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SENATE BILL 717

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Leonard Lee Rawson

AN ACT

RELATING TO RISK MANAGEMENT; REQUIRING COVERAGE FOR
UNCOMPENSATED HEALTH PROVIDERS IF A PUBLIC BENEFICIARY FILES A
MALPRACTICE CLAIM; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 15-7-3 NMSA 1978 (being Laws 1978,
Chapter 166, Section 8, as amended) is amended to read:

"15-7-3. ADDITIONAL POWERS AND DUTIES OF THE RISK
MANAGEMENT DIVISION.--

A. The risk management division of the general
services department may:

(1) enter into contracts;

(2) procure insurance, reinsurance or employee
group benefits; provided that any proposal or contract for the
procurement of any group health care benefits shall be subject

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1 to the provisions of the Health Care Purchasing Act; and
2 provided further that reinsurance or excess coverage insurance
3 may be placed by private negotiation, notwithstanding the
4 provisions of the Procurement Code, if the insurance or
5 reinsurance has a restricted number of interested carriers, the
6 board determines that the coverage is in the interest of the
7 state and cannot otherwise be procured for a reasonable cost
8 and the director seeks the advice and review of the board in
9 the placement and in designing private negotiation procedures;

10 (3) in the manner prescribed by Subsection E
11 of Section 9-17-5 NMSA 1978, after a notice and a public
12 hearing, prescribe by regulation reasonable and objective
13 underwriting and safety standards for governmental entities and
14 reasonable standards for municipal self-insurance pooling
15 agreements covering liability under the Tort Claims Act and
16 adopt such other regulations as may be deemed necessary;

17 (4) compromise, adjust, settle and pay claims;

18 (5) pay expenses and costs;

19 (6) in the manner prescribed by Subsection E
20 of Section 9-17-5 NMSA 1978, prescribe by rule or regulation
21 the rating bases, assessments, penalties and risks to be
22 covered by the public liability fund, the workers' compensation
23 retention fund and the public property reserve fund and the
24 extent such risks are to be covered;

25 (7) issue certificates of coverage in

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1 accordance with Paragraph (6) of this subsection:

2 (a) to any governmental entity for any
3 tort liability risk covered by the public liability fund;

4 (b) to any governmental entity for any
5 personal injury liability risk or for the defense of any errors
6 or act or omission or neglect or breach of duty, including the
7 risks set forth in Paragraph (2) of Subsection B and Paragraph
8 (2) of Subsection D of Section 41-4-4 NMSA 1978; and

9 (c) to any governmental entity for any
10 part of risk covered by the workers' compensation retention
11 fund, the surety bond fund or the public property reserve fund;

12 (8) study the risks of all governmental
13 entities;

14 (9) initiate the establishment of safety
15 programs and adopt regulations to carry out such programs in
16 the manner prescribed by Subsection E of Section 9-17-5 NMSA
17 1978;

18 (10) hire a safety program director who shall
19 coordinate all safety programs of all state agencies;

20 (11) consult with and advise local public
21 bodies on their risk management problems; and

22 (12) employ full-time legal counsel who shall
23 be under the exclusive control and supervision of the director
24 and the secretary of general services.

25 B. The risk management division of the general

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1 services department shall provide liability coverage for the
2 following risks:

3 (1) a claim made pursuant to the provisions of
4 42 U.S.C. Section 1983 against a nonprofit corporation, members
5 of its board of directors or its employees when the claim is
6 based upon action taken pursuant to the provisions of a
7 contract between the corporation and the department of health
8 under which the corporation provides developmental disability
9 services to clients of the department and the claim is made by
10 or on behalf of a client; ~~and~~

11 (2) a claim made pursuant to the provisions of
12 42 U.S.C. Section 1983 against a nonprofit corporation, members
13 of its board of directors or its employees when the corporation
14 operates a facility licensed by the department of health as an
15 intermediate care facility for the mentally retarded and the
16 claim is based upon action taken pursuant to the provisions of
17 the license and is made by or on behalf of a resident of the
18 licensed facility; and

19 (3) a successful claim made pursuant to the
20 Medical Malpractice Act against a health care provider that
21 treated a patient enrolled in medicaid or a state health
22 coverage plan or an indigent patient that did not compensate
23 the provider.

24 C. The director shall report his findings and
25 recommendations, if any, for the consideration of each

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1 legislature. The report shall include the amount and name of
2 any person receiving payment from the public liability fund of
3 any claim paid during the previous fiscal year exceeding one
4 thousand dollars (\$1,000). The report shall be made available
5 to the legislature on or before December 15 preceding each
6 regular legislative session."

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