

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 281

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

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

underscored material = new
[bracketed material] = delete

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:

.174728.1

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

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

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

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

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

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

.174728.1

underscored material = new
[bracketed material] = delete

1 R. "provider budget" means the authorized
2 expenditures pursuant to payment mechanisms established by the
3 commission to pay for health care furnished by health care
4 providers participating in the health security plan; and

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

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

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

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

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

.174728.1

underscoring material = new
[bracketed material] = delete

1 leader of the house of representatives; and

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

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

7 C. Members shall serve four-year terms; provided,
8 however, that the first twelve members appointed to the
9 committee shall serve staggered terms as follows:

10 (1) the governor shall appoint the first two
11 appointees to three-year terms;

12 (2) the speaker of the house of
13 representatives shall appoint the first three appointees so
14 that one serves for two years, one for three years and one for
15 four years;

16 (3) the president pro tempore of the senate
17 shall appoint the first three appointees so that one serves for
18 two years, one for three years and one for four years;

19 (4) the minority leader of the house of
20 representatives shall appoint the first two members so that one
21 serves for two years and one serves for four years; and

22 (5) the minority leader of the senate shall
23 appoint the first two members so that one serves for two years
24 and one serves for four years.

25 D. A member shall serve until the member's

.174728.1

underscoring material = new
[bracketed material] = delete

1 successor is appointed and qualified. Successor members shall
2 be appointed by the appointing authority that made the initial
3 appointment to the committee. A state employee who is exempt
4 from the Personnel Act is not eligible to serve on the
5 committee. A member shall be eligible for or enrolled in the
6 health security plan. An elected official shall not serve on
7 the committee. Sufficient public notice shall be provided to
8 allow members of the public to request consideration of
9 appointment to the committee.

10 E. Appointed members of the committee shall have
11 substantial knowledge of the health care system as demonstrated
12 by education or experience. A person shall not be appointed to
13 the committee if, currently or within the previous thirty-six
14 months, the person or a member of the person's household is
15 employed by, an officer of or has a controlling interest in a
16 person providing health care or health insurance, directly or
17 as an agent of a health insurer.

18 F. The committee shall take appropriate action to
19 ensure that adequate prior notice of its meetings is advertised
20 and reported in media outlets throughout the state in addition
21 to publication of a legal notice in major newspapers.
22 Publication of the legal notice shall occur once each week for
23 the two weeks immediately preceding the date of a meeting.
24 Meetings of the committee shall be open to the public, and
25 public comment shall be allowed. A majority of the committee

.174728.1

underscoring material = new
[bracketed material] = delete

1 shall constitute a quorum. The committee may allow members'
2 participation in meetings by telephone or other electronic
3 media that allows full participation. Meetings may be closed
4 only for discussion of candidates prior to selection. Final
5 selection of candidates shall be by vote of the members and
6 shall be conducted in a public meeting.

7 G. The committee shall hold its first meeting on or
8 before June 15, 2010. The committee shall actively solicit,
9 accept and evaluate applications from qualified persons for
10 membership on the commission subject to the requirements for
11 commission membership qualifications pursuant to Section 6 of
12 the Health Security Act.

13 H. No later than September 15, 2010, the committee
14 shall submit to the governor the names of persons recommended
15 for appointment to the commission by a majority of the
16 committee. Immediately after receiving committee nominations,
17 the governor may make one request of the committee for
18 submission of additional names. If a majority of the committee
19 finds that additional persons would be qualified, the committee
20 shall promptly submit additional names and recommend those
21 persons for appointment to the commission. The committee shall
22 submit no more than three names for a membership position for
23 each initial or additional appointment.

24 I. Appointed committee members shall be reimbursed
25 pursuant to the Per Diem and Mileage Act for expenses incurred

.174728.1

underscoring material = new
[bracketed material] = delete

1 in fulfilling their duties.

2 J. Staff to assist the committee in its duties
3 until a commission is appointed shall be furnished by the
4 department of health. Thereafter, commission staff shall
5 assist the committee in its duties.

6 Section 6. APPOINTMENT OF COMMISSION MEMBERS--
7 QUALIFICATIONS--TERMS.--

8 A. From the nominees submitted by the health care
9 commission membership nominating committee, the governor shall
10 appoint fifteen members to the commission, and the initial
11 commission shall be in place by November 1, 2010.

12 B. The terms of the initial commission members
13 appointed shall be chosen by lot: five members shall be
14 appointed for terms of four years; five members shall be
15 appointed for terms of three years; and five members shall be
16 appointed for terms of two years. Thereafter, all members
17 shall be appointed for terms of four years. After initial
18 terms are served, no member shall serve more than three
19 consecutive four-year terms. A member may serve until a
20 successor is appointed.

21 C. A person who served on the health care
22 commission membership nominating committee shall not be
23 nominated for or serve on the commission within thirty-six
24 months from the time served on the committee. A state employee
25 who is exempt from the Personnel Act is not eligible to serve

.174728.1

underscoring material = new
[bracketed material] = delete

1 on the commission. An elected official shall not serve on the
2 commission. A commission member shall be eligible for or
3 enrolled in the health security plan.

4 D. When a vacancy occurs in the membership of the
5 commission, the health care commission membership nominating
6 committee shall meet and act within thirty days of the
7 occurrence of the vacancy. From the nominees submitted, the
8 governor shall fill the vacancy within thirty days after
9 receiving final nominations.

10 E. Members of the commission shall include five
11 persons who represent either health care providers or health
12 facilities and ten persons who represent consumer and employer
13 interests, the majority of whom shall represent consumer
14 interests.

15 F. Except for persons appointed to represent health
16 facilities or health care providers, a person shall be
17 disqualified for appointment to the commission if, currently or
18 during the previous thirty-six months, the person or a member
19 of the person's household is employed by, an officer of or has
20 a controlling interest in a person providing health care or
21 health insurance, directly or as an agent of a health insurer.

22 G. Persons appointed who do not represent health
23 care providers or health facilities must have a knowledge of
24 the health care system as demonstrated by experience or
25 education. To ensure fair representation of all areas of the

.174728.1

underscoring material = new
[bracketed material] = delete

1 state, members shall be appointed from each of the public
2 education commission districts as follows:

3 (1) two from public education commission
4 district 1;

5 (2) one from public education commission
6 district 2;

7 (3) one from public education commission
8 district 3;

9 (4) two from public education commission
10 district 4;

11 (5) two from public education commission
12 district 5;

13 (6) one from public education commission
14 district 6;

15 (7) two from public education commission
16 district 7;

17 (8) two from public education commission
18 district 8;

19 (9) one from public education commission
20 district 9; and

21 (10) one from public education commission
22 district 10.

23 H. A member may be removed from the commission by a
24 majority vote of the members present at a meeting where a
25 quorum is duly constituted. The commission shall set standards

.174728.1

underscored material = new
[bracketed material] = delete

1 for attendance and may remove a member for incompetence, lack
2 of attendance, neglect of duty or malfeasance in office. A
3 member shall not be removed without proceedings consisting of
4 at least one notice of hearing and an opportunity to be heard.
5 Removal proceedings shall be before the commission and in
6 accordance with rules adopted by the commission.

7 I. A majority of the commission's members
8 constitutes a quorum for the transaction of business. The
9 commission may allow members' participation in meetings by
10 telephone or other electronic media that allows full
11 participation. Annually, the commission shall elect its chair
12 and any other officers it deems necessary.

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

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

21 A. The commission shall adopt a conflict-of-
22 interest disclosure statement for use by all members that
23 requires disclosure of a financial interest, whether or not a
24 controlling interest, of the member or a member of the member's
25 household in a person providing health care or health

.174728.1

underscored material = new
[bracketed material] = delete

1 insurance.

2 B. A member representing health facilities or
3 health care providers may vote on matters that pertain
4 generally to health facilities or health care providers.

5 C. If there is a question about a conflict of
6 interest of a commission member, the other members shall vote
7 on whether to allow the member to vote.

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

9 A. The commission shall adopt a general code of
10 conduct for commission members and employees subject to the
11 commission's control. The code of conduct shall include at
12 least those matters and activities proscribed by the
13 Governmental Conduct Act.

14 B. Violation of a provision of the adopted code of
15 conduct is grounds for removal of a commission member and
16 grounds for suspension, termination or other disciplinary
17 action of an employee.

18 Section 9. APPLICATION OF CERTAIN STATE LAWS TO
19 COMMISSION.--The commission and regional councils created
20 pursuant to the Health Security Act shall be subject to and
21 shall comply with the provisions of the:

- 22 A. Open Meetings Act;
- 23 B. State Rules Act;
- 24 C. Inspection of Public Records Act; and
- 25 D. Public Records Act.

.174728.1

underscoring material = new
[bracketed material] = delete

1 Section 10. CHIEF EXECUTIVE OFFICER--STAFF--CONTRACTS--
2 BUDGETS.--

3 A. The commission shall appoint and set the salary
4 of a "chief executive officer". The chief executive officer
5 shall serve at the pleasure of the commission and has authority
6 to carry on the day-to-day operations of the commission and the
7 health security plan.

8 B. The chief executive officer shall employ those
9 persons necessary to administer and implement the provisions of
10 the Health Security Act.

11 C. The chief executive officer and the chief
12 executive officer's staff shall implement the Health Security
13 Act in accordance with that act and the rules adopted by the
14 commission. The chief executive officer may delegate authority
15 to employees and may organize the staff into units to
16 facilitate its work.

17 D. If the chief executive officer determines that
18 the commission staff or a state agency does not have the
19 resources or expertise to perform a necessary task, the chief
20 executive officer may contract for performance from a person
21 who has a demonstrated capability to perform the task. The
22 commission shall establish the standards and requirements by
23 which a contract is executed by the commission or the chief
24 executive officer. A contract shall be reviewed by the
25 commission or the chief executive officer to ensure that it

.174728.1

underscoring material = new
[bracketed material] = delete

1 meets the criteria, performance standards, expectations and
2 needs of the commission.

3 E. The chief executive officer shall prepare and
4 submit an annual budget request and plan of operation to the
5 commission for its approval. The chief executive officer shall
6 provide at least quarterly status reports on the budget and
7 advise of a potential shortfall as soon as practically
8 possible.

9 F. A contract for claims processing functions shall
10 require that all work for claims processing, customer service,
11 medical and utilization review, financial audit and
12 reimbursement and related claims adjudication functions be
13 performed entirely in New Mexico. To the extent practicable,
14 all other work shall be performed in New Mexico.

15 Section 11. COMMISSION--GENERAL DUTIES.--The commission
16 shall:

17 A. adopt a five-year plan for the initial
18 implementation of the provisions of the Health Security Act,
19 update that plan and adopt other long- and short-range plans to
20 provide continuity and development of the state's health care
21 system;

22 B. design the health security plan to fulfill the
23 purposes of and conform with the provisions of the Health
24 Security Act;

25 C. provide a program to educate the public, health

.174728.1

underscored material = new
[bracketed material] = delete

1 care providers and health facilities about the health security
2 plan and the persons eligible to receive its benefits;

3 D. study and adopt as provisions of the health
4 security plan cost-effective methods of providing quality
5 health care to all beneficiaries, according high priority to
6 increased reliance on:

7 (1) preventive and primary care that includes
8 immunization and screening examinations;

9 (2) providing health care in rural or
10 underserved areas of the state;

11 (3) in-home and community-based alternatives
12 to institutional health care; and

13 (4) case management services when appropriate;

14 E. establish compensation methods for health care
15 providers and health facilities and adopt standards and
16 procedures for negotiating and entering into contracts with
17 participating health care providers and health facilities;

18 F. annually, and for those projected future periods
19 the commission believes appropriate, establish health security
20 plan budgets;

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

24 (1) standards and procedures for determining
25 the budgets; and

.174728.1

underscored material = new
[bracketed material] = delete

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

3 H. negotiate and enter into health care reciprocity
4 agreements with other states and negotiate and enter into
5 health care agreements with out-of-state health care providers
6 and health facilities;

7 I. develop claims and payment procedures for health
8 care providers, health facilities and claims administrators and
9 include provisions to ensure timely payments and provide for
10 payment of interest when reimbursable claims are not paid
11 within a reasonable time;

12 J. establish, in conjunction with other state
13 agencies similarly charged, a system to collect and analyze
14 health care data and other data necessary to improve the
15 quality, efficiency and effectiveness of health care and to
16 control costs of health care in New Mexico, which system shall
17 include data on:

18 (1) mortality, including accidental causes of
19 death, and natality;

20 (2) morbidity;

21 (3) health behavior;

22 (4) physical and psychological impairment and
23 disability;

24 (5) health care system costs and health care
25 availability, utilization and revenues;

.174728.1

underscoring material = new
[bracketed material] = delete

- 1 (6) environmental factors;
2 (7) availability, adequacy and training of
3 health care personnel;
4 (8) demographic factors;
5 (9) social and economic conditions affecting
6 health; and
7 (10) other factors determined by the
8 commission;

9 K. standardize data collection and specific methods
10 of measurement across databases and use scientific sampling or
11 complete enumeration for reporting health information;

12 L. establish a health care delivery system that is
13 efficient to administer and that eliminates unnecessary
14 administrative costs;

15 M. adopt rules necessary to implement and monitor a
16 preferred drug list, bulk purchasing or other mechanism to
17 provide prescription drugs and a pricing procedure for
18 nonprescription drugs, durable medical equipment and supplies,
19 eyeglasses, hearing aids and oxygen;

20 N. establish a pharmacy and therapeutics committee
21 to:

22 (1) conduct concurrent, prospective and
23 retrospective drug utilization review;

24 (2) conduct pharmacoeconomic research and
25 analysis of clinical safety, efficacy and effectiveness of

.174728.1

underscored material = new
[bracketed material] = delete

1 drugs;

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

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

7 (5) identify appropriate exclusions from the
8 preferred drug list; and

9 (6) conduct periodic clinical reviews of
10 preferred, nonpreferred and new drugs;

11 O. study and evaluate the adequacy and quality of
12 health care furnished pursuant to the Health Security Act, the
13 cost of each type of service and the effectiveness of cost-
14 containment measures in the health security plan;

15 P. study and monitor the migration of persons to
16 New Mexico to determine if persons with costly health care
17 needs are moving to New Mexico to receive health care and, if
18 migration appears to threaten the financial stability of the
19 health security plan, recommend to the legislature changes in
20 eligibility requirements, premiums or other changes that may be
21 necessary to maintain the financial integrity of the health
22 security plan;

23 Q. study and evaluate the cost of health care
24 provider professional liability insurance and its impact on the
25 price of health care services and recommend changes to the

.174728.1

1 legislature as necessary;

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

4 S. conduct necessary investigations and inquiries;

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

7 U. adopt rules to establish a procurement process
8 for services and property;

9 V. meet as needed, but no less often than once
10 every month;

11 W. report annually to the legislature and the
12 governor on the commission's activities and the operation of
13 the health security plan and include in the annual report:

14 (1) a summary of information about health care
15 needs, health care services, health care expenditures, revenues
16 received and projected revenues and other relevant issues
17 relating to the health security plan, the initial five-year
18 plan and future updates of that plan and other long- and short-
19 range plans; and

20 (2) recommendations on methods to control
21 health care costs and improve access to and the quality of
22 health care for state residents, as well as recommendations for
23 legislative action; and

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

.174728.1

underscored material = new
[bracketed material] = delete

1 Section 12. COMMISSION--AUTHORITY.--The commission has
2 the authority necessary to carry out the powers and duties
3 pursuant to the Health Security Act. The commission retains
4 responsibility for its duties but may delegate authority to the
5 chief executive officer. However, the authority to take the
6 following actions is expressly reserved to the commission:

7 A. approve the commission's budget and plan of
8 operation;

9 B. approve the health security plan and make
10 changes in the health security plan, but only after legislative
11 approval of those changes specified in Section 30 of the Health
12 Security Act;

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

15 D. issue subpoenas to persons to appear and testify
16 before the commission and to produce documents and other
17 information relevant to the commission's inquiry and enforce
18 this subpoena power through an action in a state district
19 court;

20 E. make reports and recommendations to the
21 legislature;

22 F. subject to the prohibitions and restrictions of
23 Section 21 of the Health Security Act, apply for program
24 waivers from any governmental entity if the commission
25 determines that the waivers are necessary to ensure the

.174728.1

underscored material = new
[bracketed material] = delete

1 participation by the greatest possible number of beneficiaries;

2 G. apply for and accept grants, loans and
3 donations;

4 H. acquire or lease real property and make
5 improvements on it and acquire by lease or by purchase tangible
6 and intangible personal property;

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

9 J. appoint and prescribe the duties of employees,
10 fix their compensation, pay their expenses and provide an
11 employee benefit program;

12 K. establish and maintain banking relationships,
13 including establishment of checking and savings accounts;

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

16 M. enter into agreements with an employer, group or
17 other plan to provide health care services for the employer's
18 employees or retirees; provided, however, that nothing in the
19 Health Security Act shall be construed to reduce or eliminate
20 benefits to which the employee or retiree is entitled.

21 Section 13. ADVISORY BOARDS.--

22 A. The commission shall establish a "health care
23 provider advisory board" and a "health facility advisory
24 board". It may establish additional advisory boards to assist
25 it in performing its duties. Advisory boards shall assist the

.174728.1

underscored material = new
[bracketed material] = delete

1 commission in matters requiring the expertise and knowledge of
2 the advisory boards' members.

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

8 C. Except for the health care provider advisory
9 board and the health facility advisory board, no more than two
10 advisory board members shall have a controlling interest,
11 direct or indirect, in a person providing health care or a
12 person providing health insurance.

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

15 Section 14. HEALTH CARE DELIVERY REGIONS.--The commission
16 shall establish health care delivery regions in the state,
17 based on geography and health care resources. The regions may
18 have differential fee schedules, budgets, capital expenditure
19 allocations or other features to encourage the provision of
20 health care in rural and other underserved areas or to tailor
21 otherwise the delivery of health care to fit the needs of a
22 region or a part of a region.

23 Section 15. REGIONAL COUNCILS.--

24 A. The commission shall designate regional councils
25 in the designated health care delivery regions. In selecting

.174728.1

underscoring material = new
[bracketed material] = delete

1 persons to serve as members of regional councils, the
2 commission shall consider the comments and recommendations of
3 persons in the region who are knowledgeable about health care
4 and the economic and social factors affecting the region.

5 B. The regional councils shall be composed of the
6 commission members who live in the region and five other
7 members who live in the region and are appointed by the
8 commission. No more than two noncommission council members
9 shall have a controlling interest, direct or indirect, in a
10 person providing health care or a person providing health
11 insurance.

12 C. Members of a regional council shall be paid per
13 diem and mileage in accordance with the provisions of the Per
14 Diem and Mileage Act.

15 D. The regional councils shall hold public hearings
16 to receive comments, suggestions and recommendations from the
17 public regarding regional health care needs. The councils
18 shall report to the commission at times specified by the
19 commission to ensure that regional concerns are considered in
20 the development and update of the five-year plan, other short-
21 and long-range plans and projections, fee schedules, budgets
22 and capital expenditure allocations.

23 E. Staff technical assistance for the regional
24 councils shall be provided by the commission.

25 Section 16. RULEMAKING.--

.174728.1

underscored material = new
[bracketed material] = delete

1 A. The commission shall adopt rules necessary to
2 carry out the duties of the commission and the provisions of
3 the Health Security Act.

4 B. The commission shall not adopt, amend or repeal
5 any rule affecting a person outside the commission without a
6 public hearing on the proposed action before the commission or
7 a hearing officer designated by the commission. The hearing
8 officer may be a member of the commission's staff. The hearing
9 shall be held in a county that the commission determines would
10 be in the interest of those affected. Notice of the subject
11 matter of the rule, the action proposed to be taken, the time
12 and place of the hearing, the manner in which interested
13 persons may present their views and the method by which copies
14 of the proposed rule or an amendment or repeal of an existing
15 rule may be obtained shall be published once at least thirty
16 days prior to the hearing date in a newspaper of general
17 circulation in the state and shall also be published in an
18 informative nonlegal format in one newspaper published in each
19 health care delivery region and mailed at least thirty days
20 prior to the hearing date to all persons who have made a
21 written request for advance notice of hearing.

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

24 Section 17. HEALTH SECURITY PLAN.--

25 A. After notice and public hearing, including

.174728.1

underscored material = new
[bracketed material] = delete

1 taking public comment and the reports of the regional councils,
2 the commission, in conjunction with other state agencies, shall
3 adopt a five-year health security plan and review it at regular
4 intervals for possible revision.

5 B. The health security plan shall be designed to
6 provide comprehensive, necessary and appropriate health care
7 benefits, including preventive health care and primary,
8 secondary and tertiary health care for acute and chronic
9 conditions. The health security plan may provide for certain
10 health care services to be phased in as the health security
11 plan budget allows.

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

- 15 (1) preventive health services;
- 16 (2) health care provider services;
- 17 (3) health facility inpatient and outpatient
18 services;
- 19 (4) laboratory tests and radiology procedures;
- 20 (5) hospice care;
- 21 (6) in-home, community-based and institutional
22 long-term care services;
- 23 (7) prescription drugs;
- 24 (8) inpatient and outpatient mental and
25 behavioral health services;

.174728.1

underscored material = new
[bracketed material] = delete

1 (9) drug and other substance abuse services;

2 (10) preventive and prophylactic dental
3 services, including an annual dental examination and cleaning;

4 (11) vision appliances, including medically
5 necessary contact lenses;

6 (12) medical supplies, durable medical
7 equipment and selected assistive devices, including hearing and
8 speech assistive devices; and

9 (13) experimental or investigational
10 procedures or treatments as specified by the commission.

11 D. Covered health care shall not include:

12 (1) surgery for cosmetic purposes other than
13 for reconstructive purposes;

14 (2) medical examinations and medical reports
15 prepared for purchasing or renewing life insurance or
16 participating as a plaintiff or defendant in a civil action for
17 the recovery or settlement of damages; and

18 (3) orthodontic services and cosmetic dental
19 services except those cosmetic dental services necessary for
20 reconstructive purposes.

21 E. The health security plan shall specify the
22 health care to be covered and the amount, scope and duration of
23 benefits.

24 F. The health security plan shall contain
25 provisions to control health care costs so that beneficiaries

.174728.1

underscored material = new
[bracketed material] = delete

1 receive comprehensive, high-quality health care consistent with
2 available revenue and budget constraints.

3 G. The health security plan shall phase in
4 beneficiaries as their participation becomes possible through
5 contracts, waivers or federal legislation. The health security
6 plan may provide for certain preventive health care to be
7 offered to all New Mexicans regardless of a person's
8 eligibility to participate as a beneficiary.

9 H. The five-year plan as well as other long- and
10 short-range plans adopted by the commission shall be reviewed
11 by the regional councils and the commission annually and
12 revised as necessary. Revisions shall be adopted by the
13 commission in accordance with Section 11 of the Health Security
14 Act. In projecting services under the health security plan,
15 the commission shall take all reasonable steps to ensure that
16 long-term care and dental care are provided at the earliest
17 practical times consistent with budget constraints.

18 Section 18. LONG-TERM CARE.--

19 A. Long-term care may include:

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

22 (2) institutional care.

23 B. No later than one year after the effective date
24 of the operation of the health security plan, the commission
25 shall appoint an advisory "long-term care committee" made up of

.174728.1

underscoring material = new
[bracketed material] = delete

1 representatives of health care consumers, providers and
2 administrators to develop a plan for integrating long-term care
3 into the health security plan. The committee shall report its
4 plan to the commission no later than one year from its
5 appointment. Committee members shall receive per diem and
6 mileage as provided in the Per Diem and Mileage Act.

7 C. The long-term care component of the health
8 security plan shall provide for case management and
9 noninstitutional services when appropriate.

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

14 E. Nothing in this section precludes the commission
15 from including long-term care services from the inception of
16 the health security plan.

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

18 A. No later than one year after appointment of the
19 chief executive officer, the commission shall appoint an
20 advisory "mental and behavioral health services committee" made
21 up of representatives of mental and behavioral health care
22 consumers, providers and administrators to develop a plan for
23 coordinating mental and behavioral health services within the
24 health security plan. The committee shall report its plan to
25 the commission no later than one year from its appointment.

.174728.1

underscoring material = new
[bracketed material] = delete

1 Committee members may receive per diem and mileage as provided
2 in the Per Diem and Mileage Act.

3 B. The mental and behavioral health services
4 component of the health security plan shall provide for case
5 management and noninstitutional services where appropriate.

6 C. The health security plan shall not impose
7 treatment limitations or financial requirements on the
8 provision of mental and behavioral health benefits if identical
9 limitations or requirements are not imposed on coverage of
10 benefits for other conditions.

11 D. Nothing in this section limits mental and
12 behavioral health services paid through private insurance or
13 state or federal programs subject to the provisions of Sections
14 40 and 41 of the Health Security Act.

15 Section 20. MEDICAID COVERAGE--AGREEMENTS.--The
16 commission may enter into appropriate agreements with the human
17 services department or other state agency for the purpose of
18 furthering the goals of the Health Security Act. These
19 agreements may provide for certain services provided pursuant
20 to the medicaid program under Title 19 and Title 21 of the
21 federal Social Security Act to be administered by the
22 commission to implement the health security plan.

23 Section 21. HEALTH SECURITY PLAN COVERAGE--CONDITIONS OF
24 ELIGIBILITY FOR BENEFICIARIES--EXCLUSIONS.--

25 A. An individual is eligible as a beneficiary of

.174728.1

underscored material = new
[bracketed material] = delete

1 the health security plan if the individual has been physically
2 present in New Mexico for one year prior to the date of
3 application for enrollment in the health security plan and if
4 the individual has a current intention to remain in New Mexico
5 and not to reside elsewhere. A dependent of an eligible
6 individual is included as a beneficiary.

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

- 9 (1) federal retiree health plan beneficiaries;
10 (2) active duty and retired military
11 personnel; and
12 (3) individuals covered by the federal active
13 and retired military health programs.

14 C. Federal Indian health service or tribally
15 operated health care program beneficiaries shall not be brought
16 into coverage except through agreements with:

- 17 (1) Indian nations, tribes or pueblos;
18 (2) consortia of tribes or pueblos; or
19 (3) a federal Indian health service agency
20 subject to the approval of the tribes or pueblos located in
21 that agency.

22 D. If an individual is ineligible due to the
23 residence requirement, the individual may become eligible by
24 paying the premium required by the health security plan for
25 coverage for the period of time up to the date the individual

.174728.1

underscored material = new
[bracketed material] = delete

1 fulfills that requirement if the individual is an employee who
2 physically resides and intends to reside in the state because
3 of employment offered to the individual in New Mexico while the
4 individual was residing elsewhere as demonstrated by furnishing
5 that evidence of those facts required by rule adopted by the
6 commission.

7 E. An employer, group or other plan that provides
8 health care benefits for its employees after retirement,
9 including coverage for payment of health care supplementary
10 coverage if the retiree is eligible for medicare, may agree to
11 participate in the health security plan; provided, however,
12 that there is no loss of benefits under the retiree health
13 benefit coverage. An employer that participates in the health
14 security plan shall contribute to the health security plan for
15 the benefit of the retiree and the agreement shall ensure that
16 the health benefit coverage for the retiree shall be restored
17 in the event of the retiree's ineligibility for health security
18 plan coverage.

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

22 Section 22. HEALTH SECURITY PLAN COVERAGE OF NONRESIDENT
23 STUDENTS.--

24 A. Except as provided in Subsection B of this
25 section, an educational institution shall purchase coverage

.174728.1

underscoring material = new
[bracketed material] = delete

1 under the health security plan for its nonresident students
2 through fees assessed to those students. The governing body of
3 an educational institution shall set the fees at the amount
4 determined by the commission.

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

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

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

16 Section 24. ELIGIBILITY CARD--USE--PENALTIES FOR
17 MISUSE.--

18 A. A beneficiary shall receive a card as proof of
19 eligibility. The card shall be electronically readable and
20 shall contain a picture or electronic image, information that
21 identifies the beneficiary for treatment and billing, payment
22 and other information the commission deems necessary. The use
23 of a beneficiary's social security number as an identification
24 number is not permitted.

25 B. The eligibility card is not transferable. A

.174728.1

underscored material = new
[bracketed material] = delete

1 beneficiary who lends the beneficiary's card to another and an
2 individual who uses another's card shall be jointly and
3 severally liable to the commission for the full cost of the
4 health care provided to the user. The liability shall be paid
5 in full within one year of final determination of liability.
6 Liabilities created pursuant to this section shall be collected
7 in a manner similar to that used for collection of delinquent
8 taxes.

9 C. A beneficiary who lends the beneficiary's card
10 to another or an individual who uses another's card after being
11 determined liable pursuant to Subsection B of this section of a
12 previous misuse is guilty of a misdemeanor and shall be
13 sentenced pursuant to the provisions of Section 31-19-1 NMSA
14 1978. A third or subsequent conviction is a fourth degree
15 felony, and the offender shall be sentenced pursuant to the
16 provisions of Section 31-18-15 NMSA 1978.

17 Section 25. PRIMARY CARE PROVIDER--RIGHT TO CHOOSE--
18 ACCESS TO SERVICES.--

19 A. Except as provided in the Workers' Compensation
20 Act, a beneficiary has the right to choose a primary care
21 provider.

22 B. The primary care provider is responsible for
23 providing health care provider services to the patient except
24 for:

25 (1) services in medical emergencies; and

.174728.1

underscored material = new
[bracketed material] = delete

1 (2) services for which a primary care provider
2 determines that specialist services are required, in which case
3 the primary care provider shall advise the patient of the need
4 for and the type of specialist services.

5 C. Except as otherwise provided in this section,
6 health care provider specialists shall be paid pursuant to the
7 health security plan only if the patient has been referred by a
8 primary care provider. Nothing in this subsection prevents a
9 beneficiary from obtaining the services of a health care
10 provider specialist and paying the specialist for services
11 provided.

12 D. The commission shall by rule specify when and
13 under what circumstances a beneficiary may self-refer,
14 including self-referral to a chiropractic physician, a doctor
15 of oriental medicine, mental and behavioral health service
16 providers and other health care providers who are not primary
17 care providers.

18 E. The commission shall by rule specify the
19 conditions under which a beneficiary may select a specialist as
20 a primary care provider.

21 Section 26. DISCRIMINATION PROHIBITED.--A health care
22 provider or health facility shall not discriminate against or
23 refuse to furnish health care to a beneficiary on the basis of
24 age, race, color, income level, national origin, religion,
25 gender, sexual orientation, disabling condition or payment

.174728.1

underscored material = new
[bracketed material] = delete

1 status. Nothing in this section shall require a health care
2 provider or health facility to provide services to a
3 beneficiary if the provider or facility is not qualified to
4 provide the needed services or does not offer them to the
5 general public.

6 Section 27. CLAIMS REVIEW.--

7 A. The commission shall adopt rules to provide a
8 comprehensive claims review program. The procedures and
9 standards used in the program shall be disclosed in writing to
10 applicants, beneficiaries, health care providers and health
11 facilities at the time of application to or participation in
12 the health security plan.

13 B. The decision to approve or deny a claim based on
14 a technicality shall be made in a timely manner and shall not
15 exceed time limits established by rule of the commission. A
16 final decision to deny payment for services based on medical
17 necessity or utilization shall be based on a recommendation
18 made by a health care professional having appropriate and
19 adequate qualifications to make the recommendation. A denial
20 of a claim for payment of a medical specialty service based on
21 medical necessity or utilization shall be made only after a
22 written recommendation for denial is made by a member of that
23 medical specialty with credentials equivalent to those of the
24 provider.

25 C. The fact of and the specific reasons for a

.174728.1

underscored material = new
[bracketed material] = delete

1 denial of a health care claim shall be communicated promptly in
2 writing to both the provider and the beneficiary involved.

3 Section 28. QUALITY OF CARE--HEALTH CARE PROVIDER AND
4 HEALTH FACILITIES--PRACTICE STANDARDS.--

5 A. The commission shall adopt rules to establish
6 and implement a quality improvement program that monitors the
7 quality and appropriateness of health care provided by the
8 health security plan, including evidence-based medicine, best
9 practices, outcome measurements, consumer education and patient
10 safety. The commission shall set standards and review benefits
11 to ensure that effective, cost-efficient, high-quality and
12 appropriate health care is provided under the health security
13 plan.

14 B. The commission shall review and adopt
15 professional practice guidelines developed by state and
16 national medical and specialty organizations, federal agencies
17 for health care policy and research and other organizations as
18 it deems necessary to promote the quality and cost-
19 effectiveness of health care provided through the health
20 security plan.

21 C. The quality improvement program shall include an
22 ongoing system for monitoring patterns of practice. The
23 commission shall appoint a "health care practice advisory
24 committee" consisting of health care providers, health
25 facilities and other knowledgeable persons to advise the

.174728.1

underscoring material = new
[bracketed material] = delete

1 commission and staff on health care practice issues. The
2 committee may appoint subcommittees and task forces to address
3 practice issues of a specific health care provider discipline
4 or a specific kind of health facility; provided, however, that
5 the subcommittee or task force includes providers of
6 substantially similar specialties or types of facilities. The
7 advisory committee shall provide to the commission recommended
8 standards and guidelines to be followed in making
9 determinations on practice issues.

10 D. With the advice of the health care practice
11 advisory committee, the commission shall establish a system of
12 peer education for health care providers or health facilities
13 determined to be engaging in aberrant patterns of practice
14 pursuant to Subsection B of this section. If the commission
15 determines that peer education efforts have failed, the
16 commission may refer the matter to the appropriate licensing or
17 certifying board.

18 E. The commission shall provide by rule the
19 procedures for recouping payments or withholding payments for
20 health care determined by the commission with the advice of the
21 health care practice advisory committee or subcommittee to be
22 medically unnecessary.

23 F. The commission may provide by rule for the
24 assessment of administrative penalties for up to three times
25 the amount of excess payments if it finds that excessive

.174728.1

underscoring material = new
[bracketed material] = delete

1 billings were part of an aberrant pattern of practice.

2 Administrative penalties shall be deposited in the current
3 school fund.

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

17 H. The commission shall report a suspension or
18 revocation of the privilege to be paid for health care pursuant
19 to the Health Security Act to the appropriate licensing or
20 certifying board.

21 I. The commission shall report cases of suspected
22 fraud by a health care provider or a health facility to the
23 attorney general or to the district attorney of the county
24 where the health care provider or health facility operates for
25 investigation and prosecution.

.174728.1

underscored material = new
[bracketed material] = delete

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

13 Section 30. HEALTH SECURITY PLAN BUDGET.--

14 A. Annually, the commission shall develop and
15 submit to the legislature a health security plan budget. The
16 budget shall be the commission's recommendation for the total
17 amount to be spent by the plan for covered health care services
18 in the next fiscal year.

19 B. Unless otherwise provided in the general
20 appropriation act or other act of the legislature, the health
21 security plan budget shall be within projected annual revenues.
22 After the legislative review and approval, the commission shall
23 implement the health security plan budget. Without specific
24 legislative approval, the commission shall not change the level
25 of premium charged and used to project revenue or change the

.174728.1

underscoring material = new
[bracketed material] = delete

1 employer contributions under the health security plan. The
2 legislature may base its approval on the findings and
3 recommendations of an independent audit or actuarial study.

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

8 D. The health security plan shall include a maximum
9 amount or percentage for administrative costs, and this
10 maximum, if a percentage, may change in relation to the total
11 costs of services provided under the health security plan. For
12 the sixth and subsequent calendar years of operation of the
13 health security plan, administrative costs shall not exceed
14 five percent of the health security plan budget.

15 Section 31. PAYMENTS TO HEALTH CARE PROVIDERS--
16 CO-PAYMENTS.--

17 A. The commission shall prepare a provider budget.
18 Consistent with the provider budget, the health security plan
19 shall provide payment for all covered health care rendered by
20 health care providers. A variety of payment plans, including
21 fee-for-service, may be adopted by the commission. Payment
22 plans shall be negotiated with providers as provided by rule.
23 In the event that negotiation fails to develop an acceptable
24 payment plan, the disputing parties shall submit the dispute
25 for resolution pursuant to Section 29 of the Health Security

.174728.1

underscoring material = new
[bracketed material] = delete

1 Act.

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

5 C. An annual percentage increase in the amount
6 allocated for provider payments in the budget shall be no
7 greater than the annual percentage increase in the consumer
8 price index for medical care prices published by the bureau of
9 labor statistics of the federal department of labor using the
10 year prior to the year in which the health security plan is
11 implemented as the baseline year. The annual limitation in
12 this subsection may be adjusted up or down by the commission
13 based on a showing of special and unusual circumstances in a
14 hearing before the commission.

15 D. Payment, or the offer of payment whether or not
16 that offer is accepted, to a health care provider for services
17 covered by the health security plan shall be payment in full
18 for those services. A health care provider shall not charge a
19 beneficiary an additional amount for services covered by the
20 plan.

21 E. The commission may establish a co-payment
22 schedule if a required co-payment is determined to be an
23 effective cost-control measure. A co-payment shall not be
24 required for preventive health care. When a co-payment is
25 required, the health care provider shall not waive it and if it

.174728.1

underscoring material = new
[bracketed material] = delete

1 remains uncollected, the health care provider shall demonstrate
2 a good-faith effort to have collected the co-payment.

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

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

19 B. Supplemental payment rates may be adopted to
20 provide incentives to help ensure the delivery of needed health
21 care services in rural and other underserved areas throughout
22 the state.

23 C. Each health care provider employed by a health
24 facility shall be paid from the facility's operating budget in a
25 manner determined by the health facility.

.174728.1

underscoring material = new
[bracketed material] = delete

1 D. The commission may establish a co-payment
2 schedule if a required co-payment is determined to be an
3 effective cost-control measure. A co-payment shall not be
4 required for preventive care. When a co-payment is required,
5 the health facility shall not waive it and if it remains
6 uncollected, the health facility shall demonstrate a good-faith
7 effort to have collected the co-payment.

8 Section 33. HEALTH RESOURCE CERTIFICATE--COMMISSION
9 RULES--REQUIREMENT FOR REVIEW.--

10 A. The commission shall adopt rules stating when a
11 health facility or health care provider participating in the
12 health security plan shall apply for a health resource
13 certificate, how the application will be reviewed, how the
14 certificate will be granted, how an expedited review is
15 conducted and other matters relating to health resource
16 projects.

17 B. Except as provided in Subsection F of this
18 section, a health facility or health care provider participating
19 in the health security plan shall not make or obligate itself to
20 make a major capital expenditure without first obtaining a
21 health resource certificate.

22 C. A health facility or health care provider shall
23 not acquire through rental, lease or comparable arrangement or
24 through donation all or a part of a capital project that would
25 have required review if the acquisition had been by purchase

.174728.1

1 unless the project is granted a health resource certificate.

2 D. A health facility or health care provider shall
3 not engage in component purchasing in order to avoid the
4 provisions of this section.

5 E. The commission shall grant a health resource
6 certificate for a major capital expenditure or a capital project
7 undertaken pursuant to Subsection C of this section only when
8 the project is determined to be needed.

9 F. This section does not apply to:

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

12 (2) expenditures incurred solely in preparation
13 for a capital project, including architectural design, surveys,
14 plans, working drawings and specifications and other related
15 activities, but those expenditures shall be included in the cost
16 of a project for the purpose of determining whether a health
17 resource certificate is required;

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

22 (4) major capital expenditures for nonclinical
23 services when the nonclinical services are the primary purpose
24 of the expenditure; and

25 (5) the replacement of equipment with equipment

underscored material = new
[bracketed material] = delete

1 that has the same function and that does not result in the
2 offering of new services.

3 G. No later than January 1, 2012, the commission
4 shall report to the appropriate committees of the legislature on
5 the capital needs of health facilities, including facilities of
6 state and local governments, with a focus on underserved
7 geographic areas with substantially below-average health
8 facilities and investment per capita as compared to the state
9 average. The report shall also describe geographic areas where
10 the distance to health facilities imposes a barrier to care.
11 The report shall include a section on health care transportation
12 needs, including capital, personnel and training needs. The
13 report shall make recommendations for legislation to amend the
14 Health Security Act that the commission determines necessary and
15 appropriate.

16 Section 34. ACTUARIAL REVIEW--AUDITS.--

17 A. The commission shall provide for an annual
18 independent actuarial review of the health security plan and any
19 funds of the commission or the plan.

20 B. The commission shall provide by rule requirements
21 for independent financial audits of health care providers and
22 health facilities.

23 C. The commission, through its staff or by contract,
24 shall perform announced and unannounced audits, including
25 financial, operational, management and electronic data

.174728.1

underscoring material = new
[bracketed material] = delete

1 processing audits of health care providers and health
2 facilities. Audit findings shall be reported directly to the
3 commission. The state auditor may be asked by the commission to
4 review preliminary findings or to consult with audit staff
5 before the findings are reported to the commission.

6 D. Actuarial reviews, financial audits and internal
7 audits are public documents after they have been released by the
8 commission, provided that the reports protect private and
9 confidential information of a patient or provider. Copies of
10 reviews, audits and other reports shall be transmitted to the
11 governor, the legislature and appropriate interim committees of
12 the legislature as well as made available via the internet.

13 Section 35. STANDARD CLAIM FORMS FOR INSURANCE PAYMENT.--
14 The commission shall adopt standard claim forms and electronic
15 formats that shall be used by all health care providers and
16 health facilities that seek payment through the health security
17 plan or from private persons, including private insurance
18 companies, for health care services rendered in the state. Each
19 claim form or electronic format may indicate whether a person is
20 eligible for federal or other insurance programs for payment.
21 To the extent practicable, the commission shall require the use
22 of existing, nationally accepted standardized forms, formats and
23 systems.

24 Section 36. COMPUTERIZED SYSTEM.--The commission shall
25 require that all participating health care providers and health

.174728.1

underscoring material = new
[bracketed material] = delete

1 facilities participate in the health security plan's computer
2 network that provides for electronic transfer of payments to
3 health care providers and health facilities; transmittal of
4 reports, including patient data and other statistical reports;
5 billing data, with specificity as to procedures or services
6 provided to individual patients; and any other information
7 required or requested by the commission. To the extent
8 practicable, the commission shall require the use of existing,
9 nationally accepted standardized forms, formats and systems.

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

11 A. The commission, through the state health
12 information system, shall require reports by all health care
13 providers and health facilities of information needed to allow
14 the commission to evaluate the health security plan, cost-
15 containment measures, utilization review, health facility
16 operating budgets, health care provider fees and any other
17 information the commission deems necessary to carry out its
18 duties pursuant to the Health Security Act.

19 B. The commission shall establish uniform reporting
20 requirements for health care providers and health facilities.

21 C. Information confidential pursuant to other
22 provisions of law shall be confidential pursuant to the Health
23 Security Act. Within the constraints of confidentiality,
24 reports of the commission are public documents.

25 Section 38. CONSUMER, PROVIDER AND HEALTH FACILITY

.174728.1

underscored material = new
[bracketed material] = delete

1 ASSISTANCE PROGRAM.--

2 A. The commission shall establish a consumer, health
3 care provider and health facility assistance program to take
4 complaints and to provide timely and knowledgeable assistance
5 to:

6 (1) eligible persons and applicants about their
7 rights and responsibilities and the coverages provided in
8 accordance with the Health Security Act; and

9 (2) health care providers and health facilities
10 about the status of claims, payments and other pertinent
11 information relevant to the claims payment process.

12 B. The commission shall establish a toll-free
13 telephone line for the consumer, health care provider and health
14 facility assistance program and shall have persons available
15 throughout the state to assist beneficiaries, applicants, health
16 care providers and health facilities in person.

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

20 A. A beneficiary may obtain health care services
21 covered by the health security plan out of state; provided,
22 however, that the services shall be paid at the same rate that
23 would apply if the services were received in New Mexico. Higher
24 charges for those services shall not be paid by the health
25 security plan unless the commission negotiates a reciprocity or

.174728.1

underscoring material = new
[bracketed material] = delete

1 other agreement with the other state or with the out-of-state
2 health care provider or health facility.

3 B. The health security plan shall make reasonable
4 efforts to ascertain any legal liability of third parties who
5 are or may be liable to pay all or part of the health care
6 services costs of injury, disease or disability of a
7 beneficiary.

8 C. When the health security plan makes payments on
9 behalf of a beneficiary, the health security plan is subrogated
10 to any right of the beneficiary against a third party for
11 recovery of amounts paid by the health security plan.

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

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

15 (a) a payment for health care services
16 from any person, firm or corporation, including an insurance
17 carrier; and

18 (b) a monetary recovery for damages for
19 bodily injury, whether by judgment, contract for compromise or
20 settlement;

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

23 (3) shall be effective as to the rights of any
24 other beneficiaries whose rights can legally be assigned by the
25 beneficiary.

.174728.1

underscoring material = new
[bracketed material] = delete

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

2 A. After the date the health security plan is
3 operating, no person shall provide private health insurance to a
4 beneficiary for health care that is covered by the health
5 security plan except for retiree health insurance plans that do
6 not enter into contracts with the health security plan. A
7 beneficiary may purchase supplemental benefits.

8 B. Nothing in this section affects insurance
9 coverage pursuant to the federal Employee Retirement Income
10 Security Act of 1974 unless the state obtains a congressional
11 exemption or a waiver from the federal government. Health
12 coverage plans that are covered by the provisions of that act
13 may elect to participate in the health security plan.

14 Section 41. HEALTH SECURITY PLAN FUND CREATED--FEDERAL
15 HEALTH INSURANCE PROGRAM WAIVERS--REIMBURSEMENT TO HEALTH
16 SECURITY PLAN FROM FEDERAL AND OTHER HEALTH INSURANCE
17 PROGRAMS.--

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

21 B. The commission shall provide for the collection
22 of premiums from eligible beneficiaries, employers, state and
23 federal agencies and other entities, which money when combined
24 with other money appropriated to the fund shall be sufficient to
25 provide the required health care services and to pay the

.174728.1

underscored material = new
[bracketed material] = delete

1 expenses of the commission and its administrative functions.

2 All premiums and other money appropriated to the fund shall be
3 credited to the fund.

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

7 D. The commission shall:

8 (1) in conjunction with the human services
9 department, apply to the United States department of health and
10 human services for all waivers of requirements under health care
11 programs established pursuant to the federal Social Security Act
12 that are necessary to enable the state to deposit federal
13 payments for services covered by the health security plan into
14 the health security plan fund and to be the supplemental payer
15 of benefits for persons receiving medicare benefits;

16 (2) except for those programs designated in
17 Subsection B of Section 21 of the Health Security Act, identify
18 other federal programs that provide federal funds for payment of
19 health care services to individuals and apply for any waivers or
20 enter into any agreements that are necessary to enable the state
21 to deposit federal payments for health care services covered by
22 the health security plan into the health security plan fund;
23 provided, however, agreements negotiated with the federal Indian
24 health service shall not impair treaty obligations of the United
25 States government and other agreements negotiated shall not

.174728.1

underscored material = new
[bracketed material] = delete

1 impair portability or other aspects of the health care coverage;

2 (3) seek an amendment to the federal Employee
3 Retirement Income Security Act of 1974 to exempt New Mexico from
4 the provisions of that act that relate to health care services
5 or health insurance, or the commission shall apply to the
6 appropriate federal agency for waivers of any requirements of
7 that act if congress provides for waivers to enable the
8 commission to extend coverage through the Health Security Act to
9 as many New Mexicans as possible; provided, however, that the
10 amendment or waiver requested shall not impair portability or
11 other aspects of the health care coverage; and

12 (4) work with the counties to determine the
13 expenditure of funds generated pursuant to the Indigent Hospital
14 and County Health Care Act and the Statewide Health Care Act.

15 E. The commission shall seek payment to the health
16 security plan from medicaid, medicare or any other federal or
17 other insurance program for any reimbursable payment provided
18 under the plan.

19 F. The commission shall seek to maximize federal
20 contributions and payments for health care services provided in
21 New Mexico and shall ensure that the contributions of the
22 federal government for health care services in New Mexico will
23 not decrease in relation to other states as a result of any
24 waivers, exemptions or agreements.

25 G. The commission shall maintain sufficient reserves

.174728.1

underscoring material = new
[bracketed material] = delete

1 in the fund to provide for catastrophic and unforeseen
2 expenditures.

3 Section 42. VOLUNTARY PURCHASE OF OTHER INSURANCE.--
4 Nothing in the Health Security Act shall be construed to
5 prohibit the voluntary purchase of insurance coverage for health
6 care services not covered by the health security plan or for
7 individuals not eligible for coverage under the health security
8 plan.

9 Section 43. INSURANCE RATES--SUPERINTENDENT OF INSURANCE
10 DUTIES.--

11 A. The superintendent of insurance shall work
12 closely with the legislative finance committee pursuant to
13 Section 44 of the Health Security Act to identify premium costs
14 associated with health care coverage in workers' compensation
15 and automobile medical coverage. The superintendent of
16 insurance shall develop an estimate of expected reduction in
17 those costs based upon assumptions of health care services
18 coverage in the health security plan, and shall report the
19 findings to the legislative finance committee to determine the
20 financing of the health security plan.

21 B. The superintendent of insurance shall ensure that
22 workers' compensation and automobile insurance premiums on
23 insurance policies written in New Mexico reflect a lower rate to
24 account for the medical payment component to be assumed by the
25 health security plan.

.174728.1

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

2 A. The legislative finance committee shall determine
3 financing options for the health security plan. In making its
4 determinations, the committee shall be guided by the following
5 requirements and assumptions:

6 (1) health care services to be included and for
7 which costs are to be projected in determining the financing
8 options shall be no less than the health care coverage afforded
9 state employees; and

10 (2) options may set minimum and maximum levels
11 of a beneficiary's income-based premium payments, sliding scale
12 premium payments and medicare credits and employer
13 contributions, and an employer may cover all or part of an
14 employee's premium provided that a collective bargaining
15 agreement is not violated.

16 B. The legislative finance committee shall prepare a
17 report of its determinations with the specific options and
18 recommendations no later than December 15, 2009. The report
19 shall be submitted for consideration for legislative
20 implementation to the second session of the forty-ninth
21 legislature.

22 Section 45. TEMPORARY PROVISION--TRANSITION PERIOD
23 ARRANGEMENTS--PUBLICLY FUNDED HEALTH CARE SERVICE PLANS.--A
24 person who, on the date benefits are available under the Health
25 Security Act's health security plan, receives health care

.174728.1

underscored material = new
[bracketed material] = delete

1 benefits under private contract or collective bargaining
2 agreement entered into prior to July 1, 2012 shall continue to
3 receive those benefits until the contract or agreement expires
4 or unless the contract or agreement is renegotiated to provide
5 participation in the health security plan.

6 Section 46. TEMPORARY PROVISION.--

7 A. If the forty-ninth legislature approves
8 implementation and financing of the health security plan, the
9 health security plan shall be operational by July 1, 2012.

10 B. If the forty-ninth legislature fails to implement
11 the recommendations of the legislative finance committee or
12 otherwise fails to determine and approve financing of the health
13 security plan, then the health security plan shall not become
14 effective.

15 Section 47. APPROPRIATION.--Five hundred thousand dollars
16 (\$500,000) is appropriated from the general fund to the
17 legislative finance committee for expenditure in fiscal year
18 2010 to determine the financing options of the health security
19 plan, contingent upon enactment of the Health Security Act
20 during the first session of the forty-ninth legislature. Any
21 unexpended or unencumbered balance remaining at the end of
22 fiscal year 2010 shall revert to the general fund.

23 Section 48. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2009.