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AN ACT

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

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

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

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

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

(1) under a policy issued to an employer, who shall be deemed the policyholder, insuring at least one employee of such employer for the benefit of persons other than the employer. The term "employees", as used in this section, includes the officers, managers and employees of the employer, the partners, if the employer is a partnership, the officers, managers and employees of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners and employees of individuals and firms the business of which is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer", as used in this section, includes any municipal

1 or governmental corporation, unit, agency or department  
2 thereof and the proper officers, as such, or any  
3 unincorporated municipality or department thereof, as well as  
4 private individuals, partnerships and corporations. A small  
5 employer shall also be subject to the Small Group Rate and  
6 Renewability Act. A "small employer" means any person, firm,  
7 corporation, partnership or association actively engaged in  
8 business who, on at least fifty percent of its working days  
9 during the preceding year, employed no more than fifty  
10 eligible employees. In determining the number of eligible  
11 employees, companies that are affiliated companies or that  
12 are eligible to file a combined tax return for purposes of  
13 state taxation shall be considered one employer;

14 (2) under a policy issued to an association,  
15 including a labor union and an agricultural association,  
16 which shall have a constitution and bylaws and which has been  
17 organized and is maintained in good faith for purposes other  
18 than that of obtaining insurance, insuring at least twenty-  
19 five members of the association for the benefit of persons  
20 other than the association or its officers or trustees, as  
21 such;

22 (3) under a policy issued to a cooperative;

23 or

24 (4) under a policy issued to any other  
25 substantially similar group that, in the discretion of the

1 superintendent, may be subject to the issuance of a group  
2 sickness and accident policy or contract.

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

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

16 (2) a provision that the insurer will  
17 furnish to the policyholder, for delivery to each employee or  
18 member of the insured group, an individual certificate  
19 setting forth in summary form a statement of the essential  
20 features of the insurance coverage of such employee or member  
21 and to whom benefits thereunder are payable. If dependents  
22 are included in the coverage, only one certificate need be  
23 issued for each family unit; and

24 (3) a provision that to the group originally  
25 insured may be added from time to time eligible new employees

1 or members or dependents, as the case may be, in accordance  
2 with the terms of the policy.

3 C. For purposes of this section only, the  
4 directors of a corporation shall be deemed to be employees of  
5 the corporation.

6 D. For the purposes of this section, "cooperative"  
7 means a private health insurance cooperative established  
8 pursuant to Section 2 of this 2011 act."

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

11 "PRIVATE HEALTH INSURANCE COOPERATIVES--  
12 INCORPORATION.--

13 A. A person may form a cooperative to purchase  
14 employer health benefit plans. A cooperative shall be  
15 organized as a nonprofit corporation and has the rights and  
16 duties provided by the Nonprofit Corporation Act.

17 B. Two or more large employers or small employers  
18 or any combination of large employers and small employers  
19 with an aggregate of fifty or more full-time-equivalent  
20 employees may purchase group health benefit plans pursuant to  
21 Chapter 59A, Article 23 NMSA 1978.

22 C. A carrier shall not form, or be a member of, a  
23 cooperative. A carrier may associate with a sponsoring  
24 entity, such as a business association, chamber of commerce  
25 or other organization representing employers or serving an

1 analogous function, to assist the sponsoring entity in  
2 forming a cooperative.

3 D. A cooperative shall:

4 (1) arrange for group health benefit plan  
5 coverage for employer groups that participate in the  
6 cooperative by contracting with carriers pursuant to Chapter  
7 59A, Article 23 NMSA 1978;

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

9 (a) group health benefit plan coverage  
10 purchased through the cooperative; and

11 (b) the cooperative's administrative  
12 expenses;

13 (3) establish administrative and accounting  
14 procedures for the operation of the cooperative;

15 (4) establish procedures under which an  
16 applicant for or participant in group health benefit plan  
17 coverage issued through the cooperative may have a grievance  
18 reviewed by an impartial person;

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

21 (6) develop and implement a plan to maintain  
22 public awareness of the cooperative and publicize the  
23 eligibility requirements for, and the procedures for  
24 enrollment in, group health benefit plan coverage through the  
25 cooperative.

1           E. A cooperative may negotiate the premiums paid  
2 by its members.

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

8           G. A carrier shall issue health benefit plan  
9 coverage for the cooperative through a licensed agent  
10 marketing the coverage in accordance with the provisions of  
11 Chapter 59A, Article 23 NMSA 1978.

12           H. The members of a cooperative shall be  
13 considered a single risk pool.

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

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

21           K. A group health benefit plan provided through a  
22 cooperative shall provide coverage for diabetes equipment,  
23 supplies and services.

24           L. A carrier may elect not to participate in a  
25 cooperative. The carrier may elect to participate in one or

1 more cooperatives and may select the cooperatives in which  
2 the carrier will participate.

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

5 N. A cooperative may contract only with a carrier  
6 that demonstrates that the carrier:

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

8 (2) has the capacity to administer health  
9 benefit plans;

10 (3) is able to monitor and evaluate the  
11 quality and cost-effectiveness of care and applicable  
12 procedures;

13 (4) is able to conduct utilization  
14 management and establish applicable procedures and policies;

15 (5) is able to ensure that enrollees have  
16 adequate access to health care providers, including adequate  
17 numbers and types of providers;

18 (6) has a satisfactory grievance procedure  
19 and is able to respond to enrollees' calls, questions and  
20 complaints; and

21 (7) has financial capacity, either through  
22 satisfying financial solvency standards that the  
23 superintendent shall set or through appropriate reinsurance  
24 or other risk-sharing mechanisms.

25 O. A cooperative is not a carrier or an insurer,

1 and an employee of the cooperative shall not be required to  
2 be licensed as an agent or broker pursuant to the provisions  
3 of the Insurance Code. This exemption from licensure  
4 includes a cooperative that acts to provide information about  
5 and to solicit membership in the cooperative.

6 P. A cooperative shall register as a cooperative  
7 with the insurance division in accordance with division  
8 rules.

9 Q. For the purposes of this section:

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

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

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

24 (b) companies that are affiliated  
25 companies or that are eligible to file a combined tax return



1 for purposes of state income taxation shall be considered one  
2 employer;

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

9 (d) the employer does not self-insure;  
10 and

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

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

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

25 (c) in the case of an employer that was SPAC/SB 89  
Page 9

1 not in existence throughout a preceding calendar year, the  
2 determination of whether the employer is a small or large  
3 employer shall be based on the average number of employees  
4 that it is reasonably expected to employ on working days in  
5 the current calendar year; and

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

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

9 "HEALTH INSURANCE COOPERATIVE--RULEMAKING.--The  
10 superintendent shall adopt rules to govern the registration of  
11 health insurance cooperatives, including the registration of  
12 cooperative employees, pursuant to Chapter 59A, Article 23  
13 NMSA 1978."

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