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HOUSE BILL 297

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY  
MICHAEL OLGUIN

FOR THE HEALTH CARE TASK FORCE

AN ACT

RELATING TO INSURANCE; AMENDING AND ENACTING CERTAIN PROVISIONS  
OF THE NEW MEXICO INSURANCE CODE REGARDING INDIVIDUAL OR GROUP  
HEALTH INSURANCE POLICIES.

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

Section 1. Section 59A-16-12.1 NMSA 1978 (being Laws 1991,  
Chapter 111, Section 12) is amended to read:

"59A-16-12.1. DISCRIMINATION ON THE BASIS OF DETERIORATION  
IN HEALTH. --

A. No insurer shall cancel or change the premiums,  
benefits or conditions of an individual health insurance policy  
or contract as to one insured solely because of a deterioration  
in the health of that insured occurring after the issuance or  
delivery of the policy or contract.

B. No conversion of a group health insurance policy

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1 that provides hospital, surgical and medical expense benefits  
2 shall be made to a conversion policy that has not been approved  
3 and found by the superintendent to provide benefits and  
4 conditions closely approximating the coverage of the policy from  
5 which conversion is exercised.

6 C. No insurer or other provider of health care  
7 benefits regulated pursuant to Section 59A-23-44, 59A-23-46 or  
8 59A-23-47 NMSA 1978 shall exclude an individual from coverage in  
9 a group because of the individual's health condition unless the  
10 entire group is excluded from coverage, except that this  
11 provision shall not prohibit the insurer or other provider of  
12 health care benefits from excluding "late enrollees or late  
13 entrants" from coverage. For purposes of this provision, "late  
14 enrollees or late entrants" means those individuals who did not  
15 enroll when first eligible for coverage or during an open  
16 enrollment period. "

17 Section 2. Section 59A-18-13.1 NMSA 1978 (being Laws 1994,  
18 Chapter 75, Section 26) is amended to read:

19 "59A-18-13.1. ADJUSTED COMMUNITY RATING. --

20 A. Until July 1, 1998, every insurer, fraternal  
21 benefit society, health maintenance organization or nonprofit  
22 health care plan that provides primary health insurance or  
23 health care coverage insuring or covering major medical expenses  
24 shall, in determining the initial year's premium charged for an  
25 individual, use only the rating factors of age, gender,

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Underscored material = new  
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1 geographic area of the place of employment and smoking  
2 practices; provided, however, for individual policies the rating  
3 factor of the individual's place of residence may be used  
4 instead of the geographic area of the individual's place of  
5 employment. In determining the initial and any subsequent  
6 year's rate, the difference in rates in any one age group that  
7 may be charged on the basis of a person's gender shall not  
8 exceed another person's rates in the age group by more than  
9 twenty percent of the lower rate, and no person's rate shall  
10 exceed the rate of any other person with similar family  
11 composition by more than two hundred fifty percent of the lower  
12 rate, except that the rates for children under the age of  
13 nineteen or children aged nineteen to twenty-five who are full-  
14 time students may be lower than the bottom rates in the two  
15 hundred fifty percent band. The rating factor restrictions  
16 shall not prohibit an insurer, society, organization or plan  
17 from offering rates that differ depending upon family  
18 composition.

19 B. Effective July 1, 1998, every insurer, fraternal  
20 benefit society, health maintenance organization or nonprofit  
21 health care plan that provides primary health insurance or  
22 health care coverage insuring or covering major medical expenses  
23 shall charge the same premium for the same coverage to each New  
24 Mexico resident, regardless of a person's individual  
25 circumstances for medical risk, job risk or gender. The only

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Underscored material = new  
[bracketed material] = delete

1 rating factor that may be used is whether a person is under or  
2 over the age of nineteen.

3 C. The superintendent shall adopt regulations to  
4 implement the provisions of this section. "

5 Section 3. Section 59A-23B-6 NMSA 1978 (being Laws 1991,  
6 Chapter 111, Section 6, as amended) is amended to read:

7 "59A-23B-6. FORMS AND RATES--APPROVAL OF THE  
8 SUPERINTENDENT OF INSURANCE--ADJUSTED COMMUNITY RATING. --

9 A. All policy or plan forms, including applications,  
10 enrollment forms, policies, plans, certificates, evidences of  
11 coverage, riders, amendments, endorsements and disclosure forms,  
12 shall be submitted to the [~~department of~~] insurance department  
13 for approval prior to use.

14 B. No policy or plan may be issued in the state  
15 unless the rates have first been filed with and approved by the  
16 superintendent [~~of insurance~~]. This subsection shall not apply  
17 to policies or plans subject to the Small Group Rate and  
18 Renewability Act.

19 C. Until July 1, 1998, in determining the initial  
20 year's premium or rate charged for coverage under a policy or  
21 plan, the only rating factors that may be used are age, gender,  
22 geographic area of the place of employment and smoking  
23 practices. Until July 1, 1998, in determining the initial and  
24 any subsequent year's rate, the difference in rates in any one  
25 age group that may be charged on the basis of a person's gender

Underscored material = new  
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1 shall not exceed another person's rates in the age group by more  
2 than twenty percent of the lower rate, and no person's rate  
3 shall exceed the rate of any other person with similar family  
4 composition by more than two hundred fifty percent of the lower  
5 rate, except that the rates for children under the age of  
6 nineteen or children aged nineteen to twenty-five who are full-  
7 time students may be lower than the bottom rates in the two  
8 hundred fifty percent band. The rating factor restrictions  
9 shall not prohibit an insurer, society, organization or plan  
10 from offering rates that differ depending upon family  
11 composition.

12 D. Effective July 1, 1998, each policy or plan  
13 covered by the Minimum Healthcare Protection Act shall charge  
14 the same premium for the same coverage to each New Mexico  
15 resident, regardless of a person's individual circumstances for  
16 medical risk, job risk or gender. The only rating factor that  
17 may be used is whether a person is under or over the age of  
18 nineteen.

19 E. The superintendent [~~of insurance~~] shall adopt  
20 regulations to implement the provisions of this section."

21 Section 4. Section 59A-23C-3 NMSA 1978 (being Laws 1991,  
22 Chapter 153, Section 3, as amended) is amended to read:

23 "59A-23C-3. DEFINITIONS. --As used in the Small Group Rate  
24 and Renewability Act:

25 A. "actuarial certification" means a written

1 statement by a member of the American academy of actuaries or  
2 another individual acceptable to the superintendent that a small  
3 employer carrier is in compliance with the provisions of Section  
4 59A-23C-5 NMSA 1978, based upon the person's examination,  
5 including a review of the appropriate records and of the  
6 actuarial assumptions and methods utilized by the carrier in  
7 establishing premium rates for applicable health benefit plans;

8 B. "base premium rate" means, for each class of  
9 business as to a rating period, the lowest premium rate charged  
10 under a rating system for that class of business by the small  
11 employer carrier to small employers with similar case  
12 characteristics for health benefit plans with the same or  
13 similar coverage;

14 C. "carrier" means any person who provides health  
15 insurance in this state. For the purposes of the Small Group  
16 Rate and Renewability Act, "carrier" or "insurer" includes a  
17 licensed insurance company, a licensed fraternal benefit  
18 society, a prepaid hospital or medical service plan, a health  
19 maintenance organization, a nonprofit health care organization,  
20 a multiple employer welfare arrangement or any other person  
21 providing a plan of health insurance subject to state insurance  
22 regulation;

23 D. "case characteristics" means demographic or other  
24 relevant characteristics of a small employer, as determined by a  
25 small employer carrier, that are considered by the carrier in

1 the determination of premium rates for the small employer, but  
2 "case characteristics" does not include claim experience, health  
3 status and duration of coverage since issue;

4 E. "class of business" means all small employers as  
5 shown on the records of the small employer carrier. A separate  
6 class of business may be established by the small employer  
7 carrier on the basis that the applicable health benefit plans  
8 have been acquired from another small employer carrier as a  
9 distinct grouping of plans;

10 F. "department" means the department of insurance;

11 G. "health benefit plan" or "plan" means any  
12 hospital or medical expense incurred policy or certificate,  
13 hospital or medical service plan contract or health maintenance  
14 organization subscriber contract. "Health benefit plan" does  
15 not include accident-only, credit, dental or disability income  
16 insurance, medicare supplement coverage, coverage issued as a  
17 supplement to liability insurance, workers' compensation or  
18 similar insurance or automobile medical-payment insurance;

19 H. "index rate" means, for each class of business  
20 for small employers with similar case characteristics, the  
21 arithmetic average of the applicable base premium rate and the  
22 corresponding highest premium rate;

23 I. "new business premium rate" means, for each class  
24 of business as to a rating period, the premium rate charged or  
25 offered by the small employer carrier to small employers with

1 similar case characteristics for newly issued health benefit  
2 plans with the same or similar coverage;

3 J. "rating period" means the calendar period for  
4 which premium rates established by a small employer carrier are  
5 assumed to be in effect, as determined by the small employer  
6 carrier;

7 K. "small employer" means any person, firm,  
8 corporation, partnership or association actively engaged in  
9 business who, on at least fifty percent of its working days  
10 during the preceding year, employed no less than two and no more  
11 than fifty eligible employees; provided that:

12 (1) in determining the minimum number of  
13 eligible employees, the spouse or dependent of an employee may,  
14 at the employer's discretion, be counted as a separate employee;  
15 and

16 (2) companies that are affiliated companies or  
17 that are eligible to file a combined tax return for purposes of  
18 state income taxation shall be considered one employer;

19 L. "small employer carrier" means any insurer that  
20 offers health benefit plans covering the employees of a small  
21 employer; and

22 M "superintendent" means the superintendent of  
23 insurance. "

24 Section 5. Section 59A-23C-5 NMSA 1978 (being Laws 1991,  
25 Chapter 153, Section 5, as amended) is amended to read:



1 "59A-23C-5. RESTRICTIONS RELATING TO PREMIUM RATES. - -

2 A. Premium rates for health benefit plans subject to  
3 the Small Group Rate and Renewability Act shall be subject to  
4 the following provisions:

5 (1) the index rate for a rating period for any  
6 class of business shall not exceed the index rate for any other  
7 class of business by more than twenty percent;

8 (2) for a class of business, the premium rates  
9 charged during a rating period to small employers with similar  
10 case characteristics for the same or similar coverage, or the  
11 rates that could be charged to those employers under the rating  
12 system for that class of business, shall not vary from the index  
13 rate by more than ~~twenty~~ fifteen percent of the index rate;

14 (3) the percentage increase in the premium rate  
15 charged to a small employer for a new rating period may not  
16 exceed the sum of the following:

17 (a) the percentage change in the new  
18 business premium rate measured from the first day of the prior  
19 rating period to the first day of the new rating period. In the  
20 case of a class of business for which the small employer carrier  
21 is not issuing new policies, the carrier shall use the  
22 percentage change in the base premium rate;

23 (b) an adjustment, not to exceed ten  
24 percent annually and adjusted pro rata for rating periods of  
25 less than one year due to the claim experience, health status or

Underscored material = new  
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1 duration of coverage of the employees or dependents of the small  
2 employer as determined from the carrier's rate manual for the  
3 class of business; and

4 (c) any adjustment due to change in  
5 coverage or change in the case characteristics of the small  
6 employer as determined from the carrier's rate manual for the  
7 class of business; and

8 (4) in the case of health benefit plans issued  
9 prior to the effective date of the Small Group Rate and  
10 Renewability Act, a premium rate for a rating period may exceed  
11 the ranges described in Paragraph (1) or (2) of this subsection  
12 for a period of five years following the effective date of the  
13 Small Group Rate and Renewability Act. In that case, the  
14 percentage increase in the premium rate charged to a small  
15 employer in that class of business for a new rating period may  
16 not exceed the sum of the following:

17 (a) the percentage change in the new  
18 business premium rate measured from the first day of the prior  
19 rating period to the first day of the new rating period. In the  
20 case of a class of business for which the small employer carrier  
21 is not issuing new policies, the carrier shall use the  
22 percentage change in the base premium rate; and

23 (b) any adjustment due to change in  
24 coverage or change in the case characteristics of the small  
25 employer as determined from the carrier's rate manual for the

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1 class of business.

2 B. Nothing in this section is intended to affect the  
3 use by a small employer carrier of legitimate rating factors  
4 other than claim experience, health status or duration of  
5 coverage in the determination of premium rates. Small employer  
6 carriers shall apply rating factors, including case  
7 characteristics, consistently with respect to all small  
8 employers in a class of business.

9 C. A small employer carrier shall not involuntarily  
10 transfer a small employer into or out of a class of business. A  
11 small employer carrier shall not offer to transfer a small  
12 employer into or out of a class of business unless the offer is  
13 made to transfer all small employers in the class of business  
14 without regard to case characteristics, claim experience, health  
15 status or duration since issue.

16 D. Prior to usage and [~~the effective date of the~~  
17 ~~Small Group Rate and Renewability Act~~] June 14, 1991, each  
18 carrier shall file with the superintendent the rate manuals and  
19 any updates thereto for each class of business. A rate filing  
20 fee is payable under Subsection U of Section 59A-6-1 NMSA 1978  
21 for the filing of each update. The superintendent shall  
22 disapprove within sixty days of receipt of a complete filing or  
23 the filing is deemed approved. If the superintendent  
24 disapproves any such form during the sixty-day review period, he  
25 shall give the carrier written notice of the disapproval stating

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1 the ground thereof. At any time, the superintendent, after a  
2 hearing thereof, may disapprove a form or withdraw a previous  
3 approval. The superintendent's order on such hearing shall  
4 state the grounds for disapproval or withdrawal of a previous  
5 approval and the date not less than twenty days later when  
6 disapproval or withdrawal becomes effective."

7 Section 6. Section 59A-23C-5.1 NMSA 1978 (being Laws 1994,  
8 Chapter 75, Section 33) is amended to read:

9 "59A-23C-5.1. ADJUSTED COMMUNITY RATING. --

10 A. Until July 1, 1998, a health benefit plan that is  
11 offered by a carrier to a small employer shall be offered  
12 without regard to the health status of any individual in the  
13 group, except as provided in the Small Group Rate and  
14 Renewability Act. The only rating factors that may be used to  
15 determine the initial year's premium charged a group, subject to  
16 the maximum rate variation provided in this section for all  
17 rating factors, are the group members':

- 18 (1) [age] ages;
- 19 (2) gender;
- 20 (3) geographic area of the place of employment;

21 or

- 22 (4) smoking practices.

23 B. Until July 1, 1998, in determining the initial  
24 and any subsequent year's rate, the difference in rates in any  
25 one age group that may be charged on the basis of a person's

Underscored material = new  
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1 gender shall not exceed another person's rates in the age group  
2 by more than twenty percent of the lower rate, and no person's  
3 rate shall exceed the rate of any other person with similar  
4 family composition by more than two hundred fifty percent of the  
5 lower rate, except that the rates for children under the age of  
6 nineteen or children aged nineteen to twenty-five who are  
7 full-time students may be lower than the bottom rates in the two  
8 hundred fifty percent band. The rating factor restrictions  
9 shall not prohibit a carrier from offering rates that differ  
10 depending upon family composition.

11 C. Effective July 1, 1998, a health benefit plan  
12 that is offered by a carrier to a small employer shall charge  
13 the same premium for the same coverage to each New Mexico  
14 resident, regardless of a person's individual circumstances for  
15 medical risk, job risk or gender. The only rating factor that  
16 may be used is whether a person is under or over the age of  
17 nineteen.

18 D. The superintendent shall adopt regulations to  
19 implement the provisions of this section."

20 Section 7. A new section of Chapter 59A, Article 23 is  
21 enacted to read:

22 "[NEW MATERIAL] OUT-OF-STATE ASSOCIATIONS AND TRUSTS. --  
23 Unless the rate applicable to the certificate or coverage of an  
24 out-of-state association or trust complies with the requirements  
25 of Section 59A-18-13.1 or 59A-23C-5.1 NMSA 1978, the out-of-

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1 state association or trust may not:

2 A. advertise in the state as a benefit of membership  
3 for any group health insurance policy available to its members  
4 or beneficiaries;

5 B. issue a certificate for delivery in New Mexico to  
6 any resident of the state; or

7 C. solicit membership in the state on the basis of  
8 the existence or availability of such health insurance  
9 coverage. "

# State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

January 29, 1996

Mr. Speaker:

Your RULES AND ORDER OF BUSINESS COMMITTEE, to  
whom has been referred

HOUSE BILL 297

has had it under consideration and finds same to be  
GERMANE in accordance with constitutional provisions.

Respectfully submitted,

---

Barbara A. Perea Casey,

Chairperson

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

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4 The roll call vote was 9 For 0 Against

5 Yes: 9

6 Excused: Lujan, Nicely, Olguin, Pederson, Wallach,

7 S. Williams

8 Absent: None

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# State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

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Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
been referred

HOUSE BILL 297

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 9, line 13, strike the brackets and line  
through and strike "fifteen".,

and thence referred to the JUDICIARY COMMITTEE.

FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

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Respectfully submitted,

\_\_\_\_\_  
Fred Luna, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against  
Yes: 11  
Excused: None  
Absent: Varela

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# State of New Mexico House of Representatives

FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

February 10, 1996

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 297, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 2, lines 7 and 8, strike "Section 59A-23-44,  
59A-23-46 or 59A-23-47" and insert in lieu thereof "Section 59A,  
Articles 23, 44, 46 or 47".

Respectfully submitted,

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Cisco McSorley, Chairman

FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 1 Against

Yes: 8

No: Christensen

Excused: Alwin, Gubbels, Larranaga

Absent: Luna

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

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FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996

February 12, 1996

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to  
whom has been referred

HOUSE BILL 297, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

\_\_\_\_\_  
Roman M. Maes, III, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 4 For 1 Against

Yes: 4

No: Rawson

Excused: Kidd, McKibben, Reagan, Robinson

Absent: None

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Underscored material = new  
[bracketed material] = delete