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SENATE BILL 499

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

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING THE PUBLIC REGULATION
COMMISSION ACT; AMENDING AND ENACTING SECTIONS OF THE NEW
MEXICO INSURANCE CODE TO PROVIDE NEW STANDARDS IN REVIEW OF
CHANGE IN CLASSIFICATION OF RISKS AND RATES; PROVIDING FOR
HEARINGS AND ADMINISTRATIVE AND JUDICIAL REVIEW OF
DETERMINATIONS IN HEALTH INSURANCE AND HEALTH CARE PLAN CHANGE
IN RATES AND CLASSIFICATION OF RISKS MATTERS.

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

SECTION 1. Section 8-8-14 NMSA 1978 (being Laws 1998,
Chapter 108, Section 14, as amended) is amended to read:

"8-8-14. HEARING EXAMINERS.--

A. The commission may appoint a commissioner or a
hearing examiner to preside over any matter before the
commission, including rulemakings, adjudicatory hearings and

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1 administrative matters.

2 B. The commission may appoint a hearing examiner to
3 preside over an administrative review of classification of
4 risks and rates. If appointed, the hearing examiner shall
5 provide the commission with a recommended decision on the
6 matter assigned to the hearing examiner, including findings of
7 fact and conclusions of law. The recommended decision shall be
8 provided to the parties. The order of the commission on review
9 of classification of risks or rates shall be issued within
10 thirty days of filing with the commission. The issue date
11 shall not be extended. If the commission does not issue a
12 timely decision, the order of the superintendent of insurance
13 shall be final.

14 [~~B.~~] C. Except as provided in the New Mexico
15 Insurance Code, a hearing examiner shall provide the commission
16 with a recommended decision on the matter assigned to [~~him~~] the
17 hearing examiner, including findings of fact and conclusions of
18 law. The recommended decision shall be provided to the
19 parties, and they may file exceptions to the decision prior to
20 the final decision of the commission.

21 [~~E.~~] D. When the commission has appointed a hearing
22 examiner to preside over a matter, at least one member of the
23 commission shall, at the request of a party to the proceedings,
24 attend oral argument."

25 SECTION 2. Section 59A-4-15 NMSA 1978 (being Laws 1984,
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1 Chapter 127, Section 59, as amended) is amended to read:

2 "59A-4-15. HEARINGS--IN GENERAL.--

3 A. The superintendent may hold a hearing, without
4 request by others, for any purpose within the scope of the
5 Insurance Code.

6 B. The superintendent shall hold a hearing:

7 (1) if required by any other provision of the
8 Insurance Code; or

9 (2) upon written request for a hearing by a
10 person aggrieved by any act, threatened act or failure of the
11 superintendent to act or by any report, rule, regulation or
12 order of the superintendent, other than an order for the
13 holding of a hearing or order on hearing or pursuant to such an
14 order on a hearing of which such person had notice.

15 C. The request for a hearing shall briefly state
16 the respects in which the applicant is so aggrieved, the relief
17 to be sought and the grounds to be relied upon as basis for
18 relief.

19 D. If the superintendent finds that the request is
20 made in good faith, that the applicant would be so aggrieved if
21 the stated grounds are established and that such grounds
22 otherwise justify the hearing, the superintendent shall
23 commence the hearing within [~~ninety~~] thirty days after filing
24 of the request, unless postponed by mutual consent. No
25 postponement shall be later than ninety days after the filing

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1 of the request.

2 E. Pending the hearing and decision [~~thereon~~], the
3 superintendent may suspend or postpone the effective date of
4 the action as to which the hearing is requested. If upon
5 request the superintendent refuses to grant [~~such~~] the
6 suspension or postponement, the person requesting the hearing
7 may apply no later than twenty days from the superintendent's
8 refusal to the district court of Santa Fe county for a stay of
9 the superintendent's action or proposed action pending the
10 hearing and the superintendent's order [~~thereon~~].

11 F. Except as otherwise expressly provided, this
12 section does not apply to hearings relative to matters arising
13 under Chapter 59A, Article 17 NMSA 1978.

14 G. The superintendent may appoint a hearing officer
15 to preside over hearings on reconsideration of classification
16 of risks or rate filings. The hearing officer shall provide
17 the superintendent with a recommended decision on the matter
18 assigned to the hearing officer, including findings of fact and
19 conclusions of law."

20 SECTION 3. Section 59A-18-12 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 342, as amended) is amended to read:

22 "59A-18-12. FILING OF FORMS AND CLASSIFICATIONS--REVIEW
23 OF EFFECT UPON INSURED.--

24 A. An insurance policy, health care plan or annuity
25 contract shall not be delivered or issued for delivery in this

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1 state, nor shall an assumption certificate, endorsement, rider
2 or application that becomes a part of a policy or health care
3 plan be used, until a copy of the form and the classification
4 of risks pertaining to the policy [~~have~~] or health care plan
5 has been filed with the superintendent. Except for a filing
6 for health insurance or health care plan classification of
7 risks or rates, a filing shall be made at least sixty days
8 before its proposed effective date. A filing made pursuant to
9 this section shall not become effective nor shall it be used
10 until approved by the superintendent pursuant to Section
11 59A-18-14 NMSA 1978, at which time it may be used. A filing
12 related to health insurance or health care plan classification
13 of risks or rates shall be subject to the provisions of Section
14 6 of this 2011 Act. A filing for any kind of insurance other
15 than life insurance, health care plans or health insurance, as
16 defined in the Insurance Rate Regulation Law, shall be deemed
17 to meet the requirements of Chapter 59A, Article 18 NMSA 1978
18 to become effective unless disapproved pursuant to Section 59A-
19 18-14 NMSA 1978 by the superintendent before the expiration of
20 the waiting period or an extension of the waiting period;
21 provided, that:

22 (1) this subsection shall not apply as to
23 policies, contracts, endorsements or riders of unique and
24 special character not for general use or offering but designed
25 and used solely as to a particular insured or risk;

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1 (2) if the superintendent has exempted a
2 person or a class of persons or a market segment from a part or
3 all of the provisions of the Insurance Rate Regulation Law
4 pursuant to Subsection C of Section 59A-17-2 NMSA 1978, the
5 superintendent also may exempt by rule that person, class of
6 persons or market segment from a part or all of the provisions
7 of this subsection;

8 (3) an insurer subject to the Insurance Rate
9 Regulation Law may authorize an advisory organization to file
10 policy forms, endorsements and other contract language and
11 related attachment rules on its behalf. Reference filings
12 shall be made prior to their use or by other methods the
13 superintendent may allow by rule; and

14 (4) the superintendent may, by rule, exempt
15 various lines and kinds of commercial insurance, as defined in
16 the Insurance Rate Regulation Law, from some or all of the
17 requirements of this subsection.

18 B. A workers' compensation insurance policy
19 covering a risk arising from the employment of a worker
20 performing work for an employer in New Mexico when that
21 employer is not domiciled in New Mexico shall not be issued or
22 become effective, nor shall any endorsement or rider covering
23 such a risk be issued or become effective, until a copy of the
24 form and the classification of risks pertaining thereto have
25 been filed with the superintendent.

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1 C. An insured or beneficiary may in writing request
2 the insurer to review the manner in which its filing has been
3 applied as to insurance or health care plan afforded the
4 insured or beneficiary. If the insurer fails to make a review
5 and grant appropriate relief within thirty days after the
6 request is received, the insured may file a written complaint
7 and request for a hearing with the superintendent, stating
8 grounds relied upon. If the complaint charges a violation of
9 the Insurance Code and the superintendent finds that the
10 complaint was made in good faith and that the insured would be
11 aggrieved if the violation is proved, the superintendent shall
12 hold a hearing, with notice to the insured and insurer stating
13 the grounds of complaint. If upon the hearing the
14 superintendent finds the complaint justified, the
15 superintendent shall order the insurer to correct the matter
16 complained of within a reasonable time specified but not less
17 than twenty days after a copy of the order was mailed to or
18 served upon the insurer.

19 D. All filings submitted pursuant to this section
20 shall be filed electronically. The superintendent may
21 designate an entity to receive the electronic filings submitted
22 pursuant to this section."

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

25 "59A-18-13. APPROVAL OR DISAPPROVAL OF HEALTH INSURANCE

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1 FORMS--RATES AND CLASSIFICATION OF RISKS.--

2 A. With policy, endorsement, rider and application
3 forms and classification of risks filed by the insurer with the
4 superintendent under Section 59A-18-12 NMSA 1978 as to health
5 insurance and health care plans, the insurer shall also file
6 with the superintendent its [~~premium~~] rates applicable to such
7 health insurance forms. An insurer shall not use any [~~such~~]
8 form [~~or premium~~] that has not been approved by the
9 superintendent or that is not in effect in accordance with
10 Section 59A-18-14 NMSA 1978.

11 B. [~~An increase~~] A change in a health insurance
12 [~~premium~~] classification of risks or rates shall not be
13 effective without [~~sixty days' written notice to the~~
14 ~~policyholder~~] complying with the provisions of Chapter 59A,
15 Article 18 NMSA 1978.

16 C. All filings submitted pursuant to this section
17 shall be filed electronically. The superintendent may
18 designate an entity to receive the electronic filings submitted
19 pursuant to this section."

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

22 "59A-18-14. GROUND, PROCEDURE FOR DISAPPROVAL.--

23 A. The superintendent shall review any filing,
24 except any filing by a health insurance issuer for a change in
25 rate or in classification of risk, made pursuant to Section

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1 59A-18-12 or 59A-18-13 NMSA 1978 within sixty days of the
2 filing date. The superintendent shall approve any form [~~or~~
3 ~~rate~~] if [~~he~~] the superintendent finds that it complies with
4 the Insurance Code and shall disapprove any form,
5 classification of risks or rate only on [~~any~~] one or more of
6 the following grounds:

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

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

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

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

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

25 B. If the superintendent disapproves any [~~such~~]

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1 form during the sixty-day review period, [he] the
2 superintendent shall give the insurer written notice of the
3 disapproval, stating the grounds [~~therefor~~] for the
4 disapproval.

5 C. After expiration of the sixty-day review period
6 referred to in Subsection A of this section [~~59A-18-13 NMSA~~
7 ~~1978~~] or at any time after having approved a form, the
8 superintendent may, after a hearing thereon, disapprove a form
9 or withdraw a previous approval on any of the grounds stated in
10 Subsection A of this section. The superintendent's order
11 issued on such hearing shall state the grounds for disapproval
12 or withdrawal of previous approval and the date, not less than
13 twenty days after the date of the order, when disapproval or
14 withdrawal of approval shall become effective.

15 D. Any filing for a change in rate or in
16 classification of risks by a health insurance issuer shall be
17 reviewed pursuant to the provisions of Chapter 59A, Article 18
18 NMSA 1978."

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

21 "[NEW MATERIAL] HEALTH INSURANCE--HEALTH CARE PLAN
22 CLASSIFICATION OF RISKS OR RATES REQUIREMENTS.--

23 A. All health insurance or health care plans filed
24 by an insurer with classification of risks or rates with the
25 superintendent pursuant to Section 59A-18-12 NMSA 1978 shall

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1 include all related forms.

2 B. A change in health insurance or health care plan
3 classification of risks or rates shall not be effective without
4 sixty days' written notice by the insurer to the policyholders
5 and beneficiaries. The language of the notice shall meet the
6 minimum language simplification standards in the Policy Language
7 Simplification Law. The notice shall include:

8 (1) a summary of the classification of risks
9 and rates, including the percentage changes in the rates or any
10 reclassification of risk;

11 (2) a summary of all related form changes;

12 (3) an explanation of form, classification of
13 risks and rates changes; and

14 (4) the policyholder or beneficiary rights
15 under the Insurance Code, including the right to comment on the
16 filing for the thirty days following the posting on the
17 division's web site as required by Subsection C of this section.

18 C. Within twelve days of the filing, the
19 superintendent shall make available on the division's web site
20 in language that shall meet the minimum language simplification
21 standards in the Policy Language Simplification Law:

22 (1) the information required by Subsection B
23 of this section; and

24 (2) the proposed classifications of risks and
25 rates.

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1 D. All filings submitted pursuant to this section
2 shall be filed electronically. The superintendent may designate
3 an entity to receive the electronic filings submitted pursuant
4 to this section."

5 SECTION 7. A new section of Chapter 59A, Article 18 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] HEALTH INSURANCE FILINGS--GROUNDS AND
8 PROCEDURE FOR DISAPPROVAL--APPEAL OF SUPERINTENDENT'S ORDER.--

9 A. The superintendent shall review health insurance
10 issuer filings made for a change in rates or classification of
11 risks within sixty days of the filing date. The superintendent
12 shall consider and issue findings on the merits of the filing.
13 The superintendent shall issue findings and shall approve any
14 change in classification of risks or rates on the following
15 grounds:

16 (1) the classification of risks or proposed
17 rate is in compliance with federal law and the Insurance Code;

18 (2) the classification of risks or proposed
19 rate does not contain, or incorporate by reference, any
20 inconsistent, ambiguous or misleading clause, exception or
21 condition that deceptively affects the risk purported to be
22 assumed in the general coverage of the contract, or that
23 encourages misrepresentation of the policy or its benefits;

24 (3) the proposed rate is actuarially sound and
25 is supported by the actuarial memorandum submitted;

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1 (4) the proposed rate or classification of
2 risks is reasonable, not excessive or inadequate and not
3 discriminatory; and

4 (5) the proposed rate or classification of
5 risks is based upon administrative expenses that are permitted
6 by federal and state law.

7 B. No final order shall be issued until after the
8 close of the comment period.

9 C. A final order of the superintendent under this
10 section may be appealed:

11 (1) to the commission within twenty days, and
12 the commission may take the matter upon its own motion within
13 twenty days; or

14 (2) to the district court pursuant to the
15 provisions of Section 39-3-1.1 NMSA 1978."

16 SECTION 8. A new section of Chapter 59A, Article 18 NMSA
17 1978 is enacted to read:

18 "[NEW MATERIAL] RATE REVIEW APPEALS--COMMISSION--REVIEW--
19 HEARING--HEARING EXAMINER--FINDINGS.--

20 A. A hearing conducted pursuant to the provisions of
21 this section shall be a hearing conducted:

22 (1) in accordance with Sections 8-8-16 through
23 8-8-18 NMSA 1978; and

24 (2) by a hearing examiner that the commission
25 appoints pursuant to Section 8-8-14 NMSA 1978.

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1 B. In lieu of a hearing, the commission may elect to
2 proceed in accordance with Subsection C of Section 8-8-4 NMSA
3 1978.

4 C. Only one appeal to the commission shall be
5 permitted."

6 **SECTION 9.** A new section of Chapter 59A, Article 18 NMSA
7 1978 is enacted to read:

8 "[NEW MATERIAL] FINALITY OF THE SUPERINTENDENT'S ORDER.--

9 A. An order by the superintendent is final:

10 (1) if not appealed to the commission upon
11 exhaustion of the time to appeal to the commission; and

12 (2) if appealed to the commission:

13 (a) if the commission fails to act timely
14 upon the exhaustion of the time for the commission to act;

15 (b) if the commission's order affirms the
16 order of the superintendent on the filing date of the
17 commission's order; or

18 (c) if the commission remands the matter
19 to the superintendent upon the filing of the superintendent's
20 order responding to the remand.

21 B. A final order by the superintendent is an order
22 under Section 59A-4-20 NMSA 1978 and subject to the appeal
23 provisions of Section 39-3-1.1 NMSA 1978."

24 **SECTION 10.** A new section of Chapter 59A, Article 18 NMSA
25 1978 is enacted to read:

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"[NEW MATERIAL] SUPERINTENDENT--RULEMAKING--COMPLIANCE
WITH FEDERAL LAW.--The superintendent shall adopt rules:
A. to define terms used regarding forms, rates,
reviews and classification of risks that an insurer or health
care plan submits in filing matters;
B. to meet criteria for review in accordance with
federal law; and
C. that the superintendent deems appropriate to
carry out the provisions of Chapter 59A, Article 18 NMSA 1978."