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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/10

SPONSOR HHGAC **LAST UPDATED** _____ **HB** 32/HHGACS

SHORT TITLE Health Insurance Small Employer Definition **SB** _____

ANALYST Lucero

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY10 | FY11 | | |
| | None | | |

(Parenthesis () Indicate Expenditure Decreases)

Companion to HB96 “Guaranteed Issue of Health Insurance Coverage”
Relates to HB31 “Health Insurer Guaranteed Issue”

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Non-Rec | Fund Affected |
|-------------------|--|--|-------------------------|------------------|
| FY10 | FY11 | FY12 | | |
| | Possible, but positive indeterminate amount | Possible, but positive indeterminate amount | Recurring | General Fund |

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Human Services Department (HSD)

Health Policy Commission (HPC)

SUMMARY

Synopsis of Bill

The House Health and Government Affairs Committee (HHGAC) substitute for House Bill 32 proposes to enact 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 amends and enacts sections of the Small Group Rate and Renewability Act to provide for the purchase of coverage by business groups of one; amends and enacts sections of the Health Maintenance Organization Law to provide for disclosures upon applications for individual

contracts by business groups of one; and amends and enacts sections of the Nonprofit Health Care Plan Law to provide for disclosures upon applications for individual contracts by business groups of one.

The bill requires insurance carriers to determine if an individual applicant for coverage meets the definition of a business group of one. In making the determination, the carrier may require the applicant to submit relevant IRS documentation. If a business group of one is accepted for coverage, the carrier must provide the business group of one with a disclosure form indicating that by purchasing an individual policy instead of a small group policy, the business group of one gives up what would otherwise be a right to purchase coverage of a small group market for a period of three years from the date of the individual coverage.

The bill amends and enacts sections of the Small Group Rate and Renewability Act to provide for the purchase of coverage by business groups of one. The bill requires a small employer carrier to issue coverage to a business group of one only during an open enrollment period, which is defined as 31 days following the birth date of the applicant. A business group of one is eligible as a late enrollee if covered under another plan at the time coverage was previously offered; however, additional restrictions are supplied for this exception.

The bill also requires a small employer carrier to provide for a dependent special enrollment period during which a person may be enrolled under the plan as a dependent of an individual meeting the definition of a business group of one.

The bill allows a small employer carrier to reject an application for coverage by a business group of one that is otherwise eligible for small group coverage if, at the time of application, place, or within the immediately preceding 30 days has had in place, an individual health insurance policy or plan of coverage for less than three years.

The bill provides a new definition for a “business group of one” under Chapter 59A Article 22 NMSA 1978, the Small Group Rate and Renewability Act, the Health Maintenance Organization Law and the Nonprofit Health Care Plan Law. A “business group of one” is defined as an individual, a sole proprietor or a single full-time employee of an S corporation, C corporation, nonprofit corporation, limited liability company or partnership that:

- Has carried on significant business activity for a period of at least one year prior to application for coverage;
- Has gross income as indicated on federal internal revenue service form 1040, schedule C, F or SE or successor forms; and
- Has gross income from which that individual, sole proprietor or single full-time employee has derived substantial income for one year out of the most recent consecutive three-year period.

The bill further provides the following definitions:

- “C corporation” means a corporation that is not an S corporation in a taxable year;
- “Nonprofit corporation” means a corporation of which no part of the income or profit is distributable to its members, directors or officers;
- “S corporation” means a small business corporation that makes an election in a taxable year to be taxed pursuant to Section 1362(a) of the federal Internal Revenue Code of 1986; and

- “Substantial income” means income derived from the business activities of a business group of one that is sufficient to pay for annual health insurance premiums for that business group of one.

FISCAL IMPLICATIONS

The New Mexico Medical Insurance Pool (NMMIP) was established in 1987 by the Legislature to provide access to health insurance coverage to residents of New Mexico who are denied health insurance or considered uninsurable. NMMIP is supported by assessments paid by insurance carriers. The Legislature authorized a tax credit for insurance carriers for a portion of the NMMIP assessment. If NMMIP is currently covering self employed consumers, and they were to leave NMMIP, then there may be a net increase in taxes paid by insurance carriers and an unquantifiable net benefit to the general fund.

According to the Human Services Department (HSD), although there is no fiscal impact to HSD, under the provisions of the bill, the underwriting risk and benefit of this benefit segment could be spread to the group market.

SIGNIFICANT ISSUES

The Health Insurance Portability and Availability Act of 1996 (HIPAA) required that all products in the “small employer” market issued or renewed after July 1, 1997 must provide a guarantee issue to a “small employer” group, regardless of the health status of its members. HIPAA; however, allows each state to define what entails a small group. Currently, in New Mexico the statute defines a “small employer” group as at least two and no more than fifty eligible employees. This bill reduces the minimum number of employees to one employee, thereby incorporating self employed individuals in the “small group” market and as such it would broaden the provisions of the law and provide guarantee issue to self employed individuals.

According to the PRC, in New Mexico some self employed individuals already qualify for guaranteed issue under Section 59A-56-3 NMSA 1978, the Health Insurance Alliance (HIA) Act which provides that HIPAA qualified self-employed individuals, with a spouse or a dependent, can purchase health insurance coverage as a “small employer;” in relevant part, as highlighted below:

(W) "small employer" means “a person that is a resident of this state, has employees at least fifty percent of whom are residents of this state, is actively engaged in business and that on at least fifty percent of its working days during either of the two preceding calendar years, employed no fewer than two and no more than fifty eligible employees; provided that:

- (1) *in determining the number of eligible employees, the spouse or dependent of an employee may, at the employer's discretion, be counted as a separate employee;*
- (2) companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state income taxation shall be considered one employer; and
- (3) in the case of an employer that was not in existence throughout a preceding calendar year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected to employ on working days in the current calendar year.”

Only certain health insurance plans are allowed under the HIA, so expanding the definition of small employer to an “employer of one” will provide greater choice of health insurance plans for individuals.

According to the Health Policy Commission; currently, well over half of the businesses covered through the Health Insurance Alliance (HIA) are self-employed business owners unable to obtain affordable insurance through the commercial market or the New Mexico Medical Insurance Pool (NMMIP). NMMIP provides health insurance, to individuals (some receiving subsidized premiums) who can’t otherwise get insurance. HIA and NMMIP are supported by an assessment paid by insurance carriers doing business in New Mexico.

In addition, not all self-employed individuals have dependents, or they may have dependents but they do not need to purchase HIA or NMMIP coverage, or the self-employed individual is not eligible for coverage under the HIA. However, according to the PRC, anecdotal evidence has made it clear that many self-employed individuals will welcome the ability to choose coverage in the small group market; however, there is no evidence that this change in law will make any significant difference in the uninsured rate in New Mexico.

PERFORMANCE IMPLICATIONS

The Human Services Department’s Strategic Plan for 2010 lists the following:

Goal 1: *Insure New Mexico!*

Task 1.2: Provide New Mexicans more opportunities for health coverage.

CONFLICT, RELATIONSHIP

Companion to HB96 “Guaranteed Issue of Health Insurance Coverage”
Relates to HB31 “Health Insurer Guaranteed Issue”

OTHER SUBSTANTIVE ISSUES

A few states define a “small employer” group as those that have 1-50 employees, but most require companies to have at least two employees to qualify for group coverage. A comparative list can be found at the Kaiser State Health Facts, at: <http://statehealthfacts.org/comparable.jsp?ind=350&cat>.

The states that allow sole proprietors to purchase group coverage are often referred to as states that guarantee coverage for “business groups of one.” In some of these states, “business groups of one” are treated in the same manner as larger employer groups. In others, they are treated as their own distinct pool and rated separately by the health insurance companies. In the states that do not allow for sole proprietors to purchase group coverage, these business owners often purchase individual health insurance coverage.

The Health Policy Commission notes that the U.S. Census Bureau reports that in 2008, 23.7% of New Mexican’s were uninsured. The State’s uninsured rate was above the national rate of 15.4%. New Mexico had the second highest uninsured rate in the nation preceded only by Texas at 24.4% using a three-year average from 2006 to 2008.

(Source: <http://www.census.gov/hhes/www/hlthins/hlthin08/statecomp08.xls>)

In 2008, New Mexico’s insured population was insured under the following types of coverage:

- Private Health Insurance
 - Employment Based - 46.6%
 - Direct Purchase - 7.5%
- Government Health Insurance
 - Medicaid - 16.4%
 - Medicare - 14.3%
- Military Health Care - 6.3%

(Source: <http://www.census.gov/hhes/www/hlthins/historic/hihist4.xls>)

ALTERNATIVES

Currently twelve states, including neighboring Colorado, define a “small group” to include an employer with just one employee. All states place the upper limit on small employers as no more than fifty employees.

In many cases, in an effort to avoid adverse selection and prevent fraud, special rules apply to “small groups” of one, such as limitations on open enrollment and the types of plans that may be sold in the small group market.

In Colorado when the “small group” was reduced to one, with just an affidavit saying they owned a business; individuals had guarantee access to small group coverage. Generalized market experience was showing that healthier self-employed individuals were signing up for coverage in the individual market, while less healthy individuals were purchasing “small group” coverage, due to the guaranteed issue. For larger, more established insurance carriers with a large book of business over which to spread this risk, the impact was minimal. For smaller carriers who were new to the market during this time, a significant impact was reported. As a result, in 1999 and 2002 the legislature passed legislation that specified more detailed documentation of sole proprietorship status and also limited guarantee issue to a single annual open enrollment period. Now Colorado requires a small group of one to be able to prove 24 hours of work per week on a regular basis; the business must have carried on significant business activity for at least one year before applying for coverage; and has either generated taxable income from the business or the owner must have derived a substantial part of their income from the business.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Except for “employers of one” who may fit the eligibility requirements of the NMHIA, “small group” would continue to be defined as an employer with at least two employees, one of which could be the employer, himself. As a result, many self-employed individuals will continue to be unable to take advantage of the small group guaranteed issue.

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