

1 SENATE BILL 226

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Carlos R. Cisneros

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7  
8 FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

9  
10 AN ACT

11 RELATING TO HEALTH CARE; ENACTING THE HEALTH SECURITY ACT TO  
12 PROVIDE FOR COMPREHENSIVE STATEWIDE HEALTH CARE; PROVIDING FOR  
13 HEALTH CARE PLANNING; ESTABLISHING PROCEDURES TO CONTAIN HEALTH  
14 CARE COSTS; CREATING A COMMISSION; PROVIDING FOR ITS POWERS AND  
15 DUTIES; PROVIDING FOR HEALTH CARE DELIVERY REGIONS AND REGIONAL  
16 COUNCILS; DIRECTING AND AUTHORIZING THE DEVELOPMENT OF A STATE  
17 HEALTH SECURITY PLAN; PROVIDING FOR TRANSFER OF HEALTH  
18 INSURANCE EXCHANGE PERSONAL PROPERTY TO THE COMMISSION;  
19 PROVIDING PENALTIES; MAKING AN APPROPRIATION.

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. SHORT TITLE.--This act may be cited as the  
23 "Health Security Act".

24 SECTION 2. PURPOSES OF ACT.--The purposes of the Health  
25 Security Act are to:

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1           A. create a program that ensures health care  
2 coverage to all New Mexicans through a combination of public  
3 and private financing;

4           B. control escalating health care costs; and

5           C. improve the health care of all New Mexicans.

6           **SECTION 3. DEFINITIONS.--**As used in the Health Security  
7 Act:

8           A. "beneficiary" means a person eligible for health  
9 care and benefits pursuant to the health security plan;

10          B. "budget" means the total of all categories of  
11 dollar amounts of expenditures for a stated period authorized  
12 for an entity or a program;

13          C. "capital budget" means that portion of a budget  
14 that establishes expenditures for:

15                 (1) acquisition or addition of substantial  
16 improvements to real property; or

17                 (2) acquisition of tangible personal property;

18          D. "case management" means a comprehensive program  
19 designed to meet an individual's need for care by coordinating  
20 and linking the components of health care;

21          E. "commission" means the health care commission  
22 created pursuant to the Health Security Act;

23          F. "consumer price index for medical care prices"  
24 means that index as published by the bureau of labor statistics  
25 of the federal department of labor;

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1 G. "controlling interest" means:

2 (1) a five percent or greater ownership  
3 interest, direct or indirect, in the person controlled; or

4 (2) a financial interest, direct or indirect,  
5 and, because of business or personal relationships, having the  
6 power to influence important decisions of the person  
7 controlled;

8 H. "financial interest" means an ownership interest  
9 of any amount, direct or indirect;

10 I. "group practice" means an association of health  
11 care providers that provides one or more specialized health  
12 care services or a tribal or urban Indian coalition in  
13 partnership or under contract with the federal Indian health  
14 service that is authorized under federal law to provide health  
15 care to Native American populations in the state;

16 J. "health care" means health care provider  
17 services and health facility services;

18 K. "health care provider" means:

19 (1) a person licensed or certified and  
20 authorized to provide health care in New Mexico;

21 (2) an individual licensed or certified by a  
22 nationally recognized professional organization and designated  
23 as a health care provider by the commission; or

24 (3) a person that is a group practice of  
25 licensed providers or a transportation service;

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1           L. "health facility" means a school-based clinic,  
2 an Indian health service facility, a tribally operated health  
3 care facility, a state-operated health care facility, a general  
4 hospital, a special hospital, an outpatient facility, a  
5 psychiatric hospital, a primary clinic pursuant to the Rural  
6 Primary Health Care Act, a laboratory, a skilled nursing  
7 facility or a nursing facility; provided that the health  
8 facility is authorized to receive state or federal  
9 reimbursement;

10           M. "health security plan" means the program that is  
11 created and administered by the commission for provision of  
12 health care pursuant to the Health Security Act;

13           N. "major capital expenditure" means construction  
14 or renovation of facilities or the acquisition of diagnostic,  
15 treatment or transportation equipment by a health care provider  
16 or health facility that costs more than an amount recommended  
17 and established by the commission;

18           O. "operating budget" means the budget of a health  
19 facility exclusive of the facility's capital budget;

20           P. "person" means an individual or any other legal  
21 entity;

22           Q. "primary care provider" means a health care  
23 provider who is a physician, osteopathic physician, nurse  
24 practitioner, physician assistant, osteopathic physician's  
25 assistant, pharmacist clinician or other health care provider

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1 certified by the commission;

2 R. "provider budget" means the authorized  
3 expenditures pursuant to payment mechanisms established by the  
4 commission to pay for health care furnished by health care  
5 providers participating in the health security plan; and

6 S. "transportation service" means a person  
7 providing the services of an ambulance, helicopter or other  
8 conveyance that is equipped with health care supplies and  
9 equipment and is used to transport patients to health care  
10 providers or health facilities.

11 SECTION 4. HEALTH CARE COMMISSION CREATED--GOVERNMENTAL  
12 INSTRUMENTALITY.--As of June 27, 2016, the "health care  
13 commission" is created as a public body, politic and corporate,  
14 constituting a governmental instrumentality. The commission  
15 consists of fifteen members.

16 SECTION 5. CREATION OF HEALTH CARE COMMISSION MEMBERSHIP  
17 NOMINATING COMMITTEE--MEMBERSHIP, TERMS AND DUTIES OF  
18 COMMITTEE.--

19 A. As of March 14, 2016, the "health care  
20 commission membership nominating committee" is created  
21 consisting of twelve members, to reflect the geographic  
22 diversity of the state, as follows:

- 23 (1) two members appointed by the governor;  
24 (2) three members appointed by the speaker of  
25 the house of representatives;

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1                   (3) three members appointed by the president  
2 pro tempore of the senate;

3                   (4) two members appointed by the minority  
4 floor leader of the house of representatives; and

5                   (5) two members appointed by the minority  
6 floor leader of the senate.

7                   B. At the first meeting of the committee, it shall  
8 elect a chair from its membership. The chair shall vote only  
9 in the case of a tie vote.

10                  C. Members shall serve four-year terms; provided,  
11 however, that the first twelve members appointed to the  
12 committee shall serve staggered terms as follows:

13                   (1) the governor shall appoint the first two  
14 appointees to three-year terms;

15                   (2) the speaker of the house of  
16 representatives shall appoint the first three appointees so  
17 that one serves for two years, one for three years and one for  
18 four years;

19                   (3) the president pro tempore of the senate  
20 shall appoint the first three appointees so that one serves for  
21 two years, one for three years and one for four years;

22                   (4) the minority floor leader of the house of  
23 representatives shall appoint the first two members so that one  
24 serves for two years and one serves for four years; and

25                   (5) the minority floor leader of the senate

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1 shall appoint the first two members so that one serves for two  
2 years and one serves for four years.

3 D. A member shall serve until the member's  
4 successor is appointed and qualified. Successor members shall  
5 be appointed by the appointing authority that made the initial  
6 appointment to the committee. A state employee who is exempt  
7 from the Personnel Act is not eligible to serve on the  
8 committee. A member shall be eligible for or enrolled in the  
9 health security plan. An elected official shall not serve on  
10 the committee. Sufficient public notice shall be provided to  
11 allow members of the public to request consideration of  
12 appointment to the committee.

13 E. Appointed members of the committee shall have  
14 substantial knowledge of the health care system as demonstrated  
15 by education or experience. A person shall not be appointed to  
16 the committee if, currently or within the previous thirty-six  
17 months, the person or a member of the person's household is  
18 employed by, is an officer of or has a controlling interest in  
19 a person providing health care or health insurance, directly or  
20 as an agent of a health insurer.

21 F. The committee shall take appropriate action to  
22 ensure that adequate prior notice of its meetings is advertised  
23 and reported on a publicly accessible web site, in media  
24 outlets throughout the state and through the publication of a  
25 legal notice in major newspapers. Publication of the legal

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1 notice shall occur once each week for the two weeks immediately  
2 preceding the date of a meeting. Meetings of the committee  
3 shall be open to the public, and public comment shall be  
4 allowed.

5 G. A majority of the committee constitutes a  
6 quorum. The committee may allow members' participation in  
7 meetings by telephone or other electronic media that allow full  
8 participation. Meetings may be closed only for discussion of  
9 candidates prior to selection. Final selection of candidates  
10 shall be by vote of the members and shall be conducted in a  
11 public meeting.

12 H. The committee shall hold its first meeting on or  
13 before March 24, 2016. The committee shall actively solicit,  
14 accept and evaluate applications from qualified persons for  
15 membership on the commission subject to the requirements for  
16 commission membership qualifications pursuant to Section 6 of  
17 the Health Security Act.

18 I. No later than May 13, 2016, the committee shall  
19 submit to the governor the names of persons recommended for  
20 appointment to the commission by a majority of the committee.  
21 Immediately after receiving committee nominations, the governor  
22 may make one request of the committee for submission of  
23 additional names. If a majority of the committee finds that  
24 additional persons would be qualified, the committee shall  
25 promptly submit additional names and recommend those persons

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1 for appointment to the commission. The committee shall submit  
2 no more than three names for a membership position for each  
3 initial or additional appointment.

4 J. Appointed committee members shall be reimbursed  
5 pursuant to the Per Diem and Mileage Act for expenses incurred  
6 in fulfilling their duties.

7 K. Staff to assist the committee in its duties  
8 until a commission is appointed shall be furnished by the  
9 department of health. Thereafter, commission staff shall  
10 assist the committee in its duties.

11 SECTION 6. APPOINTMENT OF COMMISSION MEMBERS--  
12 QUALIFICATIONS--TERMS.--

13 A. From the nominees submitted by the health care  
14 commission membership nominating committee, the governor shall  
15 appoint fifteen members to the commission, and the initial  
16 commission shall be in place by June 12, 2016.

17 B. The terms of the initial commission members  
18 appointed shall be chosen by lot: five members shall be  
19 appointed for terms of four years; five members shall be  
20 appointed for terms of three years; and five members shall be  
21 appointed for terms of two years. Thereafter, all members  
22 shall be appointed for terms of four years. After initial  
23 terms are served, no member shall serve more than three  
24 consecutive four-year terms. A member may serve until a  
25 successor is appointed.

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1           C. A person who served on the health care  
2 commission membership nominating committee shall not be  
3 nominated for or serve on the commission within thirty-six  
4 months from the time served on the committee. A state employee  
5 who is exempt from the Personnel Act is not eligible to serve  
6 on the commission. An elected official shall not serve on the  
7 commission. A commission member shall be eligible for or  
8 enrolled in the health security plan.

9           D. When a vacancy occurs in the membership of the  
10 commission, the health care commission membership nominating  
11 committee shall meet and act within thirty days of the  
12 occurrence of the vacancy. From the nominees submitted, the  
13 governor shall fill the vacancy within thirty days after  
14 receiving final nominations.

15           E. Members of the commission shall include five  
16 persons who represent either health care providers or health  
17 facilities and ten persons who represent consumer and employer  
18 interests, the majority of whom shall represent consumer  
19 interests.

20           F. Except for persons appointed to represent health  
21 facilities or health care providers, a person shall be  
22 disqualified for appointment to the commission if, currently or  
23 during the previous thirty-six months, the person or a member  
24 of the person's household is employed by, is an officer of or  
25 has a controlling interest in a person providing health care or

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1 health insurance, directly or as an agent of a health insurer.

2 G. Persons appointed who do not represent health  
3 care providers or health facilities must have a knowledge of  
4 the health care system as demonstrated by experience or  
5 education. To ensure fair representation of all areas of the  
6 state, members shall be appointed from each of the public  
7 education commission districts as follows:

8 (1) two from public education commission  
9 district 1;

10 (2) one from public education commission  
11 district 2;

12 (3) one from public education commission  
13 district 3;

14 (4) two from public education commission  
15 district 4;

16 (5) two from public education commission  
17 district 5;

18 (6) one from public education commission  
19 district 6;

20 (7) two from public education commission  
21 district 7;

22 (8) two from public education commission  
23 district 8;

24 (9) one from public education commission  
25 district 9; and

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1 (10) one from public education commission  
2 district 10.

3 H. A member may be removed from the commission by a  
4 majority vote of the members present at a meeting where a  
5 quorum is duly constituted. The commission shall set standards  
6 for attendance and may remove a member for incompetence, lack  
7 of attendance, neglect of duty or malfeasance in office. A  
8 member shall not be removed without proceedings consisting of  
9 at least one notice of hearing and an opportunity to be heard.  
10 Removal proceedings shall be before the commission and in  
11 accordance with rules adopted by the commission.

12 I. A majority of the commission's members  
13 constitutes a quorum for the transaction of business. The  
14 commission may allow members' participation in meetings by  
15 telephone or other electronic media that allow full  
16 participation. Annually, the commission shall elect a chair  
17 and any other officers that it deems necessary.

18 J. A member may receive per diem and mileage in  
19 accordance with the provisions of the Per Diem and Mileage Act.  
20 Additionally, members shall be compensated at the rate of two  
21 hundred dollars (\$200) for each meeting actually attended not  
22 to exceed compensation for one hundred twenty meetings for a  
23 two-year period occurring in a term.

24 SECTION 7. CONFLICT OF INTEREST--DISCLOSURE BY MEMBERS  
25 AND DISQUALIFICATION FROM VOTING ON CERTAIN MATTERS.--

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1           A. The commission shall adopt a conflict-of-  
2 interest disclosure statement for use by all members that  
3 requires disclosure of a financial interest, whether or not a  
4 controlling interest, of the member or a member of the member's  
5 household in a person providing health care or health  
6 insurance.

7           B. A member representing health facilities or  
8 health care providers may vote on matters that pertain  
9 generally to health facilities or health care providers.

10          C. If there is a question about a conflict of  
11 interest of a commission member, the other members shall vote  
12 on whether to allow the member to vote.

13           **SECTION 8. CODE OF CONDUCT TO BE ADOPTED BY COMMISSION.--**

14           A. The commission shall adopt a general code of  
15 conduct for commission members and employees subject to the  
16 commission's control. The code of conduct shall include at  
17 least those matters and activities proscribed by the  
18 Governmental Conduct Act.

19           B. Violation of a provision of the adopted code of  
20 conduct is grounds for removal of a commission member and  
21 grounds for suspension, termination or other disciplinary  
22 action of an employee.

23           **SECTION 9. APPLICATION OF CERTAIN STATE LAWS TO**  
24 **COMMISSION.--**The commission and regional councils created  
25 pursuant to the Health Security Act shall be subject to and

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1 shall comply with the provisions of the:

- 2 A. Open Meetings Act;
- 3 B. State Rules Act;
- 4 C. Inspection of Public Records Act; and
- 5 D. Public Records Act.

6 SECTION 10. CHIEF EXECUTIVE OFFICER--STAFF--CONTRACTS--  
7 BUDGETS.--

8 A. The commission shall appoint and set the salary  
9 of a "chief executive officer". The chief executive officer  
10 shall serve at the pleasure of the commission and has authority  
11 to carry on the day-to-day operations of the commission and the  
12 health security plan.

13 B. The chief executive officer shall employ those  
14 persons necessary to administer and implement the provisions of  
15 the Health Security Act.

16 C. The chief executive officer and the chief  
17 executive officer's staff shall implement the Health Security  
18 Act in accordance with that act and the rules adopted by the  
19 commission. The chief executive officer may delegate authority  
20 to employees and may organize the staff into units to  
21 facilitate its work.

22 D. If the chief executive officer determines that  
23 the commission staff or a state agency does not have the  
24 resources or expertise to perform a necessary task, the chief  
25 executive officer may contract for performance from a person

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1 who has a demonstrated capability to perform the task. The  
2 commission shall establish the standards and requirements by  
3 which a contract is executed by the commission or the chief  
4 executive officer. A contract shall be reviewed by the  
5 commission or the chief executive officer to ensure that it  
6 meets the criteria, performance standards, expectations and  
7 needs of the commission.

8 E. The chief executive officer shall prepare and  
9 submit an annual budget request and plan of operation to the  
10 commission for its approval. The chief executive officer shall  
11 provide at least quarterly status reports on the budget and  
12 advise of a potential shortfall as soon as practically  
13 possible.

14 F. A contract for claims processing functions shall  
15 require that all work for claims processing, customer service,  
16 medical and utilization review, financial audit and  
17 reimbursement and related claims adjudication functions be  
18 performed entirely in New Mexico. To the extent practicable,  
19 all other work shall be performed in New Mexico.

20 SECTION 11. COMMISSION--GENERAL DUTIES.--As of June 27,  
21 2016, the commission shall:

22 A. for the initial implementation of the provisions  
23 of the Health Security Act, between March 15, 2017 and March  
24 15, 2022, adopt a five-year plan and update that plan, and  
25 adopt other long- and short-range plans to provide continuity

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1 and development of the state's health care system;

2 B. pursuant to federal law, apply for any federal  
3 waiver that the commission deems necessary to implement the  
4 health security plan;

5 C. design the health security plan to fulfill the  
6 purposes of and conform with the provisions of the Health  
7 Security Act;

8 D. provide a program to educate the public, health  
9 care providers and health facilities about the health security  
10 plan and the persons eligible to receive its benefits;

11 E. study and adopt as provisions of the health  
12 security plan cost-effective methods of providing quality  
13 health care to all beneficiaries, according high priority to  
14 increased reliance on:

15 (1) preventive and primary care that includes  
16 immunization and screening examinations;

17 (2) providing health care in rural or  
18 underserved areas of the state;

19 (3) in-home and community-based alternatives  
20 to institutional health care; and

21 (4) case management services when appropriate;

22 F. establish compensation methods for health care  
23 providers and health facilities and adopt standards and  
24 procedures for negotiating and entering into contracts with  
25 participating health care providers and health facilities;

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1           G. annually, and for those projected future periods  
2 the commission believes appropriate, establish health security  
3 plan budgets;

4           H. establish capital budgets for health facilities,  
5 limited to capital expenditures subject to the Health Security  
6 Act, and include and adopt in establishing those budgets:

7                   (1) standards and procedures for determining  
8 the budgets; and

9                   (2) a requirement for prior approval by the  
10 commission for major capital expenditures by a health facility;

11           I. negotiate and enter into health care reciprocity  
12 agreements with other states and negotiate and enter into  
13 health care agreements with out-of-state health care providers  
14 and health facilities;

15           J. develop claims and payment procedures for health  
16 care providers, health facilities and claims administrators and  
17 include provisions to ensure timely payments and provide for  
18 payment of interest when reimbursable claims are not paid  
19 within a reasonable time;

20           K. establish, in conjunction with other state  
21 agencies similarly charged, a system to collect and analyze  
22 health care data and other data necessary to improve the  
23 quality, efficiency and effectiveness of health care and to  
24 control costs of health care in New Mexico, which system shall  
25 include data on:

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1 (1) mortality, including accidental causes of  
2 death, and natality;

3 (2) morbidity;

4 (3) health behavior;

5 (4) physical and psychological impairment and  
6 disability;

7 (5) health care system costs and health care  
8 availability, utilization and revenues;

9 (6) environmental factors;

10 (7) availability, adequacy and training of  
11 health care personnel;

12 (8) demographic factors;

13 (9) social and economic conditions affecting  
14 health; and

15 (10) other factors determined by the  
16 commission;

17 L. standardize data collection and specific methods  
18 of measurement across databases and use scientific sampling or  
19 complete enumeration for reporting health information;

20 M. establish a health care delivery system that is  
21 efficient to administer and that eliminates unnecessary  
22 administrative costs;

23 N. adopt rules necessary to implement and monitor a  
24 preferred drug list, bulk purchasing or other mechanism to  
25 provide prescription drugs and a pricing procedure for

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1 nonprescription drugs, durable medical equipment and supplies,  
2 eyeglasses, hearing aids and oxygen;

3 O. establish a pharmacy and therapeutics committee  
4 to:

5 (1) conduct concurrent, prospective and  
6 retrospective drug utilization review;

7 (2) conduct pharmacoeconomic research and  
8 analysis of clinical safety, efficacy and effectiveness of  
9 drugs;

10 (3) consult with specialists in appropriate  
11 fields of medicine for therapeutic classes of drugs;

12 (4) recommend therapeutic classes of drugs,  
13 including specific drugs within each class to be included in  
14 the preferred drug list;

15 (5) identify appropriate exclusions from the  
16 preferred drug list; and

17 (6) conduct periodic clinical reviews of  
18 preferred, nonpreferred and new drugs;

19 P. study and evaluate the adequacy and quality of  
20 health care furnished pursuant to the Health Security Act, the  
21 cost of each type of service and the effectiveness of cost-  
22 containment measures in the health security plan;

23 Q. in conjunction with the human services  
24 department, apply to the United States department of health and  
25 human services for all waivers of requirements under health

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1 care programs established pursuant to the federal Social  
2 Security Act that are necessary to enable the state to deposit  
3 federal payments for services covered by the health security  
4 plan into the health security plan fund and to be the  
5 supplemental payer of benefits for persons receiving medicare  
6 benefits;

7 R. except for those programs designated in  
8 Subsection B of Section 21 of the Health Security Act, identify  
9 other federal programs that provide federal funds for payment  
10 of health care services to individuals and apply for any  
11 waivers or enter into any agreements that are necessary for  
12 services covered by the health security plan into the health  
13 security plan fund; provided, however, that agreements  
14 negotiated with the federal Indian health service shall not  
15 impair treaty obligations of the United States government and  
16 that other agreements negotiated shall not impair portability  
17 or other aspects of the health care coverage;

18 S. seek an amendment to the federal Employee  
19 Retirement Income Security Act of 1974 to exempt New Mexico  
20 from the provisions of that act that relate to health care  
21 services or health insurance, or apply to the appropriate  
22 federal agency for waivers of any requirements of that act if  
23 congress provides for waivers to enable the commission to  
24 extend coverage through the Health Security Act to as many New  
25 Mexicans as possible; provided, however, that the amendment or

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1 waiver requested shall not impair portability or other aspects  
2 of the health care coverage;

3 T. analyze developments in federal law and  
4 regulation relevant to the health security plan, and provide  
5 updates and any legislative recommendations to the legislature  
6 that the commission deems necessary pursuant to those  
7 developments;

8 U. work with the counties to determine the  
9 expenditure of funds generated pursuant to the Indigent  
10 Hospital and County Health Care Act and the Statewide Health  
11 Care Act;

12 V. seek to maximize federal contributions and  
13 payments for health care services provided in New Mexico and  
14 ensure that the contributions of the federal government for  
15 health care services in New Mexico will not decrease in  
16 relation to other states as a result of any waivers, exemptions  
17 or agreements;

18 W. study and monitor the migration of persons to  
19 New Mexico to determine if persons with costly health care  
20 needs are moving to New Mexico to receive health care and, if  
21 migration appears to threaten the financial stability of the  
22 health security plan, recommend to the legislature changes in  
23 eligibility requirements, premiums or other changes that may be  
24 necessary to maintain the financial integrity of the health  
25 security plan;

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1 X. study and evaluate health care work force data  
2 and research, and information solicited from health care  
3 providers and health care work force experts, on the effect of  
4 the health security plan on the state's provider community.  
5 This shall include the study and evaluation of the supply of  
6 health care providers in the state and providers' ability to  
7 provide high-quality health care under the health security  
8 plan;

9 Y. study and evaluate the cost of health care  
10 provider professional liability insurance and its impact on the  
11 price of health care services and recommend changes to the  
12 legislature as necessary;

13 Z. establish and approve changes in coverage  
14 benefits and benefit standards in the health security plan;

15 AA. conduct necessary investigations and inquiries;

16 BB. adopt rules necessary to implement, administer  
17 and monitor the operation of the health security plan;

18 CC. adopt rules to establish a procurement process  
19 for services and property;

20 DD. meet as needed, but no less often than once  
21 every month;

22 EE. report annually to the legislature and the  
23 governor on the commission's activities and the operation of  
24 the health security plan and include in the annual report:

25 (1) a summary of information about health care

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1 needs, health care services, health care expenditures, revenues  
2 received and projected revenues and other relevant issues  
3 relating to the health security plan, the initial five-year  
4 plan and future updates of that plan and other long- and short-  
5 range plans; and

6 (2) recommendations on methods to control  
7 health care costs and improve access to and the quality of  
8 health care for state residents, as well as recommendations for  
9 legislative action; and

10 FF. provide at least one annual training for its  
11 members on health care coverage, policy and financing.

12 **SECTION 12. COMMISSION--AUTHORITY.--**The commission has  
13 the authority necessary to carry out the powers and duties  
14 pursuant to the Health Security Act. The commission retains  
15 responsibility for its duties but may delegate authority to the  
16 chief executive officer; provided, however, that only the  
17 commission may:

18 A. approve the commission's budget and plan of  
19 operation;

20 B. approve the health security plan and make  
21 changes in the health security plan, but only after legislative  
22 approval of those changes specified in Section 30 of the Health  
23 Security Act;

24 C. make rules and conduct both rulemaking and  
25 adjudicatory hearings in person or by use of a hearing officer;

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1           D. issue subpoenas to persons to appear and testify  
2 before the commission and to produce documents and other  
3 information relevant to the commission's inquiry and enforce  
4 this subpoena power through an action in a state district  
5 court;

6           E. make reports and recommendations to the  
7 legislature;

8           F. subject to the prohibitions and restrictions of  
9 Section 21 of the Health Security Act, apply for program  
10 waivers from any governmental entity if the commission  
11 determines that the waivers are necessary to ensure the  
12 participation by the greatest possible number of beneficiaries;

13           G. apply for and accept grants, loans and  
14 donations;

15           H. acquire or lease real property and make  
16 improvements on it and acquire by lease or by purchase tangible  
17 and intangible personal property;

18           I. dispose of and transfer personal property, but  
19 only at public sale after adequate notice;

20           J. appoint and prescribe the duties of employees,  
21 fix their compensation, pay their expenses and provide an  
22 employee benefit program;

23           K. establish and maintain banking relationships,  
24 including establishment of checking and savings accounts;

25           L. participate as a qualified entity in the

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1 programs of the New Mexico finance authority; and

2 M. enter into agreements with an employer, group or  
3 other plan to provide health care services for the employer's  
4 employees or retirees; provided, however, that nothing in the  
5 Health Security Act shall be construed to reduce or eliminate  
6 benefits to which the employee or retiree is entitled.

7 **SECTION 13. ADVISORY BOARDS.--**

8 A. The commission shall establish a "health care  
9 provider advisory board" and a "health facility advisory  
10 board". The commission may establish additional advisory  
11 boards to assist it in performing its duties. Advisory boards  
12 shall assist the commission in matters requiring the expertise  
13 and knowledge of the advisory boards' members.

14 B. The commission may appoint not more than two  
15 commission members and up to five additional persons to serve  
16 on an advisory board it creates. Advisory board members shall  
17 be paid per diem and mileage in accordance with the provisions  
18 of the Per Diem and Mileage Act.

19 C. Except for the health care provider advisory  
20 board and the health facility advisory board, no more than two  
21 advisory board members shall have a controlling interest,  
22 direct or indirect, in a person providing health care or a  
23 person providing health insurance.

24 D. Staff and technical assistance for an advisory  
25 board shall be provided by the commission as necessary.

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1           SECTION 14. HEALTH CARE DELIVERY REGIONS.--The commission  
2 shall establish health care delivery regions in the state,  
3 based on geography and health care resources. The regions may  
4 have differential fee schedules, budgets, capital expenditure  
5 allocations or other features to encourage the provision of  
6 health care in rural and other underserved areas or to tailor  
7 otherwise the delivery of health care to fit the needs of a  
8 region or a part of a region.

9           SECTION 15. REGIONAL COUNCILS.--

10           A. The commission shall designate regional councils  
11 in the designated health care delivery regions. In selecting  
12 persons to serve as members of regional councils, the  
13 commission shall consider the comments and recommendations of  
14 persons in the region who are knowledgeable about health care  
15 and the economic and social factors affecting the region.

16           B. The regional councils shall be composed of the  
17 commission members who live in the region and five other  
18 members who live in the region and are appointed by the  
19 commission. No more than two noncommission council members  
20 shall have a controlling interest, direct or indirect, in a  
21 person providing health care. An individual who is, or whose  
22 household contains an individual who is, employed by or an  
23 officer of or who has a controlling interesting in a person  
24 providing health insurance, directly or as an agent of a health  
25 insurer, shall not be appointed to a regional council.

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1           C. Members of a regional council shall be paid per  
2 diem and mileage in accordance with the provisions of the Per  
3 Diem and Mileage Act.

4           D. The regional councils shall hold public hearings  
5 to receive comments, suggestions and recommendations from the  
6 public regarding regional health care needs. The councils  
7 shall report to the commission at times specified by the  
8 commission to ensure that regional concerns are considered in  
9 the development and update of the five-year plan, other short-  
10 and long-range plans and projections, fee schedules, budgets  
11 and capital expenditure allocations.

12           E. Staff technical assistance for the regional  
13 councils shall be provided by the commission.

14           **SECTION 16. RULEMAKING.--**

15           A. The commission shall adopt rules necessary to  
16 carry out the duties of the commission and the provisions of  
17 the Health Security Act.

18           B. The commission shall not adopt, amend or repeal  
19 any rule affecting a person outside the commission without a  
20 public hearing on the proposed action before the commission or  
21 a hearing officer designated by the commission. The hearing  
22 officer may be a member of the commission's staff. The hearing  
23 shall be held in a county that the commission determines would  
24 be in the interest of those affected. Notice of the subject  
25 matter of the rule, the action proposed to be taken, the time

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1 and place of the hearing, the manner in which interested  
2 persons may present their views and the method by which copies  
3 of the proposed rule or an amendment or repeal of an existing  
4 rule may be obtained shall be published once at least thirty  
5 days prior to the hearing date in a newspaper of general  
6 circulation in the state and shall also be published in an  
7 informative nonlegal format in one newspaper published in each  
8 health care delivery region and mailed at least thirty days  
9 prior to the hearing date to all persons who have made a  
10 written request for advance notice of hearing.

11 C. All rules adopted by the commission shall be  
12 filed in accordance with the State Rules Act.

13 **SECTION 17. HEALTH SECURITY PLAN.--**

14 A. After notice and public hearing, including  
15 taking public comment and the reports of the regional councils,  
16 the commission, in conjunction with other state agencies, shall  
17 adopt a five-year health security plan and review it at regular  
18 intervals for possible revision.

19 B. The health security plan shall be designed to  
20 provide comprehensive, necessary and appropriate health care  
21 benefits, including preventive health care and primary,  
22 secondary and tertiary health care for acute and chronic  
23 conditions. The health security plan may provide for certain  
24 health care services to be phased in as the health security  
25 plan budget allows.

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1 C. Pursuant to the phase-in provisions of  
2 Subsection B of this section, the commission shall provide for  
3 coverage of the following health care services:

- 4 (1) preventive health services;  
5 (2) health care provider services;  
6 (3) health facility inpatient and outpatient  
7 services;  
8 (4) laboratory tests and radiology procedures;  
9 (5) hospice care;  
10 (6) in-home, community-based and institutional  
11 long-term care services;  
12 (7) prescription drugs;  
13 (8) inpatient and outpatient mental and  
14 behavioral health services;  
15 (9) drug and other substance abuse services;  
16 (10) preventive and prophylactic dental  
17 services, including an annual dental examination and cleaning;  
18 (11) vision appliances, including medically  
19 necessary contact lenses;  
20 (12) medical supplies, durable medical  
21 equipment and selected assistive devices, including hearing and  
22 speech assistive devices; and  
23 (13) experimental or investigational  
24 procedures or treatments as specified by the commission.

25 D. Covered health care shall not include:

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1 (1) surgery for cosmetic purposes other than  
2 for reconstructive purposes;

3 (2) medical examinations and medical reports  
4 prepared for purchasing or renewing life insurance or  
5 participating as a plaintiff or defendant in a civil action for  
6 the recovery or settlement of damages; and

7 (3) orthodontic services and cosmetic dental  
8 services except those cosmetic dental services necessary for  
9 reconstructive purposes.

10 E. The health security plan shall specify the  
11 health care to be covered and the amount, scope and duration of  
12 benefits.

13 F. The health security plan shall contain  
14 provisions to control health care costs so that beneficiaries  
15 receive comprehensive, high-quality health care consistent with  
16 available revenue and budget constraints.

17 G. The health security plan shall phase in  
18 beneficiaries as their participation becomes possible through  
19 contracts, waivers or federal legislation. The health security  
20 plan may provide for certain preventive health care to be  
21 offered to all New Mexicans regardless of a person's  
22 eligibility to participate as a beneficiary.

23 H. The five-year plan as well as other long- and  
24 short-range plans adopted by the commission shall be reviewed  
25 by the regional councils and the commission annually and

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1 revised as necessary. Revisions shall be adopted by the  
2 commission in accordance with Section 11 of the Health Security  
3 Act. In projecting services under the health security plan,  
4 the commission shall take all reasonable steps to ensure that  
5 long-term care and dental care are provided at the earliest  
6 practical times consistent with budget constraints.

7 **SECTION 18. LONG-TERM CARE.--**

8 A. Long-term care may include:

9 (1) home- and community-based services,  
10 including personal assistance and attendant care; and

11 (2) institutional care.

12 B. No later than one year after the effective date  
13 of the operation of the health security plan, the commission  
14 shall appoint an advisory "long-term care committee" made up of  
15 representatives of health care consumers, providers and  
16 administrators to develop a plan for integrating long-term care  
17 into the health security plan. The committee shall report its  
18 plan to the commission no later than one year from its  
19 appointment. Committee members shall receive per diem and  
20 mileage as provided in the Per Diem and Mileage Act.

21 C. The long-term care component of the health  
22 security plan shall provide for case management and  
23 noninstitutional services when appropriate.

24 D. Nothing in this section affects long-term care  
25 services paid through private insurance or state or federal

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1 programs subject to the provisions of Section 40 of the Health  
2 Security Act.

3 E. Nothing in this section precludes the commission  
4 from including long-term care services from the inception of  
5 the health security plan.

6 SECTION 19. MENTAL AND BEHAVIORAL HEALTH SERVICES.--

7 A. No later than one year after the effective date  
8 of the operation of the health security plan, the commission  
9 shall appoint an advisory "mental and behavioral health  
10 services committee" made up of representatives of mental and  
11 behavioral health care consumers, providers and administrators  
12 to develop a plan for coordinating mental and behavioral health  
13 services within the health security plan. The committee shall  
14 report its plan to the commission no later than one year from  
15 its appointment. Committee members may receive per diem and  
16 mileage as provided in the Per Diem and Mileage Act.

17 B. The mental and behavioral health services  
18 component of the health security plan shall provide for case  
19 management and noninstitutional services where appropriate.

20 C. The health security plan shall not impose  
21 treatment limitations or financial requirements on the  
22 provision of mental and behavioral health benefits if identical  
23 limitations or requirements are not imposed on coverage of  
24 benefits for other conditions.

25 D. Nothing in this section limits mental and

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1 behavioral health services paid through private insurance or  
2 state or federal programs subject to the provisions of Section  
3 40 of the Health Security Act.

4 SECTION 20. MEDICAID COVERAGE--AGREEMENTS.--The  
5 commission may enter into appropriate agreements with the human  
6 services department or other state agency for the purpose of  
7 furthering the goals of the Health Security Act. These  
8 agreements may provide for certain services provided pursuant  
9 to the medicaid program under Title 19 and Title 21 of the  
10 federal Social Security Act to be administered by the  
11 commission to implement the health security plan.

12 SECTION 21. HEALTH SECURITY PLAN COVERAGE--CONDITIONS OF  
13 ELIGIBILITY FOR BENEFICIARIES--EXCLUSIONS.--

14 A. An individual is eligible as a beneficiary of  
15 the health security plan if the individual has been physically  
16 present in New Mexico for one year prior to the date of  
17 application for enrollment in the health security plan and if  
18 the individual has a current intention to remain in New Mexico  
19 and not to reside elsewhere. A dependent of an eligible  
20 individual is included as a beneficiary.

21 B. Individuals covered under the following  
22 governmental programs shall not be brought into coverage:

- 23 (1) federal retiree health plan beneficiaries;  
24 (2) active duty and retired military  
25 personnel; and

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1 (3) individuals covered by the federal active  
2 and retired military health programs.

3 C. Federal Indian health service or tribally  
4 operated health care program beneficiaries shall not be brought  
5 into coverage except through agreements with:

6 (1) Indian nations, tribes or pueblos;

7 (2) consortia of tribes or pueblos; or

8 (3) a federal Indian health service agency  
9 subject to the approval of the tribes or pueblos located in  
10 that agency.

11 D. If an individual is ineligible due to the  
12 residence requirement, the individual may become eligible by  
13 paying the premium required by the health security plan for  
14 coverage for the period of time up to the date the individual  
15 fulfills that requirement if the individual is an employee who  
16 physically resides and intends to reside in the state because  
17 of employment offered to the individual in New Mexico while the  
18 individual was residing elsewhere as demonstrated by furnishing  
19 that evidence of those facts required by rule adopted by the  
20 commission.

21 E. An employer, group or other plan that provides  
22 health care benefits for its employees after retirement,  
23 including coverage for payment of health care supplementary  
24 coverage if the retiree is eligible for medicare, may agree to  
25 participate in the health security plan; provided, however,

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1 that there is no loss of benefits under the retiree health  
2 benefit coverage. An employer, group or other plan that  
3 participates in the health security plan shall contribute to  
4 the health security plan for the benefit of the retiree, and  
5 the agreement shall ensure that the health benefit coverage for  
6 the retiree shall be restored in the event of the retiree's  
7 ineligibility for health security plan coverage.

8 F. The commission shall prescribe by rule  
9 conditions under which other persons in the state may be  
10 eligible for coverage pursuant to the health security plan.

11 SECTION 22. HEALTH SECURITY PLAN COVERAGE OF NONRESIDENT  
12 STUDENTS.--

13 A. Except as provided in Subsection B of this  
14 section, an educational institution shall purchase coverage  
15 under the health security plan for its nonresident students  
16 through fees assessed to those students. The governing body of  
17 an educational institution shall set the fees at the amount  
18 determined by the commission.

19 B. A nonresident student at an educational  
20 institution may satisfy the requirement for health care  
21 coverage by proof of coverage under a policy or plan in another  
22 state that is acceptable to the commission. The student shall  
23 not be assessed a fee in that case.

24 C. The commission shall adopt rules to determine  
25 proof of an individual's eligibility for the health security

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1 plan or a student's proof of nonresident health care coverage.

2 SECTION 23. REMOVING INELIGIBLE PERSONS.--The commission  
3 shall adopt rules to provide procedures for removing persons no  
4 longer eligible for coverage.

5 SECTION 24. ELIGIBILITY CARD--USE--PENALTIES FOR  
6 MISUSE.--

7 A. A beneficiary shall receive a card as proof of  
8 eligibility. The card shall be electronically readable and  
9 shall contain a photograph or electronic image of the  
10 beneficiary, information that identifies the beneficiary for  
11 treatment and billing, payment and other information the  
12 commission deems necessary. The use of a beneficiary's social  
13 security number as an identification number is not permitted.

14 B. The eligibility card is not transferable. A  
15 beneficiary who lends the beneficiary's card to another and an  
16 individual who uses another's card shall be jointly and  
17 severally liable to the commission for the full cost of the  
18 health care provided to the user. The liability shall be paid  
19 in full within one year of final determination of liability.  
20 Liabilities created pursuant to this section shall be collected  
21 in a manner similar to that used for collection of delinquent  
22 taxes.

23 C. A beneficiary who lends the beneficiary's card  
24 to another or an individual who uses another's card after being  
25 determined liable pursuant to Subsection B of this section of a

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1 previous misuse is guilty of a misdemeanor and shall be  
2 sentenced pursuant to the provisions of Section 31-19-1 NMSA  
3 1978. A third or subsequent conviction is a fourth degree  
4 felony, and the offender shall be sentenced pursuant to the  
5 provisions of Section 31-18-15 NMSA 1978.

6 SECTION 25. PRIMARY CARE PROVIDER--RIGHT TO CHOOSE--  
7 ACCESS TO SERVICES.--

8 A. Except as provided in the Workers' Compensation  
9 Act, a beneficiary has the right to choose a primary care  
10 provider.

11 B. The primary care provider is responsible for  
12 providing health care provider services to the patient except  
13 for:

14 (1) services in medical emergencies; and

15 (2) services for which a primary care provider  
16 determines that specialist services are required, in which case  
17 the primary care provider shall advise the patient of the need  
18 for and the type of specialist services.

19 C. Except as otherwise provided in this section,  
20 health care provider specialists shall be paid pursuant to the  
21 health security plan only if the patient has been referred by a  
22 primary care provider. Nothing in this subsection prevents a  
23 beneficiary from obtaining the services of a health care  
24 provider specialist and paying the specialist for services  
25 provided.

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1           D. The commission shall by rule specify when and  
2 under what circumstances a beneficiary may self-refer,  
3 including self-referral to a chiropractic physician, a doctor  
4 of oriental medicine, mental and behavioral health service  
5 providers and other health care providers who are not primary  
6 care providers.

7           E. The commission shall by rule specify the  
8 conditions under which a beneficiary may select a specialist as  
9 a primary care provider.

10           **SECTION 26. DISCRIMINATION PROHIBITED.--**A health care  
11 provider or health facility shall not discriminate against or  
12 refuse to furnish health care to a beneficiary on the basis of  
13 age, race, color, income level, national origin, religion,  
14 gender, sexual orientation, disabling condition or payment  
15 status. Nothing in this section shall require a health care  
16 provider or health facility to provide services to a  
17 beneficiary if the provider or facility is not qualified to  
18 provide the needed services or does not offer them to the  
19 general public.

20           **SECTION 27. CLAIMS REVIEW.--**

21           A. The commission shall adopt rules to provide a  
22 comprehensive claims review program. The procedures and  
23 standards used in the program shall be disclosed in writing to  
24 applicants, beneficiaries, health care providers and health  
25 facilities at the time of application to or participation in

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1 the health security plan.

2 B. The decision to approve or deny a claim based on  
3 a technicality shall be made in a timely manner and shall not  
4 exceed time limits established by rule of the commission. A  
5 final decision to deny payment for services based on medical  
6 necessity or utilization shall be based on a recommendation  
7 made by a health care professional having appropriate and  
8 adequate qualifications to make the recommendation. A denial  
9 of a claim for payment of a medical specialty service based on  
10 medical necessity or utilization shall be made only after a  
11 written recommendation for denial is made by a member of that  
12 medical specialty with credentials equivalent to those of the  
13 provider.

14 C. The fact of and the specific reasons for a  
15 denial of a health care claim shall be communicated promptly in  
16 writing to both the provider and the beneficiary involved.

17 **SECTION 28. QUALITY OF CARE--HEALTH CARE PROVIDER AND**  
18 **HEALTH FACILITIES--PRACTICE STANDARDS.--**

19 A. The commission shall adopt rules to establish  
20 and implement a quality improvement program that monitors the  
21 quality and appropriateness of health care provided by the  
22 health security plan, including evidence-based medicine, best  
23 practices, outcome measurements, consumer education and patient  
24 safety. The commission shall set standards and review benefits  
25 to ensure that effective, cost-efficient, high-quality and

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1 appropriate health care is provided under the health security  
2 plan.

3 B. The commission shall review and adopt  
4 professional practice guidelines developed by state and  
5 national medical and specialty organizations, federal agencies  
6 for health care policy and research and other organizations as  
7 it deems necessary to promote the quality and cost-  
8 effectiveness of health care provided through the health  
9 security plan.

10 C. The quality improvement program shall include an  
11 ongoing system for monitoring patterns of practice. The  
12 commission shall appoint a "health care practice advisory  
13 committee" consisting of health care providers, health  
14 facilities and other knowledgeable persons to advise the  
15 commission and staff on health care practice issues. The  
16 health care provider committee shall include both health care  
17 providers and health facilities from counties having fifty  
18 thousand or fewer inhabitants as of the most recent federal  
19 decennial census and health care providers and health  
20 facilities from counties having more than fifty thousand  
21 inhabitants as of the most recent federal decennial census.  
22 The committee may appoint subcommittees and task forces to  
23 address practice issues of a specific health care provider  
24 discipline or a specific kind of health facility; provided,  
25 however, that the subcommittee or task force includes providers

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1 of substantially similar specialties or types of facilities.  
2 The advisory committee shall provide to the commission  
3 recommended standards and guidelines to be followed in making  
4 determinations on practice issues.

5 D. With the advice of the health care practice  
6 advisory committee, the commission shall establish a system of  
7 peer education for health care providers or health facilities  
8 determined to be engaging in aberrant patterns of practice  
9 pursuant to Subsection B of this section. If the commission  
10 determines that peer education efforts have failed, the  
11 commission may refer the matter to the appropriate licensing or  
12 certifying board.

13 E. The commission shall provide by rule the  
14 procedures for recouping payments or withholding payments for  
15 health care determined by the commission with the advice of the  
16 health care practice advisory committee or subcommittee to be  
17 medically unnecessary.

18 F. The commission may provide by rule for the  
19 assessment of administrative penalties for up to three times  
20 the amount of excess payments if it finds that excessive  
21 billings were part of an aberrant pattern of practice.  
22 Administrative penalties shall be deposited in the current  
23 school fund.

24 G. After consultation with the health care practice  
25 advisory committee, the commission may suspend or revoke a

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1 health care provider's or health facility's privilege to be  
2 paid for health care provided under the health security plan  
3 based upon evidence clearly supporting a determination by the  
4 commission that the provider or facility engages in aberrant  
5 patterns of practice, including inappropriate utilization,  
6 attempts to unbundle health care services or other practices  
7 that the commission deems a violation of the Health Security  
8 Act or rules adopted pursuant to that act. As used in this  
9 subsection, "unbundle" means to divide a service into  
10 components in an attempt to increase, or with the effect of  
11 increasing, compensation from the health security plan.

12 H. The commission shall report a suspension or  
13 revocation of the privilege to be paid for health care pursuant  
14 to the Health Security Act to the appropriate licensing or  
15 certifying board.

16 I. The commission shall report cases of suspected  
17 fraud by a health care provider or a health facility to the  
18 attorney general or to the district attorney of the county  
19 where the health care provider or health facility operates for  
20 investigation and prosecution.

21 **SECTION 29. DISPUTE RESOLUTION.**--A person specifically  
22 and directly aggrieved by a decision of the commission has the  
23 right to judicial review of the decision by a state district  
24 court. As a prerequisite to judicial review, the person  
25 aggrieved must exhaust administrative remedies available

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1 through procedures for dispute resolution established by rule  
2 of the commission, including mandatory participation in  
3 mediation in a good-faith effort to resolve a dispute. The  
4 commission shall include in its rules for dispute resolution  
5 provisions for adequate notice to the disputants, opportunities  
6 to be heard in informal conferences prior to mediation and all  
7 procedural due process safeguards.

8 SECTION 30. HEALTH SECURITY PLAN BUDGET.--

9 A. Annually, the commission shall develop and  
10 submit to the legislature a health security plan budget. The  
11 budget shall be the commission's recommendation for the total  
12 amount to be spent by the plan for covered health care services  
13 in the next fiscal year.

14 B. Unless otherwise provided in the general  
15 appropriation act or other act of the legislature, the health  
16 security plan budget shall be within projected annual revenues.  
17 After the legislative review and approval, the commission shall  
18 implement the health security plan budget. Without specific  
19 legislative approval, the commission shall not change the level  
20 of premium charged and used to project revenue or change the  
21 employer contributions under the health security plan. The  
22 legislature may base its approval on the findings and  
23 recommendations of an independent audit or actuarial study.

24 C. In developing the health security plan budget,  
25 the commission shall provide that credit be taken in the budget

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1 for all revenues produced for health care in the state pursuant  
2 to any law other than the Health Security Act.

3 D. The health security plan shall include a maximum  
4 amount or percentage for administrative costs, and this  
5 maximum, if a percentage, may change in relation to the total  
6 costs of services provided under the health security plan. For  
7 the sixth and subsequent calendar years of operation of the  
8 health security plan, administrative costs shall not exceed  
9 five percent of the health security plan budget.

10 SECTION 31. PAYMENTS TO HEALTH CARE PROVIDERS--  
11 CO-PAYMENTS.--

12 A. The commission shall prepare a provider budget.  
13 Consistent with the provider budget, the health security plan  
14 shall provide payment for all covered health care rendered by  
15 health care providers. A variety of payment plans, including  
16 fee-for-service, may be adopted by the commission. Payment  
17 plans shall be negotiated with providers as provided by rule.  
18 In the event that negotiation fails to develop an acceptable  
19 payment plan, the disputing parties shall submit the dispute  
20 for resolution pursuant to Section 29 of the Health Security  
21 Act.

22 B. Supplemental payment rates may be adopted to  
23 provide incentives to help ensure the delivery of needed health  
24 care in rural and other underserved areas throughout the state.

25 C. An annual percentage increase in the amount

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1 allocated for provider payments in the budget shall be no  
2 greater than the annual percentage increase in the consumer  
3 price index for medical care prices published by the bureau of  
4 labor statistics of the federal department of labor using the  
5 year prior to the year in which the health security plan is  
6 implemented as the baseline year. The annual limitation in  
7 this subsection may be adjusted up or down by the commission  
8 based on a showing of special and unusual circumstances in a  
9 hearing before the commission.

10 D. Payment, or the offer of payment whether or not  
11 that offer is accepted, to a health care provider for services  
12 covered by the health security plan shall be payment in full  
13 for those services. A health care provider shall not charge a  
14 beneficiary an additional amount for services covered by the  
15 plan.

16 E. The commission may establish a co-payment  
17 schedule if a required co-payment is determined to be an  
18 effective cost-control measure. A co-payment shall not be  
19 required for preventive health care. When a co-payment is  
20 required, the health care provider shall not waive it, and if  
21 it remains uncollected, the health care provider shall  
22 demonstrate a good-faith effort to have collected the co-  
23 payment.

24 SECTION 32. PAYMENTS TO HEALTH FACILITIES--CO-PAYMENTS.--

25 A. A health facility shall negotiate an annual

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1 operating budget with the commission. The operating budget  
2 shall be based on a base operating budget of past performance  
3 and projected changes upward or downward in costs and services  
4 anticipated for the next year. If a negotiated annual operating  
5 budget is not agreed upon, a health facility shall submit the  
6 budget to dispute resolution pursuant to Section 29 of the  
7 Health Security Act. An annual percentage increase in the  
8 amount allocated for a health facility operating budget shall be  
9 no greater than the change in the annual consumer price index  
10 for medical care prices, published annually by the bureau of  
11 labor statistics of the federal department of labor. The annual  
12 limitation in this subsection may be adjusted up or down by the  
13 commission based on a showing of special and unusual  
14 circumstances in a hearing before the commission.

15 B. Supplemental payment rates may be adopted to  
16 provide incentives to help ensure the delivery of needed health  
17 care services in rural and other underserved areas throughout  
18 the state.

19 C. Each health care provider employed by a health  
20 facility shall be paid from the facility's operating budget in a  
21 manner determined by the health facility.

22 D. The commission may establish a co-payment  
23 schedule if a required co-payment is determined to be an  
24 effective cost-control measure. A co-payment shall not be  
25 required for preventive care. When a co-payment is required,

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1 the health facility shall not waive it, and if it remains  
2 uncollected, the health facility shall demonstrate a good-faith  
3 effort to have collected the co-payment.

4 SECTION 33. HEALTH RESOURCE CERTIFICATE--COMMISSION  
5 RULES--REQUIREMENT FOR REVIEW.--

6 A. The commission shall adopt rules stating when a  
7 health facility or health care provider participating in the  
8 health security plan shall apply for a health resource  
9 certificate, how the application will be reviewed, how the  
10 certificate will be granted, how an expedited review is  
11 conducted and other matters relating to health resource  
12 projects.

13 B. Except as provided in Subsection F of this  
14 section, a health facility or health care provider participating  
15 in the health security plan shall not make or obligate itself to  
16 make a major capital expenditure without first obtaining a  
17 health resource certificate.

18 C. A health facility or health care provider shall  
19 not acquire through rental, lease or comparable arrangement or  
20 through donation all or a part of a capital project that would  
21 have required review if the acquisition had been by purchase  
22 unless the project is granted a health resource certificate.

23 D. A health facility or health care provider shall  
24 not engage in component purchasing in order to avoid the  
25 provisions of this section.

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1           E. The commission shall grant a health resource  
2 certificate for a major capital expenditure or a capital project  
3 undertaken pursuant to Subsection C of this section only when  
4 the project is determined to be needed.

5           F. This section does not apply to:

6                 (1) the purchase, construction or renovation of  
7 office space for health care providers;

8                 (2) expenditures incurred solely in preparation  
9 for a capital project, including architectural design, surveys,  
10 plans, working drawings and specifications and other related  
11 activities, but those expenditures shall be included in the cost  
12 of a project for the purpose of determining whether a health  
13 resource certificate is required;

14                 (3) acquisition of an existing health facility,  
15 equipment or practice of a health care provider that does not  
16 result in a new service being provided or in increased bed  
17 capacity;

18                 (4) major capital expenditures for nonclinical  
19 services when the nonclinical services are the primary purpose  
20 of the expenditure; and

21                 (5) the replacement of equipment with equipment  
22 that has the same function and that does not result in the  
23 offering of new services.

24           G. No later than November 1, 2016, the commission  
25 shall report to the appropriate committees of the legislature on

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1 the capital needs of health facilities, including facilities of  
2 state and local governments, with a focus on underserved  
3 geographic areas with substantially below-average health  
4 facilities and investment per capita as compared to the state  
5 average. The report shall also describe geographic areas where  
6 the distance to health facilities imposes a barrier to care.  
7 The report shall include a section on health care transportation  
8 needs, including capital, personnel and training needs. The  
9 report shall make recommendations for legislation to amend the  
10 Health Security Act that the commission determines necessary and  
11 appropriate.

12 SECTION 34. ACTUARIAL REVIEW--AUDITS.--

13 A. The commission shall provide for an annual  
14 independent actuarial review of the health security plan and any  
15 funds of the commission or the plan.

16 B. The commission shall provide by rule requirements  
17 for independent financial audits of health care providers and  
18 health facilities.

19 C. The commission, through its staff or by contract,  
20 shall perform announced and unannounced audits, including  
21 financial, operational, management and electronic data  
22 processing audits of health care providers and health  
23 facilities. Audit findings shall be reported directly to the  
24 commission. The state auditor may be asked by the commission to  
25 review preliminary findings or to consult with audit staff

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1 before the findings are reported to the commission.

2 D. Actuarial reviews, financial audits and internal  
3 audits are public documents after they have been released by the  
4 commission, provided that the reports protect private and  
5 confidential information of a patient or provider. Copies of  
6 reviews, audits and other reports shall be transmitted to the  
7 governor, the legislature and appropriate interim committees of  
8 the legislature as well as made available via the internet.

9 SECTION 35. STANDARD CLAIM FORMS FOR INSURANCE PAYMENT.--

10 The commission shall adopt standard claim forms and electronic  
11 formats that shall be used by all health care providers and  
12 health facilities that seek payment through the health security  
13 plan or from private persons, including private insurance  
14 companies, for health care services rendered in the state. Each  
15 claim form or electronic format may indicate whether a person is  
16 eligible for federal or other insurance programs for payment.  
17 To the extent practicable, the commission shall require the use  
18 of existing, nationally accepted standardized forms, formats and  
19 systems.

20 SECTION 36. INFORMATION TECHNOLOGY SYSTEM.--The commission  
21 shall require that all participating health care providers and  
22 health facilities participate in the health security plan's  
23 information technology network that provides for electronic  
24 transfer of payments to health care providers and health  
25 facilities; transmittal of reports, including patient data and

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1 other statistical reports; billing data, with specificity as to  
2 procedures or services provided to individual patients; and any  
3 other information required or requested by the commission. To  
4 the extent practicable, the commission shall require the use of  
5 existing, nationally accepted standardized forms, formats and  
6 systems.

7 SECTION 37. REPORTS REQUIRED--CONFIDENTIAL INFORMATION.--

8 A. The commission, through the state health  
9 information system, shall require reports by all health care  
10 providers and health facilities of information needed to allow  
11 the commission to evaluate the health security plan, cost-  
12 containment measures, utilization review, health facility  
13 operating budgets, health care provider fees and any other  
14 information the commission deems necessary to carry out its  
15 duties pursuant to the Health Security Act.

16 B. The commission shall establish uniform reporting  
17 requirements for health care providers and health facilities.

18 C. Information confidential pursuant to other  
19 provisions of law shall be confidential pursuant to the Health  
20 Security Act. Within the constraints of confidentiality,  
21 reports of the commission are public documents.

22 SECTION 38. CONSUMER, PROVIDER AND HEALTH FACILITY  
23 ASSISTANCE PROGRAM.--

24 A. The commission shall establish a consumer, health  
25 care provider and health facility assistance program to take

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1 complaints and to provide timely and knowledgeable assistance  
2 to:

3 (1) eligible persons and applicants about their  
4 rights and responsibilities and the coverages provided in  
5 accordance with the Health Security Act; and

6 (2) health care providers and health facilities  
7 about the status of claims, payments and other pertinent  
8 information relevant to the claims payment process.

9 B. The commission shall establish a toll-free  
10 telephone line for the consumer, health care provider and health  
11 facility assistance program and shall have persons available  
12 throughout the state to assist beneficiaries, applicants, health  
13 care providers and health facilities in person.

14 SECTION 39. REIMBURSEMENT FOR OUT-OF-STATE SERVICES--  
15 HEALTH SECURITY PLAN'S RIGHT TO SUBROGATION AND PAYMENT FROM  
16 OTHER INSURANCE PLANS.--

17 A. A beneficiary may obtain health care services  
18 covered by the health security plan out of state; provided,  
19 however, that the services shall be paid at the same rate that  
20 would apply if the services were received in New Mexico. Higher  
21 charges for those services shall not be paid by the health  
22 security plan unless the commission negotiates a reciprocity or  
23 other agreement with the other state or with the out-of-state  
24 health care provider or health facility.

25 B. The health security plan shall make reasonable

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1 efforts to ascertain any legal liability of third parties who  
2 are or may be liable to pay all or part of the health care  
3 services costs of injury, disease or disability of a  
4 beneficiary.

5 C. When the health security plan makes payments on  
6 behalf of a beneficiary, the health security plan is subrogated  
7 to any right of the beneficiary against a third party for  
8 recovery of amounts paid by the health security plan.

9 D. By operation of law, an assignment to the health  
10 security plan of the rights of a beneficiary:

11 (1) is conclusively presumed to be made of:

12 (a) a payment for health care services  
13 from any person, firm or corporation, including an insurance  
14 carrier; and

15 (b) a monetary recovery for damages for  
16 bodily injury, whether by judgment, contract for compromise or  
17 settlement;

18 (2) shall be effective to the extent of the  
19 amount of payments by the health security plan; and

20 (3) shall be effective as to the rights of any  
21 other beneficiaries whose rights can legally be assigned by the  
22 beneficiary.

23 **SECTION 40. PRIVATE HEALTH INSURANCE COVERAGE LIMITED.--**

24 A. After the date the health security plan is  
25 operating, no person shall provide private health insurance to a

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1 beneficiary for health care that is covered by the health  
2 security plan except for retiree health insurance plans that do  
3 not enter into contracts with the health security plan. A  
4 beneficiary may purchase supplemental benefits.

5 B. Nothing in this section affects insurance  
6 coverage pursuant to the federal Employee Retirement Income  
7 Security Act of 1974 unless the state obtains a congressional  
8 exemption or a waiver from the federal government. Health  
9 coverage plans that are covered by the provisions of that act  
10 may elect to participate in the health security plan.

11 SECTION 41. VOLUNTARY PURCHASE OF OTHER INSURANCE.--

12 Nothing in the Health Security Act shall be construed to  
13 prohibit the voluntary purchase of insurance coverage for health  
14 care services not covered by the health security plan or for  
15 individuals not eligible for coverage under the health security  
16 plan.

17 SECTION 42. INSURANCE RATES--SUPERINTENDENT OF INSURANCE  
18 DUTIES.--

19 A. The superintendent of insurance shall work  
20 closely with the legislative finance committee pursuant to  
21 Section 43 of the Health Security Act to identify premium costs  
22 associated with health care coverage in workers' compensation  
23 and automobile medical coverage. The superintendent of  
24 insurance shall develop an estimate of expected reduction in  
25 those costs based upon assumptions of health care services

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1 coverage in the health security plan and shall report the  
2 findings to the legislative finance committee to determine the  
3 financing of the health security plan.

4 B. The superintendent of insurance shall ensure that  
5 workers' compensation and automobile insurance premiums on  
6 insurance policies written in New Mexico reflect a lower rate to  
7 account for the medical payment component to be assumed by the  
8 health security plan.

9 SECTION 43. FINANCING THE HEALTH SECURITY PLAN.--

10 A. The legislative finance committee shall determine  
11 financing options for the health security plan. In making its  
12 determinations, the committee shall be guided by the following  
13 requirements and assumptions:

14 (1) health care services to be included and for  
15 which costs are to be projected in determining the financing  
16 options shall be no less than the health care coverage afforded  
17 state employees; and

18 (2) options may set minimum and maximum levels  
19 of a beneficiary's income-based premium payments, sliding scale  
20 premium payments and medicare credits and employer  
21 contributions, and an employer may cover all or part of an  
22 employee's premium, provided that a collective bargaining  
23 agreement is not violated.

24 B. The legislative finance committee shall prepare a  
25 report of its determinations with the specific options and

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1 recommendations no later than November 2, 2015. The report  
2 shall be submitted for consideration for legislative  
3 implementation to the second session of the fifty-second  
4 legislature.

5 SECTION 44. GRANT FUNDING AND OTHER RESOURCES--

6 PARTNERSHIPS.--The legislative finance committee shall seek  
7 partnerships among state agencies and private nonprofit persons  
8 to identify and apply for available grant funding and other in-  
9 kind and financial resources for its study of financing options  
10 for the health security plan pursuant to Section 43 of the  
11 Health Security Act. Any amounts received in grant funds or  
12 from other financial resources shall first be used to offset any  
13 state funds that the legislature appropriates or allocates. Any  
14 grant funds or other financial resources received in excess of  
15 legislative appropriations or allocations shall be used for the  
16 study of financing options for the health security plan.

17 SECTION 45. HEALTH SECURITY PLAN FUND CREATED--

18 REIMBURSEMENT TO HEALTH SECURITY PLAN FROM FEDERAL AND OTHER  
19 HEALTH INSURANCE PROGRAMS.--

20 A. The "health security plan fund" is created in the  
21 state treasury. All revenues received pursuant to the Health  
22 Security Act shall be deposited in the fund.

23 B. The commission shall provide for the collection  
24 of premiums from eligible beneficiaries, employers, state and  
25 federal agencies and other entities, which money when combined

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1 with other money appropriated to the fund shall be sufficient to  
2 provide the required health care services and to pay the  
3 expenses of the commission and its administrative functions.  
4 All premiums and other money appropriated to the fund shall be  
5 credited to the fund.

6 C. The fund shall be maintained in actuarially sound  
7 condition as evidenced by the annual written certification of a  
8 qualified independent actuary contracted by the commission.

9 D. The commission shall seek payment to the health  
10 security plan from medicaid, medicare or any other federal or  
11 other insurance program for any reimbursable payment provided  
12 under the plan.

13 E. The commission shall seek to maximize federal  
14 contributions and payments for health care services provided in  
15 New Mexico and shall ensure that the contributions of the  
16 federal government for health care services in New Mexico will  
17 not decrease in relation to other states as a result of any  
18 waivers, exemptions or agreements.

19 F. The commission shall maintain sufficient reserves  
20 in the fund to provide for catastrophic and unforeseen  
21 expenditures.

22 SECTION 46. HEALTH BENEFITS EXCHANGE OR HEALTH INSURANCE  
23 EXCHANGE PROPERTY--FEDERAL WAIVER FOR TRANSFER OF HEALTH  
24 INSURANCE EXCHANGE FUNCTIONS--TRANSFER OF HEALTH INSURANCE  
25 EXCHANGE.--

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1           A. Unless otherwise provided by federal law, any  
2 personal property that the state has procured to implement or  
3 operate a state health benefits exchange or health insurance  
4 exchange pursuant to federal law shall remain state property.

5           B. As soon as allowed under federal law, the  
6 secretary of human services shall seek a waiver to allow the  
7 state to suspend operation of any health benefits exchange or  
8 health insurance exchange and to allow the commission to  
9 administer in accordance with federal law the federal premium  
10 tax credits, cost-sharing subsidies and small business tax  
11 credits. In implementing the provisions of the Health Security  
12 Act, the department shall provide for the commission's use any  
13 personal property used in the operation of a state health  
14 benefits exchange or health insurance exchange.

15           C. As used in this section:

16                   (1) "health insurance exchange" means an entity  
17 established pursuant to federal law to provide qualified health  
18 plans to qualified individuals and qualified employers on the  
19 individual and small group or large group insurance markets;

20                   (2) "personal property" means property other  
21 than real property; and

22                   (3) "real property" means an estate or interest  
23 in, over or under land and other things or interests, including  
24 minerals, water, structures and fixtures that by custom, usage  
25 or law pass with a transfer of land even if the estate or

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1 interest is not described or mentioned in the contract of sale  
2 or instrument of conveyance and, if appropriate to the context,  
3 the land in which the estate or interest is claimed.

4 SECTION 47. TEMPORARY PROVISION--COMMISSION--TRANSFER OF  
5 HEALTH INSURANCE EXCHANGE DUTIES.--The commission shall devise a  
6 plan for the timely and efficient transfer of health insurance  
7 exchange functions and health insurance exchange property to the  
8 commission pursuant to Section 46 of the Health Security Act.

9 SECTION 48. TEMPORARY PROVISION--TRANSITION PERIOD  
10 ARRANGEMENTS--PRIVATE CONTRACT--COLLECTIVE BARGAINING.--A person  
11 who, on the date benefits are available under the Health  
12 Security Act's health security plan, receives health care  
13 benefits under a private contract or collective bargaining  
14 agreement entered into prior to July 1, 2017 shall continue to  
15 receive those benefits until the contract or agreement expires  
16 or unless the contract or agreement is renegotiated to provide  
17 participation in the health security plan.

18 SECTION 49. TEMPORARY PROVISION.--

19 A. If the fifty-second legislature approves  
20 implementation and financing of the health security plan, the  
21 health security plan shall be operational by July 1, 2017.

22 B. If the fifty-second legislature fails to  
23 implement the recommendations of the legislative finance  
24 committee or otherwise fails to determine and approve financing  
25 of the health security plan, then the health security plan shall

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1 not become effective.

2 SECTION 50. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2013.

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