

1 SENATE BILL 294

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Mary Kay Papen

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10 AN ACT

11 RELATING TO INSURANCE; AMENDING SECTIONS OF THE AUDIT ACT AND
12 THE NEW MEXICO HEALTH INSURANCE EXCHANGE ACT TO ESTABLISH
13 ADDITIONAL REPORTING AND ACCOUNTABILITY REQUIREMENTS FOR THE
14 BOARD OF DIRECTORS AND STAFF OF THE NEW MEXICO HEALTH INSURANCE
15 EXCHANGE.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. Section 12-6-2 NMSA 1978 (being Laws 1969,
19 Chapter 68, Section 2, as amended) is amended to read:

20 "12-6-2. DEFINITIONS.--As used in the Audit Act:

21 A. "agency" means:

22 (1) any department, institution, board,
23 bureau, court, commission, district or committee of the
24 government of the state, including district courts, magistrate
25 or metropolitan courts, district attorneys and charitable

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1 institutions for which appropriations are made by the
2 legislature;

3 (2) any political subdivision of the state,
4 created under either general or special act, that receives or
5 expends public money from whatever source derived, including
6 counties, county institutions, boards, bureaus or commissions;
7 municipalities; drainage, conservancy, irrigation or other
8 special districts; and school districts;

9 (3) any entity or instrumentality of the state
10 specifically provided for by law, including the New Mexico
11 finance authority, the New Mexico mortgage finance authority,
12 [~~and~~] the New Mexico lottery authority and the New Mexico
13 health insurance exchange; and

14 (4) every office or officer of any entity
15 listed in Paragraphs (1) through (3) of this subsection; and

16 B. "local public body" means a mutual domestic
17 water consumers association, a land grant, an incorporated
18 municipality or a special district."

19 **SECTION 2.** Section 59A-23F-3 NMSA 1978 (being Laws 2013,
20 Chapter 54, Section 3) is amended to read:

21 "59A-23F-3. NEW MEXICO HEALTH INSURANCE EXCHANGE
22 CREATED--BOARD CREATED.--

23 A. The "New Mexico health insurance exchange" is
24 created as a nonprofit public corporation to provide qualified
25 individuals and qualified employers with increased access to

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1 health insurance in the state and shall be governed by a board
2 of directors constituted pursuant to the provisions of the New
3 Mexico Health Insurance Exchange Act. The exchange is a
4 governmental entity for purposes of the Audit Act, the
5 Governmental Conduct Act, the Gift Act, the Sunshine Portal
6 Transparency Act, the Whistleblower Protection Act, the
7 Procurement Code and the Tort Claims Act, and neither the
8 exchange nor the board shall be considered a governmental
9 entity for any other purpose.

10 B. The exchange shall not duplicate, impair,
11 enhance, supplant, infringe upon or replace, in whole or in any
12 part, the powers, duties or authority of the superintendent,
13 including the superintendent's authority to review and approve
14 premium rates pursuant to the provisions of the New Mexico
15 Insurance Code.

16 C. The exchange shall not purchase qualified health
17 plans from insurance health issuers to offer for purchase
18 through the exchange.

19 D. All health insurance issuers and health
20 maintenance organizations authorized to conduct business in
21 this state and meeting the requirements of the rules
22 promulgated by the superintendent pursuant to Section [~~7 of the~~
23 ~~New Mexico Health Insurance Exchange Act~~] 59A-23F-7 NMSA 1978,
24 as well as meeting the rules under the federal act, shall be
25 eligible to participate in the exchange.

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1 E. The "board of directors of the New Mexico health
2 insurance exchange" is created. The board consists of thirteen
3 voting directors as follows:

4 (1) one voting director is the superintendent
5 or the superintendent's designee;

6 (2) six voting directors appointed by the
7 governor, including the secretary of human services or the
8 secretary's designee, a health insurance issuer and a consumer
9 advocate; and

10 (3) six voting directors, three appointed by
11 the president pro tempore of the senate, including one health
12 care provider, and three appointed by the speaker of the house
13 of representatives, including one health insurance issuer. One
14 of the directors appointed by the president pro tempore of the
15 senate and one of the directors appointed by the speaker of the
16 house of representatives shall be from a list of at least two
17 candidates provided, respectively, by the minority leader of
18 the senate and by the minority leader of the house of
19 representatives.

20 F. Except as provided in Subsection G of this
21 section, managerial and full-time staff of the exchange shall
22 be subject to applicable provisions of the Governmental Conduct
23 Act and shall not have any direct or indirect affiliation with
24 any health care provider, health insurance issuer or health
25 care service provider.

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1 G. Each director shall comply with the conflict-of-
2 interest provisions of Subsection F of this section, except as
3 follows:

4 (1) directors who may be appointed from the
5 boards of directors of the New Mexico medical insurance pool
6 and the New Mexico health insurance alliance shall not be
7 considered to have a conflict of interest with respect to their
8 association with those entities;

9 (2) the secretary of human services, or the
10 secretary's designee, shall not be considered to have a
11 conflict of interest with respect to the secretary's
12 performance of the secretary's duties as secretary of human
13 services;

14 (3) the director who is a health care provider
15 shall not be considered to have a conflict of interest arising
16 from that director's receipt of payment for services as a
17 health care provider; and

18 (4) directors who are representatives of
19 health insurance issuers shall not be considered to have a
20 conflict of interest with respect to those directors'
21 association with their respective health insurance issuers.

22 H. Each director and employee of the exchange shall
23 have a fiduciary duty to the exchange, to the state and to
24 those persons who purchase or enroll in qualified health plan
25 coverage or medical assistance coverage through the exchange.

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1 I. The board shall be composed, as a whole, to
2 assure representation of the state's Native American
3 population, ethnic diversity, cultural diversity and geographic
4 diversity.

5 J. Directors shall have demonstrated knowledge or
6 experience in at least one of the following areas:

7 (1) purchasing coverage in the individual
8 market;

9 (2) purchasing coverage in the small employer
10 market;

11 (3) health care finance;

12 (4) health care economics or health care
13 actuarial science;

14 (5) health care policy;

15 (6) the enrollment of underserved residents in
16 health care coverage;

17 (7) administration of a private or public
18 health care delivery system;

19 (8) information technology;

20 (9) starting a small business with fifty or
21 fewer employees; or

22 (10) provision of health care services.

23 K. The governor shall appoint no more than four
24 directors from the same political party.

25 L. Except for the secretary of human services, the

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1 non-health insurance issuer directors appointed by the governor
2 shall be appointed for initial terms of three years or less,
3 staggered so that the term of at least one director expires on
4 June 30 of each year. The non-health insurance insurer
5 directors appointed by the legislature shall be appointed for
6 initial terms of three years or less, staggered so that the
7 term of at least one director expires on June 30 of each year.
8 The health insurance issuers appointed to the board shall, upon
9 appointment, select one of them by lot to have an initial term
10 ending on June 30 following one year of service and one to have
11 an initial term ending on June 30 following two years of
12 service. Following the initial terms, health insurance issuer
13 directors shall be appointed for terms of two years. A
14 director whose term has expired shall continue to serve until a
15 successor is appointed by the respective appointing authority.
16 Health insurance issuer directors shall not serve two
17 consecutive terms.

18 M. The exchange and the board shall operate
19 consistent with provisions of the Governmental Conduct Act, the
20 Inspection of Public Records Act, the Financial Disclosure Act,
21 the Gift Act, the Whistleblower Protection Act, [and] the Open
22 Meetings Act and the Procurement Code and shall not be subject
23 to [~~the Procurement Code or~~] the Personnel Act.

24 N. The board and the exchange shall implement
25 performance-based budgeting and submit annual budgets for the

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1 exchange to the secretary of finance and administration and the
2 legislative finance committee.

3 O. The exchange shall cover its directors and
4 employees under a surety bond, in an amount that the director
5 of the risk management division of the general services
6 department shall prescribe.

7 [~~N-~~] P. A majority of directors constitutes a
8 quorum. The board may allow members to attend meetings by
9 telephone or other electronic media. A decision by the board
10 requires a quorum and a majority of directors in attendance
11 voting in favor of the decision.

12 [~~Q-~~] Q. Within thirty days of the effective date of
13 the New Mexico Health Insurance Exchange Act, the board shall
14 be fully appointed and the superintendent shall convene an
15 organizational meeting of the board, during which the board
16 shall elect a chair and vice chair from among the directors.
17 Thereafter, every three years, the board shall elect in open
18 meeting a chair and vice chair from among the directors. The
19 chair and vice chair shall serve no more than two consecutive
20 three-year terms as chair and vice chair.

21 [~~P-~~] R. A vacancy on the board shall be filled by
22 appointment by the original appointing authority for the
23 remainder of the director's unexpired term.

24 [~~Q-~~] S. A director may be removed from the board by
25 a two-thirds majority vote of the directors. The board shall

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1 set standards for attendance and may remove a director for lack
2 of attendance, neglect of duty or malfeasance in office. A
3 director shall not be removed without proceedings consisting of
4 at least one ten-day notice of hearing and an opportunity to be
5 heard. Removal proceedings shall be before the board and in
6 accordance with procedures adopted by the board.

7 [R-] T. Appointed directors may receive per diem
8 and mileage in accordance with the Per Diem and Mileage Act,
9 subject to the travel policy set by the board. Appointed
10 directors shall receive no other compensation, perquisite or
11 allowance.

12 [S-] U. The board shall:

13 (1) meet at the call of the chair and no less
14 often than once per calendar quarter. There shall be at least
15 seven days' notice given to directors prior to any meeting.
16 There shall be sufficient notice provided to the public prior
17 to meetings pursuant to the Open Meetings Act;

18 (2) create, make appointments to and duly
19 consider recommendations of an advisory committee or committees
20 made up of stakeholders, including health insurance issuers,
21 health care consumers, health care providers, health care
22 practitioners, brokers, qualified employer representatives and
23 advocates for low-income or underserved residents;

24 (3) create an advisory committee made up of
25 members insured through [~~the New Mexico health insurance~~

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1 ~~alliance and~~] the New Mexico medical insurance pool to make
2 recommendations to the board regarding the transition of each
3 organization's insured members into the exchange. The advisory
4 committee shall only exist until a transition plan has been
5 adopted by the board;

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

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

20 (a) cultural competency;
21 (b) state and federal law relating to
22 Indian health; and

23 (c) other matters relating to the
24 functions of the exchange with respect to Native Americans in
25 the state; and

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1 (6) establish at least one walk-in customer
2 service center where persons may, if eligible, enroll in
3 qualified health plans or public coverage programs."

4 SECTION 3. Section 59A-23F-5 NMSA 1978 (being Laws 2013,
5 Chapter 54, Section 5) is amended to read:

6 "59A-23F-5. PLAN OF OPERATION.--

7 A. Within sixty days of the effective date of the
8 New Mexico Health Insurance Exchange Act, the board shall
9 create a preliminary plan of operation containing provisions to
10 ensure the fair, reasonable and equitable administration of the
11 exchange. Within six months of the effective date of the New
12 Mexico Health Insurance Exchange Act, the board shall create
13 and implement a final plan of operation containing provisions
14 to ensure ~~[the fair, reasonable and equitable administration~~
15 ~~of]~~ that the exchange is administered using best practices in
16 business administration.

17 B. The board shall provide for public notice and
18 hearing prior to approving the plan of operation.

19 C. The preliminary plan of operation shall:

20 (1) establish procedures to implement the
21 provisions of the New Mexico Health Insurance Exchange Act,
22 consistent with state and federal law;

23 (2) establish procedures for handling and
24 accounting for the exchange's assets and money; and

25 (3) establish regular times and meeting places

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1 for meetings of the board.

2 D. The final plan of operation shall:

3 (1) establish a statewide consumer assistance
4 program, including a navigator program;

5 (2) establish consumer complaint and grievance
6 procedures for issues relating to the exchange;

7 (3) establish procedures for alternative
8 dispute resolution between the exchange and contractors or
9 health insurance issuers;

10 (4) develop and implement policies that:

11 (a) promote effective communication and
12 collaboration between the exchange and Indian nations, tribes
13 and pueblos, including communicating and collaborating on those
14 nations', tribes' and pueblos' plans for creating or
15 participating in health insurance exchanges; and

16 (b) promote cultural competency in
17 providing effective services to Native Americans;

18 (5) establish conflict-of-interest policies
19 and procedures; and

20 (6) contain additional provisions necessary
21 and proper for the execution of the powers and duties of the
22 board."