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SENATE BILL 501

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

INTRODUCED BY

Steven P. Neville

AN ACT

RELATING TO INSURANCE; MODERNIZING REGULATORY CAPITAL  
REQUIREMENTS FOR INSURERS.

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

SECTION 1. Section 59A-5A-2 NMSA 1978 (being Laws 1995,  
Chapter 149, Section 2) is amended to read:

"59A-5A-2. DEFINITIONS.--As used in the Risk-Based  
Capital Act:

A. "adjusted risk-based capital report" means a  
risk-based capital report adjusted in accordance with  
Subsection E of Section 59A-5A-3 NMSA 1978;

B. "authorized control level risk-based capital"  
means the number determined under the risk-based capital  
formula in accordance with the risk-based capital instructions  
bearing the same designation;

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1 C. "company action level risk-based capital" means  
2 an amount equal to two hundred percent of an insurer's or  
3 health organization's authorized control level risk-based  
4 capital;

5 D. "corrective order" means an order issued by the  
6 superintendent specifying required corrective actions;

7 E. "life [~~or~~] and health insurer" means any  
8 authorized life insurer, health insurer or casualty insurer  
9 writing only health insurance [~~or nonprofit health care plan~~];

10 F. "health organization" means a health maintenance  
11 organization, nonprofit health care plan, limited health  
12 service organization, dental or vision plan, hospital, medical  
13 and dental indemnity or service corporation or other managed  
14 care organization licensed under Chapter 59A, Articles 42A, 46,  
15 47 and 48 NMSA 1978. "Health organization" does not mean an  
16 organization that is licensed as a life and health insurer or a  
17 property and casualty insurer and that is otherwise subject to  
18 the life or property and casualty risk-based capital  
19 requirements;

20 [~~F.~~] G. "mandatory control level risk-based  
21 capital" means an amount equal to seventy percent of an  
22 insurer's or health organization's authorized control level  
23 risk-based capital;

24 [~~G.~~] H. "property [~~or~~] and casualty insurer" means  
25 any insurer authorized to write property, marine and

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1 transportation, casualty, vehicle or surety insurance, but does  
2 not include any insurer writing only one of the following:

- 3 (1) mortgage guaranty insurance;
- 4 (2) financial guaranty insurance;
- 5 (3) title insurance; or
- 6 (4) health insurance;

7 ~~[H.]~~ I. "negative trend" means, with respect to a  
8 life ~~[or]~~ and health insurer, negative trend over a period of  
9 time, as determined in accordance with the trend test  
10 calculation included in the life risk-based capital  
11 instructions;

12 ~~[I.]~~ J. "regulatory action level risk-based  
13 capital" means an amount equal to one hundred fifty percent of  
14 an insurer's or health organization's authorized control level  
15 risk-based capital;

16 ~~[J.]~~ K. "revised risk-based capital plan" means a  
17 risk-based capital plan that has been rejected by the  
18 superintendent and revised by the insurer or health  
19 organization, with or without the superintendent's  
20 recommendation;

21 ~~[K.]~~ L. "risk-based capital instructions" means the  
22 risk-based capital report, including risk-based capital  
23 instructions, adopted by the national association of insurance  
24 commissioners, as they may be amended by the national  
25 association of insurance commissioners from time to time, and

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1 not disapproved by the superintendent;

2 ~~[H.]~~ M. "risk-based capital level" means an  
3 insurer's or health organization's company action level  
4 risk-based capital, regulatory action level risk-based capital,  
5 authorized control level risk-based capital or mandatory  
6 control level risk-based capital;

7 ~~[M.]~~ N. "risk-based capital plan" means a  
8 comprehensive financial plan as specified in Subsection B of  
9 Section 59A-5A-4 NMSA 1978;

10 ~~[N.]~~ O. "risk-based capital report" means the  
11 report specified in Section 59A-5A-3 NMSA 1978; and

12 ~~[O.]~~ P. "total adjusted capital" means the sum of:

13 (1) an insurer's or health organization's  
14 capital and surplus as determined in accordance with statutory  
15 accounting principles applicable to annual financial statements  
16 required to be filed under Section 59A-5-29 NMSA 1978; and

17 (2) such other items, if any, as the  
18 risk-based capital instructions may provide."

19 **SECTION 2.** Section 59A-5A-3 NMSA 1978 (being Laws 1995,  
20 Chapter 149, Section 3) is amended to read:

21 "59A-5A-3. RISK-BASED CAPITAL REPORTS.--

22 A. On or before March 1 each year, every domestic  
23 insurer and every domestic health organization shall prepare  
24 and submit to the superintendent a report of its risk-based  
25 capital levels as of December 31 of the immediately preceding

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1 calendar year, in a form and containing such information as is  
2 required by the risk-based capital instructions. In addition,  
3 every domestic insurer and every domestic health organization  
4 shall file its risk-based capital report with:

5 (1) the national association of insurance  
6 commissioners in accordance with the risk-based capital  
7 instructions; and

8 (2) the insurance commissioner of each state  
9 in which the insurer or health organization is authorized to do  
10 business, if the insurance commissioner for that state has  
11 notified the insurer or health organization of [~~his~~] the  
12 request in writing. The insurer or health organization shall  
13 file a copy of its risk-based capital report with each [~~such~~]  
14 commissioner not later than March 1 each year or fifteen days  
15 from receipt of the notice, whichever is later.

16 B. A life [~~or~~] and health insurer's risk-based  
17 capital shall be determined in accordance with the formula in  
18 the life risk-based capital instructions. The formula shall  
19 take into account and may adjust for the covariance among the  
20 following factors:

21 (1) asset risk;  
22 (2) the risk of adverse insurance experience  
23 with respect to the insurer's liabilities and obligations;

24 (3) the interest rate risk with respect to the  
25 insurer's business; and

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1 (4) all other business risks and other  
2 relevant risks set forth in the life risk-based capital  
3 instructions.

4 C. A property ~~[or]~~ and casualty insurer's  
5 risk-based capital shall be determined in accordance with the  
6 formula in the property and casualty risk-based capital  
7 instructions. The formula shall take into account and may  
8 adjust for the covariance among the following factors:

- 9 (1) asset risk;
- 10 (2) credit risk;
- 11 (3) underwriting risk; and
- 12 (4) all other business risks and other  
13 relevant risks set forth in the property and casualty  
14 risk-based capital instructions.

15 D. A health organization's risk-based capital shall  
16 be determined in accordance with the formula in the health  
17 risk-based capital instructions. The formula shall take into  
18 account and may adjust for the covariance among the following  
19 factors:

- 20 (1) asset risk;
- 21 (2) credit risk;
- 22 (3) underwriting risk; and
- 23 (4) all other business risks and other  
24 relevant risks set forth in the health risk-based capital  
25 instructions.

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1           ~~[D-]~~ E. An excess of capital over the amount  
2           ~~[calculated by]~~ produced by the risk-based capital requirements  
3           contained in the Risk-Based Capital Act and the formulas,  
4           schedules and instructions referenced in the Risk-Based Capital  
5           Act is desirable in the business of insurance. Additional  
6           capital is used and useful in the insurance business and helps  
7           to secure an insurer or health organization against various  
8           risks inherent in, or affecting, the business of insurance and  
9           not accounted for or only partially measured by the risk-based  
10          capital requirements contained in the Risk-Based Capital Act.  
11          Accordingly, insurers and health organizations should seek to  
12          maintain capital above the risk-based capital levels required  
13          by that act.

14                 ~~[E-]~~ F. If a domestic insurer or a domestic health  
15                 organization files a risk-based capital report ~~[which]~~ that in  
16                 the superintendent's judgment is inaccurate, then the  
17                 superintendent shall adjust the risk-based capital report to  
18                 correct the inaccuracy and shall notify the insurer of the  
19                 adjustment. The notice shall contain a statement of the reason  
20                 for the adjustment."

21                 **SECTION 3.** Section 59A-5A-4 NMSA 1978 (being Laws 1995,  
22                 Chapter 149, Section 4) is amended to read:

23                 "59A-5A-4. COMPANY ACTION LEVEL EVENT.--  
24                 A. As used in the Risk-Based Capital Act, a  
25                 "company action level event" means any one or more of the

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1 following events:

2 (1) the filing of a risk-based capital report  
3 by an insurer ~~[which]~~ or health organization that indicates  
4 ~~[that]~~:

5 (a) the insurer or health organization  
6 has total adjusted capital greater than or equal to its  
7 regulatory action level risk-based capital but less than its  
8 company action level risk-based capital; ~~[or]~~

9 (b) in the case of a life ~~[or]~~ and  
10 health insurer, the insurer has total adjusted capital greater  
11 than or equal to its company action level risk-based capital  
12 but less than two hundred fifty percent of its authorized  
13 control level risk-based capital and has a negative trend;

14 (c) in the case of a property and  
15 casualty insurer, the insurer has total adjusted capital that  
16 is greater than or equal to its company action level risk-based  
17 capital but less than three hundred percent of its authorized  
18 control level risk-based capital and that triggers the trend  
19 test determined in accordance with the trend test calculation  
20 included in the property and casualty risk-based capital  
21 instructions; or

22 (d) in the case of a health  
23 organization, the health organization has total adjusted  
24 capital that is greater than or equal to its company action  
25 level risk-based capital but less than three hundred percent of

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1 its authorized control level risk-based capital and that  
2 triggers the trend test determined in accordance with the trend  
3 test calculation included in the health risk-based capital  
4 instructions;

5 (2) the superintendent's notification to an  
6 insurer or health organization that its adjusted risk-based  
7 capital report indicates the existence of an event described in  
8 Paragraph (1) of this subsection, unless the insurer or health  
9 organization challenges the adjusted report pursuant to Section  
10 59A-5A-8 NMSA 1978; or

11 (3) if an insurer or health organization  
12 challenges the adjusted report, notification to the insurer or  
13 health organization that the superintendent has, after hearing,  
14 rejected the challenge.

15 B. In the event of a company action level event,  
16 the insurer or health organization shall prepare and submit to  
17 the superintendent a risk-based capital plan, which shall:

18 (1) identify the conditions [~~which~~] that  
19 contribute to the company action level event;

20 (2) contain proposals of corrective actions  
21 [~~which~~] that the insurer or health organization intends to take  
22 to eliminate the company action level event;

23 (3) provide projections of the insurer's or  
24 health organization's expected financial results in the current  
25 year and at least the four succeeding years, both in the

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1 absence of and giving effect to the proposed corrective  
2 actions, including projections of statutory operating income,  
3 net income, capital and surplus. Projections for new and  
4 renewal business may, if appropriate, include separate  
5 projections for each major line of business and separately  
6 identify each significant income, expense and benefit  
7 component;

8 (4) identify the key assumptions impacting the  
9 insurer's or health organization's projections and the  
10 sensitivity of the projections to the assumptions; and

11 (5) identify the quality of, and problems  
12 associated with, the insurer's or health organization's  
13 business, including [~~but not limited to~~] its assets,  
14 anticipated business growth and associated surplus strain,  
15 extraordinary exposure to risk, mix of business and use of  
16 reinsurance, if any, in each case.

17 C. The risk-based capital plan shall be submitted  
18 on or before the later of the following dates:

19 (1) forty-five days after the company action  
20 level event; or

21 (2) if the insurer or health organization  
22 challenges the adjusted risk-based capital report pursuant to  
23 Section 59A-5A-8 NMSA 1978, forty-five days after the date of  
24 the notification to the insurer or health organization that the  
25 superintendent has, after hearing, rejected the insurer's or

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1 health organization's challenge.

2 D. Within sixty days after the submission of an  
3 insurer's or health organization's risk-based capital plan, the  
4 superintendent shall notify the insurer or health organization  
5 whether the plan shall be implemented or is, in the  
6 superintendent's judgment, unsatisfactory. If the  
7 superintendent determines the risk-based capital plan is  
8 unsatisfactory, the notification to the insurer or health  
9 organization shall set forth the reasons for the determination  
10 and may set forth proposed revisions that will render the plan  
11 satisfactory. Upon notification, the insurer or health  
12 organization shall prepare a revised risk-based capital plan,  
13 which may incorporate by reference any revisions proposed by  
14 the superintendent, and shall submit the revised plan to the  
15 superintendent. The revised plan shall be submitted on or  
16 before the last of the following dates:

17 (1) forty-five days after the date of the  
18 superintendent's notification; or

19 (2) if the insurer or health organization  
20 challenges the notification pursuant to Section 59A-5A-8 NMSA  
21 1978, forty-five days after the date of the notification to the  
22 insurer or health organization that the superintendent has,  
23 after hearing, rejected the insurer's or health organization's  
24 challenge.

25 E. A notification that the insurer's or health

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1 organization's risk-based capital plan or revised risk-based  
2 capital plan is unsatisfactory may include a statement that the  
3 notification constitutes a regulatory action level event,  
4 subject to the insurer's or health organizations's right to a  
5 hearing pursuant to Section 59A-5A-8 NMSA 1978.

6 F. Every domestic insurer [~~which~~] or domestic  
7 health organization that files a risk-based capital plan or  
8 revised risk-based capital plan with the superintendent shall  
9 file a copy of the risk-based capital plan and any revised  
10 risk-based capital plan with the insurance commissioner of each  
11 state in which the insurer or health organization is authorized  
12 to do business if:

13 (1) the state has confidentiality provisions  
14 substantially similar to those in Subsection A of Section  
15 59A-5A-9 NMSA 1978; and

16 (2) the insurance commissioner for that state  
17 has notified the insurer or health organization of [~~his~~] the  
18 request in writing. The insurer or health organization shall  
19 file a copy of the risk-based capital plan or revised  
20 risk-based capital plan with each [~~such~~] commissioner on or  
21 before the later of the following dates:

22 (a) fifteen days after the receipt of  
23 notice to file a copy of its risk-based capital plan or revised  
24 risk-based capital plan with the state; or

25 (b) the date the risk-based capital plan

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1 or revised risk-based capital plan is filed under Subsections C  
2 and D of this section."

3 SECTION 4. Section 59A-5A-5 NMSA 1978 (being Laws 1995,  
4 Chapter 149, Section 5) is amended to read:

5 "59A-5A-5. REGULATORY ACTION LEVEL EVENT.--

6 A. For purposes of the Risk-Based Capital Act,  
7 "regulatory action level event" means any of the following  
8 events:

9 (1) the filing of a risk-based capital report  
10 by an insurer ~~[which]~~ or health organization that indicates  
11 ~~[that]~~ the insurer's or health organization's total adjusted  
12 capital is greater than or equal to its authorized control  
13 level risk-based capital but less than its regulatory action  
14 level risk-based capital;

15 (2) the superintendent's notification to an  
16 insurer or health organization that its adjusted risk-based  
17 capital report indicates the existence of an event described in  
18 Paragraph (1) of this subsection, unless the insurer or health  
19 organization challenges the adjusted report pursuant to Section  
20 59A-5A-8 NMSA 1978;

21 (3) if an insurer or health organization  
22 challenges the adjusted report, notification to the insurer or  
23 health organization that the superintendent has, after hearing,  
24 rejected the challenge;

25 (4) an insurer's or health organization's

1 failure to file a risk-based capital report by the filing date,  
2 unless the insurer or health organization has provided an  
3 explanation satisfactory to the superintendent and has cured  
4 the failure within ten days after the filing date;

5 (5) an insurer's or health organization's  
6 failure to submit a risk-based capital plan to the  
7 superintendent by the date specified in Subsection C of Section  
8 59A-5A-4 NMSA 1978;

9 (6) the superintendent's notification to an  
10 insurer or health organization that:

11 (a) the risk-based capital plan or  
12 revised risk-based capital plan submitted by the insurer or  
13 health organization is, in the superintendent's judgment,  
14 unsatisfactory; and

15 (b) the notification constitutes a  
16 regulatory action level event with respect to the insurer or  
17 health organization, unless the insurer or health organization  
18 has challenged the determination pursuant to Section 59A-5A-8  
19 NMSA 1978;

20 (7) if an insurer or health organization  
21 challenges the superintendent's determination made pursuant to  
22 Paragraph (6) of this subsection, notification to the insurer  
23 or health organization that the superintendent has, after  
24 hearing, rejected the challenge;

25 (8) the superintendent's notification to an

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1 insurer or health organization that the insurer or health  
2 organization has failed to adhere to its risk-based capital  
3 plan or revised risk-based capital plan and that the failure  
4 has had or will have a substantial adverse effect on the  
5 ability of the insurer or health organization to eliminate the  
6 company action level event, unless the insurer or health  
7 organization has challenged the determination pursuant to  
8 Section 59A-5A-8 NMSA 1978; or

9 (9) if an insurer or health organization  
10 challenges the superintendent's determination made pursuant to  
11 Paragraph (8) of this subsection, notification to the insurer  
12 or health organization that the superintendent has, after  
13 hearing, rejected the challenge.

14 B. In the event of a regulatory action level event,  
15 the superintendent shall:

16 (1) require the insurer or health organization  
17 to prepare and submit a risk-based capital plan or, if  
18 applicable, a revised risk-based capital plan;

19 (2) perform such examination or analysis as  
20 the superintendent deems necessary of the assets, liabilities  
21 and operations of the insurer or health organization, including  
22 a review of its risk-based capital plan or revised risk-based  
23 capital plan; and

24 (3) subsequent to the examination or analysis,  
25 issue an order specifying such corrective actions as the

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1 superintendent determines are required.

2 C. In determining corrective actions, the  
3 superintendent may take into account such factors as are deemed  
4 relevant based upon the superintendent's examination or  
5 analysis of the assets, liabilities and operations of the  
6 insurer or health organization, including [~~but not limited to~~]  
7 the results of any sensitivity tests undertaken pursuant to the  
8 risk-based capital instructions. The risk-based capital plan  
9 or revised risk-based capital plan shall be submitted on or  
10 before the later of the following dates:

11 (1) forty-five days after the occurrence of  
12 the regulatory action level event; or

13 (2) if the insurer or health organization  
14 challenges an adjusted or revised risk-based capital report or  
15 plan pursuant to Section 59A-5A-8 NMSA 1978 and the challenge  
16 is not frivolous in the superintendent's judgment, forty-five  
17 days after notification to the insurer or health organization  
18 that the superintendent has, after hearing, rejected the  
19 insurer's or health organization challenge.

20 D. The superintendent may retain actuaries and  
21 investment experts and other consultants as [~~he may deem~~] the  
22 superintendent deems necessary to review the insurer's or  
23 health organization risk-based capital plan or revised  
24 risk-based capital plan, examine or analyze the assets,  
25 liabilities and operations of the insurer or health

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1 organization and formulate the corrective order with respect to  
2 the insurer or health organization. The fees, costs and  
3 expenses incurred by consultants shall be paid by the affected  
4 insurer or health organization or such other party as the  
5 superintendent directs."

6 SECTION 5. Section 59A-5A-6 NMSA 1978 (being Laws 1995,  
7 Chapter 149, Section 6) is amended to read:

8 "59A-5A-6. AUTHORIZED CONTROL LEVEL EVENT.--

9 A. As used in the Risk-Based Capital Act,  
10 "authorized control level event" means any of the following  
11 events:

12 (1) the filing of a risk-based capital report  
13 by an insurer [~~which~~] or health organization that indicates  
14 [~~that~~] the insurer's or health organization's total adjusted  
15 capital is greater than or equal to its mandatory control level  
16 risk-based capital but less than its authorized control level  
17 risk-based capital;

18 (2) the superintendent's notification to an  
19 insurer or health organization that its adjusted risk-based  
20 capital report indicates the existence of an event described in  
21 Paragraph (1) of this subsection, unless the insurer or health  
22 organization challenges the adjusted report pursuant to Section  
23 59A-5A-8 NMSA 1978;

24 (3) if an insurer or health organization  
25 challenges the adjusted capital report, notification to the

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1 insurer or health organization that the superintendent has,  
2 after hearing, rejected the challenge;

3 (4) an insurer's or health organization's  
4 failure to respond, in a manner satisfactory to the  
5 superintendent, to a corrective order unless the insurer or  
6 health organization has challenged the order pursuant to  
7 Section 59A-5A-8 NMSA 1978; or

8 (5) if an insurer or health organization has  
9 challenged a corrective order and the superintendent has, after  
10 hearing, rejected the challenge or modified the corrective  
11 order, the failure of the insurer or health organization to  
12 respond, in a manner satisfactory to the superintendent, to the  
13 corrective order subsequent to rejection or modification.

14 B. In the event of an authorized control level  
15 event with respect to an insurer or health organization, the  
16 superintendent shall:

17 (1) take such actions as are required pursuant  
18 to Section 59A-5A-5 NMSA 1978 regarding an insurer or health  
19 organization with respect to which a regulatory action level  
20 event has occurred; or

21 (2) if the superintendent deems it to be in  
22 the best interests of the insurer's or health organization's  
23 policyholders and creditors and of the public, take such  
24 actions as are necessary to cause the insurer or health  
25 organization to be placed under regulatory control pursuant to

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1 Chapter 59A, Article 41 NMSA 1978. The authorized control  
2 level event [~~shall constitute~~] constitutes sufficient grounds  
3 for the superintendent to take action pursuant to Chapter 59A,  
4 Article 41 NMSA 1978, and the superintendent [~~shall have~~] has  
5 the rights, powers and duties with respect to the insurer or  
6 health organization set forth in Chapter 59A, Article 41 NMSA  
7 1978."

8 SECTION 6. Section 59A-5A-7 NMSA 1978 (being Laws 1995,  
9 Chapter 149, Section 7) is amended to read:

10 "59A-5A-7. MANDATORY CONTROL LEVEL EVENT.--

11 A. As used in the Risk-Based Capital Act,  
12 "mandatory control level event" means any of the following  
13 events:

14 (1) the filing of a risk-based capital report  
15 [~~which~~] that indicates that an insurer's or health  
16 organization's total adjusted capital is less than its  
17 mandatory control level risk-based capital;

18 (2) the superintendent's notification to an  
19 insurer or health organization that its adjusted risk-based  
20 capital report indicates the existence of an event described in  
21 Paragraph (1) of this subsection, unless the insurer or health  
22 organization challenges the adjusted report pursuant to Section  
23 59A-5A-8 NMSA 1978; or

24 (3) if the insurer or health organization  
25 challenges the adjusted report, notification to the insurer or

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1 health organization that the superintendent has, after hearing,  
2 rejected the insurer's or health organization's challenge.

3 B. In the event of a mandatory control level event,  
4 the superintendent shall:

5 (1) with respect to a life and health insurer,  
6 take such actions as are necessary to place the insurer under  
7 regulatory control pursuant to Chapter 59A, Article 41 NMSA  
8 1978. In that event, the mandatory control level event [~~shall~~  
9 ~~constitute~~] constitutes sufficient grounds for the  
10 superintendent to take action pursuant to Chapter 59A, Article  
11 41 NMSA 1978, and the superintendent [~~shall have~~] has the  
12 rights, powers and duties with respect to the insurer set forth  
13 in Chapter 59A, Article 41 NMSA 1978. Notwithstanding the  
14 foregoing provisions of this paragraph, the superintendent may  
15 forego action for up to ninety days after the mandatory control  
16 level event if the superintendent finds there is a reasonable  
17 expectation that the mandatory control level event can be  
18 eliminated within the ninety-day period; [~~or~~]

19 (2) with respect to a property [~~or~~] and  
20 casualty insurer, take such actions as are necessary to place  
21 the insurer under regulatory control pursuant to Chapter 59A,  
22 Article 41 NMSA 1978, or, in the case of an insurer that is  
23 writing no business and that is running off its existing  
24 business, may allow the insurer to continue its run off under  
25 the superintendent's supervision. In either event, the

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1 mandatory control level event [~~shall constitute~~] constitutes  
2 sufficient grounds for the superintendent to take action  
3 pursuant to Chapter 59A, Article 41 NMSA 1978, and the  
4 superintendent [~~shall have~~] has the rights, powers and duties  
5 with respect to the insurer as are set forth in Chapter 59A,  
6 Article 41 NMSA 1978. Notwithstanding the foregoing provisions  
7 of this paragraph, the superintendent may forego action for up  
8 to ninety days after the mandatory control level event if the  
9 superintendent finds there is a reasonable expectation that the  
10 mandatory control level event can be eliminated within the  
11 ninety-day period; or

12 (3) with respect to a health organization,  
13 take such actions as are necessary to place the health  
14 organization under regulatory control pursuant to Chapter 59A,  
15 Article 41 NMSA 1978. In that event, the mandatory control  
16 level event shall constitute sufficient grounds for the  
17 superintendent to take action pursuant to Chapter 59A, Article  
18 41 NMSA 1978, and the superintendent shall have the rights,  
19 powers and duties with respect to the health organization as  
20 are set forth in Chapter 59A, Article 41 NMSA 1978.  
21 Notwithstanding the foregoing provisions of this paragraph, the  
22 superintendent may forgo action for up to ninety days after the  
23 mandatory control level event if the superintendent finds there  
24 is a reasonable expectation that the mandatory control level  
25 event can be eliminated within the ninety-day period."

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1           SECTION 7. Section 59A-5A-8 NMSA 1978 (being Laws 1995,  
2 Chapter 149, Section 8) is amended to read:

3           "59A-5A-8. CHALLENGE HEARINGS.--Any insurer or health  
4 organization has the right to a confidential administrative  
5 hearing of record in accordance with Chapter 59A, Article 4  
6 NMSA 1978 at which the insurer or health organization may  
7 challenge any determination or action by the superintendent  
8 pursuant to the Risk-Based Capital Act.

9           A. The insurer or health organization shall file  
10 and serve on the superintendent its request for hearing within  
11 five days after any of the following events:

12                       (1) the superintendent's notification to the  
13 insurer or health organization of an adjusted risk-based  
14 capital report;

15                       (2) the superintendent's notification to the  
16 insurer or health organization that:

17                               (a) the insurer's or health  
18 organization's risk-based capital plan or revised risk-based  
19 capital plan is unsatisfactory; and

20                               (b) such notification constitutes a  
21 regulatory action level event with respect to [~~such~~] the  
22 insurer or health organization;

23                       (3) the superintendent's notification to the  
24 insurer or health organization that the insurer or health  
25 organization has failed to adhere to its risk-based capital

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1 plan or revised risk-based capital plan and that such failure  
2 has had or will have a substantial adverse effect on the  
3 ability of the insurer or health organization to eliminate the  
4 company action level event; or

5 (4) the superintendent's notification to an  
6 insurer or health organization of a corrective order with  
7 respect to the insurer or health organization.

8 B. Upon receipt of the insurer's or health  
9 organization's request for hearing, the superintendent shall  
10 set a hearing date, which shall be not less than ten nor more  
11 than thirty days after the date of the insurer's or health  
12 organization's request."

13 SECTION 8. Section 59A-5A-9 NMSA 1978 (being Laws 1995,  
14 Chapter 149, Section 9) is amended to read:

15 "59A-5A-9. CONFIDENTIALITY--PROHIBITION ON  
16 ANNOUNCEMENTS--PROHIBITION ON USE IN RATEMAKING.--

17 A. To the extent not set forth in any other form  
18 accessible to the public, all information in risk-based capital  
19 reports, risk-based capital plans, results or reports of any  
20 examination or analysis of an insurer or health organization  
21 performed pursuant to the Risk-Based Capital Act and all  
22 corrective orders issued by the superintendent pursuant to such  
23 examination or analysis [~~is~~] are and shall be kept confidential  
24 by the superintendent. This information shall not be made  
25 public or be subject to subpoena, other than by the

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1 superintendent and then only for the purpose of enforcement  
2 actions taken by the superintendent pursuant to the Insurance  
3 Code.

4 B. The comparison of an insurer's or health  
5 organization's total adjusted capital to any of its risk-based  
6 capital levels is a regulatory tool that may indicate the need  
7 for possible corrective action by the superintendent with  
8 respect to the insurer or health organization and is not  
9 intended as a means to rank insurers or health organizations  
10 generally or to compare insurers or health organizations for  
11 marketing purposes. Use of such comparisons for such purposes  
12 is inherently misleading and deceptive. Except as otherwise  
13 required under the provisions of the Risk-Based Capital Act or  
14 applicable law, no insurer, health organization, agent, broker  
15 or other person engaged in any manner in the business of  
16 insurance shall make, publish, disseminate, circulate or place  
17 before the public, or cause, directly or indirectly, to be  
18 made, published, disseminated, circulated or placed before the  
19 public in a newspaper, magazine or other publication, or in the  
20 form of a notice, circular, pamphlet, letter or poster, or over  
21 any radio or television station, or in any other way, an  
22 advertisement, announcement or statement containing an  
23 assertion, representation or statement with regard to the  
24 risk-based capital levels of any insurer or health  
25 organization, or of any component derived in their calculation;

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1 provided, however, that if any materially false statement with  
2 respect to the comparison regarding an insurer's or health  
3 organization's total adjusted capital to its risk-based capital  
4 levels or an inappropriate comparison of any other amount to  
5 the insurer's or health organization risk-based capital levels  
6 is published in any written publication and the insurer or  
7 health organization is able to demonstrate to the  
8 superintendent's satisfaction the falsity or inappropriateness  
9 of the statement, then the insurer or health organization may  
10 publish an announcement approved in advance by the  
11 superintendent in a written publication whose sole purpose is  
12 to rebut the materially false statement.

13 C. The risk-based capital instructions, risk-based  
14 capital reports, adjusted risk-based capital reports, risk-  
15 based capital plans and revised risk-based capital plans are  
16 intended solely for use by the superintendent in monitoring the  
17 solvency of insurers or health organizations and the need for  
18 possible corrective action with respect to insurers [~~They~~] or  
19 health organizations. Instructions, reports and plans shall  
20 not be used by the superintendent for ratemaking, considered or  
21 introduced as evidence in any rate proceeding or used to  
22 calculate or derive any elements of an appropriate premium  
23 level or rate of return for any line of insurance [~~which~~] that  
24 an insurer or health organization or any affiliate of an  
25 insurer or health organization is authorized to write."

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1           SECTION 9. Section 59A-5A-10 NMSA 1978 (being Laws 1995,  
2 Chapter 149, Section 10) is amended to read:

3           "59A-5A-10. SUPPLEMENTAL PROVISIONS--RULES--EXEMPTION.--

4           A. The provisions of the Risk-Based Capital Act are  
5 supplemental to any other provisions of law and shall not  
6 supersede, preclude the exercise of or limit any other powers  
7 or duties of the superintendent under such laws, including [~~but~~  
8 ~~not limited to~~] Chapter 59A, Article 41 NMSA 1978.

9           B. The superintendent may adopt reasonable rules  
10 and regulations for the implementation of the Risk-Based  
11 Capital Act.

12           C. The superintendent may exempt from the  
13 application of the Risk-Based Capital Act any domestic property  
14 and casualty insurer [~~which~~] or domestic health organization  
15 that:

16                           (1) writes direct business only in this state;

17                           (2) if a property and casualty insurer, writes  
18 direct annual premiums of two million dollars (\$2,000,000) or  
19 less, or if a domestic health organization, writes direct  
20 annual premiums for comprehensive medical business of two  
21 million dollars (\$2,000,000) or less; and

22                           (3) assumes no reinsurance in excess of five  
23 percent of direct premium written."

24           SECTION 10. Section 59A-5A-11 NMSA 1978 (being Laws 1995,  
25 Chapter 149, Section 11) is amended to read:

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1 "59A-5A-11. FOREIGN INSURERS.--

2 A. Any foreign insurer or foreign health  
3 organization shall, upon the superintendent's written request,  
4 submit to the superintendent a risk-based capital report, as of  
5 the end of the most recent calendar year, on the same date  
6 risk-based capital reports are required to be filed by domestic  
7 insurers or domestic health organizations under the Risk-Based  
8 Capital Act or fifteen days after the request is received by  
9 the foreign insurer or foreign health organization, whichever  
10 is later. Any foreign insurer or foreign health organization  
11 shall, upon the superintendent's written request, promptly  
12 submit to the superintendent a copy of any risk-based capital  
13 plan filed with the insurance commissioner of any other state.

14 B. In the event of a company action level event,  
15 regulatory action level event or authorized control level event  
16 with respect to any foreign insurer or foreign health  
17 organization as determined pursuant to the risk-based capital  
18 statute applicable in an insurer's or health organization's  
19 state of domicile, or, if no risk-based capital requirements  
20 are in force in that state, under the provisions of the  
21 Risk-Based Capital Act, the superintendent may require the  
22 foreign insurer or foreign health organization to file a  
23 risk-based capital plan with the superintendent unless the  
24 insurance commissioner of the insurer's or health  
25 organization's state of domicile has previously so required.

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1 The failure of the foreign insurer or foreign health  
2 organization to timely file a risk-based capital plan with the  
3 superintendent shall be grounds to order the insurer or health  
4 organization to cease and desist from writing new insurance  
5 business in this state or to suspend or revoke its certificate  
6 of authority.

7 C. In the event of a mandatory control level event  
8 with respect to any foreign insurer or foreign health  
9 organization, the superintendent may proceed in accordance with  
10 Subsection B of Section 59A-5A-7 NMSA 1978."

11 SECTION 11. Section 59A-5A-13 NMSA 1978 (being Laws 1995,  
12 Chapter 149, Section 13) is amended to read:

13 "59A-5A-13. NOTICES.--The superintendent's notices to an  
14 insurer or health organization pursuant to the Risk-Based  
15 Capital Act shall be effective upon mailing by certified mail  
16 or, in the case of any other mode of transmission, shall be  
17 effective upon the insurer's or health organization's receipt."

18 SECTION 12. Section 59A-42A-7 NMSA 1978 (being Laws 1997,  
19 Chapter 107, Section 7) is amended to read:

20 "59A-42A-7. EXAMINATION--ANNUAL STATEMENT--RISK-BASED  
21 CAPITAL REPORT.--

22 A. The association is subject to and responsible to  
23 pay the cost of examination by the superintendent [~~of~~  
24 ~~insurance~~] on a periodic basis, pursuant to Chapter 59A,  
25 Article 4 NMSA 1978.

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1           B. Not later than March ~~[31]~~ 1 of each year, the  
2 board shall submit to the superintendent an ~~[audited financial~~  
3 ~~report for the preceding calendar year in a form approved by~~  
4 ~~the superintendent]~~ annual statement in accordance with the  
5 requirements of Section 59A-5-29 NMSA 1978 and a risk-based  
6 capital report in accordance with the requirements of Section  
7 59A-5A-3 NMSA 1978."

8           SECTION 13. Section 59A-46-9 NMSA 1978 (being Laws 1993,  
9 Chapter 266, Section 9) is amended to read:

10           "59A-46-9. ANNUAL REPORT--ANNUAL STATEMENT--RISK-BASED  
11 CAPITAL REPORT.--

12           A. Every health maintenance organization shall  
13 annually, on or before the first day of March, file a report,  
14 verified by at least two principal officers, with the  
15 superintendent covering the preceding calendar year.

16           B. The report shall be on forms prescribed by the  
17 superintendent and shall include:

18                   (1) a financial statement of the organization  
19 prepared pursuant to forms prescribed by the superintendent,  
20 including its balance sheet and receipts and disbursements for  
21 the preceding year;

22                   (2) any material changes in the information  
23 submitted pursuant to Subsection C of Section 59A-46-3 NMSA  
24 1978;

25                   (3) the number of persons enrolled during the

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1 year and the number of enrollees as of the end of the year; and

2 (4) such other reasonable information  
3 materially relating to the performance of the health  
4 maintenance organization as is necessary to enable the  
5 superintendent to carry out ~~[his]~~ the superintendent's duties  
6 under the Insurance Code.

7 C. In addition, the health maintenance organization  
8 shall file by the dates indicated:

9 (1) ~~[audited financial statements as of the~~  
10 ~~end of the preceding calendar year on or before June 1 or~~  
11 ~~within one hundred twenty days following the end of its fiscal~~  
12 ~~year, whichever is later]~~ on or before March 1, an annual  
13 statement in accordance with the requirements of Section  
14 59A-5-29 NMSA 1978 and a risk-based capital report in  
15 accordance with the requirements of Section 59A-5A-3 NMSA 1978;

16 (2) a list of the providers who have executed  
17 a contract that complies with Subsection ~~[D]~~ E of Section  
18 59A-46-13 NMSA 1978 on or before March 1; and

19 (3) a description of the grievance procedures  
20 and the total number of grievances handled through such  
21 procedures, a compilation of the causes underlying those  
22 grievances and a summary of the final disposition of those  
23 grievances, on or before March 1.

24 D. The superintendent may require such additional  
25 reports as are deemed necessary and appropriate to enable the

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1 superintendent to carry out [~~his~~] the superintendent's duties  
2 under the Health Maintenance Organization Law."

3 SECTION 14. Section 59A-47-14 NMSA 1978 (being Laws 1984,  
4 Chapter 127, Section 879.12) is amended to read:

5 "59A-47-14. ANNUAL STATEMENT--RISK-BASED CAPITAL  
6 REPORT.--As prerequisite to continuance of its certificate of  
7 authority, each health care plan shall on or before March [~~1st~~]  
8 1 each year file with the superintendent and with the national  
9 association of insurance superintendents [~~its financial~~  
10 ~~statement~~] for the year ending December [~~31st~~] 31 immediately  
11 preceding, [~~on form as prescribed and furnished without charge~~  
12 ~~by the superintendent. The form shall conform as nearly as may~~  
13 ~~be to the form of annual statement of insurers as from time to~~  
14 ~~time adopted by the national association of insurance~~  
15 ~~superintendents. The statement shall be verified by the oaths~~  
16 ~~of the president and secretary of the health care plan, or in~~  
17 ~~the absence of either of them, by other principal officers] an  
18 annual statement in accordance with the requirements of Section  
19 59A-5-29 NMSA 1978 and a risk-based capital report in  
20 accordance with the requirements of Section 59A-5A-3 NMSA  
21 1978."~~

22 SECTION 15. Section 59A-48-10 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 889) is amended to read:

24 "59A-48-10. ANNUAL [~~REPORT TO SUPERINTENDENT~~] STATEMENT--  
25 RISK-BASED CAPITAL REPORT.--

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1           A. Every prepaid dental plan organization annually  
2 on or before the first day of March shall file with the  
3 superintendent a report covering its activities for the  
4 preceding calendar year in form as prescribed by the  
5 superintendent, verified by at least two [~~2~~] principal  
6 officers of the corporation. A copy of the report shall be  
7 sent by the prepaid dental plan organization to the [~~director~~  
8 ~~of the health services division of the health and environment~~  
9 department of health].

10           B. Such reports shall be on forms prescribed by the  
11 superintendent and shall include:

12                   (1) [~~a financial statement of the~~  
13 ~~organization, including its balance sheet and receipts and~~  
14 ~~disbursements for the preceding year certified as required by~~  
15 ~~the form of the annual report~~] an annual statement in  
16 accordance with the requirements of Section 59A-5-29 NMSA 1978  
17 and a risk-based capital report in accordance with the  
18 requirements of Section 59A-5A-3 NMSA 1978;

19                   (2) any material changes in the information;

20                   (3) the number of persons who become members  
21 during the year, the number of members as of the end of the  
22 year and the number of memberships terminated during the year;

23                   (4) the costs of all care provided and the  
24 number of units of care provided; and

25                   (5) such other information relating to the

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1 performance of the prepaid dental plan organization as is  
2 necessary to enable the superintendent to carry out the duties  
3 prescribed by [~~this article~~] Chapter 59A, Article 48 NMSA 1978.

4 C. The fee for filing the annual report shall be as  
5 specified in Section [~~101 (fee schedule) of the Insurance Code~~]  
6 59A-6-1 NMSA 1978."

7 SECTION 16. EFFECTIVE DATE.--The effective date of the  
8 provisions of this act is July 1, 2011.

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