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SENATE BILL

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

DISCUSSION DRAFT

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING SECTIONS OF THE SMALL GROUP RATE AND RENEWABILITY ACT AND THE HEALTH INSURANCE ALLIANCE ACT TO CHANGE THE DEFINITION OF "SMALL EMPLOYER".

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

SECTION 1. Section 59A-23C-3 NMSA 1978 (being Laws 1991, Chapter 153, Section 3, as amended) is amended to read:

"59A-23C-3. DEFINITIONS.--As used in the Small Group Rate and Renewability Act:

A. "actuarial certification" means a written statement by a member of the American academy of actuaries or another individual acceptable to the superintendent that a small employer carrier is in compliance with the provisions of Section 59A-23C-5 NMSA 1978, based upon the person's examination, including a review of the appropriate records and

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1 of the actuarial assumptions and methods used by the carrier in
2 establishing premium rates for applicable health benefit plans;

3 B. "base premium rate" means, for each class of
4 business as to a rating period, the lowest premium rate charged
5 under a rating system for that class of business by the small
6 employer carrier to small employers with similar case
7 characteristics for health benefit plans with the same or
8 similar coverage;

9 C. "carrier" means any person who provides health
10 insurance in this state. For the purposes of the Small Group
11 Rate and Renewability Act, "carrier" or "insurer" includes a
12 licensed insurance company, a licensed fraternal benefit
13 society, a prepaid hospital or medical service plan, a health
14 maintenance organization, a nonprofit health care organization,
15 a multiple employer welfare arrangement or any other person
16 providing a plan of health insurance subject to state insurance
17 regulation;

18 D. "case characteristics" means demographic or
19 other relevant characteristics of a small employer, as
20 determined by a small employer carrier, that are considered by
21 the carrier in the determination of premium rates for the small
22 employer, but "case characteristics" does not include claim
23 experience, health status and duration of coverage since issue;

24 E. "class of business" means all small employers as
25 shown on the records of the small employer carrier. A separate

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1 class of business may be established by the small employer
2 carrier on the basis that the applicable health benefit plans
3 have been acquired from another small employer carrier as a
4 distinct grouping of plans;

5 F. "creditable coverage" means, with respect to an
6 individual, coverage of the individual pursuant to:

- 7 (1) a group health plan;
- 8 (2) health insurance coverage;
- 9 (3) Part A or Part B of Title 18 of the Social
10 Security Act;
- 11 (4) Title 19 of the Social Security Act except
12 coverage consisting solely of benefits pursuant to Section 1928
13 of that title;
- 14 (5) 10 USCA Chapter 55;
- 15 (6) a medical care program of the Indian
16 health service or of an Indian nation, tribe or pueblo;
- 17 (7) the Comprehensive Health Insurance Pool
18 Act;
- 19 (8) a health plan offered pursuant to 5 USCA
20 Chapter 89;
- 21 (9) a public health plan as defined in federal
22 regulations; or
- 23 (10) a health benefit plan offered pursuant to
24 Section 5(e) of the federal Peace Corps Act;

25 G. "department" means the [~~department of~~] insurance

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1 division of the public regulation commission;

2 H. "group health plan" means an employee welfare
3 benefit plan as defined in Section 3(1) of the federal Employee
4 Retirement Income Security Act of 1974 to the extent that the
5 plan provides medical care and including items and services
6 paid for as medical care to employees or their dependents as
7 defined under the terms of the plan directly or through
8 insurance, reimbursement or otherwise;

9 I. "health benefit plan" or "plan" means any
10 hospital or medical expense-incurred policy or certificate,
11 hospital or medical service plan contract or health maintenance
12 organization subscriber contract. "Health benefit plan" does
13 not include accident-only, credit, dental or disability income
14 insurance, medicare supplement coverage, coverage issued as a
15 supplement to liability insurance, workers' compensation or
16 similar insurance or automobile medical-payment insurance;

17 J. "index rate" means, for each class of business
18 for small employers with similar case characteristics, the
19 arithmetic average of the applicable base premium rate and the
20 corresponding highest premium rate;

21 K. "late enrollee" means, with respect to coverage
22 under a group health plan, a participant or beneficiary who
23 enrolls under the plan other than during:

24 (1) the first period in which the individual
25 is eligible to enroll under the plan; or

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1 (2) a special enrollment period pursuant to
2 Sections [~~8 and 9 of the Health Insurance Portability Act~~]
3 59A-23E-8 and 59A-23E-9 NMSA 1978;

4 L. "new business premium rate" means, for each
5 class of business as to a rating period, the premium rate
6 charged or offered by the small employer carrier to small
7 employers with similar case characteristics for newly issued
8 health benefit plans with the same or similar coverage;

9 M. "rating period" means the calendar period for
10 which premium rates established by a small employer carrier are
11 assumed to be in effect, as determined by the small employer
12 carrier;

13 N. "small employer" means any person, firm,
14 corporation, partnership or association actively engaged in
15 business [~~who~~] that, on at least fifty percent of its working
16 days during either of the two preceding years, employed no
17 [~~less~~] fewer than [~~two~~] one and no more than [~~fifty~~] one
18 hundred eligible employees; provided that:

19 (1) in determining the number of eligible
20 employees, the spouse or dependent of an employee may, at the
21 employer's discretion, be counted as a separate employee;

22 (2) companies that are affiliated companies or
23 that are eligible to file a combined tax return for purposes of
24 state income taxation shall be considered one employer; and

25 (3) in the case of an employer that was not in

1 existence throughout a preceding calendar year, the
2 determination of whether the employer is a small or large
3 employer shall be based on the average number of employees that
4 it is reasonably expected to employ on working days in the
5 current calendar year;

6 O. "small employer carrier" means any insurer that
7 offers health benefit plans covering the employees of a small
8 employer; and

9 P. "superintendent" means the superintendent of
10 insurance."

11 SECTION 2. Section 59A-56-3 NMSA 1978 (being Laws 1994,
12 Chapter 75, Section 3, as amended) is amended to read:

13 "59A-56-3. DEFINITIONS.--As used in the Health Insurance
14 Alliance Act:

15 A. "alliance" means the New Mexico health insurance
16 alliance;

17 B. "approved health plan" means any arrangement for
18 the provisions of health insurance offered through and approved
19 by the alliance;

20 C. "board" means the board of directors of the
21 alliance;

22 D. "child" means a dependent unmarried individual
23 who is less than twenty-five years of age;

24 E. "creditable coverage" means, with respect to an
25 individual, coverage of the individual pursuant to:

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- 1 (1) a group health plan;
- 2 (2) health insurance coverage;
- 3 (3) Part A or Part B of Title 18 of the
4 federal Social Security Act;
- 5 (4) Title 19 of the federal Social Security
6 Act except coverage consisting solely of benefits pursuant to
7 Section 1928 of that title;
- 8 (5) 10 USCA Chapter 55;
- 9 (6) a medical care program of the Indian
10 health service or of an Indian nation, tribe or pueblo;
- 11 (7) the Medical Insurance Pool Act;
- 12 (8) a health plan offered pursuant to 5 USCA
13 Chapter 89;
- 14 (9) a public health plan as defined in federal
15 regulations; or
- 16 (10) a health benefit plan offered pursuant to
17 Section 5(e) of the federal Peace Corps Act;
- 18 F. "department" means the insurance division of the
19 commission;
- 20 G. "director" means an individual who serves on the
21 board;
- 22 H. "earned premiums" means premiums paid or due
23 during a calendar year for coverage under an approved health
24 plan less any unearned premiums at the end of that calendar
25 year plus any unearned premiums from the end of the immediately

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1 preceding calendar year;

2 I. "eligible expenses" means the allowable charges
3 for a health care service covered under an approved health
4 plan;

5 J. "eligible individual":

6 (1) means an individual who:

7 (a) as of the date of the individual's
8 application for coverage under an approved health plan, has an
9 aggregate of eighteen or more months of creditable coverage,
10 the most recent of which was under a group health plan,
11 governmental plan or church plan as those plans are defined in
12 Subsections P, N and D of Section 59A-23E-2 NMSA 1978,
13 respectively, or health insurance offered in connection with
14 any of those plans, but for the purposes of aggregating
15 creditable coverage, a period of creditable coverage shall not
16 be counted with respect to enrollment of an individual for
17 coverage under an approved health plan if, after that period
18 and before the enrollment date, there was a sixty-three-day or
19 longer period during all of which the individual was not
20 covered under any creditable coverage; or

21 (b) is entitled to continuation coverage
22 pursuant to Section 59A-56-20 or 59A-23E-19 NMSA 1978; and

23 (2) does not include an individual who:

24 (a) has or is eligible for coverage
25 under a group health plan;

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1 (b) is eligible for coverage under
2 medicare or a state plan under Title 19 of the federal Social
3 Security Act or any successor program;

4 (c) has health insurance coverage as
5 defined in Subsection R of Section 59A-23E-2 NMSA 1978;

6 (d) during the most recent coverage
7 within the coverage period described in Subparagraph (a) of
8 Paragraph (1) of this subsection was terminated from coverage
9 as a result of nonpayment of premium or fraud; or

10 (e) has been offered the option of
11 coverage under a COBRA continuation provision as that term is
12 defined in Subsection F of Section 59A-23E-2 NMSA 1978, or
13 under a similar state program, except for continuation coverage
14 under Section 59A-56-20 NMSA 1978, and did not exhaust the
15 coverage available under the offered program;

16 K. "enrollment date" means, with respect to an
17 individual covered under a group health plan or health
18 insurance coverage, the date of enrollment of the individual in
19 the plan or coverage or, if earlier, the first day of the
20 waiting period for that enrollment;

21 L. "gross earned premiums" means premiums paid or
22 due during a calendar year for all health insurance written in
23 the state less any unearned premiums at the end of that
24 calendar year plus any unearned premiums from the end of the
25 immediately preceding calendar year;

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1 M. "group health plan" means an employee welfare
2 benefit plan to the extent the plan provides hospital, surgical
3 or medical expenses benefits to employees or their dependents,
4 as defined by the terms of the plan, directly through
5 insurance, reimbursement or otherwise;

6 N. "health care service" means a service or product
7 furnished an individual for the purpose of preventing,
8 alleviating, curing or healing human illness or injury and
9 includes services and products incidental to furnishing the
10 described services or products;

11 O. "health insurance" means "health" insurance as
12 defined in Section 59A-7-3 NMSA 1978; any hospital and medical
13 expense-incurred policy; nonprofit health care plan service
14 contract; health maintenance organization subscriber contract;
15 short-term, accident, fixed indemnity, specified disease policy
16 or disability income insurance contracts and limited health
17 benefit or credit health insurance; coverage for health care
18 services under uninsured arrangements of group or group-type
19 contracts, including employer self-insured, cost-plus or other
20 benefits methodologies not involving insurance or not subject
21 to New Mexico premium taxes; coverage for health care services
22 under group-type contracts that are not available to the
23 general public and can be obtained only because of connection
24 with a particular organization or group; coverage by medicare
25 or other governmental programs providing health care services;

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1 but "health insurance" does not include insurance issued
2 pursuant to provisions of the Workers' Compensation Act or
3 similar law, automobile medical payment insurance or provisions
4 by which benefits are payable with or without regard to fault
5 and are required by law to be contained in any liability
6 insurance policy;

7 P. "health maintenance organization" means a health
8 maintenance organization as defined by Subsection M of Section
9 59A-46-2 NMSA 1978;

10 Q. "incurred claims" means claims paid during a
11 calendar year plus claims incurred in the calendar year and
12 paid prior to April 1 of the succeeding year, less claims
13 incurred previous to the current calendar year and paid prior
14 to April 1 of the current year;

15 R. "insured" means a small employer or its employee
16 and an individual covered by an approved health plan, a former
17 employee of a small employer who is covered by an approved
18 health plan through conversion or an individual covered by an
19 approved health plan that allows individual enrollment;

20 S. "medicare" means coverage under both Parts A and
21 B of Title 18 of the federal Social Security Act;

22 T. "member" means a member of the alliance;

23 U. "nonprofit health care plan" means a health care
24 plan as defined in Subsection K of Section 59A-47-3 NMSA 1978;

25 V. "premiums" means the premiums received for

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1 coverage under an approved health plan during a calendar year;

2 W. "small employer" means a person that [~~is a~~
3 ~~resident of this state, has employees at least fifty percent of~~
4 ~~whom are residents of this state~~] is actively engaged in
5 business and that, on at least fifty percent of its working
6 days during either of the two preceding calendar years,
7 employed no fewer than [~~two~~] one and no more than [~~fifty~~] one
8 hundred eligible employees; provided that:

9 (1) in determining the number of eligible
10 employees, the spouse or dependent of an employee may, at the
11 employer's discretion, be counted as a separate employee;

12 (2) companies that are affiliated companies or
13 that are eligible to file a combined tax return for purposes of
14 state income taxation shall be considered one employer; and

15 (3) in the case of an employer that was not in
16 existence throughout a preceding calendar year, the
17 determination of whether the employer is a small or large
18 employer shall be based on the average number of employees that
19 it is reasonably expected to employ on working days in the
20 current calendar year;

21 X. "superintendent" means the superintendent of
22 insurance;

23 Y. "total premiums" means the total premiums for
24 business written in the state received during a calendar year;
25 and

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Z. "unearned premiums" means the portion of a premium previously paid for which the coverage period is in the future."