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HOUSE BILL 563

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

INTRODUCED BY

Thomas C. Taylor

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE NEW MEXICO HEALTH  
INSURANCE EXCHANGE ACT; CREATING THE NEW MEXICO HEALTH  
INSURANCE EXCHANGE BOARD OF DIRECTORS; PROVIDING DUTIES;  
ALLOWING ASSESSMENTS; ELIMINATING THE NEW MEXICO HEALTH  
INSURANCE ALLIANCE BOARD OF DIRECTORS; PROVIDING TEMPORARY  
INSTRUCTIONS; REPEALING THE HEALTH INSURANCE ALLIANCE ACT;  
DECLARING AN EMERGENCY.

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

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

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

A. "board" means the board of directors of the New

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1 Mexico health insurance exchange;

2 B. "exchange" means the New Mexico health insurance  
3 exchange, composed of an individual exchange and small business  
4 health options program, or "SHOP", exchange, under a single  
5 governance and administrative structure; and

6 C. "federal act" means the federal Patient  
7 Protection and Affordable Care Act, as amended by the federal  
8 Health Care and Education Reconciliation Act of 2010.

9 SECTION 3. [NEW MATERIAL] HEALTH INSURANCE EXCHANGE--  
10 CREATION.--

11 A. The "New Mexico health insurance exchange" is  
12 created as a nonprofit unincorporated public entity for the  
13 purpose of fostering a competitive marketplace for health  
14 insurance.

15 B. The exchange is an instrumentality of the state,  
16 except that the debts and liabilities of the exchange do not  
17 constitute the debts and liabilities of the state. Neither the  
18 exchange nor the board is an agency of the state. The board  
19 and the exchange shall be considered governmental entities for  
20 purposes of the Tort Claims Act, shall operate consistently  
21 with the provisions of the Governmental Conduct Act, the  
22 Inspection of Public Records Act, the Financial Disclosure Act  
23 and the Open Meetings Act and shall not be subject to the  
24 Procurement Code or the Personnel Act.

25 C. The exchange shall not duplicate, impair,

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1 enhance, supplant, infringe upon or replace, in whole or in any  
2 part, the powers, duties or authorities of the superintendent  
3 of insurance, including rate review and approval, except as  
4 directed by the federal act.

5 D. The exchange shall not solicit bids or engage in  
6 the active purchasing of insurance.

7 E. All health insurers and health maintenance  
8 organizations authorized to conduct business in this state and  
9 meeting the requirements of the federal act shall be eligible  
10 to participate in the exchange.

11 SECTION 4. [NEW MATERIAL] BOARD OF DIRECTORS.--

12 A. The exchange shall be governed by a board of  
13 directors. The board shall consist of fourteen members as  
14 follows:

15 (1) six voting members appointed by the  
16 governor, including a consumer advocate;

17 (2) five voting members, one each appointed by  
18 the president pro tempore of the senate, the minority floor  
19 leader of the senate, the speaker of the house of  
20 representatives, the minority floor leader of the house of  
21 representatives and the New Mexico legislative council;

22 (3) the secretary of human services, or the  
23 secretary's designee, who shall be a voting member;

24 (4) the superintendent of insurance, or the  
25 superintendent's designee, who shall be a nonvoting member,

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1 except when the superintendent's vote is necessary to break a  
2 tie; and

3 (5) the secretary of economic development, or  
4 the secretary's designee, who shall serve as a nonvoting, ex-  
5 officio member of the board.

6 B. Each voting member shall be entitled to one vote  
7 in person or by proxy at each meeting.

8 C. The governor shall appoint no more than four  
9 members who belong to the same political party.

10 D. The superintendent of insurance shall serve as  
11 chair of the board unless the superintendent declines, in which  
12 event, the superintendent shall appoint the chair.

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

23 F. Whenever a vacancy on the board occurs, the  
24 appointing authority of the position that is vacant shall fill  
25 the vacancy by appointing an individual to serve the balance of

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1 the unexpired term. The individual appointed to fill a vacancy  
2 shall meet the requirements for initial appointment to that  
3 position.

4 G. A majority of the voting members shall be  
5 business representatives or individuals who are not directly  
6 affiliated with the insurance industry.

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

- 12 (1) individual health insurance coverage;
- 13 (2) small employer health insurance;
- 14 (3) health benefits administration;
- 15 (4) health care finance;
- 16 (5) administration of a public or private  
17 health care delivery system;
- 18 (6) the provision of health care services;
- 19 (7) the purchase of health insurance coverage;
- 20 (8) health care consumer navigation or  
21 assistance;
- 22 (9) health care economics or health care  
23 actuarial sciences;
- 24 (10) information technology; or
- 25 (11) starting a small business with fifty or

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1 fewer employees.

2 I. Members may be reimbursed by the exchange 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 exchange.

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

14 SECTION 5. [NEW MATERIAL] POWERS AND DUTIES OF THE  
15 BOARD.--

16 A. The board shall determine and establish the  
17 development, governance and operation of the exchange and shall  
18 perform all functions necessary to operate the exchange, but  
19 the board shall not promulgate rules. The board shall:

20 (1) appoint an executive director to  
21 administer the exchange;

22 (2) create an initial operational and  
23 financial plan and thereafter approve such plans as created by  
24 the executive director;

25 (3) create technical and advisory groups, as

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1 the board deems necessary, to report to the board. The  
2 advisory groups, if any, shall meet regularly throughout the  
3 year to discuss issues related to the exchange and make  
4 recommendations to the board;

5 (4) provide a written report, on or before  
6 January 15 of each year, to the governor and the legislature  
7 concerning the planning and establishment of the exchange;

8 (5) consider the desirability of structuring  
9 the exchange as one entity that includes two underlying  
10 entities to operate in the individual and small employer  
11 markets, respectively;

12 (6) limit any small business health options  
13 program to those employers with at least one but no more than  
14 fifty employees, until such time as the federal act requires  
15 the participation of employers with more than fifty employees;

16 (7) consider the unique needs of rural New  
17 Mexicans as they pertain to access, affordability and choice in  
18 purchasing health insurance;

19 (8) consider the affordability and cost in the  
20 context of quality care and increased access to purchasing  
21 health insurance;

22 (9) investigate requirements, develop options  
23 and determine waivers, if appropriate, to ensure that the best  
24 interests of New Mexicans are protected;

25 (10) establish conflict of interest policies;

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1 and

2 (1) conduct periodic audits to ensure the  
3 general accuracy of the financial data submitted to the  
4 exchange.

5 B. When carrying out its functions pursuant to the  
6 New Mexico Health Insurance Exchange Act, the board shall not  
7 exercise any duty or power pursuant to the Health Insurance  
8 Alliance Act.

9 C. The board may:

10 (1) apply for planning and establishment  
11 grants made available to the exchange pursuant to the federal  
12 act and apply for, receive and expend other gifts, grants and  
13 donations. Each grant application is subject to review and  
14 approval by the board; and

15 (2) enter into information-sharing agreements  
16 with federal and state agencies and other state exchanges to  
17 carry out its responsibilities under the New Mexico Health  
18 Insurance Exchange Act so long as the agreements include  
19 adequate protections with respect to the confidentiality of the  
20 information that is shared and comply with all state and  
21 federal laws, rules and regulations.

22 SECTION 6. [NEW MATERIAL] EXCHANGE ASSESSMENTS.--Until  
23 January 1, 2016, the board may charge assessments or user fees  
24 to carriers, qualified employers or producers or otherwise to  
25 generate funding necessary to support exchange operations;

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1 provided that assessments shall be limited solely to the  
2 reasonable administrative costs of the exchange.

3 SECTION 7. Section 59A-56-4 NMSA 1978 (being Laws 1994,  
4 Chapter 75, Section 4, as amended) is amended to read:

5 "59A-56-4. ALLIANCE CREATED--BOARD CREATED.--

6 A. The "New Mexico health insurance alliance" is  
7 created as a nonprofit public corporation for the purpose of  
8 providing increased access to health insurance in the state.  
9 All insurance companies authorized to transact health insurance  
10 business in this state, nonprofit health care plans, health  
11 maintenance organizations and self-insurers not subject to  
12 federal preemption shall organize and be members of the  
13 alliance as a condition of their authority to offer health  
14 insurance in this state, except for an insurance company that  
15 is licensed under the Prepaid Dental Plan Law or a company that  
16 is solely engaged in the sale of dental insurance and is  
17 licensed under a provision of the Insurance Code.

18 B. The alliance shall be governed by ~~[a board of~~  
19 ~~directors constituted pursuant to the provisions of this~~  
20 ~~section. The board is a governmental entity for purposes of~~  
21 ~~the Tort Claims Act, but neither the board nor the alliance~~  
22 ~~shall be considered a governmental entity for any other~~  
23 ~~purpose.~~

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

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1                   D. ~~The alliance shall operate subject to the~~  
2 ~~supervision and approval of the board. The board shall consist~~  
3 ~~of:~~

4                   (1) ~~five directors, elected by the members,~~  
5 ~~who shall be officers or employees of members and shall consist~~  
6 ~~of two representatives of health maintenance organizations and~~  
7 ~~three representatives of other types of members;~~

8                   (2) ~~five directors, appointed by the governor,~~  
9 ~~who shall be officers, general partners or proprietors of small~~  
10 ~~employers, one director of which shall represent nonprofit~~  
11 ~~corporations;~~

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

14                   (4) ~~the superintendent or the superintendent's~~  
15 ~~designee, who shall be a nonvoting member, except when the~~  
16 ~~superintendent's vote is necessary to break a tie.~~

17                   E. ~~The superintendent shall serve as chairman of~~  
18 ~~the board unless the superintendent declines, in which event~~  
19 ~~the superintendent shall appoint the chairman.~~

20                   F. ~~The directors elected by the members shall be~~  
21 ~~elected for initial terms of three years or less, staggered so~~  
22 ~~that the term of at least one director expires on June 30 of~~  
23 ~~each year. The directors appointed by the governor shall be~~  
24 ~~appointed for initial terms of three years or less, staggered~~  
25 ~~so that the term of at least one director expires on June 30 of~~

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1 ~~each year. Following the initial terms, directors shall be~~  
2 ~~elected or appointed for terms of three years. A director~~  
3 ~~whose term has expired shall continue to serve until a~~  
4 ~~successor is elected or appointed and qualified.~~

5 ~~G. Whenever a vacancy on the board occurs, the~~  
6 ~~electing or appointing authority of the position that is vacant~~  
7 ~~shall fill the vacancy by electing or appointing an individual~~  
8 ~~to serve the balance of the unexpired term; provided when a~~  
9 ~~vacancy occurs in one of the director's positions elected by~~  
10 ~~the members, the superintendent is authorized to appoint a~~  
11 ~~temporary replacement director until the next scheduled~~  
12 ~~election of directors elected by the members is held. The~~  
13 ~~individual elected or appointed to fill a vacancy shall meet~~  
14 ~~the requirements for initial election or appointment to that~~  
15 ~~position.~~

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

22 SECTION 8. TEMPORARY PROVISION.--On the effective date of  
23 this act, the board of directors of the New Mexico health  
24 insurance alliance, appointed pursuant to the Health Insurance  
25 Alliance Act prior to the effective date of this act, shall

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1       cease to exist and the New Mexico health insurance alliance  
2       shall be governed pursuant to the Health Insurance Alliance Act  
3       by the board of directors of the New Mexico health insurance  
4       exchange appointed pursuant to the New Mexico Health Insurance  
5       Exchange Act. In exercising its duties, the board of directors  
6       of the New Mexico health insurance exchange shall neither apply  
7       any provisions of the Health Insurance Alliance Act to the New  
8       Mexico health insurance exchange nor apply any provisions of  
9       the New Mexico Health Insurance Exchange Act to the New Mexico  
10       health insurance alliance.

11               **SECTION 9. DELAYED REPEAL.**--Sections 59A-56-1 through  
12       59A-56-25 NMSA 1978 (being Laws 1994, Chapter 75, Sections 1  
13       through 25, as amended) are repealed effective January 1, 2015.

14               **SECTION 10. SEVERABILITY.**--If any part or application of  
15       this act is held invalid, the remainder or its application to  
16       other situations or persons shall not be affected.

17               **SECTION 11. EMERGENCY.**--It is necessary for the public  
18       peace, health and safety that this act take effect immediately.