AN ACT

RELATING TO HEALTH INSURANCE; AMENDING AND ENACTING SECTIONS
OF CHAPTER 59A, ARTICLE 23 NMSA 1978 TO PROVIDE FOR THE
CREATION AND REGISTRATION OF HEALTH INSURANCE PURCHASING
COOPERATIVES AMONG EMPLOYERS.

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

SECTION 1. Section 59A-23-3 NMSA 1978 (being Laws 1984,
Chapter 127, Section 462, as amended) is amended to read:

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

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

(1) under a policy issued to an employer,
who shall be deemed the policyholder, insuring at least one
employee of such employer for the benefit of persons other
than the employer. The term "employees", as used in this
section, includes the officers, managers and employees of the
employer, the partners, if the employer is a partnership, the
officers, managers and employees of subsidiary or affiliated
corporations of a corporation employer, and the individual
proprietors, partners and employees of individuals and firms
the business of which is controlled by the insured employer
through stock ownership, contract or otherwise. The term
"employer", as used in this section, includes any municipal
or governmental corporation, unit, agency or department thereof and the proper officers, as such, or any unincorporated municipality or department thereof, as well as private individuals, partnerships and corporations. A small employer shall also be subject to the Small Group Rate and Renewability Act. A "small employer" means any person, firm, corporation, partnership or association actively engaged in business who, on at least fifty percent of its working days during the preceding year, employed no more than fifty eligible employees. In determining the number of eligible employees, companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer;

(2) under a policy issued to an association, including a labor union and an agricultural association, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring at least twenty-five members of the association for the benefit of persons other than the association or its officers or trustees, as such;

(3) under a policy issued to a cooperative;

or

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

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

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

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

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

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

D. For the purposes of this section, "cooperative" means a private health insurance cooperative established pursuant to Section 2 of this 2011 act.

SECTION 2. A new section of Chapter 59A, Article 23 NMSA 1978 is enacted to read:

"PRIVATE HEALTH INSURANCE COOPERATIVES--INCORPORATION.--

A. A person may form a cooperative to purchase employer health benefit plans. A cooperative shall be organized as a nonprofit corporation and has the rights and duties provided by the Nonprofit Corporation Act.

B. Two or more large employers or small employers or any combination of large employers and small employers with an aggregate of fifty or more full-time-equivalent employees may purchase group health benefit plans pursuant to Chapter 59A, Article 23 NMSA 1978.

C. A carrier shall not form, or be a member of, a cooperative. A carrier may associate with a sponsoring entity, such as a business association, chamber of commerce or other organization representing employers or serving an
analogous function, to assist the sponsoring entity in
forming a cooperative.

D. A cooperative shall:

(1) arrange for group health benefit plan
coverage for employer groups that participate in the
cooperative by contracting with carriers pursuant to Chapter
59A, Article 23 NMSA 1978;

(2) collect premiums to cover the cost of:

(a) group health benefit plan coverage
purchased through the cooperative; and

(b) the cooperative's administrative
expenses;

(3) establish administrative and accounting
procedures for the operation of the cooperative;

(4) establish procedures under which an
applicant for or participant in group health benefit plan
coverage issued through the cooperative may have a grievance
reviewed by an impartial person;

(5) contract with carriers to provide
services to employers covered through the cooperative; and

(6) develop and implement a plan to maintain
public awareness of the cooperative and publicize the
eligibility requirements for, and the procedures for
enrollment in, group health benefit plan coverage through the
cooperative.
E. A cooperative may negotiate the premiums paid by its members.

F. Notwithstanding the provisions of Subsections B and C of this section, a cooperative may restrict membership to employers within a single industry grouping as defined by the most recent edition of the United States census bureau's North American Industry Classification System.

G. A carrier shall issue health benefit plan coverage for the cooperative through a licensed agent marketing the coverage in accordance with the provisions of Chapter 59A, Article 23 NMSA 1978.

H. The members of a cooperative shall be considered a single risk pool.

I. A cooperative may make available to its members more than one group health benefit plan, but each plan shall be made available to all employees covered by the cooperative.

J. The provisions of this section do not limit or restrict a small or large employer's access to health benefit plans pursuant to the Insurance Code.

K. A group health benefit plan provided through a cooperative shall provide coverage for diabetes equipment, supplies and services.

L. A carrier may elect not to participate in a cooperative. The carrier may elect to participate in one or
more cooperatives and may select the cooperatives in which
the carrier will participate.

M. A cooperative shall not self-insure or
self-fund any health benefit plan or portion of a plan.

N. A cooperative may contract only with a carrier
that demonstrates that the carrier:

(1) is in good standing with the division;
(2) has the capacity to administer health
benefit plans;
(3) is able to monitor and evaluate the
quality and cost-effectiveness of care and applicable
procedures;
(4) is able to conduct utilization
management and establish applicable procedures and policies;
(5) is able to ensure that enrollees have
adequate access to health care providers, including adequate
numbers and types of providers;
(6) has a satisfactory grievance procedure
and is able to respond to enrollees' calls, questions and
complaints; and
(7) has financial capacity, either through
satisfying financial solvency standards that the
superintendent shall set or through appropriate reinsurance
or other risk-sharing mechanisms.

O. A cooperative is not a carrier or an insurer,
and an employee of the cooperative shall not be required to be licensed as an agent or broker pursuant to the provisions of the Insurance Code. This exemption from licensure includes a cooperative that acts to provide information about and to solicit membership in the cooperative.

P. A cooperative shall register as a cooperative with the insurance division in accordance with division rules.

Q. For the purposes of this section:

(1) "carrier" means a person that is subject to licensure by the superintendent or subject to the provisions of the Insurance Code and that provides one or more health benefit or insurance plans in the state;

(2) "large employer" means a person, firm, corporation, partnership or association actively engaged in business that, on at least fifty percent of its working days during either of the two preceding years, employed no fewer than fifty-one employees eligible for employer-sponsored coverage; provided that:

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

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

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

         (d) the employer does not self-insure;

and

(3) "small employer" means a person, firm, corporation, partnership or association actively engaged in business that, on at least fifty percent of its working days during either of the two preceding years, employed no less than two and no more than fifty employees eligible for employer-sponsored coverage; provided that:

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

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

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

(d) the employer does not self-insure."

SECTION 3. A new section of the New Mexico Insurance
Code is enacted to read:

"HEALTH INSURANCE COOPERATIVE--RULEMAKING.--The
superintendent shall adopt rules to govern the registration of
health insurance cooperatives, including the registration of
cooperative employees, pursuant to Chapter 59A, Article 23
NMSA 1978."