HOUSE BILL 223

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Jim R. Trujillo and Carl Trujillo

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO INSURANCE; TRANSFERRING THE DUTY TO COLLECT INSURANCE PREMIUM TAXES TO THE TAXATION AND REVENUE DEPARTMENT; TRANSFERRING FUNCTIONS, PERSONNEL, APPROPRIATIONS, MONEY, PROPERTY AND CONTRACTUAL OBLIGATIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Insurance Premium Tax Act".

underscored material = new
[~~bracketed material~~] = delete
Amendments: new = bold, blue, highlight
delete = ~~bold, red, highlight, strikethrough~~

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Insurance Premium Tax Act:

A. "authorized insurer" means an insurer holding a valid and subsisting certificate of authority to transact insurance in this state;

B. "certificate of authority" means the certificate of authority required to transact insurance in this state pursuant to Section 59A-5-10 NMSA 1978;

C. "department" means the taxation and revenue department;

D. "health maintenance organization" means "health maintenance organization" as that term is used in Chapter 59A, Article 46 NMSA 1978;

E. "insurance" means a contract whereby a person undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit in connection with ascertainable risk contingencies, or to act as surety;

F. "insurer" includes every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance;

G. "nonprofit health care plan" means "health care plan" as that term is used in Chapter 59A, Article 47 NMSA 1978;

H. "state" means, when used in context indicating a

jurisdiction other than New Mexico, any state, district, commonwealth, territory or possession of the United States of America;

I. "superintendent" means the superintendent of insurance or the superintendent's duly authorized representative acting in official capacity;

J. "taxpayer" means:

(1) an authorized insurer;

(2) an insurer formerly authorized to transact insurance in New Mexico and receiving premiums on policies remaining in force in New Mexico, except an insurer that withdrew from New Mexico prior to March 26, 1955;

(3) a plan operating under provisions of Chapter 59A, Articles 14 and 46 through 49 NMSA 1978;

(4) a property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978;

(5) an unauthorized insurer that has assumed a contract or policy of insurance directly or indirectly from an authorized or formerly authorized insurer and is receiving premiums on such policies remaining in force in New Mexico; provided that the ceding insurer does not continue to pay the taxes imposed pursuant to the Insurance Premium Tax Act as to such policy or contract; or

(6) an insured who in this state procures, continues or renews insurance with a nonadmitted insurer

pursuant to Section 59A-15-4 NMSA 1978; and

K. "transact insurance" with respect to an insurance contract or a business of insurance includes any of the following, by mail or otherwise or whether or not for profit:

(1) solicitation or inducement;

(2) negotiation;

(3) effectuation of an insurance contract;

(4) transaction of matters subsequent to effectuation and arising out of such a contract;

(5) maintenance in this state of an office or personnel performing any function in furtherance of an insurer's business of insurance; or

(6) maintenance by an insurer of assets in trust in this state for the benefit, security or protection of its policyholders or its policyholders and creditors.

SECTION 3. [NEW MATERIAL] IMPOSITION AND RATE OF TAX--DENOMINATION OF "PREMIUM TAX" AND "HEALTH INSURANCE PREMIUM SURTAX".--

A. A tax is imposed at a rate of three and three-thousandths percent of the gross premiums and membership and policy fees received or written by a taxpayer, as reported by March 1 of each year to the department in the appropriate schedule, as determined by the department, of the taxpayer's annual financial statement on insurance or contracts covering

risks within the state during the preceding calendar year, less all return premiums, including dividends paid or credited to policyholders or contract holders and premiums received for reinsurance on New Mexico risks. The tax imposed pursuant to this section may be referred to as the "premium tax".

B. For a taxpayer that is an insurer lawfully organized pursuant to the laws of the Republic of Mexico, the premium tax shall apply solely to the taxpayer's gross premium receipts from insurance policies issued by the taxpayer in New Mexico that cover residents of New Mexico or property or risks principally domiciled or located in New Mexico.

C. With respect to a taxpayer that is a property bondsman, "gross premiums" shall be considered any consideration received as security or surety for a bail bond in connection with a judicial proceeding.

D. In addition to the premium tax, a health insurance premium surtax is imposed at a rate of one percent of the gross health insurance premiums and membership and policy fees received by the taxpayer on hospital and medical expense incurred insurance or contracts; nonprofit health care plan contracts, excluding dental or vision only contracts; and health maintenance organization subscriber contracts covering health risks within this state during the preceding calendar year, less all return health insurance premiums, including dividends paid or credited to policyholders or contract holders

and health insurance premiums received for reinsurance on New Mexico risks. The surtax imposed pursuant to this section may be referred to as the "health insurance premium surtax".

SECTION 4. [NEW MATERIAL] EXEMPTIONS.--Exempted from the taxes imposed pursuant to the Insurance Premium Tax Act are:

A. premiums attributable to insurance or contracts purchased by the state or a political subdivision for the state's or political subdivision's active or retired employees;

B. payments received by a health maintenance organization from the federal secretary of health and human services pursuant to a risk-sharing contract issued under the provisions of 42 U.S.C. Section 1395mm(g);

C. any business transacted pursuant to the provisions of the Service Contract Regulation Act;

D. the premiums from each policy or plan issued or offered pursuant to the Minimum Healthcare Protection Act during the first three years of the issuance of the master policy or individual policy; and

E. the money collected and placed in trust pursuant to Section 59A-49-6 NMSA 1978.

SECTION 5. [NEW MATERIAL] CREDIT--MEDICAL INSURANCE POOL ASSESSMENTS.--The assessment for any New Mexico medical insurance pool member pursuant to Section 59A-54-10 NMSA 1978 shall be allowed as a fifty percent credit on the tax return for that member and a seventy-five percent credit on the tax

return for that member for the assessments attributable to pool policyholders that receive premiums, in whole or in part, through the federal Ryan White CARE Act, the Ted R. Montoya hemophilia program at the university of New Mexico health sciences center, the children's medical services bureau of the public health division of the department of health or other program receiving state funding or assistance.

SECTION 6. [NEW MATERIAL] DATE PAYMENT DUE.--For each calendar quarter, an estimated payment of the premium tax and the health insurance premium surtax shall be made on April 15, July 15, October 15 and the following January 15. The estimated payments shall be equal to at least one-fourth of the payment made during the previous calendar year or one-fifth of the actual payment due for the current calendar year, whichever is greater. The final adjustment for payments due for the prior year shall be made with the return filed on April 15, at which time all taxes for that year are due. Dividends paid or credited to policyholders or contract holders and refunds, savings, savings coupons and similar returns or credits applied or credited to payment of premiums for existing, new or additional insurance shall, in the amount so used, constitute premiums subject to tax pursuant to the Insurance Premium Tax Act for the year in which so applied or credited.

SECTION 7. [NEW MATERIAL] DEPARTMENT SHALL PROMULGATE RULES.--The department shall promulgate rules to carry out the

provisions of the Insurance Premium Tax Act.

SECTION 8. Section 7-1-2 NMSA 1978 (being Laws 1965, Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

(1) Income Tax Act;

(2) Withholding Tax Act;

(3) Venture Capital Investment Act;

(4) Gross Receipts and Compensating Tax Act and any state gross receipts tax;

(5) Liquor Excise Tax Act;

(6) Local Liquor Excise Tax Act;

(7) any municipal local option gross receipts tax;

(8) any county local option gross receipts tax;

(9) Special Fuels Supplier Tax Act;

(10) Gasoline Tax Act;

(11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;

(12) Alternative Fuel Tax Act;

(13) Cigarette Tax Act;

(14) Estate Tax Act;

(15) Railroad Car Company Tax Act;

(16) Investment Credit Act, rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act, Film Production Tax Credit Act, Affordable Housing Tax Credit Act and high-wage jobs tax credit;

(17) Corporate Income and Franchise Tax Act;

(18) Uniform Division of Income for Tax Purposes Act;

(19) Multistate Tax Compact;

(20) Tobacco Products Tax Act; [~~and~~]

(21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act; and

(22) Insurance Premium Tax Act;

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

(1) Resources Excise Tax Act;

(2) Severance Tax Act;

(3) any severance surtax;

(4) Oil and Gas Severance Tax Act;

(5) Oil and Gas Conservation Tax Act;

(6) Oil and Gas Emergency School Tax Act;

(7) Oil and Gas Ad Valorem Production Tax Act;

(8) Natural Gas Processors Tax Act;

(9) Oil and Gas Production Equipment Ad Valorem Tax Act;

(10) Copper Production Ad Valorem Tax Act;

(11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;

(12) Enhanced Oil Recovery Act;

(13) Natural Gas and Crude Oil Production Incentive Act; and

(14) intergovernmental production tax credit and intergovernmental production equipment tax credit;

C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

(1) Weight Distance Tax Act;

(2) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;

(3) Uniform Unclaimed Property Act (1995);

(4) 911 emergency surcharge and the network

and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;

(5) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;

(6) the water conservation fee imposed by Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and

(7) the gaming tax imposed pursuant to the Gaming Control Act; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act."

SECTION 9. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] DISTRIBUTION--PREMIUM TAX.--

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the law enforcement protection fund in an amount equal to ten percent of the net receipts attributable to the premium tax from life, general casualty and title insurance business.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the fire protection fund of the net

receipts attributable to the premium tax derived from property and vehicle insurance business."

SECTION 10. Section 7-1-8.8 NMSA 1978 (being Laws 2009, Chapter 243, Section 10, as amended) is amended to read:

"7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES.--An employee of the department may reveal to:

A. a committee of the legislature for a valid legislative purpose, return information concerning any tax or fee imposed pursuant to the Cigarette Tax Act;

B. the attorney general, return information acquired pursuant to the Cigarette Tax Act for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

C. the commissioner of public lands, return information for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts;

D. the secretary of human services or the secretary's delegate under a written agreement with the department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance, but only for the purpose of enforcing the support liability of the absent parents by the child support enforcement division or any successor organizational unit;

E. the department of information technology, by electronic media, a database updated quarterly that contains the names, addresses, county of address and taxpayer identification numbers of New Mexico personal income tax filers, but only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978;

F. the state courts, the random jury lists produced by the department of information technology under Subsection E of this section;

G. the director of the New Mexico department of agriculture or the director's authorized representative, upon request of the director or representative, the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers;

H. the public regulation commission, return information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

I. the state racing commission, return information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

J. the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;

K. the director of the workers' compensation administration or to the director's representatives authorized for this purpose, return information to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;

L. the secretary of workforce solutions or the secretary's delegate, return information for use in enforcement of unemployment insurance collections pursuant to the terms of a written reciprocal agreement entered into by the department with the secretary of workforce solutions for exchange of information;

M. the New Mexico finance authority, information with respect to the amount of municipal and county gross receipts taxes collected by municipalities and counties pursuant to any local option municipal or county gross receipts taxes imposed, and information with respect to the amount of governmental gross receipts taxes paid by every agency, institution, instrumentality or political subdivision of the state pursuant to Section 7-9-4.3 NMSA 1978; [~~and~~]

N. the secretary of human services or the secretary's delegate; provided that a person who receives the confidential return information on behalf of the human services department shall not reveal the information and shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the

person fails to maintain the confidentiality required:

(1) that return information needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families; and

(2) the names and addresses of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the human services department shall pay the department for expenses incurred by the department to derive the information requested by the human services department if the information requested is not readily available in reports for which the department's information systems are programmed; and

O. the superintendent of insurance, return information with respect to the premium tax and the health insurance premium surtax."

SECTION 11. Section 29-13-3 NMSA 1978 (being Laws 1983, Chapter 289, Section 3, as amended) is amended to read:

"29-13-3. DISTRIBUTION OF CERTAIN INSURANCE COLLECTIONS--LAW ENFORCEMENT PROTECTION FUND CREATED.--There is created in the state treasury the "law enforcement protection fund". Ten percent of all money received for fees, licenses and penalties [~~and taxes~~] from life, general casualty and title insurance business pursuant to the New Mexico Insurance Code [~~except for money received from the health insurance premium surtax, imposed by Subsection C of Section 59A-6-2 NMSA 1978~~] shall be

paid monthly to the state treasurer and credited to the fund. On or before June 30 of each year, the state treasurer shall transfer to the general fund any balance in the law enforcement protection fund in excess of one hundred thousand dollars ($100,000) that is not obligated for expenses in that current fiscal year."

SECTION 12. Section 59A-5-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 100) is amended to read:

"59A-5-33. RECIPROCITY PROVISION.--

A. When by or pursuant to the laws of any other state or foreign country or province, any [~~taxes~~] licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material requirements, obligations, prohibitions or restrictions are or would be imposed upon New Mexico insurers doing business or that might seek to do business in such state, country or province, or upon the agents or representatives of such insurers or upon brokers or adjusters, which are in excess of such [~~taxes~~] licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit or other requirements, obligations, prohibitions or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, or upon brokers, or upon adjusters, of such other state, country, or province under the statutes of this state, so long as such laws of such other state, country or province

continue in force or are so applied, the same [~~taxes~~] licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material requirements, obligations, prohibitions or restrictions of whatever kind may be imposed by the superintendent upon the insurers, or upon the agents or [~~respresentatives~~] representatives of such insurers, or upon brokers of such other state, country or province, doing business or seeking to do business in New Mexico. Any [~~tax~~] license or other fee or obligation imposed by any city, county or other political subdivision or agency of such other state, country or province on New Mexico insurers or their agents, representatives, brokers or adjusters shall be deemed to be imposed by such state, country or province within the meaning of this section.

B. This section does not apply [~~as~~] to

[~~(1) personal income taxes; or~~

~~(2) ad valorem taxes on real or personal property; or~~

~~(3)~~] special purpose obligations or assessments, or assessments under insurance guaranty fund laws, imposed by another state in connection with particular kinds of insurance, except that assessment of insurers for financing of public safety, health, and protection purposes is not exempt under this subsection. [~~Except that deductions from premium taxes or other taxes otherwise payable, allowed on account of~~

~~real or personal property taxes paid, shall be taken into consideration by the superintendent in determining propriety and extent of reciprocity action under this section.~~]

C. For purposes of this section, domicile of an alien insurer, other than Canadian insurer, shall be [~~that~~] the state designated by the insurer in writing and filed with the superintendent at the time of authorization in this state or within six [~~(6)~~] months after the effective date of the Insurance Code, whichever date is the later, and may be any one of the following states:

(1) that in which the insurer was first authorized to transact insurance; [~~or~~]

(2) that in which is located the insurer's principal place of business in the United States; or

(3) that in which is held the largest deposit of trusteed assets of the insurer for protection of its policyholders in the United States.

D. If the insurer makes no [~~such~~] designation [~~its~~] pursuant to Subsection C of this section, the insurer's domicile shall be deemed to be that state in which is located its principal place of business in the United States.

[~~D.~~] E. The domicile of a Canadian insurer shall be Canada and the province of Canada in which its head office is located."

SECTION 13. Section 59A-6-3 NMSA 1978 (being Laws 1984,

Chapter 127, Section 103) is amended to read:

"59A-6-3. INSURER MUST PAY TAX ON WITHDRAWAL FROM STATE.--Any insurer holding certificate of authority to transact insurance in New Mexico [~~which~~] that ceases to do business in the state shall thereupon file with the [~~superintendent~~] secretary of taxation and revenue a report of its premiums collected to date of such cessation of business [~~which~~] that are subject to the premium tax [~~as provided by Section 102 of this article~~] or the health insurance premium surtax and not theretofore reported, and forthwith pay to the [~~superintendent~~] secretary the tax thereon and surrender its certificate of authority to the superintendent. Upon receipt, the secretary shall submit a copy of the report to the superintendent HBIC➔**and shall certify that all tax obligations have been satisfied by the withdrawing insurer**⬅HBIC."

SECTION 14. Section 59A-6-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 104, as amended) is amended to read:

"59A-6-4. PENALTY FOR FAILURE TO [~~REPORT OR~~] PAY [~~TAX OR~~] FEES.--Every insurer, nonprofit health care plan, health maintenance organization, prepaid dental plan or prearranged funeral plan transacting business in New Mexico that fails to [~~file when due any report for taxation, regardless of whether tax is due, or to~~] pay when due any [~~tax or~~] fees as required in [~~this~~] Chapter 59A, Article 6 NMSA 1978 HBIC➔~~shall~~ **may**⬅HBIC be liable to the state for the amount thereof and for penalty

of HBIC→up to←HBIC one thousand dollars ($1,000) for each month or part thereof it has failed to [~~file the report or~~] pay the [~~tax or~~] fees HBIC→~~after demand therefor~~ when due←HBIC. Services of process in any action against a person to recover the [~~tax~~] fee or penalty may be made upon the superintendent as attorney for service of process as provided in Section 59A-5-32 NMSA 1978."

SECTION 15. Section 59A-6-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 105, as amended) is amended to read:

"59A-6-5. DISTRIBUTION OF OFFICE COLLECTIONS.--

A. All money received by the office of superintendent of insurance for fees, licenses and penalties [~~and taxes~~] shall be paid daily by the superintendent to the state treasurer and credited to the "insurance department suspense fund" except as provided by the Law Enforcement Protection Fund Act.

B. The superintendent may authorize the refund of money erroneously paid as fees, licenses or penalties [~~or taxes~~] from the insurance department suspense fund HBIC→~~under~~ upon←HBIC request for refund HBIC→~~made within three years~~, if the request is made within one year←HBIC after the erroneous payment. [~~In the case of premium taxes erroneously paid or overpaid in accordance with law, refund may also be requested as a credit against premium taxes due in any annual or quarterly premium tax return filed within three years of the~~

underscored material = new
[~~bracketed material~~] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

~~erroneous or excess payment.~~

~~C. If required by a compact to which New Mexico has joined pursuant to law, the superintendent shall authorize the allocation of premiums collected pursuant to Section 59A-14-12 NMSA 1978 to other states that have joined the compact pursuant to an allocation formula agreed upon by the compacting states.~~

~~D.~~] C. The "insurance operations fund" is created in the state treasury. The fund shall consist of the distributions made to it pursuant to Subsection [~~E~~] D of this section. The legislature shall annually appropriate from the fund to the division those amounts necessary for the division to carry out its responsibilities pursuant to the Insurance Code and other laws. Any balance in the fund at the end of a fiscal year shall revert to the general fund.

[~~E.~~] D. At the end of every month, after applicable refunds are made pursuant to Subsection B of this section, [~~and after any allocations have been made pursuant to Subsection C of this section~~] the state treasurer shall make the following transfers from the balance remaining in the insurance department suspense fund:

(1) to the "fire protection fund", that part of the balance derived from property and vehicle insurance business;

(2) to the insurance operations fund, that part of the balance derived from the fees imposed pursuant to

Subsections A and E of Section 59A-6-1 NMSA 1978 other than fees derived from property and vehicle insurance business; and

(3) to the general fund, the balance remaining in the insurance department suspense fund derived from all other kinds of insurance business."

SECTION 16. Section 59A-6-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 106, as amended) is amended to read:

"59A-6-6. PREEMPTION AND IN LIEU PROVISION.--The state government of New Mexico preempts the field of taxation of insurers, nonprofit health care plans, health maintenance organizations, prepaid dental plans, prearranged funeral plans and insurance producers as such. [~~and~~] The payment of the taxes, licenses and fees provided for in the Insurance Premium Tax Act and the Insurance Code shall be in lieu of all other taxes, licenses and fees of every kind now or hereafter imposed by this state or any political subdivision thereof on any of the foregoing specified entities, excepting the regular state, county and city taxes on property located in New Mexico and excepting the income tax on insurance producers. [~~No provision of law enacted after January 1, 1985 shall be deemed to modify this provision except by express reference to this section.~~]"

HBIC➡~~SECTION 17. Section 59A-14-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 250, as amended) is amended to read:~~

~~"59A-14-12. [PREMIUM TAX ON] SURPLUS LINES INSURANCE--AUTHORITY TO ENTER INTO COMPACTS.--~~

underscored material = new
[~~bracketed material~~] = delete
Amendments: new = ➡bold, blue, highlight⬅
delete = ➡bold, red, highlight, strikethrough⬅

~~[A. Within sixty days after expiration of a calendar quarter, the surplus lines broker shall pay to the superintendent for the use of the state a tax on gross premiums received, less returned premiums, on surplus lines business where New Mexico is the home state of the insured transacted under the surplus lines broker's license during such calendar quarter as shown by the quarterly statement filed with the superintendent pursuant to Section 59A-14-11 NMSA 1978. The tax shall be at the same rate as is applicable to premiums of authorized insurers under Section 59A-6-2 NMSA 1978.~~

~~B. For purposes of this section, "premiums" shall include any additional amount charged the insured, including policy fees, risk purchasing group fees and inspection fees; but "premiums" shall not include any additional amount charged the insured for local, state or federal tax; regulatory authority fee; or examination fee, if any.~~

~~C. The superintendent may require surplus lines brokers to file tax allocation reports annually detailing the portion of the nonadmitted insurance policy premiums attributable to properties, risks or exposures located in each state.~~

~~D. A penalty of ten percent of the amount of tax originally due, plus one percent of such tax amount for each month or fraction thereof of delinquency after the first thirty~~

days of delinquency, shall be paid by the surplus lines broker for failure to pay the tax in full within sixty days after expiration of the calendar quarter as provided in Subsection A of this section; except that the superintendent may waive or remit the penalty if the superintendent finds that the failure or delay in payment arose from excusable mistake or excusable inadvertence.

E. For a surplus lines policy issued to an insured whose home state is New Mexico and where only a portion of the risk is located in New Mexico, the entire premium tax shall be paid to the superintendent in accordance with this section.]

A. If the superintendent finds that it would increase the efficiency of the surplus lines insurance marketplace as well as the regulation of the surplus lines market, the superintendent may enter into a compact or multistate surplus lines agreement relating to eligibility for placement of surplus lines insurance and the [payment, reporting, collection and] apportionment of surplus lines premium taxes. If a surplus lines policy covers risks or exposures only partially in New Mexico and the superintendent has entered into an agreement with other states for the apportionment of premium taxes for multistate risks, the [tax] taxes payable pursuant to [this section] the Insurance Code and the Insurance Premium Tax Act shall be computed and paid upon

~~the proportion of the premium that is properly allocable to the risks or exposures located in New Mexico in accordance with the terms of any such agreement.~~

~~B. If the superintendent enters into a compact or multistate surplus lines agreement pursuant to Subsection A of this section, the superintendent shall notify the secretary of taxation and revenue and submit a copy of the compact or agreement to the secretary, including the allocation amounts.~~

~~C. The superintendent may require surplus lines brokers to file tax allocation reports annually detailing the portion of the nonadmitted insurance policy premiums attributable to properties, risks or exposures located in each state."~~←HBIC

SECTION HBIC→~~18~~ 17←HBIC. Section 59A-15-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 259.1) is amended to read:

"59A-15-4. INSURANCE INDEPENDENTLY PROCURED--DUTY TO REPORT [~~AND PAY TAX~~].--

A. Each insured who in this state procures or continues or renews insurance with a nonadmitted insurer on a risk located or to be performed in whole or in part in this state, other than insurance procured through a surplus lines licensee pursuant to Chapter 59A, Article 14 [~~of the Insurance Code~~] NMSA 1978 shall, within [~~90~~] ninety days after the date such insurance was so procured, continued or renewed, file a

written report of the same with the superintendent, upon forms prescribed by [~~him~~] the superintendent, showing the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor and such additional pertinent information as is reasonably requested by the superintendent.

[~~B. Gross premiums charged for such insurance, less any return premiums, are subject to a tax at the same rate as is applicable to premium of authorized insurers under Section 102 of the Insurance Code. At the time of filing the report required in the first paragraph of this section, the insured shall pay the tax to the superintendent.~~

~~C.~~] B. If an independently procured policy covers risks or exposures only partially located or to be performed in this state, the [~~tax payable~~] taxes, fees and penalties imposed pursuant to the Insurance Code and the Insurance Premium Tax Act shall be computed on the portion of the premium properly attributable to the risks or exposures located or to be performed in this state and reported to the secretary of taxation and revenue. In no event, however, shall a tax be payable solely because the risk in question, or any portion thereof, is located or to be performed in this state.

[~~D. Delinquent taxes hereunder shall bear interest at the rate of twelve percent per annum.~~

~~F.~~] C. This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, any provision of [~~Section 258 or any other provision of this~~] the Insurance Code.

[~~E.~~] D. This section does not apply to life insurance, health insurance or annuities."

SECTION HBIC→~~19~~ 18←HBIC. Section 59A-20-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 398, as amended) is amended to read:

"59A-20-33. STANDARD NONFORFEITURE LAW--INDIVIDUAL DEFERRED ANNUITIES.--

A. This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1986, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced or reversionary annuity, nor to any contract that shall be delivered outside this state through an agent or other representative of the insurer issuing the contract.

B. In the case of contracts issued on or after the

operative date of this section as defined in Subsection [~~L~~] P of this section, no contract of annuity, except as stated in Subsection A of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions [~~which~~] that in the opinion of the superintendent are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:

(1) that upon cessation of payment of considerations under a contract or upon the written request of the contract owner, the insurer shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in Subsections [~~D, E, F, G and I~~] H, I, J, K and M of this section;

(2) if a contract provided for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in Subsections [~~D, E, G and I~~] H, I, K and M of this section. The insurer may reserve the right to defer the payment of such cash surrender benefit for a period not to exceed six months after demand therefor with surrender of the contract after making written request and receiving written approval of the superintendent. The request shall address the

necessity and equatability to all policyholders of the deferral;

(3) a statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and

(4) a statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract or any prior withdrawals from or partial surrenders of the contract.

C. Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from prior considerations paid would be less than twenty dollars ($20.00) monthly, the insurer may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit,

calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

[~~C.~~] D. The minimum values as specified in Subsections [~~D, E, F, G and I~~] H, I, J, K and M of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section. [~~(1)~~] The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in [~~Paragraph (2) of~~] Subsection [~~C~~] E of this section of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of [~~Subparagraphs (a) through (d)~~] Paragraphs (1) through (4) of this subsection:

[~~(a)~~] (1) any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in [~~Paragraph (2) of~~] Subsection [~~C~~] E of this section;

[~~(b)~~] (2) an annual contract charge of fifty dollars ($50.00), accumulated at rates of interest as indicated in [~~Paragraphs (2) of~~] Subsection [~~C~~] E of this section;

[~~(c)~~] (3) any [~~premium~~] tax pursuant to the Insurance Premium Tax Act paid by the insurer for the contract,

accumulated at rates of interest as indicated in [~~Paragraph (2) of~~] Subsection [~~C~~] E of this section; and

[~~(d)~~] (4) the amount of any indebtedness to the insurer on the contract, including interest due and accrued.

E. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year. [~~(2)~~] The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

[~~(a)~~] (1) the five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest one-twentieth percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date pursuant to [~~Subparagraph (d) of~~] Paragraph [~~2~~] (2) of [~~Section C of~~] this [~~section; (b)~~] subsection reduced by one hundred twenty-five basis points, [~~(c)~~] where the resulting interest rate is not less than one percent; and

[~~(d)~~] (2) the interest rate shall apply for an initial period and may be redetermined for additional periods.

The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

[~~(3)~~] F. Notwithstanding the provisions of [~~Paragraphs (1) and (2) of Subsection C~~] Subsections D and E of this section, during the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in [~~Subparagraph (b) of~~] Paragraph [~~(2)~~] (1) of Subsection [~~C~~] E of this section by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The superintendent may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the superintendent, the superintendent may disallow or limit the additional reduction.

[~~(4)~~] G. The superintendent may adopt rules to implement the provisions of [~~Paragraph (3) of~~] Subsection [~~C~~] F of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit

and for other contracts that the superintendent determines adjustments are justified.

[~~D.~~] H. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

[~~E.~~] I. For contracts that provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit that would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less

than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

[~~F.~~] J. For contracts that do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts that do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the bases of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

[~~G.~~] K. For the purpose of determining the benefits calculated under Subsections [~~E and F~~] I and J of this section,

in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

[~~H.~~] L. Any contract that does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

[~~I.~~] M. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

[~~J.~~] N. For any contract that provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture

benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Subsections [~~D, E, F, G and I~~] H, I, J, K and M of this section, additional benefits payable [~~(a)~~] in the event of total and permanent disability, [~~(b)~~] as reversionary annuity or deferred reversionary annuity benefits, or [~~(c)~~] as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

[~~K.~~] O. The superintendent may adopt rules to implement the provisions of this section.

[~~L.~~] P. After July 1, 2003, an insurer may elect to apply its provisions to annuity contracts on a contract-form by contract-form basis before July 1, 2005. In all other instances this section shall become operative with respect to annuity contracts issued by the insurer after June 30, 2005."

SECTION HBIC→~~20~~ 19←HBIC. Section 59A-22-50 NMSA 1978

(being Laws 2010, Chapter 94, Section 1, as amended) is amended to read:

"59A-22-50. HEALTH INSURERS--DIRECT SERVICES.--

A. A health insurer shall make reimbursement for direct services at a level not less than eighty-five percent of premiums across all health product lines, except individually underwritten health insurance policies, contracts or plans, that are governed by the provisions of Chapter 59A, Article 22 NMSA 1978, the Health Maintenance Organization Law and the Nonprofit Health Care Plan Law. Reimbursement shall be made for direct services provided over the preceding three calendar years, but not earlier than calendar year 2010, as determined by reports filed with the office of superintendent of insurance. Nothing in this subsection shall be construed to preclude a purchaser from negotiating an agreement with a health insurer that requires a higher amount of premiums paid to be used for reimbursement for direct services for one or more products or for one or more years.

B. For individually underwritten health care policies, plans or contracts, the superintendent shall establish, after notice and informal hearing, the level of reimbursement for direct services, as determined by the reports filed with the office of superintendent of insurance, as a percent of premiums. Additional informal hearings may

be held at the superintendent's discretion. In establishing the level of reimbursement for direct services, the superintendent shall consider the costs associated with the individual marketing and medical underwriting of these policies, plans or contracts at a level not less than seventy-five percent of premiums. A health insurer writing these policies shall make reimbursement for direct services at a level not less than that level established by the superintendent pursuant to this subsection over the three calendar years preceding the date upon which that rate is established, but not earlier than calendar year 2010. Nothing in this subsection shall be construed to preclude a purchaser of one of these policies, plans or contracts from negotiating an agreement with a health insurer that requires a higher amount of premiums paid to be used for reimbursement for direct services.

C. An insurer that fails to comply with the reimbursement requirements pursuant to this section shall issue a dividend or credit against future premiums to all policyholders in an amount sufficient to assure that the benefits paid in the preceding three calendar years plus the amount of the dividends or credits are equal to the required direct services reimbursement level pursuant to Subsection A of this section for group health coverage and blanket health coverage or the required direct services reimbursement level

pursuant to Subsection B of this section for individually underwritten health policies, contracts or plans for the preceding three calendar years. If the insurer fails to issue the dividend or credit in accordance with the requirements of this section, the superintendent shall enforce these requirements and may pursue any other penalties as provided by law, including general penalties pursuant to Section 59A-1-18 NMSA 1978.

D. After notice and hearing, the superintendent may adopt and promulgate reasonable rules necessary and proper to carry out the provisions of this section.

E. For the purposes of this section:

(1) "direct services" means services rendered to an individual by a health insurer or a health care practitioner, facility or other provider, including case management, disease management, health education and promotion, preventive services, quality incentive payments to providers and any portion of an assessment that covers services rather than administration and for which an insurer does not receive a tax credit pursuant to the Medical Insurance Pool Act [~~or the Health Insurance Alliance Act~~]; provided, however, that "direct services" does not include care coordination, utilization review or management or any other activity designed to manage utilization or services;

(2) "health insurer" means a person duly

authorized to transact the business of health insurance in the state pursuant to the Insurance Code but does not include a person that only issues a limited-benefit policy intended to supplement major medical coverage, including medicare supplement, vision, dental, disease-specific, accident-only or hospital indemnity-only insurance policies, or that only issues policies for long-term care or disability income; and

(3) "premium" means all income received from individuals and private and public payers or sources for the procurement of health coverage, including capitated payments, self-funded administrative fees, self-funded claim reimbursements, recoveries from third parties or other insurers and interests less any [~~premium~~] tax paid pursuant to [~~Section 59A-6-2 NMSA 1978~~] the Insurance Premium Tax Act and fees associated with participating in a health insurance exchange that serves as a clearinghouse for insurance."

SECTION HBIC→~~21~~ 20←HBIC. Section 59A-23C-10 NMSA 1978 (being Laws 2010, Chapter 94, Section 2, as amended) is amended to read:

"59A-23C-10. HEALTH INSURERS--DIRECT SERVICES.--

A. A health insurer shall make reimbursement for direct services at a level not less than eighty-five percent of premiums across all health product lines over the preceding three calendar years, but not earlier than calendar year 2010, as determined by reports filed with the office of

superintendent of insurance. Nothing in this subsection shall be construed to preclude a purchaser from negotiating an agreement with a health insurer that requires a higher amount of premiums paid to be used for reimbursement for direct services for one or more products or for one or more years.

B. An insurer that fails to comply with the eighty-five percent reimbursement requirement in Subsection A of this section shall issue a dividend or credit against future premiums to all policyholders in an amount sufficient to assure that the benefits paid in the preceding three calendar years plus the amount of the dividends or credits equal eighty-five percent of the premiums collected in the preceding three calendar years. If the insurer fails to issue the dividend or credit in accordance with the requirements of this section, the superintendent shall enforce the requirements and may pursue any other penalties as provided by law, including general penalties pursuant to Section 59A-1-18 NMSA 1978.

C. After notice and hearing, the superintendent may adopt and promulgate reasonable rules necessary and proper to carry out the provisions of this section.

D. For the purposes of this section:

(1) "direct services" means services rendered to an individual by a health insurer or a health

care practitioner, facility or other provider, including case management, disease management, health education and promotion, preventive services, quality incentive payments to providers and any portion of an assessment that covers services rather than administration and for which an insurer does not receive a tax credit pursuant to the Medical Insurance Pool Act [~~or the Health Insurance Alliance Act~~]; provided, however, that "direct services" does not include care coordination, utilization review or management or any other activity designed to manage utilization or services;

(2) "health insurer" means a person duly authorized to transact the business of health insurance in the state pursuant to the Insurance Code but does not include a person that only issues a limited-benefit policy intended to supplement major medical coverage, including medicare supplement, vision, dental, disease-specific, accident-only or hospital indemnity-only insurance policies, or that only issues policies for long-term care or disability income; and

(3) "premium" means all income received from individuals and private and public payers or sources for the procurement of health coverage, including capitated payments, self-funded administrative fees, self-funded claim reimbursements, recoveries from third parties or other insurers and interests less any [~~premium~~] tax paid pursuant to [~~Section 59A-6-2 NMSA 1978~~] the Insurance Premium Tax Act

and fees associated with participating in a health insurance exchange that serves as a clearinghouse for insurance."

SECTION HBIC→~~22~~ 21←HBIC. Section 59A-39-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 662) is amended to read:

"59A-39-5. ATTORNEY.--

A. "Attorney", as used in [~~this article~~] Chapter 59A, Article 39 NMSA 1978, refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm or corporation.

B. The attorney of a foreign reciprocal insurer, which insurer is duly authorized to transact insurance in this state, shall not, by virtue of the discharge of its duties as such attorney with respect to the insurer's transactions in this state, be thereby deemed to be doing business in this state within the meaning of any laws of this state applying to foreign persons, firms or corporations.

C. The subscribers and the attorney-in-fact comprise a reciprocal insurer and single entity for the purposes of the Insurance Premium Tax Act and Sections [~~102 to 106 (premium tax and related provisions), inclusive, of the Insurance Code~~] 59A-6-3 through 59A-6-6 NMSA 1978 as to all operations under the insurer's certificate of authority."

SECTION HBIC→~~23~~ 22←HBIC. Section 59A-40-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 688) is amended to

read:

"59A-40-5. [~~FEES, TAXES AND~~] REPORTS.--[~~The insurer shall pay to New Mexico annually a premium tax based solely upon its gross premium receipts from insurance policies issued by it in New Mexico which cover residents of New Mexico or property or risks principally domiciled or located in this state, as shown by reports of the insurer filed with the superintendent each year, upon the same percentage rate and in the same manner as apply to authorized insurers transacting in New Mexico the same kinds of insurance.~~] The insurer shall [~~also~~] pay [~~such other~~] any applicable fees and charges [~~and taxes~~] as are required under the Insurance Code to be paid by [~~such~~] other authorized insurers transacting in New Mexico the same kind of insurance. The insurer shall make the same reports to the superintendent and the national association of insurance commissioners as are required of such other authorized insurers, but in such adapted forms as may for the purpose be prescribed by the superintendent."

SECTION HBIC→~~24~~ 23←HBIC. Section 59A-46-51 NMSA 1978 (being Laws 2010, Chapter 94, Section 3, as amended) is amended to read:

"59A-46-51. HEALTH MAINTENANCE ORGANIZATIONS--DIRECT SERVICES.--

A. A health maintenance organization shall make reimbursement for direct services at a level not less than

eighty-five percent of premiums across all health product lines, except individually underwritten health insurance policies, contracts or plans, that are governed by the provisions of Chapter 59A, Article 22 NMSA 1978, the Health Maintenance Organization Law and the Nonprofit Health Care Plan Law. Reimbursement shall be made for direct services provided over the preceding three calendar years, but not earlier than calendar year 2010, as determined by reports filed with the office of superintendent of insurance. Nothing in this subsection shall be construed to preclude a purchaser from negotiating an agreement with a health maintenance organization that requires a higher amount of premiums paid to be used for reimbursement for direct services for one or more products or for one or more years.

B. For individually underwritten health care policies, plans or contracts, the superintendent shall establish, after notice and informal hearing, the level of reimbursement for direct services, as determined by the reports filed with the office of superintendent of insurance, as a percent of premiums. Additional informal hearings may be held at the superintendent's discretion. In establishing the level of reimbursement for direct services, the superintendent shall consider the costs associated with the individual marketing and medical underwriting of these policies, plans or contracts at a level not less than

seventy-five percent of premiums. A health insurer or health maintenance organization writing these policies, plans or contracts shall make reimbursement for direct services at a level not less than that level established by the superintendent pursuant to this subsection over the three calendar years preceding the date upon which that rate is established, but not earlier than calendar year 2010. Nothing in this subsection shall be construed to preclude a purchaser of one of these policies, plans or contracts from negotiating an agreement with a health insurer or health maintenance organization that requires a higher amount of premiums paid to be used for reimbursement for direct services.

C. A health maintenance organization that fails to comply with the reimbursement requirements pursuant to this section shall issue a dividend or credit against future premiums to all policy or contract holders in an amount sufficient to assure that the benefits paid in the preceding three calendar years plus the amount of the dividends or credits are equal to the required direct services reimbursement level pursuant to Subsection A of this section for group health coverage and blanket health coverage or the required direct services reimbursement level pursuant to Subsection B of this section for individually underwritten health policies, contracts or plans for the preceding three

calendar years. If the insurer fails to issue the dividend or credit in accordance with the requirements of this section, the superintendent shall enforce these requirements and may pursue any other penalties as provided by law, including general penalties pursuant to Section 59A-1-18 NMSA 1978.

D. After notice and hearing, the superintendent may adopt and promulgate reasonable rules necessary and proper to carry out the provisions of this section.

E. For the purposes of this section:

(1) "direct services" means services rendered to an individual by a health maintenance organization or a health care practitioner, facility or other provider, including case management, disease management, health education and promotion, preventive services, quality incentive payments to providers and any portion of an assessment that covers services rather than administration and for which an insurer does not receive a tax credit pursuant to the Medical Insurance Pool Act [~~or the Health Insurance Alliance Act~~]; provided, however, that "direct services" does not include care coordination, utilization review or management or any other activity designed to manage utilization or services;

(2) "health maintenance organization" means any person who undertakes to provide or arrange for the

delivery of basic health care services to enrollees on a prepaid basis, except for enrollee responsibility for copayments or deductibles, but does not include a person that only issues a limited-benefit policy or contract intended to supplement major medical coverage, including medicare supplement, vision, dental, disease-specific, accident-only or hospital indemnity-only insurance policies, or that only issues policies for long-term care or disability income; and

(3) "premium" means all income received from individuals and private and public payers or sources for the procurement of health coverage, including capitated payments, self-funded administrative fees, self-funded claim reimbursements, recoveries from third parties or other insurers and interests less any [~~premium~~] tax paid pursuant to [~~Section 59A-6-2 NMSA 1978~~] the Insurance Premium Tax Act and fees associated with participating in a health insurance exchange that serves as a clearinghouse for insurance."

SECTION HBIC→~~25~~ 24←HBIC. Section 59A-47-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.1, as amended) is amended to read:

"59A-47-3. DEFINITIONS.--As used in Chapter 59A, Article 47 NMSA 1978:

A. "health care" means the treatment of persons for the prevention, cure or correction of any illness or physical or mental condition, including optometric services;

B. "item of health care" includes any services or materials used in health care;

C. "health care expense payment" means a payment for health care to a purveyor on behalf of a subscriber, or such a payment to the subscriber;

D. "purveyor" means a person who furnishes any item of health care and charges for that item;

E. "service benefit" means a payment that the purveyor has agreed to accept as payment in full for health care furnished the subscriber;

F. "indemnity benefit" means a payment that the purveyor has not agreed to accept as payment in full for health care furnished the subscriber;

G. "subscriber" means any individual who, because of a contract with a health care plan entered into by or for the individual, is entitled to have health care expense payments made on the individual's behalf or to the individual by the health care plan;

H. "underwriting manual" means the health care plan's written criteria, approved by the superintendent, that defines the terms and conditions under which subscribers may be selected. The underwriting manual may be amended from time to time, but the amendment will not be effective until approved by the superintendent. The superintendent shall notify the health care plan filing the underwriting manual or

the amendment thereto of the superintendent's approval or disapproval thereof in writing within thirty days after filing or within sixty days after filing if the superintendent shall so extend the time. If the superintendent fails to act within such period, the filing shall be deemed to be approved;

I. "acquisition expenses" includes all expenses incurred in connection with the solicitation and enrollment of subscribers;

J. "administration expenses" means all expenses of the health care plan other than the cost of health care expense payments and acquisition expenses;

K. "health care plan" means [~~a nonprofit corporation~~] an organization that demonstrates to the superintendent that it has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as that section may be amended or renumbered, and is authorized by the superintendent to enter into contracts with subscribers and to make health care expense payments;

L. "agent" means a person appointed by a health care plan authorized to transact business in this state to act as its representative in any given locality for soliciting health care policies and other related duties as

may be authorized;

M. "solicitor" means a person employed by the licensed agent of a health care plan for the purpose of soliciting health care policies and other related duties in connection with the handling of the business of the agent as may be authorized and paid for the person's services either on a commission basis or salary basis or part by commission and part by salary;

N. "chiropractor" means any person holding a license provided for in the Chiropractic Physician Practice Act;

O. "doctor of oriental medicine" means any person licensed as a doctor of oriental medicine under the Acupuncture and Oriental Medicine Practice Act;

P. "pharmacist" means a person licensed as a pharmacist pursuant to the Pharmacy Act;

Q. "pharmacist clinician" means a pharmacist who exercises prescriptive authority pursuant to the Pharmacist Prescriptive Authority Act;

R. "credentialing" means the process of obtaining and verifying information about a provider and evaluating that provider when that provider seeks to become a participating provider; and

S. "provider" means a physician or other individual licensed or otherwise authorized to furnish health

care services in the state."

SECTION HBIC→~~26~~ 25←HBIC. Section 59A-47-46 NMSA 1978 (being Laws 2010, Chapter 94, Section 4, as amended) is amended to read:

"59A-47-46. HEALTH INSURERS--DIRECT SERVICES.--

A. A health care plan shall make reimbursement for direct services at a level not less than eighty-five percent of premiums across all health product lines, except individually underwritten health care policies, contracts or plans, that are governed by the provisions of Chapter 59A, Article 22 NMSA 1978, the Health Maintenance Organization Law and the Nonprofit Health Care Plan Law. Reimbursement shall be made for direct services provided over the preceding three calendar years, but not earlier than calendar year 2010, as determined by reports filed with the office of superintendent of insurance. Nothing in this subsection shall be construed to preclude a purchaser from negotiating an agreement with a health insurer that requires a higher amount of premiums paid to be used for reimbursement for direct services for one or more products or for one or more years.

B. For individually underwritten health care policies, plans or contracts, the superintendent shall establish, after notice and informal hearing, the level of reimbursement for direct services as determined as a percent of premiums. Additional hearings may be held at the

superintendent's discretion. In establishing the level of reimbursement for direct services, the superintendent shall consider the costs associated with the individual marketing and medical underwriting of these policies, plans or contracts at a level not less than seventy-five percent of premiums. A health insurer writing these policies, plans or contracts shall make reimbursement for direct services at a level not less than that level established by the superintendent pursuant to this subsection over the three calendar years preceding the date upon which that rate is established, but not earlier than calendar year 2010. Nothing in this subsection shall be construed to preclude a purchaser of one of these policies, plans or contracts from negotiating an agreement with a health insurer that requires a higher amount of premiums paid to be used for reimbursement for direct services.

C. A health care plan that fails to comply with the reimbursement requirements pursuant to this section shall issue a dividend or credit against future premiums to all policyholders in an amount sufficient to assure that the benefits paid in the preceding three calendar years plus the amount of the dividends or credits are equal to the required direct services reimbursement level pursuant to Subsection A of this section for group health coverage and blanket health coverage or the required direct services reimbursement level

pursuant to Subsection B of this section for individually underwritten health policies, contracts or plans for the preceding three calendar years. If the insurer fails to issue the dividend or credit in accordance with the requirements of this section, the superintendent shall enforce these requirements and may pursue any other penalties as provided by law, including general penalties pursuant to Section 59A-1-18 NMSA 1978.

D. After notice and hearing, the superintendent may adopt and promulgate reasonable rules necessary and proper to carry out the provisions of this section.

E. For the purposes of this section:

(1) "direct services" means services rendered to an individual by a health care plan, health insurer or a health care practitioner, facility or other provider, including case management, disease management, health education and promotion, preventive services, quality incentive payments to providers and any portion of an assessment that covers services rather than administration and for which a health care plan or a health insurer does not receive a tax credit pursuant to the Medical Insurance Pool Act [~~or the Health Insurance Alliance Act~~]; provided, however, that "direct services" does not include care coordination, utilization review or management or any other activity designed to manage utilization or services;

(2) "health care plan" means a nonprofit corporation authorized by the superintendent to enter into contracts with subscribers and to make health care expense payments but does not include a person that only issues a limited-benefit policy intended to supplement major medical coverage, including medicare supplement, vision, dental, disease-specific, accident-only or hospital indemnity-only insurance policies, or that only issues policies for long-term care or disability income; and

(3) "premium" means all income received from individuals and private and public payers or sources for the procurement of health coverage, including capitated payments, self-funded administrative fees, self-funded claim reimbursements, recoveries from third parties or other insurers and interests less any [~~premium~~] tax paid pursuant to [~~Section 59A-6-2 NMSA 1978~~] the Insurance Premium Tax Act and fees associated with participating in a health insurance exchange that serves as a clearinghouse for insurance."

SECTION HBIC→~~27~~ 26←HBIC. Section 59A-49-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 904) is amended to read:

"59A-49-6. TRUST FUND--ACCOUNTING--DEPOSIT, RESERVES AND PREMIUM TAX.--

A. In all cases where funeral plans are sold, all money paid, directly or indirectly, under such agreement, or

under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms; provided, however, that any payment made pursuant to this section shall be released upon death of the person for whose benefit such payment was made, and no payments so made shall be subject to forfeiture. Accruals of interest upon this money shall be subject to the same trust.

B. All funds received as herein provided shall be placed in trust with a trustee pursuant to an agreement executed by the depositor and trustee [~~which~~] that shall provide that the trustee shall hold the same in trust for the purposes for which deposited; that the trustee shall pay the same to the depositor upon the filing of a certified copy of the death certificate or other satisfactory evidence of the death of the beneficiary; and that the beneficiary or [~~his~~] the beneficiary's duly appointed guardian may, in writing, demand the return of the money, together with accrued interest, if any, less cost incurred in the operation of such trust, and the depositor shall be entitled to receive such money from the trustee for payment to the beneficiary upon delivery of such written demand to the trustee. The payment of such funds and accumulated interest, pursuant to the terms of [~~this article~~] the Prearranged Funeral Plan Regulatory Law and the agreement herein referred to, shall relieve the

trustee of any further liabilities with regard to such funds or interest thereon.

C. Each seller of funeral plans shall submit such accounting or accountings of all [~~monies~~] money collected or received on account of or in connection with the sale of funeral plans and of all money deposited or withdrawn from a trustee, as the superintendent may reasonably direct, by regulation or order.

D. [~~The premium tax as levied in Section 102 of the Insurance Code shall not be applicable to money collected and placed in trust pursuant to this section, nor shall~~] Funds collected and placed in [~~such a~~] trust pursuant to this section shall not be used as the basis for the calculation of the capital and surplus, general deposits and fees otherwise required under Section [~~83 of the Insurance Code~~] 59A-5-16 NMSA 1978."

SECTION HBIC→~~28~~ 27←HBIC. Section 59A-54-10 NMSA 1978 (being Laws 1987, Chapter 154, Section 10, as amended) is amended to read:

"59A-54-10. ASSESSMENTS.--

A. Following the close of each fiscal year, the pool administrator shall determine the net premium, being premiums less administrative expense allowances, the pool expenses and claim expense losses for the year, taking into account investment income and other appropriate gains and

losses. The assessment for each insurer shall be determined by multiplying the total cost of pool operation by a fraction, the numerator of which equals that insurer's premium and subscriber contract charges or their equivalent for health insurance written in the state during the preceding calendar year and the denominator of which equals the total of all premiums and subscriber contract charges written in the state; provided that premium income shall include receipts of medicaid managed care premiums but shall not include any payments by the secretary of [~~health and~~] human services pursuant to a contract issued under Section 1876 of the Social Security Act, as amended. The board may adopt other or additional methods of adjusting the formula to achieve equity of assessments among pool members, including assessment of health insurers and reinsurers based upon the number of persons they cover through primary, excess and stop-loss insurance in the state.

B. If assessments exceed actual losses and administrative expenses of the pool, the excess shall be held at interest and used by the board to offset future losses or to reduce pool premiums. As used in this subsection, "future losses" includes reserves for incurred but not reported claims.

C. The proportion of participation of each member in the pool shall be determined annually by the board based

on annual statements and other reports deemed necessary by the board and filed with it by the member. Any deficit incurred by the pool shall be recouped by assessments apportioned among the members of the pool pursuant to the assessment formula provided by Subsection A of this section. [~~provided that the assessment for any pool member shall be allowed as a fifty-percent credit on the premium tax return for that member and a seventy-five-percent credit on the premium tax return for that member for the assessments attributable to pool policy holders that receive premiums, in whole or in part, through the federal Ryan White CARE Act, the Ted R. Montoya hemophilia program at the university of New Mexico health sciences center, the children's medical services bureau of the public health division of the department of health or other program receiving state funding or assistance.~~]

D. The board may abate or defer, in whole or in part, the assessment of a member of the pool if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligation. In the event an assessment against a member of the pool is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in Subsection A of

this section. The member receiving the abatement or deferment shall remain liable to the pool for the deficiency for four years."

SECTION HBIC→~~29~~ 28←HBIC. Section 59A-55-6 NMSA 1978 (being Laws 1988, Chapter 125, Section 6, as amended) is amended to read:

"59A-55-6. [~~TAXATION OF~~] RISK RETENTION GROUPS--REPORTS.--

A. Each risk retention group shall [~~be liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within New Mexico and shall~~] report to the superintendent the net premium written for risks resident or located within New Mexico. [~~The risk retention group shall be subject to taxation and any applicable fines and penalties related thereto, on the same basis as an admitted insurer.~~]

B. To the extent a licensed insurance [~~producers are~~] producer is utilized pursuant to Section 59A-55-24 NMSA 1978, [~~they~~] the licensed insurance producer shall report to the superintendent the premiums for direct business for risks resident or located within this state [~~which~~] that the insurance producers have placed with or on behalf of a risk retention group not licensed in this state.

C. To the extent that an insurance [~~producers are~~] producer is utilized pursuant to Section 59A-55-24 NMSA

1978, the insurance producer shall keep a complete and separate record of all policies procured from each such risk retention group, which record shall be open to examination by the superintendent and shall contain the information required by the superintendent by rule."

SECTION HBIC→~~30~~ 29←HBIC. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY AND CONTRACTUAL OBLIGATIONS.--

A. On the effective date of this act, all personnel directly involved with the audit and collection of the taxes imposed pursuant to the New Mexico Insurance Code prior to the effective date of this act, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the financial audit bureau of the office of superintendent of insurance shall be transferred to the taxation and revenue department.

B. On the effective date of this act, no contractual obligations of the office of superintendent of insurance shall be binding on the taxation and revenue department.

SECTION HBIC→~~31~~ 30←HBIC. REPEAL.--Sections 59A-6-2, HBIC→59A-14-12,←HBIC 59A-14-18, 59A-23B-9 and 59A-55-21 NMSA 1978 (being Laws 1984, Chapter 127, Sections 102 HBIC→, 250 ←HBIC and 256, Laws 1991, Chapter 111, Section 9 and Laws 1988, Chapter 125, Section 21, as amended) are repealed.

.208799.6SAms

underscored material = new
[~~bracketed material~~] = delete
Amendments: new = →bold, blue, highlight←
delete = →~~bold, red, highlight, strikethrough~~←

SECTION HBIC→~~32~~ 31←HBIC. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2019.

- 62 -