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FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/13

SPONSOR Taylor LAST UPDATED _____ HB 563

SHORT TITLE NM Health Insurance Exchange Act SB _____

ANALYST Trowbridge/Geisler

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$0.0	*Significant	\$0.0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

Relates to HB 168, SB 221, HB 262, SB 266 and SB 48

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Human Services Department (HSD)

Department of Health (DOH)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

House Bill 563 (HB 563) would enact the Health Insurance Exchange Act to establish a New Mexico health insurance exchange ("HIX" or "Exchange") under the federal Patient Protection and Affordable Care Act (ACA). Under the ACA, states can establish their own exchange or have the federal government run an exchange in the state. The bill will create the HIX Board of Directors and provide their duties, eliminate the New Mexico Health Insurance Alliance (NMHIA) Board of Directors, provide for temporary instructions for the new board, and repeal the Health Insurance Alliance Act. The alliance would then cease to exist beginning January 1, 2015.

The HIX will be an unincorporated nonprofit "instrumentality" of the state, subject to the protections and duties of certain state laws (such as the Tort Claims Act) although the state would not be responsible for the HIX's debts and liabilities.

All qualified health insurers and HMOs would be eligible to participate in the HIX. HB 563 prohibits the HIX from soliciting bids or engaging in the “active purchasing of insurance.”

This legislation also provides for temporary provisions in the collection of assessments or user fees to insurance carriers, qualified employers, or producers to help the exchange become self sustaining. The fees are limited to the reasonable administrative costs of the operation of the HIX.

The HIX Board of Directors will consist of 14 members. The majority of voting members shall be business representatives or individuals who are not directly affiliated with the insurance industry. The board shall be composed to ensure representation of the state’s Native American population, ethnic diversity, cultural diversity and geographic diversity. The Board is appointed as follows:

- Six voting members appointed by the Governor, including a consumer advocate. The Governor shall appoint no more than four members from the same political party.
- Five voting members, one each appointed by the President Pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the House of Representatives, the Minority Floor Leader of the House of Representatives and the New Mexico Legislative Council.
- The Secretary of the Human Services Department (HSD) or the Secretary’s Designee, and who shall be a voting member.
- The Superintendent of Insurance or the Superintendent’s Designee, who shall not be a voting member. The Superintendent shall serve as the Chair of the Board unless the Superintendent declines and shall appoint the chair.
- The Secretary of the Economic Development Department (EDD) or the Secretary’s Designee, who shall serve as a nonvoting, ex-officio member.

Members of the Board shall demonstrate knowledge or experience in at least one of the following areas:

- Individual health insurance coverage
- Small employer health insurance
- Health benefits administration
- Health care finance
- Administration of a public or private health care delivery system
- Provisions of health care services
- Purchase of health insurance coverage
- Health care consumer navigation or assistance
- Health care economics or health care actuarial sciences
- Information technology
- Starting a small business with fifty or fewer employees

This bill contains a severability clause and an emergency clause.

FISCAL IMPLICATIONS

The implementation of the health insurance exchange is likely to have a significant fiscal impact on the state, with additional federal revenue coming to New Mexico in the form of tax credits to

subsidize the cost of health insurance for more than 70,000 exchange clients, as well as increased revenues from state premium taxes on the insurance plans offered by the exchange.

As reported in the consensus revenue estimates, the FY14 insurance premium tax estimate contains the first fiscal impacts from the expansion of Medicaid and creation of the health insurance exchange under the ACA. Note that premiums taxed are paid quarterly and the impacts will only be reflected in the last quarterly payment for FY14; much larger impacts are anticipated for subsequent fiscal years. Analysts have been careful to include the impacts of existing law only.

Significant amounts of premium tax revenue are currently diverted to the New Mexico Medical Insurance Pool (NMMIP), which provides access to health insurance coverage to residents of New Mexico who are denied health insurance and considered uninsurable. For FY 13, NMMIP has assessed health insurance companies \$117 million to substantially fund the pool. Insurance carriers in turn are allowed a roughly 55 percent credit on assessments which are claimed against premium tax liability.

This scheme will change under ACA, as the bulk of NMMIP pool participants should therefore receive insurance through the exchange, if not as an adult newly eligible for Medicaid. However, not all NMMIP participants are eligible to participate. Undocumented residents, currently estimated to be around 20 percent of the pool, will still participate in NMMIP. This leaves 80 percent of the pool eligible to enter the exchange on January 1, 2014. The consensus revenue estimate assumes about 50 percent of the pool transitions to the exchange. This transfer of clients is currently estimated to save the state between \$10 million and \$20 million.

Also of note, the health insurance exchange as created by HB 563 is a quasi-governmental entity that is exempt from the legislative appropriation and budgeting process, state procurement code, and the State Personnel Act. The exchange is likely to administer, accrue and account for substantial revenues and expenditures which will occur outside of the oversight of the executive branch and the Legislature. Although the “quasi-governmental” exchange model proposed in HB 563 is being considered by other states, other states have also decided to operate their exchanges within current executive branch agencies or have established independent state agencies, presumably with greater oversight and accountability by the Legislature and the public.

Additionally, the Human Services Department (HSD) reports that while Section 6 enacts a temporary provision -- until January 1, 2016 -- allowing “the board [to] charge assessments or user fees to carriers, qualified employers or producers or otherwise to generate funding necessary to support HIX operations; provided that assessments shall be limited solely to the reasonable administration costs of the health insurance exchange,” that assessment does not appear to be subject to provisions of 59A-56-11 NMSA 1978, which provides for a tax credit against any such assessment (see Section 8 of this bill). The HSD states that insurance carriers could potentially be significantly impacted based upon an assessment structure in this legislation or any potential future legislation.

SIGNIFICANT ISSUES

The Attorney General’s Office (AGO) points out that HB 563 could be an unconstitutional delegation of authority by the legislature. Under the ACA, state established exchanges are

charged with carrying out many responsibilities and must make decisions on “qualified health plans,” “qualified individuals,” “eligible employers” and other terms. HB 563 provides no definition for these or other terms but generally charges the board to “perform all functions necessary to operate the exchange.” Thus, HB 563 establishes an administrative body with a broad power and decision making authority and contains very little legislative guidance and direction. It is normally the province of the legislature to make the policy decisions that the HIX would be making under HB 563. Further, HB 563 specifically prohibits the board from promulgating rules so there is no requirement that decisions by the board be made with public notice and comment.

The HSD indicates that New Mexico currently has the second-highest rate of uninsured in the nation, topped only by our neighbor to the east, Texas. Preliminary figures indicate that 59 percent of uninsured households have at least one full-time employee in the home; another 16 percent have at least one part-time worker in the home. Those figures suggest that 75 percent of the state’s uninsured, in many cases, should have access to small group insurance. The establishment of a free market oriented, state-based exchange will help to capture the majority of our state’s uninsured, granting them further access to coverage.

The HSD further states that New Mexico has been working for some time now to establish the HIX within the Health Insurance Alliance. Grant funding was received in September 2011 to help New Mexico establish a state-based exchange. Work has proceeded since then and New Mexico, according to the Center for Consumer Information and Insurance Oversight (CCIIO), the federal government oversight authority over exchange implementation, is further along in development of a state-base exchange than other states.

The New Mexico Health Insurance Alliance (NMHIA) was selected as the likely best choice as an exchange implementation mechanism because it already acts as a type of HIX. The HIA was created in 1994 by the legislature to provide increased access to health insurance for small businesses, self-employed, and qualified individuals.

According to the HSD, the administration has been working towards the establishment of a free market exchange. Consumers should be offered the broadest possible array of plans with little structure of the marketplace beyond what is required by the ACA. This is more of an “Amazon dot com” style approach to shopping for insurance – a consumer can type in what they are looking to purchase, click, and purchase. This legislation sets up an exchange that is free market in nature and which gives consumers more choices and empowers them to take their health insurance decisions into their own hands. The idea is to allow consumers to save money through more choice and competition.

The HSD also reports that other types of exchanges, chiefly those that are of an active purchaser nature, do little to drive down the cost of health insurance products. They force artificial mandates on the marketplace by designing plans that must be sold in an exchange market, rather than those that meet a set of actuarial and rating standards. These types of exchanges force consumers into selecting products approved by the government under the auspices of protecting them from making unwise choices. This has the perhaps unintended and undesirable consequence of allowing insurers to come up with innovative solutions that deliver care in a more cost efficient manner.

The Department of Health (DOH) observes that the ACA requires all individuals to have health insurance. Thus, this legislation implements requirements of the ACA that require states to offer health insurance exchanges for individuals and businesses that currently do not have or do not offer health insurance.

The DOH maintains that the relationship between the proposed New Mexico Health Insurance Exchange Act and the New Mexico Health Insurance Alliance Act and their respective governing boards is not fully described in HB 563, and is somewhat unclear, possibly leading to delays in meeting ACA requirements. The DOH also states that HB 563 lacks clarity when it defines how the Board will generate funding necessary to support exchange operations. While it describes that the Board may charge assessments or user fees to carriers, qualified employers or producers, it does not describe how those revenues would be processed to support the Board.

The Public Regulation Commission (PRC) reports that requiring the Exchange to be self-supporting after 2015 raises the question of how the administrative costs of the Exchange will be funded thereafter. Also, the Exchange will continue to need the financial resources to fund the navigator program.

PERFORMANCE IMPLICATIONS

The PRC states Subsection H of Section 4 requires that the board be ethnically diverse, although it is not clear how that could actually be accomplished.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

- The AGO states HB 563 conflicts with HB 168, SB 221, which propose to enact the New Mexico Health Insurance Alliance Act that would create the New Mexico Health Insurance Exchange;
- HB 262 and SB 226, which propose to enact the Health Security Act; and
- SB 48, which would enable the participation of large employers in a health insurance exchange.

TECHNICAL ISSUES

The PRC states that Internal Revenue Service rules may require that the Exchange be incorporated (as the Alliance is) for the Alliance to be allowed to transfer its assets to the Exchange. The HSD reports that there could be an impact to the ASPEN interface programming that cannot be quantified with the information given at this time.

OTHER SUBSTANTIVE ISSUES

The DOH reports that one of five New Mexicans is without health insurance. The 2012 State Health Improvement Plan discusses higher rates of individuals in New Mexico without health insurance, relative to the U.S. (New Mexico 21 percent, U.S. 16 percent).

ALTERNATIVES

The PRC indicates that Section 8 should be amended to:

1. allow the Alliance board to continue to exist until the Exchange board convenes.
2. require that all Establishment Grant Level One monies be immediately transferred to the Alliance.
3. allow the Alliance to award the IT integrator contract and hire staff.

The PRC also suggests amending page 3 lines 7-10 as follows:

“E. All health insurers and health maintenance organizations authorized to conduct business in this state and all health policies and plans approved by the superintendent and meeting the requirements of the federal act shall be eligible to participate in the exchange.”

The PRC also suggests amending page 2 line 12 as follows:

“...created as a nonprofit ~~unincorporated~~ public ~~entity~~ corporation for the...”

And the PRC suggests amending page 9 lines 1-2 as follows:

“...provided that assessments shall be limited solely to the reasonable administrative costs of the exchange, including the navigator program.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If HB 563 is not enacted, the New Mexico Health Insurance Exchange would not be created. The HSD states that New Mexico will continue working to establish a free market, state-based health insurance exchange.

TT/svb