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FISCAL IMPACT REPORT

SPONSOR	<u>SCORC</u>	ORIGINAL DATE	03/06/13	HB	
		LAST UPDATED	03/14/13		
SHORT TITLE	<u>NM Health Insurance Exchange Act</u>	SB			<u>CS/221 & CS/589/SCORCS/ aSFI#1/aSFI#2/aHHGIC</u>
		ANALYST			<u>Trowbridge/Geisler/Chabot</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$0.0	*Significant	*Significant	N/A	Federal Funds, General Fund, Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses on Original Bills Received From

Human Services Department (HSD)
Department of Health (DOH)

SUMMARY

Synopsis of HHGIC Amendment

The House Health, Government and Indian Affairs Committee amendment to the Senate Corporations and Transportation Committee substitute for the Senate Public Affairs Committee substitute for Senate Bill 221 and the Senate Public Affairs Committee substitute for Senate Bill 589 strikes Section 4 Subsection B and inserts a new subsection allowing for assessments or fees solely for the reasonable costs of the exchange and exempts carriers that exclusively offer policies, plans or contracts outside the exchange intended to supplement major medical coverage. Medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or other limited-benefit health insurance is specifically identified.

Synopsis of SFI #2 Amendment

The Senate Floor #2 amendment reduces from three to two the number of candidates for the board of directors of the health insurance exchange on the lists provided, respectively, by the minority leader of the senate and the minority leader of the House of Representatives

Synopsis of SFI #1 Amendment

The Senate Floor #1 amendment renumbers a reference to a bill section and makes a correction to include the correct definition of “health insurance issuer” on page two of the bill, lines 17 through 21.

Synopsis of Original Bill

The Senate Corporations and Transportation Committee substitute for the Senate Public Affairs Committee substitute for Senate Bill 221 and the Senate Public Affairs Committee substitute for Senate Bill 589 (SB 221) proposes to enact the New Mexico Health Insurance Exchange Act to implement requirements of the federal Affordable Care Act (ACA) for the State to operate a health insurance exchange, *in lieu* of having the federal government operate an insurance exchange on behalf of the State. The bill would create a new entity referred to as the New Mexico Health Insurance Exchange, as well as a board of directors, including members appointed by the governor and members of the Legislature.

The bill provides definitions for agent, board, broker, exchange, health insurance issuer, Native American, navigator, and superintendent.

The definition of “exchange” is defined as “the New Mexico health insurance exchange, composed of an exchange for the individual market and a small business health options program or ‘SHOP’ exchange under a single governance and administrative structure.”

This bill contains both an emergency clause and a severability clause.

SB 221 creates the non-profit Exchange and a Board of Directors under which it shall operate. The Board shall be composed to reflect ethnic, cultural, and geographic diversity as well as the Native American population. The Board shall be composed of 13 voting Directors who shall include the Superintendent of Insurance or designee, six Directors appointed by the governor, three Directors appointed by the Senate President pro tem and three Directors appointed by the Speaker of the House, and specifically: Those appointed by the governor shall include the secretary of human services or the secretary's designee, a health insurance issuer and a consumer advocate. Additionally, one of the Directors appointed by the Senate President pro tem shall be a health care provider; one of the Directors appointed by the Speaker shall be a health insurance issuer; One of the Directors appointed by the Senate President pro tem and one of the Directors appointed by the House Speaker shall be from a list of at least three candidates provided, respectively, by the minority leader of the Senate and by the minority leader of the House of Representatives.

The governor may not appoint more than four Directors who belong to the same political party. Directors serve for three years or fewer, and terms are staggered. A Director whose term expires must continue to serve until a successor is appointed. A Director may be removed by a two-thirds majority vote, including for lack of attendance, neglect of duty, or malfeasance. The New Mexico Health Insurance Exchange (HIX) and its Directors are subject to the Tort Claims, Governmental Conduct, Inspection of Public Records, Financial Disclosure, and Open Meetings Acts.

Meetings must operate consistent with the Governmental Conduct Act, Inspection of Public Records Act, Financial Disclosure Act and Open Meetings Act.

The preliminary plan of operation, which must be created within 60 days of the act's effective date, shall: (1) establish procedures to implement the provisions of the New Mexico Health Insurance Exchange Act, consistent with state and federal law; (2) establish procedures for handling and accounting for the exchange's assets and money; and (3) establish regular times and meeting places for meetings of the board.

The Board is charged with developing a final plan of operation within six months of the effective date of the Act. The final plan of operation shall: (1) establish a statewide consumer assistance program, including a navigator program; (2) establish consumer complaint and grievance procedures for issues relating to the exchange; (3) establish procedures for alternative dispute resolution between the exchange and contractors or health insurance issuers; (4) develop and implement policies that: (a) promote effective communication and collaboration between the exchange and Indian nations, tribes and pueblos, including communicating and collaborating on those nations', tribes' and pueblos' plans for creating or participating in health insurance exchanges; and (b) promote cultural competency in providing effective services to Native Americans; (5) establish conflict-of-interest policies and procedures; and (6) contain additional provisions necessary and proper for the execution of the powers and duties of the board.

The HIX can accept applications to purchase Qualified Health Plans (QHPs) and make navigator services available for persons applying for Medicaid or QHPs.

The HIX must establish a dispute resolution process, a walk-in customer service center, a navigator program, and must share information with the Human Services Department (HSD) Medical Assistance Division. The HIX must establish stakeholder advisory committees of carriers, consumers, advocates, and Native Americans.

The board shall: A). between July 1, 2013 and January 1, 2015, provide quarterly reports to the legislature, the governor and the superintendent on the implementation of the exchange and report annually and upon request thereafter; B). keep an accurate accounting of all of the activities, receipts and expenditures of the exchange and submit this information annually to the superintendent and as required by federal law to the federal secretary of health and human services; C). beginning with the first year of operation in which access to health insurance coverage is provided, obtain an annual audit of the exchange's operations from an independent certified public accountant; D). publish the administrative costs of the exchange as required by state or federal law; and E). discharge those duties required to implement and operate the exchange in accordance with the provisions of the New Mexico Health Insurance Exchange Act consistent with state and federal law.

SB 221 amends the Health Insurance Alliance Act to delete the current Alliance Board on July 1, 2013. Further, all contracts of the New Mexico health insurance alliance relating to the development and implementation of a health insurance exchange shall be binding and effective on the New Mexico Health Insurance Exchange.

FISCAL IMPLICATIONS

The HSD in an earlier analysis of SB 589 indicates that there may be an impact to the ASPEN interface programming that cannot be quantified with the information given at this time and that IT impact cannot be determined until final requirements are established.

The implementation of the health insurance exchange is likely to have a significant fiscal impact on the state, with additional federal revenue coming to New Mexico in the form of tax credits to subsidize the cost of health insurance for more than 70,000 exchange clients, as well as increased revenues from state premium taxes on the insurance plans offered by the exchange.

As reported in the consensus revenue estimates, the FY14 insurance premium tax estimate contains the first fiscal impacts from the expansion of Medicaid and creation of the health insurance exchange under the ACA. Note that premiums taxed are paid quarterly and the impacts will only be reflected in the last quarterly payment for FY14; much larger impacts are anticipated for subsequent fiscal years. Analysts have been careful to include the impacts of existing law only.

Significant amounts of premium tax revenue are currently diverted to the New Mexico Medical Insurance Pool (NMMIP), which provides access to health insurance coverage to residents of New Mexico who are denied health insurance and considered uninsurable. For FY 13, NMMIP has assessed health insurance companies \$117 million to substantially fund the pool. Insurance carriers in turn are allowed a roughly 55 percent credit on assessments which are claimed against premium tax liability.

This scheme will change under ACA, as the bulk of NMMIP pool participants should receive insurance through the exchange, if not as an adult newly eligible for Medicaid. However, not all NMMIP participants are eligible to participate. Undocumented residents, currently estimated to be around 20 percent of the pool, will still participate in NMMIP. This leaves 80 percent of the pool eligible to enter the exchange on January 1, 2014. The consensus revenue estimate assumes about 50 percent of the pool transitions to the exchange. This transfer of clients is currently estimated to save the state between \$10 million and \$20 million.

Also of note, the health insurance exchange as created by SB 221 is a quasi-governmental entity that is exempt from the legislative appropriation and budgeting process, state procurement code, and the State Personnel Act. The exchange is likely to administer, accrue and account for substantial revenues and expenditures which will occur outside of the oversight of the executive branch and the Legislature. Although the “quasi-governmental” exchange model proposed in SB 221 is being considered by other states, other states have also decided to operate their exchanges within current executive branch agencies or have established independent state agencies, presumably with greater oversight by and accountability to the Legislature and the public.

SIGNIFICANT ISSUES

The substitute bill implements a market based exchange and the powers of the board are limited in terms of its control over the plans that are offered on the exchange. In particular, Section 3C states that “the exchange shall not purchase qualified health plans from insurance health issuers to offer for purchase through the exchange.” Section 3D follows “All health insurance issuers and health maintenance organizations authorized to conduct business in this state and meeting the requirements of the rules promulgated by the superintendent pursuant to Section 7 of the New Mexico Health Insurance Exchange Act, as well as meeting the rules under the federal act, shall be eligible to participate in the exchange.”

As noted by the HSD in its earlier analysis, under the market based approach consumers would be offered the broadest possible array of plans with little structure of the marketplace beyond

what is required by the ACA. This is more of an Amazon dot com style approach to shopping for insurance – a consumer can type in what they are looking to purchase, click, and buy. The approach in this bill is in contrast to an active purchaser model, which would empower selective contracting with carriers, set criteria that are beyond the federal standard for participation, and offer fewer choices to consumers.

The substitute bill establishes a statewide consumer assistance program, including a navigator program but does not specify particular roles and responsibilities for the program. This is in contrast to other exchange related legislation, which has specified a broader role for navigators including facilitation of enrollment in Medicaid and other public health coverage programs.

The Department of Health (DOH) noted in its analysis of Health Exchange Act legislation this session that the ACA requires all individuals to have health insurance. SB 221 implements ACA requirements for states to offer health insurance exchanges for individuals and businesses that currently do not have or do not offer health insurance.

DISPARITIES ISSUES

The DOH reports in its earlier analysis that one of five New Mexicans is without health insurance. The 2012 State Health Improvement Plan discusses higher rates of individuals in NM without health insurance, relative to the U.S. (New Mexico 21 percent, U.S. 16 percent).

RELATIONSHIP

SB 221 relates to:

- HB 168, which would create the New Mexico Health Insurance Exchange;
- HB 563, which would create the New Mexico Health Insurance Exchange;
- SB 48, which would enable the participation of large employers in a health insurance exchange.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If SB 221 is not enacted the New Mexico Health Insurance Exchange Act would not be created. The HSD reports that New Mexico will continue to work towards operating a state-based exchange.

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