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SENATE BILL 5

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Carlos R. Cisneros and Roberto "Bobby" J. Gonzales

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

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,

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

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

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

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

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

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

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1 R. "provider budget" means the authorized
2 expenditures pursuant to payment mechanisms established by the
3 commission to pay for health care furnished by health care
4 providers participating in the health security plan; and

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

10 **SECTION 4. HEALTH CARE COMMISSION CREATED--GOVERNMENTAL**
11 **INSTRUMENTALITY.--**As of November 1, 2012, the "health care
12 commission" is created as a public body, politic and corporate,
13 constituting a governmental instrumentality. The commission
14 consists of fifteen members.

15 **SECTION 5. CREATION OF HEALTH CARE COMMISSION MEMBERSHIP**
16 **NOMINATING COMMITTEE--MEMBERSHIP, TERMS AND DUTIES OF**
17 **COMMITTEE.--**

18 A. As of July 1, 2012, the "health care commission
19 membership nominating committee" is created consisting of
20 twelve members, to reflect the geographic diversity of the
21 state, as follows:

- 22 (1) two members appointed by the governor;
- 23 (2) three members appointed by the speaker of
24 the house of representatives;
- 25 (3) three members appointed by the president

1 pro tempore of the senate;

2 (4) two members appointed by the minority
3 leader of the house of representatives; and

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

6 B. At the first meeting of the committee, it shall
7 elect a chair from its membership. The chair shall vote only
8 in the case of a tie vote.

9 C. Members shall serve four-year terms; provided,
10 however, that the first twelve members appointed to the
11 committee shall serve staggered terms as follows:

12 (1) the governor shall appoint the first two
13 appointees to three-year terms;

14 (2) the speaker of the house of
15 representatives shall appoint the first three appointees so
16 that one serves for two years, one for three years and one for
17 four years;

18 (3) the president pro tempore of the senate
19 shall appoint the first three appointees so that one serves for
20 two years, one for three years and one for four years;

21 (4) the minority leader of the house of
22 representatives shall appoint the first two members so that one
23 serves for two years and one serves for four years; and

24 (5) the minority leader of the senate shall
25 appoint the first two members so that one serves for two years

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1 and one serves for four years.

2 D. A member shall serve until the member's
3 successor is appointed and qualified. Successor members shall
4 be appointed by the appointing authority that made the initial
5 appointment to the committee. A state employee who is exempt
6 from the Personnel Act is not eligible to serve on the
7 committee. A member shall be eligible for or enrolled in the
8 health security plan. An elected official shall not serve on
9 the committee. Sufficient public notice shall be provided to
10 allow members of the public to request consideration of
11 appointment to the committee.

12 E. Appointed members of the committee shall have
13 substantial knowledge of the health care system as demonstrated
14 by education or experience. A person shall not be appointed to
15 the committee if, currently or within the previous thirty-six
16 months, the person or a member of the person's household is
17 employed by, is an officer of or has a controlling interest in
18 a person providing health care or health insurance, directly or
19 as an agent of a health insurer.

20 F. The committee shall take appropriate action to
21 ensure that adequate prior notice of its meetings is advertised
22 and reported on a publicly accessible web site, in media
23 outlets throughout the state and through the publication of a
24 legal notice in major newspapers. Publication of the legal
25 notice shall occur once each week for the two weeks immediately

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1 preceding the date of a meeting. Meetings of the committee
2 shall be open to the public, and public comment shall be
3 allowed.

4 G. A majority of the committee shall constitute a
5 quorum. The committee may allow members' participation in
6 meetings by telephone or other electronic media that allow full
7 participation. Meetings may be closed only for discussion of
8 candidates prior to selection. Final selection of candidates
9 shall be by vote of the members and shall be conducted in a
10 public meeting.

11 H. The committee shall hold its first meeting on or
12 before June 15, 2012. The committee shall actively solicit,
13 accept and evaluate applications from qualified persons for
14 membership on the commission subject to the requirements for
15 commission membership qualifications pursuant to Section 6 of
16 the Health Security Act.

17 I. No later than September 15, 2012, the committee
18 shall submit to the governor the names of persons recommended
19 for appointment to the commission by a majority of the
20 committee. Immediately after receiving committee nominations,
21 the governor may make one request of the committee for
22 submission of additional names. If a majority of the committee
23 finds that additional persons would be qualified, the committee
24 shall promptly submit additional names and recommend those
25 persons for appointment to the commission. The committee shall

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1 submit no more than three names for a membership position for
2 each initial or additional appointment.

3 J. Appointed committee members shall be reimbursed
4 pursuant to the Per Diem and Mileage Act for expenses incurred
5 in fulfilling their duties.

6 K. Staff to assist the committee in its duties
7 until a commission is appointed shall be furnished by the
8 department of health. Thereafter, commission staff shall
9 assist the committee in its duties.

10 SECTION 6. APPOINTMENT OF COMMISSION MEMBERS--
11 QUALIFICATIONS--TERMS.--

12 A. From the nominees submitted by the health care
13 commission membership nominating committee, the governor shall
14 appoint fifteen members to the commission, and the initial
15 commission shall be in place by November 1, 2012.

16 B. The terms of the initial commission members
17 appointed shall be chosen by lot: five members shall be
18 appointed for terms of four years; five members shall be
19 appointed for terms of three years; and five members shall be
20 appointed for terms of two years. Thereafter, all members
21 shall be appointed for terms of four years. After initial
22 terms are served, no member shall serve more than three
23 consecutive four-year terms. A member may serve until a
24 successor is appointed.

25 C. A person who served on the health care

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1 commission membership nominating committee shall not be
2 nominated for or serve on the commission within thirty-six
3 months from the time served on the committee. A state employee
4 who is exempt from the Personnel Act is not eligible to serve
5 on the commission. An elected official shall not serve on the
6 commission. A commission member shall be eligible for or
7 enrolled in the health security plan.

8 D. When a vacancy occurs in the membership of the
9 commission, the health care commission membership nominating
10 committee shall meet and act within thirty days of the
11 occurrence of the vacancy. From the nominees submitted, the
12 governor shall fill the vacancy within thirty days after
13 receiving final nominations.

14 E. Members of the commission shall include five
15 persons who represent either health care providers or health
16 facilities and ten persons who represent consumer and employer
17 interests, the majority of whom shall represent consumer
18 interests.

19 F. Except for persons appointed to represent health
20 facilities or health care providers, a person shall be
21 disqualified for appointment to the commission if, currently or
22 during the previous thirty-six months, the person or a member
23 of the person's household is employed by, is an officer of or
24 has a controlling interest in a person providing health care or
25 health insurance, directly or as an agent of a health insurer.

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1 G. Persons appointed who do not represent health
2 care providers or health facilities must have a knowledge of
3 the health care system as demonstrated by experience or
4 education. To ensure fair representation of all areas of the
5 state, members shall be appointed from each of the public
6 education commission districts as follows:

7 (1) two from public education commission
8 district 1;

9 (2) one from public education commission
10 district 2;

11 (3) one from public education commission
12 district 3;

13 (4) two from public education commission
14 district 4;

15 (5) two from public education commission
16 district 5;

17 (6) one from public education commission
18 district 6;

19 (7) two from public education commission
20 district 7;

21 (8) two from public education commission
22 district 8;

23 (9) one from public education commission
24 district 9; and

25 (10) one from public education commission

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1 district 10.

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

11 I. A majority of the commission's members
12 constitutes a quorum for the transaction of business. The
13 commission may allow members' participation in meetings by
14 telephone or other electronic media that allow full
15 participation. Annually, the commission shall elect a chair
16 and any other officers that it deems necessary.

17 J. A member may receive per diem and mileage in
18 accordance with the provisions of the Per Diem and Mileage Act.
19 Additionally, members shall be compensated at the rate of two
20 hundred dollars (\$200) for each meeting actually attended not
21 to exceed compensation for one hundred twenty meetings for a
22 two-year period occurring in a term.

23 SECTION 7. CONFLICT OF INTEREST--DISCLOSURE BY MEMBERS
24 AND DISQUALIFICATION FROM VOTING ON CERTAIN MATTERS.--

25 A. The commission shall adopt a conflict-of-

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1 interest disclosure statement for use by all members that
2 requires disclosure of a financial interest, whether or not a
3 controlling interest, of the member or a member of the member's
4 household in a person providing health care or health
5 insurance.

6 B. A member representing health facilities or
7 health care providers may vote on matters that pertain
8 generally to health facilities or health care providers.

9 C. If there is a question about a conflict of
10 interest of a commission member, the other members shall vote
11 on whether to allow the member to vote.

12 SECTION 8. CODE OF CONDUCT TO BE ADOPTED BY COMMISSION.--

13 A. The commission shall adopt a general code of
14 conduct for commission members and employees subject to the
15 commission's control. The code of conduct shall include at
16 least those matters and activities proscribed by the
17 Governmental Conduct Act.

18 B. Violation of a provision of the adopted code of
19 conduct is grounds for removal of a commission member and
20 grounds for suspension, termination or other disciplinary
21 action of an employee.

22 SECTION 9. APPLICATION OF CERTAIN STATE LAWS TO
23 COMMISSION.--The commission and regional councils created
24 pursuant to the Health Security Act shall be subject to and
25 shall comply with the provisions of the:

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- 1 A. Open Meetings Act;
- 2 B. State Rules Act;
- 3 C. Inspection of Public Records Act; and
- 4 D. Public Records Act.

5 **SECTION 10. CHIEF EXECUTIVE OFFICER--STAFF--CONTRACTS--**
6 **BUDGETS.--**

7 A. The commission shall appoint and set the salary
8 of a "chief executive officer". The chief executive officer
9 shall serve at the pleasure of the commission and has authority
10 to carry on the day-to-day operations of the commission and the
11 health security plan.

12 B. The chief executive officer shall employ those
13 persons necessary to administer and implement the provisions of
14 the Health Security Act.

15 C. The chief executive officer and the chief
16 executive officer's staff shall implement the Health Security
17 Act in accordance with that act and the rules adopted by the
18 commission. The chief executive officer may delegate authority
19 to employees and may organize the staff into units to
20 facilitate its work.

21 D. If the chief executive officer determines that
22 the commission staff or a state agency does not have the
23 resources or expertise to perform a necessary task, the chief
24 executive officer may contract for performance from a person
25 who has a demonstrated capability to perform the task. The

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1 commission shall establish the standards and requirements by
2 which a contract is executed by the commission or the chief
3 executive officer. A contract shall be reviewed by the
4 commission or the chief executive officer to ensure that it
5 meets the criteria, performance standards, expectations and
6 needs of the commission.

7 E. The chief executive officer shall prepare and
8 submit an annual budget request and plan of operation to the
9 commission for its approval. The chief executive officer shall
10 provide at least quarterly status reports on the budget and
11 advise of a potential shortfall as soon as practically
12 possible.

13 F. A contract for claims processing functions shall
14 require that all work for claims processing, customer service,
15 medical and utilization review, financial audit and
16 reimbursement and related claims adjudication functions be
17 performed entirely in New Mexico. To the extent practicable,
18 all other work shall be performed in New Mexico.

19 **SECTION 11. COMMISSION--GENERAL DUTIES.--**As of November
20 1, 2012, the commission shall:

21 A. for the initial implementation of the provisions
22 of the Health Security Act, between July 1, 2014 and July 1,
23 2019, adopt a five-year plan and update that plan, and adopt
24 other long- and short-range plans to provide continuity and
25 development of the state's health care system;

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1 B. pursuant to federal law, apply for any federal
2 waiver that the commission deems necessary to implement the
3 health security plan;

4 C. design the health security plan to fulfill the
5 purposes of and conform with the provisions of the Health
6 Security Act;

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

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

14 (1) preventive and primary care that includes
15 immunization and screening examinations;

16 (2) providing health care in rural or
17 underserved areas of the state;

18 (3) in-home and community-based alternatives
19 to institutional health care; and

20 (4) case management services when appropriate;

21 F. establish compensation methods for health care
22 providers and health facilities and adopt standards and
23 procedures for negotiating and entering into contracts with
24 participating health care providers and health facilities;

25 G. annually, and for those projected future periods

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1 the commission believes appropriate, establish health security
2 plan budgets;

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

6 (1) standards and procedures for determining
7 the budgets; and

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

10 I. negotiate and enter into health care reciprocity
11 agreements with other states and negotiate and enter into
12 health care agreements with out-of-state health care providers
13 and health facilities;

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

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

25 (1) mortality, including accidental causes of

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- 1 death, and natality;
- 2 (2) morbidity;
- 3 (3) health behavior;
- 4 (4) physical and psychological impairment and
- 5 disability;
- 6 (5) health care system costs and health care
- 7 availability, utilization and revenues;
- 8 (6) environmental factors;
- 9 (7) availability, adequacy and training of
- 10 health care personnel;
- 11 (8) demographic factors;
- 12 (9) social and economic conditions affecting
- 13 health; and
- 14 (10) other factors determined by the
- 15 commission;

16 L. standardize data collection and specific methods
17 of measurement across databases and use scientific sampling or
18 complete enumeration for reporting health information;

19 M. establish a health care delivery system that is
20 efficient to administer and that eliminates unnecessary
21 administrative costs;

22 N. adopt rules necessary to implement and monitor a
23 preferred drug list, bulk purchasing or other mechanism to
24 provide prescription drugs and a pricing procedure for
25 nonprescription drugs, durable medical equipment and supplies,

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1 eyeglasses, hearing aids and oxygen;

2 O. establish a pharmacy and therapeutics committee
3 to:

4 (1) conduct concurrent, prospective and
5 retrospective drug utilization review;

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

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

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

14 (5) identify appropriate exclusions from the
15 preferred drug list; and

16 (6) conduct periodic clinical reviews of
17 preferred, nonpreferred and new drugs;

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

22 Q. in conjunction with the human services
23 department, apply to the United States department of health and
24 human services for all waivers of requirements under health
25 care programs established pursuant to the federal Social

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1 Security Act that are necessary to enable the state to deposit
2 federal payments for services covered by the health security
3 plan into the health security plan fund and to be the
4 supplemental payer of benefits for persons receiving medicare
5 benefits;

6 R. except for those programs designated in
7 Subsection B of Section 21 of the Health Security Act, identify
8 other federal programs that provide federal funds for payment
9 of health care services to individuals and apply for any
10 waivers or enter into any agreements that are necessary for
11 services covered by the health security plan into the health
12 security plan fund; provided, however, that agreements
13 negotiated with the federal Indian health service shall not
14 impair treaty obligations of the United States government and
15 that other agreements negotiated shall not impair portability
16 or other aspects of the health care coverage;

17 S. seek an amendment to the federal Employee
18 Retirement Income Security Act of 1974 to exempt New Mexico
19 from the provisions of that act that relate to health care
20 services or health insurance, or apply to the appropriate
21 federal agency for waivers of any requirements of that act if
22 congress provides for waivers to enable the commission to
23 extend coverage through the Health Security Act to as many New
24 Mexicans as possible; provided, however, that the amendment or
25 waiver requested shall not impair portability or other aspects

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1 of the health care coverage;

2 T. analyze developments in federal law and
3 regulation relevant to the health security plan, and provide
4 updates and any legislative recommendations to the legislature
5 that the commission deems necessary pursuant to those
6 developments;

7 U. work with the counties to determine the
8 expenditure of funds generated pursuant to the Indigent
9 Hospital and County Health Care Act and the Statewide Health
10 Care Act;

11 V. seek to maximize federal contributions and
12 payments for health care services provided in New Mexico and
13 ensure that the contributions of the federal government for
14 health care services in New Mexico will not decrease in
15 relation to other states as a result of any waivers, exemptions
16 or agreements;

17 W. study and monitor the migration of persons to
18 New Mexico to determine if persons with costly health care
19 needs are moving to New Mexico to receive health care and, if
20 migration appears to threaten the financial stability of the
21 health security plan, recommend to the legislature changes in
22 eligibility requirements, premiums or other changes that may be
23 necessary to maintain the financial integrity of the health
24 security plan;

25 X. study and evaluate the cost of health care

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1 provider professional liability insurance and its impact on the
2 price of health care services and recommend changes to the
3 legislature as necessary;

4 Y. establish and approve changes in coverage
5 benefits and benefit standards in the health security plan;

6 Z. conduct necessary investigations and inquiries;

7 AA. adopt rules necessary to implement, administer
8 and monitor the operation of the health security plan;

9 BB. adopt rules to establish a procurement process
10 for services and property;

11 CC. meet as needed, but no less often than once
12 every month;

13 DD. report annually to the legislature and the
14 governor on the commission's activities and the operation of
15 the health security plan and include in the annual report:

16 (1) a summary of information about health care
17 needs, health care services, health care expenditures, revenues
18 received and projected revenues and other relevant issues
19 relating to the health security plan, the initial five-year
20 plan and future updates of that plan and other long- and short-
21 range plans; and

22 (2) recommendations on methods to control
23 health care costs and improve access to and the quality of
24 health care for state residents, as well as recommendations for
25 legislative action; and

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1 EE. provide annual training for its members on
2 health care coverage, policy and financing.

3 **SECTION 12. COMMISSION--AUTHORITY.--**The commission has
4 the authority necessary to carry out the powers and duties
5 pursuant to the Health Security Act. The commission retains
6 responsibility for its duties but may delegate authority to the
7 chief executive officer; provided, however, that only the
8 commission may:

9 A. approve the commission's budget and plan of
10 operation;

11 B. approve the health security plan and make
12 changes in the health security plan, but only after legislative
13 approval of those changes specified in Section 30 of the Health
14 Security Act;

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

17 D. issue subpoenas to persons to appear and testify
18 before the commission and to produce documents and other
19 information relevant to the commission's inquiry and enforce
20 this subpoena power through an action in a state district
21 court;

22 E. make reports and recommendations to the
23 legislature;

24 F. subject to the prohibitions and restrictions of
25 Section 21 of the Health Security Act, apply for program

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1 waivers from any governmental entity if the commission
2 determines that the waivers are necessary to ensure the
3 participation by the greatest possible number of beneficiaries;

4 G. apply for and accept grants, loans and
5 donations;

6 H. acquire or lease real property and make
7 improvements on it and acquire by lease or by purchase tangible
8 and intangible personal property;

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

11 J. appoint and prescribe the duties of employees,
12 fix their compensation, pay their expenses and provide an
13 employee benefit program;

14 K. establish and maintain banking relationships,
15 including establishment of checking and savings accounts;

16 L. participate as a qualified entity in the
17 programs of the New Mexico finance authority; and

18 M. enter into agreements with an employer, group or
19 other plan to provide health care services for the employer's
20 employees or retirees; provided, however, that nothing in the
21 Health Security Act shall be construed to reduce or eliminate
22 benefits to which the employee or retiree is entitled.

23 **SECTION 13. ADVISORY BOARDS.--**

24 A. The commission shall establish a "health care
25 provider advisory board" and a "health facility advisory

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1 board". The commission may establish additional advisory
2 boards to assist it in performing its duties. Advisory boards
3 shall assist the commission in matters requiring the expertise
4 and knowledge of the advisory boards' members.

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

10 C. Except for the health care provider advisory
11 board and the health facility advisory board, no more than two
12 advisory board members shall have a controlling interest,
13 direct or indirect, in a person providing health care or a
14 person providing health insurance.

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

17 **SECTION 14. HEALTH CARE DELIVERY REGIONS.**--The commission
18 shall establish health care delivery regions in the state,
19 based on geography and health care resources. The regions may
20 have differential fee schedules, budgets, capital expenditure
21 allocations or other features to encourage the provision of
22 health care in rural and other underserved areas or to tailor
23 otherwise the delivery of health care to fit the needs of a
24 region or a part of a region.

25 **SECTION 15. REGIONAL COUNCILS.**--

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1 A. The commission shall designate regional councils
2 in the designated health care delivery regions. In selecting
3 persons to serve as members of regional councils, the
4 commission shall consider the comments and recommendations of
5 persons in the region who are knowledgeable about health care
6 and the economic and social factors affecting the region.

7 B. The regional councils shall be composed of the
8 commission members who live in the region and five other
9 members who live in the region and are appointed by the
10 commission. No more than two noncommission council members
11 shall have a controlling interest, direct or indirect, in a
12 person providing health care or a person providing health
13 insurance.

14 C. Members of a regional council shall be paid per
15 diem and mileage in accordance with the provisions of the Per
16 Diem and Mileage Act.

17 D. The regional councils shall hold public hearings
18 to receive comments, suggestions and recommendations from the
19 public regarding regional health care needs. The councils
20 shall report to the commission at times specified by the
21 commission to ensure that regional concerns are considered in
22 the development and update of the five-year plan, other short-
23 and long-range plans and projections, fee schedules, budgets
24 and capital expenditure allocations.

25 E. Staff technical assistance for the regional

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1 councils shall be provided by the commission.

2 SECTION 16. RULEMAKING.--

3 A. The commission shall adopt rules necessary to
4 carry out the duties of the commission and the provisions of
5 the Health Security Act.

6 B. The commission shall not adopt, amend or repeal
7 any rule affecting a person outside the commission without a
8 public hearing on the proposed action before the commission or
9 a hearing officer designated by the commission. The hearing
10 officer may be a member of the commission's staff. The hearing
11 shall be held in a county that the commission determines would
12 be in the interest of those affected. Notice of the subject
13 matter of the rule, the action proposed to be taken, the time
14 and place of the hearing, the manner in which interested
15 persons may present their views and the method by which copies
16 of the proposed rule or an amendment or repeal of an existing
17 rule may be obtained shall be published once at least thirty
18 days prior to the hearing date in a newspaper of general
19 circulation in the state and shall also be published in an
20 informative nonlegal format in one newspaper published in each
21 health care delivery region and mailed at least thirty days
22 prior to the hearing date to all persons who have made a
23 written request for advance notice of hearing.

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

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1 SECTION 17. HEALTH SECURITY PLAN.--

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

7 B. The health security plan shall be designed to
8 provide comprehensive, necessary and appropriate health care
9 benefits, including preventive health care and primary,
10 secondary and tertiary health care for acute and chronic
11 conditions. The health security plan may provide for certain
12 health care services to be phased in as the health security
13 plan budget allows.

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

- 17 (1) preventive health services;
18 (2) health care provider services;
19 (3) health facility inpatient and outpatient
20 services;
21 (4) laboratory tests and radiology procedures;
22 (5) hospice care;
23 (6) in-home, community-based and institutional
24 long-term care services;
25 (7) prescription drugs;

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- 1 (8) inpatient and outpatient mental and
2 behavioral health services;
- 3 (9) drug and other substance abuse services;
- 4 (10) preventive and prophylactic dental
5 services, including an annual dental examination and cleaning;
- 6 (11) vision appliances, including medically
7 necessary contact lenses;
- 8 (12) medical supplies, durable medical
9 equipment and selected assistive devices, including hearing and
10 speech assistive devices; and
- 11 (13) experimental or investigational
12 procedures or treatments as specified by the commission.

13 D. Covered health care shall not include:

- 14 (1) surgery for cosmetic purposes other than
15 for reconstructive purposes;
- 16 (2) medical examinations and medical reports
17 prepared for purchasing or renewing life insurance or
18 participating as a plaintiff or defendant in a civil action for
19 the recovery or settlement of damages; and
- 20 (3) orthodontic services and cosmetic dental
21 services except those cosmetic dental services necessary for
22 reconstructive purposes.

23 E. The health security plan shall specify the
24 health care to be covered and the amount, scope and duration of
25 benefits.

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1 F. The health security plan shall contain
2 provisions to control health care costs so that beneficiaries
3 receive comprehensive, high-quality health care consistent with
4 available revenue and budget constraints.

5 G. The health security plan shall phase in
6 beneficiaries as their participation becomes possible through
7 contracts, waivers or federal legislation. The health security
8 plan may provide for certain preventive health care to be
9 offered to all New Mexicans regardless of a person's
10 eligibility to participate as a beneficiary.

11 H. The five-year plan as well as other long- and
12 short-range plans adopted by the commission shall be reviewed
13 by the regional councils and the commission annually and
14 revised as necessary. Revisions shall be adopted by the
15 commission in accordance with Section 11 of the Health Security
16 Act. In projecting services under the health security plan,
17 the commission shall take all reasonable steps to ensure that
18 long-term care and dental care are provided at the earliest
19 practical times consistent with budget constraints.

20 SECTION 18. LONG-TERM CARE.--

21 A. Long-term care may include:

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

24 (2) institutional care.

25 B. No later than one year after the effective date

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1 of the operation of the health security plan, the commission
2 shall appoint an advisory "long-term care committee" made up of
3 representatives of health care consumers, providers and
4 administrators to develop a plan for integrating long-term care
5 into the health security plan. The committee shall report its
6 plan to the commission no later than one year from its
7 appointment. Committee members shall receive per diem and
8 mileage as provided in the Per Diem and Mileage Act.

9 C. The long-term care component of the health
10 security plan shall provide for case management and
11 noninstitutional services when appropriate.

12 D. Nothing in this section affects long-term care
13 services paid through private insurance or state or federal
14 programs subject to the provisions of Section 40 of the Health
15 Security Act.

16 E. Nothing in this section precludes the commission
17 from including long-term care services from the inception of
18 the health security plan.

19 **SECTION 19. MENTAL AND BEHAVIORAL HEALTH SERVICES.--**

20 A. No later than one year after appointment of the
21 chief executive officer, the commission shall appoint an
22 advisory "mental and behavioral health services committee" made
23 up of representatives of mental and behavioral health care
24 consumers, providers and administrators to develop a plan for
25 coordinating mental and behavioral health services within the

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1 health security plan. The committee shall report its plan to
2 the commission no later than one year from its appointment.
3 Committee members may receive per diem and mileage as provided
4 in the Per Diem and Mileage Act.

5 B. The mental and behavioral health services
6 component of the health security plan shall provide for case
7 management and noninstitutional services where appropriate.

8 C. The health security plan shall not impose
9 treatment limitations or financial requirements on the
10 provision of mental and behavioral health benefits if identical
11 limitations or requirements are not imposed on coverage of
12 benefits for other conditions.

13 D. Nothing in this section limits mental and
14 behavioral health services paid through private insurance or
15 state or federal programs subject to the provisions of Section
16 40 of the Health Security Act.

17 **SECTION 20. MEDICAID COVERAGE--AGREEMENTS.--**The
18 commission may enter into appropriate agreements with the human
19 services department or other state agency for the purpose of
20 furthering the goals of the Health Security Act. These
21 agreements may provide for certain services provided pursuant
22 to the medicaid program under Title 19 and Title 21 of the
23 federal Social Security Act to be administered by the
24 commission to implement the health security plan.

25 **SECTION 21. HEALTH SECURITY PLAN COVERAGE--CONDITIONS OF**

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1 ELIGIBILITY FOR BENEFICIARIES--EXCLUSIONS.--

2 A. An individual is eligible as a beneficiary of
3 the health security plan if the individual has been physically
4 present in New Mexico for one year prior to the date of
5 application for enrollment in the health security plan and if
6 the individual has a current intention to remain in New Mexico
7 and not to reside elsewhere. A dependent of an eligible
8 individual is included as a beneficiary.

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

- 11 (1) federal retiree health plan beneficiaries;
12 (2) active duty and retired military
13 personnel; and
14 (3) individuals covered by the federal active
15 and retired military health programs.

16 C. Federal Indian health service or tribally
17 operated health care program beneficiaries shall not be brought
18 into coverage except through agreements with:

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

24 D. If an individual is ineligible due to the
25 residence requirement, the individual may become eligible by

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1 paying the premium required by the health security plan for
2 coverage for the period of time up to the date the individual
3 fulfills that requirement if the individual is an employee who
4 physically resides and intends to reside in the state because
5 of employment offered to the individual in New Mexico while the
6 individual was residing elsewhere as demonstrated by furnishing
7 that evidence of those facts required by rule adopted by the
8 commission.

9 E. An employer, group or other plan that provides
10 health care benefits for its employees after retirement,
11 including coverage for payment of health care supplementary
12 coverage if the retiree is eligible for medicare, may agree to
13 participate in the health security plan; provided, however,
14 that there is no loss of benefits under the retiree health
15 benefit coverage. An employer, group or other plan that
16 participates in the health security plan shall contribute to
17 the health security plan for the benefit of the retiree, and
18 the agreement shall ensure that the health benefit coverage for
19 the retiree shall be restored in the event of the retiree's
20 ineligibility for health security plan coverage.

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

24 SECTION 22. HEALTH SECURITY PLAN COVERAGE OF NONRESIDENT
25 STUDENTS.--

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1 A. Except as provided in Subsection B of this
2 section, an educational institution shall purchase coverage
3 under the health security plan for its nonresident students
4 through fees assessed to those students. The governing body of
5 an educational institution shall set the fees at the amount
6 determined by the commission.

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

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

15 **SECTION 23. REMOVING INELIGIBLE PERSONS.--**The commission
16 shall adopt rules to provide procedures for removing persons no
17 longer eligible for coverage.

18 **SECTION 24. ELIGIBILITY CARD--USE--PENALTIES FOR**
19 **MISUSE.--**

20 A. A beneficiary shall receive a card as proof of
21 eligibility. The card shall be electronically readable and
22 shall contain a photograph or electronic image of the
23 beneficiary, information that identifies the beneficiary for
24 treatment and billing, payment and other information the
25 commission deems necessary. The use of a beneficiary's social

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1 security number as an identification number is not permitted.

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

11 C. A beneficiary who lends the beneficiary's card
12 to another or an individual who uses another's card after being
13 determined liable pursuant to Subsection B of this section of a
14 previous misuse is guilty of a misdemeanor and shall be
15 sentenced pursuant to the provisions of Section 31-19-1 NMSA
16 1978. A third or subsequent conviction is a fourth degree
17 felony, and the offender shall be sentenced pursuant to the
18 provisions of Section 31-18-15 NMSA 1978.

19 SECTION 25. PRIMARY CARE PROVIDER--RIGHT TO CHOOSE--
20 ACCESS TO SERVICES.--

21 A. Except as provided in the Workers' Compensation
22 Act, a beneficiary has the right to choose a primary care
23 provider.

24 B. The primary care provider is responsible for
25 providing health care provider services to the patient except

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1 for:

- 2 (1) services in medical emergencies; and
3 (2) services for which a primary care provider
4 determines that specialist services are required, in which case
5 the primary care provider shall advise the patient of the need
6 for and the type of specialist services.

7 C. Except as otherwise provided in this section,
8 health care provider specialists shall be paid pursuant to the
9 health security plan only if the patient has been referred by a
10 primary care provider. Nothing in this subsection prevents a
11 beneficiary from obtaining the services of a health care
12 provider specialist and paying the specialist for services
13 provided.

14 D. The commission shall by rule specify when and
15 under what circumstances a beneficiary may self-refer,
16 including self-referral to a chiropractic physician, a doctor
17 of oriental medicine, mental and behavioral health service
18 providers and other health care providers who are not primary
19 care providers.

20 E. The commission shall by rule specify the
21 conditions under which a beneficiary may select a specialist as
22 a primary care provider.

23 **SECTION 26. DISCRIMINATION PROHIBITED.--**A health care
24 provider or health facility shall not discriminate against or
25 refuse to furnish health care to a beneficiary on the basis of

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1 age, race, color, income level, national origin, religion,
2 gender, sexual orientation, disabling condition or payment
3 status. Nothing in this section shall require a health care
4 provider or health facility to provide services to a
5 beneficiary if the provider or facility is not qualified to
6 provide the needed services or does not offer them to the
7 general public.

8 SECTION 27. CLAIMS REVIEW.--

9 A. The commission shall adopt rules to provide a
10 comprehensive claims review program. The procedures and
11 standards used in the program shall be disclosed in writing to
12 applicants, beneficiaries, health care providers and health
13 facilities at the time of application to or participation in
14 the health security plan.

15 B. The decision to approve or deny a claim based on
16 a technicality shall be made in a timely manner and shall not
17 exceed time limits established by rule of the commission. A
18 final decision to deny payment for services based on medical
19 necessity or utilization shall be based on a recommendation
20 made by a health care professional having appropriate and
21 adequate qualifications to make the recommendation. A denial
22 of a claim for payment of a medical specialty service based on
23 medical necessity or utilization shall be made only after a
24 written recommendation for denial is made by a member of that
25 medical specialty with credentials equivalent to those of the

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1 provider.

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

5 SECTION 28. QUALITY OF CARE--HEALTH CARE PROVIDER AND
6 HEALTH FACILITIES--PRACTICE STANDARDS.--

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

16 B. The commission shall review and adopt
17 professional practice guidelines developed by state and
18 national medical and specialty organizations, federal agencies
19 for health care policy and research and other organizations as
20 it deems necessary to promote the quality and cost-
21 effectiveness of health care provided through the health
22 security plan.

23 C. The quality improvement program shall include an
24 ongoing system for monitoring patterns of practice. The
25 commission shall appoint a "health care practice advisory

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1 committee" consisting of health care providers, health
2 facilities and other knowledgeable persons to advise the
3 commission and staff on health care practice issues. The
4 committee may appoint subcommittees and task forces to address
5 practice issues of a specific health care provider discipline
6 or a specific kind of health facility; provided, however, that
7 the subcommittee or task force includes providers of
8 substantially similar specialties or types of facilities. The
9 advisory committee shall provide to the commission recommended
10 standards and guidelines to be followed in making
11 determinations on practice issues.

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

20 E. The commission shall provide by rule the
21 procedures for recouping payments or withholding payments for
22 health care determined by the commission with the advice of the
23 health care practice advisory committee or subcommittee to be
24 medically unnecessary.

25 F. The commission may provide by rule for the

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1 assessment of administrative penalties for up to three times
2 the amount of excess payments if it finds that excessive
3 billings were part of an aberrant pattern of practice.
4 Administrative penalties shall be deposited in the current
5 school fund.

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

19 H. The commission shall report a suspension or
20 revocation of the privilege to be paid for health care pursuant
21 to the Health Security Act to the appropriate licensing or
22 certifying board.

23 I. The commission shall report cases of suspected
24 fraud by a health care provider or a health facility to the
25 attorney general or to the district attorney of the county

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1 where the health care provider or health facility operates for
2 investigation and prosecution.

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

15 **SECTION 30. HEALTH SECURITY PLAN BUDGET.**--

16 A. Annually, the commission shall develop and
17 submit to the legislature a health security plan budget. The
18 budget shall be the commission's recommendation for the total
19 amount to be spent by the plan for covered health care services
20 in the next fiscal year.

21 B. Unless otherwise provided in the general
22 appropriation act or other act of the legislature, the health
23 security plan budget shall be within projected annual revenues.
24 After the legislative review and approval, the commission shall
25 implement the health security plan budget. Without specific

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1 legislative approval, the commission shall not change the level
2 of premium charged and used to project revenue or change the
3 employer contributions under the health security plan. The
4 legislature may base its approval on the findings and
5 recommendations of an independent audit or actuarial study.

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

10 D. The health security plan shall include a maximum
11 amount or percentage for administrative costs, and this
12 maximum, if a percentage, may change in relation to the total
13 costs of services provided under the health security plan. For
14 the sixth and subsequent calendar years of operation of the
15 health security plan, administrative costs shall not exceed
16 five percent of the health security plan budget.

17 SECTION 31. PAYMENTS TO HEALTH CARE PROVIDERS--
18 CO-PAYMENTS.--

19 A. The commission shall prepare a provider budget.
20 Consistent with the provider budget, the health security plan
21 shall provide payment for all covered health care rendered by
22 health care providers. A variety of payment plans, including
23 fee-for-service, may be adopted by the commission. Payment
24 plans shall be negotiated with providers as provided by rule.
25 In the event that negotiation fails to develop an acceptable

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1 payment plan, the disputing parties shall submit the dispute
2 for resolution pursuant to Section 29 of the Health Security
3 Act.

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

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

17 D. Payment, or the offer of payment whether or not
18 that offer is accepted, to a health care provider for services
19 covered by the health security plan shall be payment in full
20 for those services. A health care provider shall not charge a
21 beneficiary an additional amount for services covered by the
22 plan.

23 E. The commission may establish a co-payment
24 schedule if a required co-payment is determined to be an
25 effective cost-control measure. A co-payment shall not be

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1 required for preventive health care. When a co-payment is
2 required, the health care provider shall not waive it, and if
3 it remains uncollected, the health care provider shall
4 demonstrate a good-faith effort to have collected the co-
5 payment.

6 SECTION 32. PAYMENTS TO HEALTH FACILITIES--CO-PAYMENTS.--

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

22 B. Supplemental payment rates may be adopted to
23 provide incentives to help ensure the delivery of needed health
24 care services in rural and other underserved areas throughout
25 the state.

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1 C. Each health care provider employed by a health
2 facility shall be paid from the facility's operating budget in a
3 manner determined by the health facility.

4 D. 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 care. When a co-payment is required,
8 the health facility shall not waive it, and if it remains
9 uncollected, the health facility shall demonstrate a good-faith
10 effort to have collected the co-payment.

11 **SECTION 33. HEALTH RESOURCE CERTIFICATE--COMMISSION**
12 **RULES--REQUIREMENT FOR REVIEW.--**

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

20 B. Except as provided in Subsection F of this
21 section, a health facility or health care provider participating
22 in the health security plan shall not make or obligate itself to
23 make a major capital expenditure without first obtaining a
24 health resource certificate.

25 C. A health facility or health care provider shall

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1 not acquire through rental, lease or comparable arrangement or
2 through donation all or a part of a capital project that would
3 have required review if the acquisition had been by purchase
4 unless the project is granted a health resource certificate.

5 D. A health facility or health care provider shall
6 not engage in component purchasing in order to avoid the
7 provisions of this section.

8 E. The commission shall grant a health resource
9 certificate for a major capital expenditure or a capital project
10 undertaken pursuant to Subsection C of this section only when
11 the project is determined to be needed.

12 F. This section does not apply to:

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

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

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

25 (4) major capital expenditures for nonclinical

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1 services when the nonclinical services are the primary purpose
2 of the expenditure; and

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

6 G. No later than September 1, 2013, the commission
7 shall report to the appropriate committees of the legislature on
8 the capital needs of health facilities, including facilities of
9 state and local governments, with a focus on underserved
10 geographic areas with substantially below-average health
11 facilities and investment per capita as compared to the state
12 average. The report shall also describe geographic areas where
13 the distance to health facilities imposes a barrier to care.
14 The report shall include a section on health care transportation
15 needs, including capital, personnel and training needs. The
16 report shall make recommendations for legislation to amend the
17 Health Security Act that the commission determines necessary and
18 appropriate.

19 **SECTION 34. ACTUARIAL REVIEW--AUDITS.--**

20 A. The commission shall provide for an annual
21 independent actuarial review of the health security plan and any
22 funds of the commission or the plan.

23 B. The commission shall provide by rule requirements
24 for independent financial audits of health care providers and
25 health facilities.

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

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

16 **SECTION 35. STANDARD CLAIM FORMS FOR INSURANCE PAYMENT.--**

17 The commission shall adopt standard claim forms and electronic
18 formats that shall be used by all health care providers and
19 health facilities that seek payment through the health security
20 plan or from private persons, including private insurance
21 companies, for health care services rendered in the state. Each
22 claim form or electronic format may indicate whether a person is
23 eligible for federal or other insurance programs for payment.
24 To the extent practicable, the commission shall require the use
25 of existing, nationally accepted standardized forms, formats and

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1 systems.

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

14 SECTION 37. REPORTS REQUIRED--CONFIDENTIAL INFORMATION.--

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

23 B. The commission shall establish uniform reporting
24 requirements for health care providers and health facilities.

25 C. Information confidential pursuant to other

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1 provisions of law shall be confidential pursuant to the Health
2 Security Act. Within the constraints of confidentiality,
3 reports of the commission are public documents.

4 **SECTION 38. CONSUMER, PROVIDER AND HEALTH FACILITY**
5 **ASSISTANCE PROGRAM.--**

6 A. The commission shall establish a consumer, health
7 care provider and health facility assistance program to take
8 complaints and to provide timely and knowledgeable assistance
9 to:

10 (1) eligible persons and applicants about their
11 rights and responsibilities and the coverages provided in
12 accordance with the Health Security Act; and

13 (2) health care providers and health facilities
14 about the status of claims, payments and other pertinent
15 information relevant to the claims payment process.

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

21 **SECTION 39. REIMBURSEMENT FOR OUT-OF-STATE SERVICES--**
22 **HEALTH SECURITY PLAN'S RIGHT TO SUBROGATION AND PAYMENT FROM**
23 **OTHER INSURANCE PLANS.--**

24 A. A beneficiary may obtain health care services
25 covered by the health security plan out of state; provided,

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1 however, that the services shall be paid at the same rate that
2 would apply if the services were received in New Mexico. Higher
3 charges for those services shall not be paid by the health
4 security plan unless the commission negotiates a reciprocity or
5 other agreement with the other state or with the out-of-state
6 health care provider or health facility.

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

12 C. When the health security plan makes payments on
13 behalf of a beneficiary, the health security plan is subrogated
14 to any right of the beneficiary against a third party for
15 recovery of amounts paid by the health security plan.

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

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

19 (a) a payment for health care services
20 from any person, firm or corporation, including an insurance
21 carrier; and

22 (b) a monetary recovery for damages for
23 bodily injury, whether by judgment, contract for compromise or
24 settlement;

25 (2) shall be effective to the extent of the

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1 amount of payments by the health security plan; and

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

5 SECTION 40. PRIVATE HEALTH INSURANCE COVERAGE LIMITED.--

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

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

18 SECTION 41. VOLUNTARY PURCHASE OF OTHER INSURANCE.--

19 Nothing in the Health Security Act shall be construed to
20 prohibit the voluntary purchase of insurance coverage for health
21 care services not covered by the health security plan or for
22 individuals not eligible for coverage under the health security
23 plan.

24 SECTION 42. INSURANCE RATES--SUPERINTENDENT OF INSURANCE
25 DUTIES.--

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1 A. The superintendent of insurance shall work
2 closely with the legislative finance committee pursuant to
3 Section 43 of the Health Security Act to identify premium costs
4 associated with health care coverage in workers' compensation
5 and automobile medical coverage. The superintendent of
6 insurance shall develop an estimate of expected reduction in
7 those costs based upon assumptions of health care services
8 coverage in the health security plan and shall report the
9 findings to the legislative finance committee to determine the
10 financing of the health security plan.

11 B. The superintendent of insurance shall ensure that
12 workers' compensation and automobile insurance premiums on
13 insurance policies written in New Mexico reflect a lower rate to
14 account for the medical payment component to be assumed by the
15 health security plan.

16 **SECTION 43. FINANCING THE HEALTH SECURITY PLAN.--**

17 A. The legislative finance committee shall determine
18 financing options for the health security plan. In making its
19 determinations, the committee shall be guided by the following
20 requirements and assumptions:

21 (1) health care services to be included and for
22 which costs are to be projected in determining the financing
23 options shall be no less than the health care coverage afforded
24 state employees; and

25 (2) options may set minimum and maximum levels

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1 of a beneficiary's income-based premium payments, sliding scale
2 premium payments and medicare credits and employer
3 contributions, and an employer may cover all or part of an
4 employee's premium, provided that a collective bargaining
5 agreement is not violated.

6 B. The legislative finance committee shall prepare a
7 report of its determinations with the specific options and
8 recommendations no later than December 15, 2011. The report
9 shall be submitted for consideration for legislative
10 implementation to the second session of the fiftieth
11 legislature.

12 SECTION 44. GRANT FUNDING AND OTHER RESOURCES--
13 PARTNERSHIPS.--The legislative finance committee shall seek
14 partnerships among state agencies and private nonprofit persons
15 to identify and apply for available grant funding and other in-
16 kind and financial resources for its study of financing options
17 for the health security plan pursuant to Section 43 of the
18 Health Security Act. Any amounts received in grant funds or
19 from other financial resources shall first be used to offset any
20 state funds that the legislature appropriates or allocates. Any
21 grant funds or other financial resources received in excess of
22 legislative appropriations or allocations shall be used for the
23 study of financing options for the health security plan.

24 SECTION 45. HEALTH SECURITY PLAN FUND CREATED--
25 REIMBURSEMENT TO HEALTH SECURITY PLAN FROM FEDERAL AND OTHER

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1 HEALTH INSURANCE PROGRAMS.--

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

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

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

16 D. The commission shall seek payment to the health
17 security plan from medicaid, medicare or any other federal or
18 other insurance program for any reimbursable payment provided
19 under the plan.

20 E. The commission shall seek to maximize federal
21 contributions and payments for health care services provided in
22 New Mexico and shall ensure that the contributions of the
23 federal government for health care services in New Mexico will
24 not decrease in relation to other states as a result of any
25 waivers, exemptions or agreements.

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1 F. The commission shall maintain sufficient reserves
2 in the fund to provide for catastrophic and unforeseen
3 expenditures.

4 **SECTION 46. TEMPORARY PROVISION--TRANSITION PERIOD**
5 **ARRANGEMENTS--PRIVATE CONTRACT--COLLECTIVE BARGAINING.--**A person
6 who, on the date benefits are available under the Health
7 Security Act's health security plan, receives health care
8 benefits under private contract or collective bargaining
9 agreement entered into prior to July 1, 2014 shall continue to
10 receive those benefits until the contract or agreement expires
11 or unless the contract or agreement is renegotiated to provide
12 participation in the health security plan.

13 **SECTION 47. TEMPORARY PROVISION.--**

14 A. If the fiftieth legislature approves
15 implementation and financing of the health security plan, the
16 health security plan shall be operational by July 1, 2014.

17 B. If the fiftieth legislature fails to implement
18 the recommendations of the legislative finance committee or
19 otherwise fails to determine and approve financing of the health
20 security plan, then the health security plan shall not become
21 effective.

22 **SECTION 48. APPROPRIATION.--**Five hundred thousand dollars
23 (\$500,000) is appropriated from the general fund to the
24 legislative finance committee for expenditure in fiscal year
25 2012 to determine the financing options of the health security

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1 plan, contingent upon enactment of the Health Security Act
2 during the first session of the fiftieth legislature. Any
3 unexpended or unencumbered balance remaining at the end of
4 fiscal year 2012 shall revert to the general fund.

5 SECTION 49. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2011.

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