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FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/19

SPONSOR Roybal Caballero **LAST UPDATED** _____ **HB** 142

SHORT TITLE Preexisting Condition Health Coverage **SB** _____

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY19 | FY20 | FY21 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|---------------|---------------|-------------------|---------------------------|-------------------------|
| Total | | Indeterminate | Indeterminate | Indeterminate | Recurring | See Fiscal Implications |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
 New Mexico Attorney General (NMAG)
 New Mexico Public School Insurance Authority (NMPSIA)
 Office of Superintendent of Insurance (OSI)
 Retiree Health Care Authority (RHCA)
 University of New Mexico Health Sciences Center (UNMHSC)

Responses Not Received From

General Services Department/Risk Management (GSD)
 Human Services Department (HSD)

SUMMARY

Synopsis of Bill

House Bill 142 proposes to guarantee health coverage to New Mexicans without exclusion for preexisting conditions. The term “[p]reexisting conditions” is generally defined as physical or mental conditions for which medical advice, medication, diagnosis, care or treatment was recommended for or received by an applicant for health insurance within six months before the effective date of coverage, except pregnancy is not considered a preexisting condition. HB 142 guarantee health coverage applies to individual health insurance policies pursuant to Chapter 59A, Article 22, group and blanket health insurance policies pursuant to Chapter 59A, Article 23, Health Maintenance Organizations pursuant to Chapter 59A, Article 46 and Nonprofit Health Care Plans pursuant to Chapter 59A, Article 47. In addition to defining “Preexisting

Condition”, HB 142 defines “Health Insurer.” It is intended to become effective January 1, 2020.

FISCAL IMPLICATIONS

The UNM Health Sciences Center writes the costs for covering people with preexisting conditions are offset by the individual mandate which balances the risk pool by requiring healthy, young people to be insured. If the individual mandate is overturned, the coverage of pre-existing conditions does not have a counterbalance in the insurance pool. The Health Sciences Center would continue to provide care to those with preexisting conditions with or without insurance coverage but having coverage for people with pre-existing conditions means the cost burden is not shifted to the healthcare providers.

DOH reports the bill’s fiscal impact would depend on the extent to which NMDOH might need to increase services to New Mexicans with preexisting conditions who are uninsured and underinsured if HB142 does not include a community rating provision.

SIGNIFICANT ISSUES

The Office of Superintendent of Insurance indicates SB142 does not apply to all forms of health insurance coverage, which may lead to skewed risk pools in the state’s insurance markets. The legislation does not apply to or repeal the Minimum Healthcare Protection Act, N. M. S. A. 1978, § 59A-23B-1. Should the ACA fall and without application of this law to this section of the insurance code or its repeal, this coverage would likely become a refuge for healthier individuals, creating adverse selection in the individual and small group market. Likewise, a similar issue potentially arises with coverage offered under multiple employer welfare arrangements (MEWAs or association health plans) pursuant to N.M.S.A. 1978, § 59A-15-20, franchise insurance, N.M.S.A. 1978, § 59A-22-37 and other more limited forms of coverage. The legislation does not address issues of potential market bifurcation, which may result in adverse selection and the destabilization of the individual and small group markets.

TECHNICAL ISSUES

NMAG reports the bill’s definition for “Preexisting Condition” is slightly different than the definition for “Preexisting Condition” provided under NMSA 1978, Section 59A-22-5. There, a condition may be deemed preexisting, provided that:

- (1) the condition manifested itself within a period of six months prior to the effective date of coverage in a manner that would cause a reasonably prudent person to seek diagnosis, care or treatment; or
- (2) medical advice or treatment relating to the condition was recommended or received within a period of six months prior to the effective date of coverage.

OTHER SUBSTANTIVE ISSUES

The Department of Health reports the following:

The federal Affordable Care Act (ACA) contains specific provisions designed to help people obtain coverage regardless of their health status (www.hhs.gov/healthcare/about-the-aca/pre-existing-conditions/index.html). For health insurance policies that went into effect on or after January 1, 2014, these ACA provisions have prevented insurance companies from:

1. denying someone a policy because they have a preexisting condition (the “guaranteed issue” requirement),
2. refusing to cover services that people need to treat a preexisting condition (“preexisting condition exclusions”), and,
3. charging a higher premium based on a person’s health status (the “community rating” provision) (www.commonwealthfund.org/blog/2018/lawsuit-ACA-preexisting-condition-protections-where-you-live).

According to information provided by the National Conference of State Legislatures (NCSL) in September 2018 (www.ncsl.org/research/health/health-insurance-and-states-overview.aspx), “a pending federal lawsuit threatens Affordable Care Act preexisting condition protections but impact will depend on where coverage is purchased. New research published Aug. 29, 2018, illustrates 1) If the ACA’s preexisting condition protections are invalidated, consumers may be turned down for insurance, charged higher premiums, or have benefits for their health problems excluded from coverage. 2) States have the ability to enact and enforce their own laws to protect consumers, should ACA preexisting condition protections be removed”. In New Mexico, an estimated 27% (332,000) of nonelderly adults had a preexisting condition under pre-ACA practices that may have prevented them from obtaining insurance ([Kaiser Family Foundation](http://www.kaiserfamilyfoundation.org), 2015). Several states have already adopted their own laws to incorporate some or all of the ACA’s protections (www.commonwealthfund.org/blog/2018/lawsuit-ACA-preexisting-condition-protections-where-you-live).

The provisions of HB142 would provide some, but not all, of the protections to New Mexicans with preexisting conditions included under the ACA. If the ACA provisions are struck down, the differences between what is protected by the ACA and HB142 may impact access to coverage for individuals buying individual plans, for individuals whose genetic information indicates a risk of disease, and for newborns or adopted children whose parents/guardians have coverage that falls under the Group and Blanket Health Insurance Contracts statute (59A-23).

HB142 does not include a community rating provision, which is included in the current ACA provisions, meaning that health insurers and HMOs could charge a higher premium based on a person’s health status. If insurers and HMOs elect to charge higher premiums to individuals with preexisting conditions, this could make health insurance unaffordable to many New Mexicans living with established health care needs. Colorado, Massachusetts, New York and Virginia, have already adopted all three ACA or equivalent protections, including the community rating provision (www.commonwealthfund.org/blog/2018/lawsuit-ACA-preexisting-condition-protections-where-you-live). In total, eight states have adopted the ACA’s community rating provision and six states have adopted community rating provisions that differ slightly from the ACA.