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## FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 02/05/21  
LAST UPDATED 03/08/21 HB 235/HJCS

SHORT TITLE Insurance Code Changes SB \_\_\_\_\_

ANALYST Martinez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Superintendent of Insurance (OSI) – original bill

General Services Department (GSD) – original bill

### SUMMARY

#### Synopsis of Bill

The House Judiciary Committee substitute for House Bill 235 (HB235/HJCS) proposes numerous changes to the New Mexico Insurance Code, including clean-up of language. HB235/HJCS also proposes changes to the Insurance Code to increase the duties of the Superintendent of Insurance during certain states of emergency declared by the governor, including the ability to take action to ensure citizens have access to insurance and healthcare and other insurance-related needs during a declared state of emergency.

The effective date of this bill is July 1, 2021.

### FISCAL IMPLICATIONS

HB235/HJCS does not contain an appropriation and will not have a fiscal impact on the Office of the Superintendent of Insurance.

### SIGNIFICANT ISSUES

The Office of Superintendent of Insurance provided the following significant issues on the original bill.

59A-1-8.2. Deliver. This section is proposed to enable persons and companies to use e-mail as an information or document delivery method if the recipient has an e-mail address on file with the sender.

59A-2-8. General powers and duties of superintendent. Adds a new subsection K which allows the superintendent of insurance to take action necessary to maintain access to insurance and health care and address other insurance related needs in a declared state of emergency.

59A-4-15 Hearings; in general. The amendment to subsection G clarifies that the superintendent of insurance can appoint a hearing officer for any type of hearing, not just for a hearing on reconsideration of a rate filing.

59A-5-23. Continuance, expiration, reinstatement of certificate of authority. The new subsection D allows a company's reinstatement of an expired certificate of authority within 3 months of expiration to relate back to the date of the expiration, thereby protecting against a gap in authority, but clarifies that the holder remains subject to the Insurance Code during the intervening period.

59A-5-32. Serving process; time to plead. The amendment of this section allows persons serving insurance companies through the office of superintendent of insurance to effectuate that service electronically. The amendment also allows any person for whom electronic delivery creates a hardship to use an alternate form of delivery.

59A-11-10. Continuation, expiration of license. The amendment to subsection E allows for reinstatement of an insurance producer's lapsed license if, within twelve months of the license renewal due date, the insurance producer pays the renewal fee and related penalty. The insurance producer will not have to pass a written examination, but will have to pass a criminal history background investigation.

59A-12-2. Definitions. This amendment creates definitions for the terms "Personal lines insurance producer" and "reinstatement" which are terms used in the Insurance Code but are undefined therein.

59A-12-3(B) "Broker" [~~and "service representative"~~] defined. This amendment will remove the definition of the term "service representative." This is the only place in the Insurance Code that uses this term. This definition blurs the line between a "broker", which is a type of producer that OSI regulates, and a "service representative", which OSI does not regulate. Based on the current version of this statute, a person performing acts that are typically performed by a licensed broker or other type of producer may claim to be a "service representative" and therefore claim exemption from OSI licensing and regulatory authority.

59A-12-16. Examination for license. The amendment to subsection E (6) is made to conform this statute to 59A-12-17, which provides that the examination requirement is waived if an insurance producer reinstates his or her license within twelve months. 59A-12-16 (E) (6) currently allows a five year lapse before reexamination is required, and the amendment corrects the contradiction among the statutes.

59A-13-8. Powers conferred by adjuster license. The amendment deletes a reference to a “temporary adjuster” which is a term not otherwise used in the Insurance Code and an adjuster type not recognized in New Mexico.

59A-16-5.1. Advertising; filings and review. This new section is part of a package wherein OSI proposes repeal of three redundant and inconsistent advertising statutes (59A-23A-11 Filing requirements for advertising, 59A-24A-12 Filing requirements for advertising, and 59A-48-16 Approval of advertising and sales material) and replacement of those deleted sections with the new 59A-16-5.1. This change will clarify the scope of the superintendent of insurance’s advertising review authority and eliminate redundant and inconsistent advertising review provisions.

59A-16-15. Discrimination, rebates and certain inducements prohibited; life, health and annuity contracts. The amendments to this section are made to simplify the language prohibiting discrimination, rebates and inducements by eliminating antiquated and unclear language.

59A-16-16. Exceptions to discrimination, rebate and inducement prohibition; life, health and annuity contracts. This amendment allows, as an exception to the general prohibition of inducements, the offering of certain value-added insurance related products or services so long as the offering is in conformance with 59A-16-17 (G), discussed more fully below.

59A-16-17. Unfair discrimination, rebates prohibited; other coverages. The amendments to this section are made to simplify the language prohibiting rebates and inducements by eliminating antiquated and unclear language. Additionally, the amendment adds a new subsection G which allows, as an exception to the general prohibition of inducements, the offering of certain value-added insurance related products or services so long as, prior to offering the product or service, the offeror files with the superintendent of insurance a request for approval of the product or service. These provisions recognize national trends in the insurance business, emerging technologies that promote and monitor health, wellness and safety, and are part of a national model being adopted in many states.

59A-16-21. Payment of claim by check, draft or electronic transfer; failure to pay; interest. This amendment updates the language in subsection B, which was enacted in 1984. At that time, no uniform and readily accessible method existed for an insurer to determine the prime lending rate on any specific date. That being so, the best practice at that time for providing notice of the applicable rate was through a bulletin issued by the superintendent of insurance. Subsequent advances in technology and information access now provide insurers and policyholders with nearly instantaneous access to the prime lending rate on any specific date. Because that rate fluctuates, insurers and insureds should not be bound by an OSI interest rate bulletin that may no longer accurately reflect the interest rate on a specific date. The proposed amendment also clarifies that the date of accrual and the date for determining the interest rate are both determined by the date the proof of loss was furnished.

59A-18-1. Scope of article. The amendment removes language in subsection C that was previously repealed by the legislature.

59A-18-22. Binders. This amendment replaces the term “agent” with the term “producer.” The terms were replaced throughout the Insurance Code in a previous cleanup bill, but this instance was missed.

59A-18-29. Cancellation of certain policies. The amendment to subsection D is made to ensure that notice of cancellation will be delivered to the named insured through the insured's preferred communication method.

59A-22-2. Form and content of policy. The amendment to subsection C is made to change the maximum age of a dependent from 19 to 26 to comply with the ACA. The amendment to subsection F is made to require placement of page numbers on forms submitted to OSI for review which will streamline form review and more easily identify areas of the form that need adjustment or correction.

59A-22-30.1. Maximum age of dependent. The amendment to this section is made to change the maximum age of a dependent from 25 to 26 to comply with the ACA.

59A-22-33. ~~[Handicapped children]~~ Children with disabilities; coverage continued. This amendment replaces the term "handicapped children" with the term "children with disabilities" in the section title, as that term is generally recognized as more appropriate. For the same reason, the term "mental retardation" is replaced with "intellectual or developmental disability" and physical "handicap" is replaced with physical "disability."

59A-22-40.1. Coverage for the human papillomavirus vaccine. The amendment to subsection A is made to ensure the statutory guidance conforms to the guidance provided by the federal Centers for Disease Control and Prevention. The age-related guideline currently included in the statute is outdated, and the revision will eliminate the need to update the statute in response to future updates of federal guidance.

59A-22-41.1. Coverage for medical diets for genetic inborn errors of metabolism. The amendment to subsection D (1) (b) replaces the term "mental retardation" with "intellectual or developmental disability" as that term is generally recognized as more appropriate.

59A-22-50. Health insurers; direct services. The amendment to this section simplifies confusing language and conforms the statutory medical loss ratio requirements to the federal medical loss ratio requirements.

59A-22A-3. Definitions. This amendment to subsection C makes the definition of "emergency care" consistent throughout the Insurance Code and consistent with the definition of emergency care in federal law.

59A-23-4. Other provisions applicable. This amendment makes health insurance contract requirements that apply to individual coverage contracts also apply to group health contracts (such as grace period, notice of claim, proof of loss, and payment of claims).

59A-23-7.3. Maximum age of dependent. The amendment to this section is made to change the maximum age of a dependent from 25 to 26 to comply with the ACA.

~~[59A-23-9. Out-of-state associations and trusts]~~. This amendment is made to repeal this statutory section because all major medical coverage, no matter whether the plan is sold to an in-state or out-of-state group, must comply with 59A-18-13.1. 59A-23-9 creates confusion with that clear requirement, and implies that the community rating standards do not apply to plans issued to out-of-state groups that are not associations or trusts.

~~[59A-23A-11. Filing requirements for advertising.]~~ The amendment will repeal this section as part of a package wherein OSI proposes repeal of three redundant and inconsistent advertising statutes (59A-23A-11 Filing requirements for advertising, 59A-24A-12 Filing requirements for advertising, and 59A-48-16 Approval of advertising and sales material) and replacement of those deleted sections with the new 59A-16-5.1. This change will clarify the scope of the superintendent of insurance’s advertising review authority and eliminate redundant and inconsistent advertising review provisions.

59A-23D-2. Definitions. The amendment to subsection 3 is made to change the maximum age of a dependent from 25 to 26 to comply with the ACA. The amendment to subsection 4 is made to replace the term “mental retardation” with “intellectual or developmental disability” and to replace the term physical “handicap” with physical “disability” as those terms are generally recognized as more appropriate.

~~[59A-24A-12. Filing requirements for advertising.]~~ The amendment will repeal this section as part of a package wherein OSI proposes repeal of three redundant and inconsistent advertising statutes (59A-23A-11 Filing requirements for advertising, 59A-24A-12 Filing requirements for advertising, and 59A-48-16 Approval of advertising and sales material) and replacement of those deleted sections with the new 59A-16-5.1. This change will clarify the scope of the superintendent of insurance’s advertising review authority and eliminate redundant and inconsistent advertising review provisions.

59A-46-30. Statutory construction and relationship to other laws. This amendment clarifies HMO compliance requirements with newly enacted laws and other applicable statutes. The amendment also removes reference to an Article that was repealed in a previous legislative session and no longer applies.

59A-46-38.3. Maximum age of dependent. The amendment to this section is made to change the maximum age of a dependent from 25 to 26 to comply with the ACA.

59A-46-42.1. Coverage for the human papillomavirus vaccine. The amendment to subsection A is made to ensure the statutory guidance conforms to the guidance provided by the federal Centers for Disease Control and Prevention. The age-related guideline currently included in the statute is outdated, and the revision will eliminate the need to update the statute in response to future updates of federal guidance.

~~59A-46-51. Health maintenance organizations; direct services.~~ This amendment will repeal this section as part of a package wherein direct services reimbursement obligations for all health insurers are clarified in 59A-22-50. 59A-22-50 is made applicable to HMOs through an amendment to 59A-46-30, making this separate section duplicative and unnecessary.

59A-47-33. Other provisions applicable. This amendment makes 59A-22-50 (direct services reimbursement obligations for all health insurers) applicable to nonprofit health care plans.

59A-47-40. Maximum age of dependent. The amendment to this section is made to change the maximum age of a dependent from 25 to 26 to comply with the ACA.

~~59A-47-46. Health insurers; direct services.~~ This amendment will repeal this section as part of a package wherein direct services reimbursement obligations for all health insurers are clarified in 59A-22-50. 59A-22-50 is made applicable to nonprofit health care plans through an amendment to 59A-47-33, making this separate section duplicative and unnecessary.

~~[59A-48-16. Approval of advertising and sales material.]~~ The amendment will repeal this section as part of a package wherein OSI proposes repeal of three redundant and inconsistent advertising statutes (59A-23A-11 Filing requirements for advertising, 59A-24A-12 Filing requirements for advertising, and 59A-48-16 Approval of advertising and sales material) and replacement of those deleted sections with the new 59A-16-5.1. This change will clarify the scope of the superintendent of insurance’s advertising review authority and eliminate redundant and inconsistent advertising review provisions.

59A-54-6. Notice of pool. The amendment to subsection A(4) includes termination of coverage as a reason an insurer must provide their previously covered member with notice of and an application for coverage by the medical insurance pool.

59A-54-8. Examination. The amendment to this section changes the date the medical insurance pool must submit to OSI an audited financial report from March 1 to June 30 each year. This amendment is necessary because the collection and audit of premium data is not completed until June of each year.

59A-54-11. Pool administrator; selection; duties. The amendment to subsection B provides that the term of the pool administrator’s contract shall conform to the requirements of the state procurement code.

59A-54-14. Deductibles; coinsurance; maximum out-of-pocket payments. The amendment to subsection B is made to recognize that the medical insurance pool utilizes defined copays for a number of services instead of 20% coinsurance across the board. Such cost sharing is far more common in health plans than a strict 80/20 model. The amendment provides the medical insurance pool board, comprised of doctors, health plan executives, actuaries, citizen representatives, pool member representatives and the superintendent of insurance, the discretion to determine the appropriate coinsurance requirements for pool policies.

59A-54-19. Rates; standard risk rate. The amendment removes outdated language that no longer applies to policies issued by the medical insurance pool.

59A-57-3. Definitions. This amendment to subsection D makes the definition of “emergency care” consistent throughout the Insurance Code and consistent with the definition of emergency care in federal law.

## **ADMINISTRATIVE IMPLICATIONS**

HB235/HJC will not have an administrative impact to OSI.

JM/al/sb