

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE HEALTH,  
GOVERNMENT AND INDIAN AFFAIRS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 168

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE NEW MEXICO HEALTH  
INSURANCE EXCHANGE ACT; CREATING THE NEW MEXICO HEALTH  
INSURANCE EXCHANGE; PROVIDING FOR THE APPOINTMENT, POWERS AND  
DUTIES OF A BOARD OF DIRECTORS FOR THE EXCHANGE; PROVIDING THE  
SUPERINTENDENT OF INSURANCE WITH RULEMAKING POWERS RELATING TO  
THE EXCHANGE; ENACTING A TEMPORARY PROVISION TO PROVIDE FOR  
TRANSFER OF NEW MEXICO HEALTH INSURANCE ALLIANCE PERSONNEL,  
PERSONAL PROPERTY, CONTRACTS AND REFERENCES IN LAW TO THE NEW  
MEXICO HEALTH INSURANCE EXCHANGE; PROVIDING FOR THE DELAYED  
REPEAL OF THE NEW MEXICO HEALTH INSURANCE ALLIANCE ACT;  
AMENDING A SECTION OF THE TORT CLAIMS ACT TO PROVIDE FOR  
COVERAGE OF THE EXCHANGE STAFF AND BOARD UNDER THE NEW MEXICO  
HEALTH INSURANCE EXCHANGE ACT; AMENDING A SECTION OF THE NEW  
MEXICO HEALTH INSURANCE ALLIANCE ACT TO PROVIDE FOR OPERATION  
OF THE ALLIANCE BY THE EXCHANGE BOARD OF DIRECTORS; AMENDING,

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1 REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; RECONCILING  
2 MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009.

3  
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

5 SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
6 through 11 of this act may be cited as the "New Mexico Health  
7 Insurance Exchange Act".

8 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
9 New Mexico Health Insurance Exchange Act:

10 A. "agent" means a person appointed by a carrier  
11 authorized to transact business in this state to act as its  
12 representative in any given locality;

13 B. "board" means the board of directors of the  
14 exchange;

15 C. "broker" means a person licensed as a broker  
16 pursuant to the New Mexico Insurance Code;

17 D. "carrier" means a person that is subject to  
18 licensure by the superintendent or subject to the provisions of  
19 the New Mexico Insurance Code and that provides one or more  
20 health benefits or insurance plans in the state;

21 E. "child" means an individual who is less than  
22 twenty-six years of age;

23 F. "dependent" means "dependent" as defined in  
24 Section 152 of the federal Internal Revenue Code of 1986;

25 G. "director" means an individual who serves on the

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1 board;

2 H. "employee" means an individual hired by another  
3 individual or entity for a wage or fixed payment in exchange  
4 for personal services and who does not provide the services as  
5 part of an independent business;

6 I. "exchange" means a health insurance exchange  
7 entity established pursuant to federal law to provide qualified  
8 health plans to qualified individuals and qualified employers  
9 on the individual, small group or large group health insurance  
10 market, that uses an internet web site through which applicants  
11 may obtain standardized comparative information about qualified  
12 health plans and that offers enrollment assistance through  
13 navigators and a toll-free telephone hotline;

14 J. "health care provider" means an individual who  
15 is licensed, certified or otherwise authorized or permitted by  
16 law pursuant to Chapter 61 NMSA 1978 to provide health care in  
17 the ordinary course of business or practice of a profession;

18 K. "health care services, finance or coverage  
19 sector" means a business sector that includes carriers and  
20 other health insurance issuers; health maintenance or managed  
21 care organizations; nonprofit health plans; self-insured group  
22 health plans; trade associations of carriers; producers;  
23 persons licensed or otherwise authorized to provide health care  
24 in the regular course of business; and health care facilities;

25 L. "Native American" means:

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1 (1) an individual who is a member of any  
2 federally recognized Indian nation, tribe or pueblo or who is  
3 an Alaska Native; or

4 (2) an individual who has been deemed eligible  
5 for services and programs provided to Native Americans by the  
6 United States public health service or the bureau of Indian  
7 affairs;

8 M. "navigator" means an entity that, in a manner  
9 culturally and linguistically appropriate to the state's  
10 diverse populations, conducts public education, distributes tax  
11 credit and qualified health plan enrollment information,  
12 facilitates enrollment in qualified health plans and public  
13 health coverage programs or provides referrals to consumer  
14 assistance or ombudsman services. "Navigator" does not mean a  
15 carrier or a person that receives any consideration, directly  
16 or indirectly, from any carrier in connection with the  
17 enrollment of a qualified individual in a qualified health plan  
18 or any other health coverage; provided that a broker may be a  
19 navigator if the broker receives no consideration, directly or  
20 indirectly, from any carrier in connection with the enrollment  
21 of a qualified individual or qualified employer in a qualified  
22 health plan, an approved health plan or any other health  
23 coverage;

24 N. "producer" means an agent or broker licensed  
25 pursuant to the applicable provisions of the New Mexico

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1 Insurance Code;

2 O. "qualified dental plan" means a stand-alone  
3 dental plan that includes the essential pediatric dental  
4 benefits prescribed pursuant to federal law, or any other  
5 dental benefits that the board has determined meets the  
6 requirement in federal law for a qualified dental plan to be  
7 offered through the exchange;

8 P. "qualified employer" means a small employer that  
9 elects to make its full-time employees and, at the option of  
10 the employer, some or all of its part-time employees eligible  
11 for one or more qualified health plans offered in the small  
12 group market through the exchange; provided that the employer  
13 elects to provide coverage through the exchange to all of its  
14 eligible employees who are principally employed in the state;

15 Q. "qualified health plan" means health insurance  
16 coverage or a group health plan that the superintendent has  
17 determined as meeting the requirements in federal law for  
18 coverage to be offered through the exchange;

19 R. "qualified individual" means an individual who:

20 (1) seeks to enroll or who participates in a  
21 qualified health plan offered through the exchange and who  
22 meets one of the following residency requirements:

23 (a) the individual is a resident of the  
24 state and is, and continues to be, legally domiciled and  
25 physically residing on a full-time basis in a place of

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1 habitation in the state that remains the person's principal  
2 residence and from which the person is absent only for a  
3 temporary or transitory purpose;

4 (b) the individual is a full-time  
5 student attending an educational institution outside of the  
6 state but, prior to attending the educational institution, met  
7 the requirements of Subparagraph (a) of this paragraph;

8 (c) the individual is a full-time  
9 student attending an institution of higher education located in  
10 the state;

11 (d) the individual, whether a resident  
12 or not, is a dependent; or

13 (e) the individual, whether a resident  
14 or not, is an employee of a qualified employer;

15 (2) is not incarcerated at the time of  
16 enrollment, other than incarceration pending the disposition of  
17 charges; and

18 (3) is a citizen or national of the  
19 United States or an alien lawfully present in the United  
20 States, or who is reasonably expected to be a citizen or  
21 national of the United States or an alien lawfully present in  
22 the United States during the entire period for which enrollment  
23 in the exchange is sought;

24 S. "small employer" means a person that is actively  
25 engaged in a business that employs at least one employee on the

1 first day of a plan year and that:

2 (1) employs on at least fifty percent of its  
3 working days during the preceding calendar year:

4 (a) at least one and not more than fifty  
5 full-time employees before January 1, 2016; and

6 (b) at least one and not more than one  
7 hundred full-time employees after December 31, 2015;

8 (2) shall be considered to be a small employer  
9 in the case of an employer that was not in existence throughout  
10 a preceding calendar year if the number of employees that the  
11 employer is reasonably expected to employ on working days in  
12 the current calendar year is:

13 (a) at least one and not more than fifty  
14 full-time employees before January 1, 2016; and

15 (b) at least one and not more than one  
16 hundred full-time employees after December 31, 2015;

17 (3) elects to make all full-time employees  
18 eligible for one or more qualified health plans offered in the  
19 small group market through the exchange;

20 (4) shall be counted as one small employer if  
21 the employer constitutes a group of affiliated persons that are  
22 eligible to file a combined tax return for the purposes of  
23 state income taxation; and

24 (5) is not a self-insured entity; and

25 T. "superintendent" means the superintendent of

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1 insurance.

2 SECTION 3. [NEW MATERIAL] NEW MEXICO HEALTH INSURANCE  
3 EXCHANGE CREATED--BOARD CREATED.--

4 A. The "New Mexico health insurance exchange" is  
5 created as a nonprofit public corporation to provide qualified  
6 individuals and qualified employers with increased access to  
7 health insurance in the state and shall be governed by a board  
8 of directors constituted pursuant to the provisions of the New  
9 Mexico Health Insurance Exchange Act.

10 B. The "board of directors of the New Mexico health  
11 insurance exchange" is created. Managerial and full-time  
12 employees of the exchange and appointed directors, while  
13 serving on the board, shall not have any affiliation with, any  
14 income derived from current or active employment in, a contract  
15 with or consultation for the health care services, finance or  
16 coverage sectors; provided that the following exceptions shall  
17 apply:

18 (1) the directors' administration and offering  
19 of approved health plans in accordance with the directors'  
20 duties pursuant to the Health Insurance Alliance Act shall not  
21 be considered to violate the provisions of this section;

22 (2) the director appointed pursuant to  
23 Paragraph (1) of Subsection E of this section shall not be  
24 considered to have a conflict of interest with respect to that  
25 director's association with a carrier; and

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1                   (3) one director may be a health care provider  
2 and shall not be considered to have a conflict of interest  
3 arising from that director's receipt of payment for services as  
4 a health care provider.

5                   C. The board shall be composed, as a whole, to  
6 assure representation of the state's Native American  
7 population, ethnic diversity, cultural diversity and geographic  
8 diversity. Members shall have demonstrated knowledge or  
9 experience in at least one of the following areas:

- 10                   (1) purchasing health coverage in the  
11 individual market;
- 12                   (2) purchasing health coverage in the small  
13 employer market;
- 14                   (3) health care finance;
- 15                   (4) health care economics;
- 16                   (5) health care policy;
- 17                   (6) the enrollment of underserved residents in  
18 health care coverage; or
- 19                   (7) administering private or public health  
20 care insurance.

21                   D. A maximum of one director whom the governor  
22 appoints and one director whom the New Mexico legislative  
23 council appoints may be exempt from the qualifications provided  
24 in Paragraphs (1) through (7) of Subsection C of this section.

25                   E. The exchange shall operate subject to the

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1 supervision and approval of the board. The board shall consist  
2 of:

3 (1) one director, appointed by the governor,  
4 who shall be an officer or an employee of a carrier;

5 (2) five directors, who shall be members,  
6 owners, officers, general partners or proprietors of small  
7 employers, one director of which shall represent a nonprofit  
8 corporation. These directors shall be appointed as follows:

9 (a) two shall be appointed by the  
10 governor, including the member representing a nonprofit  
11 corporation;

12 (b) one shall be appointed by the  
13 president pro tempore of the senate;

14 (c) one shall be appointed by the  
15 speaker of the house of representatives; and

16 (d) one shall be appointed by the New  
17 Mexico legislative council;

18 (3) four directors, who shall be employees of  
19 small employers. These directors shall be appointed as  
20 follows:

21 (a) two shall be appointed by the  
22 governor;

23 (b) one shall be appointed by the  
24 minority floor leader of the senate; and

25 (c) one shall be appointed by the

1 minority floor leader of the house of representatives;

2 (4) one director, appointed by the governor,  
3 who shall be a consumer advocate;

4 (5) the secretary of human services or the  
5 secretary's designee, who shall be a voting member; and

6 (6) the superintendent or the superintendent's  
7 designee, who shall be a nonvoting member, except when the  
8 superintendent's vote is necessary to break a tie.

9 F. The governor shall appoint no more than four  
10 directors who belong to the same political party.

11 G. The superintendent shall serve as chair of the  
12 board unless the superintendent declines, in which event the  
13 superintendent shall appoint the chair.

14 H. The directors appointed by legislators shall be  
15 appointed for initial terms of three years or less, staggered  
16 so that the term of at least one director expires on June 30 of  
17 each year. The directors appointed by the governor shall be  
18 appointed for initial terms of three years or less, staggered  
19 so that the term of at least one director expires on June 30 of  
20 each year. Following the initial terms, directors shall be  
21 appointed for terms of three years. A director whose term has  
22 expired shall continue to serve until a successor is appointed  
23 and qualified.

24 I. Whenever a vacancy on the board occurs, the  
25 appointing authority of the position that is vacant shall fill

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1 the vacancy by appointing an individual to serve the balance of  
2 the unexpired term. The individual appointed to fill a vacancy  
3 shall meet the requirements for initial appointment to that  
4 position.

5 J. A director may be removed from the board by a  
6 majority vote of two-thirds of the directors. The board shall  
7 set standards for attendance and may remove a director for lack  
8 of attendance, neglect of duty or malfeasance in office. A  
9 director shall not be removed without proceedings consisting of  
10 at least one ten-day notice of hearing and an opportunity to be  
11 heard. Removal proceedings shall be before the board and in  
12 accordance with procedures adopted by the board.

13 K. The exchange, including the board, is a  
14 governmental entity for purposes of the Tort Claims Act and  
15 shall operate consistently with the provisions of the  
16 Governmental Conduct Act, the Inspection of Public Records Act,  
17 the Financial Disclosure Act and the Open Meetings Act and  
18 shall not be subject to the Procurement Code or the Personnel  
19 Act.

20 L. Appointed members may receive per diem and  
21 mileage in accordance with the Per Diem and Mileage Act,  
22 subject to the travel policy set by the board. Appointed  
23 members shall receive no other compensation, perquisite or  
24 allowance.

25 SECTION 4. [NEW MATERIAL] NEW MEXICO HEALTH INSURANCE

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1 EXCHANGE--BOARD DUTIES--BOARD POWERS.--

2 A. The board shall:

3 (1) ensure that the exchange:

4 (a) beginning October 1, 2013, or in  
5 accordance with a schedule approved or provided by the federal  
6 center for consumer information and insurance oversight,  
7 accepts applications from qualified individuals and qualified  
8 employers to purchase qualified health plans on the exchange;

9 (b) beginning October 1, 2013, or in  
10 accordance with a schedule approved or provided by the federal  
11 center for consumer information and insurance oversight, makes  
12 available navigator services for persons applying for medicaid  
13 or to purchase qualified health plans through the exchange; and

14 (c) beginning January 1, 2014, or in  
15 accordance with a schedule approved or provided by the federal  
16 center for consumer information and insurance oversight, offers  
17 qualified health plans for purchase by qualified individuals  
18 and qualified employers;

19 (2) by October 1, 2013, or in accordance with  
20 a schedule approved or provided by the federal center for  
21 consumer information and insurance oversight, in accordance  
22 with rules that the superintendent has promulgated, shall  
23 establish a dispute resolution process for applicants that have  
24 been denied:

25 (a) qualified health plan status;

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- 1 (b) qualified individual status;  
2 (c) qualified employer status;  
3 (d) a premium tax credit subsidy;  
4 (e) a cost-sharing subsidy for a  
5 qualified health plan; or  
6 (f) exemption from the federal  
7 requirement to purchase health insurance;  
8 (3) establish at least one walk-in customer  
9 service center where persons may apply for any status, credit  
10 or exemption listed in Paragraph (2) of this subsection and, if  
11 eligible, enroll in qualified health plans or public coverage  
12 programs;  
13 (4) establish a navigator program;  
14 (5) cooperate with the medical assistance  
15 division of the human services department to share information  
16 and facilitate transitions in enrollment between the exchange  
17 and medicaid;  
18 (6) between October 1, 2013 and January 1,  
19 2015, provide quarterly reports to the legislature, the  
20 governor and the superintendent on the implementation of the  
21 exchange and report annually and upon request thereafter;  
22 (7) create, make appointments to and duly  
23 consider recommendations of an advisory committee or committees  
24 made up of stakeholders, including carriers, health care  
25 consumers, health care providers, health care practitioners,

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1 brokers, qualified employer representatives and advocates for  
2 low-income or underserved residents;

3 (8) create an advisory committee made up of  
4 Native Americans, some of whom live on a reservation and some  
5 of whom do not live on a reservation, to advise the board on  
6 the implementation of the provisions of the New Mexico Health  
7 Insurance Exchange Act and to guide the implementation of the  
8 Native American-specific provisions of the federal Patient  
9 Protection and Affordable Care Act and the federal Indian  
10 Health Care Improvement Act;

11 (9) designate a Native American liaison, who  
12 shall assist the board in developing and ensuring  
13 implementation of communication and collaboration between the  
14 exchange and Native Americans in the state. The tribal liaison  
15 shall serve as a contact person between the exchange and New  
16 Mexico Indian nations, tribes and pueblos and shall ensure that  
17 training is provided to the staff of the exchange;

18 (10) be subject to and responsible for  
19 examination by the superintendent. No later than March 1 of  
20 each year, the board shall submit to the superintendent an  
21 audited financial report for the preceding calendar year in a  
22 form approved by the superintendent;

23 (11) consider the unique needs of rural New  
24 Mexicans as they pertain to access, affordability and choice in  
25 purchasing health insurance;

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1                   (12) consider the affordability and cost in  
2 the context of quality care and increased access to purchasing  
3 health insurance; and

4                   (13) select an executive director, who shall  
5 be responsible for the operation of the exchange, including the  
6 hiring of staff and such other duties as the board may  
7 delegate. The board shall select the executive director based  
8 on criteria established by the board that shall include:

9                   (a) proven ability to administer health  
10 insurance programs; and

11                   (b) ability to administer the exchange  
12 in a cost-efficient manner.

13                   B. The board may:

14                   (1) seek and receive grant funding from  
15 federal, state or local governments or private philanthropic  
16 organizations to defray the costs of operating the exchange;

17                   (2) create ad hoc advisory councils;

18                   (3) request assistance from other boards,  
19 commissions, departments, agencies and organizations as  
20 necessary to provide appropriate expertise to accomplish the  
21 board's duties with respect to the exchange;

22                   (4) enter into contracts with persons or other  
23 organizations as necessary or proper to carry out the  
24 provisions and purposes of the New Mexico Health Insurance  
25 Exchange Act, including the authority to contract or employ



1 staff for the performance of administrative, legal, actuarial,  
2 accounting and other functions, provided that any contractor  
3 shall be subject to the conflict-of-interest provisions set  
4 forth in Subsection B of Section 3 of the New Mexico Health  
5 Insurance Exchange Act;

6 (5) enter into contracts with similar  
7 exchanges of other states for the joint performance of common  
8 administrative functions;

9 (6) enter into information-sharing agreements  
10 with federal and state agencies and other state exchanges to  
11 carry out its responsibilities; provided that these agreements  
12 include adequate protections of the confidentiality of the  
13 information to be shared and comply with all state and federal  
14 laws and regulations;

15 (7) sue or be sued or otherwise take any  
16 necessary or proper legal action in the execution of its duties  
17 and powers;

18 (8) appoint board committees, which may  
19 include non-board members, to provide technical assistance in  
20 the operation of the exchange and any other function within the  
21 authority of the exchange;

22 (9) conduct periodic audits to assure the  
23 general accuracy of the financial data submitted to the  
24 exchange; and

25 (10) charge assessments or user fees to

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1 carriers, qualified employers or producers or otherwise  
2 generate funding necessary to support exchange operations;  
3 provided that assessments shall be limited solely to the  
4 reasonable administration costs of the exchange.

5 SECTION 5. PLAN OF OPERATION.--

6 A. Within thirty days of the effective date of the  
7 New Mexico Health Insurance Exchange Act, the board shall  
8 submit a plan of operation to the superintendent and any  
9 amendments to the plan necessary or suitable to assure the  
10 fair, reasonable and equitable administration of the exchange.

11 B. The superintendent shall, after notice and  
12 hearing, approve the plan of operation if it is determined to  
13 assure the fair, reasonable and equitable administration of the  
14 exchange. The plan of operation shall become effective upon  
15 written approval of the superintendent consistent with the date  
16 on which health insurance coverage through the exchange  
17 pursuant to the provisions of the New Mexico Health Insurance  
18 Exchange Act is made available. A plan of operation adopted by  
19 the superintendent shall continue in force until modified by  
20 the superintendent or superseded by a subsequent plan of  
21 operation submitted by the board and approved by the  
22 superintendent.

23 C. The plan of operation shall:

24 (1) establish procedures for the handling and  
25 accounting of assets of the exchange;

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1 (2) establish regular times and places for  
2 meetings of the board;

3 (3) establish procedures for records to be  
4 kept of all financial transactions and for annual fiscal  
5 reporting to the superintendent;

6 (4) establish the amount of and the method for  
7 collecting assessments pursuant to the New Mexico Health  
8 Insurance Exchange Act;

9 (5) establish penalties for nonpayment of  
10 assessments by carriers;

11 (6) establish procedures for alternative  
12 dispute resolution of disputes between carriers and insureds;

13 (7) contain additional provisions necessary  
14 and proper for the execution of the powers and duties of the  
15 exchange;

16 (8) provide for the following events:

17 (a) by October 1, 2013, or in accordance  
18 with a schedule approved or provided by the federal center for  
19 consumer information and insurance oversight, the acceptance of  
20 applications from qualified individuals and qualified employers  
21 to purchase qualified health plans on the exchange;

22 (b) by October 1, 2013, or in accordance  
23 with a schedule approved or provided by the federal center for  
24 consumer information and insurance oversight, the availability  
25 of navigator services for persons applying for medicaid or to

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1 purchase qualified health plans through the exchange; and

2 (c) by January 1, 2014, or in accordance  
3 with a schedule approved or provided by the federal center for  
4 consumer information and insurance oversight, the sale of  
5 qualified health plans to qualified individuals and qualified  
6 employers;

7 (9) establish procedures to implement the  
8 provisions of the New Mexico Health Insurance Exchange Act  
9 consistent with state law and federal law, including:

10 (a) determination of which qualified  
11 health plans will be offered through the exchange;

12 (b) eligibility determination for  
13 purchasing qualified health plans on the exchange, for federal  
14 cost-sharing subsidies, tax credits, medicaid, exemption from  
15 the federal requirement for certain individuals to have health  
16 coverage and eligibility for related public programs as  
17 provided by rules adopted by the superintendent; and

18 (c) enrollment of qualified individuals  
19 and qualified employers;

20 (10) establish a program to publicize the  
21 existence of the exchange and qualified health plans offered by  
22 the exchange and the eligibility requirements and procedures  
23 for enrollment in a qualified health plan, premium assistance  
24 subsidies, tax credits or other public health coverage programs  
25 and to maintain public awareness of the exchange; and

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1 (11) establish conflict-of-interest policies  
2 and procedures.

3 SECTION 6. SUPERINTENDENT OF INSURANCE--RULEMAKING.--The  
4 superintendent shall:

5 A. adopt and promulgate rules that provide for  
6 disclosure by carriers of the availability of qualified health  
7 plans; and

8 B. adopt rules to carry out the provisions of the  
9 New Mexico Health Insurance Exchange Act."

10 SECTION 7. QUALIFIED HEALTH PLANS.--

11 A. A qualified health plan shall conform to federal  
12 and state law governing qualified health plans and the  
13 exchange's qualified health plan design criteria. A carrier  
14 offering a qualified health plan shall:

15 (1) be licensed and in good standing to offer  
16 health insurance in the state;

17 (2) offer through the exchange at least one  
18 qualified health plan in the silver level of coverage and at  
19 least one plan in the gold level of coverage, pursuant to the  
20 levels of coverage as described in rules the superintendent has  
21 promulgated pursuant to federal law;

22 (3) charge the same premium for each qualified  
23 health plan within each level of coverage without regard to  
24 whether the plan is offered through the exchange directly from  
25 the carrier or through an agent or broker; and

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1 (4) comply with the regulations that the  
2 federal secretary of health and human services has promulgated  
3 and any other requirement that the board or the superintendent  
4 has established.

5 B. If a qualified health plan design approved by  
6 the board is not offered by any carrier already offering a  
7 qualified health plan, but a carrier offers a substantially  
8 similar plan design outside the exchange, the board may require  
9 the carrier to offer that plan design as a qualified health  
10 plan through the exchange.

11 C. A carrier offering a qualified health plan may  
12 withdraw the plan but shall continue to offer it for five  
13 consecutive years after the date notice of future withdrawal is  
14 given to the board, unless:

15 (1) the carrier substitutes another qualified  
16 health plan for the plan withdrawn; or

17 (2) the board allows the plan to be withdrawn  
18 because it imposes a serious hardship upon the carrier.

19 D. The following items and services, as defined by  
20 federal and state law and rules the superintendent has  
21 promulgated, are essential benefits that shall be included in  
22 any health insurance certified as a qualified health plan:

23 (1) ambulatory patient services;

24 (2) emergency services;

25 (3) hospitalization;

- 1 (4) maternity and newborn care;  
2 (5) mental health and substance abuse disorder  
3 services, including behavioral health treatment;  
4 (6) prescription drugs;  
5 (7) rehabilitative and habilitative services  
6 and devices;  
7 (8) laboratory services;  
8 (9) preventive and wellness services and  
9 chronic disease management; and  
10 (10) pediatric services, including oral and  
11 vision care.

12 E. A qualified health plan shall not be required to  
13 offer the essential pediatric dental benefit specified in  
14 Paragraph (10) of Subsection D of this section, so long as the  
15 exchange offers at least one qualified dental plan meeting the  
16 standards set forth in federal and state law and rules that the  
17 superintendent has promulgated for benefits to be offered on  
18 the health insurance exchange.

19 **SECTION 8. ENROLLMENT--QUALIFIED HEALTH PLANS.--**

20 A. An individual is eligible for a qualified health  
21 plan if on the effective date of coverage or renewal the  
22 individual meets the definition of a qualified individual under  
23 Subsection R of Section 2 of the New Mexico Health Insurance  
24 Exchange Act. An employer is eligible for a qualified health  
25 plan if on the effective date of coverage or renewal the

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1 employer meets the definition of a qualified employer under  
2 Subsection P of Section 2 of the New Mexico Health Insurance  
3 Exchange Act.

4 B. If a child's coverage ended or did not begin for  
5 the reasons set forth in this section, a qualified health plan  
6 shall provide the child an opportunity to enroll in a qualified  
7 health plan for which coverage continues for at least sixty  
8 days and shall provide written notice of the opportunity to  
9 enroll no later than the first day of the plan year. A written  
10 notice of the opportunity for special enrollment provided  
11 pursuant to this section shall include a statement that a child  
12 whose coverage ended, who was denied coverage or who was not  
13 eligible for coverage because dependent coverage of children  
14 was unavailable before the child reached twenty-six years of  
15 age is eligible to enroll in a qualified health plan or other  
16 health coverage. This notice may be provided to a principal  
17 insured on behalf of the principal insured's child. For an  
18 individual who enrolls in a qualified health plan, the coverage  
19 shall take effect not later than the first day of the first  
20 plan or policy year.

21 C. For qualified health plans offered on the  
22 exchange, the exchange shall provide for an initial open  
23 enrollment period from October 1, 2013 through February 28,  
24 2014, or in accordance with a schedule approved or provided by  
25 the federal center for consumer information and insurance

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1 oversight. Thereafter, the exchange shall provide for annual  
 2 open enrollment periods for qualified health plans, as provided  
 3 in federal law and by rules that the superintendent has  
 4 promulgated. Except as provided pursuant to Subsections B and  
 5 E of this section, new employees and their dependents may  
 6 enroll in their qualified employer's qualified health plan  
 7 within thirty-one days of completion of their employer's  
 8 eligibility period. If application for enrollment is not made  
 9 during this period, the new employee and the new employee's  
 10 dependents may be required to submit evidence of eligibility  
 11 for a special enrollment period pursuant to Section 9801 of the  
 12 federal Internal Revenue Code of 1986.

13 D. An insured shall notify the exchange at least  
 14 thirty-one days before the insured's yearly anniversary date of  
 15 the qualified health plan of the insured's intent to switch  
 16 coverage to another qualified health plan.

17 E. The exchange shall provide a monthly opportunity  
 18 to enroll or switch enrollment between qualified health plans  
 19 to any individual who is a Native American.

20 **SECTION 9. ELIGIBILITY--GUARANTEED ISSUE--PROHIBITION OF**  
 21 **PREEXISTING CONDITION EXCLUSIONS.--**

22 A. An individual is eligible for a qualified health  
 23 plan if on the effective date of coverage or renewal the  
 24 individual meets the definition of a qualified individual under  
 25 Subsection R of Section 2 of the New Mexico Health Insurance

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1 Exchange Act. An employer is eligible for a qualified health  
2 plan if on the effective date of coverage or renewal the  
3 employer meets the definition of a qualified employer under  
4 Subsection P of Section 2 of the New Mexico Health Insurance  
5 Exchange Act.

6 B. A qualified health plan shall provide in  
7 substance that attainment of the limiting age by a child or  
8 dependent individual does not operate to terminate coverage  
9 when the individual continues to be incapable of  
10 self-sustaining employment by reason of developmental  
11 disability or physical handicap and the individual is primarily  
12 dependent for support and maintenance upon the employee. Proof  
13 of incapacity and dependency shall be furnished to the exchange  
14 and the carrier that offered the qualified health plan within  
15 one hundred twenty days of attainment of the limiting age. The  
16 board may require subsequent proof annually after a two-year  
17 period following attainment of the limiting age.

18 C. A qualified health plan shall provide that the  
19 health insurance benefits applicable for eligible children are  
20 payable with respect to a newly born child of the family member  
21 or the individual in whose name the contract is issued from the  
22 moment of birth, including the necessary care and treatment of  
23 medically diagnosed congenital defects and birth abnormalities.  
24 If payment of a specific premium is required to provide  
25 coverage for the child, the contract may require that

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1 notification of the birth of a child and payment of the  
 2 required premium shall be furnished to the carrier within  
 3 thirty-one days after the date of birth in order to have the  
 4 coverage from birth. A qualified health plan shall provide  
 5 that the health insurance benefits applicable for eligible  
 6 children are payable for an adopted child in accordance with  
 7 the provisions of Section 59A-22-34.1 NMSA 1978.

8 D. A qualified health plan issued to a qualified  
 9 individual shall not contain any preexisting condition  
 10 exclusion.

11 E. As used in this section, "preexisting condition  
 12 exclusion" means a limitation or exclusion of benefits relating  
 13 to a condition based on the fact that the condition was present  
 14 before the date of enrollment for coverage for the benefits  
 15 whether or not any medical advice, diagnosis, care or treatment  
 16 was recommended or received before that date, but genetic  
 17 information is not included as a preexisting condition for the  
 18 purposes of limiting or excluding benefits in the absence of a  
 19 diagnosis of the condition related to the genetic information.

20 SECTION 10. [NEW MATERIAL] EXEMPTION.--The exchange is  
 21 exempt from payment of all fees and all taxes levied by this  
 22 state or any of its political subdivisions.

23 SECTION 11. [NEW MATERIAL] FUNDING.--

24 A. To fund the planning, implementation and  
 25 operation of the exchange, the board shall contract with the

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1 human services department or any other state agency that  
2 receives federal funds allocated, appropriated or granted to  
3 the state for purposes of funding the planning, implementation  
4 or operation of a health insurance exchange.

5 B. The human services department or any other state  
6 agency that receives federal funds allocated, appropriated or  
7 granted to the state for purposes of funding the planning,  
8 implementation or operation of a health insurance exchange  
9 shall contract with the board to provide those funds to the  
10 exchange in consideration for its planning, implementation or  
11 operation.

12 SECTION 12. A new section of the New Mexico Insurance  
13 Code is enacted to read:

14 "[NEW MATERIAL] OFFICE OF SUPERINTENDENT OF INSURANCE--  
15 COOPERATION WITH NEW MEXICO HEALTH INSURANCE EXCHANGE.--The  
16 office of superintendent of insurance shall cooperate with the  
17 New Mexico health insurance exchange to share information and  
18 assist in the implementation of the functions of the exchange."

19 SECTION 13. Section 41-4-3 NMSA 1978 (being Laws 1976,  
20 Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,  
21 Section 2 and by Laws 2009, Chapter 129, Section 2 and also by  
22 Laws 2009, Chapter 249, Section 2) is amended to read:

23 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

24 A. "board" means the risk management advisory  
25 board;

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1           B. "governmental entity" means the state or any  
2 local public body as defined in Subsections C and H of this  
3 section;

4           C. "local public body" means all political  
5 subdivisions of the state and their agencies, instrumentalities  
6 and institutions and all water and natural gas associations  
7 organized pursuant to Chapter 3, Article 28 NMSA 1978;

8           D. "law enforcement officer" means a full-time  
9 salaried public employee of a governmental entity, or a  
10 certified part-time salaried police officer employed by a  
11 governmental entity, whose principal duties under law are to  
12 hold in custody any person accused of a criminal offense, to  
13 maintain public order or to make arrests for crimes, or members  
14 of the national guard when called to active duty by the  
15 governor;

16           E. "maintenance" does not include:

17                   (1) conduct involved in the issuance of a  
18 permit, driver's license or other official authorization to use  
19 the roads or highways of the state in a particular manner; or

20                   (2) an activity or event relating to a public  
21 building or public housing project that was not foreseeable;

22           F. "public employee" means an officer, employee or  
23 servant of a governmental entity, excluding independent  
24 contractors except for individuals defined in Paragraphs (7),  
25 (8), (10), (14) and (17) of this subsection, or of a

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1 corporation organized pursuant to the Educational Assistance  
2 Act, the Small Business Investment Act or the Mortgage Finance  
3 Authority Act or a licensed health care provider, who has no  
4 medical liability insurance, providing voluntary services as  
5 defined in Paragraph (16) of this subsection and including:

6 (1) elected or appointed officials;

7 (2) law enforcement officers;

8 (3) persons acting on behalf or in service of  
9 a governmental entity in any official capacity, whether with or  
10 without compensation;

11 (4) licensed foster parents providing care for  
12 children in the custody of the human services department,  
13 corrections department or department of health, but not  
14 including foster parents certified by a licensed child  
15 placement agency;

16 (5) members of state or local selection panels  
17 established pursuant to the Adult Community Corrections Act;

18 (6) members of state or local selection panels  
19 established pursuant to the Juvenile Community Corrections Act;

20 (7) licensed medical, psychological or dental  
21 arts practitioners providing services to the corrections  
22 department pursuant to contract;

23 (8) members of the board of directors of the  
24 New Mexico medical insurance pool;

25 (9) individuals who are members of medical

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1 review boards, committees or panels established by the  
2 educational retirement board or the retirement board of the  
3 public employees retirement association;

4 (10) licensed medical, psychological or dental  
5 arts practitioners providing services to the children, youth  
6 and families department pursuant to contract;

7 (11) members of the board of directors of the  
8 New Mexico educational assistance foundation;

9 (12) members of the board of directors of the  
10 New Mexico student loan guarantee corporation;

11 (13) members of the New Mexico mortgage  
12 finance authority;

13 (14) volunteers, employees and board members  
14 of court-appointed special advocate programs;

15 (15) members of the board of directors of the  
16 small business investment corporation;

17 (16) health care providers licensed in New  
18 Mexico who render voluntary health care services without  
19 compensation in accordance with rules promulgated by the  
20 secretary of health. The rules shall include requirements for  
21 the types of locations at which the services are rendered, the  
22 allowed scope of practice and measures to ensure quality of  
23 care; ~~and~~

24 (17) an individual while participating in the  
25 state's adaptive driving program and only while using a

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1 special-use state vehicle for evaluation and training purposes  
2 in that program; and

3 (18) the staff and members of the board of  
4 directors of the New Mexico health insurance exchange  
5 established pursuant to the New Mexico Health Insurance  
6 Exchange Act;

7 G. "scope of duty" means performing any duties that  
8 a public employee is requested, required or authorized to  
9 perform by the governmental entity, regardless of the time and  
10 place of performance; and

11 H. "state" or "state agency" means the state of New  
12 Mexico or any of its branches, agencies, departments, boards,  
13 instrumentalities or institutions."

14 **SECTION 14.** Section 59A-56-4 NMSA 1978 (being Laws 1994,  
15 Chapter 75, Section 4, as amended) is amended to read:

16 "59A-56-4. ALLIANCE CREATED--BOARD CREATED.--

17 A. The "New Mexico health insurance alliance" is  
18 created as a nonprofit public corporation for the purpose of  
19 providing increased access to health insurance in the state.  
20 All insurance companies authorized to transact health insurance  
21 business in this state, nonprofit health care plans, health  
22 maintenance organizations and self-insurers not subject to  
23 federal preemption shall organize and be members of the  
24 alliance as a condition of their authority to offer health  
25 insurance in this state, except for an insurance company that

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1 is licensed under the Prepaid Dental Plan Law or a company that  
2 is solely engaged in the sale of dental insurance and is  
3 licensed under a provision of the Insurance Code.

4 B. The alliance shall be governed by ~~[a board of~~  
5 ~~directors constituted pursuant to the provisions of this~~  
6 ~~section. The board is a governmental entity for purposes of~~  
7 ~~the Tort Claims Act, but neither the board nor the alliance~~  
8 ~~shall be considered a governmental entity for any other~~  
9 ~~purpose.~~

10 C. ~~Each member shall be entitled to one vote in~~  
11 ~~person or by proxy at each meeting.~~

12 D. ~~The alliance shall operate subject to the~~  
13 ~~supervision and approval of the board. The board shall consist~~  
14 ~~of:~~

15 ~~(1) five directors, elected by the members,~~  
16 ~~who shall be officers or employees of members and shall consist~~  
17 ~~of two representatives of health maintenance organizations and~~  
18 ~~three representatives of other types of members;~~

19 ~~(2) five directors, appointed by the governor,~~  
20 ~~who shall be officers, general partners or proprietors of small~~  
21 ~~employers, one director of which shall represent nonprofit~~  
22 ~~corporations;~~

23 ~~(3) four directors, appointed by the governor,~~  
24 ~~who shall be employees of small employers; and~~

25 ~~(4) the superintendent or the superintendent's~~

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1 ~~designee, who shall be a nonvoting member, except when the~~  
2 ~~superintendent's vote is necessary to break a tie.~~

3 ~~E. The superintendent shall serve as chairman of~~  
4 ~~the board unless the superintendent declines, in which event~~  
5 ~~the superintendent shall appoint the chairman.~~

6 ~~F. The directors elected by the members shall be~~  
7 ~~elected for initial terms of three years or less, staggered so~~  
8 ~~that the term of at least one director expires on June 30 of~~  
9 ~~each year. The directors appointed by the governor shall be~~  
10 ~~appointed for initial terms of three years or less, staggered~~  
11 ~~so that the term of at least one director expires on June 30 of~~  
12 ~~each year. Following the initial terms, directors shall be~~  
13 ~~elected or appointed for terms of three years. A director~~  
14 ~~whose term has expired shall continue to serve until a~~  
15 ~~successor is elected or appointed and qualified.~~

16 ~~G. Whenever a vacancy on the board occurs, the~~  
17 ~~electing or appointing authority of the position that is vacant~~  
18 ~~shall fill the vacancy by electing or appointing an individual~~  
19 ~~to serve the balance of the unexpired term; provided when a~~  
20 ~~vacancy occurs in one of the director's positions elected by~~  
21 ~~the members, the superintendent is authorized to appoint a~~  
22 ~~temporary replacement director until the next scheduled~~  
23 ~~election of directors elected by the members is held. The~~  
24 ~~individual elected or appointed to fill a vacancy shall meet~~  
25 ~~the requirements for initial election or appointment to that~~

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1 position.

2 H. ~~Directors may be reimbursed by the alliance as~~  
3 ~~provided in the Per Diem and Mileage Act for nonsalaried public~~  
4 ~~officers but shall receive no other compensation, perquisite or~~  
5 ~~allowance from the alliance.]~~ the board of directors of the New  
6 Mexico health insurance exchange appointed pursuant to the New  
7 Mexico Health Insurance Exchange Act."

8 SECTION 15. TEMPORARY PROVISION--NEW MEXICO HEALTH  
9 INSURANCE ALLIANCE--NEW MEXICO HEALTH INSURANCE EXCHANGE--  
10 TRANSFER OF PERSONNEL, FUNDS AND PERSONAL PROPERTY--REFERENCES  
11 IN LAW--CONTRACTS.--

12 A. On June 15, 2013:

13 (1) all personnel, appropriations, money,  
14 records, equipment, supplies and other personal property of the  
15 New Mexico health insurance alliance shall transfer to the New  
16 Mexico health insurance exchange;

17 (2) all contracts of the New Mexico health  
18 insurance alliance shall be binding and effective on the New  
19 Mexico health insurance exchange; and

20 (3) all references in law to the New Mexico  
21 health insurance alliance shall be deemed to be references to  
22 the New Mexico health insurance exchange.

23 B. As used in this section:

24 (1) "personal property" means property other  
25 than real property; and

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1                   (2) "real property" means an estate or  
2 interest in, over or under land and other things or interests,  
3 including minerals, water, structures and fixtures that by  
4 custom, usage or law pass with a transfer of land even if the  
5 estate or interest is not described or mentioned in the  
6 contract of sale or instrument of conveyance and, if  
7 appropriate to the context, the land in which the estate or  
8 interest is claimed.

9                   **SECTION 16. TEMPORARY PROVISION.**--On the effective date  
10 of this act, the board of directors of the New Mexico health  
11 insurance alliance, appointed pursuant to the Health Insurance  
12 Alliance Act prior to the effective date of the New Mexico  
13 Health Insurance Exchange Act, shall cease to exist and the New  
14 Mexico health insurance alliance shall be governed pursuant to  
15 the Health Insurance Alliance Act by the board of directors of  
16 the New Mexico health insurance exchange appointed pursuant to  
17 the New Mexico Health Insurance Exchange Act. In exercising  
18 its duties, the board of directors of the New Mexico health  
19 insurance exchange shall neither apply any provisions of the  
20 Health Insurance Alliance Act to the New Mexico health  
21 insurance exchange nor apply any provisions of the New Mexico  
22 Health Insurance Exchange Act to the New Mexico health  
23 insurance alliance.

24                   **SECTION 17. DELAYED REPEAL.**--On January 1, 2015, Sections  
25 59A-56-1 through 59A-56-25 NMSA 1978 (being Laws 1994, Chapter  
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1 75, Sections 1 through 25, as amended) are repealed.

2 SECTION 18. SEVERABILITY.--If any part or application of  
3 this act is held invalid, the remainder or its application to  
4 other situations or persons shall not be affected.

5 SECTION 19. EMERGENCY.--It is necessary for the public  
6 peace, health and safety that this act take effect immediately.

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