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HOUSE BILL 262

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

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO HEALTH CARE; ENACTING THE HEALTH SECURITY ACT TO PROVIDE FOR COMPREHENSIVE STATEWIDE HEALTH CARE; PROVIDING FOR HEALTH CARE PLANNING; ESTABLISHING PROCEDURES TO CONTAIN HEALTH CARE COSTS; CREATING A COMMISSION; PROVIDING FOR ITS POWERS AND DUTIES; PROVIDING FOR HEALTH CARE DELIVERY REGIONS AND REGIONAL COUNCILS; DIRECTING AND AUTHORIZING THE DEVELOPMENT OF A STATE HEALTH SECURITY PLAN; PROVIDING FOR TRANSFER OF HEALTH INSURANCE EXCHANGE PERSONAL PROPERTY TO THE COMMISSION; PROVIDING PENALTIES.

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

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

SECTION 2. PURPOSES OF ACT.--The purposes of the Health 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. establish annual health security plan budgets
2 and budgets for those projected future periods that the
3 commission believes appropriate;

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 receive
3 federal payments for services covered by the health security
4 plan and to be the supplemental payer of benefits for persons
5 receiving medicare benefits;

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

17 S. seek an amendment to the federal Employee
18 Retirement Income Security Act of 1974 to exempt New Mexico
19 from the provisions of that act that relate to health care
20 services or health insurance, or apply to the appropriate
21 federal agency for waivers of any requirements of that act if
22 congress provides for waivers to enable the commission to
23 extend coverage through the Health Security Act to as many New
24 Mexicans as possible; provided, however, that the amendment or
25 waiver requested shall not impair portability or other aspects

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1 of the health care coverage;

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

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

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

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

25 X. study and evaluate health care work force data

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

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

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

14 AA. conduct necessary investigations and inquiries;

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

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

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

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

24 (1) a summary of information about health care
25 needs, health care services, health care expenditures, revenues

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

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

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

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

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

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

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

25 D. issue subpoenas to persons to appear and testify

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1 before the commission and to produce documents and other
2 information relevant to the commission's inquiry and enforce
3 this subpoena power through an action in a state district
4 court;

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

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

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

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

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

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

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

24 L. participate as a qualified entity in the
25 programs of the New Mexico finance authority; and

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

6 SECTION 13. ADVISORY BOARDS.--

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

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

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

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

25 SECTION 14. HEALTH CARE DELIVERY REGIONS.--The commission

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

8 SECTION 15. REGIONAL COUNCILS.--

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

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

25 C. Members of a regional council shall be paid per

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1 diem and mileage in accordance with the provisions of the Per
2 Diem and Mileage Act.

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

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

13 SECTION 16. RULEMAKING.--

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

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

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

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

12 SECTION 17. HEALTH SECURITY PLAN.--

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

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

25 C. Pursuant to the phase-in provisions of

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1 Subsection B of this section, the commission shall provide for
2 coverage of the following health care services:

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

24 D. Covered health care shall not include:

- 25 (1) surgery for cosmetic purposes other than

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1 for reconstructive purposes;

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

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

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

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

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

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

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

6 SECTION 18. LONG-TERM CARE.--

7 A. Long-term care may include:

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

10 (2) institutional care.

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

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

23 D. Nothing in this section affects long-term care
24 services paid through private insurance or state or federal
25 programs subject to the provisions of Section 40 of the Health

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1 Security Act.

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

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

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

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

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

24 D. Nothing in this section limits mental and
25 behavioral health services paid through private insurance or

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

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

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

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

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

- 22 (1) federal retiree health plan beneficiaries;
23 (2) active duty and retired military
24 personnel; and
25 (3) individuals covered by the federal active

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1 and retired military health programs.

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

- 5 (1) Indian nations, tribes or pueblos;
6 (2) consortia of tribes or pueblos; or
7 (3) a federal Indian health service agency
8 subject to the approval of the tribes or pueblos located in
9 that agency.

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

20 E. An employer, group or other plan that provides
21 health care benefits for its employees after retirement,
22 including coverage for payment of health care supplementary
23 coverage if the retiree is eligible for medicare, may agree to
24 participate in the health security plan; provided, however,
25 that there is no loss of benefits under the retiree health

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1 benefit coverage. An employer, group or other plan that
2 participates in the health security plan shall contribute to
3 the health security plan for the benefit of the retiree, and
4 the agreement shall ensure that the health benefit coverage for
5 the retiree shall be restored in the event of the retiree's
6 ineligibility for health security plan coverage.

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

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

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

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

23 C. The commission shall adopt rules to determine
24 proof of an individual's eligibility for the health security
25 plan or a student's proof of nonresident health care coverage.

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

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

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

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

22 C. A beneficiary who lends the beneficiary's card
23 to another or an individual who uses another's card after being
24 determined liable pursuant to Subsection B of this section of a
25 previous misuse is guilty of a misdemeanor and shall be

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

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

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

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

- 13 (1) services in medical emergencies; and
14 (2) services for which a primary care provider
15 determines that specialist services are required, in which case
16 the primary care provider shall advise the patient of the need
17 for and the type of specialist services.

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

25 D. The commission shall by rule specify when and

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

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

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

19 SECTION 27. CLAIMS REVIEW.--

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

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

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

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

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

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1 plan.

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

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

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1 The advisory committee shall provide to the commission
2 recommended standards and guidelines to be followed in making
3 determinations on practice issues.

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

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

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

23 G. After consultation with the health care practice
24 advisory committee, the commission may suspend or revoke a
25 health care provider's or health facility's privilege to be

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

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

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

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

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

7 **SECTION 30. HEALTH SECURITY PLAN BUDGET.--**

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

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

23 C. In developing the health security plan budget,
24 the commission shall provide that credit be taken in the budget
25 for all revenues produced for health care in the state pursuant

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1 to any law other than the Health Security Act.

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

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

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

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

24 C. An annual percentage increase in the amount
25 allocated for provider payments in the budget shall be no

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1 greater than the annual percentage increase in the consumer
2 price index for medical care prices published by the bureau of
3 labor statistics of the federal department of labor using the
4 year prior to the year in which the health security plan is
5 implemented as the baseline year. The annual limitation in
6 this subsection may be adjusted up or down by the commission
7 based on a showing of special and unusual circumstances in a
8 hearing before the commission.

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

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

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

24 A. A health facility shall negotiate an annual
25 operating budget with the commission. The operating budget

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

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

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

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

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1 uncollected, the health facility shall demonstrate a good-faith
2 effort to have collected the co-payment.

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

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

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

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

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

25 E. The commission shall grant a health resource

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1 certificate for a major capital expenditure or a capital project
2 undertaken pursuant to Subsection C of this section only when
3 the project is determined to be needed.

4 F. This section does not apply to:

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

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

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

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

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

23 G. No later than November 1, 2016, the commission
24 shall report to the appropriate committees of the legislature on
25 the capital needs of health facilities, including facilities of

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

11 SECTION 34. ACTUARIAL REVIEW--AUDITS.--

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

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

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

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

8 **SECTION 35. STANDARD CLAIM FORMS FOR INSURANCE PAYMENT.--**

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

19 **SECTION 36. INFORMATION TECHNOLOGY SYSTEM.--**The commission

20 shall require that all participating health care providers and
21 health facilities participate in the health security plan's
22 information technology network that provides for electronic
23 transfer of payments to health care providers and health
24 facilities; transmittal of reports, including patient data and
25 other statistical reports; billing data, with specificity as to

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

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

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

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

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

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

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

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1 to:

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

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

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

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

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

24 B. The health security plan shall make reasonable
25 efforts to ascertain any legal liability of third parties who

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1 are or may be liable to pay all or part of the health care
2 services costs of injury, disease or disability of a
3 beneficiary.

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

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

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

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

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

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

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

22 SECTION 40. PRIVATE HEALTH INSURANCE COVERAGE LIMITED.--

23 A. After the date the health security plan is
24 operating, no person shall provide private health insurance to a
25 beneficiary for health care that is covered by the health

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

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

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

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

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

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

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1 findings to the legislative finance committee to determine the
2 financing of the health security plan.

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

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

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

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

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

23 B. The legislative finance committee shall prepare a
24 report of its determinations with the specific options and
25 recommendations no later than November 2, 2015. The report

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1 shall be submitted for consideration for legislative
2 implementation to the second session of the fifty-second
3 legislature.

4 SECTION 44. GRANT FUNDING AND OTHER RESOURCES--

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

16 SECTION 45. REIMBURSEMENT TO HEALTH SECURITY PLAN FROM

17 FEDERAL AND OTHER HEALTH INSURANCE PROGRAMS.--

18 A. The commission shall seek payment to the health
19 security plan from medicaid, medicare or any other federal or
20 other insurance program for any reimbursable payment provided
21 under the plan.

22 B. The commission shall seek to maximize federal
23 contributions and payments for health care services provided in
24 New Mexico and shall ensure that the contributions of the
25 federal government for health care services in New Mexico will

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1 not decrease in relation to other states as a result of any
2 waivers, exemptions or agreements.

3 C. The commission shall maintain sufficient reserves
4 to provide for catastrophic and unforeseen expenditures.

5 SECTION 46. HEALTH BENEFITS EXCHANGE OR HEALTH INSURANCE
6 EXCHANGE PROPERTY--FEDERAL WAIVER FOR TRANSFER OF HEALTH
7 INSURANCE EXCHANGE FUNCTIONS--TRANSFER OF HEALTH INSURANCE
8 EXCHANGE.--

9 A. Unless otherwise provided by federal law, any
10 personal property that the state has procured to implement or
11 operate a state health benefits exchange or health insurance
12 exchange pursuant to federal law shall remain state property.

13 B. As soon as allowed under federal law, the
14 secretary of human services shall seek a waiver to allow the
15 state to suspend operation of any health benefits exchange or
16 health insurance exchange and to allow the commission to
17 administer in accordance with federal law the federal premium
18 tax credits, cost-sharing subsidies and small business tax
19 credits. In implementing the provisions of the Health Security
20 Act, the department shall provide for the commission's use any
21 personal property used in the operation of a state health
22 benefits exchange or health insurance exchange.

23 C. As used in this section:

24 (1) "health insurance exchange" means an entity
25 established pursuant to federal law to provide qualified health

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1 plans to qualified individuals and qualified employers on the
2 individual and small group or large group insurance markets;

3 (2) "personal property" means property other
4 than real property; and

5 (3) "real property" means an estate or interest
6 in, over or under land and other things or interests, including
7 minerals, water, structures and fixtures that by custom, usage
8 or law pass with a transfer of land even if the estate or
9 interest is not described or mentioned in the contract of sale
10 or instrument of conveyance and, if appropriate to the context,
11 the land in which the estate or interest is claimed.

12 SECTION 47. TEMPORARY PROVISION--COMMISSION--TRANSFER OF
13 HEALTH INSURANCE EXCHANGE DUTIES.--The commission shall devise a
14 plan for the timely and efficient transfer of health insurance
15 exchange functions and health insurance exchange property to the
16 commission pursuant to Section 46 of the Health Security Act.

17 SECTION 48. TEMPORARY PROVISION--TRANSITION PERIOD
18 ARRANGEMENTS--PRIVATE CONTRACT--COLLECTIVE BARGAINING.--A person
19 who, on the date benefits are available under the Health
20 Security Act's health security plan, receives health care
21 benefits under a private contract or collective bargaining
22 agreement entered into prior to July 1, 2017 shall continue to
23 receive those benefits until the contract or agreement expires
24 or unless the contract or agreement is renegotiated to provide
25 participation in the health security plan.

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1 **SECTION 49. TEMPORARY PROVISION.--**

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

5 B. If the fifty-second legislature fails to
6 implement the recommendations of the legislative finance
7 committee or otherwise fails to determine and approve financing
8 of the health security plan, then the health security plan shall
9 not become effective.

10 **SECTION 50. EFFECTIVE DATE.--**The effective date of the
11 provisions of this act is July 1, 2013.