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AN ACT

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

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

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

"EMPLOYEE LEASING CONTRACTOR GROUP HEALTH PLAN  
REQUIREMENTS.--

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

B. A group health plan sponsored by an employee  
leasing contractor shall be a fully insured plan.

C. For the purposes of determining whether an  
employee leasing contractor is a small or large employer, the  
employee leasing contractor's leased workers shall be counted  
as employees in addition to the employee leasing contractor's  
employees, and when an employee leasing contractor has:

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

1 including rules applicable to the small group market by  
2 reason of the federal Patient Protection and Affordable Care  
3 Act; and

4 (2) fifty-one or more employees, the  
5 employee leasing contractor shall be treated as a large  
6 employer pursuant to the Health Insurance Portability Act,  
7 and the group health plan that it sponsors shall be subject  
8 to the rules of the large group market, including rules  
9 applicable to the large group market by reason of the federal  
10 Patient Protection and Affordable Care Act.

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

18 E. For the purposes of this section:

19 (1) "employee leasing contractor" means any  
20 person who is registered as an employee leasing contractor  
21 pursuant to the Employee Leasing Act;

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

25 (3) "large group market" means the health

1 insurance market under which individuals obtain health  
2 insurance coverage on behalf of themselves and their  
3 dependents through a group health plan maintained by a large  
4 employer;

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

8 (5) "multiple employer welfare arrangement"  
9 means a plan for providing welfare benefits for employees of  
10 more than one employer as defined by 29 U.S.C. Section 1002;  
11 and

12 (6) "small group market" means the health  
13 insurance market under which individuals obtain health  
14 insurance coverage through a group health plan maintained by  
15 a small employer."

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

18 "59A-23-3. GROUP HEALTH INSURANCE.--

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

22 (1) under a policy issued to an employer,  
23 who shall be deemed the policyholder, insuring at least one  
24 employee of such employer for the benefit of persons other  
25 than the employer. The term "employees", as used in this

1 section, includes the officers, managers and employees of the  
2 employer, leased workers if the employer is registered as an  
3 employee leasing contractor pursuant to the Employee Leasing  
4 Act, the partners, if the employer is a partnership, the  
5 officers, managers and employees of subsidiary or affiliated  
6 corporations of a corporation employer, and the individual  
7 proprietors, partners and employees of individuals and firms  
8 the business of which is controlled by the insured employer  
9 through stock ownership, contract or otherwise. The term  
10 "employer", as used in this section, includes any municipal  
11 or governmental corporation, unit, agency or department  
12 thereof and the proper officers, as such, or any  
13 unincorporated municipality or department thereof, as well as  
14 private individuals, partnerships and corporations. A small  
15 employer shall also be subject to the Small Group Rate and  
16 Renewability Act. A "small employer" means any person, firm,  
17 corporation, partnership or association actively engaged in  
18 business who, on at least fifty percent of its working days  
19 during the preceding year, employed no more than fifty  
20 eligible employees. In determining the number of eligible  
21 employees, companies that are affiliated companies or that  
22 are eligible to file a combined tax return for purposes of  
23 state taxation shall be considered one employer;

24 (2) under a policy issued to an association,  
25 including a labor union and an agricultural association,

1 which shall have a constitution and bylaws and which has been  
2 organized and is maintained in good faith for purposes other  
3 than that of obtaining insurance, insuring at least twenty-  
4 five members of the association for the benefit of persons  
5 other than the association or its officers or trustees, as  
6 such;

7 (3) under a policy issued to a cooperative;

8 or

9 (4) under a policy issued to any other  
10 substantially similar group that, in the discretion of the  
11 superintendent, may be subject to the issuance of a group  
12 sickness and accident policy or contract.

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

15 (1) a provision that the policy, the  
16 application of the policyholder, if such application or copy  
17 thereof is attached to such policy, and the individual  
18 applications, if any, submitted in connection with such  
19 policy by the employees or members, shall constitute the  
20 entire contract between the parties, and that all statements,  
21 in the absence of fraud, made by any applicant or applicants  
22 shall be deemed representations and not warranties, and that  
23 no such statement shall void the insurance or reduce benefits  
24 thereunder unless contained in a written application for such  
25 insurance;

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

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

13                   C. For purposes of this section only, the  
14 directors of a corporation shall be deemed to be employees of  
15 the corporation.

16                   D. For the purposes of this section, "cooperative"  
17 means a private health insurance cooperative established  
18 pursuant to Section 59A-23-11 NMSA 1978."

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