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HOUSE BILL 1222

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO HEALTH CARE; ENACTING THE HEALTH SECURITY ACT TO
PROVIDE FOR COMPREHENSIVE STATEWIDE HEALTH CARE; PROVIDING FOR
HEALTH CARE PLANNING; ESTABLISHING PROCEDURES TO CONTAIN HEALTH
CARE COSTS; CREATING A COMMISSION; PROVIDING FOR ITS POWERS AND
DUTIES; PROVIDING FOR HEALTH CARE DELIVERY REGIONS AND REGIONAL
COUNCILS; DIRECTING AND AUTHORIZING THE DEVELOPMENT OF A STATE
HEALTH SECURITY PLAN; PROVIDING PENALTIES; MAKING AN
APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Health Security Act".

Section 2. PURPOSES OF ACT.--The purposes of the Health
Security Act are to:

A. create a program that ensures health care

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1 coverage to all New Mexicans through a combination of public
2 and private financing;

3 B. control escalating health care costs; and

4 C. improve the health care of all New Mexicans.

5 Section 3. DEFINITIONS.--As used in the Health Security
6 Act:

7 A. "beneficiary" means a person eligible for health
8 care and benefits pursuant to the health security plan;

9 B. "budget" means the total of all categories of
10 dollar amounts of expenditures for a stated period authorized
11 for an entity or a program;

12 C. "capital budget" means that portion of a budget
13 that establishes expenditures for:

14 (1) acquisition or addition of substantial
15 improvements to real property; or

16 (2) acquisition of tangible personal property;

17 D. "case management" means a comprehensive program
18 designed to meet an individual's need for care by coordinating
19 and linking the components of health care;

20 E. "commission" means the health care commission
21 created pursuant to the Health Security Act;

22 F. "consumer price index for medical care prices"
23 means that index as published by the bureau of labor statistics
24 of the federal department of labor;

25 G. "controlling interest" means:

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1 (1) a five percent or greater ownership
2 interest, direct or indirect, in the person controlled; or

3 (2) a financial interest, direct or indirect,
4 and, because of business or personal relationships, having the
5 power to influence important decisions of the person
6 controlled;

7 H. "financial interest" means an ownership interest
8 of any amount, direct or indirect;

9 I. "group practice" means an association of health
10 care providers that provides one or more specialized health
11 care services or a tribal or urban Indian coalition in
12 partnership or under contract with the federal Indian health
13 service that is authorized under federal law to provide health
14 care to Native American populations in the state;

15 J. "health care" means health care provider
16 services and health facility services;

17 K. "health care provider" means:

18 (1) a person licensed or certified and
19 authorized to provide health care in New Mexico;

20 (2) an individual licensed or certified by a
21 nationally recognized professional organization and designated
22 as a health care provider by the commission; or

23 (3) a person that is a group practice of
24 licensed providers or a transportation service;

25 L. "health facility" means a school-based clinic,

1 an Indian health service facility, a tribally operated health
2 care facility, a general hospital, a special hospital, an
3 outpatient facility, a psychiatric hospital, a primary clinic
4 pursuant to the Rural Primary Health Care Act, a laboratory, a
5 skilled nursing facility or a nursing facility; provided that
6 the health facility is authorized to receive state or federal
7 reimbursement;

8 M. "health security plan" means the program that is
9 created and administered by the commission for provision of
10 health care pursuant to the Health Security Act;

11 N. "major capital expenditure" means construction
12 or renovation of facilities or the acquisition of diagnostic,
13 treatment or transportation equipment by a health care provider
14 or health facility that costs more than an amount recommended
15 and established by the commission;

16 O. "operating budget" means the budget of a health
17 facility exclusive of the facility's capital budget;

18 P. "person" means an individual or any other legal
19 entity;

20 Q. "primary care provider" means a health care
21 provider who is a physician, osteopathic physician, nurse
22 practitioner, physician assistant, osteopathic physician's
23 assistant, pharmacist clinician or other health care provider
24 certified by the commission;

25 R. "provider budget" means the authorized

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1 expenditures pursuant to payment mechanisms established by the
2 commission to pay for health care furnished by health care
3 providers participating in the health security plan; and

4 S. "transportation service" means a person
5 providing the services of an ambulance, helicopter or other
6 conveyance that is equipped with health care supplies and
7 equipment and is used to transport patients to other health
8 care providers or health facilities.

9 Section 4. HEALTH CARE COMMISSION CREATED--GOVERNMENTAL
10 INSTRUMENTALITY.--The "health care commission" is created as a
11 public body, politic and corporate, constituting a governmental
12 instrumentality. The commission consists of fifteen members.

13 Section 5. CREATION OF HEALTH CARE COMMISSION MEMBERSHIP
14 NOMINATING COMMITTEE--MEMBERSHIP, TERMS AND DUTIES OF
15 COMMITTEE.--

16 A. The "health care commission membership
17 nominating committee" is created consisting of twelve members,
18 to reflect the geographic diversity of the state, as follows:

- 19 (1) two members appointed by the governor;
20 (2) three members appointed by the speaker of
21 the house of representatives;
22 (3) three members appointed by the president
23 pro tempore of the senate;
24 (4) two members appointed by the minority
25 leader of the house of representatives; and

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1 (5) two members appointed by the minority
2 leader of the senate.

3 B. An elected official shall not be appointed to
4 serve on the committee. At the first meeting of the committee
5 it shall elect a chair from its membership. The chair shall
6 vote only in the case of a tie vote.

7 C. The first twelve members appointed to the
8 committee shall have terms chosen by lot: four two-year terms;
9 four three-year terms; and four four-year terms. Thereafter,
10 members shall serve four-year terms. A member shall serve
11 until the member's successor is appointed and qualified.
12 Successor members shall be appointed by the appointing
13 authority that made the initial appointment to the committee.
14 A state employee who is exempt from the Personnel Act is not
15 eligible to serve on the committee. A member shall be eligible
16 for or enrolled in the health security plan. An elected
17 official shall not be appointed to serve on the committee.
18 Sufficient public notice shall be provided to allow members of
19 the public to request consideration of appointment to the
20 committee.

21 D. Appointed members of the committee shall have
22 substantial knowledge of the health care system as demonstrated
23 by education or experience. A person shall not be appointed to
24 the committee if, currently or within the previous thirty-six
25 months, the person or a member of the person's household is

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1 employed by, an officer of or has a controlling interest in a
2 person providing health care or health insurance, directly or
3 as an agent of a health insurer.

4 E. The committee shall take appropriate action to
5 ensure that adequate prior notice of its meetings is advertised
6 and reported in media outlets throughout the state in addition
7 to publication of a legal notice in major newspapers.

8 Publication of the legal notice shall occur once each week for
9 the two weeks immediately preceding the date of a meeting.

10 Meetings of the committee shall be open to the public, and
11 public comment shall be allowed. A majority of the committee
12 shall constitute a quorum. The committee may allow members'
13 participation in meetings by telephone or other electronic
14 media that allows full participation. Meetings may be closed
15 only for discussion of candidates prior to selection. Final
16 selection of candidates shall be by vote of the members and
17 shall be conducted in a public meeting.

18 F. The committee shall hold its first meeting on or
19 before June 15, 2008. The committee shall actively solicit,
20 accept and evaluate applications from qualified persons for
21 membership on the commission subject to the requirements for
22 commission membership qualifications pursuant to Section 6 of
23 the Health Security Act.

24 G. No later than September 15, 2008, the committee
25 shall submit to the governor the names of persons recommended

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1 for appointment to the commission by a majority of the
2 committee. Immediately after receiving committee nominations,
3 the governor may make one request of the committee for
4 submission of additional names. If a majority of the committee
5 finds that additional persons would be qualified, the committee
6 shall promptly submit additional names and recommend those
7 persons for appointment to the commission. The committee shall
8 submit no less than one or more than three names for a
9 membership position for initial and additional appointments.

10 H. Appointed committee members shall be reimbursed
11 pursuant to the Per Diem and Mileage Act for expenses incurred
12 in fulfilling their duties.

13 I. Staff to assist the committee in its duties
14 until a commission is appointed shall be furnished by the
15 department of health. Thereafter, commission staff shall
16 assist the committee in its duties.

17 Section 6. APPOINTMENT OF COMMISSION MEMBERS--
18 QUALIFICATIONS--TERMS.--

19 A. From the nominees submitted by the health care
20 commission membership nominating committee, the governor shall
21 appoint fifteen members to the commission, and the initial
22 commission shall be in place by November 1, 2008.

23 B. The terms of the initial commission members
24 appointed shall be chosen by lot: five members shall be
25 appointed for terms of four years; five members shall be

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1 appointed for terms of three years; and five members shall be
2 appointed for terms of two years. Thereafter, all members
3 shall be appointed for terms of four years. After initial
4 terms are served, no member shall serve more than three
5 consecutive four-year terms. A member may serve until a
6 successor is appointed.

7 C. A person who served on the health care
8 commission membership nominating committee shall not be
9 nominated for or serve on the commission within thirty-six
10 months from the time served on the committee. A state employee
11 who is exempt from the Personnel Act is not eligible to serve
12 on the commission. An elected official shall not be appointed
13 to serve on the commission. A commission member shall be
14 eligible for or enrolled in the health security plan.

15 D. When a vacancy occurs in the membership of the
16 commission, the health care commission membership nominating
17 committee shall meet and act within thirty days of the
18 occurrence of the vacancy. From the nominees submitted, the
19 governor shall fill the vacancy within thirty days after
20 receiving final nominations.

21 E. Members of the commission shall include five
22 persons who represent either health care providers or health
23 facilities and ten persons who represent consumer and employer
24 interests, the majority of whom shall represent consumer
25 interests.

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1 F. Except for persons appointed to represent health
2 facilities or health care providers, a person shall be
3 disqualified for appointment to the commission if, currently or
4 during the previous thirty-six months, the person or a member
5 of the person's household is employed by, an officer of or has
6 a controlling interest in a person providing health care or
7 health insurance, directly or as an agent of a health insurer.

8 G. Persons appointed who do not represent health
9 care providers or health facilities must have a knowledge of
10 the health care system as demonstrated by experience or
11 education. To ensure fair representation of all areas of the
12 state, members shall be appointed from each of the public
13 education commission districts as follows:

14 (1) two from public education commission
15 district 1;

16 (2) one from public education commission
17 district 2;

18 (3) one from public education commission
19 district 3;

20 (4) two from public education commission
21 district 4;

22 (5) two from public education commission
23 district 5;

24 (6) one from public education commission
25 district 6;

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- 1 (7) two from public education commission
2 district 7;
3 (8) two from public education commission
4 district 8;
5 (9) one from public education commission
6 district 9; and
7 (10) one from public education commission
8 district 10.

9 H. A member may be removed from the commission by a
10 majority vote of the members present at a meeting where a
11 quorum is duly constituted. The commission shall set standards
12 for attendance and may remove a member for incompetence, lack
13 of attendance, neglect of duty or malfeasance in office. A
14 member shall not be removed without proceedings consisting of
15 at least one notice of hearing and an opportunity to be heard.
16 Removal proceedings shall be before the commission and in
17 accordance with rules adopted by the commission.

18 I. A majority of the commission's members
19 constitutes a quorum for the transaction of business.
20 Annually, the commission shall elect its chair and any other
21 officers it deems necessary.

22 J. A member may receive per diem and mileage in
23 accordance with the provisions of the Per Diem and Mileage Act.
24 Additionally, members shall be compensated at the rate of two
25 hundred dollars (\$200) for each meeting actually attended not

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1 to exceed compensation for one hundred twenty meetings for a
2 two-year period occurring in a term.

3 Section 7. CONFLICT OF INTEREST--DISCLOSURE BY MEMBERS
4 AND DISQUALIFICATION FROM VOTING ON CERTAIN MATTERS.--

5 A. The commission shall adopt a conflict-of-
6 interest disclosure statement for use by all members that
7 requires disclosure of a financial interest, whether or not a
8 controlling interest, of the member or a member of the member's
9 household in a person providing health care or health
10 insurance.

11 B. A member representing health facilities or
12 health care providers may vote on matters that pertain
13 generally to health facilities or health care providers.

14 C. If there is a question about a conflict of
15 interest of a commission member, the other members shall vote
16 on whether to allow the member to vote.

17 Section 8. CODE OF CONDUCT TO BE ADOPTED BY COMMISSION.--

18 A. The commission shall adopt a general code of
19 conduct for commission members and employees subject to the
20 commission's control. The code of conduct shall include at
21 least those matters and activities proscribed by the
22 Governmental Conduct Act.

23 B. Violation of a provision of the adopted code of
24 conduct is grounds for removal of a commission member and
25 grounds for suspension, termination or other disciplinary

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1 action of an employee.

2 Section 9. APPLICATION OF CERTAIN STATE LAWS TO
3 COMMISSION.--The commission and regional councils created
4 pursuant to the Health Security Act shall be subject to and
5 shall comply with the provisions of the:

- 6 A. Open Meetings Act;
- 7 B. State Rules Act;
- 8 C. Inspection of Public Records Act; and
- 9 D. Public Records Act.

10 Section 10. CHIEF EXECUTIVE OFFICER--STAFF--CONTRACTS--
11 BUDGETS.--

12 A. The commission shall appoint and set the salary
13 of a "chief executive officer". The chief executive officer
14 shall serve at the pleasure of the commission and has authority
15 to carry on the day-to-day operations of the commission and the
16 health security plan.

17 B. The chief executive officer shall employ those
18 persons necessary to administer and implement the provisions of
19 the Health Security Act.

20 C. The chief executive officer and the chief
21 executive officer's staff shall implement the Health Security
22 Act in accordance with that act and the rules adopted by the
23 commission. The chief executive officer may delegate authority
24 to employees and may organize the staff into units to
25 facilitate its work.

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1 D. If the chief executive officer determines that
2 the commission staff or a state agency does not have the
3 resources or expertise to perform a necessary task, the chief
4 executive officer may contract for performance from a person
5 who has a demonstrated capability to perform the task. The
6 commission shall establish the standards and requirements by
7 which a contract is executed by the commission or the chief
8 executive officer. A contract shall be reviewed by the
9 commission or the chief executive officer to ensure that it
10 meets the criteria, performance standards, expectations and
11 needs of the commission.

12 E. The chief executive officer shall prepare and
13 submit an annual budget request and plan of operation to the
14 commission for its approval. The chief executive officer shall
15 provide at least quarterly status reports on the budget and
16 advise of a potential shortfall as soon as practically
17 possible.

18 F. A contract for claims processing functions shall
19 require that all work for claims processing, customer service,
20 medical and utilization review, financial audit and
21 reimbursement and related claims adjudication functions be
22 performed entirely in New Mexico. To the extent practicable,
23 all other work shall be performed in New Mexico.

24 Section 11. COMMISSION--GENERAL DUTIES.--The commission
25 shall:

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1 A. adopt a five-year plan for the initial
2 implementation of the provisions of the Health Security Act,
3 update that plan and adopt other long- and short-range plans to
4 provide continuity and development of the state's health care
5 system;

6 B. design the health security plan to fulfill the
7 purposes of and conform with the provisions of the Health
8 Security Act;

9 C. provide a program to educate the public, health
10 care providers and health facilities about the health security
11 plan and the persons eligible to receive its benefits;

12 D. study and adopt as provisions of the health
13 security plan cost-effective methods of providing quality
14 health care to all beneficiaries, according high priority to
15 increased reliance on:

16 (1) preventive and primary care that includes
17 immunization and screening examinations;

18 (2) providing health care in rural or
19 underserved areas of the state;

20 (3) in-home and community-based alternatives
21 to institutional health care; and

22 (4) case management services when appropriate;

23 E. establish compensation methods for health care
24 providers and health facilities and adopt standards and
25 procedures for negotiating and entering into contracts with

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1 participating health care providers and health facilities;

2 F. annually, and for those projected future periods
3 the commission believes appropriate, establish health security
4 plan budgets;

5 G. establish capital budgets for health facilities,
6 limited to capital expenditures subject to the Health Security
7 Act, and include and adopt in establishing those budgets:

8 (1) standards and procedures for determining
9 the budgets; and

10 (2) a requirement for prior approval by the
11 commission for major capital expenditures by a health facility;

12 H. negotiate and enter into health care reciprocity
13 agreements with other states and negotiate and enter into
14 health care agreements with out-of-state health care providers
15 and health facilities;

16 I. develop claims and payment procedures for health
17 care providers, health facilities and claims administrators and
18 include provisions to ensure timely payments and provide for
19 payment of interest when reimbursable claims are not paid
20 within a reasonable time;

21 J. establish, in conjunction with other state
22 agencies similarly charged, a system to collect and analyze
23 health care data and other data necessary to improve the
24 quality, efficiency and effectiveness of health care and to
25 control costs of health care in New Mexico, which system shall

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1 include data on:

2 (1) mortality, including accidental causes of
3 death, and natality;

4 (2) morbidity;

5 (3) health behavior;

6 (4) physical and psychological impairment and
7 disability;

8 (5) health care system costs and health care
9 availability, utilization and revenues;

10 (6) environmental factors;

11 (7) availability, adequacy and training of
12 health care personnel;

13 (8) demographic factors;

14 (9) social and economic conditions affecting
15 health; and

16 (10) other factors determined by the
17 commission;

18 K. standardize data collection and specific methods
19 of measurement across databases and use scientific sampling or
20 complete enumeration for reporting health information;

21 L. establish a health care delivery system that is
22 efficient to administer and that eliminates unnecessary
23 administrative costs;

24 M. adopt rules necessary to implement and monitor a
25 preferred drug list, bulk purchasing or other mechanism to

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1 provide prescription drugs and a pricing procedure for
2 nonprescription drugs, durable medical equipment and supplies,
3 eyeglasses, hearing aids and oxygen;

4 N. establish a pharmacy and therapeutics committee
5 to:

6 (1) conduct concurrent, prospective and
7 retrospective drug utilization review;

8 (2) conduct pharmacoeconomic research and
9 analysis of clinical safety, efficacy and effectiveness of
10 drugs;

11 (3) consult with specialists in appropriate
12 fields of medicine for therapeutic classes of drugs;

13 (4) recommend therapeutic classes of drugs,
14 including specific drugs within each class to be included in
15 the preferred drug list;

16 (5) identify appropriate exclusions from the
17 preferred drug list; and

18 (6) conduct periodic clinical reviews of
19 preferred, nonpreferred and new drugs;

20 O. study and evaluate the adequacy and quality of
21 health care furnished pursuant to the Health Security Act, the
22 cost of each type of service and the effectiveness of cost-
23 containment measures in the health security plan;

24 P. study and monitor the migration of persons to
25 New Mexico to determine if persons with costly health care

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1 needs are moving to New Mexico to receive health care, and if
2 migration appears to threaten the financial stability of the
3 health security plan, recommend to the legislature changes in
4 eligibility requirements, premiums or other changes that may be
5 necessary to maintain the financial integrity of the health
6 security plan;

7 Q. study and evaluate the cost of health care
8 provider professional liability insurance and its impact on the
9 price of health care services and recommend changes to the
10 legislature as necessary;

11 R. establish and approve changes in coverage
12 benefits and benefit standards in the health security plan;

13 S. conduct necessary investigations and inquiries;

14 T. adopt rules necessary to implement, administer
15 and monitor the operation of the health security plan;

16 U. adopt rules to establish a procurement process
17 for services and property;

18 V. meet as needed, but no less often than once
19 every month;

20 W. report annually to the legislature and the
21 governor on the commission's activities and the operation of
22 the health security plan and include in the annual report:

23 (1) a summary of information about health care
24 needs, health care services, health care expenditures, revenues
25 received and projected revenues and other relevant issues

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1 relating to the health security plan, the initial five-year
2 plan and future updates of that plan and other long- and short-
3 range plans; and

4 (2) recommendations on methods to control
5 health care costs and improve access to and the quality of
6 health care for state residents, as well as recommendations for
7 legislative action; and

8 X. provide annual training for its members on
9 health care coverage, policy and financing.

10 Section 12. COMMISSION--AUTHORITY.--The commission has
11 the authority necessary to carry out the powers and duties
12 pursuant to the Health Security Act. The commission retains
13 responsibility for its duties but may delegate authority to the
14 chief executive officer. However, the authority to take the
15 following actions is expressly reserved to the commission:

16 A. approve the commission's budget and plan of
17 operation;

18 B. approve the health security plan and make
19 changes in the health security plan, but only after legislative
20 approval of those changes specified in Section 30 of the Health
21 Security Act;

22 C. make rules and conduct both rulemaking and
23 adjudicatory hearings in person or by use of a hearing officer;

24 D. issue subpoenas to persons to appear and testify
25 before the commission and to produce documents and other

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1 information relevant to the commission's inquiry and enforce
2 this subpoena power through an action in a state district
3 court;

4 E. make reports and recommendations to the
5 legislature;

6 F. subject to the prohibitions and restrictions of
7 Section 21 of the Health Security Act, apply for program
8 waivers from any governmental entity if the commission
9 determines that the waivers are necessary to ensure the
10 participation by the greatest possible number of beneficiaries;

11 G. apply for and accept grants, loans and
12 donations;

13 H. acquire or lease real property and make
14 improvements on it and acquire by lease or by purchase tangible
15 and intangible personal property;

16 I. dispose of and transfer personal property, but
17 only at public sale after adequate notice;

18 J. appoint and prescribe the duties of employees,
19 fix their compensation, pay their expenses and provide an
20 employee benefit program;

21 K. establish and maintain banking relationships,
22 including establishment of checking and savings accounts;

23 L. participate as an eligible entity in the
24 programs of the New Mexico finance authority; and

25 M. enter into agreements with an employer to

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1 provide health care services for the employer's employees or
2 retirees; provided, however, that nothing in the Health
3 Security Act shall be construed to reduce or eliminate benefits
4 to which the employee or retiree is entitled.

5 Section 13. ADVISORY BOARDS.--

6 A. The commission shall establish a "health care
7 provider advisory board" and a "health facility advisory
8 board". It may establish additional advisory boards to assist
9 it in performing its duties. Advisory boards shall assist the
10 commission in matters requiring the expertise and knowledge of
11 the advisory boards' members.

12 B. The commission may appoint not more than two
13 commission members and up to five additional persons to serve
14 on an advisory board it creates. Advisory board members shall
15 be paid per diem and mileage in accordance with the provisions
16 of the Per Diem and Mileage Act.

17 C. Except for the health care provider advisory
18 board and the health facility advisory board, no more than two
19 advisory board members shall have a controlling interest,
20 direct or indirect, in a person providing health care or a
21 person providing health insurance.

22 D. Staff and technical assistance for an advisory
23 board shall be provided by the commission as necessary.

24 Section 14. HEALTH CARE DELIVERY REGIONS.--The commission
25 shall establish health care delivery regions in the state,

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1 based on geography and health care resources. The regions may
2 have differential fee schedules, budgets, capital expenditure
3 allocations or other features to encourage the provision of
4 health care in rural and other underserved areas or to
5 otherwise tailor the delivery of health care to fit the needs
6 of a region or a part of a region.

7 Section 15. REGIONAL COUNCILS.--

8 A. The commission shall designate regional councils
9 in the designated health care delivery regions. In selecting
10 persons to serve as members of regional councils, the
11 commission shall consider the comments and recommendations of
12 persons in the region who are knowledgeable about health care
13 and the economic and social factors affecting the region.

14 B. The regional councils shall be composed of the
15 commission members who live in the region and five other
16 members who live in the region and are appointed by the
17 commission. No more than two noncommission council members
18 shall have a controlling interest, direct or indirect, in a
19 person providing health care or a person providing health
20 insurance.

21 C. Members of a regional council shall be paid per
22 diem and mileage in accordance with the provisions of the Per
23 Diem and Mileage Act.

24 D. The regional councils shall hold public hearings
25 to receive comments, suggestions and recommendations from the

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1 public regarding regional health care needs. The councils
2 shall report to the commission at times specified by the
3 commission to ensure that regional concerns are considered in
4 the development and update of the five-year plan, other short-
5 and long-range plans and projections, fee schedules, budgets
6 and capital expenditure allocations.

7 E. Staff technical assistance for the regional
8 councils shall be provided by the commission.

9 Section 16. RULEMAKING.--

10 A. The commission shall adopt rules necessary to
11 carry out the duties of the commission and the provisions of
12 the Health Security Act.

13 B. The commission shall not adopt, amend or repeal
14 any rule affecting a person outside the commission without a
15 public hearing on the proposed action before the commission or
16 a hearing officer designated by the commission. The hearing
17 officer may be a member of the commission's staff. The hearing
18 shall be held in a county that the commission determines would
19 be in the interest of those affected. Notice of the subject
20 matter of the rule, the action proposed to be taken, the time
21 and place of the hearing, the manner in which interested
22 persons may present their views and the method by which copies
23 of the proposed rule or an amendment or repeal of an existing
24 rule may be obtained shall be published once at least thirty
25 days prior to the hearing date in a newspaper of general

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1 circulation in the state and shall also be published in an
2 informative nonlegal format in one newspaper published in each
3 health care delivery region and mailed at least thirty days
4 prior to the hearing date to all persons who have made a
5 written request for advance notice of hearing.

6 C. All rules adopted by the commission shall be
7 filed in accordance with the State Rules Act.

8 Section 17. HEALTH SECURITY PLAN.--

9 A. After notice and public hearing, including
10 taking public comment and the reports of the regional councils,
11 the commission, in conjunction with other state agencies, shall
12 adopt a five-year health security plan and review it at regular
13 intervals for possible revision.

14 B. The health security plan shall be designed to
15 provide comprehensive, necessary and appropriate health care
16 benefits, including preventive health care and primary,
17 secondary and tertiary health care for acute and chronic
18 conditions. The health security plan may provide for certain
19 health care services to be phased in as the health security
20 plan budget allows.

21 C. Pursuant to the phase-in provisions of
22 Subsection B of this section, the commission shall provide for
23 coverage of the following health care services:

- 24 (1) preventive health services;
25 (2) health care provider services;

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- 1 (3) health facility inpatient and outpatient
2 services;
- 3 (4) laboratory tests and radiology procedures;
4 (5) hospice care;
5 (6) in-home, community-based and institutional
6 long-term care services;
- 7 (7) prescription drugs;
8 (8) inpatient and outpatient mental and
9 behavioral health services;
- 10 (9) drug and other substance abuse services;
11 (10) preventive and prophylactic dental
12 services, including an annual dental examination and cleaning;
13 (11) vision appliances, including medically
14 necessary contact lenses;
- 15 (12) medical supplies, durable medical
16 equipment and selected assistive devices, including hearing and
17 speech assistive devices; and
18 (13) experimental or investigational
19 procedures or treatments as specified by the commission.

20 D. Covered health care shall not include:

- 21 (1) surgery for cosmetic purposes other than
22 for reconstructive purposes;
23 (2) medical examinations and medical reports
24 prepared for purchasing or renewing life insurance or
25 participating as a plaintiff or defendant in a civil action for

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1 the recovery or settlement of damages; and

2 (3) orthodontic services and cosmetic dental
3 services except those cosmetic dental services necessary for
4 reconstructive purposes.

5 E. The health security plan shall specify the
6 health care to be covered and the amount, scope and duration of
7 benefits.

8 F. The health security plan shall contain
9 provisions to control health care costs so that beneficiaries
10 receive comprehensive, high-quality health care consistent with
11 available revenue and budget constraints.

12 G. The health security plan shall phase in
13 beneficiaries as their participation becomes possible through
14 contracts, waivers or federal legislation. The health security
15 plan may provide for certain preventive health care to be
16 offered to all New Mexicans regardless of a person's
17 eligibility to participate as a beneficiary.

18 H. The five-year plan as well as other long- and
19 short-range plans adopted by the commission shall be reviewed
20 by the regional councils and the commission annually and
21 revised as necessary. Revisions shall be adopted by the
22 commission in accordance with Section 11 of the Health Security
23 Act. In projecting services under the health security plan,
24 the commission shall take all reasonable steps to ensure that
25 long-term care and dental care are provided at the earliest

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1 practical times consistent with budget constraints.

2 Section 18. LONG-TERM CARE.--

3 A. Long-term care may include:

4 (1) home- and community-based services,
5 including personal assistance and attendant care; and

6 (2) institutional care.

7 B. No later than one year after the effective date
8 of the operation of the health security plan, the commission
9 shall appoint an advisory "long-term care committee" made up of
10 representatives of health care consumers, providers and
11 administrators to develop a plan for integrating long-term care
12 into the health security plan. The committee shall report its
13 plan to the commission no later than one year from its
14 appointment. Committee members shall receive per diem and
15 mileage as provided in the Per Diem and Mileage Act.

16 C. The long-term care component of the health
17 security plan shall provide for case management and
18 noninstitutional services when appropriate.

19 D. Nothing in this section affects long-term care
20 services paid through private insurance or state or federal
21 programs subject to the provisions of Sections 40 and 41 of the
22 Health Security Act.

23 E. Nothing in this section precludes the commission
24 from including long-term care services from the inception of
25 the health security plan.

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1 Section 19. MENTAL AND BEHAVIORAL HEALTH SERVICES.--

2 A. No later than one year after appointment of the
3 chief executive officer, the commission shall appoint an
4 advisory "mental and behavioral health services committee" made
5 up of representatives of mental and behavioral health care
6 consumers, providers and administrators to develop a plan for
7 coordinating mental and behavioral health services within the
8 health security plan. The committee shall report its plan to
9 the commission no later than one year from its appointment.
10 Committee members may receive per diem and mileage as provided
11 in the Per Diem and Mileage Act.

12 B. The mental and behavioral health services
13 component of the health security plan shall provide for case
14 management and noninstitutional services where appropriate.

15 C. The health security plan shall not impose
16 treatment limitations or financial requirements on the
17 provision of mental and behavioral health benefits if identical
18 limitations or requirements are not imposed on coverage of
19 benefits for other conditions.

20 D. Nothing in this section limits mental and
21 behavioral health services paid through private insurance or
22 state or federal programs subject to the provisions of Sections
23 40 and 41 of the Health Security Act.

24 Section 20. MEDICAID COVERAGE--AGREEMENTS.--The
25 commission may enter into appropriate agreements with the human

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1 services department or other state agency for the purpose of
2 furthering the goals of the Health Security Act. These
3 agreements may provide for certain services provided pursuant
4 to the medicaid program under Title 19 and Title 21 of the
5 Social Security Act to be administered by the commission to
6 implement the health security plan.

7 Section 21. HEALTH SECURITY PLAN COVERAGE--CONDITIONS OF
8 ELIGIBILITY FOR BENEFICIARIES--EXCLUSIONS.--

9 A. An individual is eligible as a beneficiary of
10 the health security plan if the individual has been physically
11 present in New Mexico for one year prior to the date of
12 application for enrollment in the health security plan and if
13 the individual has a current intention to remain in New Mexico
14 and not to reside elsewhere. A dependent of an eligible
15 individual is included as a beneficiary.

16 B. Individuals covered under the following
17 governmental programs shall not be brought into coverage:

- 18 (1) federal retiree health plan beneficiaries;
19 (2) active duty and retired military
20 personnel; and
21 (3) individuals covered by the federal active
22 and retired military health programs.

23 C. Federal Indian health service or tribally
24 operated health care program beneficiaries shall not be brought
25 into coverage except through agreements with:

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- 1 (1) Indian nations, tribes or pueblos;
2 (2) consortia of tribes or pueblos; or
3 (3) a federal Indian health service agency
4 subject to the approval of the tribes or pueblos located in
5 that agency.

6 D. If an individual is ineligible due to the
7 residence requirement, the individual may become eligible by
8 paying the premium required by the health security plan for
9 coverage for the period of time up to the date the individual
10 fulfills that requirement if the individual is an employee who
11 physically resides and intends to reside in the state because
12 of employment offered to the individual in New Mexico while the
13 individual was residing elsewhere as demonstrated by furnishing
14 that evidence of those facts required by rule adopted by the
15 commission.

16 E. An employer that provides health care benefits
17 for its employees after retirement, including coverage for
18 payment of health care supplementary coverage if the retiree is
19 eligible for medicare, may agree to participate in the health
20 security plan; provided, however, that there is no loss of
21 benefits under the retiree health benefit coverage. An
22 employer that participates in the health security plan shall
23 contribute to the health security plan for the benefit of the
24 retiree and the agreement shall ensure that the health benefit
25 coverage for the retiree shall be restored in the event of the

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1 retiree's ineligibility for health security plan coverage.

2 F. The commission shall prescribe by rule
3 conditions under which other persons in the state may be
4 eligible for coverage pursuant to the health security plan.

5 Section 22. HEALTH SECURITY PLAN COVERAGE OF NONRESIDENT
6 STUDENTS.--

7 A. Except as provided in Subsection B of this
8 section, an educational institution shall purchase coverage
9 under the health security plan for its nonresident students
10 through fees assessed to those students. The governing body of
11 an educational institution shall set the fees at the amount
12 determined by the commission.

13 B. A nonresident student at an educational
14 institution may satisfy the requirement for health care
15 coverage by proof of coverage under a policy or plan in another
16 state that is acceptable to the commission. The student shall
17 not be assessed a fee in that case.

18 C. The commission shall adopt rules to determine
19 proof of an individual's eligibility for the health security
20 plan or a student's proof of nonresident health care coverage.

21 Section 23. REMOVING INELIGIBLE PERSONS.--The commission
22 shall adopt rules to provide procedures for removing persons no
23 longer eligible for coverage.

24 Section 24. ELIGIBILITY CARD--USE--PENALTIES FOR
25 MISUSE.--

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1 A. A beneficiary shall receive a card as proof of
2 eligibility. The card shall be electronically readable and
3 shall contain a picture or electronic image, information that
4 identifies the beneficiary for treatment, billing, payment and
5 other information the commission deems necessary. The use of a
6 beneficiary's social security number as an identification
7 number is not permitted.

8 B. The eligibility card is not transferable. A
9 beneficiary who lends the beneficiary's card to another and an
10 individual who uses another's card shall be jointly and
11 severally liable to the commission for the full cost of the
12 health care provided to the user. The liability shall be paid
13 in full within one year of final determination of liability.
14 Liabilities created pursuant to this section shall be collected
15 in a manner similar to that used for collection of delinquent
16 taxes.

17 C. A beneficiary who lends the beneficiary's card
18 to another or an individual who uses another's card after being
19 determined liable pursuant to Subsection B of this section of a
20 previous misuse is guilty of a misdemeanor and shall be
21 sentenced pursuant to the provisions of Section 31-19-1 NMSA
22 1978. A third or subsequent conviction is a fourth degree
23 felony, and the offender shall be sentenced pursuant to the
24 provisions of Section 31-18-15 NMSA 1978.

25 Section 25. PRIMARY CARE PROVIDER--RIGHT TO CHOOSE--

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1 ACCESS TO SERVICES.--

2 A. Except as provided in the Workers' Compensation
3 Act, a beneficiary has the right to choose a primary care
4 provider.

5 B. The primary care provider is responsible for
6 providing health care provider services to the patient except
7 for:

- 8 (1) services in medical emergencies; and
9 (2) services for which a primary care provider
10 determines that specialist services are required, in which case
11 the primary care provider shall advise the patient of the need
12 for and the type of specialist services.

13 C. Except as otherwise provided in this section,
14 health care provider specialists shall be paid pursuant to the
15 health security plan only if the patient has been referred by a
16 primary care provider. Nothing in this subsection prevents a
17 beneficiary from obtaining the services of a health care
18 provider specialist and paying the specialist for services
19 provided.

20 D. The commission shall by rule specify when and
21 under what circumstances a beneficiary may self-refer,
22 including self-referral to a chiropractic physician, a doctor
23 of oriental medicine, mental and behavioral health service
24 providers and other health care providers who are not primary
25 care providers.

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1 E. The commission shall by rule specify the
2 conditions under which a beneficiary may select a specialist as
3 a primary care provider.

4 Section 26. DISCRIMINATION PROHIBITED.--A health care
5 provider or health facility shall not discriminate against or
6 refuse to furnish health care to a beneficiary on the basis of
7 age, race, color, income level, national origin, religion,
8 gender, sexual orientation, disabling condition or payment
9 status. Nothing in this section shall require a health care
10 provider or health facility to provide services to a
11 beneficiary if the provider or facility is not qualified to
12 provide the needed services or does not offer them to the
13 general public.

14 Section 27. CLAIMS REVIEW.--

15 A. The commission shall adopt rules to provide a
16 comprehensive claims review program. The procedures and
17 standards used in the program shall be disclosed in writing to
18 applicants, beneficiaries, health care providers and health
19 facilities at the time of application to or participation in
20 the health security plan.

21 B. The decision to approve or deny a claim based on
22 a technicality shall be made in a timely manner and shall not
23 exceed time limits established by rule of the commission. A
24 final decision to deny payment for services based on medical
25 necessity or utilization shall be based on a recommendation

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1 made by a health care professional having appropriate and
2 adequate qualifications to make the recommendation. A denial
3 of a claim for payment of a medical specialty service based on
4 medical necessity or utilization shall be made only after a
5 written recommendation for denial is made by a member of that
6 medical specialty with credentials equivalent to those of the
7 provider.

8 C. The fact of and the specific reasons for a
9 denial of a health care claim shall be communicated promptly in
10 writing to both the provider and the beneficiary involved.

11 Section 28. QUALITY OF CARE--HEALTH CARE PROVIDER AND
12 HEALTH FACILITIES--PRACTICE STANDARDS.--

13 A. The commission shall adopt rules to establish
14 and implement a quality improvement program that monitors the
15 quality and appropriateness of health care provided by the
16 health security plan, including evidence-based medicine, best
17 practices, outcome measurements, consumer education and patient
18 safety. The commission shall set standards and review benefits
19 to ensure that effective, cost-efficient, high quality and
20 appropriate health care is provided under the health security
21 plan.

22 B. The commission shall review and adopt
23 professional practice guidelines developed by state and
24 national medical and specialty organizations, federal agencies
25 for health care policy and research and other organizations as

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1 it deems necessary to promote the quality and cost-
2 effectiveness of health care provided through the health
3 security plan.

4 C. The quality improvement program shall include an
5 ongoing system for monitoring patterns of practice. The
6 commission shall appoint a "health care practice advisory
7 committee" consisting of health care providers, health
8 facilities and other knowledgeable persons to advise the
9 commission and staff on health care practice issues. The
10 committee may appoint subcommittees and task forces to address
11 practice issues of a specific health care provider discipline
12 or a specific kind of health facility; provided, however, that
13 the subcommittee or task force includes providers of
14 substantially similar specialties or types of facilities. The
15 advisory committee shall provide to the commission recommended
16 standards and guidelines to be followed in making
17 determinations on practice issues.

18 D. With the advice of the health care practice
19 advisory committee, the commission shall establish a system of
20 peer education for health care providers or health facilities
21 determined to be engaging in aberrant patterns of practice
22 pursuant to Subsection B of this section. If the commission
23 determines that peer education efforts have failed, the
24 commission may refer the matter to the appropriate licensing or
25 certifying board.

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1 E. The commission shall provide by rule the
2 procedures for recouping payments or withholding payments for
3 health care determined by the commission with the advice of the
4 health care practice advisory committee or subcommittee to be
5 medically unnecessary.

6 F. The commission may provide by rule for the
7 assessment of administrative penalties for up to three times
8 the amount of excess payments if it finds that excessive
9 billings were part of an aberrant pattern of practice.
10 Administrative penalties shall be deposited in the current
11 school fund.

12 G. After consultation with the health care practice
13 advisory committee, the commission may suspend or revoke a
14 health care provider's or health facility's privilege to be
15 paid for health care provided under the health security plan
16 based upon evidence clearly supporting a determination by the
17 commission that the provider or facility engages in aberrant
18 patterns of practice, including inappropriate utilization,
19 attempts to unbundle health care services or other practices
20 that the commission deems a violation of the Health Security
21 Act or rules adopted pursuant to that act. As used in this
22 subsection, "unbundle" means to divide a service into
23 components in an attempt to increase or with the effect of
24 increasing compensation from the health security plan.

25 H. The commission shall report a suspension or

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1 revocation of the privilege to be paid for health care pursuant
2 to the Health Security Act to the appropriate licensing or
3 certifying board.

4 I. The commission shall report cases of suspected
5 fraud by a health care provider or a health facility to the
6 attorney general or to the district attorney of the county
7 where the health care provider or health facility operates for
8 investigation and prosecution.

9 Section 29. DISPUTE RESOLUTION.--A person specifically
10 and directly aggrieved by a decision of the commission has the
11 right to judicial review of the decision by a state district
12 court. As a prerequisite to judicial review, the person
13 aggrieved must exhaust administrative remedies available
14 through procedures for dispute resolution established by rule
15 of the commission, including mandatory participation in
16 mediation in a good-faith effort to resolve a dispute. The
17 commission shall include in its rules for dispute resolution
18 provisions for adequate notice to the disputants, opportunities
19 to be heard in informal conferences prior to mediation and all
20 procedural due process safeguards.

21 Section 30. HEALTH SECURITY PLAN BUDGET.--

22 A. Annually, the commission shall develop and
23 submit to the legislature a health security plan budget. The
24 budget shall be the commission's recommendation for the total
25 amount to be spent by the plan for covered health care services

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1 in the next fiscal year.

2 B. Unless otherwise provided in the general
3 appropriation act or other act of the legislature, the health
4 security plan budget shall be within projected annual revenues.
5 After the legislative review and approval, the commission shall
6 implement the health security plan budget. Without specific
7 legislative approval, the commission shall not change the level
8 of premium charged and used to project revenue or change the
9 employer contributions under the health security plan. The
10 legislature may base its approval on the findings and
11 recommendations of an independent audit or actuarial study.

12 C. In developing the health security plan budget,
13 the commission shall provide that credit be taken in the budget
14 for all revenues produced for health care in the state pursuant
15 to any law other than the Health Security Act.

16 D. The health security plan shall include a maximum
17 amount or percentage for administrative costs, and this
18 maximum, if a percentage, may change in relation to the total
19 costs of services provided under the health security plan. For
20 the sixth and subsequent calendar years of operation of the
21 health security plan, administrative costs shall not exceed
22 five percent of the health security plan budget.

23 Section 31. PAYMENTS TO HEALTH CARE PROVIDERS--
24 CO-PAYMENTS.--

25 A. The commission shall prepare a provider budget.

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1 Consistent with the provider budget, the health security plan
2 shall provide payment for all covered health care rendered by
3 health care providers. A variety of payment plans, including
4 fee-for-service, may be adopted by the commission. Payment
5 plans shall be negotiated with providers as provided by rule.
6 In the event that negotiation fails to develop an acceptable
7 payment plan, the disputing parties shall submit the dispute
8 for resolution pursuant to Section 29 of the Health Security
9 Act.

10 B. Supplemental payment rates may be adopted to
11 provide incentives to help ensure the delivery of needed health
12 care in rural and other underserved areas throughout the state.

13 C. An annual percentage increase in the amount
14 allocated for provider payments in the budget shall be no
15 greater than the annual percentage increase in the consumer
16 price index for medical care prices published by the bureau of
17 labor statistics of the federal department of labor using the
18 year prior to the year in which the health security plan is
19 implemented as the baseline year. The annual limitation in
20 this subsection may be adjusted up or down by the commission
21 based on a showing of special and unusual circumstances in a
22 hearing before the commission.

23 D. Payment, or the offer of payment whether or not
24 that offer is accepted, to a health care provider for services
25 covered by the health security plan shall be payment in full

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1 for those services. A health care provider shall not charge a
2 beneficiary an additional amount for services covered by the
3 plan.

4 E. The commission may establish a co-payment
5 schedule if a required co-payment is determined to be an
6 effective cost-control measure. A co-payment shall not be
7 required for preventive health care. When a co-payment is
8 required, the health care provider shall not waive it and if it
9 remains uncollected, the health care provider shall demonstrate
10 a good-faith effort to have collected the co-payment.

11 Section 32. PAYMENTS TO HEALTH FACILITIES--CO-PAYMENTS.--

12 A. A health facility shall negotiate an annual
13 operating budget with the commission. The operating budget
14 shall be based on a base operating budget of past performance
15 and projected changes upward or downward in costs and services
16 anticipated for the next year. If a negotiated annual operating
17 budget is not agreed upon, a health facility shall submit the
18 budget to dispute resolution pursuant to Section 29 of the
19 Health Security Act. An annual percentage increase in the
20 amount allocated for a health facility operating budget shall be
21 no greater than the change in the annual consumer price index
22 for medical care prices, published annually by the bureau of
23 labor statistics of the federal department of labor. The annual
24 limitation in this subsection may be adjusted up or down by the
25 commission based on a showing of special and unusual

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1 circumstances in a hearing before the commission.

2 B. Supplemental payment rates may be adopted to
3 provide incentives to help ensure the delivery of needed health
4 care services in rural and other underserved areas throughout
5 the state.

6 C. Each health care provider employed by a health
7 facility shall be paid from the facility's operating budget in a
8 manner determined by the health facility.

9 D. The commission may establish a co-payment
10 schedule if a required co-payment is determined to be an
11 effective cost-control measure. A co-payment shall not be
12 required for preventive care. When a co-payment is required,
13 the health facility shall not waive it and if it remains
14 uncollected, the health facility shall demonstrate a good-faith
15 effort to have collected the co-payment.

16 Section 33. HEALTH RESOURCE CERTIFICATE--COMMISSION
17 RULES--REQUIREMENT FOR REVIEW.--

18 A. The commission shall adopt rules stating when a
19 health facility or health care provider participating in the
20 health security plan shall apply for a health resource
21 certificate, how the application will be reviewed, how the
22 certificate will be granted, how an expedited review is
23 conducted and other matters relating to health resource
24 projects.

25 B. Except as provided in Subsection F of this

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1 section, a health facility or health care provider participating
2 in the health security plan shall not make or obligate itself to
3 make a major capital expenditure without first obtaining a
4 health resource certificate.

5 C. A health facility or health care provider shall
6 not acquire through rental, lease or comparable arrangement or
7 through donation all or a part of a capital project that would
8 have required review if the acquisition had been by purchase
9 unless the project is granted a health resource certificate.

10 D. A health facility or health care provider shall
11 not engage in component purchasing in order to avoid the
12 provisions of this section.

13 E. The commission shall grant a health resource
14 certificate for a major capital expenditure or a capital project
15 undertaken pursuant to Subsection C of this section only when
16 the project is determined to be needed.

17 F. This section does not apply to:

18 (1) the purchase, construction or renovation of
19 office space for health care providers;

20 (2) expenditures incurred solely in preparation
21 for a capital project, including architectural design, surveys,
22 plans, working drawings and specifications and other related
23 activities, but those expenditures shall be included in the cost
24 of a project for the purpose of determining whether a health
25 resource certificate is required;

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1 (3) acquisition of an existing health facility,
2 equipment or practice of a health care provider that does not
3 result in a new service being provided or in increased bed
4 capacity;

5 (4) major capital expenditures for nonclinical
6 services when the nonclinical services are the primary purpose
7 of the expenditure; and

8 (5) the replacement of equipment with equipment
9 that has the same function and that does not result in the
10 offering of new services.

11 G. No later than January 1, 2010, the commission
12 shall report to the appropriate committees of the legislature on
13 the capital needs of health facilities, including facilities of
14 state and local governments, with a focus on underserved
15 geographic areas with substantially below-average health
16 facilities and investment per capita as compared to the state
17 average. The report shall also describe geographic areas where
18 the distance to health facilities imposes a barrier to care.
19 The report shall include a section on health care transportation
20 needs, including capital, personnel and training needs. The
21 report shall make recommendations for legislation to amend the
22 Health Security Act that the commission determines necessary and
23 appropriate.

24 Section 34. ACTUARIAL REVIEW--AUDITS.--

25 A. The commission shall provide for an annual

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1 independent actuarial review of the health security plan and any
2 funds of the commission or the plan.

3 B. The commission shall provide by rule requirements
4 for independent financial audits of health care providers and
5 health facilities.

6 C. The commission, through its staff or by contract,
7 shall perform announced and unannounced audits, including
8 financial, operational, management and electronic data
9 processing audits of health care providers and health
10 facilities. Audit findings shall be reported directly to the
11 commission. The state auditor may be asked by the commission to
12 review preliminary findings or to consult with audit staff
13 before the findings are reported to the commission.

14 D. Actuarial reviews, financial audits and internal
15 audits are public documents after they have been released by the
16 commission, provided that the reports protect private and
17 confidential information of a patient or provider. Copies of
18 reviews, audits and other reports shall be transmitted to the
19 governor, the legislature and appropriate interim committees of
20 the legislature as well as made available via the internet.

21 Section 35. STANDARD CLAIM FORMS FOR INSURANCE PAYMENT.--
22 The commission shall adopt standard claim forms and electronic
23 formats that shall be used by all health care providers and
24 health facilities that seek payment through the health security
25 plan or from private persons, including private insurance

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1 companies, for health care services rendered in the state. Each
2 claim form or electronic format may indicate whether a person is
3 eligible for federal or other insurance programs for payment.
4 To the extent practicable, the commission shall require the use
5 of existing, nationally accepted standardized forms, formats and
6 systems.

7 Section 36. COMPUTERIZED SYSTEM.--The commission shall
8 require that all participating health care providers and health
9 facilities participate in the health security plan's computer
10 network that provides for electronic transfer of payments to
11 health care providers and health facilities; transmittal of
12 reports, including patient data and other statistical reports;
13 billing data, with specificity as to procedures or services
14 provided to individual patients; and any other information
15 required or requested by the commission. To the extent
16 practicable, the commission shall require the use of existing,
17 nationally accepted standardized forms, formats and systems.

18 Section 37. REPORTS REQUIRED--CONFIDENTIAL INFORMATION.--

19 A. The commission, through the state health
20 information system, shall require reports by all health care
21 providers and health facilities of information needed to allow
22 the commission to evaluate the health security plan, cost-
23 containment measures, utilization review, health facility
24 operating budgets, health care provider fees and any other
25 information the commission deems necessary to carry out its

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1 duties pursuant to the Health Security Act.

2 B. The commission shall establish uniform reporting
3 requirements for health care providers and health facilities.

4 C. Information confidential pursuant to other
5 provisions of law shall be confidential pursuant to the Health
6 Security Act. Within the constraints of confidentiality,
7 reports of the commission are public documents.

8 Section 38. CONSUMER, PROVIDER AND HEALTH FACILITY
9 ASSISTANCE PROGRAM.--

10 A. The commission shall establish a consumer, health
11 care provider and health facility assistance program to take
12 complaints and to provide timely and knowledgeable assistance
13 to:

14 (1) eligible persons and applicants about their
15 rights and responsibilities and the coverages provided in
16 accordance with the Health Security Act; and

17 (2) health care providers and health facilities
18 about the status of claims, payments and other pertinent
19 information relevant to the claims payment process.

20 B. The commission shall establish a toll-free
21 telephone line for the consumer, health care provider and health
22 facility assistance program and shall have persons available
23 throughout the state to assist beneficiaries, applicants, health
24 care providers and health facilities in person.

25 Section 39. REIMBURSEMENT FOR OUT-OF-STATE SERVICES--

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1 HEALTH SECURITY PLAN'S RIGHT TO SUBROGATION AND PAYMENT FROM
2 OTHER INSURANCE PLANS.--

3 A. A beneficiary may obtain health care services
4 covered by the health security plan out of state; provided,
5 however, that the services shall be paid at the same rate that
6 would apply if the services were received in New Mexico. Higher
7 charges for those services shall not be paid by the health
8 security plan unless the commission negotiates a reciprocity or
9 other agreement with the other state or with the out-of-state
10 health care provider or health facility.

11 B. The health security plan shall make reasonable
12 efforts to ascertain any legal liability of third parties who
13 are or may be liable to pay all or part of the health care
14 services costs of injury, disease or disability of a
15 beneficiary.

16 C. When the health security plan makes payments on
17 behalf of a beneficiary, the health security plan is subrogated
18 to any right of the beneficiary against a third party for
19 recovery of amounts paid by the health security plan.

20 D. By operation of law, an assignment to the health
21 security plan of the rights of a beneficiary:

22 (1) is conclusively presumed to be made of:

23 (a) a payment for health care services
24 from any person, firm or corporation, including an insurance
25 carrier; and

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1 (b) a monetary recovery for damages for
2 bodily injury, whether by judgment, contract for compromise or
3 settlement;

4 (2) shall be effective to the extent of the
5 amount of payments by the health security plan; and

6 (3) shall be effective as to the rights of any
7 other beneficiaries whose rights can legally be assigned by the
8 beneficiary.

9 Section 40. PRIVATE HEALTH INSURANCE COVERAGE LIMITED.--

10 A. After the date the health security plan is
11 operating, no person shall provide private health insurance to a
12 beneficiary for health care that is covered by the health
13 security plan except for retiree health insurance plans that do
14 not enter into contracts with the health security plan. A
15 beneficiary may purchase supplemental benefits.

16 B. Nothing in this section affects insurance
17 coverage pursuant to the federal Employee Retirement Income
18 Security Act of 1974 unless the state obtains a congressional
19 exemption or a waiver from the federal government. Health
20 coverage plans that are covered by the provisions of that act
21 may elect to participate in the health security plan.

22 Section 41. HEALTH SECURITY PLAN FUND CREATED--FEDERAL
23 HEALTH INSURANCE PROGRAM WAIVERS--REIMBURSEMENT TO HEALTH
24 SECURITY PLAN FROM FEDERAL AND OTHER HEALTH INSURANCE
25 PROGRAMS.--

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1 A. The "health security plan fund" is created in the
2 state treasury. All revenues received pursuant to the Health
3 Security Act shall be deposited in the fund.

4 B. The commission shall provide for the collection
5 of premiums from eligible beneficiaries, employers, state and
6 federal agencies and other entities, which money when combined
7 with other money appropriated to the fund shall be sufficient to
8 provide the required health care services and to pay the
9 expenses of the commission and its administrative functions.
10 All premiums and other money appropriated to the fund shall be
11 credited to the fund.

12 C. The fund shall be maintained in actuarially sound
13 condition as evidenced by the annual written certification of a
14 qualified independent actuary contracted by the commission.

15 D. The commission shall:
16 (1) in conjunction with the human services
17 department, apply to the United States department of health and
18 human services for all waivers of requirements under health care
19 programs established pursuant to the federal Social Security Act
20 that are necessary to enable the state to deposit federal
21 payments for services covered by the health security plan into
22 the health security plan fund and to be the supplemental payer
23 of benefits for persons receiving medicare benefits;

24 (2) except for those programs designated in
25 Subsection B of Section 21 of the Health Security Act, identify

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1 other federal programs that provide federal funds for payment of
2 health care services to individuals and apply for any waivers or
3 enter into any agreements that are necessary to enable the state
4 to deposit federal payments for health care services covered by
5 the health security plan into the health security plan fund;
6 provided, however, agreements negotiated with the federal Indian
7 health service shall not impair treaty obligations of the United
8 States government, and other agreements negotiated shall not
9 impair portability or other aspects of the health care coverage;

10 (3) seek an amendment to the federal Employee
11 Retirement Income Security Act of 1974 to exempt New Mexico from
12 the provisions of that act that relate to health care services
13 or health insurance, or the commission shall apply to the
14 appropriate federal agency for waivers of any requirements of
15 that act if congress provides for waivers to enable the
16 commission to extend coverage through the Health Security Act to
17 as many New Mexicans as possible; and

18 (4) work with the counties to determine the
19 expenditure of funds generated pursuant to the Indigent Hospital
20 and County Health Care Act and the Statewide Health Care Act.

21 E. The commission shall seek payment to the health
22 security plan from medicaid, medicare or any other federal or
23 other insurance program for any reimbursable payment provided
24 under the plan.

25 F. The commission shall seek to maximize federal

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1 contributions and payments for health care services provided in
2 New Mexico and shall ensure that the contributions of the
3 federal government for health care services in New Mexico will
4 not decrease in relation to other states as a result of any
5 waivers, exemptions or agreements.

6 G. The commission shall maintain sufficient reserves
7 in the fund to provide for catastrophic and unforeseen
8 expenditures.

9 Section 42. VOLUNTARY PURCHASE OF OTHER INSURANCE.--
10 Nothing in the Health Security Act shall be construed to
11 prohibit the voluntary purchase of insurance coverage for health
12 care services not covered by the health security plan or for
13 individuals not eligible for coverage under the health security
14 plan.

15 Section 43. INSURANCE RATES--SUPERINTENDENT OF INSURANCE
16 DUTIES.--

17 A. The superintendent of insurance shall work
18 closely with the legislative finance committee pursuant to
19 Section 44 of the Health Security Act to identify premium costs
20 associated with health care coverage in workers' compensation
21 and automobile medical coverage. The superintendent of
22 insurance shall develop an estimate of expected reduction in
23 those costs based upon assumptions of health care services
24 coverage in the health security plan, and shall report the
25 findings to the legislative finance committee to determine the

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1 financing of the health security plan.

2 B. The superintendent of insurance shall ensure that
3 workers' compensation and automobile insurance premiums on
4 insurance policies written in New Mexico reflect a lower rate to
5 account for the medical payment component to be assumed by the
6 health security plan.

7 Section 44. FINANCING THE HEALTH SECURITY PLAN.--

8 A. The legislative finance committee shall determine
9 financing options for the health security plan. In making its
10 determinations, the committee shall be guided by the following
11 requirements and assumptions:

12 (1) health care services to be included and for
13 which costs are to be projected in determining the financing
14 options shall be no less than the health care coverage afforded
15 state employees; and

16 (2) options may set minimum and maximum levels
17 of a beneficiary's income-based premium payments, sliding scale
18 premium payments and medicare credits and employer
19 contributions, and an employer may cover all or part of an
20 employee's premium provided that a collective bargaining
21 agreement is not violated.

22 B. The legislative finance committee shall prepare a
23 report of its determinations with the specific options and
24 recommendations no later than December 15, 2007. The report
25 shall be submitted for consideration for legislative

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1 implementation to the second session of the forty-eighth
2 legislature.

3 Section 45. TEMPORARY PROVISION--TRANSITION PERIOD
4 ARRANGEMENTS--PUBLICLY FUNDED HEALTH CARE SERVICE PLANS.--

5 A. A person who, on the date benefits are available
6 under the Health Security Act's health security plan, receives
7 health care benefits under private contract or collective
8 bargaining agreement entered into prior to July 1, 2010 shall
9 continue to receive those benefits until the contract or
10 agreement expires or unless the contract or agreement is
11 renegotiated to provide participation in the health security
12 plan.

13 B. A person covered by a health care plan that has
14 its premiums paid for in any part by public money, including
15 money from the state, a political subdivision, state educational
16 institution, public school or other entity that receives public
17 money to pay health insurance premiums, shall be covered by the
18 Health Security Act health security plan on the effective date
19 that benefits are available under the health security plan.

20 Section 46. TEMPORARY PROVISION.--

21 A. If the forty-eighth legislature approves
22 implementation and financing of the health security plan, the
23 health security plan shall be operational by July 1, 2010.

24 B. If the forty-eighth legislature fails to
25 implement the recommendations of the legislative finance

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1 committee or otherwise fails to determine and approve financing
2 of the health security plan, then the health security plan shall
3 not become effective.

4 Section 47. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2007.