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SENATE BILL 89

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

INTRODUCED BY

George K. Munoz

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE PRIVATE HEALTH
INSURANCE PURCHASING COOPERATIVE ACT; PROVIDING FOR THE
CREATION OF HEALTH INSURANCE PURCHASING COOPERATIVES AMONG
EMPLOYERS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 13 of this act may be cited as the "Private Health
Insurance Purchasing Cooperative Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Private Health Insurance Purchasing Cooperative Act:

A. "board of directors" means the board of
directors elected by a cooperative;

B. "carrier" means a person that provides health
insurance or a health benefit plan in this state and includes a

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

7 C. "cooperative" means a private health insurance
8 purchasing cooperative established pursuant to the Private
9 Health Insurance Purchasing Cooperative Act;

10 D. "expanded service area" means any area larger
11 than one county in which a cooperative offers coverage;

12 E. "health benefit plan" means an employee welfare
13 benefit plan as defined in Section 3(1) of the federal Employee
14 Retirement Income Security Act of 1974 to the extent that the
15 plan provides medical care and includes items and services paid
16 for as medical care to employees or their dependents as defined
17 under the terms of the plan directly or through insurance,
18 reimbursement or otherwise;

19 F. "large employer" means a person that does
20 business in this state, that has employees of whom at least
21 fifty percent are residents of this state, that is actively
22 engaged in business and that, on at least fifty percent of its
23 working days during either of the two preceding calendar years,
24 employed no fewer than fifty-one eligible employees; provided
25 that:

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

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

7 (3) in the case of an employer that was not in
8 existence throughout a preceding calendar year, the
9 determination of whether the employer is a small or large
10 employer shall be based on the average number of employees that
11 the employer reasonably expects to employ on working days in
12 the current calendar year;

13 G. "small employer" means a person actively engaged
14 in business that, on at least fifty percent of its working days
15 during either of the two preceding years, employed no less than
16 two and no more than fifty eligible employees; provided that:

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

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

23 (3) in the case of an employer that was not in
24 existence throughout a preceding calendar year, the
25 determination of whether the employer is a small or large

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1 employer shall be based on the average number of employees that
2 the employer reasonably expects to employ on working days in
3 the current calendar year; and

4 H. "superintendent" means the superintendent of
5 insurance of the insurance division of the public regulation
6 commission.

7 SECTION 3. [NEW MATERIAL] PRIVATE HEALTH INSURANCE
8 COOPERATIVES--INCORPORATION--FILING WITH SUPERINTENDENT.--

9 A. A person may form a cooperative to purchase
10 employer health benefit plans. A cooperative shall be
11 organized as a nonprofit corporation and has the rights and
12 duties provided by the Nonprofit Corporation Act.

13 B. Two or more small employers may form a
14 cooperative to purchase health benefit plans pursuant to the
15 Small Group Rate and Renewability Act.

16 C. Two or more large employers, or any combination
17 of large employers and small employers, may purchase group
18 health benefit plans pursuant to Chapter 59A, Article 23 NMSA
19 1978.

20 D. On receipt of a certificate of incorporation or
21 certificate of authority from the public regulation commission,
22 the cooperative shall file written notice of the receipt of the
23 certificate and a copy of the cooperative's organizational
24 documents with the superintendent.

25 E. Annually, the board of directors shall file with
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1 the superintendent a statement of all amounts collected and
2 expenses incurred for each of the preceding three years.

3 F. A carrier shall not form, or be a member of, a
4 cooperative. A carrier may associate with a sponsoring entity,
5 such as a business association, chamber of commerce or other
6 organization representing employers or serving an analogous
7 function, to assist the sponsoring entity in forming a
8 cooperative.

9 SECTION 4. [NEW MATERIAL] POWERS AND DUTIES OF A
10 COOPERATIVE.--

11 A. A cooperative shall:

12 (1) arrange for small or large employer health
13 benefit plan coverage for small or large employer groups that
14 participate in the cooperative by contracting with carriers
15 pursuant to the Small Group Rate and Renewability Act or
16 Chapter 59A, Article 23 NMSA 1978 in accordance with Section 3
17 of the Private Health Insurance Purchasing Cooperative Act;

18 (2) collect premiums to cover the cost of:

19 (a) small or large employer health
20 benefit plan coverage purchased through the cooperative; and

21 (b) the cooperative's administrative
22 expenses;

23 (3) establish administrative and accounting
24 procedures for the operation of the cooperative;

25 (4) establish procedures under which an

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1 applicant for or participant in health benefit plan coverage
2 issued through the cooperative may have a grievance reviewed by
3 an impartial person;

4 (5) contract with carriers to provide services
5 to small or large employers covered through the cooperative;
6 and

7 (6) develop and implement a plan to maintain
8 public awareness of the cooperative and publicize the
9 eligibility requirements for, and the procedures for enrollment
10 in, health benefit plan coverage through the cooperative.

11 B. A cooperative may:

12 (1) contract with agents to market health
13 benefit plan coverage issued through the cooperative;

14 (2) contract with a carrier or third-party
15 administrator to provide administrative services to the
16 cooperative;

17 (3) negotiate the premiums paid by its
18 members; and

19 (4) offer other ancillary products and
20 services to its members that are customarily offered in
21 conjunction with health benefit plans.

22 C. A cooperative shall comply with:

23 (1) federal laws applicable to cooperatives
24 and health benefit plans offered through cooperatives to the
25 extent required by state law or rules adopted by the

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1 superintendent; and

2 (2) state laws applicable to cooperatives and
3 health benefit plans offered through cooperatives.

4 D. To be eligible to exercise the authority granted
5 under Paragraph (1) of Subsection A of this section, a
6 cooperative shall have at least ten participating employers.

7 SECTION 5. [NEW MATERIAL] SPECIAL PROVISIONS RELATING TO
8 COOPERATIVES.--

9 A. To participate as a member of a cooperative, an
10 employer shall be a small or large employer. The membership of
11 a cooperative may consist of only small employers, only large
12 employers or both small and large employers. Notwithstanding
13 the provisions of Subsections B and C of this section, a
14 cooperative may restrict membership to small and large
15 employers within a single industry grouping as defined by the
16 most recent edition of the United States census bureau's *North*
17 *American Industry Classification System*.

18 B. The type of group that may be covered by a group
19 health benefit plan issued through a cooperative is not
20 limited.

21 C. A cooperative:

22 (1) shall allow a small employer to join a
23 cooperative consisting of only small employers or both small
24 and large employers and enroll in health benefit plan coverage;
25 and

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1 (2) may allow a large employer to join a
2 cooperative and enroll in health benefit plan coverage.

3 D. A cooperative consisting of only small employers
4 or both small and large employers shall allow any small
5 employer to join the cooperative and enroll in the
6 cooperative's health benefit plan coverage during the initial
7 enrollment and annual open enrollment periods.

8 E. A sponsoring entity of a cooperative may inform
9 the members of the entity about the cooperative and the health
10 benefit plans offered by the cooperative. A carrier shall
11 issue health benefit plan coverage for the cooperative through
12 a licensed agent marketing the coverage in accordance with the
13 provisions of the Private Health Insurance Purchasing
14 Cooperative Act.

15 F. The superintendent shall promulgate rules that
16 govern the manner in which an employer may terminate, because
17 of a financial hardship affecting the employer, participation
18 in a cooperative.

19 G. An employer's participation in a cooperative is
20 voluntary, but an employer electing to participate in a
21 cooperative shall commit to purchasing health benefit plan
22 coverage through the cooperative for two years, except as
23 provided by Subsection F of this section.

24 H. A carrier issuing coverage to a cooperative:

25 (1) shall use a standard presentation form

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1 that the superintendent prescribes by rule to market health
2 benefit plan coverage through the cooperative;

3 (2) may contract to provide health benefit
4 plan coverage with only one cooperative in any county, except
5 that a carrier may contract with additional cooperatives if it
6 is providing health benefit plan coverage in an expanded
7 service area;

8 (3) shall allow enrollment in health benefit
9 plan coverage in compliance with Subsection C of this section
10 and with the carrier's agreement with the cooperative;

11 (4) is exempt from the premium tax collected
12 pursuant to Chapter 59A, Article 6 NMSA 1978 with respect to
13 the premiums or revenues received for coverage provided to each
14 uninsured employee or dependent as defined by the
15 superintendent in accordance with Subsection I of this section;
16 and

17 (5) shall maintain documentation to be
18 provided by cooperatives to ensure compliance with rules that
19 the superintendent has promulgated pursuant to Subsection I of
20 this section regarding uninsured employees or dependents.

21 I. The superintendent shall promulgate rules that
22 define "uninsured employee or dependent" for purposes of
23 Paragraph (4) of Subsection H of this section.

24 J. Notwithstanding any other state or federal law,
25 and except as provided by Subsection O of this section, a

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1 health benefit plan issued by a carrier to provide coverage
2 with a cooperative is not subject to a state law or rule that:

3 (1) relates to a particular illness, disease
4 or treatment; or

5 (2) regulates the differences in rates
6 applicable to services provided within a health benefit plan
7 network or outside the network.

8 K. The superintendent shall promulgate rules to
9 implement the exemption authorized by Subsection J of this
10 section.

11 L. A cooperative may offer more than one health
12 benefit plan, but each plan offered shall be made available to
13 all employees covered by the cooperative.

14 M. A carrier may, with notice to the
15 superintendent, provide health benefit plan coverage to an
16 expanded service area that includes the entire state. A
17 carrier may apply for approval of an expanded service area that
18 consists of less than the entire state by filing with the
19 superintendent an application, in a form and manner prescribed
20 by the superintendent, at least sixty days before the date the
21 carrier issues coverage to the cooperative in the expanded
22 service area. At the expiration of sixty days after the date
23 of receipt by the insurance division of the public regulation
24 commission of a filed application, the application is
25 considered approved by the insurance division unless, before

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1 that date, the application was either affirmatively approved or
2 disapproved by written order of the superintendent. The
3 superintendent, after notice and opportunity for hearing, may
4 rescind an approval granted to a carrier pursuant to this
5 subsection if the superintendent finds that the carrier has
6 failed to market fairly to all eligible employers in the state
7 or the expanded service area.

8 N. The provisions of this section do not limit or
9 restrict a small or large employer's access to health benefit
10 plans pursuant to the New Mexico Insurance Code.

11 O. A health benefit plan provided through a
12 cooperative shall provide coverage for diabetes equipment,
13 supplies and services.

14 P. A cooperative consisting only of small employers
15 is not required to allow a small employer to join the
16 cooperative if:

17 (1) the cooperative has elected to restrict
18 membership in the cooperative in accordance with this
19 subsection and Subsection Q of this section; and

20 (2) after the small employer has joined the
21 cooperative, the total number of eligible employees employed on
22 business days during the preceding calendar year by all small
23 employers participating in the cooperative would exceed fifty.

24 Q. A cooperative shall make the election described
25 by Subsection P of this section at the time the cooperative is

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1 initially formed. Evidence of the election shall be filed in
2 writing with the superintendent in the form and at the time
3 prescribed by rules the superintendent has promulgated.

4 SECTION 6. [NEW MATERIAL] VOLUNTARY PARTICIPATION BY
5 CARRIER IN A COOPERATIVE.--A carrier may elect not to
6 participate in a cooperative. The carrier may elect to
7 participate in one or more cooperatives and may select the
8 cooperatives in which the carrier will participate.

9 SECTION 7. [NEW MATERIAL] SELF-INSURED OR SELF-FUNDED
10 PLAN PROHIBITED.--A cooperative shall not self-insure or
11 self-fund any health benefit plan or portion of a plan.

12 SECTION 8. [NEW MATERIAL] REQUIREMENTS APPLICABLE TO
13 CARRIERS WITH WHICH A COOPERATIVE MAY CONTRACT.--A cooperative
14 may contract only with a carrier that demonstrates that the
15 carrier:

16 A. is in good standing with the insurance division
17 of the public regulation commission;

18 B. has the capacity to administer health benefit
19 plans;

20 C. is able to monitor and evaluate the quality and
21 cost-effectiveness of care and applicable procedures;

22 D. is able to conduct utilization management and
23 establish applicable procedures and policies;

24 E. is able to ensure that enrollees have adequate
25 access to health care providers, including adequate numbers and

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1 types of providers;

2 F. has a satisfactory grievance procedure and is
3 able to respond to enrollees' calls, questions and complaints;
4 and

5 G. has financial capacity, either through
6 satisfying financial solvency standards that the superintendent
7 shall set or through appropriate reinsurance or other
8 risk-sharing mechanisms.

9 SECTION 9. [NEW MATERIAL] COOPERATIVE NOT INSURER--
10 AGENTS.--

11 A. A cooperative is not a carrier or an insurer,
12 and an employee of the cooperative shall not be required to be
13 licensed as an agent or broker pursuant to the provisions of
14 the New Mexico Insurance Code. This exemption from licensure
15 includes a cooperative that acts to provide information about
16 and to solicit membership in the cooperative.

17 B. An agent used and compensated by a cooperative
18 may market the products and services sponsored by the
19 cooperative without being appointed by each carrier
20 participating in the cooperative. The agent shall not market
21 any other product or service of a participating carrier that is
22 not sponsored by the cooperative unless the agent has been
23 appointed by that carrier.

24 SECTION 10. [NEW MATERIAL] COOPERATIVE ADMINISTRATORS.--

25 A. A board of directors may select a cooperative

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1 administrator through a competitive request for proposals
2 process. The cooperative administrator shall be licensed as an
3 agent or broker pursuant to the New Mexico Insurance Code. The
4 board of directors shall evaluate proposals based on criteria
5 established by the board of directors that shall include:

6 (1) proven ability to administer health
7 insurance programs;

8 (2) an estimate of total charges for
9 administering the cooperative for the proposed contract period;
10 and

11 (3) ability to administer the cooperative in
12 a cost-efficient manner.

13 B. The cooperative administrator contract shall be
14 for a period up to four years, subject to annual renegotiation
15 of the fees and services, and shall provide for cancellation of
16 the contract for cause or due to termination of the
17 cooperative.

18 C. At least one year prior to the expiration of a
19 cooperative administrator contract, the board of directors may
20 invite all interested parties, including the current
21 administrator, to submit proposals to serve as administrator
22 for a succeeding contract period. Selection of the
23 administrator for a succeeding contract period shall be made at
24 least six months prior to the expiration of the current
25 contract.

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1 D. The board of directors may require carriers
2 issuing policies through the cooperative to perform, subject to
3 the oversight of the board of directors, any or all of the
4 administrative functions of the cooperative related to
5 enrollment, billing or other activity that members regularly
6 perform in the normal course of business. Carriers shall be
7 required to submit regular reports to the board of directors of
8 such activities, as specified by the board of directors.
9 Carriers performing such functions shall not be entitled to
10 receive any portion of the administrative assessment or any
11 other payment from the cooperative for performing these
12 services.

13 SECTION 11. [NEW MATERIAL] IMMUNITY.--

14 A. A cooperative, a member of the board of
15 directors, an executive director of a cooperative or an
16 employee or agent of the cooperative is not liable for:

17 (1) an act performed in good faith in the
18 execution of duties in connection with the cooperative; or

19 (2) an independent action of a carrier or a
20 person that provides health care services under a health
21 benefit plan.

22 B. A cooperative, a member of the board of
23 directors, the executive director of a cooperative or an
24 employee or agent of the cooperative is not liable for failure
25 to arrange for coverage of any particular illness, disease or

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1 health condition.

2 SECTION 12. [NEW MATERIAL] STATUS AS EMPLOYER.--

3 A. A small employer health coalition that otherwise
4 meets the description of a small employer is considered a
5 single small employer for all purposes pursuant to the Private
6 Health Insurance Purchasing Cooperative Act.

7 B. A cooperative that is composed of only small
8 employers, only large employers, or both small and large
9 employers is considered a single employer pursuant to the
10 Private Health Insurance Purchasing Cooperative Act.

11 C. A cooperative that is composed only of small
12 employers and that has made the election described by Paragraph
13 (1) of Subsection P of Section 5 of the Private Health
14 Insurance Purchasing Cooperative Act shall be treated in the
15 same manner as a small employer for the purposes of that act,
16 including for the purposes of any provision relating to premium
17 rates and issuance and renewal of health benefit plan coverage.

18 D. A cooperative that is composed only of small
19 employers and that has not made an election pursuant to
20 Paragraph (1) of Subsection P of Section 5 of the Private
21 Health Insurance Purchasing Cooperative Act in accordance with
22 Subsection Q of that section, or a cooperative that is composed
23 of both small and large employers, may be treated in the same
24 manner as a large employer for the purposes of that act,
25 including for the purposes of any provision relating to premium

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1 rates and issuance and renewal of health benefit plan coverage.

2 E. A cooperative shall have sole authority to make
3 benefit elections and perform other administrative functions
4 pursuant to the Private Health Insurance Purchasing Cooperative
5 Act for the cooperative's participating employers.

6 F. Any other cooperative formed pursuant to the
7 Private Health Insurance Purchasing Cooperative Act is
8 considered an employer solely for the purposes of benefit
9 elections pursuant to that act.

10 SECTION 13. [NEW MATERIAL] CERTAIN ACTIONS BASED ON RISK
11 CHARACTERISTICS OR HEALTH STATUS PROHIBITED.--A cooperative
12 shall not limit, restrict or condition an employer's or
13 employee's membership in a cooperative or choice among health
14 benefit plans based on:

15 A. risk characteristics of a group or of any member
16 of a group; or

17 B. health status related factors, duration of
18 coverage or any similar characteristic related to the health
19 status or experience of a group or of any member of a group.

20 SECTION 14. Section 59A-6-2 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 102, as amended) is amended to read:

22 "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

23 A. The premium tax provided for in this section
24 shall apply as to the following taxpayers:

25 (1) each insurer authorized to transact

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1 insurance in New Mexico;

2 (2) each insurer formerly authorized to
3 transact insurance in New Mexico and receiving premiums on
4 policies remaining in force in New Mexico, except that this
5 provision shall not apply as to an insurer that withdrew from
6 New Mexico prior to March 26, 1955;

7 (3) each plan operating under provisions of
8 Chapter 59A, Articles 46 through 49 NMSA 1978;

9 (4) each property bondsman, as that person is
10 defined in Section 59A-51-2 NMSA 1978, as to any consideration
11 received as security or surety for a bail bond in connection
12 with a judicial proceeding, which consideration shall be
13 considered "gross premiums" for the purposes of this section;
14 and

15 (5) each unauthorized insurer that has assumed
16 a contract or policy of insurance directly or indirectly from
17 an authorized or formerly authorized insurer and is receiving
18 premiums on such policies remaining in force in New Mexico,
19 except that this provision shall not apply if a ceding insurer
20 continues to pay the tax provided in this section as to such
21 policy or contract.

22 B. Each such taxpayer shall pay in accordance with
23 this subsection a premium tax of three and three-thousandths
24 percent of the gross premiums and membership and policy fees
25 received or written by it, as reported in Schedule T and

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1 supporting schedules of its annual financial statement on
2 insurance or contracts covering risks within this state during
3 the preceding calendar year, less all return premiums,
4 including dividends paid or credited to policyholders or
5 contract holders and premiums received for reinsurance on New
6 Mexico risks.

7 C. In addition to the premium tax imposed pursuant
8 to Subsection B of this section, each taxpayer described in
9 Subsection A of this section that transacts health insurance in
10 New Mexico or is a plan described in Chapter 59A, Article 46 or
11 47 NMSA 1978 shall pay a health insurance premium surtax of one
12 percent of the gross health insurance premiums and membership
13 and policy fees received by it on hospital and medical expense
14 incurred insurance or contracts; nonprofit health care service
15 plan contracts, excluding dental or vision only contracts; and
16 health maintenance organization subscriber contracts covering
17 health risks within this state during the preceding calendar
18 year, less all return health insurance premiums, including
19 dividends paid or credited to policyholders or contract holders
20 and health insurance premiums received for reinsurance on New
21 Mexico risks. Except as provided in this section, all
22 references in the Insurance Code to the premium tax shall
23 include both the premium tax and the health insurance premium
24 surtax.

25 D. For each calendar quarter, an estimated payment

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1 of the premium tax and the health insurance premium surtax
2 shall be made on April 15, July 15, October 15 and the
3 following January 15. The estimated payments shall be equal to
4 at least one-fourth of either the payment made during the
5 previous calendar year or eighty percent of the actual payment
6 due for the current calendar year, whichever is greater. The
7 final adjustment for payments due for the prior year shall be
8 made with the return, which shall be filed on April 15 of each
9 year, at which time all taxes for that year are due. Dividends
10 paid or credited to policyholders or contract holders and
11 refunds, savings, savings coupons and similar returns or
12 credits applied or credited to payment of premiums for
13 existing, new or additional insurance shall, in the amount so
14 used, constitute premiums subject to tax under this section for
15 the year in which so applied or credited.

16 E. Exempted from the taxes imposed by this section
17 are:

18 (1) premiums attributable to insurance or
19 contracts purchased by the state or a political subdivision for
20 the state's or political subdivision's active or retired
21 employees; ~~and~~

22 (2) payments received by a health maintenance
23 organization from the federal secretary of health and human
24 services pursuant to a contract issued under the provisions of
25 42 U.S.C. Section 1395 mm(g); and

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1 (3) premiums paid by employers for employer
2 health benefit plans pursuant to the Private Health Insurance
3 Cooperative Act."

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