

1 SENATE BILL 208

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Dede Feldman

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10 AN ACT

11 RELATING TO HEALTH INSURANCE; AMENDING AND ENACTING SECTIONS OF
12 THE NEW MEXICO INSURANCE CODE TO PROVIDE GREATER TRANSPARENCY
13 AND NEW STANDARDS IN REVIEW OF APPLICATIONS FOR HEALTH
14 INSURANCE PREMIUM RATE INCREASES; PROVIDING FOR PUBLIC HEARINGS
15 AND ADMINISTRATIVE AND JUDICIAL REVIEW OF DETERMINATIONS IN
16 HEALTH INSURANCE PREMIUM RATE REVIEW MATTERS.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. A new section of the Public Regulation
20 Commission Act is enacted to read:

21 "[NEW MATERIAL] HEALTH INSURANCE PREMIUM RATE REVIEW--
22 HEARING EXAMINERS.--

23 A. The superintendent of insurance may appoint a
24 hearing examiner to preside over hearings on reconsideration
25 pursuant to Section 8 of this 2011 act. A hearing examiner

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1 shall provide the superintendent with a recommended decision on
2 the matter assigned to the hearing examiner, including findings
3 of fact and conclusions of law. The recommended decision shall
4 be provided to the parties, and they may file exceptions to the
5 decision prior to the final decision of the superintendent.

6 B. The commission shall appoint a hearing examiner
7 to preside over hearings pursuant to Section 9 of this 2011
8 act. A hearing examiner shall provide the commission with a
9 recommended decision on the matter assigned to the hearing
10 examiner, including conclusions of law. The recommended
11 decision shall be provided to the parties, and they may file
12 exceptions to the decision prior to the final decision of the
13 commission."

14 SECTION 2. A new section of Chapter 59A, Article 18 NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] "BLOCK OF BUSINESS" DEFINED.--As used in
17 Chapter 59A, Article 18 NMSA 1978, "block of business" means a
18 particular policy or pool that provides health insurance, that
19 an insurer issues to one or more individuals and that includes
20 distinct benefits, services and terms."

21 SECTION 3. A new section of Chapter 59A, Article 18 NMSA
22 1978 is enacted to read:

23 "[NEW MATERIAL] CLOSED BLOCK OF BUSINESS.--As used in
24 Chapter 59A, Article 18 NMSA 1978, "closed block of business"
25 means a policy or group of policies that an insurer no longer

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1 markets or sells, or that has less than five hundred contracts
2 in force in the state, or for which enrollment has decreased by
3 more than twelve percent since the last rate filing relating to
4 that block of business."

5 SECTION 4. Section 59A-18-13 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 343, as amended) is amended to read:

7 "59A-18-13. APPROVAL OR DISAPPROVAL OF HEALTH INSURANCE
8 FORMS.--

9 A. With policy, endorsement, rider and application
10 forms and classification of risks filed by the insurer with the
11 superintendent under Section 59A-18-12 NMSA 1978 as to health
12 insurance, the insurer shall also file with the superintendent
13 its premium rates applicable to such health insurance forms.
14 An insurer shall not use any such form or premium rate that has
15 not been approved by the superintendent or that is not in
16 effect in accordance with Section 59A-18-14 NMSA 1978.

17 B. An increase in a health insurance premium shall
18 not be effective without sixty days' written notice by the
19 insurer to the policyholder. That notice shall include a
20 summary of the form or classification of risks that the insurer
21 files pursuant to Section 59A-18-12 NMSA 1978 in language that
22 meets minimum language simplification standards pursuant to the
23 Policy Language Simplification Law.

24 C. ~~[All]~~ The insurer shall file all filings
25 ~~[submitted]~~ pursuant to this section ~~[shall be filed]~~

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1 electronically. The superintendent may designate an entity to
2 receive the electronic filings submitted pursuant to this
3 section.

4 D. Within ten days of the filing, the
5 superintendent shall make available on the division's web site
6 and easily accessible to the general public all premium rates,
7 forms, classifications of risks, filings made pursuant to
8 Subsections E, F and G of this section and the summary that an
9 insurer files pursuant to Section 59A-18-12 NMSA 1978 and this
10 section.

11 E. For each block of business included in the
12 proposed premium rate increase, filings shall be accompanied by
13 the following to the extent that this information is not
14 already included in the actuarial memorandum:

15 (1) a summary, in language that meets minimum
16 language simplification standards pursuant to the Policy
17 Language Simplification Law, that explains the rationale for
18 the proposed rate increase;

19 (2) a brief description of the type of policy
20 benefits, renewability, general market methods and age limits
21 on issuance, if any;

22 (3) a brief description of how the revised
23 rates were determined, including the general description and
24 source of each assumption used;

25 (4) for blocks of business in existence for at

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1 least three years, the rating history for the three years
2 preceding the date of filing, including any premium increases
3 for those blocks of business;

4 (5) an estimated percentage of the premium
5 that the applicant expects to set aside in reserves;

6 (6) innovations in health care quality that
7 advance the delivery of patient care, with documentation of
8 expenses incurred for that purpose;

9 (7) for blocks of business in existence for at
10 least three years, the measurable cost-containment efforts that
11 the applicant has undertaken within the three years preceding
12 the date of filing;

13 (8) the expected medical loss ratio and, for
14 blocks of business in existence for at least three years, the
15 medical loss ratio for the three years preceding the date of
16 filing, accompanied by supporting information as to how the
17 blocks of business will meet the requirements for medical loss
18 ratio in state and federal law;

19 (9) if medical costs, including utilization
20 and compensation rates, are alleged to justify a premium rate
21 increase, the filing shall identify in the aggregate the types
22 of expenditures in those categories that support the premium
23 rate increase in the geographic area covered;

24 (10) for blocks of business in existence for
25 at least three years, premium revenues, claims history, losses

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1 and reserves for the three years preceding the date of filing,
2 accompanied by supporting documentation;

3 (11) in the aggregate, the ages, genders,
4 tobacco use and geographic location of and claims history for
5 individuals enrolled in the block of business potentially
6 affected by a proposed rate increase;

7 (12) whether the insurer has ceased to
8 actively offer or sell to new applicants a block of business
9 for which it seeks a rate increase; and

10 (13) other information that the superintendent
11 deems necessary to aid the review.

12 F. Regarding an insurer's overall operations for
13 the three years preceding the date of filing, the insurer shall
14 file:

15 (1) details regarding executive compensation;

16 (2) a list detailing which blocks of business
17 are open and which are closed to new enrollment;

18 (3) an estimate of the insurer's
19 profitability;

20 (4) the insurer's risk-based capital report
21 filed pursuant to the Risk-Based Capital Act and, to the extent
22 this information is not included in that report, reserves and
23 surpluses for product lines sold in the state, including
24 earnings on the reserves during that period and a reasonable
25 estimate of the expected earnings on any surplus;

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1 (5) for blocks of business in existence for at
2 least three years, innovations in health care quality that
3 advance the delivery of patient care, with documentation of
4 expenses incurred for that purpose for the three years
5 preceding the date of filing;

6 (6) for blocks of business in existence for at
7 least three years, measurable cost-containment efforts that the
8 applicant has undertaken within the three years preceding the
9 date of filing; and

10 (7) other information that the superintendent
11 deems necessary to aid the review.

12 G. The filing shall include the last year's annual
13 and quarterly financial statements that the insurer has filed
14 with the division.

15 H. On the date that the superintendent posts a
16 form, classification of risks or other filing pursuant to
17 Subsection D of this section, the superintendent shall open a
18 thirty-day public comment period for policyholders and the
19 general public, during which the policyholders and the general
20 public may make comments online or in writing. The
21 superintendent shall post on the division's web site in a
22 manner easily accessible to the public all comments made during
23 the thirty-day public comment period."

24 SECTION 5. Section 59A-18-14 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 344, as amended) is amended to read:

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1 "59A-18-14. GROUNDS, PROCEDURE FOR DISAPPROVAL.--

2 A. The superintendent shall review any filing,
3 except any filing related to a health insurance, managed care
4 or health maintenance organization policy, plan or contract,
5 made pursuant to Section 59A-18-12 or 59A-18-13 NMSA 1978
6 within sixty days of the filing date. The superintendent shall
7 approve any form or rate if [~~he~~] the superintendent finds that
8 it complies with the Insurance Code and shall disapprove any
9 form or rate only on [~~any~~] one or more of the following
10 grounds:

11 (1) if the form is in any respect in violation
12 of or does not comply with the Insurance Code;

13 (2) if the form contains, or incorporates by
14 reference where such incorporation is otherwise permissible,
15 any inconsistent, ambiguous or misleading clauses or exceptions
16 and conditions [~~which~~] that deceptively affect the risk
17 purported to be assumed in the general coverage of the
18 contract, or [~~which encourages~~] that encourage
19 misrepresentation of the policy or its benefits;

20 (3) if the benefits offered are unreasonably
21 restricted in relation to the premium charged;

22 (4) if the form has [~~any~~] a title, heading or
23 other indication of its provisions [~~which~~] that is misleading
24 or if the form is printed in such type or manner of
25 reproduction as to be difficult to read; or

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1 (5) if purchase of the form is being solicited
2 by advertising, communication or dissemination of information
3 [~~which~~] that is deceptive or misleading.

4 B. If the superintendent disapproves any [~~such~~]
5 form during the sixty-day review period, [~~he~~] the
6 superintendent shall give the insurer written notice of the
7 disapproval, stating the grounds [~~therefor~~] for the
8 disapproval.

9 C. After expiration of the sixty-day review period
10 referred to in Section 59A-18-13 NMSA 1978 or at any time after
11 having approved a form, the superintendent may, after a hearing
12 thereon, disapprove a form or withdraw a previous approval on
13 any of the grounds stated in Subsection A of this section. The
14 superintendent's order issued on such hearing shall state the
15 grounds for disapproval or withdrawal of previous approval and
16 the date, not less than twenty days after the date of the
17 order, when disapproval or withdrawal of approval shall become
18 effective."

19 SECTION 6. A new section of Chapter 59A, Article 18 NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] HEALTH INSURANCE FILINGS--GROUNDS AND
22 PROCEDURE FOR DISAPPROVAL.--

23 A. The superintendent shall review any health
24 insurance, managed care or health maintenance organization
25 filing made pursuant to Section 59A-18-12 or 59A-18-13 NMSA

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1 1978 within sixty days of the filing date. The superintendent
2 shall consider and issue findings on the merits of the filing.
3 The superintendent shall issue findings and shall approve any
4 form or rate on the following grounds:

5 (1) the form or rate is in full compliance
6 with the Insurance Code;

7 (2) the form or rate does not contain, or
8 incorporate by reference, any inconsistent, ambiguous or
9 misleading clauses or exceptions and conditions that
10 deceptively affect the risk purported to be assumed in the
11 general coverage of the contract, or that encourage
12 misrepresentation of the policy or its benefits;

13 (3) the form does not have a title, heading or
14 other indication of its provisions that is misleading;

15 (4) the form is not printed in such type or
16 manner of reproduction as to be difficult to read;

17 (5) purchase of the form is not being
18 solicited by advertising, communication or dissemination of
19 information that is deceptive or misleading;

20 (6) the proposed rate is actuarially sound and
21 is supported by the actuarial memorandum submitted;

22 (7) the proposed rate is reasonable, not
23 excessive or inadequate and not unfairly discriminatory; and

24 (8) the proposed rate is based upon reasonable
25 administrative expenses.

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1 B. In order to determine whether the proposed rates
2 are reasonable, actuarially sound and based on reasonable
3 administrative expenses, the superintendent shall consider:

4 (1) the insurer's financial position,
5 including profitability, surplus, reserves, executive
6 compensation and investment savings;

7 (2) historical and projected administrative
8 costs, including market expenses, broker commissions and
9 advertising and medical expenses;

10 (3) the historical and projected loss ratio
11 between the amounts spent on direct services and earned
12 premiums;

13 (4) any anticipated change in the number of
14 enrollees if the proposed rate is approved;

15 (5) changes to covered benefits or health
16 benefit plan design;

17 (6) innovations in health care quality that
18 advance the delivery of patient care, with documentation of
19 expenses incurred for the purpose of these innovations;

20 (7) measurable cost-containment efforts that
21 the insurer has undertaken since the insurer's last rate filing
22 for the same block of business;

23 (8) the need for the proposed change in order
24 to maintain the insurer's solvency or to maintain rate
25 stability and prevent excessive rate increases in the future;

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1 (9) the absence of significant premium
2 differences among covered individuals in similar risk
3 categories;

4 (10) any public comment received pursuant to
5 Subsection H of Section 59A-18-13 NMSA 1978 that pertains to
6 the considerations set forth in this subsection;

7 (11) whether the proposed change applies to a
8 closed block of business and how the closed block of business
9 is pooled in relation to all appropriate blocks of business
10 that are not closed;

11 (12) the affordability and equity of the
12 premium structure, given community needs and the insurer's
13 mission; increases in executive compensation during the
14 preceding three years; and increases in reserves and surplus
15 over the preceding three years;

16 (13) the insurer's statement of purpose or
17 mission in its corporate charter or mission statement;

18 (14) the insurer's compliance with all federal
19 and state requirements for pooling risk and for participation
20 in risk adjustment programs in effect under federal and state
21 law;

22 (15) the reliability and accuracy of the
23 information provided in order to assure a meaningful review;
24 and

25 (16) other considerations that arise from the

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1 information that the insurer submits.

2 C. The insurer shall have the burden of proving, by
3 a preponderance of the evidence, that a rate increase is
4 reasonable according to the grounds set forth in Subsection A
5 of this section.

6 D. The superintendent shall give notice approving
7 or disapproving a rate filing or, with the written consent of
8 the insurer, modifying a rate filing submitted pursuant to this
9 section no later than sixty days after the close of the public
10 comment period provided pursuant to Subsection H of Section
11 59A-18-13 NMSA 1978. The notice shall state the grounds for
12 the decision, specifically addressing the considerations set
13 forth in Subsection B of this section and shall be posted on
14 the web site of the insurance division in a manner easily
15 accessible by covered individuals and the general public and
16 provided in writing to:

17 (1) an aggrieved party to a matter pursuant to
18 this section;

19 (2) when feasible, persons that have commented
20 on the filing pursuant to Subsection H of Section 59A-18-13
21 NMSA 1978; and

22 (3) persons that have requested notification.

23 E. After expiration of the sixty-day review period
24 pursuant to Subsection A of this section or at any time after
25 having approved a form or rate, the superintendent may, after a

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1 hearing thereon, disapprove a form or rate or withdraw a
2 previous approval on any of the grounds stated in Subsection A
3 of this section. The superintendent's order issued on the
4 hearing shall state the grounds for disapproval or withdrawal
5 of previous approval and the date, not less than twenty days
6 after the date of the order, when disapproval or withdrawal of
7 approval shall become effective.

8 F. An aggrieved party, including a covered
9 individual, an insurer applicant, any entity that the
10 superintendent deems to represent the interest of a covered
11 individual or the attorney general may file a request for a
12 hearing to reconsider with the superintendent pursuant to the
13 provisions of Section 8 of this 2011 act. The hearing request
14 shall be filed within thirty days after the issuance of the
15 superintendent's order approving, disapproving or modifying a
16 rate filing pursuant to this section."

17 SECTION 7. A new section of Chapter 59A, Article 18 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] POOLING OF CLOSED BLOCKS OF BUSINESS.--For
20 the purpose of determining the premium rate of any policy
21 within a closed block of business, an insurer shall pool the
22 experience of a closed block of business with all appropriate
23 blocks of business that are not closed. An insurer shall not
24 apply a rate penalty or surcharge beyond that which reflects
25 the experience of a pool combined in accordance with this

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1 section."

2 SECTION 8. A new section of Chapter 59A, Article 18 NMSA
3 1978 is enacted to read:

4 "[NEW MATERIAL] RATE REVIEW CASES--HEARING ON
5 RECONSIDERATION--EVIDENCE--HEARING EXAMINER--BURDEN--
6 FINDINGS.--

7 A. When appearing before the superintendent in a
8 hearing on reconsideration of the superintendent's decision in
9 a rate review matter as provided in Subsection F of Section 6
10 of this 2011 act, the attorney general shall represent the
11 interests of covered individuals as a whole.

12 B. When the attorney general appears in a rate
13 review case, the attorney general may obtain an independent
14 actuarial analysis of the proposed increase in premium rates.
15 The actuarial analysis shall be performed by an actuary who has
16 experience in health insurance and who is a member of the
17 academy of actuaries.

18 C. A hearing conducted pursuant to the provisions
19 of this section shall be a formal hearing conducted pursuant to
20 the provisions of Sections 59A-4-15, 59A-4-16, 59A-4-19,
21 12-8-10 through 12-8-13 and 12-8-15 NMSA 1978 and may be
22 conducted by a hearing examiner that the superintendent
23 appoints pursuant to Subsection A of Section 1 of this 2011
24 act.

25 D. The burden of proof to show that a premium

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1 increase is reasonable shall be on the insurer, who shall prove
2 this by a preponderance of the evidence.

3 E. In addition to complying with the provisions of
4 Section 59A-4-16 NMSA 1978, the superintendent shall give
5 notice of the hearing:

6 (1) on the division's web site in an easily
7 accessible manner;

8 (2) in a newspaper of general circulation in
9 this state;

10 (3) once in the New Mexico register;

11 (4) to all aggrieved parties to matters
12 considered pursuant to this section or Section 6 of this 2011
13 act;

14 (5) when feasible, to persons that have
15 commented on the filing pursuant to Subsection H of Section
16 59A-18-13 NMSA 1978; and

17 (6) to persons that have requested
18 notification.

19 F. The superintendent shall publish the following
20 information regarding the matter to be heard pursuant to
21 Subsection E of this section:

22 (1) the names of the person or persons
23 requesting the hearing;

24 (2) the provisions of the Insurance Code at
25 issue;

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1 (3) the amount of the proposed rate increase;

2 and

3 (4) the date, time and location of the

4 hearing.

5 G. Within thirty days of the hearing on
6 reconsideration, the superintendent shall issue an order with
7 the superintendent's ruling on reconsideration and findings to
8 support the ruling. If the superintendent finds the proposed
9 premium rates to be unreasonable, not actuarially sound or not
10 based on reasonable administrative expenses, the superintendent
11 shall determine rates that comply with the grounds set forth in
12 Section 6 of this 2011 act and order the insurer to apply these
13 rates."

14 SECTION 9. A new section of Chapter 59A, Article 18 NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] RATE REVIEW APPEALS--PUBLIC REGULATION
17 COMMISSION--HEARING--HEARING EXAMINER--FINDINGS.--

18 A. A hearing conducted pursuant to the provisions
19 of this section shall be a formal hearing conducted:

20 (1) in accordance with Sections 8-8-16 through
21 8-8-18 NMSA 1978;

22 (2) by a hearing examiner that the commission
23 appoints pursuant to Subsection B of Section 1 of this 2011
24 act; and

25 (3) as a hearing on the record as a whole.

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1 B. The commission shall evaluate the record of
2 evidence according to whether the record as a whole provides
3 substantial evidence on the whole record that a premium
4 increase is reasonable, actuarially sound and based on
5 reasonable administrative expenses.

6 C. The commission shall give written notice of the
7 hearing not less than thirty days in advance of the hearing.
8 The notice shall state the date, time and place of the hearing
9 and specify the matters to be considered at the hearing.

10 D. On the division's web site in an easily
11 accessible manner, in a newspaper of general circulation in
12 this state and once in the New Mexico register, the commission
13 shall give notice of the hearing by publishing the following
14 information regarding the matter to be heard on appeal:

- 15 (1) the names of the person or persons
16 requesting the hearing;
- 17 (2) the provisions of the Insurance Code at
18 issue;
- 19 (3) the amount of the proposed rate increase;
- 20 and
- 21 (4) the date, time and location of the
22 hearing.

23 E. The commission shall provide notice of the
24 hearing in writing and posted on the web site of the division
25 in a manner easily accessible by covered individuals and the

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1 general public. The notice shall state the date, time and
2 place of the hearing and specify the matters to be considered
3 at the hearing. This notice shall be provided not less than
4 thirty days in advance:

5 (1) to all aggrieved parties to matters
6 considered pursuant to this section or Section 6 or 8 of this
7 2011 act;

8 (2) when feasible, to persons that have
9 commented on the filing pursuant to Subsection H of Section
10 59A-18-13 NMSA 1978; and

11 (3) to persons that have requested
12 notification.

13 F. After the commission's review of the
14 superintendent's ruling on reconsideration of the proposed rate
15 increase, the commission shall issue an order:

16 (1) remanding the case to the superintendent
17 for redetermination only if it determines that the action is:

18 (a) arbitrary, capricious or an abuse of
19 discretion;

20 (b) not supported by substantial
21 evidence in the record taken as a whole; or

22 (c) otherwise not in accordance with
23 law; or

24 (2) affirming the superintendent's ruling on
25 reconsideration of the proposed rate increase if the commission

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1 determines that the action appealed is free from the errors
2 specified under Subparagraphs (a) through (c) of Paragraph (1)
3 of this subsection."

4 SECTION 10. A new section of Chapter 59A, Article 18 NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] JUDICIAL REVIEW OF COMMISSION'S RULING.--
7 Not later than sixty days after the commission's order issued
8 pursuant to Subsection F of Section 9 of this 2011 act, an
9 aggrieved party may file a petition in the court of appeal for
10 judicial review of the commission's ruling. The appeal shall
11 be on the record made in proceedings before the superintendent.
12 The filing for appeals shall include a notice of appeal to the
13 court of appeals and a copy of the commission's order issued
14 pursuant to Subsection F of Section 9 of this 2011 act. If the
15 court finds that the commission's action is not supported by
16 substantial evidence in the record as a whole, the court shall
17 hold the ruling unlawful and set it aside."

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

20 "[NEW MATERIAL] SUPERINTENDENT OF INSURANCE--RULEMAKING--
21 COMPLIANCE WITH FEDERAL LAW.--The superintendent shall
22 promulgate rules to implement the provisions of this 2011 act,
23 including rules:

24 A. to define terms used regarding applications that
25 insurers submit in rate filing matters;

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1 B. to meet criteria for adequate rate review in
2 accordance with federal law; and

3 C. that the superintendent deems appropriate to
4 carry out the provisions of this 2011 act."

5 SECTION 12. Section 59A-4-20 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 67, as amended) is amended to read:

7 "59A-4-20. APPEAL TO COURT.--

8 A. A party may appeal from an order of the
9 superintendent made after an informal hearing or an
10 administrative hearing. The appeal shall be taken to the
11 district court pursuant to the provisions of Section 39-3-1.1
12 NMSA 1978.

13 B. This section shall not apply as to matters
14 arising pursuant to Chapter 59A, Article 17 NMSA 1978 or to
15 health insurance, managed care and health maintenance
16 organization rate review matters pursuant to Sections 6 and 8
17 of this 2011 act."

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