

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 589

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE NEW MEXICO HEALTH
INSURANCE EXCHANGE ACT; CREATING THE NEW MEXICO HEALTH
INSURANCE EXCHANGE; PROVIDING FOR THE APPOINTMENT, POWERS AND
DUTIES OF A BOARD OF DIRECTORS FOR THE EXCHANGE; PROVIDING THE
SUPERINTENDENT OF INSURANCE WITH RULEMAKING POWERS RELATING TO
THE EXCHANGE; PROVIDING FOR POWERS AND DUTIES OF THE EXCHANGE;
PROVIDING FOR TRANSPARENCY OF EXCHANGE FUNDING AND OPERATIONS;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; RECONCILING
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009;
DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 9 of this act may be cited as the "New Mexico Health
Insurance Exchange Act".

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underscored material = new
[bracketed material] = delete

1 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
2 New Mexico Health Insurance Exchange Act:

3 A. "board" means the board of directors of the
4 exchange;

5 B. "exchange" means the New Mexico health insurance
6 exchange, composed of an exchange for the individual market and
7 a small business health options program or "SHOP" exchange
8 under a single governance and administrative structure;

9 C. "Native American" means:

10 (1) an individual who is a member of any
11 federally recognized Indian nation, tribe or pueblo or who is
12 an Alaska native; or

13 (2) an individual who has been deemed eligible
14 for services and programs provided to Native Americans by the
15 United States public health service or the bureau of Indian
16 affairs;

17 D. "navigator" means a person that, in a manner
18 culturally and linguistically appropriate to the state's
19 diverse populations, conducts public education, distributes tax
20 credit and qualified health plan enrollment information,
21 facilitates enrollment in qualified health plans or provides
22 referrals to consumer assistance or ombudsman services.

23 "Navigator" does not mean a carrier or a person that receives
24 any consideration, directly or indirectly, from any carrier in
25 connection with the enrollment of a qualified individual in a

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1 qualified health plan; provided that a broker may be a
2 navigator if the broker receives no consideration, directly or
3 indirectly, from any carrier in connection with the enrollment
4 of a qualified individual or qualified employer in a qualified
5 health plan, an approved health plan or any other health
6 coverage; and

7 E. "superintendent" means the superintendent of
8 insurance.

9 SECTION 3. [NEW MATERIAL] NEW MEXICO HEALTH INSURANCE
10 EXCHANGE CREATED--BOARD CREATED.--

11 A. The "New Mexico health insurance exchange" is
12 created as a nonprofit public corporation to provide qualified
13 individuals and qualified employers with increased access to
14 health insurance in the state and shall be governed by a board
15 of directors constituted pursuant to the provisions of the New
16 Mexico Health Insurance Exchange Act. The exchange is a
17 governmental entity for purposes of the Tort Claims Act, and
18 neither the exchange nor the board shall be considered a
19 governmental entity for any other purpose.

20 B. The exchange shall not duplicate, impair,
21 enhance, supplant, infringe upon or replace, in whole or in any
22 part, the powers, duties or authority of the superintendent.
23 This includes the superintendent's authority to review and
24 approve premium rates pursuant to the provisions of the New
25 Mexico Insurance Code.

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1 C. The "board of directors of the New Mexico health
2 insurance exchange" is created. The board consists of thirteen
3 voting directors. One voting ex-officio director is the
4 superintendent or the superintendent's designee.

5 D. Except as provided in Subsection E of this
6 section, managerial and full-time employees of the exchange and
7 appointed directors, while serving on the board, shall not have
8 any affiliation with or any income derived from:

9 (1) current or active employment as, a
10 contract with or consultation for a health care provider; or

11 (2) current or active employment in, a
12 contract with or consultation for the health care services
13 finance or coverage sectors.

14 E. Each director shall comply with the conflict-of-
15 interest provisions of Subsection D of this section, except as
16 provided as follows:

17 (1) directors appointed from the boards of
18 directors of the New Mexico medical insurance pool and the New
19 Mexico health insurance alliance shall not be considered to
20 have a conflict of interest with respect to their association
21 with those entities;

22 (2) the director who is a health care provider
23 shall not be considered to have a conflict of interest with
24 respect to the provider's receipt of payment for health care
25 services provided;

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1 (3) the director who is a representative of a
2 statewide health care planning entity shall not be considered
3 to have a conflict of interest with respect to that director's
4 association with the statewide health care planning entity; and

5 (4) the directors who are representatives of
6 carriers shall not be considered to have a conflict of interest
7 with respect to those directors' association with their
8 respective carriers.

9 F. Each director and employee of the exchange shall
10 have a fiduciary duty to the exchange.

11 G. The board shall be composed, as a whole, to
12 assure representation of the state's Native American
13 population, ethnic diversity, cultural diversity and geographic
14 diversity. Directors shall have demonstrated knowledge or
15 experience in at least one of the following areas:

- 16 (1) purchasing coverage in the individual
17 market;
- 18 (2) purchasing coverage in the small employer
19 market;
- 20 (3) health care finance;
- 21 (4) health care economics;
- 22 (5) health care policy;
- 23 (6) the enrollment of underserved residents in
24 health care coverage; or
- 25 (7) administering private or public health

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1 care insurance.

2 H. The governor shall appoint six directors.

3 I. The president pro tempore of the senate and the
4 speaker of the house of representatives shall each appoint
5 three directors. Appointments of directors who are members of
6 the minority party shall be chosen from a list of candidates
7 provided by the minority floor leader of the senate and the
8 minority floor leader of the house of representatives.

9 J. The directors shall be chosen as follows:

10 (1) one director shall be a health care
11 provider;

12 (2) one director shall be the secretary of
13 human services or the secretary's designee;

14 (3) one director shall be a representative of
15 a statewide health care planning entity;

16 (4) one director shall be a representative of
17 a nonprofit corporation;

18 (5) three directors shall be representatives
19 of carriers; and

20 (6) five directors shall be chosen from health
21 care consumers; health care consumer advocates; individuals who
22 are officers, general partners or proprietors of small
23 employers; and employees of small employers.

24 K. Four initial appointments to the board shall be
25 made from the board of directors of the New Mexico health

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1 insurance alliance, and four of the initial appointments to the
2 board shall be made from the board of directors of the New
3 Mexico medical insurance pool.

4 L. No more than six appointed directors shall
5 belong to the same political party.

6 M. The directors appointed from the New Mexico
7 health insurance alliance board and the New Mexico medical
8 insurance pool board shall serve an initial term of two years.
9 Thereafter, appointed directors shall serve three-year terms.
10 Directors selected from the New Mexico health insurance
11 alliance and the New Mexico medical insurance pool may be
12 reappointed.

13 N. A director shall serve until the director's
14 successor is appointed by the respective appointing authority.

15 O. The exchange and the board shall operate
16 consistent with provisions of the Governmental Conduct Act, the
17 Inspection of Public Records Act, the Financial Disclosure Act
18 and the Open Meetings Act and shall not be subject to the
19 Procurement Code or the Personnel Act.

20 P. A majority of directors constitutes a quorum.
21 The board may allow members to attend meetings by telephone or
22 other electronic media. A decision by the board requires a
23 quorum and a majority of directors in attendance voting in
24 favor of the decision.

25 Q. Within thirty days of the effective date of the

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1 New Mexico Health Insurance Exchange Act, the superintendent
2 shall convene the organizational meeting of the board, during
3 which the board shall elect a chair and vice chair from among
4 the directors. Thereafter, every three years, the board shall
5 elect in open meeting a chair and vice chair from among the
6 directors. The chair and vice chair shall serve no more than
7 two consecutive three-year terms as chair and vice chair.

8 R. A vacancy on the board shall be filled by
9 appointment by the original appointing authority for the
10 remainder of the director's unexpired term.

11 S. A director may be removed from the board by a
12 majority vote of the directors. The board shall set standards
13 for attendance and may remove a director for lack of
14 attendance, neglect of duty or malfeasance in office. A
15 director shall not be removed without proceedings consisting of
16 at least one ten-day notice of hearing and an opportunity to be
17 heard. Removal proceedings shall be before the board and in
18 accordance with procedures adopted by the board.

19 T. Appointed directors may receive per diem and
20 mileage in accordance with the Per Diem and Mileage Act,
21 subject to the travel policy set by the board. Appointed
22 directors shall receive no other compensation, perquisite or
23 allowance.

24 U. The board shall:

25 (1) meet at the call of the chair and no less

1 often than once per calendar quarter. There shall be at least
2 seven days' notice given to directors prior to any meeting.
3 There shall be sufficient notice provided to the public prior
4 to meetings consistent with the Open Meetings Act;

5 (2) create, make appointments to and duly
6 consider recommendations of an advisory committee or committees
7 made up of stakeholders, including carriers, health care
8 consumers, health care providers, health care practitioners,
9 brokers, qualified employer representatives and advocates for
10 low-income or underserved residents;

11 (3) create an advisory committee made up of
12 Native Americans, some of whom live on a reservation and some
13 of whom do not live on a reservation, to guide the
14 implementation of the Native American-specific provisions of
15 the federal Patient Protection and Affordable Care Act and the
16 federal Indian Health Care Improvement Act;

17 (4) consider all written recommendations
18 submitted to the board by its advisory committees and enter
19 into the public record the reasons for accepting or rejecting
20 any written recommendations that the advisory committees have
21 submitted; and

22 (5) designate a Native American liaison, who
23 shall assist the board in developing and ensuring
24 implementation of communication and collaboration between the
25 exchange and Native Americans in the state. The Native

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1 American liaison shall serve as a contact person between the
2 exchange and New Mexico Indian nations, tribes and pueblos and
3 shall ensure that training is provided to the staff of the
4 exchange, which may include training in:

- 5 (a) cultural competency;
- 6 (b) state and federal law relating to
7 Indian health; and
- 8 (c) other matters relating to the
9 functions of the exchange with respect to Native Americans in
10 the state.

11 SECTION 4. [NEW MATERIAL] BOARD OF DIRECTORS--

12 POWERS.--The board may:

- 13 A. seek and receive grant funding from federal,
14 state or local governments or private philanthropic
15 organizations to defray the costs of operating the exchange;
- 16 B. generate funding, including, but not limited to,
17 charging assessments or fees, to support its operations in
18 accordance with provisions of the New Mexico Health Insurance
19 Exchange Act;
- 20 C. create ad hoc advisory councils;
- 21 D. request assistance from other boards,
22 commissions, departments, agencies and organizations as
23 necessary to provide appropriate expertise to accomplish the
24 exchange's duties;
- 25 E. enter into contracts with persons or other

1 organizations as necessary or proper to carry out the
2 provisions and purposes of the New Mexico Health Insurance
3 Exchange Act, including the authority to contract or employ
4 staff for the performance of administrative, legal, actuarial,
5 accounting and other functions; provided that no contractor
6 shall be a carrier or a producer;

7 F. enter into contracts with similar exchanges of
8 other states for the joint performance of common administrative
9 functions;

10 G. enter into information-sharing agreements with
11 federal and state agencies and other state exchanges to carry
12 out its responsibilities; provided that these agreements
13 include adequate protections of the confidentiality of the
14 information to be shared and comply with all state and federal
15 laws and regulations;

16 H. sue or be sued or otherwise take any necessary
17 or proper legal action in the execution of its duties and
18 powers;

19 I. appoint board committees, which may include
20 non-board members, to provide technical assistance in the
21 operation of the exchange and any other function within the
22 authority of the exchange; and

23 J. conduct periodic audits to assure the general
24 accuracy of the financial data submitted to the exchange.

25 SECTION 5. [NEW MATERIAL] PLAN OF OPERATION.--

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1 A. Within sixty days of the effective date of the
2 New Mexico Health Insurance Exchange Act, the board shall
3 create a preliminary plan of operation containing provisions to
4 ensure the fair, reasonable and equitable administration of the
5 exchange. Within six months of the effective date of the New
6 Mexico Health Insurance Exchange Act, the board shall have a
7 final plan of operation containing provisions to ensure the
8 fair, reasonable and equitable administration of the exchange.

9 B. The board shall provide for public notice and
10 hearing prior to approving the plan of operation.

11 C. The preliminary plan of operation shall:

12 (1) establish procedures to implement the
13 provisions of the New Mexico Health Insurance Exchange Act,
14 consistent with state law, the federal Patient Protection and
15 Affordable Care Act and other federal law and federally
16 approved waivers of federal law;

17 (2) establish procedures for handling and
18 accounting for the exchange's assets and money; and

19 (3) establish regular times and meeting places
20 for meetings of the board.

21 D. The final plan of operation shall:

22 (1) establish a statewide consumer assistance
23 program, including a navigator program;

24 (2) establish consumer complaint and grievance
25 procedures for issues relating to the exchange;

1 (3) establish procedures for alternative
2 dispute resolution between the exchange and contractors or
3 carriers;

4 (4) consult with representatives of New Mexico
5 Indian nations, tribes and pueblos and develop and implement
6 policies that:

7 (a) promote effective communication and
8 collaboration between the exchange and Indian nations, tribes
9 and pueblos, including communicating and collaborating on those
10 nations', tribes' and pueblos' plans for creating or
11 participating in health insurance exchanges; and

12 (b) promote cultural competency in
13 providing effective services to Native Americans;

14 (5) establish conflict-of-interest policies
15 and procedures; and

16 (6) contain additional provisions necessary
17 and proper for the execution of the powers and duties of the
18 board.

19 SECTION 6. [NEW MATERIAL] BOARD DUTIES--REPORTING.--The
20 board shall:

21 A. between July 1, 2013 and January 1, 2015,
22 provide quarterly reports to the legislature, the governor and
23 the superintendent on the implementation of the exchange and
24 report annually and upon request thereafter;

25 B. keep an accurate accounting of all of the

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1 activities, receipts and expenditures of the exchange and
2 submit this information annually to the superintendent and as
3 required by federal law to the federal secretary of health and
4 human services;

5 C. beginning with the first year of operation in
6 which access to health insurance coverage is provided, obtain
7 an annual audit of the exchange's operations from an
8 independent certified public accountant;

9 D. publish the administrative costs of the exchange
10 as required by state or federal law; and

11 E. discharge those duties required to implement and
12 operate the exchange in accordance with the provisions of the
13 New Mexico Health Insurance Exchange Act consistent with state
14 and federal law.

15 SECTION 7. [NEW MATERIAL] RULES--DISPUTE RESOLUTION.--The
16 superintendent shall promulgate rules necessary to implement
17 and carry out the provisions of the New Mexico Health Insurance
18 Exchange Act.

19 SECTION 8. [NEW MATERIAL] EXEMPTION.--The exchange is
20 exempt from payment of all fees and all taxes levied by this
21 state or any of its political subdivisions.

22 SECTION 9. [NEW MATERIAL] FUNDING.--

23 A. To fund the planning, implementation and
24 operation of the exchange, the board shall contract with the
25 human services department or any other state agency that

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1 receives federal funds allocated, appropriated or granted to
 2 the state for purposes of funding the planning, implementation
 3 or operation of a health insurance exchange.

4 B. The human services department or any other state
 5 agency that receives federal funds allocated, appropriated or
 6 granted to the state for purposes of funding the planning,
 7 implementation or operation of a health insurance exchange
 8 shall contract with the board to provide those funds to the
 9 exchange in consideration for its planning, implementation or
 10 operation.

11 SECTION 10. [NEW MATERIAL] COOPERATION WITH THE NEW
 12 MEXICO HEALTH INSURANCE EXCHANGE.--The medical assistance
 13 division of the human services department shall cooperate with
 14 the New Mexico health insurance exchange to share information
 15 and facilitate transitions in enrollment between the exchange
 16 and medicaid and any other state public health coverage
 17 program.

18 SECTION 11. A new section of the New Mexico Insurance
 19 Code is enacted to read:

20 "[NEW MATERIAL] OFFICE OF SUPERINTENDENT OF INSURANCE--
 21 COOPERATION WITH NEW MEXICO HEALTH INSURANCE EXCHANGE.--The
 22 office of superintendent of insurance shall cooperate with the
 23 New Mexico health insurance exchange to share information and
 24 assist in the implementation of the functions of the exchange."

25 SECTION 12. Section 41-4-3 NMSA 1978 (being Laws 1976,

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1 Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,
2 Section 2 and by Laws 2009, Chapter 129, Section 2 and also by
3 Laws 2009, Chapter 249, Section 2) is amended to read:

4 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

5 A. "board" means the risk management advisory
6 board;

7 B. "governmental entity" means the state or any
8 local public body as defined in Subsections C and H of this
9 section;

10 C. "local public body" means all political
11 subdivisions of the state and their agencies, instrumentalities
12 and institutions and all water and natural gas associations
13 organized pursuant to Chapter 3, Article 28 NMSA 1978;

14 D. "law enforcement officer" means a full-time
15 salaried public employee of a governmental entity, or a
16 certified part-time salaried police officer employed by a
17 governmental entity, whose principal duties under law are to
18 hold in custody any person accused of a criminal offense, to
19 maintain public order or to make arrests for crimes, or members
20 of the national guard when called to active duty by the
21 governor;

22 E. "maintenance" does not include:

23 (1) conduct involved in the issuance of a
24 permit, driver's license or other official authorization to use
25 the roads or highways of the state in a particular manner; or

1 (2) an activity or event relating to a public
2 building or public housing project that was not foreseeable;

3 F. "public employee" means an officer, employee or
4 servant of a governmental entity, excluding independent
5 contractors except for individuals defined in Paragraphs (7),
6 (8), (10), (14) and (17) of this subsection, or of a
7 corporation organized pursuant to the Educational Assistance
8 Act, the Small Business Investment Act or the Mortgage Finance
9 Authority Act or a licensed health care provider, who has no
10 medical liability insurance, providing voluntary services as
11 defined in Paragraph (16) of this subsection and including:

12 (1) elected or appointed officials;

13 (2) law enforcement officers;

14 (3) persons acting on behalf or in service of
15 a governmental entity in any official capacity, whether with or
16 without compensation;

17 (4) licensed foster parents providing care for
18 children in the custody of the human services department,
19 corrections department or department of health, but not
20 including foster parents certified by a licensed child
21 placement agency;

22 (5) members of state or local selection panels
23 established pursuant to the Adult Community Corrections Act;

24 (6) members of state or local selection panels
25 established pursuant to the Juvenile Community Corrections Act;

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1 (7) licensed medical, psychological or dental
2 arts practitioners providing services to the corrections
3 department pursuant to contract;

4 (8) members of the board of directors of the
5 New Mexico medical insurance pool;

6 (9) individuals who are members of medical
7 review boards, committees or panels established by the
8 educational retirement board or the retirement board of the
9 public employees retirement association;

10 (10) licensed medical, psychological or dental
11 arts practitioners providing services to the children, youth
12 and families department pursuant to contract;

13 (11) members of the board of directors of the
14 New Mexico educational assistance foundation;

15 (12) members of the board of directors of the
16 New Mexico student loan guarantee corporation;

17 (13) members of the New Mexico mortgage
18 finance authority;

19 (14) volunteers, employees and board members
20 of court-appointed special advocate programs;

21 (15) members of the board of directors of the
22 small business investment corporation;

23 (16) health care providers licensed in New
24 Mexico who render voluntary health care services without
25 compensation in accordance with rules promulgated by the

1 secretary of health. The rules shall include requirements for
 2 the types of locations at which the services are rendered, the
 3 allowed scope of practice and measures to ensure quality of
 4 care; ~~and~~

5 (17) an individual while participating in the
 6 state's adaptive driving program and only while using a
 7 special-use state vehicle for evaluation and training purposes
 8 in that program; and

9 (18) the staff and members of the board of
 10 directors of the New Mexico health insurance exchange;

11 G. "scope of duty" means performing any duties that
 12 a public employee is requested, required or authorized to
 13 perform by the governmental entity, regardless of the time and
 14 place of performance; and

15 H. "state" or "state agency" means the state of New
 16 Mexico or any of its branches, agencies, departments, boards,
 17 instrumentalities or institutions."

18 **SECTION 13. TEMPORARY PROVISION--NEW MEXICO HEALTH**
 19 **INSURANCE ALLIANCE--NEW MEXICO HEALTH INSURANCE**
 20 **EXCHANGE--TRANSFER OF CONTRACTS.--**On July 1, 2013, all
 21 contracts of the New Mexico health insurance alliance relating
 22 to the development and implementation of a health insurance
 23 exchange shall be binding and effective on the New Mexico
 24 health insurance exchange.

25 **SECTION 14. SEVERABILITY.--**If any part or application of

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1 this act is held invalid, the remainder or its application to
2 other situations or persons shall not be affected.

3 SECTION 15. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.