

1 SENATE BILL 367

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Carroll H. Leavell

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9  
10 AN ACT

11 RELATING TO INSURANCE; AMENDING SECTIONS OF THE NEW MEXICO  
12 INSURANCE CODE; AMENDING REQUIREMENTS RELATED TO EXAMINATION  
13 REPORTS AND INVESTIGATORY HEARINGS; CHANGING ANNUAL FINANCIAL  
14 STATEMENT FILING PENALTIES; ENACTING A SEVERABILITY SECTION TO  
15 THE RISK-BASED CAPITAL ACT; REMOVING STOP-LOSS INSURANCE FROM  
16 THE LIST OF ACCIDENT AND HEALTH INSURANCE PRODUCTS; ALLOWING  
17 ACCIDENT AND HEALTH INSURERS TO WRITE STOP-LOSS INSURANCE;  
18 ALLOWING CASUALTY INSURERS TO CONTINUE TO WRITE ACCIDENT AND  
19 HEALTH INSURANCE; REVISING VARIOUS REQUIREMENTS RELATED TO  
20 SURPLUS LINES INSURANCE; ALLOWING INSURERS TO PAY CLAIMS BY  
21 ELECTRONIC FUND TRANSFER; AMENDING THE INSURANCE FRAUD ACT TO  
22 ESTABLISH A FEE PAYMENT DEADLINE AND LATE PAYMENT PENALTY;  
23 INCLUDING STUDENT HEALTH POLICIES WITHIN PROVISIONS RELATING TO  
24 INDIVIDUAL HEALTH INSURANCE; REMOVING STUDENT HEALTH PLANS FROM  
25 THE LIST OF BLANKET HEALTH INSURANCE PRODUCTS AND FROM THE LIST

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1 OF PRODUCTS THAT ARE NOT MANAGED HEALTH CARE PLANS; EXTENDING  
2 THE SUPERINTENDENT OF INSURANCE'S REVIEW PERIOD FOR MARKETING  
3 MATERIALS AND FOR CREDIT LIFE AND CREDIT HEALTH PRODUCT  
4 FILINGS; REPEALING THE SURPLUS LINES INSURANCE MULTISTATE  
5 COMPLIANCE COMPACT.

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 SECTION 1. Section 59A-4-9 NMSA 1978 (being Laws 1984,  
9 Chapter 127, Section 53, as amended) is amended to read:

10 "59A-4-9. EXAMINATION REPORT--CONTENTS.--~~Upon~~ No later  
11 than sixty days following completion of an examination, the  
12 examiner in charge shall ~~make a true~~ file with the office of  
13 superintendent of insurance a verified, written examination  
14 report [thereof comprising]. The examination report shall  
15 comprise only facts appearing upon the books, records or other  
16 documents of the person examined, or from information provided  
17 to the examiner during the course of the examination by the  
18 examinee's officers or agents and other individuals examined  
19 concerning its affairs, together with ~~such~~ the conclusions  
20 and recommendations of the examiners as may reasonably be  
21 warranted from ~~such~~ the facts. The ~~report of~~ examination  
22 report shall be verified by the oath of the examiner in charge  
23 of the examination."

24 SECTION 2. Section 59A-4-10 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 54, as amended) is amended to read:

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1 "59A-4-10. EXAMINATION REPORT [~~DISTRIBUTION~~]~~--CONFERENCE~~  
2 [~~AND HEARING--ADOPTING~~]~~--ADOPTION ORDERS--INVESTIGATORY~~  
3 HEARINGS.--

4 A. Upon completion of the examination and receipt  
5 of the examination report, the superintendent shall [~~furnish~~  
6 ~~two copies thereof~~] transmit the report to the person examined  
7 and shall allow the person a reasonable period, but not to  
8 exceed twenty days, within which to review the report and to  
9 file with the superintendent in writing requested corrections  
10 or modifications, with the reasons therefor. For good [~~cause~~]  
11 reason shown, the superintendent may grant reasonable extension  
12 of the review period.

13 B. [~~As soon as reasonably possible~~] Within twenty  
14 days after the superintendent's receipt of [~~such~~] the request,  
15 the person examined shall confer with the superintendent and  
16 examiner relative to requested corrections and modification.  
17 [~~If through such conference the report is acceptable to the~~  
18 ~~person examined with such changes as the superintendent~~  
19 ~~approves, the superintendent shall adopt the report as so~~  
20 ~~changed. If the report is not acceptable, the superintendent~~  
21 ~~shall hold a hearing with respect to the report and adopt the~~  
22 ~~report with such changes as result with the superintendent's~~  
23 ~~approval from the conference and hearing.~~

24 C. ~~If no changes are requested, upon expiration of~~  
25 ~~the period allowed by the superintendent for review of the~~

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1 ~~report, the superintendent may adopt the report.~~

2 ~~D. At any point prior to adoption of the~~  
3 ~~examination report, the superintendent may reject the report~~  
4 ~~with directions to the examiners to reopen the examination for~~  
5 ~~purposes of obtaining additional data, documentation or~~  
6 ~~information, and the examiner in charge shall subsequently~~  
7 ~~report in accordance with Section 59A-4-9 NMSA 1978.]~~

8 C. Within thirty days of the end of the period  
9 allowed for the receipt of written submissions or rebuttals,  
10 the superintendent shall fully consider and review the  
11 examination report, together with any written submission or  
12 rebuttal, any conference and any relevant portion of the  
13 examiner's work papers and shall enter an order. An order  
14 entered pursuant to this subsection shall be accompanied by  
15 findings of fact and conclusions of law resulting from the  
16 superintendent's consideration and review of the examination  
17 report, any written submission or rebuttal, any conferences and  
18 any relevant portion of the examiner's work papers. An order  
19 shall be considered a final administrative decision that may be  
20 appealed pursuant to Section 59A-4-20 NMSA 1978. An order  
21 shall be served on all parties by certified mail, together with  
22 a copy of the adopted examination report. An order issued  
23 pursuant to this subsection shall:

24 (1) adopt the examination report as filed or  
25 with modification or corrections. If the examination report

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1 reveals that the person is operating in violation of statute,  
2 rule or prior order of the superintendent, the superintendent  
3 may order the person to take any action that the superintendent  
4 considers necessary and appropriate to cure the violation;

5 (2) reject the examination report with  
6 directions to the examiners to reopen the examination for  
7 purposes of obtaining additional data, documentation or  
8 information and refiling pursuant to Section 59A-4-9 NMSA 1978;  
9 or

10 (3) call for an investigatory hearing with no  
11 less than twenty days' notice to the person for purposes of  
12 obtaining additional documentation, data, information or  
13 testimony.

14 D. An investigatory hearing held pursuant to  
15 Paragraph (3) of Subsection C of this section:

16 (1) may be conducted by the superintendent or  
17 the superintendent may authorize a representative to conduct  
18 the hearing; provided that the superintendent shall not  
19 authorize an examiner to conduct the hearing;

20 (2) shall be conducted as a nonadversarial,  
21 confidential investigatory proceeding, as necessary for the  
22 resolution of any inconsistency, discrepancy or disputed issue  
23 apparent upon the face of the examination report or raised by  
24 or as a result of the superintendent's review of work papers  
25 and conferences or by the written submission or rebuttal of the

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1 person; and

2 (3) shall proceed expeditiously with discovery  
3 by the person limited to those work papers of the examiner that  
4 tend to substantiate any assertions set forth in any written  
5 submission or rebuttal.

6 E. Relating to an investigatory hearing held  
7 pursuant to Paragraph (3) of Subsection C of this section, the  
8 superintendent or the superintendent's representative may issue  
9 a subpoena to compel the attendance of any witness or the  
10 production of any document that the superintendent or the  
11 superintendent's representative deems relevant to the  
12 investigation, whether the document is under the control of the  
13 office of superintendent of insurance, the person being  
14 examined or any other person. Documents produced shall be  
15 included in the record and testimony taken by the  
16 superintendent or the superintendent's representative and shall  
17 be made under oath and preserved for the record. The  
18 superintendent or the superintendent's representative shall  
19 pose questions to any person subpoenaed. Thereafter, the  
20 person being examined and the office of superintendent of  
21 insurance may present testimony relevant to the investigation.  
22 Only the superintendent or the superintendent's representative  
23 shall conduct cross-examination. The person being examined and  
24 the office of superintendent of insurance shall be permitted to  
25 make closing statements and may be represented by counsel of

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1 the person's choice. Nothing in this section shall be  
2 construed to require the office of superintendent of insurance  
3 to disclose any information or record that would indicate or  
4 demonstrate the existence or content of any investigation or  
5 activity of a criminal justice agency.

6 F. Within twenty days of the conclusion of an  
7 investigatory hearing pursuant to Paragraph (3) of Subsection C  
8 of this section, the superintendent shall enter an order in  
9 accordance with Paragraph (1) of Subsection C of this section."

10 SECTION 3. Section 59A-4-12 NMSA 1978 (being Laws 1984,  
11 Chapter 127, Section 56) is amended to read:

12 "59A-4-12. EXAMINATION REPORT--INFORMATION TO MANAGEMENT  
13 OF DOMESTIC ENTITIES.--If the examination is of a domestic  
14 insurer or other person domiciled in New Mexico, when the  
15 examination report has been filed for public inspection, the  
16 chief executive officer of the insurer or person shall cause to  
17 be delivered to each member of the examinee's board of  
18 directors, or other similar governing body, a copy of the  
19 report, or summary thereof, and of its recommendations approved  
20 by the superintendent [~~and the officer's certificate to the~~  
21 ~~effect that the report or summary has been so delivered shall~~  
22 ~~be deemed to constitute proof that the contents of the report~~  
23 ~~or summary are known to each such member]. Within ninety days  
24 of the issuance of the adopted report or within fifteen days  
25 after the first board meeting after the issuance of the adopted~~

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1 report, whichever occurs first, the insurer shall file  
2 affidavits executed by each of its directors stating under oath  
3 that they have received a copy of the adopted report and  
4 related orders."

5 SECTION 4. Section 59A-5-30 NMSA 1978 (being Laws 1984,  
6 Chapter 127, Section 97) is amended to read:

7 "59A-5-30. PENALTIES FOR LATE, FALSE ANNUAL STATEMENTS.--

8 A. Any insurer failing, without just cause  
9 reasonably beyond control of the insurer, to file its annual  
10 statement as required in Section [~~96 of this article~~] 59A-5-29  
11 NMSA 1978 shall be required to pay a penalty of one hundred  
12 dollars (\$100) for each day's delay, but not to exceed five  
13 thousand dollars (\$5,000) in aggregate amount. [~~to be~~  
14 ~~recovered in a civil action brought against the insurer in the~~  
15 ~~name of the State of New Mexico by the attorney general. Such]~~  
16 This penalty may be in addition to any refusal to continue, or  
17 suspension or revocation of, the insurer's certificate of  
18 authority for such failure.

19 B. Any director, officer, agent or employee of any  
20 insurer who subscribes to, makes or concurs in making or  
21 publishing any annual or other statement of the insurer  
22 required by law, knowing the same to contain any material  
23 statement [~~which~~] that is false, shall upon conviction thereof  
24 be guilty of a misdemeanor and upon conviction shall be  
25 sentenced to a fine of not more than one thousand dollars

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1 (\$1,000), unless by its extent and nature the offense is  
2 punishable under other statutes as a felony."

3 SECTION 5. Section 59A-7-3 NMSA 1978 (being Laws 2016,  
4 Chapter 89, Section 6) is amended to read:

5 "59A-7-3. ACCIDENT AND HEALTH INSURANCE.--

6 A. Accident and health includes:

- 7 [A.] (1) accident;
- 8 [B.] (2) accidental death and dismemberment;
- 9 [C.] (3) blanket accident and sickness;
- 10 [D.] (4) credit disability;
- 11 [E.] (5) critical illness;
- 12 [F.] (6) dental;
- 13 [G.] (7) disability income;
- 14 [~~H.~~ ~~excess or stop loss~~;
- 15 [I.] (8) home health care;
- 16 [J.] (9) hospital indemnity;
- 17 [K.] (10) long-term care;
- 18 [L.] (11) major medical;
- 19 [M.] (12) medical expense;
- 20 [N.] (13) medicare supplement;
- 21 [O.] (14) prescription drug;
- 22 [P.] (15) sickness;
- 23 [Q.] (16) specified disease;
- 24 [R.] (17) vision; and
- 25 [S.] (18) similar products relating to

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1 accident and health matters.

2 B. An insurer or a health maintenance organization  
3 authorized to transact accident and health insurance may write  
4 stop-loss liability insurance as listed in Paragraph (51) of  
5 Subsection A of Section 59A-7-6 NMSA 1978."

6 SECTION 6. Section 59A-7-6 NMSA 1978 (being Laws 2016,  
7 Chapter 89, Section 8) is amended to read:

8 "59A-7-6. CASUALTY.--

9 A. Casualty includes:

- 10 [~~A.~~] (1) aircraft liability;
- 11 [~~B.~~] (2) auto commercial liability;
- 12 [~~C.~~] (3) auto private passenger liability;
- 13 [~~D.~~] (4) auto warranty contract;
- 14 [~~E.~~] (5) boiler and machinery;
- 15 [~~F.~~] (6) burglary and theft;
- 16 [~~G.~~] (7) collateral protection;
- 17 [~~H.~~] (8) commercial excess/umbrella  
18 liability;
- 19 [~~I.~~] (9) commercial general liability;
- 20 [~~J.~~] (10) congenital defects;
- 21 [~~K.~~] (11) contractual liability;
- 22 [~~L.~~] (12) credit;
- 23 [~~M.~~] (13) credit property;
- 24 [~~N.~~] (14) creditor-placed dual/single  
25 interest;

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- 1                   [~~Θ~~] (15)   crime;
- 2                   [~~Ρ~~] (16)   directors and officers liability;
- 3                   [~~Q~~] (17)   employers liability;
- 4                   [~~R~~] (18)   elevator;
- 5                   [~~S~~] (19)   entertainment;
- 6                   [~~T~~] (20)   errors and omissions;
- 7                   [~~U~~] (21)   failure to file instrument;
- 8                   [~~V~~] (22)   farm and ranch liability;
- 9                   [~~W~~] (23)   fidelity bonds;
- 10                  [~~X~~] (24)   fidelity insurance;
- 11                  [~~Y~~] (25)   financial guaranty;
- 12                  [~~Z~~] (26)   gap;
- 13                  [~~AA~~] (27)   garage liability;
- 14                  [~~BB~~] (28)   glass;
- 15                  [~~CC~~] (29)   involuntary unemployment;
- 16                  [~~DD~~] (30)   kidnap and ransom;
- 17                  [~~EE~~] (31)   leakage and fire-extinguishing
- 18                  equipment;
- 19                  [~~FF~~] (32)   legal liability;
- 20                  [~~GG~~] (33)   liquor liability;
- 21                  [~~HH~~] (34)   livestock;
- 22                  [~~II~~] (35)   mechanical breakdown;
- 23                  [~~JJ~~] (36)   medical malpractice;
- 24                  [~~KK~~] (37)   mobile homes under transport;
- 25                  [~~LL~~] (38)   money and securities;

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- 1                   ~~[MM.]~~ (39) motor club service contracts;  
2                   ~~[NN.]~~ (40) mortgage guaranty;  
3                   ~~[OO.]~~ (41) personal excess/umbrella  
4 liability;  
5                   ~~[PP.]~~ (42) personal effects;  
6                   ~~[QQ.]~~ (43) personal liability;  
7                   ~~[RR.]~~ (44) personal property floater;  
8                   ~~[SS.]~~ (45) pollution liability;  
9                   ~~[TT.]~~ (46) premises and operations;  
10                  ~~[UU.]~~ (47) product liability;  
11                  ~~[VV.]~~ (48) products and completed  
12 operations;  
13                  ~~[WW.]~~ (49) professional liability;  
14                  ~~[XX.]~~ (50) owners and contractors;  
15                  ~~[YY.]~~ (51) stop loss liability;  
16                  ~~[ZZ.]~~ (52) surety;  
17                  ~~[AAA.]~~ (53) title;  
18                  ~~[BBB.]~~ (54) vandalism and malicious  
19 mischief;  
20                  ~~[GGG.]~~ (55) workers' compensation; and  
21                  ~~[DDD.]~~ (56) similar products relating to  
22 casualty matters.

23                   B. An insurer authorized to transact casualty  
24 insurance may write accident and health insurance as those  
25 terms are defined in Section 59A-7-3 NMSA 1978."

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1           SECTION 7. Section 59A-14-2 NMSA 1978 (being Laws 1991,  
2 Chapter 125, Section 12, as amended) is amended to read:

3           "59A-14-2. DEFINITIONS.--As used in Chapter 59A, Article  
4 14 NMSA 1978:

5           A. "affiliate" means, with respect to an insured,  
6 any entity that controls, is controlled by or is under common  
7 control with the insured;

8           B. "affiliated group" means any group of entities  
9 that are all affiliated;

10          C. "association" means the national association of  
11 insurance commissioners or any successor entity;

12          D. "authorized insurer" means, with respect to New  
13 Mexico, an insurer holding a valid and subsisting certificate  
14 of authority, issued by the superintendent, to transact  
15 insurance in New Mexico;

16          ~~[D.]~~ E. "control" means that an entity:

17               (1) ~~[an entity]~~ directly or indirectly or  
18 acting through one or more other persons owns, controls or has  
19 the power to vote twenty-five percent or more of any class of  
20 voting securities of another entity; or

21               (2) ~~[an entity]~~ controls in any manner the  
22 election of a majority of the directors or trustees of another  
23 entity;

24          ~~[E.]~~ F. "eligible surplus lines insurer" means a  
25 qualified nonadmitted insurer ~~[approved and listed pursuant to~~

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1 ~~Section 59A-14-4 NMSA 1978~~] with which a surplus lines broker  
2 may place surplus lines insurance pursuant to Section 59A-14-4  
3 NMSA 1978;

4 [F-] G. "exempt commercial purchaser" means any  
5 person purchasing commercial insurance that, at the time of  
6 placement, meets the following requirements:

7 (1) the person employs or retains a qualified  
8 risk manager to negotiate insurance coverage;

9 (2) the person has paid aggregate nationwide  
10 commercial property and casualty insurance premiums in excess  
11 of one hundred thousand dollars (\$100,000) in the immediately  
12 preceding twelve months; and

13 (3) the person:

14 (a) possesses a net worth in excess of  
15 twenty million dollars (\$20,000,000), provided that this amount  
16 shall be adjusted every five years by rule of the  
17 superintendent to account for the percentage change in the  
18 consumer price index;

19 (b) generates annual revenues in excess  
20 of fifty million dollars (\$50,000,000), provided that this  
21 amount shall be adjusted every five years by rule of the  
22 superintendent to account for the percentage change in the  
23 consumer price index;

24 (c) employs more than five hundred  
25 full-time or full-time-equivalent employees per insured entity

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1 or is a member of an affiliated group employing more than one  
2 thousand employees in the aggregate;

3 (d) is a not-for-profit organization or  
4 public entity generating annual budgeted expenditures of at  
5 least thirty million dollars (\$30,000,000), provided that this  
6 amount shall be adjusted every five years by rule of the  
7 superintendent to account for the percentage change in the  
8 consumer price index; or

9 (e) is a municipality with a population  
10 in excess of fifty thousand persons;

11 [~~G.~~] H. "export" means to place insurance with a  
12 nonadmitted insurer;

13 [~~H.~~] I. "home state" means, with respect to an  
14 insured:

15 [~~(1) except as provided in Paragraph (3) of~~  
16 ~~this subsection, the state in which an insured maintains its~~  
17 ~~principal place of business or, in the case of an individual,~~  
18 ~~the individual's principal residence;~~

19 [~~(2) except as provided in Paragraph (3) of~~  
20 ~~this subsection, if one hundred percent of the insured risk is~~  
21 ~~located out of the state referred to in Paragraph (1) of this~~  
22 ~~subsection, the state to which the greatest percentage of the~~  
23 ~~insured's taxable premium for that insurance contract is~~  
24 ~~allocated; or~~

25 [~~(3) if more than one insured from an~~

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1 ~~affiliated group are named insureds on a single nonadmitted~~  
2 ~~insurance contract, "home state" means the home state, as~~  
3 ~~determined pursuant to Paragraph (1) or (2) of this subsection,~~  
4 ~~of the member of the affiliated group that has the largest~~  
5 ~~percentage of premium attributed to it under the insurance~~  
6 ~~contract]~~

7 (1) the state:

8 (a) in which an insured maintains its  
9 principal place of business or, in the case of an individual,  
10 the individual's principal residence; or

11 (b) to which the greatest percentage of  
12 the insured's taxable premium for that insurance contract is  
13 allocated, if one hundred percent of the insured risk is  
14 located out of the state referred to in Subparagraph (a) of  
15 this paragraph; or

16 (2) if more than one insured from an  
17 affiliated group are named insureds on a single nonadmitted  
18 insurance contract, "home state" means the home state, as  
19 determined pursuant to Paragraph (1) of this subsection, of the  
20 member of the affiliated group that has the largest percentage  
21 of premium attributed to it under the insurance contract;

22 ~~[F.]~~ J. "independently procured insurance" means  
23 insurance procured directly by an insured from a nonadmitted  
24 insurer;

25 K. "nonadmitted insurance" means any property and



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1 casualty insurance permitted to be placed [~~directly or~~] through  
2 a surplus lines broker with an eligible surplus lines insurer;

3 [~~J.~~] L. "nonadmitted insurer" means an insurer not  
4 licensed to engage in the business of insurance in New Mexico  
5 but does not include a risk retention group, as "risk retention  
6 group" is defined in the federal Liability Risk Retention Act  
7 of 1986;

8 [~~K.~~] M. "premium tax" means, with respect to  
9 surplus lines, any tax, fee, assessment or other charge imposed  
10 by a government entity directly or indirectly based on any  
11 payment made as consideration for an insurance contract for  
12 such insurance, including premium deposits, assessments,  
13 registration fees and any other compensation given in  
14 consideration for a contract of insurance;

15 N. "principal place of business" means, with  
16 respect to determining the home state of the insured, the state  
17 where the insured maintains its headquarters and where the  
18 insured's high-level officers direct, control and coordinate  
19 the business activities of the insured;

20 O. "producing broker" means the broker or agent  
21 dealing directly with the person seeking insurance if the home  
22 state of the person seeking insurance is New Mexico;

23 [~~L.~~] P. "professional designation" means:

24 (1) a designation as a chartered property and  
25 casualty underwriter issued by the American institute for

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1 chartered property and casualty underwriters;

2 (2) a designation as an associate in risk  
3 management issued by the insurance institute of America;

4 (3) a designation as a certified risk manager  
5 issued by the national alliance for insurance education and  
6 research;

7 (4) a designation as a RIMS fellow issued by  
8 the global risk management institute; or

9 (5) any other designation, certification or  
10 license determined by the superintendent to demonstrate minimum  
11 competency in risk management;

12 [M-] Q. "qualified risk manager" means, with  
13 respect to an exempt commercial purchaser, a person who:

14 (1) is an employee of, or a third-party  
15 consultant retained by, the exempt commercial purchaser;

16 (2) provides skilled services in loss  
17 prevention, loss reduction, risk and insurance coverage  
18 analysis and purchase of insurance; and

19 (3) has:

20 (a) a bachelor's degree or higher from  
21 an accredited college or university in risk management,  
22 business administration, finance, economics or any other field  
23 determined by the superintendent to demonstrate minimum  
24 competence in risk management and either: 1) three years of  
25 experience in risk financing, claims administration, loss

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1 prevention, risk and insurance coverage analysis or purchase of  
2 commercial lines of insurance; or 2) a professional  
3 designation;

4 (b) a professional designation and at  
5 least seven years of experience in risk financing, claims  
6 administration, loss prevention, risk and insurance coverage  
7 analysis or purchase of commercial lines of insurance;

8 (c) at least ten years of experience in  
9 risk financing, claims administration, loss prevention, risk  
10 and insurance coverage analysis or purchase of commercial lines  
11 of insurance; or

12 (d) a graduate degree from an accredited  
13 college or university in risk management, business  
14 administration, finance, economics or any other field  
15 determined by the superintendent to demonstrate minimum  
16 competence in risk management;

17 R. "reinsurance" means the assumption by an insurer  
18 of all or part of a risk undertaken originally by another  
19 insurer;

20 [~~N-~~] S. "surplus lines broker" means an individual,  
21 firm or corporation licensed under Chapter 59A, Article 14 NMSA  
22 1978 to place insurance with eligible surplus lines insurers;

23 [~~0-~~] T. "surplus lines insurance" means any  
24 insurance permitted to be exported through a surplus lines  
25 broker in accordance with the provisions of Chapter 59A,

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1 Article 14 NMSA 1978;

2 [P-] U. "type of insurance" means one of the types  
3 of insurance required to be reported in the annual statement  
4 that must be filed with the superintendent by authorized  
5 insurers; and

6 [Q-] V. "unauthorized insurer" means a nonadmitted  
7 insurer."

8 SECTION 8. Section 59A-14-4 NMSA 1978 (being Laws 1991,  
9 Chapter 125, Section 14, as amended) is amended to read:

10 "59A-14-4. ELIGIBLE SURPLUS LINES INSURERS REQUIRED.--

11 A. No person shall export insurance on behalf of an  
12 insured whose home state is New Mexico except as authorized by  
13 and in accordance with Chapter 59A, Article 14 NMSA 1978.

14 B. No surplus lines broker shall transact surplus  
15 lines insurance with an insurer other than an eligible surplus  
16 lines insurer.

17 C. To qualify as an eligible surplus lines insurer,  
18 a nonadmitted insurer shall file information demonstrating to  
19 the superintendent's satisfaction that:

20 (1) the insurer is authorized to write the  
21 particular line of business in the state in which it is  
22 domiciled and:

23 (a) the insurer has capital and surplus  
24 or their equivalent that equals the greater of: 1) fifteen  
25 million dollars (\$15,000,000); or 2) the minimum capital and

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1 surplus required in this state for that particular line of  
2 business; or

3 (b) the insurer has capital and surplus  
4 less than the amounts required in Subparagraph (a) of this  
5 paragraph but the superintendent affirmatively finds that the  
6 insurer is acceptable as an eligible surplus lines insurer.  
7 The finding shall be based upon such factors as quality of  
8 management, capital and surplus of any parent company, company  
9 underwriting profit and investment income trends and company  
10 record and reputation within the industry. In no event shall  
11 the superintendent make an affirmative finding of acceptability  
12 when the surplus lines insurer's capital and surplus is less  
13 than four million five hundred thousand dollars (\$4,500,000);

14 (2) the insurer is a member of an "insurance  
15 exchange", which is an association of syndicates or insurers  
16 created by the laws of individual states, and shall maintain  
17 capital and surplus, or the equivalent thereof, of not less  
18 than fifty million dollars (\$50,000,000) in the aggregate. For  
19 insurance exchanges that maintain funds for the protection of  
20 all insurance exchange policyholders, each individual syndicate  
21 shall maintain minimum capital and surplus, or the equivalent  
22 thereof, of not less than five million dollars (\$5,000,000).  
23 In the event the insurance exchange does not maintain funds for  
24 the protection of all insurance exchange policyholders, each  
25 individual syndicate shall meet the minimum capital and surplus

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1 requirements of Subparagraph (a) of Paragraph (1) of this  
2 subsection;

3 (3) if the insurer is an alien insurer, the  
4 insurer is listed on the quarterly listing of alien insurers  
5 maintained by the international insurers department of the  
6 association; or

7 (4) if, pursuant to law, New Mexico has joined  
8 a compact or multistate agreement for the regulation of surplus  
9 lines insurance and the state, through the compact commission,  
10 has adopted nationwide uniform eligibility requirements, the  
11 insurer is in compliance with those requirements.

12 D. The superintendent shall maintain a list of  
13 eligible surplus line insurers from those qualified nonadmitted  
14 insurers that [~~qualify as an eligible surplus lines insurer~~  
15 ~~under this section~~] file information to satisfy the criteria  
16 established under Subsection C of this section. In addition to  
17 the requirements of Subsection C of this section, in order to  
18 appear on the list of eligible surplus lines insurers, a  
19 nonadmitted insurer shall provide annually to the  
20 superintendent a copy of [~~its~~] the insurer's most current  
21 annual statement certified and sworn to by the insurer, unless  
22 the annual statement is available to the superintendent through  
23 the national association of insurance commissioners or from  
24 public sources. The statement shall be provided or made  
25 available at the same time it is provided to the insurer's

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1 domicile, but in no event more than nine months after the close  
2 of the period reported upon, and shall be either:

3 (1) filed with and approved by the regulatory  
4 authority in the insurer's domicile; or

5 (2) certified as correct and in accordance  
6 with applicable accounting principles by a public accounting  
7 firm licensed in the insurer's domicile.

8 In the case of an insurance exchange, the statement may be  
9 an aggregate combined statement of all underwriting syndicates  
10 operating during the period reported.

11 E. The listing [~~required~~] described by Subsection D  
12 of this section shall not be deemed to constitute or evidence  
13 the superintendent's [~~approval or~~] guaranty as to the financial  
14 condition or business practices of the insurer, and no insurer  
15 or other person shall allege orally or in writing that any such  
16 listing constitutes or implies the superintendent's approval.

17 F. The superintendent may adopt rules fixing  
18 reasonable conditions to be met by insurers for the listing.  
19 For good cause shown, the superintendent may in writing waive  
20 the requirements of this section to permit insurance to be  
21 placed as to a particular risk and insurer if the insurance is  
22 not otherwise reasonably obtainable."

23 SECTION 9. Section 59A-14-4.1 NMSA 1978 (being Laws 1991,  
24 Chapter 125, Section 15) is amended to read:

25 "59A-14-4.1. WITHDRAWAL OF ELIGIBILITY FROM A SURPLUS

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1     ~~[LINE]~~ LINES INSURER.--The superintendent may at any time  
2     declare an eligible surplus lines insurer to be ineligible if  
3     the superintendent has reason to believe that the insurer:

4             A. is in unsound financial condition;

5             B. is subject to delinquency proceedings in this  
6     state or any other jurisdiction;

7             C. is no longer eligible under Section 59A-14-4  
8     NMSA 1978;

9             D. has violated the laws of this state, including  
10    ~~[but not limited to]~~ any violation of the Insurance Code or the  
11    superintendent's orders;

12            E. does not make reasonably prompt payment of loss  
13    claims or other obligations in this state or elsewhere;

14            F. has failed within sixty days to satisfy a final  
15    judgment rendered against it or against an insured for which it  
16    is legally liable under the terms of a contract of surplus  
17    lines insurance; or

18            G. has failed to satisfy the superintendent that it  
19    is fit to be allowed to continue to do business in this state.

20            The superintendent shall promptly mail notice of all such  
21    declarations to the insurer and to every surplus lines broker.  
22    Notice sent pursuant to this subsection to a licensed surplus  
23    lines broker may, at the option of the surplus lines broker, be  
24    sent by the superintendent via electronic mail."

25            SECTION 10. Section 59A-14-11 NMSA 1978 (being Laws 1991,

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1 Chapter 125, Section 17, as amended) is amended to read:

2 "59A-14-11. DUTY TO FILE REPORTS AND AFFIDAVITS.--

3 A. The producing broker shall complete, execute and  
4 provide to the surplus lines broker [~~an affidavit~~] a signed  
5 statement in substantially the form required by the  
6 superintendent, as to the diligent efforts to place the  
7 coverage with authorized insurers and the results thereof. The  
8 [~~affidavit~~] statement shall affirm that the insured was  
9 expressly advised prior to placement of the insurance and in  
10 the insurance policy that:

11 (1) the surplus lines insurer with which the  
12 insurance was to be placed is not an authorized insurer in this  
13 state and is not subject to the superintendent's supervision;  
14 and

15 (2) in the event the surplus lines insurer  
16 becomes insolvent, claims will not be paid nor will unearned  
17 premiums be returned by any New Mexico insurance guaranty fund.

18 B. [~~Within sixty days after the end of each~~  
19 ~~calendar quarter, the surplus lines broker shall file with the~~  
20 ~~superintendent a copy of each of the producing broker~~  
21 ~~affidavits required by Subsection A of this section and a copy~~  
22 ~~of the policy declarations page of all surplus lines insurance~~  
23 ~~business transacted during the calendar quarter.] The surplus  
24 lines broker shall preserve the original producing broker  
25 [~~affidavits~~] statements in compliance with Section [~~59A-14-10~~]~~

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1     59A-14-11 NMSA 1978. The declaration pages shall be  
2     confidential and shall not be subject to public inspection.  
3     The superintendent's copy of the [~~affidavits~~] statements shall  
4     be open to public inspection. If the producing broker has  
5     failed to provide the producing broker [~~affidavit~~] statement,  
6     the surplus lines broker shall at the time of quarterly filing  
7     notify the superintendent of the producing broker's failure to  
8     comply.

9             C. Each surplus lines broker shall, within sixty  
10     days after expiration of each calendar quarter, file with the  
11     superintendent a statement under the surplus lines broker's  
12     oath of all surplus lines insurance business transacted during  
13     such calendar quarter. The statement shall be on forms as  
14     prescribed and furnished by the superintendent and shall  
15     contain such information relative to the surplus lines  
16     insurance transaction as the superintendent may reasonably  
17     require for the purposes of Chapter 59A, Article 14 NMSA 1978."

18             **SECTION 11.** Section 59A-14-12 NMSA 1978 (being Laws 1984,  
19     Chapter 127, Section 250, as amended) is amended to read:

20             "59A-14-12. PREMIUM TAX ON SURPLUS LINES INSURANCE.--

21             A. Within sixty days after expiration of a calendar  
22     quarter, the surplus lines broker shall pay to the  
23     superintendent for the use of the state a tax on gross premiums  
24     received, less returned premiums, on surplus lines business  
25     where New Mexico is the home state of the insured transacted

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1 under the surplus lines broker's license during such calendar  
2 quarter as shown by the quarterly statement filed with the  
3 superintendent pursuant to Section 59A-14-11 NMSA 1978. The  
4 tax shall be at the same rate as is applicable to premiums of  
5 authorized insurers under Section 59A-6-2 NMSA 1978.

6 B. For purposes of this section, "premiums" shall  
7 include any additional amount charged the insured, including  
8 policy fees, risk purchasing group fees and inspection fees;  
9 but "premiums" shall not include any additional amount charged  
10 the insured for local, state or federal tax; regulatory  
11 authority fee; or examination fee, if any.

12 C. The superintendent may require surplus lines  
13 brokers [~~and insureds who have independently procured~~  
14 ~~insurance~~] to file tax allocation reports annually detailing  
15 the portion of the nonadmitted insurance policy premiums  
16 attributable to properties, risks or exposures located in each  
17 state.

18 D. A penalty of ten percent of the amount of tax  
19 originally due, plus one percent of such tax amount for each  
20 month or fraction thereof of delinquency after the first thirty  
21 days of delinquency, shall be paid by the surplus lines broker  
22 for failure to pay the tax in full within sixty days after  
23 expiration of the calendar quarter as provided in Subsection A  
24 of this section; except that the superintendent may waive or  
25 remit the penalty if the superintendent finds that the failure

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1 or delay in payment arose from excusable mistake or excusable  
2 inadvertence.

3 E. For a surplus lines policy issued to an insured  
4 whose home state is New Mexico and where only a portion of the  
5 risk is located in New Mexico, the entire premium tax shall be  
6 paid to the superintendent in accordance with this section. If  
7 the superintendent finds that it would increase the efficiency  
8 of the surplus lines insurance marketplace as well as the  
9 regulation of the surplus lines market, the superintendent may  
10 enter into a compact or multistate surplus lines agreement  
11 relating to eligibility for placement of surplus lines  
12 insurance and the payment, reporting, collection and  
13 apportionment of surplus lines premium taxes. If a surplus  
14 lines policy covers risks or exposures only partially in New  
15 Mexico and the superintendent has entered into an agreement  
16 with other states for the apportionment of premium taxes for  
17 multistate risks, the tax payable pursuant to this section  
18 shall be computed and paid upon the proportion of the premium  
19 that is properly allocable to the risks or exposures located in  
20 New Mexico in accordance with the terms of any such agreement."

21 SECTION 12. Section 59A-16-21 NMSA 1978 (being Laws 1984,  
22 Chapter 127, Section 287, as amended) is amended to read:

23 "59A-16-21. PAYMENT OF CLAIM BY CHECK, [ØR] DRAFT OR  
24 ELECTRONIC TRANSFER--FAILURE TO PAY--INTEREST.--

25 A. An insurer shall pay claims arising under its

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1 policies with checks or drafts [~~which~~], or, if a claimant  
2 requests, by electronic transfer of funds, that are promptly  
3 paid. Without amending other statutes dealing with checks,  
4 [~~and~~] drafts or electronic transfer of funds, a resident of New  
5 Mexico is granted a cause of action for ten percent of the  
6 amount of any check, [~~or~~] draft or electronic transfer of funds  
7 that is not paid or lawfully rejected within ten days of  
8 forwarding by a New Mexico financial institution, but in no  
9 case to be less than five hundred dollars (\$500) plus costs of  
10 suit and [~~attorneys'~~] attorney fees. The insurer shall not be  
11 required to pay such civil damages for delay if it proves that  
12 the delay in processing and payment was caused by a financial  
13 institution or postal or delivery service and the check, [~~or~~]  
14 draft or electronic transfer of funds was paid or lawfully  
15 rejected within forty-eight hours of actual receipt of the  
16 draft, [~~or~~] check or electronic transfer of funds by the person  
17 on whom drawn.

18 B. Notwithstanding any provision of the Insurance  
19 Code, any insurer issuing any policy, certificate or contract  
20 of insurance, surety, guaranty or indemnity of any kind or  
21 nature [~~which~~] that fails for a period of forty-five days,  
22 after required proof of loss has been furnished, to pay to the  
23 person entitled the amount justly due shall be liable for the  
24 amount due and unpaid with interest on that amount at the rate  
25 of one and one-half times the prime lending rate, as determined

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1 by the superintendent, for New Mexico banks per year during the  
2 period the claim is unpaid.

3 C. Subsection B of this section shall not apply to  
4 any claims in arbitration or litigation."

5 SECTION 13. Section 59A-16C-14 NMSA 1978 (being Laws  
6 1998, Chapter 115, Section 14, as amended) is amended to read:

7 "59A-16C-14. INSURANCE FRAUD FUND CREATED--  
8 APPROPRIATION.--

9 A. There is created an "insurance fraud fund" in the  
10 state treasury. All fees collected [~~under~~] pursuant to the  
11 provisions of the Insurance Fraud Act shall be deposited in the  
12 fund and are subject to appropriation for use in paying the  
13 expenses incurred by the superintendent in carrying out the  
14 provisions of the Insurance Fraud Act. Interest on the fund  
15 shall be credited to the fund. The fund is a continuing,  
16 nonreverting fund.

17 B. To implement the provisions of the Insurance Fraud  
18 Act, the superintendent shall determine a rate of assessment  
19 and collect a fee from authorized insurers in an amount not  
20 less than two hundred dollars (\$200) and not exceeding one-  
21 tenth of one percent of the correctly reported direct written  
22 premiums on policies written in New Mexico by the authorized  
23 insurers. The fee shall be due annually pursuant to rules  
24 promulgated by the superintendent. The failure of an insurer  
25 to pay this fee when due shall subject the insurer to a penalty

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1 of one thousand dollars (\$1,000) per month or part thereof in  
2 which the fee remains unpaid. The superintendent, after taking  
3 into account unexpended money produced by collection of the  
4 fee, shall adjust the rate of assessment each year to produce  
5 the amount of money that ~~[he]~~ the superintendent estimates will  
6 be necessary to pay expenses incurred by the superintendent in  
7 carrying out the provisions of the Insurance Fraud Act. ~~[The~~  
8 ~~assessment for a title insurer, as defined in Section 59A-30-3~~  
9 ~~NMSA 1978, shall be determined by the superintendent at the~~  
10 ~~annual hearing conducted pursuant to Section 59A-30-8 NMSA~~  
11 ~~1978.]~~

12 C. In calculating the direct written premiums for an  
13 insurer pursuant to the provisions of this section, all direct  
14 written premiums for workers' compensation insurance and for  
15 all types of insurance that are exempted by federal law shall  
16 be excluded from the calculation.

17 D. The fees required by this section are in addition  
18 to all other taxes and fees now imposed or that may be  
19 subsequently imposed."

20 SECTION 14. Section 59A-22-1 NMSA 1978 (being Laws 1984,  
21 Chapter 127, Section 422) is amended to read:

22 "59A-22-1. SCOPE OF ARTICLE.--~~[This article]~~ Chapter 59A,  
23 Article 22 NMSA 1978 applies generally to policies of  
24 individual health insurance, including student health plan  
25 policies. Nothing in ~~[this]~~ that article shall apply to or

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1 affect:

2 A. any policy of [~~workmen's~~] workers' compensation  
3 insurance or any policy of liability insurance with or without  
4 supplementary expense coverage therein; [~~or~~]

5 B. life insurance, endowment or annuity contracts or  
6 contracts supplemental thereto [~~which~~] that contain only such  
7 provisions relating to health insurance as:

8 (1) provide additional benefits in case of death  
9 by accident; and

10 (2) operate to safeguard such contracts against  
11 lapse or to give a special surrender value or special benefit  
12 or annuity in event the insured or annuitant becomes totally  
13 and permanently disabled, as defined by the contract or  
14 supplemental contract;

15 C. group or blanket health insurance, except as  
16 stated in Chapter 59A, Article 23 [~~of the Insurance Code~~] NMSA  
17 1978; or

18 D. reinsurance."

19 SECTION 15. Section 59A-23-2 NMSA 1978 (being Laws 1984,  
20 Chapter 127, Section 461) is amended to read:

21 "59A-23-2. BLANKET HEALTH INSURANCE.--

22 A. Blanket health insurance is [~~hereby~~] declared to  
23 be that form of health insurance covering special groups of not  
24 [~~less~~] fewer than ten [~~(10)~~] persons as enumerated in one of  
25 the following paragraphs [~~(1) to (5) inclusive~~]:

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1                   (1) under a policy or contract issued to [~~any~~] a  
2 common carrier, which shall be deemed the policyholder,  
3 covering a group defined as all persons who may become  
4 passengers on [~~such~~] the common carrier;

5                   (2) under a policy or contract issued to an  
6 employer [~~who~~] that shall be deemed the policyholder, covering  
7 [~~any~~] a group of employees defined by reference to exceptional  
8 hazards incident to [~~such~~] employment;

9                   (3) under a policy or contract issued to a  
10 college, school or other institution of learning or to the head  
11 or principal thereof, who or which shall be deemed the  
12 policyholder, covering students and teachers;

13                   (4) under a policy or contract issued in the  
14 name of [~~any~~] a volunteer fire department or first aid or other  
15 such volunteer group, which shall be deemed the policyholder,  
16 covering all of the members of [~~such~~] the department or group;  
17 or

18                   (5) under a policy or contract issued to any  
19 other substantially similar group [~~which~~] that, in the  
20 discretion of the superintendent, may be subject to the  
21 issuance of a blanket health policy or contract.

22                   B. An individual application shall not be required  
23 from a person covered under a blanket sickness or accident  
24 policy or contract.

25                   C. All benefits under any blanket sickness and

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1 accident policy shall be payable to the person insured or [~~his~~]  
2 the person's agent, or to [~~his~~] the person's designated  
3 beneficiary or beneficiaries, or to [~~his~~] the person's estate,  
4 except that if the person insured [~~be~~] is a minor, such  
5 benefits may be made payable to [~~his~~] the minor's parent,  
6 guardian or other person actually supporting [~~him~~] the minor.

7 D. A blanket sickness or accident policy or contract  
8 issued to a college, school or other institution of learning or  
9 to the head or principal thereof shall not be identified or  
10 sold as a student health plan."

11 SECTION 16. Section 59A-23B-5 NMSA 1978 (being Laws 1991,  
12 Chapter 111, Section 5) is amended to read:

13 "59A-23B-5. POLICY OR PLAN DISCLOSURE REQUIREMENTS.--

14 A. Upon offering coverage under a policy or plan for  
15 any individual, family or group member, an insurer, fraternal  
16 benefit society, health maintenance organization or nonprofit  
17 healthcare plan shall provide the individual, family or group  
18 member with a written disclosure statement containing at least  
19 the following:

20 (1) a general explanation of those mandated  
21 benefits and providers not covered by the policy or plan;

22 (2) an explanation of the managed care and cost  
23 control features of the policy or plan, along with all  
24 appropriate mailing addresses and telephone numbers to be  
25 utilized by the insured or enrollees seeking information or

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1 authorization; and

2 (3) an explanation of the primary and preventive  
3 care features of the policy or plan.

4 B. Any disclosure statement provided pursuant to  
5 Subsection A of this section shall be written in a clear and  
6 understandable form and format and shall be separate from the  
7 insurance policy or certificate or other evidence of coverage  
8 provided to the individual, family and group member.

9 C. Before any insurer, fraternal benefit society,  
10 health maintenance organization or nonprofit healthcare plan  
11 issues a policy or plan contract, the insurer, fraternal  
12 benefit society, health maintenance organization or nonprofit  
13 healthcare plan shall obtain from the prospective policyholder,  
14 contract holder or member a signed written statement in which  
15 the prospective policyholder, contract holder or member:

16 (1) certifies as to the eligibility of the  
17 individual, family or group for coverage under the policy or  
18 plan;

19 (2) acknowledges the limited nature of the  
20 coverage, including the managed care and cost control features  
21 of the policy or plan;

22 (3) acknowledges that if misrepresentations are  
23 made regarding eligibility for coverage under a policy or plan,  
24 the person making such misrepresentations shall forfeit  
25 coverage provided by the policy or plan if the insurer,

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1 fraternal benefit society, health maintenance organization or  
2 nonprofit healthcare plan relied upon the misrepresentation to  
3 its detriment; and

4 (4) acknowledges that the prospective  
5 policyholder, contract holder or member had, at the time of  
6 application for the policy or plan, been offered the  
7 opportunity to purchase coverage that included all applicable  
8 mandated benefits and the prospective policyholder, contract  
9 holder or member rejected such coverage.

10 D. A copy of the written statement required by  
11 Subsection C of this section shall be provided to the  
12 prospective policyholder, contract holder or member no later  
13 than at the time of delivery of the policy or plan and the  
14 original signed written statement shall be retained in the  
15 files of the insurer, fraternal benefit society, health  
16 maintenance organization or nonprofit healthcare plan while the  
17 policy or plan remains in effect or for three years, whichever  
18 is less.

19 E. Any material statement made by an applicant for  
20 coverage under a policy or plan that falsely certifies to the  
21 applicant's eligibility for coverage shall serve as the basis  
22 for termination of coverage under the policy or plan if the  
23 insurer, fraternal benefit society, health maintenance  
24 organization or nonprofit healthcare plan detrimentally relied  
25 upon the misrepresentation.

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1 F. All printed, radio or television communication  
2 intended to be used for marketing a policy or plan in the state  
3 and the disclosures required by Subsection A of this section  
4 shall be submitted for review and approval by the  
5 superintendent [~~of insurance~~] prior to use. The superintendent  
6 [~~of insurance~~] shall complete the review within [~~thirty~~] sixty  
7 days or else the materials submitted shall be deemed approved  
8 for use."

9 SECTION 17. Section 59A-25-8 NMSA 1978 (being Laws 1984,  
10 Chapter 127, Section 479) is amended to read:

11 "59A-25-8. FILING, APPROVAL AND WITHDRAWAL OF FORMS.--

12 A. All policies, certificates of insurance, notice of  
13 proposed insurance, applications for insurance, endorsements  
14 and riders delivered or issued for delivery in this state and  
15 the schedules of premium rates pertaining [~~thereto~~] to them  
16 shall be filed by the insurer with the superintendent.

17 B. The superintendent shall, within [~~thirty (30)~~]  
18 sixty days after the filing of any such policies, certificates  
19 of insurance, notice of proposed insurance, applications for  
20 insurance, endorsements and riders, disapprove any [~~such~~] form  
21 if the benefits provided therein are not reasonable in relation  
22 to the premium charge or if it contains provisions [~~which~~] that  
23 are unjust, unfair, inequitable, misleading, deceptive or  
24 encourage misrepresentation of the coverage or that are  
25 contrary to [~~any~~] a provision of the Insurance Code or of [~~any~~]

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1     a rule or regulation promulgated thereunder.

2             C. If the superintendent notifies the insurer that  
3 the form is disapproved, it is unlawful thereafter for the  
4 insurer to issue or use [~~such~~] the form. In [~~such~~] the notice,  
5 the superintendent shall specify the reason for disapproval and  
6 state that a hearing will be granted within twenty [~~(20)~~] days  
7 after request in writing by the insurer. No such policy,  
8 certificate of insurance, notice of proposed insurance, nor any  
9 application, endorsement or rider, shall be issued or used  
10 until the expiration of thirty [~~(30)~~] days after it has been  
11 [~~so~~] filed, unless the superintendent gives [~~his~~] prior written  
12 approval thereto.

13             D. The superintendent may, at any time after a  
14 hearing held not less than twenty [~~(20)~~] days after written  
15 notice to the insurer, withdraw [~~his~~] approval of [~~any such~~] a  
16 form on any ground set forth in Subsection B [~~above~~] of this  
17 section. The written notice of hearing shall state the reason  
18 for the proposed withdrawal.

19             E. The insurer shall not issue [~~such~~] the forms or  
20 use them after the effective date of [~~such~~] withdrawal.

21             F. If a group policy of credit life insurance or  
22 credit health insurance has been or is delivered in another  
23 state, the insurer shall be required to file only the group  
24 certificate and notice of proposed insurance delivered or  
25 issued for delivery in this state as specified in Subsections B

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1 and D of Section [~~478 of this article~~] 59A-25-7 NMSA 1978, and  
2 [~~such~~] the forms shall be approved by the superintendent if  
3 they conform with the requirements specified in such  
4 subsections and if the schedules of premium rates applicable to  
5 the insurance evidenced by [~~such~~] the certificate or notice are  
6 not in excess of the insurer's schedules of premium rates filed  
7 with the superintendent."

8 SECTION 18. Section 59A-57-3 NMSA 1978 (being Laws 1998,  
9 Chapter 107, Section 3) is amended to read:

10 "59A-57-3. DEFINITIONS.--As used in the Patient  
11 Protection Act:

12 A. "continuous quality improvement" means an ongoing  
13 and systematic effort to measure, evaluate and improve a  
14 managed health care plan's process in order to improve  
15 continually the quality of health care services provided to  
16 enrollees;

17 B. "covered person", "enrollee", "patient" or  
18 "consumer" means an individual who is entitled to receive  
19 health care benefits provided by a managed health care plan;

20 C. "department" means the office of superintendent of  
21 insurance [~~department~~];

22 D. "emergency care" means health care procedures,  
23 treatments or services delivered to a covered person after the  
24 sudden onset of what reasonably appears to be a medical  
25 condition that manifests itself by symptoms of sufficient

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1 severity, including severe pain, that the absence of immediate  
2 medical attention could be reasonably expected by a reasonable  
3 layperson to result in jeopardy to a person's health, serious  
4 impairment of bodily functions, serious dysfunction of a bodily  
5 organ or part or disfigurement to a person;

6 E. "health care facility" means an institution  
7 providing health care services, including a hospital or other  
8 licensed inpatient center; an ambulatory surgical or treatment  
9 center; a skilled nursing center; a residential treatment  
10 center; a home health agency; a diagnostic, laboratory or  
11 imaging center; and a rehabilitation or other therapeutic  
12 health setting;

13 F. "health care insurer" means a person that has a  
14 valid certificate of authority in good standing under the  
15 Insurance Code to act as an insurer, health maintenance  
16 organization, nonprofit health care plan or prepaid dental  
17 plan;

18 G. "health care professional" means a physician or  
19 other health care practitioner, including a pharmacist, who is  
20 licensed, certified or otherwise authorized by the state to  
21 provide health care services consistent with state law;

22 H. "health care provider" or "provider" means a  
23 person that is licensed or otherwise authorized by the state to  
24 furnish health care services and includes health care  
25 professionals and health care facilities;



underscoring material = new  
~~[bracketed material] = delete~~

1 I. "health care services" includes, to the extent  
2 offered by the plan, physical health or community-based mental  
3 health or developmental disability services, including services  
4 for developmental delay;

5 J. "managed health care plan" or "plan" means a  
6 health care insurer or a provider service network when offering  
7 a benefit that either requires a covered person to use, or  
8 creates incentives, including financial incentives, for a  
9 covered person to use, health care providers managed, owned,  
10 under contract with or employed by the health care insurer or  
11 provider service network. "Managed health care plan" or "plan"  
12 does not include a health care insurer or provider service  
13 network offering a traditional fee-for-service indemnity  
14 benefit or a benefit that covers only short-term travel,  
15 accident-only, limited benefit [~~student health plan~~] or  
16 specified disease policies;

17 K. "person" means an individual or other legal  
18 entity;

19 L. "point-of-service plan" or "open plan" means a  
20 managed health care plan that allows enrollees to use health  
21 care providers other than providers under direct contract with  
22 or employed by the plan, even if the plan provides incentives,  
23 including financial incentives, for covered persons to use the  
24 plan's designated participating providers;

25 M. "provider service network" means two or more

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1 health care providers affiliated for the purpose of providing  
2 health care services to covered persons on a capitated or  
3 similar prepaid flat-rate basis that hold a certificate of  
4 authority pursuant to the Provider Service Network Act;

5 N. "superintendent" means the superintendent of  
6 insurance; and

7 O. "utilization review" means a system for reviewing  
8 the appropriate and efficient allocation of health care  
9 services given or proposed to be given to a patient or group of  
10 patients."

11 SECTION 19. A new section of the Risk-Based Capital Act  
12 is enacted to read:

13 "[NEW MATERIAL] SEVERABILITY.--If any part or application  
14 of the Risk-Based Capital Act is held invalid, the remainder or  
15 its application to other situations or persons shall not be  
16 affected."

17 SECTION 20. REPEAL.--Sections 59A-14A-1 and 59A-14A-2  
18 NMSA 1978 (being Laws 2011, Chapter 156, Sections 1 and 2) are  
19 repealed.

20 SECTION 21. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2017.