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FISCAL IMPACT REPORT

SPONSOR Sapient **ORIGINAL DATE** 2/26/19 **LAST UPDATED** 3/05/19 **HB** _____
SHORT TITLE Insurance Code Changes **SB** 364/aSCORC/aSJC
ANALYST Hawker/Woods

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		No fiscal impact				

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis SJC Amendment

The Senate Judiciary Committee Amendment to Senate Bill 364 as amended by Senate Corporations and Transportation Committee strikes line 18 on page 1 through line 2 on page 2. This removes section 1 of the bill and renumbers the sections thereafter.

The amendment removes language amending Section 59A-2-8 NMSA 1978 which would have provided the office of the superintendent to ability conduct hearings in accordance with rules promulgated by the superintendent.

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee Amendment to Senate Bill 364 strikes line 20 on page 47 through line 16 on page 55. This removes section 20 of the bill and renumbers the sections thereafter.

The amendment removes language amending Section 59A-42-3 NMSA 1978 which would have deleted the terms health care plan and health maintenance organization as used in the Life and Health Insurance Guaranty Association Act.

Senate Bill 364/aSCORC/aSJC - 2

Synopsis of Original Bill

Senate Bill 364 provides for a variety of technical revisions to the Insurance Code, Chapter 59A NMSA 1978

Section 1 strikes the requirement OSI comply with provision of the Administrative Procedures Act, replacing it with the OSI shall conduct hearing in accordance with rules promulgated by the superintendent.

Section 2 amends Section 59A-4-15 NMSA 1978 allowing OSI 180 days to commence a hearing after the filing of a request. A hearing initiated by OSI shall be commenced within 180 days of the filing of notice of hearing.

Section 3 amends Section 59A-4-17 NMSA 1978 to require administrative hearings shall be held in accordance with rules promulgated by the Superintendent.

Section 4 creates a new section of Chapter 59A Article 5 NMSA 1978 that states, if an insurer allows its certificate to lapse, the holder of the lapsed certificate shall remain subject to the provisions of the Insurance Code. The holder of the lapsed certificate is not authorized to transact insurance business.

If the lapsed certificate is reinstated, the reinstatement shall relate back to the date of the lapse. Section 5 amends penalties in 59A-6-1 NMSA 1978.

Section 6 amends 59A-6-1.2 NMSA 1978 to establish that by July 1, 2019, and each subsequent July 1, an entity that transacts or is authorized to transact property or casualty insurance, excluding title insurance, shall pay a filing fee.

Provides methodology to calculate the filing fee.

Section 7 creates a new section of Chapter 59A, Article 6, NMSA 1978 that states the OSI may require any person obligated to make payment to the superintendent to make the payment via electronic funds transfer. Any charge imposed by the payor's financial institution is the responsibility of the payor and shall not reduce or be deducted from the amount due to OSI.

Section 8 amends Section 59A-11-10 NMSA 1978, on the continuation or expiration of licenses. The bill strikes the provision that the section does not apply to temporary licenses. Additionally, an insurance producer who allows its license to lapse may, within 12 months from the due date of the license renewal fee, reinstate the license without having to pass a written examination, provided OSI shall assess a penalty in the amount of double the unpaid renewal fee for any renewal fee received after its due date.

Section 9 amends Section 59A-12-2 NMSA 1978, adding definitions for "personal lines insurance producer" and "reinstatement."

Section 10 amends Section 59A-12-3 NMSA 1978, striking "service representative" from statute.

Senate Bill 364/aSCORC/aSJC - 3

Section 11 amends Section 59A-12-16 NMSA 1978, examination for license, changing the time period for applicants to not have to pass an examination to one year for applicants “for a license covering the same kind or kinds of insurance as to which licensed in this state under a similar license.”

Section 12 amends Section 59A-13-8 NMSA 1978 striking, “A temporary adjuster shall, as to claims and leases, have the powers of the employer, subject to extension or limitations by contract.”

Section 13 amends Section 59A-16-21 NMSA 1978, establishing how interest on late payments to the person entitled to the payments shall be calculated.

Section 14 amends Section 59A-19-22 NMSA 1978, stipulating that “a producer” may make a binder or other contracts for temporary insurance, striking “an agent.”

Section 15 amends Section 59A-22-40.1 NMSA 1978, establishing that human papillomavirus vaccine is to be covered in accordance with current standards promulgated by the federal centers for disease control and prevention.

Section 16 amends Section 59A-22-41.1 NMSA 1978, providing for language cleanup. Section 17 amends the definition of “emergency care” 59A-22A-3 NMSA 1978.

Section 18 amends Section 59A-23D-2 NMSA 1978 for technical cleanup.

Section 19 amends Section 59A-23E-2 NMSA 1978 for technical cleanup and adds limited scope audiology and podiatry benefits to the definition of excepted benefits.

Section 20 amends Section 59A-42-3 NMSA 1978, striking “a health care plan, whether profit or nonprofit” and “a health maintenance organization” from excluded entities in the definition of “member insurer.” It renumbers the subsection accordingly.¹

Section 21 amends 59A-46-42.1 NMSA 1978, providing coverage for human papillomavirus vaccine is to be in accordance with the current standards promulgated by the federal centers for disease control and prevention.

Section 22 amends Section 59A-57-3 NMSA 1978, changing the definition for “emergency care.”

FISCAL IMPLICATIONS

SB 364 has no fiscal impact.

¹ No longer applicable due to the SCORC amendment

SIGNIFICANT ISSUES

Sections 1 and 3 of SB364 remove the obligation OSI conduct hearings pursuant to the Administrative Procedures Act (APA). APA procedures have not been substantively revised since 1953 and do not comport with modern hearing procedures used by other New Mexico agencies. OSI states AHO recently adopted a comprehensive set of procedural rules for conducting administrative hearings. OSI is in the process of adopting a similar set of the same rules. To be effective, OSI states is must be relieved of the obligation to comply with outdated APA procedures.

Section 2 of SB364 addresses administrative hearings conducted by OSI. According to OSI:

Hearings conducted by the OSI fall into two broad categories. The first includes those hearings requested by persons who claim to be “aggrieved”, *i.e.*, adversely impacted, by an action or proposed action of the OSI. The second broad category encompasses proceedings initiated by the OSI to determine facts that are a predicate to certain actions delegated to the agency.

Under current law, a hearing requested by an aggrieved person must be commenced within 30 days of the request, unless the requestor and the OSI agree to a postponement that can extend the deadline up to 90 days. These deadlines ensure that a person who is, or may be, adversely impacted by an action or threatened action of the OSI is afforded due process, which generally requires expedient resolution of questions concerning the deprivation, or potential deprivation, of a property right.

Under 59A-4-15(E) NMSA 1978, the OSI has discretion to suspend any action or proposed action that is the subject of a hearing request. If the OSI does not suspend, the aggrieved person can ask the Santa Fe county district court to stay the action or proposed action. If an action or proposed action is suspended, either by the OSI or a court, due process does not require the same degree of expediency as when an action has occurred or is imminent.

SB364 provides for a 180-day limit to conduct a hearing.

Section 2 also provides that OSI can appoint a hearing officer for all hearings, not just for a hearing for reconsideration of a rate filing.

Section 4 adds language to Chapter 59A, Article 5, NMSA 1978 as current sections of the Insurance Code allow a regulated entity whose certificate of authority has lapsed to reinstate the certificate of authority by paying a reinstatement fee within a specified time frame, see 59A-11-15(C) NMSA 1978 and 59A-11-16(B) NMSA 1978. They do not address the legal status nor do they address the obligations of the certificated entity during the period of lapse. It is the intent of this section to provide clarity.

Section 5 of SB364 allows for reinstatement of an insurance producer’s lapsed license, if, within 12 months of the license renewal due date, the insurance producer pays the renewal fee and related penalty. The insurance producer will not have to pass a written examination. Additional changes in this section include allowing for a continuation of license fee to be biennially assessed and the assessing of fees related to biennially reporting.

Senate Bill 364/aSCORC/aSJC - 5

Section 6 updates 59A-6-1.2 NMSA 1978. This section of statute has not been amended since 2001. Changes made in 2017 have, as stated by OSI, resulted in unintended consequences. The proposed language clarifies a title insurer is not required to pay a filing fee under Section 59A-6-1.2 NMSA 1978 and all other entities that transact any type of property or casualty insurance in New Mexico are subject to that filing fee.

The language clarifies that any entity, authorized or not, that transacts property or casualty insurance in New Mexico is subject to the filing fee. There has been uncertainty by risk retention groups as to whether they are subject to the filing fee. The amendment clarifies they are subject to the filing fee.

Section 7 add new language, providing OSI may require payments to be made via electronic funds transfer. Any fees imposed on the payment by the payor's financial institution are the responsibility of the payor and will not reduce the amount owed to OSI.

Section 8 of SB364 allows for the reinstatement of an insurance producer's lapsed license if, within 12 months of the renewal due date, the insurance producer pays the renewal fee and related penalty. In this case, the insurance producer will not have to pass a written examination.

Section 10 strikes the definition of "service representative." OSI does not regulated "service representative." OSI observes a person who is performing acts that are typically performed by a producer may claim to be a "service representative" and thereby exempt from licensing. Deleting "service representative" will allow OSI to regulate all producers, while still allowing persons who do not perform the duties of a producer to do so without a license.

Section 13 updates the method to determine the prime lending rate on any specific date. The amendment clarifies the date of accrual and the date for determining the interest rate. When 59A-16-21B NMSA 1978 was enacted in 1984 there was no uniform and readily accessible method for an insurer to determine the prime lending rate on any specific date.

Section 17 and Section 22 amends the definition of "emergency care" making the definition consistent with the federal definition, it also clarifies that "a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following" can seek covered emergency care.

Section 20, according to OSI:

"The purpose of the Life and Health Insurance Guaranty Association Act is to provide a mechanism to facilitate continuation of coverage and the payment of covered claims under certain insurance policies, to avoid excessive delay in payment and avoid financial loss to claimants or policyholders because of insolvency of an insurer, to assist in detection and prevention of insurer insolvencies and to provide an association to assess the cost of such protection among insurers" Section 59A-42-2 NMSA 1978 (1984, amended 2012).

The Act establishes a Life and Health Guaranty Fund and provides for its funding and disbursements, among other things.

The Act provides, in relevant part, "All insurers shall organize and remain members of the

Senate Bill 364/aSCORC/aSJC - 6

association as a condition of their authority to transact insurance business covered by Section 59A-42-4 NMSA 1978.” NMSA 1978, § 59A-42-5(A) (1984, amended 2012).

The Act, Section 59A-42-5(A)(1)-(2) NMSA 1978, requires the Guaranty Fund Association to maintain two accounts:

- A life insurance and annuity account, and
- A health insurance account.

Changes to the Act that were enacted in 2012, effective July 1, 2012, created these accounts and revised the assessment provisions. (Compiler’s Notes.)

However, as currently written, the definitions section of the Act (Section 59A-42-3 NMSA 1978), at subsection M, specifically excludes health care plans and health maintenance organizations (HMOs) from participation in the Life and Health Guaranty Fund.

This amendment cleans up Section 59A-42-3(M) NMSA 1978 so that the stated purpose of the Life and Health Guaranty Fund, and its account requirements, square with the designated participants in the fund.

ADMINISTRATIVE IMPLICATIONS

OSI will no longer be obligated to comply with APA. The administrative hearing procedures OSI wishes to implement cannot be implemented efficiently or effectively under APA.

When an aggrieved party requests a hearing, OSI will have a 180-day deadline to commence said hearing.

OSI will no longer be required to issue a bulletin to determine the prime lending rate.

VKH/CW/gb/sb/gb