

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 33

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE NEW MEXICO HEALTH
INSURANCE EXCHANGE ACT; PROVIDING FOR A BOARD OF DIRECTORS OF
THE EXCHANGE; PROVIDING FOR POWERS AND DUTIES OF THE EXCHANGE;
PROVIDING FOR QUALIFIED HEALTH PLAN CERTIFICATION; REQUIRING
CARRIERS THAT OFFER HEALTH BENEFIT PLANS IN THE INDIVIDUAL OR
SMALL GROUP MARKET TO OFFER QUALIFIED HEALTH PLANS THROUGH THE
EXCHANGE; PROVIDING FOR ENROLLMENT AND COVERAGE ELECTION;
PROVIDING FOR DISPUTE RESOLUTION; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO
THE SAME SECTION OF LAW IN LAWS 2009; DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 14 of this act may be cited as the "New Mexico Health
Insurance Exchange Act".

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underscoring material = new
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1 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
2 New Mexico Health Insurance Exchange Act:

3 A. "actuarial value" means the percentage of
4 expected medical expenses paid by a health benefit plan for a
5 standard population, usually stated as a percentage from zero
6 percent for a health benefit plan that pays nothing to one
7 hundred percent for a health benefit plan that pays all medical
8 expenses;

9 B. "board" means the board of directors of the
10 exchange;

11 C. "bronze level of coverage" means a level of
12 coverage that is designed to provide benefits that are
13 actuarially equivalent to sixty percent of the full actuarial
14 value of the benefits provided under a health benefit plan;

15 D. "carrier" means a person that is subject to
16 licensure by the superintendent or subject to the provisions of
17 the New Mexico Insurance Code and that provides one or more
18 health benefit or insurance plans in the state;

19 E. "catastrophic coverage" means a level of
20 coverage offered to individuals that provides essential health
21 benefits only after the covered individual has incurred cost-
22 sharing expenses in an amount equal to the dollar amount of the
23 annual limitation in effect under Section 223(c)(2)(A)(ii) of
24 the federal Internal Revenue Code of 1986;

25 F. "child" means an individual who is related to a

.184032.5

1 principal insured by birth or adoption;

2 G. "dependent" means the spouse of a principal
3 insured or a child who is under the age of twenty-six;

4 H. "employee" means an individual who is hired by
5 another individual or entity for a wage or fixed payment in
6 exchange for personal services and who does not provide the
7 services as part of an independent business;

8 I. "essential benefits" means the following
9 categories of items and services, as those items and services
10 are defined by federal regulation pursuant to Section 1302(b)
11 of the federal Patient Protection and Affordable Care Act:

12 (1) ambulatory patient services;
13 (2) emergency services;
14 (3) hospitalization;
15 (4) maternity and newborn care;
16 (5) mental health and substance abuse disorder
17 services, including behavioral health treatment;

18 (6) prescription drugs;
19 (7) rehabilitative and habilitative services
20 and devices;

21 (8) laboratory services;
22 (9) preventive and wellness services and
23 chronic disease management; and

24 (10) pediatric services, including oral and
25 vision care;

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underscored material = new
~~[bracketed material] = delete~~

1 J. "exchange" means the New Mexico health insurance
2 exchange created pursuant to the New Mexico Health Insurance
3 Exchange Act offering qualified health plans to qualified
4 individuals in the individual market and the small group
5 market;

6 K. "free choice voucher" means the amount equal in
7 value to what an employer would have contributed for a
8 qualified health plan if an employee would have been covered
9 under the qualified health plan; provided that:

10 (1) the required employee contribution exceeds
11 eight percent of the employee's household income for the
12 taxable year;

13 (2) the required employee contribution does
14 not exceed nine and eight-tenths percent of the employee's
15 household income for the taxable year;

16 (3) the employee's household income is not
17 greater than four hundred percent of the federal poverty level;
18 and

19 (4) the employee does not participate in the
20 qualified health plan chosen by the employee's employer;

21 L. "gold level of coverage" means a level of
22 coverage that is designed to provide benefits that are
23 actuarially equivalent to eighty percent of the full actuarial
24 value of the benefits provided under a health benefit plan;

25 M. "health benefit plan" means a policy, contract,

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1 certificate or agreement offered by a carrier to provide,
2 deliver, arrange for, pay for or reimburse any of the costs of
3 health care services. "Health benefit plan" does not mean:

4 (1) coverage only for accident or disability
5 income insurance, or a combination of both;

6 (2) coverage issued as a supplement to
7 liability insurance;

8 (3) liability insurance, including general
9 liability insurance and automobile liability insurance;

10 (4) workers' compensation or similar
11 insurance;

12 (5) automobile medical payment insurance;

13 (6) credit-only insurance;

14 (7) coverage for on-site medical clinics;

15 (8) other similar insurance coverage under
16 which benefits for medical care are secondary or incidental to
17 other insurance benefits; or

18 (9) self-insured plans;

19 N. "health care facility" means an institution that
20 provides health care services, including a hospital or other
21 licensed inpatient center; an ambulatory surgical or treatment
22 center; a home health agency; a diagnostic, laboratory or
23 imaging center; and a rehabilitation or other organized
24 therapeutic health setting;

25 O. "health care provider" means an individual who 6

.184032.5

1 is licensed, certified or otherwise authorized or permitted by
2 law pursuant to Chapter 61 NMSA 1978 to provide health care in
3 the ordinary course of business or practice of a profession;

4 P. "health care services finance or coverage
5 sector" includes carriers and other health insurance issuers;
6 health maintenance or managed care organizations; nonprofit
7 health plans; self-insured group health plans; trade
8 associations of carriers; producers; and health care
9 facilities;

10 Q. "individual market" means the market for health
11 insurance coverage offered to individuals other than in
12 connection with a group health plan;

13 R. "level of coverage" means the board's rating of
14 a qualified health plan on the basis of the actuarial value of
15 essential benefits provided under the plan, pursuant to
16 regulations issued by the federal secretary of health and human
17 services;

18 S. "navigator" means an entity that, in a manner
19 culturally and linguistically appropriate to the state's
20 diverse populations, conducts public education, distributes tax
21 credit and qualified health plan enrollment information,
22 facilitates enrollment in qualified health plans or provides
23 referrals to consumer assistance or ombudsman services.

24 "Navigator" does not mean a carrier or a person that receives
25 any consideration, directly or indirectly, from any carrier in

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1 connection with the enrollment of a qualified individual in a
2 qualified health plan;

3 T. "plan year" means the period of time during
4 which a qualified individual is covered under a health benefit
5 plan pursuant to the contract governing the plan;

6 U. "platinum level of coverage" means a level of
7 coverage that is designed to provide benefits that are
8 actuarially equivalent to ninety percent of the full actuarial
9 value of the benefits provided under a health benefit plan;

10 V. "premium" means the consideration for insurance,
11 by whatever name the consideration is called. Any
12 "assessment", "membership", "policy", "survey", "inspection",
13 "service" or similar fee or other charge in consideration for
14 an insurance contract is part of the premium;

15 W. "producer" means a person that is licensed in
16 the state to sell, solicit or negotiate insurance;

17 X. "qualified employer" means a small employer that
18 elects to make its full-time employees, and, at the option of
19 the employer, some or all of its part-time employees, eligible
20 for one or more qualified health plans offered in the small
21 group market through the exchange; provided that the employer:

22 (1) has its principal place of business in the
23 state and elects to provide coverage through the exchange to
24 all of its eligible employees, wherever employed; or

25 (2) elects to provide coverage through the

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1 exchange to all of its eligible employees who are principally
2 employed in the state;

3 Y. "qualified health plan" means health insurance
4 coverage or a group health plan that the board has determined
5 as meeting the requirements in federal law for coverage to be
6 offered through the exchange;

7 Z. "qualified individual" means an individual who:
8 (1) seeks to enroll or who participates in a
9 qualified health plan offered through the exchange and who
10 meets one of the following residency requirements:

11 (a) the individual is a resident of the
12 state and is, and continues to be, legally domiciled and
13 physically residing on a full-time basis in a place of
14 habitation in the state that remains the person's principal
15 residence and from which the person is absent only for a
16 temporary or transitory purpose;

17 (b) the individual is a full-time
18 student attending an educational institution outside of the
19 state but, prior to attending the educational institution, met
20 the requirements of Subparagraph (a) of this paragraph;

21 (c) the individual is a full-time
22 student attending an institution of higher education located in
23 the state;

24 (d) the individual, whether a resident
25 or not, is a dependent; or

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1 (e) the individual, whether a resident
2 or not, is an employee of a qualified employer; and

3 (2) is not incarcerated at the time of
4 enrollment, other than incarceration pending the disposition of
5 charges; and

6 (3) is a citizen or national of the United
7 States or an alien lawfully present in the United States, or
8 who is reasonably expected to be a citizen or national of the
9 United States or an alien lawfully present in the United States
10 during the entire period for which enrollment in the exchange
11 is sought;

12 AA. "silver level of coverage" means a level of
13 coverage that is designed to provide benefits that are
14 actuarially equivalent to seventy percent of the full actuarial
15 value of the benefits provided under a health benefit plan;

16 BB. "small employer" means a person that is
17 actively engaged in business that employed an average of at
18 least one but not more than fifty full-time-equivalent
19 employees on business days during the preceding calendar year
20 and that employs at least one employee in the first day of the
21 plan year; provided that:

22 (1) the small employer elects to make all
23 full-time employees eligible for one or more qualified health
24 plans offered in the small group market through the exchange;

25 (2) persons that are affiliated persons or

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1 that are eligible to file a combined tax return for purposes of
2 state income taxation shall be considered one small employer;

3 (3) in the case of an employer that was not in
4 existence throughout a preceding calendar year, the
5 determination of whether the employer is a small employer shall
6 be based on the average number of employees that the employer
7 is reasonably expected to employ on working days in the current
8 calendar year; and

9 (4) the person is not a self-insured entity;

10 CC. "small group market" means the small business
11 health options program under which employees obtain health
12 insurance coverage, directly or through any arrangement, on
13 behalf of the employees and their dependents through a
14 qualified health plan maintained by a qualified employer;

15 DD. "stand-alone dental benefits" means limited
16 scope dental benefits meeting the requirements of Section
17 9832(c)(2)(A) of the federal Internal Revenue Code of 1986 and
18 federal regulations regarding pediatric oral health benefits;
19 and

20 EE. "superintendent" means the superintendent of
21 insurance of the insurance division of the public regulation
22 commission or its successor agency.

23 SECTION 3. [NEW MATERIAL] NEW MEXICO HEALTH INSURANCE
24 EXCHANGE CREATED--CORPORATE FORM.--The "New Mexico health
25 insurance exchange" is created as a nonprofit public

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1 corporation, separate and apart from the state, to provide
 2 increased access to health insurance in the state. The
 3 exchange shall operate subject to the supervision and approval
 4 of the board.

5 SECTION 4. [NEW MATERIAL] BOARD OF DIRECTORS.--

6 A. The "board of directors of the New Mexico health
 7 insurance exchange" is created. The board consists of eleven
 8 voting members. The superintendent is an ex-officio member.
 9 The secretary of human services or the secretary of the human
 10 services department's successor agency is an ex-officio voting
 11 member.

12 B. Appointed members, while serving on the board,
 13 and managerial and full-time employees of the exchange shall
 14 not have any affiliation with or any income derived from:

15 (1) current or active employment as, a
 16 contract with or consultation for a health care provider; or

17 (2) current or active employment in, a
 18 contract with or consultation for the health care services
 19 finance or coverage sector.

20 C. Each board member and employee of the exchange
 21 shall have a fiduciary duty to the exchange.

22 D. The board shall be composed, as a whole, to
 23 ensure representation of the state's Native American
 24 population, ethnic diversity, cultural diversity and geographic
 25 diversity. Board members shall have demonstrated knowledge or

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1 experience in at least one of the following areas:

- 2 (1) purchasing coverage in the individual
3 market;
- 4 (2) purchasing coverage in the small group
5 market;
- 6 (3) health care finance;
- 7 (4) health care economics;
- 8 (5) health care policy; or
- 9 (6) the enrollment of underserved residents in
10 health care coverage.

11 E. Selection of the ten appointed voting members
12 shall be as follows:

- 13 (1) the governor shall appoint five members;
14 and
- 15 (2) the New Mexico legislative council shall
16 appoint five members.

17 F. Initially, appointed members shall have terms
18 chosen by lot as follows: three members shall serve two-year
19 terms; three members shall serve three-year terms; and four
20 members shall serve four-year terms. An appointed member shall
21 not serve more than two consecutive terms. An appointed member
22 shall serve until the member's successor is appointed and
23 qualified or for six months, whichever period of time is
24 shorter.

25 G. A member shall serve until the member's

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1 successor is appointed by the respective appointing authority.

2 H. Every third year, the board shall elect in open
3 session a chair and vice chair from among its members. The
4 chair and vice chair shall serve not more than two three-year
5 terms as chair and vice chair.

6 I. The exchange and the board are subject to and
7 shall comply with the provisions of the Governmental Conduct
8 Act, the Financial Disclosure Act, the Open Meetings Act and
9 the Administrative Procedures Act as well as other statutes and
10 rules applicable to state agencies, except that the exchange
11 and the board shall not be subject to the Procurement Code or
12 the Personnel Act.

13 J. A vacancy on the board shall be filled by
14 appointment by the original appointing authority for the
15 remainder of the member's unexpired term.

16 K. A member may be removed from the board by a
17 majority vote of the members. The board shall set standards
18 for attendance and may remove a member for lack of attendance,
19 neglect of duty or malfeasance in office. A member shall not
20 be removed without proceedings consisting of at least one ten-
21 day notice of hearing and an opportunity to be heard. Removal
22 proceedings shall be before the board and in accordance with
23 procedures adopted by the board, including appeals procedures
24 to the attorney general.

25 L. Appointed members may receive per diem and

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1 mileage in accordance with the Per Diem and Mileage Act,
2 subject to appropriation by the legislature and travel policy
3 as set by the board's bylaws. Appointed members shall receive
4 no other compensation, perquisite or allowance.

5 M. The board shall meet at the call of the chair
6 and not less than once monthly from July 1, 2011 until January
7 1, 2014. Thereafter, the board shall meet no less often than
8 once per calendar quarter. There shall be at least one week's
9 notice given to members prior to any meeting. There shall be
10 sufficient notice provided to the public prior to meetings
11 pursuant to the Open Meetings Act.

12 N. The board may:

- 13 (1) create ad hoc advisory councils; and
14 (2) request assistance from other boards,
15 commissions, departments, agencies and organizations as
16 necessary to provide appropriate expertise to accomplish the
17 exchange's duties.

18 O. The board shall create and duly consider the
19 recommendations of standing advisory committees made up of
20 representatives of carriers, health care providers licensed
21 pursuant to Chapter 61 NMSA 1978, health care consumers,
22 representatives of employers, advocates for low-income or
23 underserved residents and representatives of American Indians
24 or Alaska Natives, some of whom live on a reservation and some
25 of whom do not live on a reservation, to guide the

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1 implementation of the Indian-specific provisions of the federal
 2 Patient Protection and Affordable Care Act and the federal
 3 Indian Health Care Improvement Act.

4 P. The board may sue and be sued or otherwise take
 5 any necessary or proper legal action.

6 SECTION 5. [NEW MATERIAL] PLAN OF OPERATION.--

7 A. The board shall submit a written plan of
 8 operation to the superintendent with any provisions necessary
 9 to ensure the fair, reasonable and equitable administration of
 10 the exchange.

11 B. The plan of operation shall:

12 (1) establish written procedures to implement
 13 the provisions of the New Mexico Health Insurance Exchange Act
 14 to create an exchange through which:

15 (a) qualified individuals employed by
 16 qualified employers may enroll in any qualified health plan
 17 offered through the exchange at the level of coverage specified
 18 by the employer;

19 (b) qualified employers can receive
 20 assistance in the enrollment of their employees in qualified
 21 health plans offered through the small group market;

22 (c) qualified individuals may enroll in
 23 any qualified health plan offered through the individual
 24 market;

25 (d) procedures are established for the

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1 collection of assessments from carriers, qualified employers,
2 qualified individuals and producers as needed to support the
3 operation of the exchange;

4 (e) the amount of assessment is
5 established pursuant to Subsection A of Section 14 of the New
6 Mexico Health Insurance Exchange Act; and

7 (f) penalties are established for
8 nonpayment of assessments;

9 (2) establish written procedures and criteria
10 for determining which qualified health plans may be offered
11 through the exchange, which shall include:

12 (a) assessing the affordability of
13 qualified health plans; and

14 (b) assigning ratings on the basis of
15 relative quality, price and actuarial value of qualified health
16 plans;

17 (3) establish written procedures for handling
18 and accounting for the exchange's assets and money;

19 (4) establish regular times and meeting places
20 for meetings of the board; and

21 (5) contain additional provisions necessary
22 and proper for the execution of the powers and duties of the
23 board.

24 SECTION 6. [NEW MATERIAL] BOARD DUTIES--REPORTING.--The
25 board shall:

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1 A. provide quarterly reports on the implementation
2 of the exchange between July 1, 2011 and January 1, 2014 and
3 report annually and upon request thereafter to the legislative
4 health and human services committee and the legislative finance
5 committee;

6 B. keep an accurate accounting of all of the
7 activities, receipts and expenditures of the exchange and
8 submit this information annually to the federal secretary of
9 health and human services and the superintendent;

10 C. by or before January 1, 2012, develop and
11 implement strategies to avoid adverse selection, and report
12 findings and recommendations to the legislative health and
13 human services committee, the legislative finance committee and
14 the superintendent;

15 D. by or before January 1, 2012, provide
16 legislative recommendations to the legislative health and human
17 services committee and the legislative finance committee on
18 whether to change the number of full-time-equivalent employees
19 of a small employer from fifty to one hundred before January 1,
20 2016. The board shall recommend a transition plan for the
21 exchange and carriers to follow when changing the number of
22 full-time-equivalent employees to one hundred whether the
23 change occurs prior to or on January 1, 2016;

24 E. by July 1, 2016, provide legislative
25 recommendations to the legislative health and human services

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1 committee and the legislative finance committee on whether to:

2 (1) continue limiting qualified employer
3 status to small employers;

4 (2) combine the individual market and the
5 small group market into a single risk pool; and

6 (3) enter into an exchange with other states
7 or share resources or responsibilities to enhance the
8 affordability and effectiveness of the exchange;

9 F. develop and implement a program to publicize the
10 existence of the exchange and the requirements to become
11 eligible for and enroll in the exchange and to maintain public
12 awareness of the exchange; and

13 G. cooperate with the medical assistance division
14 of the human services department, or its successor in interest,
15 to share information and facilitate transitions between the
16 exchange, medicaid, the children's health insurance program or
17 any other state public health coverage program.

18 SECTION 7. [NEW MATERIAL] EXECUTIVE DIRECTOR--
19 APPOINTMENT--STAFF--DUTIES--POWERS.--

20 A. The board shall appoint an executive director of
21 the exchange, subject to removal for cause. The executive
22 director shall have at least five years' experience in health
23 care policy, management, service delivery or coverage. The
24 board shall develop a process for evaluating the executive
25 director's performance. The executive director shall carry out

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1 the day-to-day operations of the exchange.

2 B. The executive director of the exchange shall:

3 (1) employ and fix the compensation of those
4 persons necessary to discharge the duties of the exchange,
5 including regular, full-time employees;

6 (2) propose an annual budget for the exchange;

7 (3) report to the board no less than once
8 monthly from July 1, 2011 until January 1, 2013 and no less
9 than once quarterly after January 1, 2013; and

10 (4) supervise the staff of the exchange.

11 SECTION 8. [~~NEW MATERIAL~~] NEW MEXICO HEALTH INSURANCE
12 EXCHANGE--DUTIES.--The exchange shall:

13 A. negotiate with carriers to procure affordable,
14 qualified health plans in accordance with the New Mexico Health
15 Insurance Exchange Act. The exchange shall offer these
16 qualified health plans to qualified individuals and qualified
17 employers for purchase through the exchange;

18 B. assign a rating to each qualified health plan
19 offered through the exchange on the basis of relative quality,
20 price and actuarial value in accordance with criteria
21 established by the federal secretary of health and human
22 services in consultation with the superintendent. On the basis
23 of that rating and if offering the qualified health plan
24 through the exchange is in the interest of the qualified
25 individuals and qualified employers in this state, the exchange

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1 shall determine which qualified health plans that have been
2 certified by the superintendent will be offered through the
3 exchange;

4 C. assist qualified employers in the enrollment of
5 their employees in qualified health plans offered in the small
6 group market and assist qualified individuals to enroll in
7 qualified health plans offered in the individual market;

8 D. in accordance with the provisions of the New
9 Mexico Health Insurance Exchange Act, create an implementation
10 plan to demonstrate readiness to operate the exchange to the
11 federal department of health and human services by January 1,
12 2013;

13 E. make qualified health plans available to
14 qualified individuals and qualified employers beginning on or
15 before January 1, 2014;

16 F. make pediatric dental benefits available:

17 (1) in conjunction with the essential benefits
18 offered in a qualified health plan; or

19 (2) as a stand-alone dental benefits plan;

20 G. provide for the operation of a toll-free
21 telephone hotline to respond to requests for assistance;

22 H. provide for enrollment periods in accordance
23 with the provisions in Subsection B of Section 12 of the New
24 Mexico Health Insurance Exchange Act;

25 I. provide for an internet web site containing

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1 standardized comparative information on qualified health plans;

2 J. develop and implement a standardized format for
3 presenting information on how to:

4 (1) participate in the exchange;
5 (2) enroll in a qualified health plan;
6 (3) receive a health coverage subsidy;
7 (4) receive an exemption from the individual
8 responsibility to maintain minimum essential coverage mandated
9 pursuant to Section 1501 of the federal Patient Protection and
10 Affordable Care Act; and

11 (5) receive an exemption from cost-sharing
12 pursuant to Section 2901 of the federal Patient Protection and
13 Affordable Care Act;

14 K. inform individuals of eligibility requirements
15 for health coverage through medicaid, the children's health
16 insurance program or any state or local public health coverage
17 program. If the exchange determines through screening of an
18 individual's application that the individual is eligible for
19 any of those programs, the exchange shall enroll that
20 individual in that program;

21 L. establish and make available by electronic means
22 a calculator to determine the actual cost of health coverage
23 for a qualified individual after applying any premium tax
24 credit and cost-sharing reductions for which the qualified
25 individual is eligible;

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1 M. grant certification to individuals for
2 hardship or other exemptions from the individual responsibility
3 to retain minimum essential coverage mandated pursuant to
4 Section 1501 of the federal Patient Protection and Affordable
5 Care Act;

6 N. transfer to the federal secretary of the
7 treasury the following:

8 (1) a list of those individuals who are issued
9 a certification pursuant to Subsection M of this section,
10 including the name and taxpayer identification number of each
11 individual;

12 (2) the name and taxpayer identification
13 number of each individual who was an employee of an employer
14 but who was determined to be eligible for the premium tax
15 credit under Section 36B of the federal Internal Revenue Code
16 of 1986 because:

17 (a) the employer did not provide minimum
18 essential health benefits coverage; or

19 (b) the employer provided minimum
20 essential health benefits coverage, but the exchange determined
21 that the coverage was either unaffordable to the employee or
22 that the coverage did not provide the required minimum
23 actuarial value; and

24 (3) the name and taxpayer identification
25 number of each individual who notifies the exchange that the

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1 individual has changed employers and of each individual who
2 ceases coverage under a qualified health plan during a plan
3 year and the effective date of that coverage cessation;

4 O. provide to each employer the name of each
5 employee of the employer who ceases coverage under a qualified
6 health plan during a plan year and the effective date of that
7 coverage cessation;

8 P. perform duties required of, or delegated to, the
9 exchange by the federal secretary of health and human services
10 or the federal secretary of the treasury related to determining
11 eligibility for premium tax credits, reduced cost-sharing or
12 exemptions to the individual responsibility requirement;

13 Q. establish a navigator program by awarding grants
14 to entities that demonstrate that they meet the requirements to
15 be a navigator pursuant to state and federal law. The
16 navigator program shall:

17 (1) conduct public education activities to
18 raise awareness of the availability of qualified health plans;

19 (2) distribute fair and impartial information
20 concerning enrollment in qualified health plans, the
21 availability of premium tax credits under Section 36B of the
22 federal Internal Revenue Code of 1986 and cost-sharing
23 reductions under Section 1402 of the federal Patient Protection
24 and Affordability Act;

25 (3) facilitate enrollment in qualified health

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1 plans;

2 (4) provide referrals to any applicable office
3 offering health insurance consumer assistance, or any other
4 appropriate state agency, for any qualified individual with a
5 grievance, complaint or question regarding the individual's
6 qualified health plan or coverage or a determination under that
7 plan or coverage; and

8 (5) provide information in a manner that is
9 culturally and linguistically appropriate to the needs of the
10 population being served by the exchange;

11 R. in consultation with the superintendent, review
12 the growth rate in the cost of premiums within and outside of
13 the exchange;

14 S. develop and implement a free choice voucher
15 program, credit the amount of any free choice voucher to the
16 monthly premium of the qualified health plan in which a
17 qualified individual is enrolled and collect the amount
18 credited from the employer offering the free choice voucher;

19 T. consult with various stakeholders about carrying
20 out the exchange's responsibilities;

21 U. publicize the existence of the exchange, the
22 exchange's web site and the exchange's toll-free telephone
23 hotline;

24 V. collect and transmit to administrators of the
25 applicable qualified health plans all premium payments or

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1 contributions made by or on behalf of qualified individuals and
 2 develop mechanisms to:

3 (1) receive and process automatic payroll
 4 deductions for qualified individuals enrolled in qualified
 5 health plans;

6 (2) enable qualified individuals to pay, in
 7 whole or in part, for coverage through the exchange by electing
 8 to assign to the exchange any federal earned income tax credit
 9 payments due to the qualified individual; and

10 (3) receive and process any federal or state
 11 tax credits, health coverage subsidy or other premium support
 12 payments for health insurance as may be established by law; and

13 W. establish procedures to account for all funds
 14 received and disbursed by the exchange in accordance with
 15 generally accepted accounting principles.

16 SECTION 9. [NEW MATERIAL] NEW MEXICO HEALTH INSURANCE
 17 EXCHANGE--POWERS.--The exchange may:

18 A. establish one or more service centers within the
 19 state to determine eligibility and enroll qualified individuals
 20 and qualified employers in qualified health plans;

21 B. enter into contracts with persons or other
 22 organizations as necessary or proper to carry out the
 23 provisions and purposes of the New Mexico Health Insurance
 24 Exchange Act, including the authority to contract or employ
 25 staff for the performance of administrative, legal, actuarial,

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1 accounting and other functions of the exchange;

2 C. enter into information-sharing agreements with
3 federal and state agencies and other state exchanges to carry
4 out its responsibilities; provided that these agreements
5 include adequate protections of the confidentiality of the
6 information to be shared and comply with all state and federal
7 laws and regulations; and

8 D. contract with vendors and producers to perform
9 one or more of the functions specified in Section 8 of the New
10 Mexico Health Insurance Exchange Act.

11 SECTION 10. [NEW MATERIAL] SUPERINTENDENT OF INSURANCE
12 DUTIES AND POWERS--RULEMAKING--CERTIFICATION OF PLANS.--

13 A. The superintendent shall promulgate rules to
14 avoid adverse selection against the exchange.

15 B. The superintendent shall, after notice and
16 hearing, approve the plan of operation, provided that it is
17 determined to ensure fair, reasonable and equitable
18 administration of the exchange. If the board fails to submit a
19 plan of operation within one hundred eighty days after the
20 appointment of the board, or at any time thereafter fails to
21 submit amendments to the plan of operation that the
22 superintendent deems necessary, the superintendent shall, after
23 notice and hearing, adopt and promulgate rules that the
24 superintendent deems necessary or advisable to effectuate the
25 provisions of the New Mexico Health Insurance Exchange Act.

.184032.5

1 The plan of operation shall become effective upon the
2 superintendent's written approval. Rules promulgated by the
3 superintendent shall continue in force until modified by the
4 superintendent or superseded by a subsequent plan of operation
5 submitted by the superintendent.

6 SECTION 11. [NEW MATERIAL] CARRIERS--REQUIREMENT TO OFFER
7 QUALIFIED HEALTH PLANS IN THE EXCHANGE AT THE SILVER AND GOLD
8 LEVELS OF COVERAGE.--A carrier that offers a health benefit
9 plan in the individual or the small group market in the state
10 shall offer qualified health plans through the exchange at the
11 silver and gold levels of coverage.

12 SECTION 12. [NEW MATERIAL] ENROLLMENT AND COVERAGE
13 ELECTION.--

14 A. A qualified individual may apply to participate
15 in the exchange. A qualified employer may apply on behalf of
16 its employees or the employees' dependents. Upon determination
17 by the exchange that an individual is a qualified individual,
18 the qualified individual may enroll or, if applicable, be
19 enrolled by the qualified individual's parent or legal guardian
20 in a qualified health plan offered through the exchange during
21 the next open enrollment or as otherwise provided in Subsection
22 B of this section.

23 B. The exchange shall set the dates of the
24 following enrollment periods, which shall be in compliance with
25 regulations promulgated by the federal secretary of health and

.184032.5

1 human services:

2 (1) an initial open enrollment period;

3 (2) an annual open enrollment for calendar
4 years after the initial open enrollment period;

5 (3) special enrollment periods specified in
6 Section 9801 of the federal Internal Revenue Code of 1986 and
7 other special enrollment periods under circumstances similar to
8 the periods specified in that federal act, pursuant to Part D
9 of Title 18 of the federal Social Security Act; and

10 (4) special monthly enrollment periods for
11 Indians, as "Indians" is defined in Section 4 of the federal
12 Indian Health Care Improvement Act.

13 SECTION 13. [NEW MATERIAL] DISPUTE RESOLUTION.--The
14 superintendent shall promulgate rules for resolving disputes
15 arising from the operation of the exchange in accordance with
16 the provisions of the New Mexico Health Insurance Exchange Act,
17 including disputes with respect to:

18 A. the eligibility of an individual to participate
19 in the exchange;

20 B. receiving an exemption from the individual
21 responsibility to retain minimum essential coverage mandated
22 pursuant to Section 1501 of the federal Patient Protection and
23 Affordable Care Act; and

24 C. the exchange's collection and transmission to
25 the applicable qualified health plans any applications for

.184032.5

1 enrollment and all premium payments or contributions made by or
 2 on behalf of qualified individuals or qualified employers
 3 participating in the exchange.

4 SECTION 14. [NEW MATERIAL] FUNDING--PUBLICATION OF
 5 COSTS.--The exchange:

6 A. may charge assessments or user fees to carriers,
 7 qualified employers, qualified individuals and producers or
 8 otherwise generate funding necessary to support its operations
 9 provided pursuant to the New Mexico Health Insurance Exchange
 10 Act;

11 B. shall publish the average costs of licensing,
 12 regulatory fees and any other payments required by the
 13 exchange, and administrative costs of the exchange, on an
 14 internet web site to educate consumers on such costs. This
 15 information shall include information on money lost to waste,
 16 fraud and abuse; and

17 C. may seek and directly receive grant funding from
 18 federal, state or local governments or private philanthropic
 19 organizations to defray the costs of operating the exchange.

20 SECTION 15. Section 41-4-3 NMSA 1978 (being Laws 1976,
 21 Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,
 22 Section 2 and by Laws 2009, Chapter 129, Section 2 and also by
 23 Laws 2009, Chapter 249, Section 2) is amended to read:

24 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

25 A. "board" means the risk management advisory

.184032.5

1 board;

2 B. "governmental entity" means the state or any
3 local public body as defined in Subsections C and H of this
4 section;

5 C. "local public body" means all political
6 subdivisions of the state and their agencies, instrumentalities
7 and institutions and all water and natural gas associations
8 organized pursuant to Chapter 3, Article 28 NMSA 1978;

9 D. "law enforcement officer" means a full-time
10 salaried public employee of a governmental entity, or a
11 certified part-time salaried police officer employed by a
12 governmental entity, whose principal duties under law are to
13 hold in custody any person accused of a criminal offense, to
14 maintain public order or to make arrests for crimes, or members
15 of the national guard of New Mexico when called to active duty
16 by the governor;

17 E. "maintenance" does not include:

18 (1) conduct involved in the issuance of a
19 permit, driver's license or other official authorization to use
20 the roads or highways of the state in a particular manner; or

21 (2) an activity or event relating to a public
22 building or public housing project that was not foreseeable;

23 F. "public employee" means an officer, employee or
24 servant of a governmental entity, excluding independent
25 contractors except for individuals defined in Paragraphs (7),

.184032.5

1 (8), (10), (14) and (17) of this subsection, or of a
2 corporation organized pursuant to the Educational Assistance
3 Act, the Small Business Investment Act, [~~or~~] the Mortgage
4 Finance Authority Act or the New Mexico Health Insurance
5 Exchange Act or a licensed health care provider, who has no
6 medical liability insurance, providing voluntary services as
7 defined in Paragraph [~~(16)~~] (17) of this subsection and
8 including:

- 9 (1) elected or appointed officials;
- 10 (2) law enforcement officers;
- 11 (3) persons acting on behalf or in service of
12 a governmental entity in any official capacity, whether with or
13 without compensation;
- 14 (4) licensed foster parents providing care for
15 children in the custody of the human services department,
16 corrections department or department of health, but not
17 including foster parents certified by a licensed child
18 placement agency;
- 19 (5) members of state or local selection panels
20 established pursuant to the Adult Community Corrections Act;
- 21 (6) members of state or local selection panels
22 established pursuant to the Juvenile Community Corrections Act;
- 23 (7) licensed medical, psychological or dental
24 arts practitioners providing services to the corrections
25 department pursuant to contract;

.184032.5

1 (8) members of the board of directors of the
2 New Mexico medical insurance pool;

3 (9) individuals who are members of medical
4 review boards, committees or panels established by the
5 educational retirement board or the retirement board of the
6 public employees retirement association;

7 (10) licensed medical, psychological or dental
8 arts practitioners providing services to the children, youth
9 and families department pursuant to contract;

10 (11) members of the board of directors of the
11 New Mexico educational assistance foundation;

12 (12) members of the board of directors of the
13 New Mexico student loan guarantee corporation;

14 (13) members of the board of directors of the
15 New Mexico health insurance exchange;

16 [~~(13)~~] (14) members of the New Mexico mortgage
17 finance authority;

18 [~~(14)~~] (15) volunteers, employees and board
19 members of court-appointed special advocate programs;

20 [~~(15)~~] (16) members of the board of directors
21 of the New Mexico small business investment corporation;

22 [~~(16)~~] (17) health care providers licensed in
23 New Mexico who render voluntary health care services without
24 compensation in accordance with rules promulgated by the
25 secretary of health. The rules shall include requirements for

.184032.5

1 the types of locations at which the services are rendered, the
 2 allowed scope of practice and measures to ensure quality of
 3 care; and

4 [~~(17)~~] (18) an individual while participating
 5 in the state's adaptive driving program and only while using a
 6 special-use state vehicle for evaluation and training purposes
 7 in that program;

8 G. "scope of duty" means performing any duties that
 9 a public employee is requested, required or authorized to
 10 perform by the governmental entity, regardless of the time and
 11 place of performance; and

12 H. "state" or "state agency" means the state of New
 13 Mexico or any of its branches, agencies, departments, boards,
 14 instrumentalities or institutions."

15 SECTION 16. [NEW MATERIAL] COOPERATION WITH THE NEW
 16 MEXICO HEALTH INSURANCE EXCHANGE.--The medical assistance
 17 division of the human services department, or its successor in
 18 interest, shall cooperate with the New Mexico health insurance
 19 exchange to share information and facilitate transitions
 20 between the exchange, medicaid, the children's health insurance
 21 program or any other state public health coverage program.

22 SECTION 17. TEMPORARY PROVISION--NEW MEXICO HEALTH
 23 INSURANCE EXCHANGE--NEW MEXICO MEDICAL INSURANCE POOL--NEW
 24 MEXICO HEALTH INSURANCE ALLIANCE.--The board of directors of
 25 the New Mexico health insurance exchange shall meet with the

.184032.5

1 board of directors of the New Mexico health insurance alliance
2 and the New Mexico medical insurance pool by October 1, 2011
3 and at least quarterly through October 1, 2013 to:

4 A. provide portability of coverage for individuals
5 covered through the New Mexico medical insurance pool to the
6 extent possible through the New Mexico health insurance
7 exchange;

8 B. provide for the transition of other functions of
9 the New Mexico health insurance alliance to the New Mexico
10 health insurance exchange as permitted by law; and

11 C. prepare a report to the first session of the
12 fifty-first legislature on the transition of functions of the
13 New Mexico health insurance alliance and the New Mexico medical
14 insurance pool to the New Mexico health insurance exchange and
15 on any recommendations to the legislature for continued and
16 expanded health coverage of the state's residents.

17 SECTION 18. SEVERABILITY.--If any part or application of
18 the New Mexico Health Insurance Exchange Act is held invalid,
19 the remainder or its application to other situations or persons
20 shall not be affected.

21 SECTION 19. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.