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SENATE BILL 3

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO HEALTH CARE; ENACTING THE HEALTH SECURITY ACT TO PROVIDE FOR COMPREHENSIVE STATEWIDE HEALTH CARE; PROVIDING FOR HEALTH CARE PLANNING; ESTABLISHING PROCEDURES TO CONTAIN HEALTH CARE COSTS; CREATING A COMMISSION; PROVIDING FOR ITS POWERS AND DUTIES; PROVIDING FOR HEALTH CARE DELIVERY REGIONS AND REGIONAL COUNCILS; DIRECTING AND AUTHORIZING THE DEVELOPMENT OF A STATE HEALTH SECURITY PLAN; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--This act may be cited as the "Health Security Act".

Section 2. PURPOSES OF ACT.--The purposes of the Health Security Act are to:

- A. create a program that ensures health care

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1 coverage to all New Mexicans through a combination of public
2 and private financing;

3 B. control escalating health care costs; and

4 C. improve the health care of all New Mexicans.

5 Section 3. DEFINITIONS.--As used in the Health Security
6 Act:

7 A. "beneficiary" means a person eligible for health
8 care and benefits pursuant to the health security plan;

9 B. "budget" means the total of all categories of
10 dollar amounts of expenditures for a stated period authorized
11 for an entity or a program;

12 C. "capital budget" means that portion of a budget
13 that establishes expenditures for:

14 (1) acquisition or addition of substantial
15 improvements to real property; or

16 (2) acquisition of tangible personal property;

17 D. "case management" means a comprehensive program
18 designed to meet an individual's need for care by coordinating
19 and linking the components of health care;

20 E. "commission" means the health care commission
21 created pursuant to the Health Security Act;

22 F. "consumer price index for medical care prices"
23 means that index as published by the bureau of labor statistics
24 of the federal department of labor;

25 G. "controlling interest" means:

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1 (1) a five percent or greater ownership
2 interest, direct or indirect, in the person controlled; or

3 (2) a financial interest, direct or indirect,
4 and, because of business or personal relationships, having the
5 power to influence important decisions of the person
6 controlled;

7 H. "financial interest" means an ownership interest
8 of any amount, direct or indirect;

9 I. "group practice" means an association of health
10 care providers that provides one or more specialized health
11 care services or a tribal or urban Indian coalition in
12 partnership or under contract with the federal Indian health
13 service that is authorized under federal law to provide health
14 care to Native American populations in the state;

15 J. "health care" means health care provider
16 services and health facility services;

17 K. "health care provider" means:

18 (1) a person licensed or certified and
19 authorized to provide health care in New Mexico;

20 (2) an individual licensed or certified by a
21 nationally recognized professional organization and designated
22 as a health care provider by the commission; or

23 (3) a person that is a group practice of
24 licensed providers or a transportation service;

25 L. "health facility" means a school-based clinic,

1 an Indian health service facility, a tribally operated health
2 care facility, a general hospital, a special hospital, an
3 outpatient facility, a psychiatric hospital, a primary clinic
4 pursuant to the Rural Primary Health Care Act, a laboratory, a
5 skilled nursing facility or a nursing facility; provided that
6 the health facility is authorized to receive state or federal
7 reimbursement;

8 M. "health security plan" means the program that is
9 created and administered by the commission for provision of
10 health care pursuant to the Health Security Act;

11 N. "major capital expenditure" means construction
12 or renovation of facilities or the acquisition of diagnostic,
13 treatment or transportation equipment by a health care provider
14 or health facility that costs more than an amount recommended
15 and established by the commission;

16 O. "operating budget" means the budget of a health
17 facility exclusive of the facility's capital budget;

18 P. "person" means an individual or any other legal
19 entity;

20 Q. "primary care provider" means a health care
21 provider who is a physician, osteopathic physician, nurse
22 practitioner, physician assistant, osteopathic physician's
23 assistant, pharmacist clinician or other health care provider
24 certified by the commission;

25 R. "provider budget" means the authorized

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1 expenditures pursuant to payment mechanisms established by the
2 commission to pay for health care furnished by health care
3 providers participating in the health security plan; and

4 S. "transportation service" means a person
5 providing the services of an ambulance, helicopter or other
6 conveyance that is equipped with health care supplies and
7 equipment and is used to transport patients to other health
8 care providers or health facilities.

9 Section 4. HEALTH CARE COMMISSION CREATED--GOVERNMENTAL
10 INSTRUMENTALITY.--The "health care commission" is created as a
11 public body, politic and corporate, constituting a governmental
12 instrumentality. The commission consists of fifteen members.

13 Section 5. CREATION OF HEALTH CARE COMMISSION MEMBERSHIP
14 NOMINATING COMMITTEE--MEMBERSHIP, TERMS AND DUTIES OF
15 COMMITTEE.--

16 A. The "health care commission membership
17 nominating committee" is created consisting of twelve members,
18 to reflect the geographic diversity of the state, as follows:

- 19 (1) two members appointed by the governor;
20 (2) three members appointed by the speaker of
21 the house of representatives;
22 (3) three members appointed by the president
23 pro tempore of the senate;
24 (4) two members appointed by the minority
25 leader of the house of representatives; and

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1 (5) two members appointed by the minority
2 leader of the senate.

3 B. At the first meeting of the committee it shall
4 elect a chair from its membership. The chair shall vote only
5 in the case of a tie vote.

6 C. The first twelve members appointed to the
7 committee shall have terms chosen by lot: four two-year terms;
8 four three-year terms; and four four-year terms. Thereafter,
9 members shall serve four-year terms. A member shall serve
10 until the member's successor is appointed and qualified.
11 Successor members shall be appointed by the appointing
12 authority that made the initial appointment to the committee.
13 A state employee who is exempt from the Personnel Act is not
14 eligible to serve on the committee. A member shall be eligible
15 for or enrolled in the health security plan. An elected
16 official shall not be appointed to serve on the committee.
17 Sufficient public notice shall be provided to allow members of
18 the public to request consideration of appointment to the
19 committee.

20 D. Appointed members of the committee shall have
21 substantial knowledge of the health care system as demonstrated
22 by education or experience. A person shall not be appointed to
23 the committee if, currently or within the previous thirty-six
24 months, the person or a member of the person's household is
25 employed by, an officer of or has a controlling interest in a

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1 person providing health care or health insurance, directly or
2 as an agent of a health insurer.

3 E. The committee shall take appropriate action to
4 ensure that adequate prior notice of its meetings is advertised
5 and reported in media outlets throughout the state in addition
6 to publication of a legal notice in major newspapers.

7 Publication of the legal notice shall occur once each week for
8 the two weeks immediately preceding the date of a meeting.

9 Meetings of the committee shall be open to the public, and
10 public comment shall be allowed. A majority of the committee
11 shall constitute a quorum. The committee may allow members'
12 participation in meetings by telephone or other electronic
13 media that allows full participation. Meetings may be closed
14 only for discussion of candidates prior to selection. Final
15 selection of candidates shall be by vote of the members and
16 shall be conducted in a public meeting.

17 F. The committee shall hold its first meeting on or
18 before June 15, 2009. The committee shall actively solicit,
19 accept and evaluate applications from qualified persons for
20 membership on the commission subject to the requirements for
21 commission membership qualifications pursuant to Section 6 of
22 the Health Security Act.

23 G. No later than September 15, 2009, the committee
24 shall submit to the governor the names of persons recommended
25 for appointment to the commission by a majority of the

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1 committee. Immediately after receiving committee nominations,
2 the governor may make one request of the committee for
3 submission of additional names. If a majority of the committee
4 finds that additional persons would be qualified, the committee
5 shall promptly submit additional names and recommend those
6 persons for appointment to the commission. The committee shall
7 submit no more than three names for a membership position for
8 each initial or additional appointment.

9 H. Appointed committee members shall be reimbursed
10 pursuant to the Per Diem and Mileage Act for expenses incurred
11 in fulfilling their duties.

12 I. Staff to assist the committee in its duties
13 until a commission is appointed shall be furnished by the
14 department of health. Thereafter, commission staff shall
15 assist the committee in its duties.

16 Section 6. APPOINTMENT OF COMMISSION MEMBERS--
17 QUALIFICATIONS--TERMS.--

18 A. From the nominees submitted by the health care
19 commission membership nominating committee, the governor shall
20 appoint fifteen members to the commission, and the initial
21 commission shall be in place by November 1, 2009.

22 B. The terms of the initial commission members
23 appointed shall be chosen by lot: five members shall be
24 appointed for terms of four years; five members shall be
25 appointed for terms of three years; and five members shall be

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1 appointed for terms of two years. Thereafter, all members
2 shall be appointed for terms of four years. After initial
3 terms are served, no member shall serve more than three
4 consecutive four-year terms. A member may serve until a
5 successor is appointed.

6 C. A person who served on the health care
7 commission membership nominating committee shall not be
8 nominated for or serve on the commission within thirty-six
9 months from the time served on the committee. A state employee
10 who is exempt from the Personnel Act is not eligible to serve
11 on the commission. An elected official shall not be appointed
12 to serve on the commission. A commission member shall be
13 eligible for or enrolled in the health security plan.

14 D. When a vacancy occurs in the membership of the
15 commission, the health care commission membership nominating
16 committee shall meet and act within thirty days of the
17 occurrence of the vacancy. From the nominees submitted, the
18 governor shall fill the vacancy within thirty days after
19 receiving final nominations.

20 E. Members of the commission shall include five
21 persons who represent either health care providers or health
22 facilities and ten persons who represent consumer and employer
23 interests, the majority of whom shall represent consumer
24 interests.

25 F. Except for persons appointed to represent health

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1 facilities or health care providers, a person shall be
2 disqualified for appointment to the commission if, currently or
3 during the previous thirty-six months, the person or a member
4 of the person's household is employed by, an officer of or has
5 a controlling interest in a person providing health care or
6 health insurance, directly or as an agent of a health insurer.

7 G. Persons appointed who do not represent health
8 care providers or health facilities must have a knowledge of
9 the health care system as demonstrated by experience or
10 education. To ensure fair representation of all areas of the
11 state, members shall be appointed from each of the public
12 education commission districts as follows:

13 (1) two from public education commission
14 district 1;

15 (2) one from public education commission
16 district 2;

17 (3) one from public education commission
18 district 3;

19 (4) two from public education commission
20 district 4;

21 (5) two from public education commission
22 district 5;

23 (6) one from public education commission
24 district 6;

25 (7) two from public education commission

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1 district 7;

2 (8) two from public education commission

3 district 8;

4 (9) one from public education commission

5 district 9; and

6 (10) one from public education commission

7 district 10.

8 H. A member may be removed from the commission by a
9 majority vote of the members present at a meeting where a
10 quorum is duly constituted. The commission shall set standards
11 for attendance and may remove a member for incompetence, lack
12 of attendance, neglect of duty or malfeasance in office. A
13 member shall not be removed without proceedings consisting of
14 at least one notice of hearing and an opportunity to be heard.
15 Removal proceedings shall be before the commission and in
16 accordance with rules adopted by the commission.

17 I. A majority of the commission's members
18 constitutes a quorum for the transaction of business. The
19 commission may allow members' participation in meetings by
20 telephone or other electronic media that allows full
21 participation. Annually, the commission shall elect its chair
22 and any other officers it deems necessary.

23 J. A member may receive per diem and mileage in
24 accordance with the provisions of the Per Diem and Mileage Act.
25 Additionally, members shall be compensated at the rate of two
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1 hundred dollars (\$200) for each meeting actually attended not
2 to exceed compensation for one hundred twenty meetings for a
3 two-year period occurring in a term.

4 Section 7. CONFLICT OF INTEREST--DISCLOSURE BY MEMBERS
5 AND DISQUALIFICATION FROM VOTING ON CERTAIN MATTERS.--

6 A. The commission shall adopt a conflict-of-
7 interest disclosure statement for use by all members that
8 requires disclosure of a financial interest, whether or not a
9 controlling interest, of the member or a member of the member's
10 household in a person providing health care or health
11 insurance.

12 B. A member representing health facilities or
13 health care providers may vote on matters that pertain
14 generally to health facilities or health care providers.

15 C. If there is a question about a conflict of
16 interest of a commission member, the other members shall vote
17 on whether to allow the member to vote.

18 Section 8. CODE OF CONDUCT TO BE ADOPTED BY COMMISSION.--

19 A. The commission shall adopt a general code of
20 conduct for commission members and employees subject to the
21 commission's control. The code of conduct shall include at
22 least those matters and activities proscribed by the
23 Governmental Conduct Act.

24 B. Violation of a provision of the adopted code of
25 conduct is grounds for removal of a commission member and

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1 grounds for suspension, termination or other disciplinary
2 action of an employee.

3 Section 9. APPLICATION OF CERTAIN STATE LAWS TO
4 COMMISSION.--The commission and regional councils created
5 pursuant to the Health Security Act shall be subject to and
6 shall comply with the provisions of the:

- 7 A. Open Meetings Act;
- 8 B. State Rules Act;
- 9 C. Inspection of Public Records Act; and
- 10 D. Public Records Act.

11 Section 10. CHIEF EXECUTIVE OFFICER--STAFF--CONTRACTS--
12 BUDGETS.--

13 A. The commission shall appoint and set the salary
14 of a "chief executive officer". The chief executive officer
15 shall serve at the pleasure of the commission and has authority
16 to carry on the day-to-day operations of the commission and the
17 health security plan.

18 B. The chief executive officer shall employ those
19 persons necessary to administer and implement the provisions of
20 the Health Security Act.

21 C. The chief executive officer and the chief
22 executive officer's staff shall implement the Health Security
23 Act in accordance with that act and the rules adopted by the
24 commission. The chief executive officer may delegate authority
25 to employees and may organize the staff into units to

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1 facilitate its work.

2 D. If the chief executive officer determines that
3 the commission staff or a state agency does not have the
4 resources or expertise to perform a necessary task, the chief
5 executive officer may contract for performance from a person
6 who has a demonstrated capability to perform the task. The
7 commission shall establish the standards and requirements by
8 which a contract is executed by the commission or the chief
9 executive officer. A contract shall be reviewed by the
10 commission or the chief executive officer to ensure that it
11 meets the criteria, performance standards, expectations and
12 needs of the commission.

13 E. The chief executive officer shall prepare and
14 submit an annual budget request and plan of operation to the
15 commission for its approval. The chief executive officer shall
16 provide at least quarterly status reports on the budget and
17 advise of a potential shortfall as soon as practically
18 possible.

19 F. A contract for claims processing functions shall
20 require that all work for claims processing, customer service,
21 medical and utilization review, financial audit and
22 reimbursement and related claims adjudication functions be
23 performed entirely in New Mexico. To the extent practicable,
24 all other work shall be performed in New Mexico.

25 Section 11. COMMISSION--GENERAL DUTIES.--The commission

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1 shall:

2 A. adopt a five-year plan for the initial
3 implementation of the provisions of the Health Security Act,
4 update that plan and adopt other long- and short-range plans to
5 provide continuity and development of the state's health care
6 system;

7 B. design the health security plan to fulfill the
8 purposes of and conform with the provisions of the Health
9 Security Act;

10 C. provide a program to educate the public, health
11 care providers and health facilities about the health security
12 plan and the persons eligible to receive its benefits;

13 D. study and adopt as provisions of the health
14 security plan cost-effective methods of providing quality
15 health care to all beneficiaries, according high priority to
16 increased reliance on:

17 (1) preventive and primary care that includes
18 immunization and screening examinations;

19 (2) providing health care in rural or
20 underserved areas of the state;

21 (3) in-home and community-based alternatives
22 to institutional health care; and

23 (4) case management services when appropriate;

24 E. establish compensation methods for health care
25 providers and health facilities and adopt standards and

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1 procedures for negotiating and entering into contracts with
2 participating health care providers and health facilities;

3 F. annually, and for those projected future periods
4 the commission believes appropriate, establish health security
5 plan budgets;

6 G. establish capital budgets for health facilities,
7 limited to capital expenditures subject to the Health Security
8 Act, and include and adopt in establishing those budgets:

9 (1) standards and procedures for determining
10 the budgets; and

11 (2) a requirement for prior approval by the
12 commission for major capital expenditures by a health facility;

13 H. negotiate and enter into health care reciprocity
14 agreements with other states and negotiate and enter into
15 health care agreements with out-of-state health care providers
16 and health facilities;

17 I. develop claims and payment procedures for health
18 care providers, health facilities and claims administrators and
19 include provisions to ensure timely payments and provide for
20 payment of interest when reimbursable claims are not paid
21 within a reasonable time;

22 J. establish, in conjunction with other state
23 agencies similarly charged, a system to collect and analyze
24 health care data and other data necessary to improve the
25 quality, efficiency and effectiveness of health care and to

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1 control costs of health care in New Mexico, which system shall
2 include data on:

3 (1) mortality, including accidental causes of
4 death, and natality;

5 (2) morbidity;

6 (3) health behavior;

7 (4) physical and psychological impairment and
8 disability;

9 (5) health care system costs and health care
10 availability, utilization and revenues;

11 (6) environmental factors;

12 (7) availability, adequacy and training of
13 health care personnel;

14 (8) demographic factors;

15 (9) social and economic conditions affecting
16 health; and

17 (10) other factors determined by the
18 commission;

19 K. standardize data collection and specific methods
20 of measurement across databases and use scientific sampling or
21 complete enumeration for reporting health information;

22 L. establish a health care delivery system that is
23 efficient to administer and that eliminates unnecessary
24 administrative costs;

25 M. adopt rules necessary to implement and monitor a

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1 preferred drug list, bulk purchasing or other mechanism to
2 provide prescription drugs and a pricing procedure for
3 nonprescription drugs, durable medical equipment and supplies,
4 eyeglasses, hearing aids and oxygen;

5 N. establish a pharmacy and therapeutics committee
6 to:

7 (1) conduct concurrent, prospective and
8 retrospective drug utilization review;

9 (2) conduct pharmacoeconomic research and
10 analysis of clinical safety, efficacy and effectiveness of
11 drugs;

12 (3) consult with specialists in appropriate
13 fields of medicine for therapeutic classes of drugs;

14 (4) recommend therapeutic classes of drugs,
15 including specific drugs within each class to be included in
16 the preferred drug list;

17 (5) identify appropriate exclusions from the
18 preferred drug list; and

19 (6) conduct periodic clinical reviews of
20 preferred, nonpreferred and new drugs;

21 O. study and evaluate the adequacy and quality of
22 health care furnished pursuant to the Health Security Act, the
23 cost of each type of service and the effectiveness of cost-
24 containment measures in the health security plan;

25 P. study and monitor the migration of persons to

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1 New Mexico to determine if persons with costly health care
2 needs are moving to New Mexico to receive health care, and if
3 migration appears to threaten the financial stability of the
4 health security plan, recommend to the legislature changes in
5 eligibility requirements, premiums or other changes that may be
6 necessary to maintain the financial integrity of the health
7 security plan;

8 Q. study and evaluate the cost of health care
9 provider professional liability insurance and its impact on the
10 price of health care services and recommend changes to the
11 legislature as necessary;

12 R. establish and approve changes in coverage
13 benefits and benefit standards in the health security plan;

14 S. conduct necessary investigations and inquiries;

15 T. adopt rules necessary to implement, administer
16 and monitor the operation of the health security plan;

17 U. adopt rules to establish a procurement process
18 for services and property;

19 V. meet as needed, but no less often than once
20 every month;

21 W. report annually to the legislature and the
22 governor on the commission's activities and the operation of
23 the health security plan and include in the annual report:

24 (1) a summary of information about health care
25 needs, health care services, health care expenditures, revenues

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1 received and projected revenues and other relevant issues
2 relating to the health security plan, the initial five-year
3 plan and future updates of that plan and other long- and short-
4 range plans; and

5 (2) recommendations on methods to control
6 health care costs and improve access to and the quality of
7 health care for state residents, as well as recommendations for
8 legislative action; and

9 X. provide annual training for its members on
10 health care coverage, policy and financing.

11 Section 12. COMMISSION--AUTHORITY.--The commission has
12 the authority necessary to carry out the powers and duties
13 pursuant to the Health Security Act. The commission retains
14 responsibility for its duties but may delegate authority to the
15 chief executive officer. However, the authority to take the
16 following actions is expressly reserved to the commission:

17 A. approve the commission's budget and plan of
18 operation;

19 B. approve the health security plan and make
20 changes in the health security plan, but only after legislative
21 approval of those changes specified in Section 30 of the Health
22 Security Act;

23 C. make rules and conduct both rulemaking and
24 adjudicatory hearings in person or by use of a hearing officer;

25 D. issue subpoenas to persons to appear and testify

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1 before the commission and to produce documents and other
2 information relevant to the commission's inquiry and enforce
3 this subpoena power through an action in a state district
4 court;

5 E. make reports and recommendations to the
6 legislature;

7 F. subject to the prohibitions and restrictions of
8 Section 21 of the Health Security Act, apply for program
9 waivers from any governmental entity if the commission
10 determines that the waivers are necessary to ensure the
11 participation by the greatest possible number of beneficiaries;

12 G. apply for and accept grants, loans and
13 donations;

14 H. acquire or lease real property and make
15 improvements on it and acquire by lease or by purchase tangible
16 and intangible personal property;

17 I. dispose of and transfer personal property, but
18 only at public sale after adequate notice;

19 J. appoint and prescribe the duties of employees,
20 fix their compensation, pay their expenses and provide an
21 employee benefit program;

22 K. establish and maintain banking relationships,
23 including establishment of checking and savings accounts;

24 L. participate as a qualified entity in the
25 programs of the New Mexico finance authority; and

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1 M. enter into agreements with an employer to
2 provide health care services for the employer's employees or
3 retirees; provided, however, that nothing in the Health
4 Security Act shall be construed to reduce or eliminate benefits
5 to which the employee or retiree is entitled.

6 Section 13. ADVISORY BOARDS.--

7 A. The commission shall establish a "health care
8 provider advisory board" and a "health facility advisory
9 board". It may establish additional advisory boards to assist
10 it in performing its duties. Advisory boards shall assist the
11 commission in matters requiring the expertise and knowledge of
12 the advisory boards' members.

13 B. The commission may appoint not more than two
14 commission members and up to five additional persons to serve
15 on an advisory board it creates. Advisory board members shall
16 be paid per diem and mileage in accordance with the provisions
17 of the Per Diem and Mileage Act.

18 C. Except for the health care provider advisory
19 board and the health facility advisory board, no more than two
20 advisory board members shall have a controlling interest,
21 direct or indirect, in a person providing health care or a
22 person providing health insurance.

23 D. Staff and technical assistance for an advisory
24 board shall be provided by the commission as necessary.

25 Section 14. HEALTH CARE DELIVERY REGIONS.--The commission

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1 shall establish health care delivery regions in the state,
2 based on geography and health care resources. The regions may
3 have differential fee schedules, budgets, capital expenditure
4 allocations or other features to encourage the provision of
5 health care in rural and other underserved areas or to
6 otherwise tailor the delivery of health care to fit the needs
7 of a region or a part of a region.

8 Section 15. REGIONAL COUNCILS.--

9 A. The commission shall designate regional councils
10 in the designated health care delivery regions. In selecting
11 persons to serve as members of regional councils, the
12 commission shall consider the comments and recommendations of
13 persons in the region who are knowledgeable about health care
14 and the economic and social factors affecting the region.

15 B. The regional councils shall be composed of the
16 commission members who live in the region and five other
17 members who live in the region and are appointed by the
18 commission. No more than two noncommission council members
19 shall have a controlling interest, direct or indirect, in a
20 person providing health care or a person providing health
21 insurance.

22 C. Members of a regional council shall be paid per
23 diem and mileage in accordance with the provisions of the Per
24 Diem and Mileage Act.

25 D. The regional councils shall hold public hearings

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1 to receive comments, suggestions and recommendations from the
2 public regarding regional health care needs. The councils
3 shall report to the commission at times specified by the
4 commission to ensure that regional concerns are considered in
5 the development and update of the five-year plan, other short-
6 and long-range plans and projections, fee schedules, budgets
7 and capital expenditure allocations.

8 E. Staff technical assistance for the regional
9 councils shall be provided by the commission.

10 Section 16. RULEMAKING.--

11 A. The commission shall adopt rules necessary to
12 carry out the duties of the commission and the provisions of
13 the Health Security Act.

14 B. The commission shall not adopt, amend or repeal
15 any rule affecting a person outside the commission without a
16 public hearing on the proposed action before the commission or
17 a hearing officer designated by the commission. The hearing
18 officer may be a member of the commission's staff. The hearing
19 shall be held in a county that the commission determines would
20 be in the interest of those affected. Notice of the subject
21 matter of the rule, the action proposed to be taken, the time
22 and place of the hearing, the manner in which interested
23 persons may present their views and the method by which copies
24 of the proposed rule or an amendment or repeal of an existing
25 rule may be obtained shall be published once at least thirty

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1 days prior to the hearing date in a newspaper of general
2 circulation in the state and shall also be published in an
3 informative nonlegal format in one newspaper published in each
4 health care delivery region and mailed at least thirty days
5 prior to the hearing date to all persons who have made a
6 written request for advance notice of hearing.

7 C. All rules adopted by the commission shall be
8 filed in accordance with the State Rules Act.

9 Section 17. HEALTH SECURITY PLAN.--

10 A. After notice and public hearing, including
11 taking public comment and the reports of the regional councils,
12 the commission, in conjunction with other state agencies, shall
13 adopt a five-year health security plan and review it at regular
14 intervals for possible revision.

15 B. The health security plan shall be designed to
16 provide comprehensive, necessary and appropriate health care
17 benefits, including preventive health care and primary,
18 secondary and tertiary health care for acute and chronic
19 conditions. The health security plan may provide for certain
20 health care services to be phased in as the health security
21 plan budget allows.

22 C. Pursuant to the phase-in provisions of
23 Subsection B of this section, the commission shall provide for
24 coverage of the following health care services:

25 (1) preventive health services;

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- 1 (2) health care provider services;
- 2 (3) health facility inpatient and outpatient
- 3 services;
- 4 (4) laboratory tests and radiology procedures;
- 5 (5) hospice care;
- 6 (6) in-home, community-based and institutional
- 7 long-term care services;
- 8 (7) prescription drugs;
- 9 (8) inpatient and outpatient mental and
- 10 behavioral health services;
- 11 (9) drug and other substance abuse services;
- 12 (10) preventive and prophylactic dental
- 13 services, including an annual dental examination and cleaning;
- 14 (11) vision appliances, including medically
- 15 necessary contact lenses;
- 16 (12) medical supplies, durable medical
- 17 equipment and selected assistive devices, including hearing and
- 18 speech assistive devices; and
- 19 (13) experimental or investigational
- 20 procedures or treatments as specified by the commission.

21 D. Covered health care shall not include:

- 22 (1) surgery for cosmetic purposes other than
- 23 for reconstructive purposes;
- 24 (2) medical examinations and medical reports
- 25 prepared for purchasing or renewing life insurance or

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1 participating as a plaintiff or defendant in a civil action for
2 the recovery or settlement of damages; and

3 (3) orthodontic services and cosmetic dental
4 services except those cosmetic dental services necessary for
5 reconstructive purposes.

6 E. The health security plan shall specify the
7 health care to be covered and the amount, scope and duration of
8 benefits.

9 F. The health security plan shall contain
10 provisions to control health care costs so that beneficiaries
11 receive comprehensive, high-quality health care consistent with
12 available revenue and budget constraints.

13 G. The health security plan shall phase in
14 beneficiaries as their participation becomes possible through
15 contracts, waivers or federal legislation. The health security
16 plan may provide for certain preventive health care to be
17 offered to all New Mexicans regardless of a person's
18 eligibility to participate as a beneficiary.

19 H. The five-year plan as well as other long- and
20 short-range plans adopted by the commission shall be reviewed
21 by the regional councils and the commission annually and
22 revised as necessary. Revisions shall be adopted by the
23 commission in accordance with Section 11 of the Health Security
24 Act. In projecting services under the health security plan,
25 the commission shall take all reasonable steps to ensure that

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1 long-term care and dental care are provided at the earliest
2 practical times consistent with budget constraints.

3 Section 18. LONG-TERM CARE.--

4 A. Long-term care may include:

5 (1) home- and community-based services,
6 including personal assistance and attendant care; and

7 (2) institutional care.

8 B. No later than one year after the effective date
9 of the operation of the health security plan, the commission
10 shall appoint an advisory "long-term care committee" made up of
11 representatives of health care consumers, providers and
12 administrators to develop a plan for integrating long-term care
13 into the health security plan. The committee shall report its
14 plan to the commission no later than one year from its
15 appointment. Committee members shall receive per diem and
16 mileage as provided in the Per Diem and Mileage Act.

17 C. The long-term care component of the health
18 security plan shall provide for case management and
19 noninstitutional services when appropriate.

20 D. Nothing in this section affects long-term care
21 services paid through private insurance or state or federal
22 programs subject to the provisions of Sections 40 and 41 of the
23 Health Security Act.

24 E. Nothing in this section precludes the commission
25 from including long-term care services from the inception of

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1 the health security plan.

2 Section 19. MENTAL AND BEHAVIORAL HEALTH SERVICES.--

3 A. No later than one year after appointment of the
4 chief executive officer, the commission shall appoint an
5 advisory "mental and behavioral health services committee" made
6 up of representatives of mental and behavioral health care
7 consumers, providers and administrators to develop a plan for
8 coordinating mental and behavioral health services within the
9 health security plan. The committee shall report its plan to
10 the commission no later than one year from its appointment.
11 Committee members may receive per diem and mileage as provided
12 in the Per Diem and Mileage Act.

13 B. The mental and behavioral health services
14 component of the health security plan shall provide for case
15 management and noninstitutional services where appropriate.

16 C. The health security plan shall not impose
17 treatment limitations or financial requirements on the
18 provision of mental and behavioral health benefits if identical
19 limitations or requirements are not imposed on coverage of
20 benefits for other conditions.

21 D. Nothing in this section limits mental and
22 behavioral health services paid through private insurance or
23 state or federal programs subject to the provisions of Sections
24 40 and 41 of the Health Security Act.

25 Section 20. MEDICAID COVERAGE--AGREEMENTS.--The

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1 commission may enter into appropriate agreements with the human
2 services department or other state agency for the purpose of
3 furthering the goals of the Health Security Act. These
4 agreements may provide for certain services provided pursuant
5 to the medicaid program under Title 19 and Title 21 of the
6 federal Social Security Act to be administered by the
7 commission to implement the health security plan.

8 Section 21. HEALTH SECURITY PLAN COVERAGE--CONDITIONS OF
9 ELIGIBILITY FOR BENEFICIARIES--EXCLUSIONS.--

10 A. An individual is eligible as a beneficiary of
11 the health security plan if the individual has been physically
12 present in New Mexico for one year prior to the date of
13 application for enrollment in the health security plan and if
14 the individual has a current intention to remain in New Mexico
15 and not to reside elsewhere. A dependent of an eligible
16 individual is included as a beneficiary.

17 B. Individuals covered under the following
18 governmental programs shall not be brought into coverage:

19 (1) federal retiree health plan beneficiaries;

20 (2) active duty and retired military

21 personnel; and

22 (3) individuals covered by the federal active
23 and retired military health programs.

24 C. Federal Indian health service or tribally
25 operated health care program beneficiaries shall not be brought

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1 into coverage except through agreements with:

2 (1) Indian nations, tribes or pueblos;

3 (2) consortia of tribes or pueblos; or

4 (3) a federal Indian health service agency

5 subject to the approval of the tribes or pueblos located in
6 that agency.

7 D. If an individual is ineligible due to the
8 residence requirement, the individual may become eligible by
9 paying the premium required by the health security plan for
10 coverage for the period of time up to the date the individual
11 fulfills that requirement if the individual is an employee who
12 physically resides and intends to reside in the state because
13 of employment offered to the individual in New Mexico while the
14 individual was residing elsewhere as demonstrated by furnishing
15 that evidence of those facts required by rule adopted by the
16 commission.

17 E. An employer that provides health care benefits
18 for its employees after retirement, including coverage for
19 payment of health care supplementary coverage if the retiree is
20 eligible for medicare, may agree to participate in the health
21 security plan; provided, however, that there is no loss of
22 benefits under the retiree health benefit coverage. An
23 employer that participates in the health security plan shall
24 contribute to the health security plan for the benefit of the
25 retiree and the agreement shall ensure that the health benefit

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1 coverage for the retiree shall be restored in the event of the
2 retiree's ineligibility for health security plan coverage.

3 F. The commission shall prescribe by rule
4 conditions under which other persons in the state may be
5 eligible for coverage pursuant to the health security plan.

6 Section 22. HEALTH SECURITY PLAN COVERAGE OF NONRESIDENT
7 STUDENTS.--

8 A. Except as provided in Subsection B of this
9 section, an educational institution shall purchase coverage
10 under the health security plan for its nonresident students
11 through fees assessed to those students. The governing body of
12 an educational institution shall set the fees at the amount
13 determined by the commission.

14 B. A nonresident student at an educational
15 institution may satisfy the requirement for health care
16 coverage by proof of coverage under a policy or plan in another
17 state that is acceptable to the commission. The student shall
18 not be assessed a fee in that case.

19 C. The commission shall adopt rules to determine
20 proof of an individual's eligibility for the health security
21 plan or a student's proof of nonresident health care coverage.

22 Section 23. REMOVING INELIGIBLE PERSONS.--The commission
23 shall adopt rules to provide procedures for removing persons no
24 longer eligible for coverage.

25 Section 24. ELIGIBILITY CARD--USE--PENALTIES FOR

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1 MISUSE.--

2 A. A beneficiary shall receive a card as proof of
3 eligibility. The card shall be electronically readable and
4 shall contain a picture or electronic image, information that
5 identifies the beneficiary for treatment, billing, payment and
6 other information the commission deems necessary. The use of a
7 beneficiary's social security number as an identification
8 number is not permitted.

9 B. The eligibility card is not transferable. A
10 beneficiary who lends the beneficiary's card to another and an
11 individual who uses another's card shall be jointly and
12 severally liable to the commission for the full cost of the
13 health care provided to the user. The liability shall be paid
14 in full within one year of final determination of liability.
15 Liabilities created pursuant to this section shall be collected
16 in a manner similar to that used for collection of delinquent
17 taxes.

18 C. A beneficiary who lends the beneficiary's card
19 to another or an individual who uses another's card after being
20 determined liable pursuant to Subsection B of this section of a
21 previous misuse is guilty of a misdemeanor and shall be
22 sentenced pursuant to the provisions of Section 31-19-1 NMSA
23 1978. A third or subsequent conviction is a fourth degree
24 felony, and the offender shall be sentenced pursuant to the
25 provisions of Section 31-18-15 NMSA 1978.

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1 Section 25. PRIMARY CARE PROVIDER--RIGHT TO CHOOSE--
2 ACCESS TO SERVICES.--

3 A. Except as provided in the Workers' Compensation
4 Act, a beneficiary has the right to choose a primary care
5 provider.

6 B. The primary care provider is responsible for
7 providing health care provider services to the patient except
8 for:

9 (1) services in medical emergencies; and

10 (2) services for which a primary care provider
11 determines that specialist services are required, in which case
12 the primary care provider shall advise the patient of the need
13 for and the type of specialist services.

14 C. Except as otherwise provided in this section,
15 health care provider specialists shall be paid pursuant to the
16 health security plan only if the patient has been referred by a
17 primary care provider. Nothing in this subsection prevents a
18 beneficiary from obtaining the services of a health care
19 provider specialist and paying the specialist for services
20 provided.

21 D. The commission shall by rule specify when and
22 under what circumstances a beneficiary may self-refer,
23 including self-referral to a chiropractic physician, a doctor
24 of oriental medicine, mental and behavioral health service
25 providers and other health care providers who are not primary

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1 care providers.

2 E. The commission shall by rule specify the
3 conditions under which a beneficiary may select a specialist as
4 a primary care provider.

5 Section 26. DISCRIMINATION PROHIBITED.--A health care
6 provider or health facility shall not discriminate against or
7 refuse to furnish health care to a beneficiary on the basis of
8 age, race, color, income level, national origin, religion,
9 gender, sexual orientation, disabling condition or payment
10 status. Nothing in this section shall require a health care
11 provider or health facility to provide services to a
12 beneficiary if the provider or facility is not qualified to
13 provide the needed services or does not offer them to the
14 general public.

15 Section 27. CLAIMS REVIEW.--

16 A. The commission shall adopt rules to provide a
17 comprehensive claims review program. The procedures and
18 standards used in the program shall be disclosed in writing to
19 applicants, beneficiaries, health care providers and health
20 facilities at the time of application to or participation in
21 the health security plan.

22 B. The decision to approve or deny a claim based on
23 a technicality shall be made in a timely manner and shall not
24 exceed time limits established by rule of the commission. A
25 final decision to deny payment for services based on medical

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1 necessity or utilization shall be based on a recommendation
2 made by a health care professional having appropriate and
3 adequate qualifications to make the recommendation. A denial
4 of a claim for payment of a medical specialty service based on
5 medical necessity or utilization shall be made only after a
6 written recommendation for denial is made by a member of that
7 medical specialty with credentials equivalent to those of the
8 provider.

9 C. The fact of and the specific reasons for a
10 denial of a health care claim shall be communicated promptly in
11 writing to both the provider and the beneficiary involved.

12 Section 28. QUALITY OF CARE--HEALTH CARE PROVIDER AND
13 HEALTH FACILITIES--PRACTICE STANDARDS.--

14 A. The commission shall adopt rules to establish
15 and implement a quality improvement program that monitors the
16 quality and appropriateness of health care provided by the
17 health security plan, including evidence-based medicine, best
18 practices, outcome measurements, consumer education and patient
19 safety. The commission shall set standards and review benefits
20 to ensure that effective, cost-efficient, high-quality and
21 appropriate health care is provided under the health security
22 plan.

23 B. The commission shall review and adopt
24 professional practice guidelines developed by state and
25 national medical and specialty organizations, federal agencies

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1 for health care policy and research and other organizations as
2 it deems necessary to promote the quality and cost-
3 effectiveness of health care provided through the health
4 security plan.

5 C. The quality improvement program shall include an
6 ongoing system for monitoring patterns of practice. The
7 commission shall appoint a "health care practice advisory
8 committee" consisting of health care providers, health
9 facilities and other knowledgeable persons to advise the
10 commission and staff on health care practice issues. The
11 committee may appoint subcommittees and task forces to address
12 practice issues of a specific health care provider discipline
13 or a specific kind of health facility; provided, however, that
14 the subcommittee or task force includes providers of
15 substantially similar specialties or types of facilities. The
16 advisory committee shall provide to the commission recommended
17 standards and guidelines to be followed in making
18 determinations on practice issues.

19 D. With the advice of the health care practice
20 advisory committee, the commission shall establish a system of
21 peer education for health care providers or health facilities
22 determined to be engaging in aberrant patterns of practice
23 pursuant to Subsection B of this section. If the commission
24 determines that peer education efforts have failed, the
25 commission may refer the matter to the appropriate licensing or

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1 certifying board.

2 E. The commission shall provide by rule the
3 procedures for recouping payments or withholding payments for
4 health care determined by the commission with the advice of the
5 health care practice advisory committee or subcommittee to be
6 medically unnecessary.

7 F. The commission may provide by rule for the
8 assessment of administrative penalties for up to three times
9 the amount of excess payments if it finds that excessive
10 billings were part of an aberrant pattern of practice.
11 Administrative penalties shall be deposited in the current
12 school fund.

13 G. After consultation with the health care practice
14 advisory committee, the commission may suspend or revoke a
15 health care provider's or health facility's privilege to be
16 paid for health care provided under the health security plan
17 based upon evidence clearly supporting a determination by the
18 commission that the provider or facility engages in aberrant
19 patterns of practice, including inappropriate utilization,
20 attempts to unbundle health care services or other practices
21 that the commission deems a violation of the Health Security
22 Act or rules adopted pursuant to that act. As used in this
23 subsection, "unbundle" means to divide a service into
24 components in an attempt to increase or with the effect of
25 increasing compensation from the health security plan.

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1 H. The commission shall report a suspension or
2 revocation of the privilege to be paid for health care pursuant
3 to the Health Security Act to the appropriate licensing or
4 certifying board.

5 I. The commission shall report cases of suspected
6 fraud by a health care provider or a health facility to the
7 attorney general or to the district attorney of the county
8 where the health care provider or health facility operates for
9 investigation and prosecution.

10 Section 29. DISPUTE RESOLUTION.--A person specifically
11 and directly aggrieved by a decision of the commission has the
12 right to judicial review of the decision by a state district
13 court. As a prerequisite to judicial review, the person
14 aggrieved must exhaust administrative remedies available
15 through procedures for dispute resolution established by rule
16 of the commission, including mandatory participation in
17 mediation in a good-faith effort to resolve a dispute. The
18 commission shall include in its rules for dispute resolution
19 provisions for adequate notice to the disputants, opportunities
20 to be heard in informal conferences prior to mediation and all
21 procedural due process safeguards.

22 Section 30. HEALTH SECURITY PLAN BUDGET.--

23 A. Annually, the commission shall develop and
24 submit to the legislature a health security plan budget. The
25 budget shall be the commission's recommendation for the total

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1 amount to be spent by the plan for covered health care services
2 in the next fiscal year.

3 B. Unless otherwise provided in the general
4 appropriation act or other act of the legislature, the health
5 security plan budget shall be within projected annual revenues.
6 After the legislative review and approval, the commission shall
7 implement the health security plan budget. Without specific
8 legislative approval, the commission shall not change the level
9 of premium charged and used to project revenue or change the
10 employer contributions under the health security plan. The
11 legislature may base its approval on the findings and
12 recommendations of an independent audit or actuarial study.

13 C. In developing the health security plan budget,
14 the commission shall provide that credit be taken in the budget
15 for all revenues produced for health care in the state pursuant
16 to any law other than the Health Security Act.

17 D. The health security plan shall include a maximum
18 amount or percentage for administrative costs, and this
19 maximum, if a percentage, may change in relation to the total
20 costs of services provided under the health security plan. For
21 the sixth and subsequent calendar years of operation of the
22 health security plan, administrative costs shall not exceed
23 five percent of the health security plan budget.

24 Section 31. PAYMENTS TO HEALTH CARE PROVIDERS--
25 CO-PAYMENTS.--

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1 A. The commission shall prepare a provider budget.
2 Consistent with the provider budget, the health security plan
3 shall provide payment for all covered health care rendered by
4 health care providers. A variety of payment plans, including
5 fee-for-service, may be adopted by the commission. Payment
6 plans shall be negotiated with providers as provided by rule.
7 In the event that negotiation fails to develop an acceptable
8 payment plan, the disputing parties shall submit the dispute
9 for resolution pursuant to Section 29 of the Health Security
10 Act.

11 B. Supplemental payment rates may be adopted to
12 provide incentives to help ensure the delivery of needed health
13 care in rural and other underserved areas throughout the state.

14 C. An annual percentage increase in the amount
15 allocated for provider payments in the budget shall be no
16 greater than the annual percentage increase in the consumer
17 price index for medical care prices published by the bureau of
18 labor statistics of the federal department of labor using the
19 year prior to the year in which the health security plan is
20 implemented as the baseline year. The annual limitation in
21 this subsection may be adjusted up or down by the commission
22 based on a showing of special and unusual circumstances in a
23 hearing before the commission.

24 D. Payment, or the offer of payment whether or not
25 that offer is accepted, to a health care provider for services

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1 covered by the health security plan shall be payment in full
2 for those services. A health care provider shall not charge a
3 beneficiary an additional amount for services covered by the
4 plan.

5 E. The commission may establish a co-payment
6 schedule if a required co-payment is determined to be an
7 effective cost-control measure. A co-payment shall not be
8 required for preventive health care. When a co-payment is
9 required, the health care provider shall not waive it and if it
10 remains uncollected, the health care provider shall demonstrate
11 a good-faith effort to have collected the co-payment.

12 Section 32. PAYMENTS TO HEALTH FACILITIES--CO-PAYMENTS.--

13 A. A health facility shall negotiate an annual
14 operating budget with the commission. The operating budget
15 shall be based on a base operating budget of past performance
16 and projected changes upward or downward in costs and services
17 anticipated for the next year. If a negotiated annual operating
18 budget is not agreed upon, a health facility shall submit the
19 budget to dispute resolution pursuant to Section 29 of the
20 Health Security Act. An annual percentage increase in the
21 amount allocated for a health facility operating budget shall be
22 no greater than the change in the annual consumer price index
23 for medical care prices, published annually by the bureau of
24 labor statistics of the federal department of labor. The annual
25 limitation in this subsection may be adjusted up or down by the

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1 commission based on a showing of special and unusual
2 circumstances in a hearing before the commission.

3 B. Supplemental payment rates may be adopted to
4 provide incentives to help ensure the delivery of needed health
5 care services in rural and other underserved areas throughout
6 the state.

7 C. Each health care provider employed by a health
8 facility shall be paid from the facility's operating budget in a
9 manner determined by the health facility.

10 D. The commission may establish a co-payment
11 schedule if a required co-payment is determined to be an
12 effective cost-control measure. A co-payment shall not be
13 required for preventive care. When a co-payment is required,
14 the health facility shall not waive it and if it remains
15 uncollected, the health facility shall demonstrate a good-faith
16 effort to have collected the co-payment.

17 Section 33. HEALTH RESOURCE CERTIFICATE--COMMISSION
18 RULES--REQUIREMENT FOR REVIEW.--

19 A. The commission shall adopt rules stating when a
20 health facility or health care provider participating in the
21 health security plan shall apply for a health resource
22 certificate, how the application will be reviewed, how the
23 certificate will be granted, how an expedited review is
24 conducted and other matters relating to health resource
25 projects.

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1 B. Except as provided in Subsection F of this
2 section, a health facility or health care provider participating
3 in the health security plan shall not make or obligate itself to
4 make a major capital expenditure without first obtaining a
5 health resource certificate.

6 C. A health facility or health care provider shall
7 not acquire through rental, lease or comparable arrangement or
8 through donation all or a part of a capital project that would
9 have required review if the acquisition had been by purchase
10 unless the project is granted a health resource certificate.

11 D. A health facility or health care provider shall
12 not engage in component purchasing in order to avoid the
13 provisions of this section.

14 E. The commission shall grant a health resource
15 certificate for a major capital expenditure or a capital project
16 undertaken pursuant to Subsection C of this section only when
17 the project is determined to be needed.

18 F. This section does not apply to:

19 (1) the purchase, construction or renovation of
20 office space for health care providers;

21 (2) expenditures incurred solely in preparation
22 for a capital project, including architectural design, surveys,
23 plans, working drawings and specifications and other related
24 activities, but those expenditures shall be included in the cost
25 of a project for the purpose of determining whether a health

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1 resource certificate is required;

2 (3) acquisition of an existing health facility,
3 equipment or practice of a health care provider that does not
4 result in a new service being provided or in increased bed
5 capacity;

6 (4) major capital expenditures for nonclinical
7 services when the nonclinical services are the primary purpose
8 of the expenditure; and

9 (5) the replacement of equipment with equipment
10 that has the same function and that does not result in the
11 offering of new services.

12 G. No later than January 1, 2011, the commission
13 shall report to the appropriate committees of the legislature on
14 the capital needs of health facilities, including facilities of
15 state and local governments, with a focus on underserved
16 geographic areas with substantially below-average health
17 facilities and investment per capita as compared to the state
18 average. The report shall also describe geographic areas where
19 the distance to health facilities imposes a barrier to care.
20 The report shall include a section on health care transportation
21 needs, including capital, personnel and training needs. The
22 report shall make recommendations for legislation to amend the
23 Health Security Act that the commission determines necessary and
24 appropriate.

25 Section 34. ACTUARIAL REVIEW--AUDITS.--

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1 A. The commission shall provide for an annual
2 independent actuarial review of the health security plan and any
3 funds of the commission or the plan.

4 B. The commission shall provide by rule requirements
5 for independent financial audits of health care providers and
6 health facilities.

7 C. The commission, through its staff or by contract,
8 shall perform announced and unannounced audits, including
9 financial, operational, management and electronic data
10 processing audits of health care providers and health
11 facilities. Audit findings shall be reported directly to the
12 commission. The state auditor may be asked by the commission to
13 review preliminary findings or to consult with audit staff
14 before the findings are reported to the commission.

15 D. Actuarial reviews, financial audits and internal
16 audits are public documents after they have been released by the
17 commission, provided that the reports protect private and
18 confidential information of a patient or provider. Copies of
19 reviews, audits and other reports shall be transmitted to the
20 governor, the legislature and appropriate interim committees of
21 the legislature as well as made available via the internet.

22 Section 35. STANDARD CLAIM FORMS FOR INSURANCE PAYMENT.--
23 The commission shall adopt standard claim forms and electronic
24 formats that shall be used by all health care providers and
25 health facilities that seek payment through the health security

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1 plan or from private persons, including private insurance
2 companies, for health care services rendered in the state. Each
3 claim form or electronic format may indicate whether a person is
4 eligible for federal or other insurance programs for payment.
5 To the extent practicable, the commission shall require the use
6 of existing, nationally accepted standardized forms, formats and
7 systems.

8 Section 36. COMPUTERIZED SYSTEM.--The commission shall
9 require that all participating health care providers and health
10 facilities participate in the health security plan's computer
11 network that provides for electronic transfer of payments to
12 health care providers and health facilities; transmittal of
13 reports, including patient data and other statistical reports;
14 billing data, with specificity as to procedures or services
15 provided to individual patients; and any other information
16 required or requested by the commission. To the extent
17 practicable, the commission shall require the use of existing,
18 nationally accepted standardized forms, formats and systems.

19 Section 37. REPORTS REQUIRED--CONFIDENTIAL INFORMATION.--

20 A. The commission, through the state health
21 information system, shall require reports by all health care
22 providers and health facilities of information needed to allow
23 the commission to evaluate the health security plan, cost-
24 containment measures, utilization review, health facility
25 operating budgets, health care provider fees and any other

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1 information the commission deems necessary to carry out its
2 duties pursuant to the Health Security Act.

3 B. The commission shall establish uniform reporting
4 requirements for health care providers and health facilities.

5 C. Information confidential pursuant to other
6 provisions of law shall be confidential pursuant to the Health
7 Security Act. Within the constraints of confidentiality,
8 reports of the commission are public documents.

9 Section 38. CONSUMER, PROVIDER AND HEALTH FACILITY
10 ASSISTANCE PROGRAM.--

11 A. The commission shall establish a consumer, health
12 care provider and health facility assistance program to take
13 complaints and to provide timely and knowledgeable assistance
14 to:

15 (1) eligible persons and applicants about their
16 rights and responsibilities and the coverages provided in
17 accordance with the Health Security Act; and

18 (2) health care providers and health facilities
19 about the status of claims, payments and other pertinent
20 information relevant to the claims payment process.

21 B. The commission shall establish a toll-free
22 telephone line for the consumer, health care provider and health
23 facility assistance program and shall have persons available
24 throughout the state to assist beneficiaries, applicants, health
25 care providers and health facilities in person.

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1 Section 39. REIMBURSEMENT FOR OUT-OF-STATE SERVICES--
2 HEALTH SECURITY PLAN'S RIGHT TO SUBROGATION AND PAYMENT FROM
3 OTHER INSURANCE PLANS.--

4 A. A beneficiary may obtain health care services
5 covered by the health security plan out of state; provided,
6 however, that the services shall be paid at the same rate that
7 would apply if the services were received in New Mexico. Higher
8 charges for those services shall not be paid by the health
9 security plan unless the commission negotiates a reciprocity or
10 other agreement with the other state or with the out-of-state
11 health care provider or health facility.

12 B. The health security plan shall make reasonable
13 efforts to ascertain any legal liability of third parties who
14 are or may be liable to pay all or part of the health care
15 services costs of injury, disease or disability of a
16 beneficiary.

17 C. When the health security plan makes payments on
18 behalf of a beneficiary, the health security plan is subrogated
19 to any right of the beneficiary against a third party for
20 recovery of amounts paid by the health security plan.

21 D. By operation of law, an assignment to the health
22 security plan of the rights of a beneficiary:

23 (1) is conclusively presumed to be made of:

24 (a) a payment for health care services
25 from any person, firm or corporation, including an insurance

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1 carrier; and

2 (b) a monetary recovery for damages for
3 bodily injury, whether by judgment, contract for compromise or
4 settlement;

5 (2) shall be effective to the extent of the
6 amount of payments by the health security plan; and

7 (3) shall be effective as to the rights of any
8 other beneficiaries whose rights can legally be assigned by the
9 beneficiary.

10 Section 40. PRIVATE HEALTH INSURANCE COVERAGE LIMITED.--

11 A. After the date the health security plan is
12 operating, no person shall provide private health insurance to a
13 beneficiary for health care that is covered by the health
14 security plan except for retiree health insurance plans that do
15 not enter into contracts with the health security plan. A
16 beneficiary may purchase supplemental benefits.

17 B. Nothing in this section affects insurance
18 coverage pursuant to the federal Employee Retirement Income
19 Security Act of 1974 unless the state obtains a congressional
20 exemption or a waiver from the federal government. Health
21 coverage plans that are covered by the provisions of that act
22 may elect to participate in the health security plan.

23 Section 41. HEALTH SECURITY PLAN FUND CREATED--FEDERAL
24 HEALTH INSURANCE PROGRAM WAIVERS--REIMBURSEMENT TO HEALTH
25 SECURITY PLAN FROM FEDERAL AND OTHER HEALTH INSURANCE

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1 PROGRAMS.--

2 A. The "health security plan fund" is created in the
3 state treasury. All revenues received pursuant to the Health
4 Security Act shall be deposited in the fund.

5 B. The commission shall provide for the collection
6 of premiums from eligible beneficiaries, employers, state and
7 federal agencies and other entities, which money when combined
8 with other money appropriated to the fund shall be sufficient to
9 provide the required health care services and to pay the
10 expenses of the commission and its administrative functions.
11 All premiums and other money appropriated to the fund shall be
12 credited to the fund.

13 C. The fund shall be maintained in actuarially sound
14 condition as evidenced by the annual written certification of a
15 qualified independent actuary contracted by the commission.

16 D. The commission shall:

17 (1) in conjunction with the human services
18 department, apply to the United States department of health and
19 human services for all waivers of requirements under health care
20 programs established pursuant to the federal Social Security Act
21 that are necessary to enable the state to deposit federal
22 payments for services covered by the health security plan into
23 the health security plan fund and to be the supplemental payer
24 of benefits for persons receiving medicare benefits;

25 (2) except for those programs designated in

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1 Subsection B of Section 21 of the Health Security Act, identify
2 other federal programs that provide federal funds for payment of
3 health care services to individuals and apply for any waivers or
4 enter into any agreements that are necessary to enable the state
5 to deposit federal payments for health care services covered by
6 the health security plan into the health security plan fund;
7 provided, however, agreements negotiated with the federal Indian
8 health service shall not impair treaty obligations of the United
9 States government, and other agreements negotiated shall not
10 impair portability or other aspects of the health care coverage;

11 (3) seek an amendment to the federal Employee
12 Retirement Income Security Act of 1974 to exempt New Mexico from
13 the provisions of that act that relate to health care services
14 or health insurance, or the commission shall apply to the
15 appropriate federal agency for waivers of any requirements of
16 that act if congress provides for waivers to enable the
17 commission to extend coverage through the Health Security Act to
18 as many New Mexicans as possible; and

19 (4) work with the counties to determine the
20 expenditure of funds generated pursuant to the Indigent Hospital
21 and County Health Care Act and the Statewide Health Care Act.

22 E. The commission shall seek payment to the health
23 security plan from medicaid, medicare or any other federal or
24 other insurance program for any reimbursable payment provided
25 under the plan.

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1 F. The commission shall seek to maximize federal
2 contributions and payments for health care services provided in
3 New Mexico and shall ensure that the contributions of the
4 federal government for health care services in New Mexico will
5 not decrease in relation to other states as a result of any
6 waivers, exemptions or agreements.

7 G. The commission shall maintain sufficient reserves
8 in the fund to provide for catastrophic and unforeseen
9 expenditures.

10 Section 42. VOLUNTARY PURCHASE OF OTHER INSURANCE.--
11 Nothing in the Health Security Act shall be construed to
12 prohibit the voluntary purchase of insurance coverage for health
13 care services not covered by the health security plan or for
14 individuals not eligible for coverage under the health security
15 plan.

16 Section 43. INSURANCE RATES--SUPERINTENDENT OF INSURANCE
17 DUTIES.--

18 A. The superintendent of insurance shall work
19 closely with the legislative finance committee pursuant to
20 Section 44 of the Health Security Act to identify premium costs
21 associated with health care coverage in workers' compensation
22 and automobile medical coverage. The superintendent of
23 insurance shall develop an estimate of expected reduction in
24 those costs based upon assumptions of health care services
25 coverage in the health security plan, and shall report the

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1 findings to the legislative finance committee to determine the
2 financing of the health security plan.

3 B. The superintendent of insurance shall ensure that
4 workers' compensation and automobile insurance premiums on
5 insurance policies written in New Mexico reflect a lower rate to
6 account for the medical payment component to be assumed by the
7 health security plan.

8 Section 44. FINANCING THE HEALTH SECURITY PLAN.--

9 A. The legislative finance committee shall determine
10 financing options for the health security plan. In making its
11 determinations, the committee shall be guided by the following
12 requirements and assumptions:

13 (1) health care services to be included and for
14 which costs are to be projected in determining the financing
15 options shall be no less than the health care coverage afforded
16 state employees; and

17 (2) options may set minimum and maximum levels
18 of a beneficiary's income-based premium payments, sliding scale
19 premium payments and medicare credits and employer
20 contributions, and an employer may cover all or part of an
21 employee's premium provided that a collective bargaining
22 agreement is not violated.

23 B. The legislative finance committee shall prepare a
24 report of its determinations with the specific options and
25 recommendations no later than December 15, 2008. The report

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1 shall be submitted for consideration for legislative
2 implementation to the first session of the forty-ninth
3 legislature.

4 Section 45. TEMPORARY PROVISION--TRANSITION PERIOD
5 ARRANGEMENTS--PUBLICLY FUNDED HEALTH CARE SERVICE PLANS.--

6 A. A person who, on the date benefits are available
7 under the Health Security Act's health security plan, receives
8 health care benefits under private contract or collective
9 bargaining agreement entered into prior to July 1, 2011 shall
10 continue to receive those benefits until the contract or
11 agreement expires or unless the contract or agreement is
12 renegotiated to provide participation in the health security
13 plan.

14 B. A person covered by a health care plan that has
15 its premiums paid for in any part by public money, including
16 money from the state, a political subdivision, state educational
17 institution, public school or other entity that receives public
18 money to pay health insurance premiums, shall be covered by the
19 Health Security Act health security plan on the effective date
20 that benefits are available under the health security plan.

21 Section 46. TEMPORARY PROVISION.--

22 A. If the forty-ninth legislature approves
23 implementation and financing of the health security plan, the
24 health security plan shall be operational by July 1, 2011.

25 B. If the forty-ninth legislature fails to implement

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1 the recommendations of the legislative finance committee or
2 otherwise fails to determine and approve financing of the health
3 security plan, then the health security plan shall not become
4 effective.

5 Section 47. APPROPRIATION.--Five hundred thousand dollars
6 (\$500,000) is appropriated from the general fund to the
7 legislative finance committee for expenditure in fiscal year
8 2009 to determine the financing options of the health security
9 plan, contingent upon enactment of the Health Security Act
10 during the second session of the forty-eighth legislature. Any
11 unexpended or unencumbered balance remaining at the end of
12 fiscal year 2009 shall revert to the general fund.

13 Section 48. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2008.