formal arrangements to deliver consumer services and information, • **Facilitate rule-making and rule changes needed for the adoption of the Uniform Health Carrier External Review Model Act (NAIC Model Act #76-33) -** to include assisting the Superintendent of Insurance with the selection of an independent review organization to be used for adverse appeals. • The selected ombudsman should have extensive consumer advocacy experience and/or is a licensed New Mexico attorney.	
Ensuring Consumers get value for their dollars: review of unreasonable premium rates and disclosure	DOI has applied for grant money to move forward on this issue. **Grant Opportunity for Insurance Rate Review** Work plan and Time line Project Abstract Summary of Enhancements GRANT TASK FORCE Minutes June 16 GRANT TASK FORCE Minutes June 21 Rate Review Grant Agenda Letter to the Governor Governor's Letter Supporting Premium Rate Review Grant Current rates must be approved by the Superintendent of Insurance. To improve consumer protections and provide greater transparency, the DOI is in the process of suggested legislative changes. Additional changes may be required to align state law with standards developed for approval of rates pursuant to the PPACA.[7]	Yes.
Temporary reinsurance program for early retirees	This appears to be in the purview of federal tax authorities, and may need the cooperation of the state's Workforce Solutions Department (WSD).	Does not appear to need Insurance Code amendment.

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Web portal to identify affordable coverage options	Setting up a web portal would not necessarily require any change in current law. If the federal law, however, requires the web portal to publish data that the insurance industry objects to as proprietary, then there is a question as to whether the state government could pass legislation to declare such data as subject to public scrutiny.	Perhaps, depending on what information is to be published and industry reaction to such publication.
Current state-mandated benefits:	State benefit mandates need to be reviewed in light of the "essential benefits" that will be offered through the Exchange. State mandates not included in essential benefits will cost the state money, in the form of reimbursements to the federal government for subsidized individuals. "Essential benefits" have not been fully defined yet, so it is not clear as to which state benefits will go beyond the "essential benefits," nor the cost to the state to continue in place those mandates. NM mandates coverage for HPV screening; **PPACA specifically does not.** **Other mandates that may or may not be included in PPACA:** **Educated guess for inclusion, though perhaps not at the same levels of coverage:** craniomandibular and temporomandibular joint disorders (TMJ); hearing aids for children and circumcision for newborns (*may be included in rules re: pediatric coverage under PPACA*); maternity transport; home health care option; mastectomies and lymph node removal – minimum hospital stays; diabetes coverage; alpha-fetoprotein IV screening test; childhood immunization; genetic inborn errors of metabolism; and autism spectrum disorder. **Educated guess for exclusion:** chiropractor services; doctors of oriental medicine; smoking cessation treatment; general anesthesia and hospitalization for dental surgery; prescription contraceptives; and certified midwives & registered lay midwives.	Possibly.
Coverage of Clinical Trials	New Mexico only requires coverage of cancer clinical trials.	Yes.

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Maternity Coverage & Newborn Care; Maternity Transport	New Mexico does not require equivalent coverage.	Yes.
Mental Health Parity	Passage of amended mental health parity laws by Congress requires that New Mexico amend its state laws regarding some terminology and coverage issues. With the passage of PPACA, the state amendments could also clarify that the standards will apply to health plans issued in compliance with PPACA. http://www.dol.gov/ebsa/newsroom/fsmhpaea.html	Yes.
Genetic Nondiscrimination	Passage of the genetic nondiscrimination law by Congress requires that New Mexico amend its state laws regarding the more narrow federal exceptions to non-disclosure of genetic information. With the passage of PPACA, the state amendments could also clarify that the standards will apply to health plans issued in compliance with PPACA.	Yes.
Other HIPAA provisions	State law should specify that other HIPAA provisions are applicable to health care plans issued pursuant to PPACA.	Yes.

[1] In some cases, rather than legislation, the Superintendent of Insurance "after a hearing thereon, may make reasonable rules and regulations necessary for or as an aid to administration or effectuation of any provision of the Insurance Code administered by the superintendent, and from time to time withdraw, modify or amend any such rule or regulation" in accordance with Section 59A-2-9(A) NMSA 1978.

[2] In all cases in which the Insurance Code must be amended, it is careful to note that an amendment will not apply to the following entities, unless those portions of the Code are also amended: individual plans, as identified in Chapter 59A, Article 22; group health plans, as identified in Chapter 59A, Article 23. fraternal benefit societies, as identified in Chapter 59A, Article 44 NMSA 1978; nonprofit health care plans, as identified in Chapter 59A, Article 47 NMSA 1978; health maintenance organizations, as identified in Chapter 59A, Article 46 NMSA 1978; and prepaid dental plans, as identified in Chapter 59A, Article 48 NMSA 1978.

[3] When a policy or plan is submitted for filing subsequent to federal law but prior to state law enactment, the general practice is for the DOI to review the new law with insurers and request their compliance. While plans generally comply, this is a stop-gap measure that requires legislative change for effective state enforcement.

In a related matter, NM law allows minors age 15 and above to contract for coverage. So, for instance, minors living away from home, such as college students or foster children, are allowed to contract for their own coverage. Section 59A-18-7(B) NMSA 1978.

[4] STANDARD DEFINITIONS AND SUMMARY COVERAGE FORMS SENT TO CONSUMER TESTING
COMMENT PERIOD -- OCT 6, 2010
> Pursuant to Section 1001(5) of the Patient Protection and Affordable
> Care Act (PPPPACA), the National Association of Insurance Commissioners
> (NAIC) created a Subgroup of state regulators and assembled a "working
> group composed of representatives of health insurance-related,
> consumer advocacy organizations, health insurance issuers, health care
> professionals, patient advocates including those representing
> individuals with limited English proficiency, and other qualified
> individuals." This group began in June 2010 to develop "uniform
> definitions of standard insurance terms and medical terms" (as
> provided in the statute) as well as a summary of benefits and
> coverage. The definitions and summary forms were sent to consumer
> testing September 13, 2010. The Consumer Information (B) Subgroup,
> intends to finalize these documents by next motnh to send onto HHS and
> DOL.
>
> A public comment period for the standard definitions and summary
> coverage forms is open until October 6, 2010.
>
> More information about the Consumer Information Subgroup can be found
> at the following link:
> http://www.naic.org/committees_b_consumer_information.htm

[5] E.g. “policy” is defined in Section 59A-18-2 NMSA 1978.

[6] In particular, Section 59A-57-4 NMSA 1978 describes the patient rights, disclosures, rights to basic and comprehensive health care services, utilization review program and continuous quality program. Many provisions of the PPACA are specifically required under the PPA, and the PPA specifically gives the Superintendent of Insurance the authority to promulgate rules to effectuate these rights. Accordingly, where the Superintendent finds a need to change the managed health care rules to effectuate the federal law, these changes can be made through administrative rulemaking process. For instance, the PPA provides patients with a right to an appeals process. The details of the appeals process are all contained in the New Mexico Administrative Code. Any changes would require rulemaking rather than legislation.

[7] Current standards for denial of a rate increase: Section 59A-18-14 NMSA 1978. Related statutory authority that requires insurers to get approval for all filings, including rate changes, are at: Section 59A-18-12 and 59A-18-13 NMSA 1978.