AN ACT

RELATING TO HEALTH INSURANCE; AMENDING AND ENACTING SECTIONS OF THE NEW MEXICO INSURANCE CODE TO PROVIDE NEW STANDARDS IN REVIEW OF FILINGS OF HEALTH INSURANCE RATES; PROVIDING FOR ADMINISTRATIVE HEARINGS AND APPEAL TO THE SUPREME COURT OF DETERMINATIONS IN HEALTH INSURANCE AND HEALTH CARE PLAN RATE MATTERS; PROVIDING FOR RULEMAKING BY THE SUPERINTENDENT OF INSURANCE; PROVIDING FOR POOLING OF CLOSED BLOCKS OF BUSINESS.

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

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

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

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

B. The superintendent shall hold a hearing:

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

(2) upon written request for a hearing by a person aggrieved by any act, threatened act or failure of the superintendent to act or by any report, rule, regulation or order of the superintendent, other than an order for the holding of a hearing or order on hearing or pursuant to such

1 an order on a hearing of which such person had notice.
2 C. The request for a hearing shall briefly state
3 the respects in which the applicant is so aggrieved, the
4 relief to be sought and the grounds to be relied upon as
5 basis for relief.
6 D. If the superintendent finds that the request is
7 made in good faith, that the applicant would be so aggrieved
8 if the stated grounds are established and that such grounds
9 otherwise justify the hearing, the superintendent shall
10 commence the hearing within thirty days after filing of the
11 request, unless postponed by mutual consent. No postponement
12 shall be later than ninety days after the filing of the
13 request.
14 E. Pending the hearing and decision, the
15 superintendent may suspend or postpone the effective date of
16 the action as to which the hearing is requested. If upon
17 request the superintendent refuses to grant the suspension or
18 postponement, the person requesting the hearing may apply no
19 later than twenty days from the superintendent's refusal to
20 the district court of Santa Fe county for a stay of the
21 superintendent's action or proposed action pending the
22 hearing and the superintendent's order.
23 F. Except as otherwise expressly provided, this
24 section does not apply to hearings relative to matters
25 arising under Chapter 59A, Article 17 NMSA 1978.

G. The superintendent may appoint a hearing officer to preside over hearings on reconsideration of rate filings. The hearing officer shall provide the superintendent with a recommended decision on the matter assigned to the hearing officer, including findings of fact and conclusions of law."

SECTION 2. Section 59A-18-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 342, as amended) is amended to read:

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

A. An insurance policy, health care plan or annuity contract shall not be delivered or issued for delivery in this state, nor shall an assumption certificate, endorsement, rider or application that becomes a part of a policy or health care plan be used, until a copy of the form and the classification of risks pertaining to the policy or health care plan has been filed with the superintendent. Except for a filing for health insurance or health care plan rates, a filing shall be made at least sixty days before its proposed effective date. A filing made pursuant to this section shall not become effective nor shall it be used until approved by the superintendent pursuant to Section 59A-18-14 NMSA 1978, at which time it may be used. A filing related to health insurance or health care plan or rates shall be

subject to the provisions of Section 5 of this 2011 act. A filing for any kind of insurance other than life insurance, health care plans or health insurance, as defined in the Insurance Rate Regulation Law, shall be deemed to meet the requirements of Chapter 59A, Article 18 NMSA 1978 to become effective unless disapproved pursuant to Section 59A-18-14 NMSA 1978 by the superintendent before the expiration of the waiting period or an extension of the waiting period; provided, that:

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

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

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

1 superintendent may allow by rule; and

2 (4) the superintendent may, by rule, exempt

3 various lines and kinds of commercial insurance, as defined

4 in the Insurance Rate Regulation Law, from some or all of the

5 requirements of this subsection.

6 B. A workers' compensation insurance policy

7 covering a risk arising from the employment of a worker

8 performing work for an employer in New Mexico when that

9 employer is not domiciled in New Mexico shall not be issued

10 or become effective, nor shall any endorsement or rider

11 covering such a risk be issued or become effective, until a

12 copy of the form and the classification of risks pertaining

13 thereto have been filed with the superintendent.

14 C. An insured, a beneficiary or, in the public

15 interest of the state, the attorney general, may in writing

16 request the insurer to review the manner in which its filing

17 has been applied as to insurance or health care plan afforded

18 the insured, the beneficiary, or the attorney general. If

19 the insurer fails to make a review and grant appropriate

20 relief within thirty days after the request is received, the

21 insured, the beneficiary or the attorney general may file a

22 written complaint and request for a hearing with the

23 superintendent stating grounds relied upon. If the complaint

24 charges a violation of the Insurance Code and the

25 superintendent finds that the complaint was made in good

1 faith and that the insured, the beneficiary or the attorney
2 general would be aggrieved if the violation is proved, the
3 superintendent shall hold a hearing, with notice to the
4 insured, the beneficiary or the attorney general and insurer
5 stating the grounds of complaint. If upon the hearing the
6 superintendent finds the complaint justified, the
7 superintendent shall order the insurer to correct the matter
8 complained of within a reasonable time specified but not less
9 than twenty days after a copy of the order was mailed to or
10 served upon the insurer.
11 D. All filings submitted pursuant to this section
12 shall be filed electronically. The superintendent may
13 designate an entity to receive the electronic filings
14 submitted pursuant to this section.
15 E. As used in this section, "health insurance" or
16 "health care plan" means a hospital and medical
17 expense-incurred policy, plan or contract offered by a health
18 insurer; nonprofit health service provider; health
19 maintenance organization; managed care organization; or
20 provider service organization; "health insurance" or "health
21 care plan" does not include an individual policy intended to
22 supplement major medical group-type coverage such as medicare
23 supplement, long-term care, disability income, specified
24 disease, accident-only, hospital indemnity or any other
25 limited-benefit health insurance policy."

1 SECTION 3. Section 59A-18-13 NMSA 1978 (being Laws
2 1984, Chapter 127, Section 343, as amended) is amended to
3 read:
4 "59A-18-13. APPROVAL OR DISAPPROVAL OF HEALTH INSURANCE
5 FORMS.--
6 A. With policy, endorsement, rider and application
7 forms and classification of risks filed by the insurer with
8 the superintendent under Section 59A-18-12 NMSA 1978 as to
9 health insurance and health care plans, the insurer shall
10 also file with the superintendent its rates applicable to
11 such health insurance forms. An insurer shall not use any
12 form that has not been approved by the superintendent or that
13 is not in effect in accordance with Section 59A-18-14 NMSA
14 1978.
15 B. All filings submitted pursuant to this section
16 shall be filed electronically. The superintendent may
17 designate an entity to receive the electronic filings
18 submitted pursuant to this section."
19 SECTION 4. Section 59A-18-14 NMSA 1978 (being Laws
20 1984, Chapter 127, Section 344, as amended) is amended to
21 read:
22 "59A-18-14. GROUNDS, PROCEDURE FOR DISAPPROVAL.--
23 A. The superintendent shall review any filing,
24 except any filing by a health insurance issuer for a change
25 in rate, made pursuant to Section 59A-18-12 or 59A-18-13 NMSA

1 1978 within sixty days of the filing date. The
2 superintendent shall approve any form if the superintendent
3 finds that it complies with the Insurance Code and shall
4 disapprove any form, classification of risks or rate only on
5 one or more of the following grounds:
6 (1) if the form is in any respect in
7 violation of or does not comply with the Insurance Code;
8 (2) if the form contains, or incorporates by
9 reference where such incorporation is otherwise permissible,
10 any inconsistent, ambiguous or misleading clauses or
11 exceptions and conditions that deceptively affect the risk
12 purported to be assumed in the general coverage of the
13 contract, or that encourage misrepresentation of the policy
14 or its benefits;
15 (3) if the benefits offered are unreasonably
16 restricted in relation to the premium charged;
17 (4) if the form has a title, heading or
18 other indication of its provisions that is misleading or if
19 the form is printed in such type or manner of reproduction as
20 to be difficult to read; or
21 (5) if purchase of the form is being
22 solicited by advertising, communication or dissemination of
23 information that is deceptive or misleading.
24 B. If the superintendent disapproves any form
25 during the sixty-day review period, the superintendent shall

give the insurer written notice of the disapproval, stating the grounds for the disapproval.

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

D. Any filing for a rate by a health insurance issuer shall be reviewed pursuant to the provisions of Section 6 of this 2011 act.

E. As used in this section, "health insurance issuer" means a health insurer; nonprofit health service provider; health maintenance organization; managed care organization; or provider service organization that offers a hospital and medical expense-incurred policy, plan or contract; "health insurance issuer" does not include a person that offers an individual policy intended to supplement major medical group-type coverage such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or any other

limited-benefit health insurance policy."

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

"HEALTH INSURANCE--HEALTH CARE PLAN RATES FILING REQUIREMENTS.--

A. All health insurance or health care plan rates filed by an insurer with the superintendent pursuant to Section 59A-18-12 NMSA 1978 shall include all related forms.

B. An insurer shall not use a rate without prior approval of the superintendent pursuant to Section 6 of this 2011 act and compliance with the provisions of that act.

C. Upon making a filing pursuant to Subsection A of this section, an insurer shall provide written notice to policyholders and beneficiaries potentially affected by the insurer's filing. The language of the notice shall meet the minimum language simplification standards in the Policy Language Simplification Law. The insurer shall provide, at a minimum, the following in its notice:

(1) a summary of the rates, including any percentage changes in the rates;

(2) a summary of all related form changes;

(3) an explanation of form and rate changes; and

(4) the policyholder or beneficiary rights under the Insurance Code, including the right to comment on

1 the filing for the thirty days following the posting on the
2 division's web site as required by Subsection D of this
3 section.

4 D. Within twelve days of the filing, the
5 superintendent shall make available on the division's web
6 site in language that shall meet the minimum language
7 simplification standards in the Policy Language
8 Simplification Law the following information provided by the
9 insurer that relates to each block of business included in
10 the filing:

11 (1) the information required by Subsection C
12 of this section;

13 (2) the proposed rates;

14 (3) a brief description of how the revised
15 rates were determined, including the general description and
16 source of each assumption used;

17 (4) the expected medical loss ratio and, for
18 blocks of business in existence for at least three years, the
19 medical loss ratio for the three years preceding the date of
20 filing, accompanied by supporting information as to how the
21 blocks of business will meet the requirements for medical
22 loss ratio in state and federal law;

23 (5) if medical costs, including utilization
24 and compensation rates, are alleged to justify a rate
25 increase, the filing shall identify in the aggregate the

types of expenditures in those categories that support the premium rate increase in the geographic area covered;

(6) for blocks of business in existence for at least three years, premium revenues, claims history, losses and reserves for the three years preceding the date of filing, accompanied by supporting documentation; and

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

E. Regarding an insurer's overall insurance operations in the state for the three years preceding the date of filing, the superintendent shall make available on the division's web site, at a minimum, the following information that the insurer provides:

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

(2) reserves and surpluses for all product lines sold in the state and a reasonable estimate of the expected reserves and surpluses; and

(3) changes in total medical and administrative costs over the previous three years.

F. The superintendent shall post a link on the division's web site to the most recent annual financial statement and actuarial memorandum that the insurer has filed with the division.

G. Notwithstanding any other provision of this section, upon request by an insurer, the superintendent may exempt from disclosure any part of the filing that the superintendent determines to contain proprietary information and that would, if disclosed, harm competition. Pending the superintendent's determination under this subsection, the superintendent shall not disclose the part of a filing that is the subject of an insurer's request.

H. On the date that the superintendent posts a filing pursuant to Subsection D of this section, the superintendent shall open a thirty-day public comment period for policyholders and the general public, during which the policyholders and the general public may make comments online or in writing. The superintendent shall post on the division's web site in a manner easily accessible to the public all comments made during the thirty-day public comment period.

I. All filings submitted pursuant to this section shall be filed electronically. The superintendent may designate an entity to receive the electronic filings submitted pursuant to this section.

J. As used in this section, "health insurance" or "health care plan" means a hospital and medical expense-incurred policy, plan or contract offered by a health insurer; nonprofit health service provider; health

maintenance organization; managed care organization; or provider service organization; "health insurance" or "health care plan" does not include an individual policy intended to supplement major medical group-type coverage such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or any other limited-benefit health insurance policy."

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

"HEALTH INSURANCE FILINGS--GROUNDS AND PROCEDURE FOR APPROVAL OR DISAPPROVAL.--

A. The superintendent shall issue a final order within sixty days of the filing date for health insurance filings made on rates. The superintendent shall consider any public comment made pursuant to Subsection H of Section 5 of this 2011 act. The superintendent shall issue findings and shall approve any rates on the following grounds:

(1) the proposed rate is in compliance with federal law and the Insurance Code;

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

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

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

(5) the proposed rate is based upon administrative expenses that are permitted by federal and state law.

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

(1) the financial position of the insurer's insurance operations in the state, including surplus and reserves as reported in the latest three years' financial statements filed by the insurer;

(2) information provided to the superintendent for calculation of the amount of the insurer's direct services reimbursement pursuant to Section 59A-22-50, 59A-23C-10, 59A-46-51 or 59A-47-46 NMSA 1978;

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

(4) changes to covered benefits or health benefit plan design;

(5) the insurer's compliance with all federal and state requirements for pooling risk and for

participation in risk adjustment programs in effect under federal and state law; and

(6) the reliability and accuracy of the information provided in order to assure a meaningful review.

C. No final order shall be issued until after the close of the public comment period pursuant to Subsection H of Section 5 of this 2011 act.

D. In rate filings for which the superintendent holds a hearing on reconsideration pursuant to Section 59A-4-15 NMSA 1978, the superintendent shall issue a final order within sixty days of the hearing.

E. A final order of the superintendent under this section may be appealed to the commission pursuant to the provisions of Section 7 of this 2011 act within twenty days.

F. As used in this section, "health insurance" or "health care plan" means a hospital and medical expense-incurred policy, plan or contract offered by a health insurer; nonprofit health service provider; health maintenance organization; managed care organization; or provider service organization; "health insurance" or "health care plan" does not include an individual policy intended to supplement major medical group-type coverage such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or any other limited-benefit health insurance policy."

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

"REVIEW OF HEALTH INSURANCE OR PLAN RATES--APPEAL--COMMISSION--HEARING--HEARING EXAMINER--FINDINGS.--

A. A hearing conducted pursuant to an appeal to the public regulation commission filed following a final order of the superintendent under Section 6 of this 2011 act shall be a hearing conducted:

(1) within forty days after the date a request for appeal was filed;

(2) in accordance with Sections 8-8-16 through 8-8-18 NMSA 1978;

(3) by a hearing examiner that the commission appoints pursuant to Section 8-8-14 NMSA 1978; and

(4) as a hearing on the record as a whole.

B. On appeal, the commission shall set aside the superintendent's final order and remand the matter to the superintendent only if:

(1) after evaluation of the record of evidence as a whole, it finds that the superintendent's decision was not based on substantial evidence as to whether the proposed rates are reasonable, actuarially sound and based on reasonable administrative expenses;

(2) it finds that the superintendent's decision was arbitrary, capricious or an abuse of discretion;

or

(3) it finds that the superintendent's decision is otherwise not in accordance with law.

C. The commission shall render a decision within ninety days of a hearing held pursuant to this section."

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

"REVIEW OF HEALTH INSURANCE OR PLAN RATES--APPEAL TO SUPREME COURT FROM COMMISSION.--

A. In a matter arising from an order of the commission on appeal pursuant to Section 7 of this 2011 act, an aggrieved party may appeal to the supreme court.

B. The supreme court shall consider the commission's order on appeal and reverse the commission's order on appeal only if the supreme court determines:

(1) after evaluation of the record of evidence as a whole, that the superintendent's decision was not based on substantial evidence as to whether the proposed rates are reasonable, actuarially sound and based on reasonable administrative expenses;

(2) that the commission's decision was arbitrary, capricious or an abuse of discretion; or

(3) that the commission's decision on appeal is otherwise not in accordance with law."

SECTION 9. A new section of Chapter 59A, Article 18

NMSA 1978 is enacted to read:

"POOLING OF CLOSED BLOCKS OF BUSINESS.--For the purpose of determining the rate of any policy within a closed block of business, the superintendent may require an insurer to pool the experience of a closed block of business with all appropriate blocks of business that are not closed in accordance with Section 59A-18-13.1 NMSA 1978. An insurer shall not apply a rate penalty or surcharge beyond that which reflects the experience of a pool combined in accordance with this section."

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

"CLOSED BLOCK OF BUSINESS.--As used in Chapter 59A, Article 18 NMSA 1978, "closed block of business" means a policy or group of policies that division rules identify as closed because an insurer no longer markets or sells the policy or group of policies or because the policy's or group of policies' enrollment has decreased."

SECTION 11. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

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

SECTION 12. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

"HEALTH INSURANCE OR HEALTH PLAN FORM AND RATE FILINGS--SUPERINTENDENT--RULEMAKING--COMPLIANCE WITH FEDERAL LAW.--The superintendent shall adopt rules:

A. to define terms used regarding forms, rates, reviews and blocks of business that an insurer or health care plan submits in filing matters;

B. to govern any additional filing requirements the superintendent deems appropriate;

C. to provide notice of hearings and the grounds on which the hearings have been requested;

D. to meet criteria for review in accordance with federal law; and

E. that the superintendent deems appropriate to carry out the provisions of Chapter 59A, Article 18 NMSA 1978."

SECTION 13. Section 59A-4-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 67, as amended) is amended to read:

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

A. Except in matters arising from Sections 6 and 7 of this 2011 act, a party may appeal from an order of the superintendent made after an informal hearing or an administrative hearing. The appeal shall be taken to the

district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. This section shall not apply as to matters arising pursuant to Chapter 59A, Article 17 NMSA 1978."

SECTION 14. EFFECTIVE DATE.--The effective date of provisions of this act is January 1, 2012.