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HOUSE BILL 101

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

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 HEALTH
SECURITY PLAN; PROVIDING FOR TRANSFER OF HEALTH INSURANCE
EXCHANGE PERSONAL PROPERTY TO THE COMMISSION; PROVIDING
PENALTIES; AMENDING A SECTION OF THE TORT CLAIMS ACT; PROVIDING
FOR DELAYED REPEAL.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 46 of this act may be cited as the "Health Security
Act".

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1 SECTION 2. ~~[NEW MATERIAL]~~ PURPOSES OF ACT.--The purposes
2 of the Health Security Act are to:

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

6 B. control escalating health care costs; and

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

8 SECTION 3. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
9 Health Security Act:

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

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

15 C. "capital budget" means that portion of a budget
16 that establishes expenditures for:

17 (1) acquisition or addition of substantial
18 improvements to real property; or

19 (2) acquisition of tangible personal property;

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

23 E. "commission" means the health care commission;

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

1 of the federal department of labor;

2 G. "controlling interest" means:

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

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

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

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

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

19 K. "health care provider" means:

20 (1) a person or network of persons licensed or
21 certified and authorized to provide health care;

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

25 (3) a person that is a group practice of

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1 licensed providers or a transportation service;

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

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

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

19 O. "medicare offset" means a reimbursement that the
20 federal government makes pursuant to the federal Health
21 Insurance for the Aged Act, Title 18 of the Social Security
22 Amendments of 1965, as then constituted or later amended;

23 P. "operating budget" means the budget of a health
24 facility exclusive of the facility's capital budget;

25 Q. "person" means an individual or any other legal

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1 entity;

2 R. "primary care provider" means a health care
3 provider who is a physician, osteopathic physician, nurse
4 practitioner, physician assistant, osteopathic physician's
5 assistant, pharmacist clinician or other health care provider
6 certified by the commission to provide the first level of basic
7 health care, including diagnostic and treatment services;
8 services delivered at a primary clinic, telehealth site or a
9 school-based health center; and behavioral health services if
10 those services are integrated into the provider's service
11 array;

12 S. "provider budget" means the authorized
13 expenditures pursuant to payment mechanisms established by the
14 commission to pay for health care furnished by health care
15 providers participating in the health security plan;

16 T. "service" means a health care service or product
17 offered or provided to an individual for the purpose of
18 preventing, alleviating, curing or healing human physical or
19 mental illness or injury or substance use disorder;

20 U. "superintendent" means the superintendent of
21 insurance; and

22 V. "transportation service" means a person
23 providing the services of an ambulance, helicopter or other
24 conveyance that is equipped with health care supplies and
25 equipment and that is used to transport patients to health care

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1 providers or health facilities.

2 SECTION 4. [NEW MATERIAL] HEALTH CARE COMMISSION
3 CREATED--GOVERNMENTAL INSTRUMENTALITY.--As of December 1, 2016,
4 the "health care commission" is created as a public body,
5 politic and corporate, constituting a governmental
6 instrumentality. The commission consists of fifteen members.

7 SECTION 5. [NEW MATERIAL] CREATION OF HEALTH CARE
8 COMMISSION MEMBERSHIP NOMINATING COMMITTEE--MEMBERSHIP, TERMS
9 AND DUTIES.--

10 A. As of April 15, 2018, the "health care
11 commission membership nominating committee" is created,
12 consisting of ten members, to reflect the geographic diversity
13 of the state, as follows:

14 (1) three members appointed by the speaker of
15 the house of representatives;

16 (2) three members appointed by the president
17 pro tempore of the senate;

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

20 (4) two members appointed by the minority
21 floor leader of the senate.

22 B. By March 1, 2018, the legislative council
23 service shall provide the public with public notice to allow
24 members of the public to request consideration of appointment
25 to the nominating committee. The notice shall be advertised

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1 and reported on a publicly accessible website that the
2 nominating committee establishes and maintains, in media
3 outlets throughout the state and through publication of a legal
4 notice in major newspapers. Publication of the legal notice
5 shall occur once each week for the two weeks preceding April
6 15, 2018.

7 C. At the first meeting of the nominating
8 committee, it shall elect a chair and any other officers it
9 deems necessary from its membership. The chair shall vote only
10 in the case of a tie vote.

11 D. Members shall serve two-year terms.

12 E. A member shall serve until the member's
13 successor is appointed and qualified. Successor members shall
14 be appointed by the appointing authority that made the initial
15 appointment to the nominating committee. A member shall be
16 eligible for or enrolled in the health security plan. A person
17 shall not serve on the nominating committee if that person:

18 (1) currently or within the previous thirty-
19 six months:

20 (a) serves or has served as a member of
21 the commission; or

22 (b) has, or is a member of the household
23 of a person who has, been employed by, served as an agent or
24 officer of or had a controlling interest in a person that is
25 licensed to provide health insurance;

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1 (2) is a state employee who is exempt from the
2 Personnel Act; or

3 (3) is an elected official.

4 F. Appointed members of the nominating committee
5 shall have substantial knowledge of the health care system as
6 demonstrated by education or experience.

7 G. The nominating committee shall advertise and
8 report notice of its meetings and agendas at least seventy-two
9 hours before each meeting on a publicly accessible website that
10 the commission establishes and maintains, in media outlets
11 throughout the state and through publication of a legal notice
12 in major newspapers. Publication of the legal notice shall
13 occur once each week for the two weeks immediately preceding
14 the date of a meeting. Meetings of the nominating committee
15 shall be open to the public, and public comment shall be
16 allowed.

17 H. A majority of the nominating committee
18 constitutes a quorum. The nominating committee may allow
19 members' participation in meetings by telephone or other
20 electronic media that allow full participation. Meetings may
21 be closed only for discussion of candidates prior to selection.
22 Final selection of candidates shall be by vote of the members
23 and shall be conducted in a public meeting.

24 I. The New Mexico legislative council shall convene
25 the first meeting of the nominating committee on or before May

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1 16, 2018 and thereafter at the call of the chair.

2 J. The nominating committee shall actively solicit,
3 accept and evaluate applications from qualified persons for
4 membership on the commission subject to the qualification
5 requirements for commission membership pursuant to Section 6 of
6 the Health Security Act.

7 K. No later than October 1, 2018, the nominating
8 committee shall submit to the governor the names of the persons
9 recommended for appointment to the commission by a majority of
10 the nominating committee. Immediately after receiving the
11 nominating committee's nominations, the governor may make one
12 request of the nominating committee for submission of
13 additional names. If a majority of the nominating committee
14 finds additional persons that would be qualified, the
15 nominating committee shall promptly submit the additional names
16 and recommend those persons for appointment to the commission.
17 The nominating committee shall submit no more than three names
18 for a membership position for each initial or additional
19 appointment.

20 L. Appointed nominating committee members may be
21 reimbursed pursuant to the Per Diem and Mileage Act for
22 expenses incurred in fulfilling their duties.

23 M. The legislative council service shall provide
24 staff to assist the nominating committee.

25 SECTION 6. [NEW MATERIAL] APPOINTMENT OF COMMISSION

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1 MEMBERS--MEETINGS--QUALIFICATIONS--TERMS.--

2 A. From the nominees submitted by the health care
3 commission membership nominating committee, the governor shall
4 appoint fifteen members to the commission, and the initial
5 commission shall be in place by December 1, 2018. In the event
6 that the governor does not appoint a member to a commission
7 membership slot by December 1, 2018, the nominating committee
8 shall make that appointment.

9 B. The New Mexico legislative council shall convene
10 a first meeting of the commission by January 4, 2019. At the
11 first meeting of the commission, the members shall elect from
12 their membership a chair and a vice chair and any other
13 officers they deem necessary. The chair, vice chair and any
14 other officers shall serve for terms of two years.

15 C. After the first meeting of the commission, the
16 commission shall meet at the call of the chair as the chair
17 deems necessary and at least once each month.

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

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1 successor is appointed.

2 E. A person shall not serve on the commission if
3 that person:

4 (1) within the previous thirty-six months has
5 served as a member of the nominating committee;

6 (2) has, or is a member of the household of a
7 person who has, during the previous thirty-six months been
8 employed by, served as an agent or officer of or had a
9 controlling interest in a person that is licensed to provide
10 health insurance;

11 (3) is a state employee who is exempt from the
12 Personnel Act;

13 (4) is an elected official; or

14 (5) is not eligible for or enrolled in the
15 health security plan.

16 F. When a vacancy occurs in the membership of the
17 commission, the health care commission membership nominating
18 committee shall meet and nominate a member to fill the vacancy
19 within thirty days of the occurrence of the vacancy. From the
20 nominees submitted, the governor shall fill the vacancy within
21 thirty days after receiving final nominations. In the event
22 that the governor does not appoint a member to the vacancy
23 within thirty days, the nominating committee shall appoint a
24 member to fill the vacancy.

25 G. The fifteen members of the commission shall

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1 include:

2 (1) five persons who represent either health
3 care providers or health facilities;

4 (2) six persons who represent consumer
5 interests; and

6 (3) four persons who represent employer
7 interests; provided that a person who represents a health care
8 provider or a health facility shall not serve as a member who
9 represents employer interests.

10 H. A person appointed to the commission who does
11 not represent a health care provider or a health facility shall
12 have a knowledge of the health care system as demonstrated by
13 experience or education.

14 I. To ensure fair representation of all areas of
15 the state, members shall be appointed from each of the public
16 education commission districts as follows:

17 (1) two from public education commission
18 district 1;

19 (2) one from public education commission
20 district 2;

21 (3) one from public education commission
22 district 3;

23 (4) two from public education commission
24 district 4;

25 (5) two from public education commission

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1 district 5;
2 (6) one from public education commission
3 district 6;
4 (7) two from public education commission
5 district 7;
6 (8) two from public education commission
7 district 8;
8 (9) one from public education commission
9 district 9; and
10 (10) one from public education commission
11 district 10.

12 J. The presence of a majority of the commission's
13 members constitutes a quorum for the transaction of business.
14 The commission may allow members' participation in meetings by
15 telephone or other electronic media that allow full
16 participation.

17 K. A member may receive per diem and mileage at a
18 rate equal to the rate at which state legislators are
19 reimbursed in accordance with the provisions of the Per Diem
20 and Mileage Act for expenses incurred in fulfilling their
21 duties. Additionally, members shall be compensated at the rate
22 of two hundred dollars (\$200) for each day of a meeting or
23 training event actually attended not to exceed compensation for
24 one hundred twenty meetings for a two-year period occurring in
25 a term.

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1 L. The commission shall establish an electronic
2 mail or "email" system for use by members in the conduct of
3 commission business. Commission business shall be exclusively
4 conducted on the commission's email system.

5 SECTION 7. [NEW MATERIAL] CONFLICT OF INTEREST--
6 DISCLOSURE BY MEMBERS AND DISQUALIFICATION FROM VOTING ON
7 CERTAIN MATTERS.--

8 A. The commission shall adopt a conflict-of-
9 interest disclosure statement for use by all members that
10 requires disclosure of a financial interest, whether or not a
11 controlling interest, of the member or a member of the member's
12 household in a person providing health care or health
13 insurance.

14 B. A member representing health facilities or
15 health care providers may vote on matters that pertain
16 generally to health facilities or health care providers.

17 C. If there is a question about a conflict of
18 interest of a commission member, the other members shall vote
19 on whether to allow the member to vote.

20 SECTION 8. [NEW MATERIAL] COMMISSION CODE OF CONDUCT--
21 MEMBER DISCIPLINE--REMOVAL.--The commission shall adopt and
22 promulgate a code of conduct and procedures to be observed by
23 members in the execution of their duties. The commission may
24 remove a member for a violation of the commission code of
25 conduct or a violation of the Health Security Act by a two-

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1 thirds' majority vote of all of the members at a meeting where
2 all members, except the member who is the subject of the vote,
3 are present. A member shall not be removed without proceedings
4 consisting of at least one ten-day notice of hearing and an
5 opportunity to be heard. Removal proceedings shall be before
6 the commission and in accordance with procedures the commission
7 has adopted and promulgated.

8 SECTION 9. [NEW MATERIAL] APPLICATION OF CERTAIN STATE
9 LAWS TO COMMISSION.--The commission and regional councils
10 created pursuant to the Health Security Act:

11 A. shall be subject to and shall comply with the
12 provisions of the:

- 13 (1) Open Meetings Act;
- 14 (2) State Rules Act;
- 15 (3) Inspection of Public Records Act;
- 16 (4) Public Records Act;
- 17 (5) Financial Disclosure Act;
- 18 (6) Accountability in Government Act;
- 19 (7) Gift Act; and
- 20 (8) Tort Claims Act; and

21 B. shall not be subject to the provisions of the
22 Procurement Code or the Personnel Act.

23 SECTION 10. [NEW MATERIAL] CHIEF EXECUTIVE OFFICER--
24 STAFF--CONTRACTS--BUDGETS.--

25 A. The commission shall appoint and set the salary

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1 of a "chief executive officer". The chief executive officer
2 shall serve at the pleasure of the commission and has authority
3 to carry on the day-to-day operations of the commission and the
4 health security plan.

5 B. The chief executive officer shall employ those
6 persons necessary to administer and implement the provisions of
7 the Health Security Act.

8 C. The chief executive officer and the chief
9 executive officer's staff shall implement the Health Security
10 Act in accordance with that act and the rules adopted by the
11 commission. The chief executive officer may delegate authority
12 to employees and may organize the staff into units to
13 facilitate its work.

14 D. If the chief executive officer determines that
15 the commission staff or a state agency does not have the
16 resources or expertise to perform a necessary task, the chief
17 executive officer may contract for performance from a person
18 who has a demonstrated capability to perform the task. The
19 commission shall establish the standards and requirements by
20 which a contract is executed by the commission or the chief
21 executive officer. A contract shall be reviewed by the
22 commission or the chief executive officer to ensure that it
23 meets the criteria, performance standards, expectations and
24 needs of the commission.

25 E. The chief executive officer shall prepare and

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1 submit an annual budget request and plan of operation to the
2 commission for its approval. The chief executive officer shall
3 provide at least quarterly status reports on the budget and
4 advise of a potential shortfall as soon as practicably
5 possible.

6 F. A contract for claims processing functions shall
7 require that all work for claims processing, customer service,
8 medical and utilization review, financial audit and
9 reimbursement and related claims adjudication functions be
10 performed entirely in New Mexico. To the extent practicable,
11 all other work shall be performed in New Mexico.

12 SECTION 11. [NEW MATERIAL] COMMISSION--GENERAL DUTIES.--

13 The commission shall:

14 A. adopt a transition plan to ensure the seamless
15 transition of health security plan beneficiaries from other
16 sources of coverage, public and private. The transition plan
17 shall ensure the proper assignment and payment of claims
18 incurred on behalf of beneficiaries before the implementation
19 of the health security plan;

20 B. by February 15, 2019, obtain legal counsel to
21 advise the commission in the execution of its duties;

22 C. by April 1, 2019, adopt and promulgate rules for
23 the procurement of goods and services. With the exception of
24 audit-related services, rules relating to the procurement of
25 goods and services shall provide for a preference for New

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1 Mexico vendors;

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

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

8 F. 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 G. 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 H. establish annual health security plan budgets
23 and budgets for those projected future periods that the
24 commission believes appropriate;

25 I. establish capital budgets for health facilities,

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1 limited to capital expenditures subject to the Health Security
2 Act, and include and adopt in establishing those budgets:

3 (1) standards and procedures for determining
4 the budgets; and

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

7 J. negotiate and enter into health care reciprocity
8 agreements with out-of-state health care providers and
9 negotiate and enter into other health care agreements with out-
10 of-state health care providers and health facilities;

11 K. develop claims and payment procedures for health
12 care providers, health facilities and claims administrators and
13 include provisions to ensure timely payments and provide for
14 payment of interest when reimbursable claims are not paid
15 within a reasonable time;

16 L. establish, in conjunction with state agencies
17 similarly charged, a comprehensive system to collect and
18 analyze health care data, including claims data and other data,
19 necessary to improve the quality, efficiency and effectiveness
20 of health care and to control costs of health care in New
21 Mexico, which system shall include data on:

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

24 (2) morbidity;

25 (3) health behavior;

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1 (4) physical and psychological impairment and
2 disability;

3 (5) health care system costs and health care
4 availability, utilization and revenues;

5 (6) environmental factors;

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

8 (8) demographic factors;

9 (9) social and economic conditions affecting
10 health; and

11 (10) other factors determined by the
12 commission;

13 M. standardize data collection and specific methods
14 of measurement across databases and use scientific sampling or
15 complete enumeration for reporting health information;

16 N. foster a health care delivery system that is
17 efficient to administer and that eliminates unnecessary
18 administrative costs;

19 O. adopt rules necessary to implement and monitor a
20 preferred drug list, bulk purchasing or other mechanism to
21 provide prescription drugs and a pricing procedure for
22 nonprescription drugs, durable medical equipment and supplies,
23 eyeglasses, hearing aids and oxygen;

24 P. establish a pharmacy and therapeutics committee
25 to:

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1 (1) research federal and state incentives and
2 discount programs for the purchase, manufacture or supply of
3 drugs, biologics and medical equipment and supplies to maximize
4 the health security plan's savings potential through these
5 incentives and programs;

6 (2) establish a formulary of drugs and
7 biologics that is in accordance with clinical best practices
8 for safety, efficacy and effectiveness while, in strict
9 observance of those best practices, maximizing fiscal
10 soundness;

11 (3) conduct concurrent, prospective and
12 retrospective drug utilization review;

13 (4) consult with specialists in appropriate
14 fields of medicine for therapeutic classes of drugs;

15 (5) recommend therapeutic classes of drugs,
16 including specific drugs within each class to be included in
17 the preferred drug list;

18 (6) identify appropriate exclusions from the
19 preferred drug list; and

20 (7) conduct periodic clinical reviews of
21 preferred, nonpreferred and new drugs;

22 Q. study and evaluate the adequacy and quality of
23 health care furnished pursuant to the Health Security Act, the
24 cost of each type of service and the effectiveness of cost-
25 containment measures in the health security plan;

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1 R. in conjunction with the human services
2 department, apply to the United States department of health and
3 human services for all waivers of requirements under health
4 care programs established pursuant to the federal Social
5 Security Act that are necessary to enable the health security
6 plan to receive federal payments for services rendered to
7 medicaid or medicare beneficiaries;

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

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

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1 Mexicans as possible; provided, however, that the amendment or
2 waiver requested shall not impair portability or other aspects
3 of the health care coverage;

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

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

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

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

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1 security plan;

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

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

14 AA. establish and approve changes in coverage
15 services and service standards in the health security plan in
16 compliance with federal and state law;

17 BB. conduct necessary investigations and inquiries;

18 CC. adopt rules necessary to implement, administer
19 and monitor the operation of the health security plan;

20 DD. designate a Native American liaison who shall:

21 (1) serve on the Native American advisory
22 board established pursuant to Subsection A of Section 13 of the
23 Health Security Act;

24 (2) assist the commission in developing and
25 ensuring implementation of communication and collaboration

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1 between the commission and Native Americans in the state;

2 (3) serve as a contact person between the
3 commission and New Mexico Indian nations, tribes and pueblos;
4 and

5 (4) ensure that training is provided to the
6 staff of the commission, which may include training in:

7 (a) cultural competency;
8 (b) state and federal law relating to
9 Indian health; and

10 (c) other matters relating to the
11 functions of the health security plan with respect to Native
12 Americans in the state;

13 EE. report at least once annually to the
14 legislature and the governor on the commission's activities and
15 the operation of the health security plan and include in the
16 annual report:

17 (1) a summary of information about health care
18 needs, health care services, health care expenditures, revenues
19 received and projected revenues and other relevant issues
20 relating to the health security plan; and

21 (2) recommendations on methods to control
22 health care costs and improve access to and the quality of
23 health care for state residents, as well as recommendations for
24 legislative action; and

25 FF. provide at least one annual training for its

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1 members on health care coverage, policy and financing.

2 SECTION 12. [NEW MATERIAL] COMMISSION--AUTHORITY.--The
3 commission has the authority necessary to carry out the powers
4 and duties pursuant to the Health Security Act. The commission
5 retains responsibility for its duties but may delegate
6 authority to the chief executive officer; provided, however,
7 that only the commission may:

8 A. approve the commission's budget and plan of
9 operation;

10 B. approve the health security plan and make
11 changes in the health security plan;

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

14 D. issue subpoenas to persons to appear and testify
15 before the commission and to produce documents and other
16 information relevant to the commission's inquiry and enforce
17 this subpoena power through an action in a state district
18 court;

19 E. make reports and recommendations to the
20 legislature;

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

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1 G. apply for and accept grants, loans and
2 donations;

3 H. acquire or lease real property and make
4 improvements on it and acquire by lease or by purchase tangible
5 and intangible personal property;

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

8 J. appoint and prescribe the duties of employees,
9 fix their compensation, pay their expenses and provide an
10 employee benefit program;

11 K. establish and maintain banking relationships,
12 including establishment of checking and savings accounts;

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

15 M. enter into agreements with an employer, group or
16 other plan to provide health care services for the employer's
17 employees or retirees; provided, however, that nothing in the
18 Health Security Act shall be construed to reduce or eliminate
19 services to which the employee or retiree is entitled.

20 SECTION 13. [NEW MATERIAL] ADVISORY BOARDS.--

21 A. The commission shall establish the following in
22 matters requiring the expertise and knowledge of the advisory
23 boards' members:

24 (1) a "health care provider advisory board"
25 made up of health care providers;

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1 (2) a "health facility advisory board" made up
2 of representatives of health facilities; and

3 (3) a "Native American advisory board" made up
4 of Native Americans, some of whom live on a reservation and
5 some of whom do not live on a reservation, and the Native
6 American liaison established pursuant to Subsection DD of
7 Section 11 of the Health Security Act. The Native American
8 advisory board shall make recommendations to the commission on:

9 (a) matters relating to Native American
10 beneficiaries; and

11 (b) agreements between the commission
12 and tribal governments.

13 B. The commission may establish advisory boards in
14 addition to the advisory boards established pursuant to
15 Subsection A of this section to assist the commission in
16 performing its duties.

17 C. The commission shall not appoint to an advisory
18 board:

19 (1) more than two members of the commission;

20 (2) more than five persons who are not members
21 of the commission; or

22 (3) a person who represents or who has a
23 controlling interest, direct or indirect, in a person licensed
24 to provide health insurance in the state.

25 D. Except for the members of the health care

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1 provider advisory board and the health facility advisory board,
2 no more than two members of any advisory board shall represent
3 or have a controlling interest, direct or indirect, in a health
4 care provider or a health facility.

5 E. Advisory board members may be paid per diem and
6 mileage equal to the rate at which state legislators are
7 reimbursed in accordance with the provisions of the Per Diem
8 and Mileage Act.

9 F. Staff and technical assistance for advisory
10 boards shall be provided by the commission as necessary.

11 SECTION 14. [NEW MATERIAL] HEALTH CARE DELIVERY
12 REGIONS.--The commission shall establish health care delivery
13 regions in the state, based on geography and health care
14 resources. The regions may have differential fee schedules,
15 budgets, capital expenditure allocations or other features to
16 encourage the provision of health care in rural and other
17 underserved areas or to tailor otherwise the delivery of health
18 care to fit the needs of a region or a part of a region.

19 SECTION 15. [NEW MATERIAL] REGIONAL COUNCILS.--

20 A. The commission shall designate regional councils
21 in the designated health care delivery regions. In selecting
22 persons to serve as members of regional councils, the
23 commission shall consider the comments and recommendations of
24 persons in the region who are knowledgeable about health care
25 and the economic and social factors affecting the region.

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1 B. The regional councils shall be composed of the
2 commission members who live in the region and five other
3 members who live in the region and are appointed by the
4 commission. No more than two noncommission council members
5 shall have a controlling interest, direct or indirect, in a
6 person providing health care. The commission shall not appoint
7 to a regional council an individual who is, or whose household
8 contains an individual who is, employed by or an officer of or
9 who has a controlling interest in a person licensed to
10 provide health insurance, directly or as an agent of a health
11 insurer.

12 C. Members of a regional council may be paid per
13 diem and mileage equal to the rate at which state legislators
14 are reimbursed in accordance with the provisions of the Per
15 Diem and Mileage Act.

16 D. The regional councils shall hold public hearings
17 to receive comments, suggestions and recommendations from the
18 public regarding regional health care needs. The councils
19 shall report to the commission at times specified by the
20 commission to ensure that regional concerns are considered in
21 the development and update of short- and long-range plans and
22 projections, fee schedules, budgets and capital expenditure
23 allocations.

24 E. Staff technical assistance for the regional
25 councils shall be provided by the commission.

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1 SECTION 16. ~~[NEW MATERIAL]~~ RULEMAKING.--

2 A. The commission shall adopt rules necessary to
3 carry out the duties of the commission and the provisions of
4 the Health Security Act.

5 B. The commission shall not adopt, amend or repeal
6 any rule affecting a person outside the commission without a
7 public hearing on the proposed action before the commission or
8 a hearing officer designated by the commission. The hearing
9 officer may be a member of the commission's staff. The hearing
10 shall be held in a county that the commission determines would
11 be in the interest of those affected. Notice of the subject
12 matter of the rule, the action proposed to be taken, the time
13 and place of the hearing, the manner in which interested
14 persons may present their views and the method by which copies
15 of the proposed rule or an amendment or repeal of an existing
16 rule may be obtained shall be published once at least thirty
17 days prior to the hearing date on a publicly accessible website
18 that the commission establishes and maintains and in media
19 outlets throughout the state. Notice shall also be published
20 in an informative nonlegal format in one newspaper published in
21 each health care delivery region and mailed at least thirty
22 days prior to the hearing date to all persons who have made a
23 written request for advance notice of hearing.

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

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1 SECTION 17. ~~[NEW MATERIAL]~~ HEALTH SECURITY PLAN.--

2 A. The commission shall design the health security
3 plan to provide comprehensive, necessary and appropriate health
4 care services, including the "minimum essential health
5 benefits" required under federal and state law. The commission
6 may establish additional preventive health care and primary,
7 secondary and tertiary health care for acute and chronic
8 conditions.

9 B. Covered health care services shall not include:

10 (1) surgery for cosmetic purposes other than
11 for reconstructive purposes;

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

16 (3) orthodontic services and cosmetic dental
17 services except those cosmetic dental services necessary for
18 reconstructive purposes.

19 C. The health security plan shall specify the
20 health care to be covered and the amount, scope and duration of
21 services.

22 D. The health security plan shall contain
23 provisions to control health care costs so that beneficiaries
24 receive comprehensive, high-quality health care consistent with
25 available revenue and budget constraints.

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1 E. The health security plan shall phase in
2 eligibility for beneficiaries as their participation becomes
3 possible through contracts, waivers or federal legislation.
4 The health security plan may provide for certain preventive
5 health care to be offered to all New Mexicans regardless of a
6 person's eligibility to participate as a beneficiary.

7 **SECTION 18. [NEW MATERIAL] LONG-TERM CARE.--**

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

18 B. The long-term care component of the health
19 security plan shall provide for case management and
20 noninstitutional services when appropriate.

21 C. Nothing in this section affects long-term care
22 services paid through private insurance or state or federal
23 programs subject to the provisions of Section 39 of the Health
24 Security Act.

25 **SECTION 19. [NEW MATERIAL] MENTAL AND BEHAVIORAL HEALTH**

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1 SERVICES--PARITY.--

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

13 B. The commission shall ensure that the health
14 security plan conforms to federal and state mental and
15 behavioral health services parity laws.

16 C. The mental and behavioral health services
17 component of the health security plan shall provide, where
18 appropriate, for:

- 19 (1) inpatient crisis evaluation services;
- 20 (2) inpatient residential substance abuse
21 treatment services without a step therapy requirement; and
- 22 (3) case management, care coordination and
23 noninstitutional services.

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 39 of the Health Security Act.

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

12 SECTION 21. [NEW MATERIAL] HEALTH SECURITY PLAN
13 COVERAGE--CONDITIONS OF ELIGIBILITY FOR BENEFICIARIES--
14 EXCLUSIONS.--

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

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

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

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1 personnel; and

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

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

7 (1) Indian nations, tribes or pueblos;

8 (2) consortia of tribes or pueblos; or

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

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

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

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

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

12 SECTION 22. [NEW MATERIAL] HEALTH SECURITY PLAN COVERAGE
13 OF NONRESIDENT STUDENTS.--

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

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

25 C. The commission shall adopt rules to determine

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1 proof of an individual's eligibility for the health security
2 plan or a student's proof of nonresident health care coverage.

3 SECTION 23. [NEW MATERIAL] REMOVING INELIGIBLE PERSONS.--

4 The commission shall adopt rules to provide procedures for
5 removing persons no longer eligible for coverage.

6 SECTION 24. [NEW MATERIAL] ELIGIBILITY CARD--USE--

7 PENALTIES FOR MISUSE.--

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

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

24 C. A beneficiary who lends the beneficiary's card
25 to another or an individual who uses another's card after being

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

7 SECTION 25. [NEW MATERIAL] PRIMARY CARE PROVIDER--RIGHT
8 TO CHOOSE--ACCESS TO SERVICES.--

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

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

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

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

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1 provided.

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

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

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

21 SECTION 27. [NEW MATERIAL] BENEFICIARY RIGHTS--CLAIMS
22 REVIEW--INTERNAL APPEALS--EXTERNAL APPEALS--GRIEVANCES.--

23 A. The commission shall adopt and promulgate rules
24 to provide for:

25 (1) a system of service claim review pursuant

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1 to which any final decision shall be made by a health
2 professional qualified and legally authorized to make the
3 determination. The service claim review system shall include
4 an internal and external appeals process for adverse
5 determinations of service claims, including:

6 (a) a determination that a service is
7 not medically necessary;

8 (b) a denial of coverage for a service
9 because it is determined to be experimental, investigational or
10 inappropriate; and

11 (c) any other determination that results
12 in a denial of, or partial payment for, a service claim;

13 (2) expedited appeals of adverse
14 determinations of service claims, including the grounds for
15 expedited appeals and the time lines for hearing and decisions
16 on expedited appeals;

17 (3) procedures and evidentiary rules relating
18 to the internal appeals process;

19 (4) a beneficiary's right to continue to
20 receive services that are the subject of an appeal and that the
21 beneficiary was receiving before the beneficiary filed the
22 appeal; and

23 (5) a beneficiary's right to emergency
24 services that are immediately available without prior
25 authorization requirements and appropriate out-of-state

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1 emergency services that are not subject to additional cost to
2 the beneficiary.

3 B. The commission shall adopt and promulgate rules
4 to provide beneficiaries with a prompt and fair grievance
5 procedure for resolving patient complaints and for addressing
6 patient questions and concerns relating to any aspect of the
7 health security plan not relating to the service claim review
8 system.

9 C. Within a reasonable time after enrollment and at
10 subsequent periodic times as the commission deems appropriate,
11 the health security plan shall provide beneficiaries with
12 written materials that contain, in a clear, conspicuous and
13 readily understandable form, a full disclosure of:

- 14 (1) the health security plan's covered
15 services, limitations and exclusions;
16 (2) conditions of eligibility;
17 (3) prior authorization requirements;
18 (4) rights to appeals of adverse service claim
19 determinations and to grievance procedures, including:

20 (a) a beneficiary's right to have a
21 service claim denial, reduction or termination communicated
22 promptly in writing;

23 (b) a beneficiary's right to review the
24 beneficiary's file and to present evidence and testimony as
25 part of the appeals and grievance processes;

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1 (c) the availability of the office of
2 the ombudsman at the office of superintendent of insurance to
3 assist beneficiaries with appeals and grievances;

4 (d) a beneficiary's right to continue to
5 receive services that are the subject of an appeal and that the
6 beneficiary was receiving before the beneficiary filed the
7 appeal; and

8 (e) a beneficiary's right to have the
9 outcome of an appeal or grievance communicated promptly in
10 writing; and

11 (5) a beneficiary's right to emergency
12 services that are immediately available without prior
13 authorization requirements and appropriate out-of-state
14 emergency services that are not subject to additional costs to
15 the beneficiary.

16 D. The superintendent shall adopt and promulgate
17 rules to establish an external appeals process for review of
18 beneficiary service claim appeals in accordance with the
19 provisions of the Health Security Act.

20 E. The superintendent shall appoint one or more
21 qualified individuals to review external service claim appeals.
22 The superintendent shall fix the reasonable compensation of
23 each appointee based upon compensation amounts suggested by
24 national or state legal or medical professional societies,
25 organizations or associations. The commission shall pay the

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1 compensation directly to each appointee who participated in the
2 external grievance appeal review.

3 F. Upon completion of the external service claim
4 appeal review, the superintendent shall prepare a detailed
5 statement of compensation due each appointee and shall present
6 the statement to the beneficiary and the commission.

7 G. The decision to approve or deny a service claim
8 based on a technicality shall be made in a timely manner and
9 shall not exceed time limits established by rule of the
10 commission.

11 H. The fact of and the specific reasons for a
12 denial of a service claim shall be communicated promptly in
13 writing to both the provider and the beneficiary involved.

14 SECTION 28. [NEW MATERIAL] QUALITY OF CARE--HEALTH CARE
15 PROVIDER AND HEALTH FACILITIES--PRACTICE STANDARDS.--

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

25 B. The commission shall establish a quality

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

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

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1 followed in making determinations on practice issues.

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

10 E. The commission may provide by rule for the
11 assessment of administrative penalties for up to three times
12 the amount of excess payments if it finds that excessive
13 billings were part of an aberrant pattern of practice.
14 Administrative penalties shall be deposited in the current
15 school fund.

16 F. After consultation with the health care practice
17 advisory committee, the commission may suspend or revoke a
18 health care provider's or health facility's privilege to be
19 paid for health care provided under the health security plan
20 based upon evidence clearly supporting a determination by the
21 commission that the provider or facility engages in aberrant
22 patterns of practice, including inappropriate utilization,
23 attempts to unbundle health care services or other practices
24 that the commission deems a violation of the Health Security
25 Act or rules adopted pursuant to that act. As used in this

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1 subsection, "unbundle" means to divide a service into
2 components in an attempt to increase, or with the effect of
3 increasing, compensation from the health security plan.

4 G. The commission shall report a suspension or
5 revocation of the privilege to be paid for health care pursuant
6 to the Health Security Act to the appropriate licensing or
7 certifying board.

8 H. The commission shall report cases of suspected
9 fraud by a health care provider or a health facility to the
10 attorney general for investigation and prosecution. The office
11 of the attorney general has independent authority to
12 investigate and prosecute suspected fraud without a prior
13 commission report of fraud.

14 SECTION 29. [NEW MATERIAL] HEALTH CARE PROVIDER AND
15 HEALTH FACILITY RIGHTS--DISPUTE RESOLUTION--GRIEVANCE
16 PROCEDURES--RULEMAKING.--

17 A. The health security plan shall not:

18 (1) adopt a gag rule or practice that
19 prohibits a health care provider or health facility from
20 discussing a treatment option with a beneficiary even if the
21 health security plan does not approve of the option;

22 (2) include in any of its contracts with
23 health care providers or health facilities any provisions that
24 offer an inducement, financial or otherwise, to provide less
25 than medically necessary services to a beneficiary; or

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1 (3) require a health care provider or health
2 facility to violate any recognized fiduciary duty of the health
3 care provider's profession or place the health care provider's
4 or health facility's license in jeopardy.

5 B. If the health security plan proposes to make an
6 adverse determination affecting the participation of a health
7 care provider or health care facility in the health security
8 plan, it shall explain in writing the rationale for its
9 proposed adverse determination and deliver reasonable advance
10 written notice to the provider or facility prior to the
11 proposed effective date of the termination.

12 C. The commission shall adopt and promulgate rules
13 to implement a dispute resolution system, and include in each
14 contract with a health care provider or a health facility a
15 dispute resolution provision, to permit the provider or
16 facility to dispute:

17 (1) a denial of, or partial payment for, a
18 service that the health care provider or health facility has
19 rendered to a beneficiary; or

20 (2) the existence of adequate cause to
21 terminate the provider's or facility's participation in the
22 plan when the termination is made for cause.

23 D. The commission shall adopt and promulgate rules
24 to implement procedures pursuant to which a health care
25 provider or a health facility may file a grievance relating to

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1 administration of the plan. The rules shall provide, at a
2 minimum, the provider or facility with the right to present to
3 the commission a grievance and evidence to support that
4 grievance. A grievance may relate to:

5 (1) the quality of and access to health care
6 services; or

7 (2) the choice of health care providers and
8 health facilities under the plan.

9 E. As used in this section, "adverse determination"
10 means any of the following actions against a health care
11 provider or health facility:

12 (1) restriction of or termination from
13 participation in the health security plan;

14 (2) the recoupment of payment; or

15 (3) the assessment of an administrative
16 penalty.

17 SECTION 30. [NEW MATERIAL] HEALTH SECURITY PLAN BUDGET--
18 PREMIUM RATES--EMPLOYER CONTRIBUTIONS.--

19 A. Annually, the commission shall develop a health
20 security plan budget. The budget shall be the commission's
21 recommendation for the total amount to be spent by the plan for
22 covered health care services in the next fiscal year.

23 B. The superintendent shall adopt and promulgate
24 rules for the establishment or modification of premium rates
25 and employer contribution rates. The rules shall include, at a

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1 minimum, provisions for:

2 (1) the transparency of rate filings;

3 (2) grounds for the establishment or
4 modification of rates;

5 (3) the issuance of findings by the
6 superintendent;

7 (4) procedures pursuant to which the
8 commission or a member of the public may obtain a
9 redetermination of the superintendent's findings; and

10 (5) procedures pursuant to which the
11 commission or a member of the public may appeal a
12 redetermination of the superintendent's findings in a court of
13 competent jurisdiction.

14 C. In developing the health security plan budget,
15 the commission shall provide that credit be taken in the budget
16 for all revenues produced for health care in the state pursuant
17 to any law other than the Health Security Act.

18 D. The health security plan shall include a maximum
19 amount or percentage for administrative costs, and this
20 maximum, if a percentage, may change in relation to the total
21 costs of services provided under the health security plan. For
22 the sixth and subsequent calendar years of operation of the
23 health security plan, administrative costs shall not exceed
24 five percent of the health security plan budget.

25 SECTION 31. [NEW MATERIAL] PAYMENTS TO HEALTH CARE

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1 PROVIDERS.--

2 A. The commission shall prepare a budget to provide
3 payment for all covered health care services rendered by health
4 care providers. The commission may adopt a variety of payment
5 systems, including fee-for-service or shared incentives. The
6 commission shall negotiate payment with providers as provided
7 by rule and in accordance with federal antitrust law. In the
8 event that negotiation fails to develop an acceptable payment
9 plan and except as otherwise provided in federal law, the
10 disputing parties shall submit the dispute for resolution
11 pursuant to Section 29 of the Health Security Act.

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

15 C. An annual percentage increase in the amount
16 allocated for provider payments in the budget shall be no
17 greater than the annual percentage increase in the consumer
18 price index for medical care prices published by the bureau of
19 labor statistics of the federal department of labor using the
20 year prior to the year in which the health security plan is
21 implemented as the baseline year. The annual limitation in
22 this subsection may be adjusted up or down by the commission
23 based on a showing of special and unusual circumstances in a
24 hearing before the commission.

25 D. Payment, or the offer of payment whether or not

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1 that offer is accepted, to a health care provider for services
2 covered by the health security plan shall be payment in full
3 for those services. A health care provider shall not charge a
4 beneficiary an additional amount for services covered by the
5 plan.

6 SECTION 32. [NEW MATERIAL] PAYMENTS TO HEALTH
7 FACILITIES--COPAYMENTS.--

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

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

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1 the state.

2 C. Each health care provider employed by a health
3 facility shall be paid from the facility's operating budget in
4 a manner determined by the health facility.

5 SECTION 33. [NEW MATERIAL] BENEFICIARY COPAYMENTS--
6 PREVENTIVE SERVICES--OUT-OF-STATE SERVICES--THIRD-PARTY
7 PAYMENTS--ASSIGNMENT OF CLAIMS.--

8 A. The commission may establish a copayment
9 schedule if a required copayment is determined to be an
10 effective cost-control measure. A copayment shall not be
11 required for preventive health care services, as the commission
12 defines "preventive health care services" by rule in accordance
13 with state and federal law. When a copayment is required, a
14 health care provider or health facility shall not waive it, and
15 if it remains uncollected, the provider or facility shall
16 demonstrate a good-faith effort to collect the copayment.

17 B. A beneficiary may obtain health care services
18 covered by the health security plan out of state; provided,
19 however, that the services shall be reimbursed at:

20 (1) the same rate that would apply if those
21 services had been received in New Mexico; or

22 (2) a rate higher than the reimbursement rate
23 the health security plan would have paid if the services had
24 been received in New Mexico if the commission negotiates a
25 reimbursement agreement or other agreement with:

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1 (a) the state in which the health care
2 services were received; or

3 (b) the health care provider or health
4 facility rendering the services.

5 C. The health security plan shall make reasonable
6 efforts to ascertain any legal liability of third-party persons
7 that are or may be liable to pay all or part of the health care
8 services costs of injury, disease or disability of a
9 beneficiary.

10 D. When the health security plan makes payments on
11 behalf of a beneficiary, the health security plan is subrogated
12 to any right of the beneficiary against a third party for
13 recovery of amounts paid by the health security plan.

14 E. By operation of law, an assignment to the health
15 security plan of the rights of a beneficiary:

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

17 (a) a payment for health care services
18 from any person, including an insurance carrier; and

19 (b) a monetary recovery for damages for
20 bodily injury, whether by judgment, contract for compromise or
21 settlement;

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

24 (3) shall be effective as to the rights of any
25 other beneficiary whose rights can legally be assigned by the

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1 beneficiary.

2 SECTION 34. ~~[NEW MATERIAL]~~ STANDARD CLAIM FORMS FOR
3 INSURANCE PAYMENT.--The commission shall adopt standard claim
4 forms and electronic formats that shall be used by all health
5 care providers and health facilities that seek payment through
6 the health security plan or from private persons, including
7 private insurance companies, for health care services rendered
8 in the state. Each claim form or electronic format may
9 indicate whether a person is eligible for federal or other
10 insurance programs for payment. To the extent practicable, the
11 commission shall require the use of existing, nationally
12 accepted standardized forms, formats and systems.

13 SECTION 35. ~~[NEW MATERIAL]~~ HEALTH RESOURCE CERTIFICATE--
14 COMMISSION RULES--REQUIREMENT FOR REVIEW.--

15 A. The commission shall adopt rules stating when a
16 health facility or health care provider participating in the
17 health security plan shall apply for a health resource
18 certificate, how the application will be reviewed, how the
19 certificate will be granted, how an expedited review is
20 conducted and other matters relating to health resource
21 projects.

22 B. Except as provided in Subsection F of this
23 section, a health facility or health care provider
24 participating in the health security plan shall not make or
25 obligate itself to make a major capital expenditure without

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1 first obtaining a health resource certificate.

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

7 D. A health facility or health care provider shall
8 not engage in component purchasing in order to avoid the
9 provisions of this section.

10 E. The commission shall grant a health resource
11 certificate for a major capital expenditure or a capital
12 project undertaken pursuant to Subsection C of this section
13 only when the project is determined to be needed.

14 F. This section does not apply to:

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

17 (2) expenditures incurred solely in
18 preparation for a capital project, including architectural
19 design, surveys, plans, working drawings and specifications and
20 other related activities, but those expenditures shall be
21 included in the cost of a project for the purpose of
22 determining whether a health resource certificate is required;

23 (3) acquisition of an existing health
24 facility, equipment or practice of a health care provider that
25 does not result in a new service being provided or in increased

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1 bed capacity;

2 (4) major capital expenditures for nonclinical
3 services when the nonclinical services are the primary purpose
4 of the expenditure; and

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

8 G. No later than November 1, 2019, the commission
9 shall report to the appropriate committees of the legislature
10 on the capital needs of health facilities, including facilities
11 of state and local governments, with a focus on underserved
12 geographic areas with substantially below-average health
13 facilities and investment per capita as compared to the state
14 average. The report shall also describe geographic areas where
15 the distance to health facilities imposes a barrier to care.
16 The report shall include a section on health care
17 transportation needs, including capital, personnel and training
18 needs. The report shall make recommendations for legislation
19 to amend the Health Security Act that the commission determines
20 necessary and appropriate.

21 SECTION 36. [NEW MATERIAL] FISCAL AND ACTUARIAL REVIEWS--
22 AUDITS.--

23 A. The commission shall provide for annual
24 independent fiscal and actuarial reviews of the health security
25 plan and any funds of the commission or the plan.

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1 B. The commission shall provide by rule
2 requirements for independent financial audits of health care
3 providers and health facilities.

4 C. The commission, through its staff or by
5 contract, shall perform announced and unannounced reviews,
6 including financial, operational, management and electronic
7 data processing reviews of health care providers and health
8 facilities. Review findings shall be reported directly to the
9 commission. The commission may request the state auditor to
10 review preliminary findings or to consult with review staff
11 before the findings are reported to the commission.

12 D. Actuarial review, fiscal reviews, financial
13 audits and internal audits are public documents after they have
14 been released by the commission; provided that the reports
15 protect private and confidential information of a patient or
16 provider. Copies of reviews, audits and other reports shall be
17 transmitted to the governor, the legislature, appropriate
18 interim committees of the legislature and the office of the
19 state auditor as well as made available via the internet.

20 **SECTION 37. [NEW MATERIAL] INFORMATION TECHNOLOGY**
21 **SYSTEM.--**The commission shall establish guidelines for
22 maximizing participation of health care providers and health
23 facilities in the health security plan's information technology
24 network that provides for electronic transfer of payments to
25 health care providers and health facilities; transmittal of

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

7 SECTION 38. [NEW MATERIAL] REPORTS REQUIRED--CONFIDENTIAL
8 INFORMATION.--

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

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

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

22 SECTION 39. [NEW MATERIAL] CONSUMER, PROVIDER AND HEALTH
23 FACILITY ASSISTANCE PROGRAM.--

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

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

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

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

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

15 SECTION 40. [NEW MATERIAL] PRIVATE HEALTH INSURANCE
16 COVERAGE LIMITED--VOLUNTARY PURCHASE OF OTHER INSURANCE.--

17 A. After the date on which the health security plan
18 begins operating:

19 (1) a beneficiary may purchase supplemental
20 health insurance benefits; and

21 (2) a person shall not provide private health
22 insurance to a beneficiary for a health care service that is
23 covered by the health security plan, except as follows:

24 (a) transitional coverage as provided in
25 Section 45 of the Health Security Act; and

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1 (b) a retiree health insurance plan that
2 does not enter into contract with the health security plan.

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

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

14 SECTION 41. [NEW MATERIAL] AUTOMOBILE MEDICAL
15 COVERAGE--WORKERS' COMPENSATION--RATES--SUPERINTENDENT
16 DUTIES.--

17 A. The superintendent shall work closely with the
18 legislative finance committee pursuant to Section 42 of the
19 Health Security Act to identify premium costs associated with
20 health care coverage in workers' compensation and automobile
21 medical coverage. The superintendent shall develop an estimate
22 of expected reduction in those costs based upon assumptions of
23 health care services coverage in the health security plan and,
24 by September 15, 2017, shall report the findings to the
25 legislative finance committee to determine the financing of the

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1 health security plan.

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

7 SECTION 42. [NEW MATERIAL] PROPOSED HEALTH SECURITY
8 PLAN--FISCAL ANALYSIS.--

9 A. The legislative finance committee shall
10 undertake a fiscal analysis relating to the first five years of
11 the establishment and operation of the proposed health security
12 plan, including an analysis of the provisions of Sections 17
13 through 22, 25, 31 through 33, 35, 40 and 41 of the Health
14 Security Act. The fiscal analysis shall include a projection
15 of plan costs and a review of financing options for the
16 proposed health security plan.

17 B. In its fiscal analysis performed pursuant to
18 Subsection A of this section, the legislative finance committee
19 shall be guided by the following requirements and assumptions:

20 (1) before estimating beneficiary and employer
21 contributions to the health security plan budget, the committee
22 shall identify and estimate the amount of public finances that
23 may be contributed to the budget;

24 (2) health care services to be included and
25 for which costs are to be projected in determining the

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1 financing options shall be no less than the health care
2 services afforded to state employees pursuant to the Health
3 Care Purchasing Act;

4 (3) financing options may set minimum and
5 maximum levels of costs to a beneficiary based on the following
6 factors, as they apply to a given beneficiary:

7 (a) the beneficiary's income;

8 (b) federal premium tax credits;

9 (c) federal cost-sharing subsidies; and

10 (d) medicare offsets; and

11 (4) financing options may set minimum and
12 maximum levels of employer contributions, taking into
13 consideration an employer's payroll and number of employees.

14 C. The legislative finance committee shall:

15 (1) make projections regarding the impact of
16 the health security plan upon the state budget;

17 (2) project the costs of establishing and
18 administering the health security plan;

19 (3) prepare a report of its determinations
20 with the specific options and recommendations no later than
21 October 1, 2017; and

22 (4) submit its report prepared pursuant to
23 Paragraph (3) of this subsection to the appropriate interim
24 legislative committees for consideration by the fifty-third
25 legislature.

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1 SECTION 43. ~~[NEW MATERIAL]~~ FISCAL ANALYSIS--GRANT FUNDING
2 AND OTHER RESOURCES--PARTNERSHIPS.--The legislative finance
3 committee shall seek partnerships among state agencies and
4 private nonprofit persons to identify and apply for available
5 grant funding and other in-kind and financial resources for its
6 fiscal analysis conducted pursuant to Section 42 of the Health
7 Security Act. Any amounts that the legislative finance
8 committee receives in grant funds or from other financial
9 resources shall first be used to offset any state funds that
10 the legislature appropriates or allocates for the fiscal
11 analysis. Any grant funds or other financial resources
12 received in excess of legislative appropriations or allocations
13 shall be used for the study of financing options for the health
14 security plan.

15 SECTION 44. ~~[NEW MATERIAL]~~ REIMBURSEMENT TO HEALTH
16 SECURITY PLAN FROM FEDERAL AND OTHER HEALTH INSURANCE
17 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
4 reserves to provide for catastrophic and unforeseen
5 expenditures.

6 SECTION 45. [NEW MATERIAL] HEALTH BENEFITS EXCHANGE OR
7 HEALTH INSURANCE EXCHANGE PROPERTY--FEDERAL WAIVER FOR TRANSFER
8 OF HEALTH INSURANCE EXCHANGE FUNCTIONS--TRANSFER OF HEALTH
9 INSURANCE EXCHANGE.--

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

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

24 C. As used in this section:

25 (1) "health insurance exchange" means an

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1 entity established pursuant to federal law to provide qualified
2 health plans to qualified individuals and qualified employers
3 on the individual and small group or large group insurance
4 markets;

5 (2) "personal property" means property other
6 than real property; and

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

15 SECTION 46. [NEW MATERIAL] TRANSITION PERIOD
16 ARRANGEMENTS--PRIVATE CONTRACT--COLLECTIVE BARGAINING.--A
17 person who, on the date benefits are available under the Health
18 Security Act's health security plan, receives health care
19 benefits under a private contract or collective bargaining
20 agreement entered into prior to July 1, 2019 shall continue to
21 receive those benefits until the contract or agreement expires
22 or unless the contract or agreement is renegotiated to provide
23 participation in the health security plan.

24 SECTION 47. Section 41-4-3 NMSA 1978 (being Laws 1976,
25 Chapter 58, Section 3, as amended) is amended to read:

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1 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

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

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

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

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

19 E. "maintenance" does not include:

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

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

25 F. "public employee" means an officer, employee or

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1 servant of a governmental entity, excluding independent
2 contractors except for individuals defined in Paragraphs (7),
3 (8), (10), (14) and (17) of this subsection, or of a
4 corporation organized pursuant to the Educational Assistance
5 Act, the Small Business Investment Act or the Mortgage Finance
6 Authority Act or a licensed health care provider, who has no
7 medical liability insurance, providing voluntary services as
8 defined in Paragraph (16) of this subsection and including:

- 9 (1) elected or appointed officials;
- 10 (2) law enforcement officers;
- 11 (3) persons acting on behalf or in service of
12 a governmental entity in any official capacity, whether with or
13 without compensation;
- 14 (4) licensed foster parents providing care for
15 children in the custody of the human services department,
16 corrections department or department of health, but not
17 including foster parents certified by a licensed child
18 placement agency;
- 19 (5) members of state or local selection panels
20 established pursuant to the Adult Community Corrections Act;
- 21 (6) members of state or local selection panels
22 established pursuant to the Juvenile Community Corrections Act;
- 23 (7) licensed medical, psychological or dental
24 arts practitioners providing services to the corrections
25 department pursuant to contract;

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

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

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

10 (11) members of the board of directors of the
11 New Mexico educational assistance foundation;

12 (12) members of the board of directors of the
13 New Mexico student loan guarantee corporation;

14 (13) members of the New Mexico mortgage
15 finance authority;

16 (14) volunteers, employees and board members
17 of court-appointed special advocate programs;

18 (15) members of the board of directors of the
19 small business investment corporation;

20 (16) health care providers licensed in New
21 Mexico who render voluntary health care services without
22 compensation in accordance with rules promulgated by the
23 secretary of health. The rules shall include requirements for
24 the types of locations at which the services are rendered, the
25 allowed scope of practice and measures to ensure quality of

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1 care;

2 (17) an individual while participating in the
3 state's adaptive driving program and only while using a
4 special-use state vehicle for evaluation and training purposes
5 in that program;

6 (18) the staff and members of the board of
7 directors of the New Mexico health insurance exchange
8 established pursuant to the New Mexico Health Insurance
9 Exchange Act; ~~and~~

10 (19) members of the insurance nominating
11 committee; and

12 (20) the staff and members of the health care
13 commission established pursuant to the Health Security Act;

14 G. "scope of duty" means performing any duties that
15 a public employee is requested, required or authorized to
16 perform by the governmental entity, regardless of the time and
17 place of performance; and

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

21 **SECTION 48.** Effective June 1, 2018, Section 41-4-3 NMSA
22 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is
23 repealed and a new Section 41-4-3 NMSA 1978 is enacted to read:

24 "41-4-3. [NEW MATERIAL] DEFINITIONS.--As used in the Tort
25 Claims Act:

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

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

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

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

18 E. "maintenance" does not include:

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

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

24 F. "public employee" means an officer, employee or
25 servant of a governmental entity, excluding independent

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1 contractors except for individuals defined in Paragraphs (7),
2 (8), (10), (14) and (17) of this subsection, or of a
3 corporation organized pursuant to the Educational Assistance
4 Act, the Small Business Investment Act or the Mortgage Finance
5 Authority Act or a licensed health care provider, who has no
6 medical liability insurance, providing voluntary services as
7 defined in Paragraph (16) of this subsection and including:

8 (1) elected or appointed officials;

9 (2) law enforcement officers;

10 (3) persons acting on behalf or in service of
11 a governmental entity in any official capacity, whether with or
12 without compensation;

13 (4) licensed foster parents providing care for
14 children in the custody of the human services department,
15 corrections department or department of health, but not
16 including foster parents certified by a licensed child
17 placement agency;

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

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

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

25 (8) members of the board of directors of the

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1 New Mexico medical insurance pool;

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

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

9 (11) members of the board of directors of the
10 New Mexico educational assistance foundation;

11 (12) members of the board of directors of the
12 New Mexico student loan guarantee corporation;

13 (13) members of the New Mexico mortgage
14 finance authority;

15 (14) volunteers, employees and board members
16 of court-appointed special advocate programs;

17 (15) members of the board of directors of the
18 small business investment corporation;

19 (16) health care providers licensed in New
20 Mexico who render voluntary health care services without
21 compensation in accordance with rules promulgated by the
22 secretary of health. The rules shall include requirements for
23 the types of locations at which the services are rendered, the
24 allowed scope of practice and measures to ensure quality of
25 care;

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underscoring material = new
~~[bracketed material]~~ = delete

1 (17) an individual while participating in the
2 state's adaptive driving program and only while using a
3 special-use state vehicle for evaluation and training purposes
4 in that program;

5 (18) the staff and members of the board of
6 directors of the New Mexico health insurance exchange
7 established pursuant to the New Mexico Health Insurance
8 Exchange Act; and

9 (19) members of the insurance nominating
10 committee;

11 G. "scope of duty" means performing any duties that
12 a public employee is requested, required or authorized to
13 perform by the governmental entity, regardless of the time and
14 place of performance; and

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

18 **SECTION 49. TEMPORARY PROVISION--HEALTH CARE COMMISSION--**
19 **TRANSFER OF HEALTH INSURANCE EXCHANGE DUTIES--REIMBURSEMENT FOR**
20 **FISCAL ANALYSIS.--The health care commission shall:**

21 A. devise a plan for the timely and efficient
22 transfer of health insurance exchange functions and health
23 insurance exchange property to the commission pursuant to
24 Section 45 of the Health Security Act; and

25 B. reimburse the legislative finance committee for

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underscoring material = new
~~[bracketed material] = delete~~

1 any state funds it expended in undertaking the fiscal analysis
2 pursuant to Section 42 of the Health Security Act.

3 SECTION 50. DELAYED REPEAL.--Sections 1 through 46 and 49
4 of this act are repealed effective June 1, 2018.

5 SECTION 51. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2017.