

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 208

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

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING AND ENACTING SECTIONS OF  
THE NEW MEXICO INSURANCE CODE TO PROVIDE GREATER TRANSPARENCY  
AND NEW STANDARDS IN REVIEW OF APPLICATIONS FOR HEALTH  
INSURANCE PREMIUM RATE INCREASES; PROVIDING FOR PUBLIC HEARINGS  
AND ADMINISTRATIVE AND JUDICIAL REVIEW OF DETERMINATIONS IN  
HEALTH INSURANCE PREMIUM RATE REVIEW MATTERS.

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

**SECTION 1.** 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 or annuity contract shall  
not be delivered or issued for delivery in this state, nor  
shall an assumption certificate, endorsement, rider or

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

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

25 (2) if the superintendent has exempted a

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

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

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

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

25 C. An insured may in writing request the insurer to

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

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

21 SECTION 2. A new Section of Chapter 59A, Article 18 NMSA  
22 1978 is enacted to read:

23 "[NEW MATERIAL] HEALTH INSURANCE, HEALTH MAINTENANCE OR  
24 MANAGED CARE ORGANIZATION RATES FILING REQUIREMENTS--PUBLIC  
25 COMMENT.--

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1           A. With rates filed by the insurer with the  
2 superintendent under Section 59A-18-12 NMSA 1978 as to a health  
3 insurance, health maintenance or managed care organization  
4 policy, plan or contract, the insurer shall also file with the  
5 superintendent its rates applicable to a health insurance,  
6 health maintenance or managed care organization plan, policy or  
7 contract filing. An insurer shall not use any rate that has  
8 not been approved by the superintendent or that is not in  
9 effect in accordance with Section 5 of this 2011 act.

10           B. An increase in a health insurance, health  
11 maintenance or managed care organization plan, policy or  
12 contract rate shall not be effective without sixty days'  
13 written notice by the insurer to the policyholder. The notice  
14 shall include a summary of the rate that the insurer files  
15 pursuant to Section 59A-18-12 NMSA 1978 in language that meets  
16 minimum language simplification standards pursuant to the  
17 Policy Language Simplification Law.

18           C. The insurer shall file all filings pursuant to  
19 this section electronically. The superintendent may designate  
20 an entity to receive the electronic filings submitted pursuant  
21 to this section.

22           D. Within ten days of the filing, the  
23 superintendent shall make available on the division's web site  
24 and easily accessible to the general public all premium rates  
25 and filings made pursuant to Subsections E, F and G of this

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1 section and the summary that an insurer files pursuant to  
2 Section 59A-18-12 NMSA 1978 and this section.

3 E. For each block of business included in the  
4 proposed rate increase, filings shall be accompanied by the  
5 following to the extent that this information is not already  
6 included in the actuarial memorandum:

7 (1) a summary, in language that meets minimum  
8 language simplification standards pursuant to the Policy  
9 Language Simplification Law, that explains the rationale for  
10 the proposed rate increase;

11 (2) a brief description of the type of policy  
12 benefits, renewability, general market methods and age limits  
13 on issuance, if any;

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) for blocks of business in existence for at  
18 least three years, the rating history for the three years  
19 preceding the date of filing, including any rate increases for  
20 those blocks of business;

21 (5) an estimated percentage of the premium  
22 that the applicant expects to set aside in reserves;

23 (6) innovations in health care quality that  
24 advance the delivery of patient care, with documentation of  
25 expenses incurred for that purpose;

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1 (7) for blocks of business in existence for at  
2 least three years, the measurable cost-containment efforts that  
3 the applicant has undertaken within the three years preceding  
4 the date of filing;

5 (8) the expected medical loss ratio and, for  
6 blocks of business in existence for at least three years, the  
7 medical loss ratio for the three years preceding the date of  
8 filing, accompanied by supporting information as to how the  
9 blocks of business will meet the requirements for medical loss  
10 ratio in state and federal law;

11 (9) if medical costs, including utilization  
12 and compensation rates, are alleged to justify a rate increase,  
13 the filing shall identify in the aggregate the types of  
14 expenditures in those categories that support the premium rate  
15 increase in the geographic area covered;

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

20 (11) in the aggregate, the ages, genders,  
21 tobacco use and geographic location of and claims history for  
22 individuals enrolled in the block of business potentially  
23 affected by a proposed rate increase;

24 (12) whether the insurer has ceased to  
25 actively offer or sell to new applicants a block of business

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1 for which it seeks a rate increase; and

2 (13) other information that the superintendent  
3 deems necessary to aid the review.

4 F. Regarding an insurer's overall operations for  
5 the three years preceding the date of filing, the insurer shall  
6 file:

7 (1) details regarding executive compensation;

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

10 (3) an estimate of the insurer's  
11 profitability;

12 (4) reserves and surpluses for product lines  
13 sold in the state, including earnings on the reserves during  
14 that period and a reasonable estimate of the expected earnings  
15 on any surplus;

16 (5) for blocks of business in existence for at  
17 least three years, innovations in health care quality that  
18 advance the delivery of patient care, with documentation of  
19 expenses incurred for that purpose for the three years  
20 preceding the date of filing;

21 (6) for blocks of business in existence for at  
22 least three years, measurable cost-containment efforts that the  
23 applicant has undertaken within the three years preceding the  
24 date of filing; and

25 (7) other information that the superintendent

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1 deems necessary to aid the review.

2 G. The filing shall include the last year's annual  
3 and quarterly financial statements that the insurer has filed  
4 with the division.

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

13 SECTION 3. Section 59A-18-13 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 343, as amended) is amended to read:

15 "59A-18-13. APPROVAL OR DISAPPROVAL OF HEALTH INSURANCE  
16 FORMS AND CLASSIFICATIONS OF RISK.--

17 A. With policy, endorsement, rider and application  
18 forms and classification of risks filed by the insurer with the  
19 superintendent under Section 59A-18-12 NMSA 1978 as to health  
20 insurance, the insurer shall also file with the superintendent  
21 its premium rates applicable to such health insurance forms in  
22 accordance with the provisions of Section 2 of this 2011 act.

23 An insurer shall not use any [~~such~~] form [~~or premium~~] that has  
24 not been approved by the superintendent or that is not in  
25 effect in accordance with Section 59A-18-14 NMSA 1978.

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1           ~~[B. An increase in a health insurance premium shall~~  
2 ~~not be effective without sixty days' written notice to the~~  
3 ~~policyholder.~~

4           G.] B. All filings submitted pursuant to this  
5 section shall be filed electronically. The superintendent may  
6 designate an entity to receive the electronic filings submitted  
7 pursuant to this section."

8           SECTION 4. Section 59A-18-14 NMSA 1978 (being Laws 1984,  
9 Chapter 127, Section 344, as amended) is amended to read:

10           "59A-18-14. FORMS--GROUNDS AND PROCEDURE FOR  
11 DISAPPROVAL.--

12           A. The superintendent shall review any filing,  
13 except any filing related to a health insurance, managed care  
14 or health maintenance organization policy, plan or contract,  
15 made pursuant to Section 59A-18-12 or 59A-18-13 NMSA 1978  
16 within sixty days of the filing date. The superintendent shall  
17 approve any form [~~or rate~~] if [~~he~~] the superintendent finds  
18 that it complies with the Insurance Code and shall disapprove  
19 any form [~~or rate~~] only on [~~any~~] one or more of the following  
20 grounds:

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

23                   (2) if the form contains, or incorporates by  
24 reference where such incorporation is otherwise permissible,  
25 any inconsistent, ambiguous or misleading clauses or exceptions

1 and conditions [~~which~~] that deceptively affect the risk  
2 purported to be assumed in the general coverage of the  
3 contract, or [~~which encourages~~] that encourage  
4 misrepresentation of the policy or its benefits;

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

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

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

14 B. If the superintendent disapproves any [~~such~~]  
15 form during the sixty-day review period, [~~he~~] the  
16 superintendent shall give the insurer written notice of the  
17 disapproval, stating the grounds [~~therefor~~] for the  
18 disapproval.

19 C. [~~After expiration of the sixty-day review period~~  
20 ~~referred to in Section 59A-18-13 NMSA 1978 or~~] At any time  
21 after having approved a form, the superintendent may, after a  
22 hearing thereon, disapprove a form or withdraw a previous  
23 approval on any of the grounds stated in Subsection A of this  
24 section. The superintendent's order issued on such hearing  
25 shall state the grounds for disapproval or withdrawal of

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1 previous approval and the date, not less than twenty days after  
2 the date of the order, when disapproval or withdrawal of  
3 approval shall become effective."

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

6 "[NEW MATERIAL] HEALTH INSURANCE, HEALTH MAINTENANCE OR  
7 MANAGED CARE ORGANIZATION FILINGS--GROUNDS AND PROCEDURE FOR  
8 APPROVAL.--

9 A. The superintendent shall review any health  
10 insurance, managed care or health maintenance organization  
11 filing made pursuant to Section 59A-18-12 NMSA 1978 or Section  
12 2 of this 2011 act, or any hearing on redetermination pursuant  
13 to Subsection F of this section, within sixty days after the  
14 close of the public comment period provided pursuant to  
15 Subsection H of Section 2 of this 2011 act. The superintendent  
16 shall consider and issue findings on the merits of the filing.  
17 The superintendent shall issue findings and shall approve any  
18 rate on the following grounds:

19 (1) the rate is in full compliance with the  
20 Insurance Code;

21 (2) the proposed rate is actuarially sound and  
22 is supported by the actuarial memorandum submitted;

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

25 (4) the proposed rate is based upon reasonable

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1 administrative expenses.

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

5 (1) the insurer's financial position,  
6 including profitability, surplus, reserves, executive  
7 compensation and investment savings;

8 (2) historical and projected administrative  
9 costs, including market expenses, broker commissions and  
10 advertising and medical expenses;

11 (3) the historical and projected loss ratio  
12 between the amounts spent on direct services and earned  
13 premiums;

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

16 (5) changes to covered benefits or health  
17 benefit plan design;

18 (6) innovations in health care quality that  
19 advance the delivery of patient care, with documentation of  
20 expenses incurred for the purpose of these innovations;

21 (7) measurable cost-containment efforts that  
22 the insurer has undertaken since the insurer's last rate filing  
23 for the same block of business;

24 (8) the need for the proposed change in order  
25 to maintain the insurer's solvency or to maintain rate

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1 stability and prevent excessive rate increases in the future;

2 (9) the absence of significant premium  
3 differences among covered individuals in similar risk  
4 categories;

5 (10) any public comment received pursuant to  
6 Subsection H of Section 2 of this 2011 act that pertains to the  
7 considerations set forth in this subsection;

8 (11) whether the proposed change applies to a  
9 closed block of business and how the closed block of business  
10 is pooled in relation to all appropriate blocks of business  
11 that are not closed;

12 (12) the affordability and equity of the rate  
13 structure, given community needs and the insurer's mission;  
14 increases in executive compensation during the preceding three  
15 years; and increases in reserves and surplus over the preceding  
16 three years;

17 (13) the insurer's statement of purpose or  
18 mission in its corporate charter or mission statement;

19 (14) the insurer's compliance with all federal  
20 and state requirements for pooling risk and for participation  
21 in risk adjustment programs in effect under federal and state  
22 law;

23 (15) the reliability and accuracy of the  
24 information provided in order to assure a meaningful review;

25 and

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1 (16) other considerations that arise from the  
2 information that the insurer submits.

3 C. The insurer shall have the burden of proving, by  
4 a preponderance of the evidence, that a rate increase is  
5 reasonable according to the grounds set forth in Subsection A  
6 of this section.

7 D. The superintendent shall give notice approving  
8 or disapproving a rate filing or, with the written consent of  
9 the insurer, modifying a rate filing submitted pursuant to this  
10 section no later than sixty days after the close of the public  
11 comment period provided pursuant to Subsection H of Section 2  
12 of this 2011 act. The notice shall state the grounds for the  
13 decision, specifically addressing the considerations set forth  
14 in Subsection B of this section and shall be posted on the web  
15 site of the division in a manner easily accessible by covered  
16 individuals and the general public and provided in writing to:

17 (1) an aggrieved party to a matter pursuant to  
18 this section;

19 (2) when feasible, persons that have commented  
20 on the filing pursuant to Subsection H of Section 2 of this  
21 2011 act; and

22 (3) persons that have requested notification.

23 E. After expiration of the sixty-day review period  
24 pursuant to Subsection A of this section or at any time after  
25 having approved a rate, the superintendent may, after a hearing

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1 thereon, disapprove a rate or withdraw a previous approval on  
2 any of the grounds stated in Subsection A of this section. The  
3 superintendent's order issued on the hearing shall state the  
4 grounds for disapproval or withdrawal of previous approval and  
5 the date, not less than twenty days after the date of the  
6 order, when disapproval or withdrawal of approval shall become  
7 effective.

8 F. An aggrieved party, including a covered  
9 individual, an insurer applicant, any entity that the  
10 superintendent deems to represent the interest of a covered  
11 individual or the attorney general may file a request for a  
12 hearing to reconsider with the superintendent pursuant to the  
13 provisions of Section 9 of this 2011 act. The hearing request  
14 shall be filed within thirty days after the issuance of the  
15 superintendent's order approving, disapproving or modifying a  
16 rate filing pursuant to this section. The superintendent shall  
17 stay any rate increase while a matter is pending the outcome of  
18 a hearing on reconsideration."

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

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

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1           SECTION 7. A new section of Chapter 59A, Article 18 NMSA  
2 1978 is enacted to read:

3           "[NEW MATERIAL] CLOSED BLOCK OF BUSINESS.--As used in  
4 Chapter 59A, Article 18 NMSA 1978, "closed block of business"  
5 means a policy or group of policies that an insurer no longer  
6 markets or sells, or that has less than five hundred contracts  
7 in force in the state, or for which enrollment has decreased by  
8 more than twelve percent since the last rate filing relating to  
9 that block of business."

10          SECTION 8. A new section of Chapter 59A, Article 18 NMSA  
11 1978 is enacted to read:

12          "[NEW MATERIAL] POOLING OF CLOSED BLOCKS OF BUSINESS.--For  
13 the purpose of determining the rate of any policy within a  
14 closed block of business, an insurer shall pool the experience  
15 of a closed block of business with all appropriate blocks of  
16 business that are not closed in accordance with Section  
17 59A-18-13.1 NMSA 1978. An insurer shall not apply a rate  
18 penalty or surcharge beyond that which reflects the experience  
19 of a pool combined in accordance with this section."

20          SECTION 9. A new section of Chapter 59A, Article 18 NMSA  
21 1978 is enacted to read:

22          "[NEW MATERIAL] RATE REVIEW CASES--HEARING ON  
23 RECONSIDERATION--EVIDENCE--HEARING EXAMINER--BURDEN--  
24 FINDINGS.--

25           A. A hearing pursuant to a request for a hearing on  
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1 reconsideration pursuant to Subsection F of Section 5 of this  
2 2011 act shall be held within thirty days of the filing of the  
3 request.

4 B. When appearing before the superintendent in a  
5 hearing on reconsideration of the superintendent's decision in  
6 a rate review matter as provided in Subsection F of Section 5  
7 of this 2011 act, the attorney general shall represent the  
8 interests of covered individuals as a whole.

9 C. When the attorney general appears in a rate  
10 review case, the attorney general may obtain an independent  
11 actuarial analysis of the proposed increase in premium rates.  
12 The actuarial analysis shall be performed by an actuary who has  
13 experience in health insurance and who is a member of the  
14 American academy of actuaries.

15 D. A hearing conducted pursuant to the provisions  
16 of this section shall be a formal hearing conducted pursuant to  
17 the provisions of Sections 59A-4-15, 59A-4-16, 59A-4-19 and  
18 12-8-10 through 12-8-13 NMSA 1978 and may be conducted by a  
19 hearing examiner that the superintendent appoints pursuant to  
20 Section 10 of this 2011 act.

21 E. The burden of proof to show that a premium  
22 increase is reasonable shall be on the insurer, who shall prove  
23 this by a preponderance of the evidence.

24 F. In addition to complying with the provisions of  
25 Section 59A-4-16 NMSA 1978, the superintendent shall give

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1 notice of the hearing:

2 (1) on the division's web site in an easily  
3 accessible manner;

4 (2) in a newspaper of general circulation in  
5 this state;

6 (3) once in the New Mexico register;

7 (4) to all aggrieved parties to matters  
8 considered pursuant to this section or Section 5 of this 2011  
9 act;

10 (5) when feasible, to persons that have  
11 commented on the filing pursuant to Subsection H of Section 2  
12 of this 2011 act; and

13 (6) to persons that have requested  
14 notification.

15 G. The superintendent shall publish the following  
16 information regarding the matter to be heard pursuant to  
17 Subsection F of this section:

18 (1) the grounds for the request for  
19 reconsideration;

20 (2) the names of the person or persons  
21 requesting the hearing;

22 (3) the provisions of the Insurance Code at  
23 issue;

24 (4) the amount of the proposed rate increase;  
25 and

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1 (5) the date, time and location of the  
2 hearing.

3 H. Within thirty days following the hearing on  
4 reconsideration, the superintendent shall issue an order with  
5 the superintendent's ruling on reconsideration and findings to  
6 support the ruling. If the superintendent finds the proposed  
7 premium rates to be unreasonable, not actuarially sound or not  
8 based on reasonable administrative expenses, the superintendent  
9 shall determine rates that comply with the grounds set forth in  
10 Section 5 of this 2011 act and order the insurer to apply these  
11 rates.

12 I. An aggrieved party may file an appeal for a  
13 hearing before the commission pursuant to Section 11 of this  
14 2011 act from an order of the superintendent on reconsideration  
15 only within thirty days of the superintendent's order on  
16 reconsideration."

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

19 "[NEW MATERIAL] HEALTH INSURANCE PREMIUM RATE REVIEW--  
20 HEARING EXAMINERS.--The superintendent may appoint a hearing  
21 examiner to preside over hearings on reconsideration pursuant  
22 to Section 9 of this 2011 act. A hearing examiner shall  
23 provide the superintendent with a recommended decision on the  
24 matter assigned to the hearing examiner, including findings of  
25 fact and conclusions of law. The recommended decision shall be

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1 provided to the parties, and they may file exceptions to the  
2 decision prior to the final decision of the superintendent."

3 SECTION 11. A new section of Chapter 59A, Article 18 NMSA  
4 1978 is enacted to read:

5 "[NEW MATERIAL] RATE REVIEW APPEALS--COMMISSION--HEARING--  
6 HEARING EXAMINER--FINDINGS.--

7 A. A hearing conducted pursuant to the provisions  
8 of this section shall be a formal hearing conducted:

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

11 (2) in accordance with Sections 8-8-16 through  
12 8-8-18 NMSA 1978;

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

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

16 B. The commission shall evaluate the record of  
17 evidence according to whether the record as a whole provides  
18 substantial evidence on the whole record that a premium  
19 increase is reasonable, actuarially sound and based on  
20 reasonable administrative expenses.

21 C. On the division's web site in an easily  
22 accessible manner, in a newspaper of general circulation in  
23 this state and once in the New Mexico register, the commission  
24 shall give notice of the hearing by publishing the following  
25 information regarding the matter to be heard on appeal:

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- 1 (1) the grounds for the appeal;
- 2 (2) the names of the person or persons
- 3 requesting the hearing;
- 4 (3) the provisions of the Insurance Code at
- 5 issue;
- 6 (4) the amount of the proposed rate increase;
- 7 and
- 8 (5) the date, time and location of the
- 9 hearing.

10 D. The commission shall provide notice of the  
11 hearing in writing and posted on the web site of the division  
12 in a manner easily accessible by covered individuals and the  
13 general public. The notice shall state the date, time and  
14 place of the hearing and specify the matters to be considered  
15 at the hearing. This notice shall be provided not less than  
16 thirty days in advance:

17 (1) to all aggrieved parties to matters  
18 considered pursuant to this section or Section 5 or 9 of this  
19 2011 act;

20 (2) when feasible, to persons that have  
21 commented on the filing pursuant to Subsection H of Section 2  
22 of this 2011 act; and

23 (3) to persons that have requested  
24 notification.

25 E. Within twenty days of the commission's hearing

1 on review of the superintendent's ruling on reconsideration of  
 2 the proposed rate increase, the commission shall issue an  
 3 order:

4 (1) remanding the case to the superintendent  
 5 for redetermination pursuant to Section 5 of this 2011 act only  
 6 if it determines that the action is:

7 (a) arbitrary, capricious or an abuse of  
 8 discretion;

9 (b) not supported by substantial  
 10 evidence in the record taken as a whole; or

11 (c) otherwise not in accordance with  
 12 law; or

13 (2) affirming the superintendent's ruling on  
 14 reconsideration of the proposed rate increase if the commission  
 15 determines that the action appealed is free from the errors  
 16 specified under Subparagraphs (a) through (c) of Paragraph (1)  
 17 of this subsection."

18 **SECTION 12.** A new section of Chapter 59A, Article 18 NMSA  
 19 1978 is enacted to read:

20 "[NEW MATERIAL] JUDICIAL REVIEW OF COMMISSION'S RULING.--  
 21 Not later than sixty days after the commission's order issued  
 22 pursuant to Subsection F of Section 11 of this 2011 act, an  
 23 aggrieved party may file a petition in the state supreme court  
 24 for judicial review of the commission's ruling. The appeal  
 25 shall be on the record made in proceedings before the

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1 superintendent. The filing for appeals shall include a notice  
2 of appeal to the supreme court and a copy of the commission's  
3 order issued pursuant to Subsection F of Section 11 of this  
4 2011 act. If the court finds that the commission's action is  
5 not supported by substantial evidence in the record as a whole,  
6 the court shall hold the ruling unlawful and set it aside."

7 SECTION 13. A new section of the New Mexico Insurance  
8 Code is enacted to read:

9 "[NEW MATERIAL] SUPERINTENDENT--RULEMAKING--COMPLIANCE  
10 WITH FEDERAL LAW.--The superintendent shall promulgate rules to  
11 implement the provisions of this 2011 act, including rules:

12 A. to define terms used regarding applications that  
13 insurers submit in rate filing matters;

14 B. to meet criteria for adequate rate review in  
15 accordance with federal law; and

16 C. that the superintendent deems appropriate to  
17 carry out the provisions of this 2011 act."

18 SECTION 14. Section 59A-4-20 NMSA 1978 (being Laws 1984,  
19 Chapter 127, Section 67, as amended) is amended to read:

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

21 A. A party may appeal from an order of the  
22 superintendent made after an informal hearing or an  
23 administrative hearing. The appeal shall be taken to the  
24 district court pursuant to the provisions of Section 39-3-1.1  
25 NMSA 1978.

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1           B. This section shall not apply as to matters  
2 arising pursuant to Chapter 59A, Article 17 NMSA 1978 or to  
3 health insurance, managed care and health maintenance  
4 organization rate review matters pursuant to Sections 5 and 11  
5 of this 2011 act."

6           SECTION 15. Section 8-8-14 NMSA 1978 (being Laws 1998,  
7 Chapter 108, Section 14, as amended) is amended to read:

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

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

13           B. The commission shall appoint a hearing examiner  
14 to preside over hearings pursuant to Section 11 of this 2011  
15 act. A hearing examiner shall provide the commission with a  
16 recommended decision on the matter assigned to the hearing  
17 examiner, including conclusions of law. The recommended  
18 decision shall be provided to the parties, and they may file  
19 exceptions to the decision prior to the final decision of the  
20 commission.

21           [~~B.~~] C. Except as provided in the New Mexico  
22 Insurance Code, a hearing examiner shall provide the commission  
23 with a recommended decision on the matter assigned to [~~him~~] the  
24 hearing examiner, including findings of fact and conclusions of  
25 law. The recommended decision shall be provided to the

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