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HOUSE BILL 245

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

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE PRIVATE HEALTH
INSURANCE PURCHASING COOPERATIVE ACT; PROVIDING FOR THE
CREATION OF HEALTH INSURANCE PURCHASING COOPERATIVES AMONG
EMPLOYERS.

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

SECTION 1. SHORT TITLE.--This act may be cited as the
"Private Health Insurance Purchasing Cooperative Act".

SECTION 2. DEFINITIONS.--As used in the Private Health
Insurance Purchasing Cooperative Act:

A. "board of directors" means the board of
directors elected by a cooperative;

B. "carrier" means a person that provides health
insurance or a health benefit plan in this state and includes a
licensed insurance company, a licensed fraternal benefit

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1 society, a prepaid hospital or medical service plan, a health
2 maintenance organization, a nonprofit health care organization,
3 a multiple employer welfare arrangement or any other person
4 providing health insurance or a health benefit plan to a small
5 or large employer subject to state insurance regulation;

6 C. "cooperative" means a private health insurance
7 purchasing cooperative established pursuant to the Private
8 Health Insurance Purchasing Cooperative Act;

9 D. "expanded service area" means any area larger
10 than one county in which a cooperative offers coverage;

11 E. "health benefit plan" means an employee welfare
12 benefit plan as defined in Section 3(1) of the federal Employee
13 Retirement Income Security Act of 1974 to the extent that the
14 plan provides medical care and includes items and services paid
15 for as medical care to employees or their dependents as defined
16 under the terms of the plan directly or through insurance,
17 reimbursement or otherwise;

18 F. "large employer" means a person that does
19 business in this state, that has employees of whom at least
20 fifty percent are residents of this state, that is actively
21 engaged in business and that, on at least fifty percent of its
22 working days during either of the two preceding calendar years,
23 employed no fewer than fifty-one eligible employees; provided
24 that:

25 (1) in determining the number of eligible

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1 employees, the spouse or dependent of an employee may, at the
2 employer's discretion, be counted as a separate employee;

3 (2) companies that are affiliated companies or
4 that are eligible to file a combined tax return for purposes of
5 state income taxation shall be considered one employer; and

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

12 G. "small employer" means a person actively engaged
13 in business that, on at least fifty percent of its working days
14 during either of the two preceding years, employed no less than
15 two and no more than fifty eligible employees; provided that:

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

19 (2) companies that are affiliated companies or
20 that are eligible to file a combined tax return for purposes of
21 state income taxation shall be considered one employer; and

22 (3) in the case of an employer that was not in
23 existence throughout a preceding calendar year, the
24 determination of whether the employer is a small or large
25 employer shall be based on the average number of employees that

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1 the employer reasonably expects to employ on working days in
2 the current calendar year; and

3 H. "superintendent" means the superintendent of
4 insurance of the insurance division of the public regulation
5 commission.

6 SECTION 3. PRIVATE HEALTH INSURANCE COOPERATIVES--
7 INCORPORATION--FILING WITH SUPERINTENDENT.--

8 A. A person may form a cooperative to purchase
9 employer health benefit plans. A cooperative shall be
10 organized as a nonprofit corporation and has the rights and
11 duties provided by the Nonprofit Corporation Act.

12 B. Two or more small employers may form a
13 cooperative to purchase health benefit plans pursuant to the
14 Small Group Rate and Renewability Act.

15 C. Two or more large employers, or any combination
16 of large employers and small employers, may purchase group
17 health benefit plans pursuant to Chapter 59A, Article 23 NMSA
18 1978.

19 D. On receipt of a certificate of incorporation or
20 certificate of authority from the public regulation commission,
21 the cooperative shall file written notice of the receipt of the
22 certificate and a copy of the cooperative's organizational
23 documents with the superintendent.

24 E. Annually, the board of directors shall file with
25 the superintendent a statement of all amounts collected and

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1 expenses incurred for each of the preceding three years.

2 F. A carrier shall not form, or be a member of, a
3 cooperative. A carrier may associate with a sponsoring entity,
4 such as a business association, chamber of commerce or other
5 organization representing employers or serving an analogous
6 function, to assist the sponsoring entity in forming a
7 cooperative.

8 SECTION 4. POWERS AND DUTIES OF A COOPERATIVE.--

9 A. A cooperative shall:

10 (1) arrange for small or large employer health
11 benefit plan coverage for small or large employer groups that
12 participate in the cooperative by contracting with carriers
13 pursuant to the Small Group Rate and Renewability Act or
14 Chapter 59A, Article 23 NMSA 1978 in accordance with Section 3
15 of the Private Health Insurance Purchasing Cooperative Act;

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

17 (a) small or large employer health
18 benefit plan coverage purchased through the cooperative; and

19 (b) the cooperative's administrative
20 expenses;

21 (3) establish administrative and accounting
22 procedures for the operation of the cooperative;

23 (4) establish procedures under which an
24 applicant for or participant in health benefit plan coverage
25 issued through the cooperative may have a grievance reviewed by

1 an impartial person;

2 (5) contract with carriers to provide services
3 to small or large employers covered through the cooperative;
4 and

5 (6) develop and implement a plan to maintain
6 public awareness of the cooperative and publicize the
7 eligibility requirements for, and the procedures for enrollment
8 in, health benefit plan coverage through the cooperative.

9 B. A cooperative may:

10 (1) contract with agents to market health
11 benefit plan coverage issued through the cooperative;

12 (2) contract with a carrier or third-party
13 administrator to provide administrative services to the
14 cooperative;

15 (3) negotiate the premiums paid by its
16 members; and

17 (4) offer other ancillary products and
18 services to its members that are customarily offered in
19 conjunction with health benefit plans.

20 C. A cooperative shall comply with:

21 (1) federal laws applicable to cooperatives
22 and health benefit plans offered through cooperatives to the
23 extent required by state law or rules adopted by the
24 superintendent; and

25 (2) state laws applicable to cooperatives and

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1 health benefit plans offered through cooperatives.

2 D. To be eligible to exercise the authority granted
3 under Paragraph (1) of Subsection A of this section, a
4 cooperative shall have at least ten participating employers.

5 SECTION 5. SPECIAL PROVISIONS RELATING TO COOPERATIVES.--

6 A. To participate as a member of a cooperative, an
7 employer shall be a small or large employer. The membership of
8 a cooperative may consist of only small employers, only large
9 employers or both small and large employers. Notwithstanding
10 the provisions of Subsections B and C of this section, a
11 cooperative may restrict membership to small and large
12 employers within a single industry grouping as defined by the
13 most recent edition of the United States census bureau's *North*
14 *American Industry Classification System*.

15 B. The type of group that may be covered by a group
16 health benefit plan issued through a cooperative is not
17 limited.

18 C. A cooperative:

19 (1) shall allow a small employer to join a
20 cooperative consisting of only small employers or both small
21 and large employers and enroll in health benefit plan coverage;
22 and

23 (2) may allow a large employer to join a
24 cooperative and enroll in health benefit plan coverage.

25 D. A cooperative consisting of only small employers

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1 or both small and large employers shall allow any small
2 employer to join the cooperative and enroll in the
3 cooperative's health benefit plan coverage during the initial
4 enrollment and annual open enrollment periods.

5 E. A sponsoring entity of a cooperative may inform
6 the members of the entity about the cooperative and the health
7 benefit plans offered by the cooperative. A carrier shall
8 issue health benefit plan coverage for the cooperative through
9 a licensed agent marketing the coverage in accordance with the
10 provisions of the Private Health Insurance Purchasing
11 Cooperative Act.

12 F. The superintendent shall promulgate rules that
13 govern the manner in which an employer may terminate, because
14 of a financial hardship affecting the employer, participation
15 in a cooperative.

16 G. An employer's participation in a cooperative is
17 voluntary, but an employer electing to participate in a
18 cooperative shall commit to purchasing health benefit plan
19 coverage through the cooperative for two years, except as
20 provided by Subsection F of this section.

21 H. A carrier issuing coverage to a cooperative:

22 (1) shall use a standard presentation form
23 that the superintendent prescribes by rule to market health
24 benefit plan coverage through the cooperative;

25 (2) may contract to provide health benefit

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1 plan coverage with only one cooperative in any county, except
2 that a carrier may contract with additional cooperatives if it
3 is providing health benefit plan coverage in an expanded
4 service area;

5 (3) shall allow enrollment in health benefit
6 plan coverage in compliance with Subsection C of this section
7 and with the carrier's agreement with the cooperative;

8 (4) is exempt from the premium tax collected
9 pursuant to Chapter 59A, Article 6 NMSA 1978 with respect to
10 the premiums or revenues received for coverage provided to each
11 uninsured employee or dependent as defined by the
12 superintendent in accordance with Subsection I of this section;
13 and

14 (5) shall maintain documentation to be
15 provided by cooperatives to ensure compliance with rules that
16 the superintendent has promulgated pursuant to Subsection I of
17 this section regarding uninsured employees or dependents.

18 I. The superintendent shall promulgate rules that
19 define "uninsured employee or dependent" for purposes of
20 Paragraph (4) of Subsection H of this section.

21 J. Notwithstanding any other state or federal law,
22 and except as provided by Subsection O of this section, a
23 health benefit plan issued by a carrier to provide coverage
24 with a cooperative is not subject to a state law or rule that:

25 (1) relates to a particular illness, disease

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1 or treatment; or

2 (2) regulates the differences in rates
3 applicable to services provided within a health benefit plan
4 network or outside the network.

5 K. The superintendent shall promulgate rules to
6 implement the exemption authorized by Subsection J of this
7 section.

8 L. A cooperative may offer more than one health
9 benefit plan, but each plan offered shall be made available to
10 all employees covered by the cooperative.

11 M. A carrier may, with notice to the
12 superintendent, provide health benefit plan coverage to an
13 expanded service area that includes the entire state. A
14 carrier may apply for approval of an expanded service area that
15 consists of less than the entire state by filing with the
16 superintendent an application, in a form and manner prescribed
17 by the superintendent, at least sixty days before the date the
18 carrier issues coverage to the cooperative in the expanded
19 service area. At the expiration of sixty days after the date
20 of receipt by the insurance division of the public regulation
21 commission of a filed application, the application is
22 considered approved by the insurance division unless, before
23 that date, the application was either affirmatively approved or
24 disapproved by written order of the superintendent. The
25 superintendent, after notice and opportunity for hearing, may

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1 rescind an approval granted to a carrier pursuant to this
2 subsection if the superintendent finds that the carrier has
3 failed to market fairly to all eligible employers in the state
4 or the expanded service area.

5 N. The provisions of this section do not limit or
6 restrict a small or large employer's access to health benefit
7 plans pursuant to the New Mexico Insurance Code.

8 O. A health benefit plan provided through a
9 cooperative shall provide coverage for diabetes equipment,
10 supplies and services.

11 P. A cooperative consisting only of small employers
12 is not required to allow a small employer to join the
13 cooperative if:

14 (1) the cooperative has elected to restrict
15 membership in the cooperative in accordance with this
16 subsection and Subsection Q of this section; and

17 (2) after the small employer has joined the
18 cooperative, the total number of eligible employees employed on
19 business days during the preceding calendar year by all small
20 employers participating in the cooperative would exceed fifty.

21 Q. A cooperative shall make the election described
22 by Subsection P of this section at the time the cooperative is
23 initially formed. Evidence of the election shall be filed in
24 writing with the superintendent in the form and at the time
25 prescribed by rules the superintendent has promulgated.

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1 SECTION 6. VOLUNTARY PARTICIPATION BY CARRIER IN A
2 COOPERATIVE.--A carrier may elect not to participate in a
3 cooperative. The carrier may elect to participate in one or
4 more cooperatives and may select the cooperatives in which the
5 carrier will participate.

6 SECTION 7. SELF-INSURED OR SELF-FUNDED PLAN PROHIBITED.--
7 A cooperative shall not self-insure or self-fund any health
8 benefit plan or portion of a plan.

9 SECTION 8. REQUIREMENTS APPLICABLE TO CARRIERS WITH WHICH
10 A COOPERATIVE MAY CONTRACT.--A cooperative may contract only
11 with a carrier that demonstrates that the carrier:

12 A. is in good standing with the insurance division
13 of the public regulation commission;

14 B. has the capacity to administer health benefit
15 plans;

16 C. is able to monitor and evaluate the quality and
17 cost-effectiveness of care and applicable procedures;

18 D. is able to conduct utilization management and
19 establish applicable procedures and policies;

20 E. is able to ensure that enrollees have adequate
21 access to health care providers, including adequate numbers and
22 types of providers;

23 F. has a satisfactory grievance procedure and is
24 able to respond to enrollees' calls, questions and complaints;
25 and

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1 G. has financial capacity, either through
2 satisfying financial solvency standards that the superintendent
3 shall set or through appropriate reinsurance or other
4 risk-sharing mechanisms.

5 **SECTION 9. COOPERATIVE NOT INSURER--AGENTS.--**

6 A. A cooperative is not a carrier or an insurer,
7 and an employee of the cooperative shall not be required to be
8 licensed as an agent or broker pursuant to the provisions of
9 the New Mexico Insurance Code. This exemption from licensure
10 includes a cooperative that acts to provide information about
11 and to solicit membership in the cooperative.

12 B. An agent used and compensated by a cooperative
13 may market the products and services sponsored by the
14 cooperative without being appointed by each carrier
15 participating in the cooperative. The agent shall not market
16 any other product or service of a participating carrier that is
17 not sponsored by the cooperative unless the agent has been
18 appointed by that carrier.

19 **SECTION 10. COOPERATIVE ADMINISTRATORS.--**

20 A. A board of directors may select a cooperative
21 administrator through a competitive request for proposals
22 process. The cooperative administrator shall be licensed as an
23 agent or broker pursuant to the New Mexico Insurance Code. The
24 board of directors shall evaluate proposals based on criteria
25 established by the board of directors that shall include:

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1 (1) proven ability to administer health
2 insurance programs;

3 (2) an estimate of total charges for
4 administering the cooperative for the proposed contract period;
5 and

6 (3) ability to administer the cooperative in
7 a cost-efficient manner.

8 B. The cooperative administrator contract shall be
9 for a period up to four years, subject to annual renegotiation
10 of the fees and services, and shall provide for cancellation of
11 the contract for cause or due to termination of the
12 cooperative.

13 C. At least one year prior to the expiration of a
14 cooperative administrator contract, the board of directors may
15 invite all interested parties, including the current
16 administrator, to submit proposals to serve as administrator
17 for a succeeding contract period. Selection of the
18 administrator for a succeeding contract period shall be made at
19 least six months prior to the expiration of the current
20 contract.

21 D. The board of directors may require carriers
22 issuing policies through the cooperative to perform, subject to
23 the oversight of the board of directors, any or all of the
24 administrative functions of the cooperative related to
25 enrollment, billing or other activity that members regularly

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1 perform in the normal course of business. Carriers shall be
2 required to submit regular reports to the board of directors of
3 such activities, as specified by the board of directors.
4 Carriers performing such functions shall not be entitled to
5 receive any portion of the administrative assessment or any
6 other payment from the cooperative for performing these
7 services.

8 SECTION 11. IMMUNITY.--

9 A. A cooperative, a member of the board of
10 directors, an executive director of a cooperative or an
11 employee or agent of the cooperative is not liable for:

12 (1) an act performed in good faith in the
13 execution of duties in connection with the cooperative; or

14 (2) an independent action of a carrier or a
15 person that provides health care services under a health
16 benefit plan.

17 B. A cooperative, a member of the board of
18 directors, the executive director of a cooperative or an
19 employee or agent of the cooperative is not liable for failure
20 to arrange for coverage of any particular illness, disease or
21 health condition.

22 SECTION 12. STATUS AS EMPLOYER.--

23 A. A small employer health coalition that otherwise
24 meets the description of a small employer is considered a
25 single small employer for all purposes pursuant to the Private

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1 Health Insurance Purchasing Cooperative Act.

2 B. A cooperative that is composed of only small
3 employers, only large employers, or both small and large
4 employers is considered a single employer pursuant to the
5 Private Health Insurance Purchasing Cooperative Act.

6 C. A cooperative that is composed only of small
7 employers and that has made the election described by Paragraph
8 (1) of Subsection P of Section 5 of the Private Health
9 Insurance Purchasing Cooperative Act shall be treated in the
10 same manner as a small employer for the purposes of that act,
11 including for the purposes of any provision relating to premium
12 rates and issuance and renewal of health benefit plan coverage.

13 D. A cooperative that is composed only of small
14 employers and that has not made an election pursuant to
15 Paragraph (1) of Subsection P of Section 5 of the Private
16 Health Insurance Purchasing Cooperative Act in accordance with
17 Subsection Q of that section, or a cooperative that is composed
18 of both small and large employers, may be treated in the same
19 manner as a large employer for the purposes of that act,
20 including for the purposes of any provision relating to premium
21 rates and issuance and renewal of health benefit plan coverage.

22 E. A cooperative shall have sole authority to make
23 benefit elections and perform other administrative functions
24 pursuant to the Private Health Insurance Purchasing Cooperative
25 Act for the cooperative's participating employers.

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1 F. Any other cooperative formed pursuant to the
2 Private Health Insurance Purchasing Cooperative Act is
3 considered an employer solely for the purposes of benefit
4 elections pursuant to that act.

5 SECTION 13. CERTAIN ACTIONS BASED ON RISK CHARACTERISTICS
6 OR HEALTH STATUS PROHIBITED.--A cooperative shall not limit,
7 restrict or condition an employer's or employee's membership in
8 a cooperative or choice among health benefit plans based on:

9 A. risk characteristics of a group or of any member
10 of a group; or

11 B. health status related factors, duration of
12 coverage or any similar characteristic related to the health
13 status or experience of a group or of any member of a group.

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