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AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE NEW MEXICO HEALTH INSURANCE EXCHANGE ACT TO ESTABLISH ADDITIONAL REPORTING AND ACCOUNTABILITY REQUIREMENTS FOR THE BOARD OF DIRECTORS AND STAFF OF THE NEW MEXICO HEALTH INSURANCE EXCHANGE.

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

SECTION 1. Section 59A-23F-3 NMSA 1978 (being Laws 2013, Chapter 54, Section 3) is amended to read:

"59A-23F-3. NEW MEXICO HEALTH INSURANCE EXCHANGE CREATED--BOARD CREATED.--

A. The "New Mexico health insurance exchange" is created as a nonprofit public corporation to provide qualified individuals and qualified employers with increased access to health insurance in the state and shall be governed by a board of directors constituted pursuant to the provisions of the New Mexico Health Insurance Exchange Act. The exchange is a governmental entity for purposes of the Governmental Conduct Act, the Gift Act, the Sunshine Portal Transparency Act, the Whistleblower Protection Act, the Procurement Code and the Tort Claims Act, and neither the exchange nor the board shall be considered a governmental entity for any other purpose.

B. The exchange shall not duplicate, impair,

1 enhance, supplant, infringe upon or replace, in whole or in  
2 any part, the powers, duties or authority of the  
3 superintendent, including the superintendent's authority to  
4 review and approve premium rates pursuant to the provisions  
5 of the New Mexico Insurance Code.

6 C. The exchange shall not purchase qualified  
7 health plans from insurance health issuers to offer for  
8 purchase through the exchange.

9 D. All health insurance issuers and health  
10 maintenance organizations authorized to conduct business in  
11 this state and meeting the requirements of the rules  
12 promulgated by the superintendent pursuant to  
13 Section 59A-23F-7 NMSA 1978, as well as meeting the rules  
14 under the federal act, shall be eligible to participate in  
15 the exchange.

16 E. The "board of directors of the New Mexico  
17 health insurance exchange" is created. The board consists of  
18 thirteen voting directors as follows:

19 (1) one voting director is the  
20 superintendent or the superintendent's designee;

21 (2) six voting directors appointed by the  
22 governor, including the secretary of human services or the  
23 secretary's designee, a health insurance issuer and a  
24 consumer advocate; and

25 (3) six voting directors, three appointed by SB 294  
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1 the president pro tempore of the senate, including one health  
2 care provider, and three appointed by the speaker of the  
3 house of representatives, including one health insurance  
4 issuer. One of the directors appointed by the president pro  
5 tempore of the senate and one of the directors appointed by  
6 the speaker of the house of representatives shall be from a  
7 list of at least two candidates provided, respectively, by  
8 the minority leader of the senate and by the minority leader  
9 of the house of representatives.

10 F. Except as provided in Subsection G of this  
11 section, managerial and full-time staff of the exchange shall  
12 be subject to applicable provisions of the Governmental  
13 Conduct Act and shall not have any direct or indirect  
14 affiliation with any health care provider, health insurance  
15 issuer or health care service provider.

16 G. Each director shall comply with the  
17 conflict-of-interest provisions of Subsection F of this  
18 section, except as follows:

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

24 (2) the secretary of human services, or the  
25 secretary's designee, shall not be considered to have a

1 conflict of interest with respect to the secretary's  
2 performance of the secretary's duties as secretary of human  
3 services;

4 (3) the director who is a health care  
5 provider shall not be considered to have a conflict of  
6 interest arising from that director's receipt of payment for  
7 services as a health care provider; and

8 (4) directors who are representatives of  
9 health insurance issuers shall not be considered to have a  
10 conflict of interest with respect to those directors'  
11 association with their respective health insurance issuers.

12 H. Each director and employee of the exchange  
13 shall have a fiduciary duty to the exchange, to the state and  
14 to those persons who purchase or enroll in qualified health  
15 plan coverage or medical assistance coverage through the  
16 exchange.

17 I. The board shall be composed, as a whole, to  
18 assure representation of the state's Native American  
19 population, ethnic diversity, cultural diversity and  
20 geographic diversity.

21 J. Directors shall have demonstrated knowledge or  
22 experience in at least one of the following areas:

23 (1) purchasing coverage in the individual  
24 market;

25 (2) purchasing coverage in the small

1 employer market;

2 (3) health care finance;

3 (4) health care economics or health care  
4 actuarial science;

5 (5) health care policy;

6 (6) the enrollment of underserved residents  
7 in health care coverage;

8 (7) administration of a private or public  
9 health care delivery system;

10 (8) information technology;

11 (9) starting a small business with fifty or  
12 fewer employees; or

13 (10) provision of health care services.

14 K. The governor shall appoint no more than four  
15 directors from the same political party.

16 L. Except for the secretary of human services, the  
17 non-health insurance issuer directors appointed by the  
18 governor shall be appointed for initial terms of three years  
19 or less, staggered so that the term of at least one director  
20 expires on June 30 of each year. The non-health insurance  
21 insurer directors appointed by the legislature shall be  
22 appointed for initial terms of three years or less, staggered  
23 so that the term of at least one director expires on June 30  
24 of each year. The health insurance issuers appointed to the  
25 board shall, upon appointment, select one of them by lot to

1 have an initial term ending on June 30 following one year of  
2 service and one to have an initial term ending on June 30  
3 following two years of service. Following the initial terms,  
4 health insurance issuer directors shall be appointed for  
5 terms of two years. A director whose term has expired shall  
6 continue to serve until a successor is appointed by the  
7 respective appointing authority. Health insurance issuer  
8 directors shall not serve two consecutive terms.

9 M. The exchange, members of the board and  
10 employees of the exchange shall operate consistent with  
11 provisions of the Governmental Conduct Act, the Inspection of  
12 Public Records Act, the Financial Disclosure Act, the Gift  
13 Act, the Whistleblower Protection Act, the Open Meetings Act  
14 and the Procurement Code and shall not be subject to the  
15 Personnel Act.

16 N. The board and the exchange shall implement  
17 performance-based budgeting and submit annual budgets for the  
18 exchange to the secretary of finance and administration and  
19 the legislative finance committee.

20 O. The exchange shall cover its directors and  
21 employees under a surety bond, in an amount that the director  
22 of the risk management division of the general services  
23 department shall prescribe.

24 P. A majority of directors constitutes a quorum.  
25 The board may allow members to attend meetings by telephone

1 or other electronic media. A decision by the board requires  
2 a quorum and a majority of directors in attendance voting in  
3 favor of the decision.

4 Q. Within thirty days of the effective date of the  
5 New Mexico Health Insurance Exchange Act, the board shall be  
6 fully appointed and the superintendent shall convene an  
7 organizational meeting of the board, during which the board  
8 shall elect a chair and vice chair from among the directors.  
9 Thereafter, every three years, the board shall elect in open  
10 meeting a chair and vice chair from among the directors. The  
11 chair and vice chair shall serve no more than two consecutive  
12 three-year terms as chair and vice chair.

13 R. A vacancy on the board shall be filled by  
14 appointment by the original appointing authority for the  
15 remainder of the director's unexpired term.

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

25 T. Appointed directors may receive per diem and

1 mileage in accordance with the Per Diem and Mileage Act,  
2 subject to the travel policy set by the board. Appointed  
3 directors shall receive no other compensation, perquisite or  
4 allowance.

5 U. The board shall:

6 (1) meet at the call of the chair and no  
7 less often than once per calendar quarter. There shall be at  
8 least seven days' notice given to directors prior to any  
9 meeting. There shall be sufficient notice provided to the  
10 public prior to meetings pursuant to the Open Meetings Act;

11 (2) create, make appointments to and duly  
12 consider recommendations of an advisory committee or  
13 committees made up of stakeholders, including health  
14 insurance issuers, health care consumers, health care  
15 providers, health care practitioners, brokers, qualified  
16 employer representatives and advocates for low-income or  
17 underserved residents;

18 (3) create an advisory committee made up of  
19 members insured through the New Mexico medical insurance pool  
20 to make recommendations to the board regarding the transition  
21 of each organization's insured members into the exchange.  
22 The advisory committee shall only exist until a transition  
23 plan has been adopted by the board;

24 (4) create an advisory committee made up of  
25 Native Americans, some of whom live on a reservation and some



1 of whom do not live on a reservation, to guide the  
2 implementation of the Native American-specific provisions of  
3 the federal Patient Protection and Affordable Care Act and  
4 the federal Indian Health Care Improvement Act;

5 (5) designate a Native American liaison, who  
6 shall assist the board in developing and ensuring  
7 implementation of communication and collaboration between the  
8 exchange and Native Americans in the state. The Native  
9 American liaison shall serve as a contact person between the  
10 exchange and New Mexico Indian nations, tribes and pueblos  
11 and shall ensure that training is provided to the staff of  
12 the exchange, which may include training in:

13 (a) cultural competency;

14 (b) state and federal law relating to  
15 Indian health; and

16 (c) other matters relating to the  
17 functions of the exchange with respect to Native Americans in  
18 the state; and

19 (6) establish at least one walk-in customer  
20 service center where persons may, if eligible, enroll in  
21 qualified health plans or public coverage programs."

22 SECTION 2. Section 59A-23F-5 NMSA 1978 (being Laws  
23 2013, Chapter 54, Section 5) is amended to read:

24 "59A-23F-5. PLAN OF OPERATION.--

25 A. Within sixty days of the effective date of the

1 New Mexico Health Insurance Exchange Act, the board shall  
2 create a preliminary plan of operation containing provisions  
3 to ensure the fair, reasonable and equitable administration  
4 of the exchange. Within six months of the effective date of  
5 the New Mexico Health Insurance Exchange Act, the board shall  
6 create and implement a final plan of operation containing  
7 provisions to ensure that the exchange is administered using  
8 best practices in business administration.

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 and federal law;

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

17 (3) establish regular times and meeting  
18 places for meetings of the board.

19 D. The final plan of operation shall:

20 (1) establish a statewide consumer  
21 assistance program, including a navigator program;

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

24 (3) establish procedures for alternative  
25 dispute resolution between the exchange and contractors or

1 health insurance issuers;

2 (4) develop and implement policies that:

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

8 (b) promote cultural competency in  
9 providing effective services to Native Americans;

10 (5) establish conflict-of-interest policies  
11 and procedures; and

12 (6) contain additional provisions necessary  
13 and proper for the execution of the powers and duties of the  
14 board."

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