The Legislature
of the
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER 54

SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 221 &
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 589, as amended, with emergency clause
Introduced by

EMERGENCY CLAUSE
Chapter 54

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING THE NEW MEXICO HEALTH
INSURANCE EXCHANGE ACT; CREATING THE NEW MEXICO HEALTH
EXCHANGE; PROVIDING FOR THE APPOINTMENT, POWERS AND
DUTIES OF A BOARD OF DIRECTORS FOR THE EXCHANGE; PROVIDING
THE SUPERINTENDENT OF INSURANCE WITH RULEMAKING POWERS
RELATING TO THE EXCHANGE; PROVIDING FOR POWERS AND DUTIES OF
THE EXCHANGE; PROVIDING FOR TRANSPARENCY OF EXCHANGE FUNDING
AND OPERATIONS; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF
LAW IN LAWS 2009; DECLARING AN EMERGENCY.

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

SECTION 1. SHORT TITLE.--Sections 1 through 8 of this
act may be cited as the "New Mexico Health Insurance Exchange
Act".

SECTION 2. DEFINITIONS.--As used in the New Mexico
Health Insurance Exchange Act:

A. "agent" means a person appointed by a health
insurance issuer authorized to transact business in this
state to act as its representative in any given locality;

B. "board" means the board of directors of the
exchange;

C. "broker" means a person licensed as a broker
pursuant to the New Mexico Insurance Code;
D. "exchange" means the New Mexico health insurance exchange, composed of an exchange for the individual market and a small business health options program or "SHOP" exchange under a single governance and administrative structure;

E. "health insurance issuer" means an insurance company, insurance service or insurance organization, including a health maintenance organization, that is licensed to engage in the business of insurance in the state;

F. "Native American" means:

   (1) an individual who is a member of any federally recognized Indian nation, tribe or pueblo or who is an Alaska native; or

   (2) an individual who has been deemed eligible for services and programs provided to Native Americans by the United States public health service or the bureau of Indian affairs;

G. "navigator" means a person that, in a manner culturally and linguistically appropriate to the state's diverse populations, conducts public education, distributes tax credit and qualified health plan enrollment information, facilitates enrollment in qualified health plans or provides referrals to consumer assistance or ombudsman services. "Navigator" does not mean a health insurance issuer or a person that receives any consideration, directly or
indirectly, from any health insurance issuer in connection
with the enrollment of a qualified individual in a qualified
health plan; provided that a broker or an agent may be a
navigator if the broker or the agent receives no
consideration, directly or indirectly, from any health
insurance issuer in connection with the enrollment of a
qualified individual or qualified employer in a qualified
health plan, an approved health plan or any other health
coverage; and

H. "superintendent" means the superintendent of
insurance.

SECTION 3. NEW MEXICO HEALTH INSURANCE EXCHANGE
CREATED--BOARD CREATED.--

A. The "New Mexico health insurance exchange" is
created as a nonprofit public corporation to provide
qualified individuals and qualified employers with increased
access to health insurance in the state and shall be governed
by a board of directors constituted pursuant to the
provisions of the New Mexico Health Insurance Exchange Act.
The exchange is a governmental entity for purposes of the
Tort Claims Act, and neither the exchange nor the board shall
be considered a governmental entity for any other purpose.

B. The exchange shall not duplicate, impair,
enhance, supplant, infringe upon or replace, in whole or in
any part, the powers, duties or authority of the
superintendent, including the superintendent's authority to
review and approve premium rates pursuant to the provisions
of the New Mexico Insurance Code.

C. The exchange shall not purchase qualified
health plans from insurance health issuers to offer for
purchase through the exchange.

D. All health insurance issuers and health
maintenance organizations authorized to conduct business in
this state and meeting the requirements of the rules
promulgated by the superintendent pursuant to Section 7 of
the New Mexico Health Insurance Exchange Act, as well as
meeting the rules under the federal act, shall be eligible to
participate in the exchange.

E. The "board of directors of the New Mexico
health insurance exchange" is created. The board consists of
thirteen voting directors as follows:

(1) one voting director is the
superintendent or the superintendent's designee;

(2) six voting directors appointed by the
governor, including the secretary of human services or the
secretary's designee, a health insurance issuer and a
consumer advocate; and

(3) six voting directors, three appointed by
the president pro tempore of the senate, including one health
care provider, and three appointed by the speaker of the
house of representatives, including one health insurance
issuer. One of the directors appointed by the president pro
tempore of the senate and one of the directors appointed by
the speaker of the house of representatives shall be from a
list of at least two candidates provided, respectively, by
the minority leader of the senate and by the minority leader
of the house of representatives.

F. Except as provided in Subsection G of this
section, managerial and full-time staff of the exchange shall
be subject to applicable provisions of the Governmental
Conduct Act and shall not have any direct or indirect
affiliation with any health care provider, health insurance
issuer or health care service provider.

G. Each director shall comply with the
conflict-of-interest provisions of Subsection F of this
section, except as follows:

(1) directors who may be appointed from the
boards of directors of the New Mexico medical insurance pool
and the New Mexico health insurance alliance shall not be
considered to have a conflict of interest with respect to
their association with those entities;

(2) the secretary of human services, or the
secretary's designee, shall not be considered to have a
conflict of interest with respect to the secretary's
performance of the secretary's duties as secretary of human
services;

(3) the director who is a health care provider shall not be considered to have a conflict of interest arising from that director's receipt of payment for services as a health care provider; and

(4) directors who are representatives of health insurance issuers shall not be considered to have a conflict of interest with respect to those directors' association with their respective health insurance issuers.

H. Each director and employee of the exchange shall have a fiduciary duty to the exchange.

I. The board shall be composed, as a whole, to assure representation of the state's Native American population, ethnic diversity, cultural diversity and geographic diversity.

J. Directors shall have demonstrated knowledge or experience in at least one of the following areas:

(1) purchasing coverage in the individual market;

(2) purchasing coverage in the small employer market;

(3) health care finance;

(4) health care economics or health care actuarial science;

(5) health care policy;
(6) the enrollment of underserved residents in health care coverage;

(7) administration of a private or public health care delivery system;

(8) information technology;

(9) starting a small business with fifty or fewer employees; or

(10) provision of health care services.

K. The governor shall appoint no more than four directors from the same political party.

L. Except for the secretary of human services, the non-health insurance issuer directors appointed by the governor shall be appointed for initial terms of three years or less, staggered so that the term of at least one director expires on June 30 of each year. The non-health insurance insurer directors appointed by the legislature shall be appointed for initial terms of three years or less, staggered so that the term of at least one director expires on June 30 of each year. The health insurance issuers appointed to the board shall, upon appointment, select one of them by lot to have an initial term ending on June 30 following one year of service and one to have an initial term ending on June 30 following two years of service. Following the initial terms, health insurance issuer directors shall be appointed for terms of two years. A director whose term has expired shall
continue to serve until a successor is appointed by the respective appointing authority. Health insurance issuer directors shall not serve two consecutive terms.

M. The exchange and the board shall operate consistent with provisions of the Governmental Conduct Act, the Inspection of Public Records Act, the Financial Disclosure Act and the Open Meetings Act and shall not be subject to the Procurement Code or the Personnel Act.

N. A majority of directors constitutes a quorum. The board may allow members to attend meetings by telephone or other electronic media. A decision by the board requires a quorum and a majority of directors in attendance voting in favor of the decision.

O. Within thirty days of the effective date of the New Mexico Health Insurance Exchange Act, the board shall be fully appointed and the superintendent shall convene an organizational meeting of the board, during which the board shall elect a chair and vice chair from among the directors. Thereafter, every three years, the board shall elect in open meeting a chair and vice chair from among the directors. The chair and vice chair shall serve no more than two consecutive three-year terms as chair and vice chair.

P. A vacancy on the board shall be filled by appointment by the original appointing authority for the remainder of the director's unexpired term.
Q. A director may be removed from the board by a
two-thirds majority vote of the directors. The board shall
set standards for attendance and may remove a director for
lack of attendance, neglect of duty or malfeasance in office.
A director shall not be removed without proceedings
consisting of at least one ten-day notice of hearing and an
opportunity to be heard. Removal proceedings shall be before
the board and in accordance with procedures adopted by the
board.

R. Appointed directors may receive per diem and
mileage in accordance with the Per Diem and Mileage Act,
subject to the travel policy set by the board. Appointed
directors shall receive no other compensation, perquisite or
allowance.

S. The board shall:

   (1) meet at the call of the chair and no
less often than once per calendar quarter. There shall be at
least seven days' notice given to directors prior to any
meeting. There shall be sufficient notice provided to the
public prior to meetings pursuant to the Open Meetings Act;

   (2) create, make appointments to and duly
consider recommendations of an advisory committee or
committees made up of stakeholders, including health
insurance issuers, health care consumers, health care
providers, health care practitioners, brokers, qualified
employer representatives and advocates for low-income or
underserved residents;

(3) create an advisory committee made up of
members insured through the New Mexico health insurance
alliance and the New Mexico medical insurance pool to make
recommendations to the board regarding the transition of each
organization's insured members into the exchange. The
advisory committee shall only exist until a transition plan
has been adopted by the board;

(4) create an advisory committee made up of
Native Americans, some of whom live on a reservation and some
of whom do not live on a reservation, to guide the
implementation of the Native American-specific provisions of
the federal Patient Protection and Affordable Care Act and
the federal Indian Health Care Improvement Act;

(5) designate a Native American liaison, who
shall assist the board in developing and ensuring
implementation of communication and collaboration between the
exchange and Native Americans in the state. The Native
American liaison shall serve as a contact person between the
exchange and New Mexico Indian nations, tribes and pueblos
and shall ensure that training is provided to the staff of
the exchange, which may include training in:

(a) cultural competency;

(b) state and federal law relating to
Indian health; and

(c) other matters relating to the functions of the exchange with respect to Native Americans in the state; and

(6) establish at least one walk-in customer service center where persons may, if eligible, enroll in qualified health plans or public coverage programs.

SECTION 4. BOARD OF DIRECTORS--POWERS.--The board may:

A. seek and receive grant funding from federal, state or local governments or private philanthropic organizations to defray the costs of operating the exchange;

B. generate funding, including charging assessments or fees, to support its operations in accordance with provisions of the New Mexico Health Insurance Exchange Act solely for the reasonable administrative costs of the exchange; provided that no assessment or user fee shall be imposed upon a carrier that exclusively offers policies, plans or contracts outside the exchange intended to supplement major medical coverage, including medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or other limited-benefit health insurance policy;

C. establish a Native American service center to ensure that the exchange:

   (1) is accessible to Native Americans;
(2) complies with the provisions of the federal Indian Health Care Improvement Act and Indian-specific provisions of the federal Patient Protection and Affordable Care Act; and

(3) facilitates meaningful, ongoing consultation with Native Americans;

D. create ad hoc advisory councils;

E. request assistance from other boards, commissions, departments, agencies and organizations as necessary to provide appropriate expertise to accomplish the exchange's duties;

F. enter into contracts with persons or other organizations as necessary or proper to carry out the provisions and purposes of the New Mexico Health Insurance Exchange Act, including the authority to contract or employ staff for the performance of administrative, legal, actuarial, accounting and other functions; provided that no contractor shall be a health insurance issuer or a producer;

G. enter into contracts with similar exchanges of other states for the joint performance of common administrative functions;

H. enter into information-sharing agreements with federal and state agencies and other state exchanges to carry out its responsibilities; provided that these agreements include adequate protections of the confidentiality of the
information to be shared and comply with all state and
federal laws and regulations;

    I. sue or be sued or otherwise take any necessary
or proper legal action in the execution of its duties and
powers;

    J. appoint board committees, which may include
non-board members, to provide technical assistance in the
operation of the exchange and any other function within the
authority of the exchange; and

    K. conduct periodic audits to assure the general
accuracy of the financial data submitted to the exchange.

SECTION 5. PLAN OF OPERATION.--

    A. Within sixty days of the effective date of the
New Mexico Health Insurance Exchange Act, the board shall
create a preliminary plan of operation containing provisions
to ensure the fair, reasonable and equitable administration
of the exchange. Within six months of the effective date of
the New Mexico Health Insurance Exchange Act, the board shall
create and implement a final plan of operation containing
provisions to ensure the fair, reasonable and equitable
administration of the exchange.

    B. The board shall provide for public notice and
hearing prior to approving the plan of operation.

    C. The preliminary plan of operation shall:

        (1) establish procedures to implement the
provisions of the New Mexico Health Insurance Exchange Act, consistent with state and federal law;

(2) establish procedures for handling and accounting for the exchange's assets and money; and

(3) establish regular times and meeting places for meetings of the board.

D. The final plan of operation shall:

(1) establish a statewide consumer assistance program, including a navigator program;

(2) establish consumer complaint and grievance procedures for issues relating to the exchange;

(3) establish procedures for alternative dispute resolution between the exchange and contractors or health insurance issuers;

(4) develop and implement policies that:

(a) promote effective communication and collaboration between the exchange and Indian nations, tribes and pueblos, including communicating and collaborating on those nations', tribes' and pueblos' plans for creating or participating in health insurance exchanges; and

(b) promote cultural competency in providing effective services to Native Americans;

(5) establish conflict-of-interest policies and procedures; and

(6) contain additional provisions necessary
and proper for the execution of the powers and duties of the board.

SECTION 6. BOARD DUTIES--REPORTING.--The board shall:

A. between July 1, 2013 and January 1, 2015, provide quarterly reports to the legislature, the governor and the superintendent on the implementation of the exchange and report annually and upon request thereafter;

B. keep an accurate accounting of all of the activities, receipts and expenditures of the exchange and submit this information annually to the superintendent and as required by federal law to the federal secretary of health and human services;

C. beginning with the first year of operation in which access to health insurance coverage is provided, obtain an annual audit of the exchange's operations from an independent certified public accountant;

D. publish the administrative costs of the exchange as required by state or federal law; and

E. discharge those duties required to implement and operate the exchange in accordance with the provisions of the New Mexico Health Insurance Exchange Act consistent with state and federal law.

SECTION 7. SUPERINTENDENT OF INSURANCE--RULEMAKING.-- The superintendent shall promulgate rules necessary to implement and carry out the provisions of the New Mexico
Health Insurance Exchange Act, including rules to establish
the criteria for certification of qualified health plans.

SECTION 8. FUNDING.--

A. To fund the planning, implementation and
operation of the exchange, the board shall contract with the
human services department or any other state agency that
receives federal funds allocated, appropriated or granted to
the state for purposes of funding the planning,
implementation or operation of a health insurance exchange.

B. The human services department or any other
state agency that receives federal funds allocated,
appropriated or granted to the state for purposes of funding
the planning, implementation or operation of a health
insurance exchange shall contract with the board to provide
those funds to the exchange in consideration for its
planning, implementation or operation.

SECTION 9. COOPERATION WITH THE NEW MEXICO HEALTH
INSURANCE EXCHANGE.--The medical assistance division of the
human services department shall cooperate with the New Mexico
health insurance exchange to share information and facilitate
transitions in enrollment between the exchange and medicaid.

SECTION 10. A new section of the New Mexico Insurance
Code is enacted to read:

"OFFICE OF SUPERINTENDENT OF INSURANCE--COOPERATION WITH
NEW MEXICO HEALTH INSURANCE EXCHANGE.--The office of
superintendent of insurance shall cooperate with the New
Mexico health insurance exchange to share information and
assist in the implementation of the functions of the
exchange."

SECTION 11. Section 41-4-3 NMSA 1978 (being Laws 1976,
Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,
Section 2 and by Laws 2009, Chapter 129, Section 2 and also
by Laws 2009, Chapter 249, Section 2) is amended to read:

"41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

A. "board" means the risk management advisory
board;

B. "governmental entity" means the state or any
local public body as defined in Subsections C and H of this
section;

C. "local public body" means all political
subdivisions of the state and their agencies,
instrumentalities and institutions and all water and natural
gas associations organized pursuant to Chapter 3, Article 28
NMSA 1978;

D. "law enforcement officer" means a full-time
salaried public employee of a governmental entity, or a
certified part-time salaried police officer employed by a
governmental entity, whose principal duties under law are to
hold in custody any person accused of a criminal offense, to
maintain public order or to make arrests for crimes, or
members of the national guard when called to active duty by
the governor;

E. "maintenance" does not include:

   (1) conduct involved in the issuance of a
permit, driver's license or other official authorization to
use the roads or highways of the state in a particular
manner; or

   (2) an activity or event relating to a
public building or public housing project that was not
foreseeable;

F. "public employee" means an officer, employee or
servant of a governmental entity, excluding independent
contractors except for individuals defined in Paragraphs (7),
(8), (10), (14) and (17) of this subsection, or of a
corporation organized pursuant to the Educational Assistance
Act, the Small Business Investment Act or the Mortgage
Finance Authority Act or a licensed health care provider, who
has no medical liability insurance, providing voluntary
services as defined in Paragraph (16) of this subsection and
including:

   (1) elected or appointed officials;

   (2) law enforcement officers;

   (3) persons acting on behalf or in service
of a governmental entity in any official capacity, whether
with or without compensation;
(4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

(5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;

(6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act;

(7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;

(8) members of the board of directors of the New Mexico medical insurance pool;

(9) individuals who are members of medical review boards, committees or panels established by the educational retirement board or the retirement board of the public employees retirement association;

(10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;

(11) members of the board of directors of the New Mexico educational assistance foundation;
(12) members of the board of directors of
the New Mexico student loan guarantee corporation;
(13) members of the New Mexico mortgage
finance authority;
(14) volunteers, employees and board members
of court-appointed special advocate programs;
(15) members of the board of directors of
the small business investment corporation;
(16) health care providers licensed in New
Mexico who render voluntary health care services without
compensation in accordance with rules promulgated by the
secretary of health. The rules shall include requirements
for the types of locations at which the services are
rendered, the allowed scope of practice and measures to
ensure quality of care;
(17) an individual while participating in
the state's adaptive driving program and only while using a
special-use state vehicle for evaluation and training
purposes in that program; and
(18) the staff and members of the board of
directors of the New Mexico health insurance exchange
established pursuant to the New Mexico Health Insurance
Exchange Act;
1. "Scope of duty" means performing any duties
that a public employee is requested, required or authorized
to perform by the governmental entity, regardless of the time
and place of performance; and

H. "state" or "state agency" means the state of
New Mexico or any of its branches, agencies, departments,
boards, instrumentalities or institutions."

SECTION 12. Section 59A-56-4 NMSA 1978 (being Laws
1994, Chapter 75, Section 4, as amended) is amended to read:

"59A-56-4. ALLIANCE CREATED--BOARD CREATED.--

A. The "New Mexico health insurance alliance" is
created as a nonprofit public corporation for the purpose of
providing increased access to health insurance in the state.
All insurance companies authorized to transact health
insurance business in this state, nonprofit health care
plans, health maintenance organizations and self-insurers not
subject to federal preemption shall organize and be members
of the alliance as a condition of their authority to offer
health insurance in this state, except for an insurance
company that is licensed under the Prepaid Dental Plan Law or
a company that is solely engaged in the sale of dental
insurance and is licensed under a provision of the Insurance
Code.

B. The alliance shall be governed by the board of
directors of the New Mexico health insurance exchange
appointed pursuant to the New Mexico Health Insurance
Exchange Act."
SECTION 13. TEMPORARY PROVISION.--On the effective date of this act, the board of directors of the New Mexico health insurance alliance, appointed pursuant to the Health Insurance Alliance Act prior to the effective date of this act, shall cease to exist and the New Mexico health insurance alliance shall be governed pursuant to the Health Insurance Alliance Act by the board of directors of the New Mexico health insurance exchange appointed pursuant to the New Mexico Health Insurance Exchange Act. In exercising its duties, the board of directors of the New Mexico health insurance exchange shall neither apply any provisions of the Health Insurance Alliance Act to the New Mexico health insurance exchange nor apply any provisions of the New Mexico Health Insurance Exchange Act to the New Mexico health insurance alliance.

SECTION 14. TEMPORARY PROVISION--NEW MEXICO HEALTH INSURANCE ALLIANCE--NEW MEXICO HEALTH INSURANCE EXCHANGE--TRANSFER OF CONTRACTS.--On July 1, 2013, all contracts of the New Mexico health insurance alliance relating to the development and implementation of a health insurance exchange shall be binding and effective on the New Mexico health insurance exchange.

SECTION 15. DELAYED REPEAL.--Sections 59A-56-1 through 59A-56-25 NMSA 1978 (being Laws 1994, Chapter 75, Sections 1 through 25, as amended) are repealed effective
January 1, 2015.

SECTION 16. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

SECTION 17. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
Approved by me this 28th day of March, 2013