

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 204

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO EMPLOYEE LEASING; CODIFYING THE INSURANCE MARKET
RULES APPLICABLE TO GROUP HEALTH PLANS SPONSORED BY EMPLOYEE
LEASING CONTRACTORS.

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

SECTION 1. A new section of the New Mexico Insurance Code
is enacted to read:

"~~[NEW MATERIAL]~~ EMPLOYEE LEASING CONTRACTOR GROUP HEALTH
PLAN REQUIREMENTS.--

A. A group health plan sponsored by an employee
leasing contractor shall be treated as a multiple employer
welfare arrangement for purposes of the Insurance Code.

B. For the purposes of determining whether an
employee leasing contractor is a small or large employer, the
employee leasing contractor's leased workers shall be counted

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underscoring material = new
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1 as employees in addition to the employee leasing contractor's
2 employees, and when an employee leasing contractor has:

3 (1) at least two but not more than fifty
4 employees, the employee leasing contractor shall be treated as
5 a small employer pursuant to the Health Insurance Portability
6 Act, and the group health plan that it sponsors shall be
7 subject to the rules of the small group market; and

8 (2) fifty-one or more employees, the employee
9 leasing contractor shall be treated as a large employer
10 pursuant to the Health Insurance Portability Act, and the group
11 health plan that it sponsors shall be subject to the rules of
12 the large group market.

13 C. With respect to a group health plan described in
14 this section that is subject to large group market rules, the
15 rules shall apply to the group health plan as a whole and any
16 rules applicable solely to other markets, such as the small
17 group market or individual market, shall not apply to the group
18 health plan or to any of the coverage provided by the group
19 health plan.

20 D. With respect to group health plans described in
21 this section, the group health plans and the coverage provided
22 by the group health plans shall not be made subject to rate
23 standards or mandated benefits or coverage not otherwise
24 generally applicable to policies offered in the respective
25 group market to which the group health plan belongs.

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1 E. For the purposes of this section:

2 (1) "employee leasing contractor" means any
3 person who is registered as an employee leasing contractor
4 pursuant to the Employee Leasing Act;

5 (2) "individual market" means the market for
6 health insurance coverage offered to individuals other than in
7 connection with a group health plan;

8 (3) "large group market" means the health
9 insurance market under which individuals obtain health
10 insurance coverage on behalf of themselves and their dependents
11 through a group health plan maintained by a large employer;

12 (4) "leased worker" means a worker provided by
13 an employee leasing contractor who is treated as a leased
14 worker for the purposes of the Employee Leasing Act;

15 (5) "multiple employer welfare arrangement"
16 means a plan for providing welfare benefits for employees of
17 more than one employer as defined by 29 U.S.C. Section 1002;
18 and

19 (6) "small group market" means the health
20 insurance market under which individuals obtain health
21 insurance coverage through a group health plan maintained by a
22 small employer."

23 SECTION 2. Section 59A-23-3 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 462, as amended) is amended to read:

25 "59A-23-3. GROUP HEALTH INSURANCE.--

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

1 A. Group health insurance is that form of health
2 insurance covering groups of persons, with or without their
3 dependents, and issued upon the following basis:

4 (1) under a policy issued to an employer, who
5 shall be deemed the policyholder, insuring at least one
6 employee of such employer for the benefit of persons other than
7 the employer. The term "employees", as used in this section,
8 includes the officers, managers and employees of the employer,
9 leased workers if the employer is registered as an employee
10 leasing contractor pursuant to the Employee Leasing Act, the
11 partners, if the employer is a partnership, the officers,
12 managers and employees of subsidiary or affiliated corporations
13 of a corporation employer, and the individual proprietors,
14 partners and employees of individuals and firms the business of
15 which is controlled by the insured employer through stock
16 ownership, contract or otherwise. The term "employer", as used
17 in this section, includes any municipal or governmental
18 corporation, unit, agency or department thereof and the proper
19 officers, as such, or any unincorporated municipality or
20 department thereof, as well as private individuals,
21 partnerships and corporations. A small employer shall also be
22 subject to the Small Group Rate and Renewability Act. A "small
23 employer" means any person, firm, corporation, partnership or
24 association actively engaged in business who, on at least fifty
25 percent of its working days during the preceding year, employed

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1 no more than fifty eligible employees. In determining the
2 number of eligible employees, companies that are affiliated
3 companies or that are eligible to file a combined tax return
4 for purposes of state taxation shall be considered one
5 employer;

6 (2) under a policy issued to an association,
7 including a labor union and an agricultural association, which
8 shall have a constitution and bylaws and which has been
9 organized and is maintained in good faith for purposes other
10 than that of obtaining insurance, insuring at least twenty-five
11 members of the association for the benefit of persons other
12 than the association or its officers or trustees, as such;

13 (3) under a policy issued to a cooperative; or

14 (4) under a policy issued to any other
15 substantially similar group that, in the discretion of the
16 superintendent, may be subject to the issuance of a group
17 sickness and accident policy or contract.

18 B. Each policy, as provided by this section, shall
19 contain in substance the following provisions:

20 (1) a provision that the policy, the
21 application of the policyholder, if such application or copy
22 thereof is attached to such policy, and the individual
23 applications, if any, submitted in connection with such policy
24 by the employees or members, shall constitute the entire
25 contract between the parties, and that all statements, in the

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1 absence of fraud, made by any applicant or applicants shall be
2 deemed representations and not warranties, and that no such
3 statement shall void the insurance or reduce benefits
4 thereunder unless contained in a written application for such
5 insurance;

6 (2) a provision that the insurer will furnish
7 to the policyholder, for delivery to each employee or member of
8 the insured group, an individual certificate setting forth in
9 summary form a statement of the essential features of the
10 insurance coverage of such employee or member and to whom
11 benefits thereunder are payable. If dependents are included in
12 the coverage, only one certificate need be issued for each
13 family unit; and

14 (3) a provision that to the group originally
15 insured may be added from time to time eligible new employees
16 or members or dependents, as the case may be, in accordance
17 with the terms of the policy.

18 C. For purposes of this section only, the directors
19 of a corporation shall be deemed to be employees of the
20 corporation.

21 D. For the purposes of this section, "cooperative"
22 means a private health insurance cooperative established
23 pursuant to Section [~~2 of this 2011 act~~] 59A-23-11 NMSA 1978."