

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 32

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING A NEW SECTION OF CHAPTER
59A, ARTICLE 22 NMSA 1978 TO PROVIDE FOR DISCLOSURES UPON
APPLICATIONS FOR COVERAGE BY BUSINESS GROUPS OF ONE IN THE
INDIVIDUAL MARKET; AMENDING AND ENACTING SECTIONS OF THE SMALL
GROUP RATE AND RENEWABILITY ACT TO PROVIDE FOR THE PURCHASE OF
COVERAGE BY BUSINESS GROUPS OF ONE; AMENDING AND ENACTING
SECTIONS OF THE HEALTH MAINTENANCE ORGANIZATION LAW TO PROVIDE
FOR DISCLOSURES UPON APPLICATIONS FOR INDIVIDUAL CONTRACTS BY
BUSINESS GROUPS OF ONE; AMENDING AND ENACTING SECTIONS OF THE
NONPROFIT HEALTH CARE PLAN LAW TO PROVIDE FOR DISCLOSURES UPON
APPLICATIONS FOR INDIVIDUAL CONTRACTS BY BUSINESS GROUPS OF
ONE.

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

Section 1. A new section of Chapter 59A, Article 22 NMSA

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underscoring material = new
[bracketed material] = delete

1 1978 is enacted to read:

2 "[NEW MATERIAL] DETERMINATION OF ELIGIBILITY FOR COVERAGE
3 AS BUSINESS GROUP OF ONE.--

4 A. If an individual applies for coverage under an
5 individual contract, the carrier must make an initial
6 determination whether the individual fits the definition of a
7 business group of one. If a business group of one is accepted
8 for coverage under an individual policy, the carrier shall
9 provide the business group of one with a disclosure form, as
10 approved by the superintendent, stating that, by purchasing an
11 individual policy instead of a small group policy, the business
12 group of one gives up what would otherwise be that business
13 group of one's right to purchase coverage in the small group
14 market for a period of three years after the date the
15 individual health benefit plan is purchased, unless a small
16 employer carrier voluntarily permits that business group of one
17 to purchase small group coverage within that three-year period.
18 The disclosure form shall briefly describe the cost
19 differentials and factors used to set rates for the individual
20 policy being purchased in comparison with the factors used to
21 set rates for a business group of one in the small group
22 market.

23 B. For purposes of determining whether an applicant
24 meets the requirement of the definition of a business group of
25 one, a carrier may require an applicant to submit to the

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1 carrier any of the following forms of documentation applicable
2 to the applicant's current business or employment:

3 (1) employment-related tax and withholding
4 information, including but not limited to a federal internal
5 revenue service form 1099 or successor to that form; or

6 (2) relevant portions of the federal and state
7 income tax returns or a certification by an attorney or
8 certified public accountant that the applicant has filed
9 federal and state tax returns as a business.

10 C. As used in this section:

11 (1) "business group of one" means an
12 individual, a sole proprietor or a single full-time employee of
13 an S corporation, C corporation, nonprofit corporation, limited
14 liability company or partnership that:

15 (a) has carried on significant business
16 activity for a period of at least one year prior to application
17 for coverage;

18 (b) has gross income as indicated on
19 federal internal revenue service form 1040, schedule C, F or SE
20 or successor forms; and

21 (c) has gross income from which that
22 individual, sole proprietor or single full-time employee has
23 derived substantial income for one year out of the most recent
24 consecutive three-year period;

25 (2) "C corporation" means a corporation that

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1 is not an S corporation in a taxable year;

2 (3) "nonprofit corporation" means a
3 corporation of which no part of the income or profit is
4 distributable to its members, directors or officers;

5 (4) "S corporation" means a small business
6 corporation that makes an election in a taxable year to be
7 taxed pursuant to Section 1362(a) of the federal Internal
8 Revenue Code of 1986; and

9 (5) "substantial income" means income derived
10 from the business activities of a business group of one that is
11 sufficient to pay for annual health insurance premiums for that
12 business group of one."

13 Section 2. Section 59A-23C-3 NMSA 1978 (being Laws 1991,
14 Chapter 153, Section 3, as amended) is amended to read:

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

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

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

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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. "business group of one" means an individual, a
 7 sole proprietor or a single full-time employee of an S
 8 corporation, C corporation, nonprofit corporation, limited
 9 liability company or partnership that:

10 (1) has carried on significant business
 11 activity for a period of at least one year prior to application
 12 for coverage;

13 (2) has gross income as indicated on federal
 14 internal revenue service form 1040, schedule C, F or SE or
 15 successor forms; and

16 (3) has gross income from which that
 17 individual, sole proprietor or single full-time employee has
 18 derived substantial income for one year out of the most recent
 19 consecutive three-year period;

20 D. "C corporation" means a corporation that is not
 21 an S corporation in a taxable year;

22 [~~G.~~] E. "carrier" means any person who provides
 23 health insurance in this state. For the purposes of the Small
 24 Group Rate and Renewability Act, "carrier" or "insurer"
 25 includes a licensed insurance company, a licensed fraternal

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1 benefit society, a prepaid hospital or medical service plan, a
2 health maintenance organization, a nonprofit health care
3 organization, a multiple employer welfare arrangement or any
4 other person providing a plan of health insurance subject to
5 state insurance regulation;

6 ~~[D.]~~ F. "case characteristics" means demographic or
7 other relevant characteristics of a small employer, as
8 determined by a small employer carrier, that are considered by
9 the carrier in the determination of premium rates for the small
10 employer, but "case characteristics" does not include claim
11 experience, health status and duration of coverage since issue;

12 ~~[E.]~~ G. "class of business" means all small
13 employers as shown on the records of the small employer
14 carrier. A separate class of business may be established by
15 the small employer carrier on the basis that the applicable
16 health benefit plans have been acquired from another small
17 employer carrier as a distinct grouping of plans;

18 ~~[F.]~~ H. "creditable coverage" means, with respect
19 to an individual, coverage of the individual pursuant to:

- 20 (1) a group health plan;
- 21 (2) health insurance coverage;
- 22 (3) Part A or Part B of Title 18 of the
23 federal Social Security Act;
- 24 (4) Title 19 of the Social Security Act except
25 coverage consisting solely of benefits pursuant to Section 1928

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1 of that title;

2 (5) 10 USCA Chapter 55;

3 (6) a medical care program of the Indian
4 health service or of an Indian nation, tribe or pueblo;

5 (7) the Comprehensive Health Insurance Pool
6 Act;

7 (8) a health plan offered pursuant to 5 USCA
8 Chapter 89;

9 (9) a public health plan as defined in federal
10 regulations; or

11 (10) a health benefit plan offered pursuant to
12 Section 5 (e) of the federal Peace Corps Act;

13 [~~G.~~] I. "department" means the department of
14 insurance;

15 [~~H.~~] J. "group health plan" means an employee
16 welfare benefit plan as defined Section 3(1) of the federal
17 Employee Retirement Income Security Act of 1974 to the extent
18 that the plan provides medical care and including items and
19 services paid for as medical care to employees or their
20 dependents as defined under the terms of the plan directly or
21 through insurance, reimbursement or otherwise;

22 [~~I.~~] K. "health benefit plan" or "plan" means any
23 hospital or medical expense-incurred policy or certificate,
24 hospital or medical service plan contract or health maintenance
25 organization subscriber contract. "Health benefit plan" does

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1 not include accident-only, credit, dental or disability income
2 insurance, medicare supplement coverage, coverage issued as a
3 supplement to liability insurance, workers' compensation or
4 similar insurance or automobile medical-payment insurance;

5 ~~[J.]~~ L. "index rate" means, for each class of
6 business for small employers with similar case characteristics,
7 the arithmetic average of the applicable base premium rate and
8 the corresponding highest premium rate;

9 ~~[K.]~~ M. "late enrollee" means, with respect to
10 coverage under a group health plan, a participant or
11 beneficiary who enrolls under the plan other than during:

12 (1) the first period in which the individual
13 is eligible to enroll under the plan; or

14 (2) a special enrollment period pursuant to
15 Sections ~~[8 and 9 of the Health Insurance Portability Act]~~
16 59A-23E-8 and 59A-23E-9 NMSA 1978;

17 ~~[L.]~~ N. "new business premium rate" means, for each
18 class of business as to a rating period, the premium rate
19 charged or offered by the small employer carrier to small
20 employers with similar case characteristics for newly issued
21 health benefit plans with the same or similar coverage;

22 O. "nonprofit corporation" means a corporation of
23 which no part of the income or profit is distributable to its
24 members, directors or officers;

25 ~~[M.]~~ P. "rating period" means the calendar period

1 for which premium rates established by a small employer carrier
2 are assumed to be in effect, as determined by the small
3 employer carrier;

4 Q. "S corporation" means a small business
5 corporation that makes an election in a taxable year to be
6 taxed pursuant to Section 1362(a) of the federal Internal
7 Revenue Code of 1986;

8 [~~N-~~] R. "small employer" means any person, firm,
9 corporation, partnership or association actively engaged in
10 business who, on at least fifty percent of its working days
11 during either of the two preceding years, employed no [~~less~~]
12 fewer than two and no more than fifty eligible employees;
13 provided that:

14 (1) in determining the number of eligible
15 employees, the spouse or dependent of an employee may, at the
16 employer's discretion, be counted as a separate employee;

17 (2) companies that are affiliated companies or
18 that are eligible to file a combined tax return for purposes of
19 state income taxation shall be considered one employer; and

20 (3) in the case of an employer that was not in
21 existence throughout a preceding calendar year, the
22 determination of whether the employer is a small or large
23 employer shall be based on the average number of employees that
24 it is reasonably expected to employ on working days in the
25 current calendar year;

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1 ~~[Θ-]~~ S. "small employer carrier" means any insurer
2 that offers health benefit plans covering the employees of a
3 small employer; ~~[and]~~

4 T. "substantial income" means income derived from
5 the business activities of a business group of one that is
6 sufficient to pay for annual health insurance premiums for that
7 business group of one; and

8 ~~[P-]~~ U. "superintendent" means the superintendent
9 of insurance."

10 Section 3. A new section of the Small Group Rate and
11 Renewability Act is enacted to read:

12 "[NEW MATERIAL] DETERMINATION OF ELIGIBILITY FOR COVERAGE
13 AS BUSINESS GROUP OF ONE.--For purposes of determining whether
14 an applicant meets the requirement of the definition of a
15 business group of one, a carrier may require an applicant to
16 submit to the carrier any of the following forms of
17 documentation applicable to the applicant's current business or
18 employment:

19 A. employment-related tax and withholding
20 information, including but not limited to a federal internal
21 revenue service form 1099 or successor to that form; or

22 B. relevant portions of federal and state tax
23 returns or a certification by an attorney or certified public
24 accountant that federal and state tax returns have been filed
25 as a business."

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1 Section 4. A new section of the Small Group Rate and
2 Renewability Act is enacted to read:

3 "[NEW MATERIAL] BUSINESS GROUP OF ONE--ISSUANCE DURING
4 OPEN ENROLLMENT OR AS ELIGIBLE LATE ENROLLEE.--A small employer
5 carrier is not required to issue coverage to a business group
6 of one unless the business group of one applies for coverage
7 during an open enrollment period, which is defined as the
8 thirty-one days following the birth date of a person who
9 qualifies as the business group of one, or:

10 A. the business group of one was covered under a
11 group health plan or had health insurance coverage at the time
12 coverage was previously offered to that business group of one;

13 B. the business group of one stated in writing at
14 the time coverage was offered that coverage under a group
15 health plan or health insurance coverage was the reason for
16 declining enrollment, but only if the plan sponsor or issuer
17 required such a statement at the time and provided the
18 individual with notice of that requirement and the consequences
19 of the requirement at the time;

20 C. the business group of one's coverage described
21 in Subsection A of this section was pursuant to a continuation
22 provision pursuant to:

23 (1) the federal Consolidated Omnibus Budget
24 Reconciliation Act of 1985 and the coverage under that
25 provision was exhausted; or

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1 (2) Section 59A-18-16 NMSA 1978 and coverage
2 under that provision was exhausted; and

3 D. under the terms of the plan, the business group
4 of one requested enrollment not later than thirty days after
5 the date of exhaustion of coverage described in Paragraph (1)
6 of Subsection C of this section or termination of coverage or
7 employer contribution described in Paragraph (2) of Subsection
8 C of this section."

9 Section 5. A new section of the Small Group Rate and
10 Renewability Act is enacted to read:

11 "[NEW MATERIAL] BUSINESS GROUP OF ONE--SPECIAL ENROLLMENT
12 PERIODS FOR DEPENDENT BENEFICIARIES.--

13 A. A small employer carrier shall provide for a
14 dependent special enrollment period described in Subsection B
15 of this section during which a person may be enrolled under the
16 plan as a dependent of an individual meeting the definition of
17 a business group of one, and in the case of the birth or
18 adoption of a child, the spouse of the individual meeting the
19 definition of a business group of one may be enrolled as a
20 dependent of the individual meeting the definition of a
21 business group of one if the spouse is otherwise eligible for
22 coverage, if:

23 (1) the plan makes coverage available to a
24 dependent of an individual meeting the definition of a business
25 group of one;

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1 (2) the individual meeting the definition of a
2 business group of one is a participant under the plan or has
3 met any waiting period applicable to becoming a participant and
4 is eligible to be enrolled under the plan but for a failure to
5 enroll during a previous enrollment period; and

6 (3) the applicant for coverage as a dependent
7 has become the dependent of the individual meeting the
8 definition of a business group of one through marriage, birth,
9 adoption or placement for adoption.

10 B. A dependent special enrollment period pursuant
11 to this subsection shall be for a period of not less than
12 thirty days and shall begin on the later of:

13 (1) the date dependent coverage is made
14 available; or

15 (2) the date of the marriage, birth, adoption
16 or placement for adoption described in Subsection A of this
17 section.

18 C. If an individual meeting the definition of a
19 business group of one seeks to enroll a person as a dependent
20 during the first thirty days of a dependent special enrollment
21 period, the coverage of the dependent becomes effective:

22 (1) in the case of marriage, not later than
23 the first day of the first month beginning after the date the
24 completed request for enrollment is received;

25 (2) in the case of birth, as of the date of

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1 the birth; or

2 (3) in the case of adoption or placement for
3 adoption, the date of the adoption or placement."

4 Section 6. A new section of the Small Group Rate and
5 Renewability Act is enacted to read:

6 "[NEW MATERIAL] PERMITTED REJECTION OF APPLICATION WHEN A
7 BUSINESS GROUP OF ONE IS COVERED AS AN INDIVIDUAL WITHIN THE
8 PAST THIRTY DAYS.--A small employer carrier may reject an
9 application for coverage under a small group plan a business
10 group of one that is otherwise eligible for small group
11 coverage if, at the time of application for small group
12 coverage, the small employer carrier determines that the
13 business group of one has in place, or within the immediately
14 preceding thirty days has had in place, an individual health
15 insurance policy or plan of coverage and that the individual
16 health insurance policy or plan of coverage has been in place
17 for less than three years."

18 Section 7. Section 59A-46-2 NMSA 1978 (being Laws 1993,
19 Chapter 266, Section 2, as amended) is amended to read:

20 "59A-46-2. DEFINITIONS.--As used in the Health
21 Maintenance Organization Law:

22 A. "basic health care services":

23 (1) means medically necessary services
24 consisting of preventive care, emergency care, inpatient and
25 outpatient hospital and physician care, diagnostic laboratory,

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1 diagnostic and therapeutic radiological services and services
2 of pharmacists and pharmacist clinicians; but

3 (2) does not include mental health services or
4 services for alcohol or drug abuse, dental or vision services
5 or long-term rehabilitation treatment;

6 B. "business group of one" means an individual, a
7 sole proprietor or a single full-time employee of an S
8 corporation, C corporation, nonprofit corporation, limited
9 liability company or partnership that:

10 (1) has carried on significant business
11 activity for a period of at least one year prior to application
12 for coverage;

13 (2) has gross income as indicated on federal
14 internal revenue service form 1040, schedule C, F or SE or
15 successor forms; and

16 (3) has gross income from which that
17 individual, sole proprietor or single full-time employee has
18 derived substantial income for one year out of the most recent
19 consecutive three-year period;

20 C. "C corporation" means a corporation that is not
21 an S corporation in a taxable year;

22 [~~B.~~] D. "capitated basis" means fixed per member
23 per month payment or percentage of premium payment wherein the
24 provider assumes the full risk for the cost of contracted
25 services without regard to the type, value or frequency of

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1 services provided and includes the cost associated with
2 operating staff model facilities;

3 ~~[G.]~~ E. "carrier" means a health maintenance
4 organization, an insurer, a nonprofit health care plan or other
5 entity responsible for the payment of benefits or provision of
6 services under a group contract;

7 ~~[D.]~~ F. "copayment" means an amount an enrollee
8 must pay in order to receive a specific service that is not
9 fully prepaid;

10 ~~[E.]~~ G. "deductible" means the amount an enrollee
11 is responsible to pay out of pocket before the health
12 maintenance organization begins to pay the costs associated
13 with treatment;

14 ~~[F.]~~ H. "enrollee" means an individual who is
15 covered by a health maintenance organization;

16 ~~[G.]~~ I. "evidence of coverage" means a policy,
17 contract or certificate showing the essential features and
18 services of the health maintenance organization coverage that
19 is given to the subscriber by the health maintenance
20 organization or by the group contract holder;

21 ~~[H.]~~ J. "extension of benefits" means the
22 continuation of coverage under a particular benefit provided
23 under a contract or group contract following termination with
24 respect to an enrollee who is totally disabled on the date of
25 termination;

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1 ~~[F.]~~ K. "grievance" means a written complaint
2 submitted in accordance with the health maintenance
3 organization's formal grievance procedure by or on behalf of
4 the enrollee regarding any aspect of the health maintenance
5 organization relative to the enrollee;

6 ~~[J.]~~ L. "group contract" means a contract for
7 health care services that by its terms limits eligibility to
8 members of a specified group and may include coverage for
9 dependents;

10 ~~[K.]~~ M. "group contract holder" means the person to
11 whom a group contract has been issued;

12 ~~[L.]~~ N. "health care services" means any services
13 included in the furnishing to any individual of medical,
14 mental, dental, pharmaceutical or optometric care or
15 hospitalization or nursing home care or incident to the
16 furnishing of such care or hospitalization, as well as the
17 furnishing to any person of any and all other services for the
18 purpose of preventing, alleviating, curing or healing human
19 physical or mental illness or injury;

20 ~~[M.]~~ O. "health maintenance organization" means any
21 person who undertakes to provide or arrange for the delivery of
22 basic health care services to enrollees on a prepaid basis,
23 except for enrollee responsibility for copayments or
24 deductibles;

25 ~~[N.]~~ P. "health maintenance organization agent"

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1 means a person who solicits, negotiates, effects, procures,
2 delivers, renews or continues a policy or contract for health
3 maintenance organization membership or who takes or transmits a
4 membership fee or premium for such a policy or contract, other
5 than for ~~[himself]~~ the person, or a person who advertises or
6 otherwise ~~[holds himself out]~~ makes representation to the
7 public as such;

8 ~~[Q.]~~ Q. "individual contract" means a contract for
9 health care services issued to and covering an individual and
10 ~~[it]~~ may include dependents of the subscriber;

11 ~~[P.]~~ R. "insolvent" or "insolvency" means that the
12 organization has been declared insolvent and placed under an
13 order of liquidation by a court of competent jurisdiction;

14 ~~[Q.]~~ S. "managed hospital payment basis" means
15 agreements in which the financial risk is related primarily to
16 the degree of utilization rather than to the cost of services;

17 ~~[R.]~~ T. "net worth" means the excess of total
18 admitted assets over total liabilities, but the liabilities
19 shall not include fully subordinated debt;

20 U. "nonprofit corporation" means a corporation of
21 which no part of the income or profit is distributable to its
22 members, directors or officers;

23 ~~[S.]~~ V. "participating provider" means a provider
24 as defined in Subsection ~~[U]~~ X of this section who, under an
25 express contract with the health maintenance organization or

1 with its contractor or subcontractor, has agreed to provide
 2 health care services to enrollees with an expectation of
 3 receiving payment, other than copayment or deductible, directly
 4 or indirectly from the health maintenance organization;

5 ~~[F.]~~ W. "person" means an individual or other legal
 6 entity;

7 ~~[U.]~~ X. "provider" means a physician, pharmacist,
 8 pharmacist clinician, hospital or other person licensed or
 9 otherwise authorized to furnish health care services;

10 ~~[V.]~~ Y. "replacement coverage" means the benefits
 11 provided by a succeeding carrier;

12 Z. "S corporation" means a small business
 13 corporation that makes an election in a taxable year to be
 14 taxed pursuant to Section 1362(a) of the federal Internal
 15 Revenue Code of 1986;

16 ~~[W.]~~ AA. "subscriber" means an individual whose
 17 employment or other status, except family dependency, is the
 18 basis for eligibility for enrollment in the health maintenance
 19 organization or, in the case of an individual contract, the
 20 person in whose name the contract is issued;

21 BB. "substantial income" means income derived from
 22 the business activities of a business group of one that is
 23 sufficient to pay for annual health insurance premiums for that
 24 business group of one;

25 ~~[X.]~~ CC. "uncovered expenditures" means the costs

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1 to the health maintenance organization for health care services
2 that are the obligation of the health maintenance organization,
3 for which an enrollee may also be liable in the event of the
4 health maintenance organization's insolvency and for which no
5 alternative arrangements have been made that are acceptable to
6 the superintendent;

7 ~~[Y.]~~ DD. "pharmacist" means a person licensed as a
8 pharmacist pursuant to the Pharmacy Act; and

9 ~~[Z.]~~ EE. "pharmacist clinician" means a pharmacist
10 who exercises prescriptive authority pursuant to the Pharmacist
11 Prescriptive Authority Act."

12 Section 8. A new section of the Health Maintenance
13 Organization Law is enacted to read:

14 "[NEW MATERIAL] DISCLOSURE TO BUSINESS GROUPS OF ONE
15 REGARDING INDIVIDUAL CONTRACTS--DETERMINATION OF ELIGIBILITY
16 FOR COVERAGE AS BUSINESS GROUP OF ONE.--

17 A. If an individual applies for coverage under an
18 individual contract, the carrier must make an initial
19 determination whether the individual meets the definition of a
20 business group of one. If a business group of one is accepted
21 for coverage under an individual contract, the carrier shall
22 provide the business group of one with a disclosure form, as
23 approved by the superintendent, stating that, by purchasing an
24 individual policy instead of a group health maintenance
25 contract, the business group of one's gives up what would

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1 otherwise be that business group of one's right to purchase
 2 coverage in the small group market for a period of three years
 3 after the date the individual contract is purchased, unless a
 4 carrier voluntarily permits that business group of one to
 5 purchase a group health maintenance contract within that
 6 three-year period. The disclosure form shall briefly describe
 7 the cost differentials and factors used to set rates for the
 8 individual contract being purchased in comparison with the
 9 factors used to set rates for a business group of one in the
 10 small group market.

11 B. For purposes of determining whether an applicant
 12 meets the requirement of the definition of a business group of
 13 one, a carrier may require an applicant to submit to the
 14 carrier any of the following forms of documentation applicable
 15 to the applicant's current business or employment:

16 (1) employment-related tax and withholding
 17 information, including but not limited to a federal internal
 18 revenue service form 1099 or successor to that form; or

19 (2) relevant portions of the federal and state
 20 income tax returns or a certification by an attorney or
 21 certified public accountant that the applicant has filed
 22 federal and state tax returns as a business."

23 Section 9. Section 59A-47-3 NMSA 1978 (being Laws 1984,
 24 Chapter 127, Section 879.1, as amended) is amended to read:

25 "59A-47-3. DEFINITIONS.--As used in [~~Chapter 59A, Article~~
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1 ~~47 NMSA 1978]~~ the Nonprofit Health Care Plan Law:

2 A. "health care" means the treatment of persons for
3 the prevention, cure or correction of any illness or physical
4 or mental condition, including optometric services;

5 B. "item of health care" includes any services or
6 materials used in health care;

7 C. "health care expense payment" means a payment
8 for health care to a purveyor on behalf of a subscriber, or
9 such a payment to the subscriber;

10 D. "purveyor" means a person who furnishes any item
11 of health care and charges for that item;

12 E. "service benefit" means a payment that the
13 purveyor has agreed to accept as payment in full for health
14 care furnished the subscriber;

15 F. "indemnity benefit" means a payment that the
16 purveyor has not agreed to accept as payment in full for health
17 care furnished the subscriber;

18 G. "subscriber" means any individual who, because
19 of a contract with a health care plan entered into by or for
20 the individual, is entitled to have health care expense
21 payments made on the individual's behalf or to the individual
22 by the health care plan;

23 H. "underwriting manual" means the health care
24 plan's written criteria, approved by the superintendent, that
25 defines the terms and conditions under which subscribers may be

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1 selected. The underwriting manual may be amended from time to
2 time, but amendment will not be effective until approved by the
3 superintendent. The superintendent shall notify the health
4 care plan filing the underwriting manual or the amendment
5 thereto of the superintendent's approval or disapproval thereof
6 in writing within thirty days after filing or within sixty days
7 after filing if the superintendent shall so extend the time.
8 If the superintendent fails to act within such period, the
9 filing shall be deemed to be approved;

10 I. "acquisition expenses" includes all expenses
11 incurred in connection with the solicitation and enrollment of
12 subscribers;

13 J. "administration expenses" means all expenses of
14 the health care plan other than the cost of health care expense
15 payments and acquisition expenses;

16 K. "health care plan" means a nonprofit corporation
17 authorized by the superintendent to enter into contracts with
18 subscribers and to make health care expense payments;

19 L. "agent" means a person appointed by a health
20 care plan authorized to transact business in this state to act
21 as its representative in any given locality for soliciting
22 health care policies and other related duties as may be
23 authorized;

24 M. "solicitor" means a person employed by the
25 licensed agent of a health care plan for the purpose of

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1 soliciting health care policies and other related duties in
2 connection with the handling of the business of the agent as
3 may be authorized and paid for the person's services either on
4 a commission basis or salary basis or part by commission and
5 part by salary;

6 N. "chiropractor" means any person holding a
7 license provided for in the Chiropractic Physician Practice
8 Act;

9 O. "doctor of oriental medicine" means any person
10 licensed as a doctor of oriental medicine under the Acupuncture
11 and Oriental Medicine Practice Act;

12 P. "pharmacist" means a person licensed as a
13 pharmacist pursuant to the Pharmacy Act; [~~and~~]

14 Q. "pharmacist clinician" means a pharmacist who
15 exercises prescriptive authority pursuant to the Pharmacist
16 Prescriptive Authority Act;

17 R. "business group of one" means an individual, a
18 sole proprietor or a single full-time employee of an S
19 corporation, C corporation, nonprofit corporation, limited
20 liability company or partnership that:

21 (1) has carried on significant business
22 activity for a period of at least one year prior to application
23 for coverage;

24 (2) has gross income as indicated on federal
25 internal revenue service form 1040, schedule C, F or SE or

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1 successor forms; and

2 (3) has gross income from which that
3 individual, sole proprietor or single full-time employee has
4 derived substantial income for one year out of the most recent
5 consecutive three-year period;

6 S. "C corporation" means a corporation that is not
7 an S corporation in a taxable year;

8 T. "nonprofit corporation" means a corporation of
9 which no part of the income or profit is distributable to its
10 members, directors or officers;

11 U. "S corporation" means a small business
12 corporation that makes an election in a taxable year to be
13 taxed pursuant to Section 1362(a) of the federal Internal
14 Revenue Code of 1986; and

15 V. "substantial income" means income derived from
16 the business activities of a business group of one that is
17 sufficient to pay for annual health insurance premiums for that
18 business group of one."

19 Section 10. A new section of Chapter 59A, Article 47 NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] DETERMINATION OF ELIGIBILITY FOR COVERAGE
22 AS BUSINESS GROUP OF ONE.--

23 A. If an individual applies for coverage under an
24 individual contract, the health care plan must make an initial
25 determination whether the individual may be a business group of

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1 one. If a business group of one is accepted for coverage under
2 an individual contract, the health care plan shall provide the
3 business group of one with a disclosure form, as approved by
4 the superintendent, stating that, by purchasing an individual
5 contract instead of a small group contract, the business group
6 of one gives up what would otherwise be that business group of
7 one's right to purchase coverage in the small group market for
8 a period of three years after the date the individual contract
9 is purchased, unless a health care plan voluntarily permits
10 that business group of one to purchase a small group contract
11 within that three-year period. The disclosure form shall
12 briefly describe the cost differentials and factors used to set
13 rates for the individual contract being purchased in comparison
14 with the factors used to set rates for a business group of one
15 in the small group market.

16 B. For purposes of determining whether an applicant
17 meets the requirement of the definition of a business group of
18 one, a health care plan may require an applicant to submit to
19 the health care plan any of the following forms of
20 documentation applicable to the applicant's current business or
21 employment:

22 (1) employment-related tax and withholding
23 information, including but not limited to a federal internal
24 revenue service form 1099 or successor to that form; or

25 (2) relevant portions of the federal and state

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1 income tax returns or a certification by an attorney or
2 certified public accountant that the applicant has filed
3 federal and state tax returns as a business."

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