

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 89

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

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING AND ENACTING SECTIONS OF
CHAPTER 59A, ARTICLE 23 NMSA 1978 TO PROVIDE FOR THE CREATION
AND REGISTRATION OF HEALTH INSURANCE PURCHASING COOPERATIVES
AMONG EMPLOYERS.

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

SECTION 1. Section 59A-23-3 NMSA 1978 (being Laws 1984,
Chapter 127, Section 462, as amended) is amended to read:

"59A-23-3. GROUP HEALTH INSURANCE.--

A. Group health insurance is that form of health
insurance covering groups of persons, with or without their
dependents, and issued upon the following basis:

(1) under a policy issued to an employer, who
shall be deemed the policyholder, insuring at least one
employee of such employer for the benefit of persons other than

1 the employer. The term "employees", as used in this section,
2 includes the officers, managers and employees of the employer,
3 the partners, if the employer is a partnership, the officers,
4 managers and employees of subsidiary or affiliated corporations
5 of a corporation employer, and the individual proprietors,
6 partners and employees of individuals and firms the business of
7 which is controlled by the insured employer through stock
8 ownership, contract or otherwise. The term "employer", as used
9 in this section, includes any municipal or governmental
10 corporation, unit, agency or department thereof and the proper
11 officers, as such, or any unincorporated municipality or
12 department thereof, as well as private individuals,
13 partnerships and corporations. A small employer shall also be
14 subject to the Small Group Rate and Renewability Act. A "small
15 employer" means any person, firm, corporation, partnership or
16 association actively engaged in business who, on at least fifty
17 percent of its working days during the preceding year, employed
18 no more than fifty eligible employees. In determining the
19 number of eligible employees, companies that are affiliated
20 companies or that are eligible to file a combined tax return
21 for purposes of state taxation shall be considered one
22 employer;

23 (2) under a policy issued to an association,
24 including a labor union and an agricultural association, which
25 shall have a constitution and bylaws and which has been

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1 organized and is maintained in good faith for purposes other
2 than that of obtaining insurance, insuring at least twenty-five
3 members of the association for the benefit of persons other
4 than the association or its officers or trustees, as such; ~~or~~

5 (3) under a policy issued to a cooperative; or
6 ~~(3)]~~ (4) under a policy issued to any other
7 substantially similar group ~~which~~ that, in the discretion of
8 the superintendent, may be subject to the issuance of a group
9 sickness and accident policy or contract.

10 B. Each policy, as provided by this section, shall
11 contain in substance the following provisions:

12 (1) a provision that the policy, the
13 application of the policyholder, if such application or copy
14 thereof is attached to such policy, and the individual
15 applications, if any, submitted in connection with such policy
16 by the employees or members, shall constitute the entire
17 contract between the parties, and that all statements, in the
18 absence of fraud, made by any applicant or applicants shall be
19 deemed representations and not warranties, and that no such
20 statement shall void the insurance or reduce benefits
21 thereunder unless contained in a written application for such
22 insurance;

23 (2) a provision that the insurer will furnish
24 to the policyholder, for delivery to each employee or member of
25 the insured group, an individual certificate setting forth in

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1 summary form a statement of the essential features of the
2 insurance coverage of such employee or member and to whom
3 benefits thereunder are payable. If dependents are included in
4 the coverage, only one certificate need be issued for each
5 family unit; and

6 (3) a provision that to the group originally
7 insured may be added from time to time eligible new employees
8 or members or dependents, as the case may be, in accordance
9 with the terms of the policy.

10 C. For purposes of this section only, the directors
11 of a corporation shall be deemed to be employees of the
12 corporation.

13 D. For the purposes of this section, "cooperative"
14 means a private health insurance cooperative established
15 pursuant to Section 2 of this 2011 act."

16 SECTION 2. A new section of Chapter 59A, Article 23 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] PRIVATE HEALTH INSURANCE COOPERATIVES--
19 INCORPORATION.--

20 A. A person may form a cooperative to purchase
21 employer health benefit plans. A cooperative shall be
22 organized as a nonprofit corporation and has the rights and
23 duties provided by the Nonprofit Corporation Act.

24 B. Two or more large employers or small employers
25 or any combination of large employers and small employers with

1 an aggregate of fifty or more full-time-equivalent employees
2 may purchase group health benefit plans pursuant to Chapter
3 59A, Article 23 NMSA 1978.

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

10 D. A cooperative shall:

11 (1) arrange for group health benefit plan
12 coverage for employer groups that participate in the
13 cooperative by contracting with carriers pursuant to Chapter
14 59A, Article 23 NMSA 1978;

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

16 (a) group health benefit plan coverage
17 purchased through the cooperative; and

18 (b) the cooperative's administrative
19 expenses;

20 (3) establish administrative and accounting
21 procedures for the operation of the cooperative;

22 (4) establish procedures under which an
23 applicant for or participant in group health benefit plan
24 coverage issued through the cooperative may have a grievance
25 reviewed by an impartial person;

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1 (5) contract with carriers to provide services
2 to employers covered through the cooperative; and

3 (6) develop and implement a plan to maintain
4 public awareness of the cooperative and publicize the
5 eligibility requirements for, and the procedures for enrollment
6 in, group health benefit plan coverage through the cooperative.

7 E. A cooperative may negotiate the premiums paid by
8 its members.

9 F. Notwithstanding the provisions of Subsections B
10 and C of this section, a cooperative may restrict membership to
11 employers within a single industry grouping as defined by the
12 most recent edition of the United States census bureau's *North*
13 *American Industry Classification System*.

14 G. A carrier shall issue health benefit plan
15 coverage for the cooperative through a licensed agent marketing
16 the coverage in accordance with the provisions of Chapter 59A,
17 Article 23 NMSA 1978.

18 H. The members of a cooperative shall be considered
19 a single risk pool.

20 I. A cooperative may make available to its members
21 more than one group health benefit plan, but each plan shall be
22 made available to all employees covered by the cooperative.

23 J. The provisions of this section do not limit or
24 restrict a small or large employer's access to health benefit
25 plans pursuant to the Insurance Code.

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1 K. A group health benefit plan provided through a
2 cooperative shall provide coverage for diabetes equipment,
3 supplies and services.

4 L. A carrier may elect not to participate in a
5 cooperative. The carrier may elect to participate in one or
6 more cooperatives and may select the cooperatives in which the
7 carrier will participate.

8 M. A cooperative shall not self-insure or self-fund
9 any health benefit plan or portion of a plan.

10 N. A cooperative may contract only with a carrier
11 that demonstrates that the carrier:

12 (1) is in good standing with the division;

13 (2) has the capacity to administer health
14 benefit plans;

15 (3) is able to monitor and evaluate the
16 quality and cost-effectiveness of care and applicable
17 procedures;

18 (4) is able to conduct utilization management
19 and establish applicable procedures and policies;

20 (5) is able to ensure that enrollees have
21 adequate access to health care providers, including adequate
22 numbers and types of providers;

23 (6) has a satisfactory grievance procedure and
24 is able to respond to enrollees' calls, questions and
25 complaints; and

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1 (7) has financial capacity, either through
2 satisfying financial solvency standards that the superintendent
3 shall set or through appropriate reinsurance or other
4 risk-sharing mechanisms.

5 O. A cooperative is not a carrier or an insurer,
6 and an employee of the cooperative shall not be required to be
7 licensed as an agent or broker pursuant to the provisions of
8 the Insurance Code. This exemption from licensure includes a
9 cooperative that acts to provide information about and to
10 solicit membership in the cooperative.

11 P. A cooperative shall register as a cooperative
12 with the insurance division in accordance with division rules.

13 Q. For the purposes of this section:

14 (1) "carrier" means a person that is subject
15 to licensure by the superintendent or subject to the provisions
16 of the Insurance Code and that provides one or more health
17 benefit or insurance plans in the state;

18 (2) "large employer" means a person, firm,
19 corporation, partnership or association actively engaged in
20 business that, on at least fifty percent of its working days
21 during either of the two preceding years, employed no fewer
22 than fifty-one employees eligible for employer-sponsored
23 coverage; provided that:

24 (a) in determining the number of
25 eligible employees, the spouse or dependent of an employee may,

1 at the employer's discretion, be counted as a separate
2 employee;

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

7 (c) in the case of an employer that was
8 not in 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 it is reasonably expected to employ on working days in the
12 current calendar year; and

13 (d) the employer does not self-insure;
14 and

15 (3) "small employer" means a person, firm,
16 corporation, partnership or association actively engaged in
17 business that, on at least fifty percent of its working days
18 during either of the two preceding years, employed no less than
19 two and no more than fifty employees eligible for employer-
20 sponsored coverage; provided that:

21 (a) in determining the number of
22 eligible employees, the spouse or dependent of an employee may,
23 at the employer's discretion, be counted as a separate
24 employee;

25 (b) companies that are affiliated

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

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

10 (d) the employer does not self-insure."

11 SECTION 3. A new section of the New Mexico Insurance Code
12 is enacted to read:

13 "[NEW MATERIAL] HEALTH INSURANCE COOPERATIVE--
14 RULEMAKING.--The superintendent shall adopt rules to govern the
15 registration of health insurance cooperatives, including the
16 registration of cooperative employees, pursuant to Chapter 59A,
17 Article 23 NMSA 1978."