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FISCAL IMPACT REPORT

ORIGINAL DATE
LAST UPDATED 01/24/08 **HB** _____

SPONSOR Cisneros

SHORT TITLE Health Security Act **SB** 3

ANALYST Hanika Ortiz

APPROPRIATION (dollars in thousands)

Appropriation			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	\$500.0		Non-Recurring	General Fund
		\$0.1 (see narrative)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	\$0.1 (see narrative)		Recurring	Health Security Plan Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Public Regulation Commission/INS (PRC/INS)
 Human Services Department/Medical Assistance Division (HSD/MAD)
 New Mexico Higher Education Department (NMHED)
 Department of Finance and Administration (DFA)
 New Mexico Corrections Department (NMCD)
 Health Policy Commission (HPC)
 Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 3 enacts the Health Security Act to provide a mandatory comprehensive statewide

health care plan through a combination of public and private financing; control of health care costs; and, by providing preventative health care for all New Mexicans. The Act outlines procedures for the implementation of a Health Care Commission of 15 members reflecting the geographic diversity of the state tasked with establishing the entity for the Health Security Act by 11/01/09. The commission will have a two-year development period to work with state agencies and the public; and, collect, review and analyze pertinent health care data to see whether the plan is financially feasible. The bill requires financing recommendations made by the LFC be approved by the legislature in 2009 before this plan goes into effect.

The bill excludes active military, military retirees, TRICARE recipients and federal retirees. Nothing in the Act is to affect coverage pursuant to the federal Employee Retirement Act. Tribes and plans covered under ERISA may opt to join.

Specific provisions of the bill include:

1. A 15 member Health Care Commission and its employees;
2. The adoption of a five year plan by the new commission which will:
 - a. emphasize preventive care, health care for rural, underserved areas, and in-home/community-based alternatives to institutional health care;
 - b. negotiate compensation methods for health care providers and health facilities;
 - c. establish capital budgets for health care facilities;
 - d. negotiate reciprocity agreements with other states;
 - e. develop claims and payment procedures;
 - f. provide for health care data collection and analysis to improve health care quality and control health care costs;
 - g. appoint a committee governing prescription drugs and medical devices;
 - h. study and report on impact of provider professional liability insurance on health care costs and access to health care;
 - i. provide for coverage of most physical, mental and behavioral health care services, dental services, long- term care, prescription drugs and medical supplies;
 - j. report annually to the legislature; and,
 - k. become effective contingent upon approval by the 2009 legislature, and if so approved, be implemented by July 1, 2011.
3. Granting the commission the authority to:
 - a. appoint a health care provider advisory board and a health facility advisory board;
 - b. establish health care delivery regions to differentiate fees and capital expense allocations to encourage health care in rural, underserved areas;
 - c. establish a comprehensive claims review procedure;
 - d. negotiate payment plans with providers and facilities;
 - e. establish a quality improvement program for providers and health facilities ;
 - f. negotiate annual operating budgets with health care facilities;
 - g. regulate major capital expenditures by health care providers and health care facilities (with certain exemptions);
 - h. establish a consumer, provider and health facility complaint process;
 - i. develop standard claims forms and a state-wide computer network for billing purposes and data collection;
 - j. require health care providers and health care facilities to participate in a statewide computerized system;
 - k. develop an annual budget to be within projected annual revenues;

- l. require health care providers and health care facilities to submit certain reports to aid the commission in an ongoing evaluation of the Health Security plan; and,
- m. apply for waivers and federal law changes and exemptions allowing the maximum contribution of federal money to the “Health Security Plan Fund” (see fiscal implications);
4. Providing for subrogation rights;
5. Prohibiting the sale of private health care insurance in New Mexico to any eligible beneficiary after the date the health care plan is operating, except for supplemental benefits and certain retiree health care plans;
6. Establishing a “Health Security Plan Fund” and giving the commission the responsibility for the collection of premiums from eligible beneficiaries, employers, state and federal agencies and other entities;
7. Requiring the Superintendent of Insurance to ensure that workers' compensation and automobile insurance premiums on insurance policies written in New Mexico reflect a lower rate to account for the medical payment component to be assumed by the health security plan;
8. Requiring educational institutions to provide coverage under the health security plan for nonresident students;
9. Requiring the Legislative Finance Committee (LFC) to determine financing options for the health security plan; and
10. Providing for a transition period for those covered by existing health care plans.

FISCAL IMPLICATIONS

The plan attempts to put most New Mexicans under one risk pool as a way to leverage purchasing power and simplify the multiple payor system of health insurance coverage; realize cost savings from the elimination of duplicative administration; and, protect the State and consumer from rising health care costs. DFA is concerned it still remains unclear how the bill proposes to generate sufficient revenues for a self-sustaining health insurance program to cover all New Mexicans.

This bill creates a new Health Security Plan Fund to receive all premiums from eligible beneficiaries, employers, state and federal agencies, and other state appropriations. In order for this to occur, the commission will need to apply for waivers and enter into agreements with all federal health care programs to enable the state to deposit federal payments for health care services covered by the plan into the health security plan fund; seek amendments to the federal Employee Retirement Income Security Act to exempt the state from certain provisions to allow the commission to extend coverage to as many New Mexicans as possible; determine expenditures of indigent funds; and, seek payment from Medicaid, Medicare and all other insurance programs for any reimbursable payment provided under the plan.

The bill requires the Legislative Finance Committee develop financing recommendations for the plan and provide such to the legislature for approval or modification before 12/15/08 for consideration by the 2009 Legislature. The financing recommendations are expected by the LFC before the commission's plan for coverage is known. The LFC is to be guided by benefit packages and costs of such health care coverage provided to state employees; and, options may set beneficiary income-based premium payments, sliding scale premium payments and Medicare credits and employer contributions. There is an appropriation of \$500 thousand in the bill

directed to the LFC for this effort; however, there may be more time needed for the Committee to complete this great task.

The plan will begin July 1, 2011 if approved by the 2009 Legislature, and during the fiscal year preceding that date, the commission will become operational with support of appropriations from the general fund. Beginning in FY12 private insurance will be replaced by the health security plan for those covered by the plan. PRC/INS reports that the private health insurance industry currently pays premium taxes and premium tax surcharges which are revenues for the general fund. Those insurers who collect over \$3 billion dollars in premiums pay approximately \$120 million in premium taxes and premium tax surcharges. A substantial portion of those premium taxes could be eliminated.

The Health Coverage for New Mexicans Committee (HCNMC) was created by the Legislature and the Governor to study three models of universal health coverage. The HCNMC engaged Mathematica Policy Research, Inc. with costing out three different approaches to universal coverage in New Mexico. One of the models costed by Mathematica was based on the Health Security Act. Mathematica's report indicated that a universal coverage plan could be achieved at a savings in total cost over what we as New Mexicans currently spend on health care. Each of the reform models promised cost savings, but it remains unclear whether they included real cost controls.

The appropriation of \$500 thousand contained in this bill is a non-recurring expense to the General Fund. Any unexpended or unencumbered balance remaining at the end of FY09 shall revert to the General Fund. This bill creates the health security plan fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

With respect to depositing administrative penalties in the current school fund, the meaning of "current school fund" is unclear and does not specify why penalties would be deposited into the school fund versus the state General Fund.

DFA notes that the bill allows for \$200 in compensation per member per meeting. The current rate of per diem for board and commission members is \$95.

SIGNIFICANT ISSUE

The bill will effectively subject all existing health care facilities and health care providers in New Mexico to state control. It will require mandatory participation in the health care plan by most state residents other than persons covered by federal health plans, military personnel, and members of Indian tribes covered by federal health plans. It will prohibit the sale of health insurance in New Mexico for health care that is covered by the health security plan except for retiree health insurance plans that do not enter into contracts with the health security plan. The private sector would continue to provide the actual delivery of health care but will be required to comply with the rules of the commission and provisions of the health care plan.

HSD reports that the commission will need to apply for all applicable federal waivers. Until such federal waivers are actually approved, the commission will be unable to put into place the programs/services requiring such waivers, which would impact planning and budget

considerations.

Section 32 of the bill attempts to address health care costs that are reflected in other types of liability insurance. PRC/INS reflects that the theory of this section is that, since we have universal coverage, the premiums for these other liability coverage can be reduced because additional health coverage won't be needed. However, nothing in this bill removes an employer's liability under the worker's compensation act. Nor does this bill eliminate liability created by careless and reckless driving. State law would require the health care commission to recover damages from parties liable for their actions.

Section 40 confirms that any employer sponsored health insurance plans subject to ERISA are not required to participate. ERISA's original purpose was to regulate employee pension plans. However, ERISA also precludes state agencies and governments from regulating self-insured business insurance plans.

The Commission would establish the state's health care budget, budgets for health care facilities and limits rate increases to the increases in the Consumer Price Index (CPI) rate. DFA reports that while this may appear to be a means of controlling health care costs, one potential negative consequence is a potential disincentive for providers to continue to do business in New Mexico if the budget established by the commission is not sufficient.

The bill requires the Superintendent of Insurance to ensure that worker's compensation and automobile insurance premiums on insurance policies reflect a lower rate to account for the medical payment component to be assumed by the health security plan.

HSD notes that a pharmaceutical formulary as proposed in the bill will require the commission to negotiate with manufacturers, which may conflict with the federal Medical Reform of 2004.

It appears that the Commission will be charged with Vital Statistics. It is unclear how this would impact the existing Vital Statistics Bureau at DOH.

Considering the multiple data collection efforts outlined, it would be good to include the provision of a committee or advisory group that would be for research and evidence-based practices for the Health Security Act.

SB 3 requires the state's colleges and universities to assess students for health insurance through their fees. This may increase the costs of higher education in New Mexico even though many of students are dependents of NM state residents who will be covered by their parents' policy. Nonresident students apparently may opt out of the fees if they can show proof of out-of-state coverage.

ADMINISTRATIVE IMPLICATIONS

Agencies report redistribution on an administrative and staffing level will occur as roles and responsibilities are repositioned to support the Act.

The bill charges DOH with the responsibility of providing staff to the HCC membership nominating committee, until a commission is appointed. The act proposes adding the state's Medicaid program into its infrastructure, but does not include HSD in its implementation or

planning.

HSD notes that the multiple data collection efforts might be duplicative of powers and duties of existing state entities; and, the bill does not outline how existing entities will interact with the Health Security Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 3 duplicates HB 214

HB 62 creates the healthSOLUTIONS New Mexico act, which represents the Governor's proposed universal coverage and health reform plan

SB 228 and HB 205 (duplicates) also address universal coverage and contain an individual mandate.

OTHER SUBSTANTIVE ISSUES

The commission may find it difficult to bring in certain insured persons or groups accustomed to a certain level of benefit coverage if the state's coverage provided is less.

Socioeconomic disparities exist with respect to access to health care. In 2005, 20.4% of New Mexicans were without health insurance, compared to 15.9% for the US. According to the HPC's *Universal Health Coverage – Research on States and Unsolved Issues* Report published in August 2007, various states have addressed universal health care.

Persons eager for insurance reform believe New Mexico's reliance on private insurers may make universal coverage unaffordable in today's market.

88% of small employers in New Mexico employ less than 20 employees; 41% of those do not offer health insurance. Eight-one percent of the small employers that do not currently provide coverage cite cost as the primary reason and 67% of uninsured individuals say it is affordability.

ALTERNATIVES

HSD reports the Health Coverage for New Mexicans (HCNMC) was created by the Legislature to study three models of universal coverage. The HCNMC recommendation to the Governor and the Legislature was not to accept any one model in its entirety, but to take the best components of all the modes and create a new plan.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There will be no new statewide Health Care Commission to oversee a new health care system in New Mexico through this bill.

TECHNICAL ISSUES

DOH states that the provisions for "standard claims forms" in Section 35 and computer systems in Section 36 should specify that the HCC must comply with the federal HIPAA rule on Transactions and Code sets.

AMENDMENTS

The PRD/INS recommends the following to fix technical issues in the bill:

Page 56, line 9, strike everything after “plan”

Page 56, line 10, strike everything through “legislature”

QUESTIONS

How will licensure operate under the Health Security Act and in what manner will the powers and duties of current licensing boards and commissions be handled?

SB 3 appears to mandate additional Continuing Medical Education (CME). Is the commission required to coordinate this with current CMS requirement for New Mexico licensure under the authority of existing boards and commissions?

AHO/mt