

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 121

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO PUBLIC HEALTH; ENACTING THE VACCINE PURCHASING ACT;
ESTABLISHING A VACCINE PURCHASING PROGRAM; CREATING THE VACCINE
PURCHASING FUND; REQUIRING REPORTING OF THE NUMBER OF INSURED
CHILDREN; REQUIRING HEALTH INSURERS AND GROUP HEALTH PLANS TO
REIMBURSE THE STATE FOR COSTS OF VACCINES PURCHASED BY THE
STATE FOR INSURED CHILDREN; PROVIDING FOR PENALTIES; MAKING AN
APPROPRIATION; DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Vaccine Purchasing Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Vaccine Purchasing Act:

A. "advisory committee on immunization practices"
means the group of medical and public health experts that

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1 develops recommendations on how to use vaccines to control
2 diseases in the United States, established under Section 222 of
3 the federal Public Health Service Act;

4 B. "department" means the department of health;

5 C. "fund" means the vaccine purchasing fund;

6 D. "group health plan" means an employee welfare
7 benefit plan to the extent that the plan provides medical care
8 to employees or their dependents under the Employee Retirement
9 Income Security Act of 1974 directly or through insurance,
10 reimbursement or other means;

11 E. "health insurance coverage" means benefits
12 consisting of medical care provided directly or through
13 insurance or reimbursement or other means under any hospital or
14 medical service policy or certificate, hospital or medical
15 service plan contract or health maintenance organization
16 contract offered by a health insurance issuer;

17 F. "health insurer" means any entity subject to
18 regulation by the office of superintendent of insurance that:

19 (1) provides or is authorized to provide
20 health insurance or health benefit plans;

21 (2) administers health insurance or health
22 benefit coverage; or

23 (3) otherwise provides a plan of health
24 insurance or health benefits;

25 G. "insured child" means a child under the age of

1 nineteen who is eligible to receive health insurance coverage
2 from a health insurer or medical care pursuant to a group
3 health plan;

4 H. "office of superintendent" means the office of
5 superintendent of insurance;

6 I. "policy" means any contract of health insurance
7 between a health insurer and the insured and all clauses,
8 riders, endorsements and parts thereof;

9 J. "provider" means an individual or organization
10 licensed, certified or otherwise authorized or permitted by law
11 to provide vaccinations to insured children; and

12 K. "vaccines for children program" means the
13 federally funded program that provides vaccines at no cost to
14 eligible children pursuant to Section 1928 of the federal
15 Social Security Act.

16 SECTION 3. [NEW MATERIAL] STATEWIDE VACCINE PURCHASING
17 PROGRAM.--

18 A. The department shall establish and administer a
19 statewide vaccine purchasing program to:

20 (1) expand access to childhood immunizations
21 recommended by the advisory committee on immunization
22 practices;

23 (2) maintain and improve immunization rates;

24 (3) facilitate the acquisition by providers of
25 vaccines for childhood immunizations recommended by the

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1 advisory committee on immunization practices; and

2 (4) leverage public and private funding and
3 resources for the purchase, storage and distribution of
4 vaccines for childhood immunizations recommended by the
5 advisory committee on immunization practices.

6 B. The department shall:

7 (1) purchase vaccines for all children in New
8 Mexico, including children eligible for the vaccines for
9 children program and insured children;

10 (2) invoice each health insurer and group
11 health plan to reimburse the department for the cost of
12 vaccines provided directly or indirectly by the department to
13 such health insurer's or group health plan's insured children;

14 (3) maintain a list of registered providers
15 who receive vaccines for insured children that are purchased by
16 the state and provide such list to each health insurer and
17 group health plan with every invoice;

18 (4) report the failure of a health insurer to
19 reimburse the department within thirty days of the date of the
20 invoice to the office of superintendent;

21 (5) report the failure of a health insurer or
22 group health plan to reimburse the department within thirty
23 days of the date of the invoice to the office of the attorney
24 general for collection; and

25 (6) credit all receipts collected from health

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1 insurers and group health plans pursuant to the Vaccine
2 Purchasing Act to the fund.

3 C. No later than July 1, 2015 and July 1 of each
4 year thereafter, the department shall estimate the amount to be
5 expended annually by the department to purchase, store and
6 distribute vaccines recommended by the advisory committee on
7 immunization practices to all insured children in the state,
8 including a reserve of ten percent of the amount estimated.

9 D. No later than September 1, 2015 and each quarter
10 thereafter, the department shall invoice each health insurer
11 and each group health plan for one-fourth of its proportionate
12 share of the estimated amount and reserve pursuant to
13 Subsection C of this section, calculated pursuant to Subsection
14 B of Section 6 of the Vaccine Purchasing Act.

15 E. The department may update its estimated amount
16 to be expended annually and its reserve to take into account
17 increases or decreases in the cost of vaccines or the costs of
18 additional vaccines that the department determines should be
19 included in the statewide vaccine purchasing program and adjust
20 the amount invoiced to each health insurer and group health
21 plan the following quarter.

22 SECTION 4. [NEW MATERIAL] VACCINE PURCHASING FUND.--

23 A. The "vaccine purchasing fund" is created in the
24 state treasury. The fund consists of amounts reimbursed to the
25 state by health insurers and group health plans pursuant to the

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1 Vaccine Purchasing Act and of appropriations from, and
2 transfers made to, the fund. Money in the fund shall be
3 expended only for the purposes specified in the Vaccine
4 Purchasing Act, by warrant issued by the secretary of finance
5 and administration pursuant to vouchers approved by the
6 secretary of health.

7 B. Money from the fund may be appropriated to the
8 department to be expended only as authorized in Section 5 of
9 the Vaccine Purchasing Act.

10 C. The fund shall be audited in the same manner as
11 other state funds are audited, and all records of payments made
12 from the fund shall be open to the public.

13 D. Any balance remaining in the fund shall not
14 revert or be transferred to any other fund at the end of a
15 fiscal year.

16 E. Money in the fund shall be invested by the state
17 investment officer in accordance with the limitations in
18 Article 12, Section 7 of the constitution of New Mexico.
19 Income from investment of the fund shall be credited to the
20 fund.

21 SECTION 5. [NEW MATERIAL] AUTHORIZED USES OF THE VACCINE
22 PURCHASING FUND.--

23 A. The fund shall be used for the purchase, storage
24 and distribution of vaccines, as recommended by the advisory
25 committee on immunization practices, for insured children who

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1 are not eligible for the vaccines for children program.

2 B. The department shall credit any balance
3 remaining in the fund at the end of the fiscal year toward the
4 department's purchase of vaccines the following year; provided
5 that the department maintains a reserve of ten percent of the
6 amount estimated to be expended in the following year.

7 C. The fund shall not be used:

8 (1) for the purchase, storage and distribution
9 of vaccines for children who are eligible for the vaccines for
10 children program;

11 (2) for administrative expenses associated
12 with the statewide vaccine purchasing program; or

13 (3) to pass through a federally negotiated
14 discount pursuant to 42 U.S.C. 1396s.

15 SECTION 6. [NEW MATERIAL] REPORTING.--

16 A. No later than one hundred twenty days following
17 the enactment of the Vaccine Purchasing Act, the office of
18 superintendent shall:

19 (1) promulgate rules requiring each health
20 insurer and group health plan to report the number of children
21 it insured who were under the age of nineteen as of December
22 31, 2014 and to annually report the number of children it
23 insures who will be under the age of nineteen as of December 31
24 of each subsequent year to the office of superintendent,
25 excluding from such reports children who are enrolled in

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1 medicaid or in any medical assistance program administered by
2 the department or the human services department and children
3 who are American Indian or Alaska Natives; and

4 (2) for each health insurer or group health
5 plan, provide the department with the number of insured
6 children reported by such health insurer or group health plan
7 pursuant to Paragraph (1) of this subsection.

8 B. Each health insurer and group health plan shall
9 reimburse the department for the cost of vaccines for childhood
10 immunizations purchased by the state for the benefit of such
11 health insurer's or group health plan's insured children
12 according to such health insurer's or group health plan's
13 policy obligations and in accordance with health insurance
14 coverage requirements under state and federal law. The amount
15 reimbursed by each health insurer or group health plan shall be
16 a fraction, the denominator of which is the total number of
17 insured children reported by all health insurers and group
18 health plans pursuant to Subsection A of this section and the
19 numerator of which is the number of insured children reported
20 by such health insurer or group health plan pursuant to
21 Subsection A of this section multiplied by the total amount as
22 determined by the department pursuant to Subsection B of
23 Section 3 of the Vaccine Purchasing Act.

24 C. A health insurer's or group health plan's
25 reimbursement to the department pursuant to the Vaccine

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1 Purchasing Act shall be deemed payment for clinical services
2 and activities to promote health care quality for the purpose
3 of calculating a health insurer's or group health plan's
4 medical loss ratio.

5 SECTION 7. [NEW MATERIAL] APPEAL--PENALTIES.--

6 A. A health insurer aggrieved pursuant to the
7 Vaccine Purchasing Act may appeal as provided in Section
8 59A-4-20 NMSA 1978.

9 B. A health insurer or group health plan that fails
10 to file a report required by the office of superintendent
11 pursuant to Subsection A of Section 6 of the Vaccine Purchasing
12 Act shall pay a late filing fee of five hundred dollars (\$500)
13 per day for each day from the date the report was due.

14 C. The office of superintendent may require a
15 health insurer or group health plan subject to the Vaccine
16 Purchasing Act to produce records that were used to prepare the
17 report required under Subsection A of Section 6 of the Vaccine
18 Purchasing Act. If the office of superintendent determines
19 that there is other than a good faith discrepancy between the
20 number of insured children reported and the number of insured
21 children that should have been reported, the health insurer or
22 group health plan shall pay a civil penalty of five hundred
23 dollars (\$500) for each report filed for which the office of
24 superintendent determines there is such a discrepancy.

25 D. Failure of a health insurer or group health plan

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1 to make timely payment of an amount invoiced pursuant to
2 Subsection D of Section 3 of the Vaccine Purchasing Act shall
3 subject the health insurer or group health plan to a civil
4 penalty of five hundred dollars (\$500) for each day from the
5 date the payment is due.

6 SECTION 8. [NEW MATERIAL] POWERS AND AUTHORITY.--The
7 department and the office of superintendent shall promulgate
8 and enforce such rules as may be necessary to carry out the
9 provisions of the Vaccine Purchasing Act.

10 SECTION 9. [NEW MATERIAL] APPLICABILITY.--The provisions
11 of the Vaccine Purchasing Act:

12 A. do not apply to an entity that only issues
13 policies, certificates or subscriber contracts within New
14 Mexico that are limited to a specific disease; hospital
15 confinement; indemnity; accident-only; credit; dental; vision;
16 medicare supplement; long-term care; disability income
17 insurance; student health benefits-only coverage issued as a
18 supplement to liability insurance; workers' compensation or
19 similar insurance; automobile medical payment insurance;
20 nonrenewable short-term coverage issued for a period of twelve
21 months or less; medicaid; or any medical assistance program
22 administered by the department or the human services
23 department; and

24 B. apply to policies, plans, contracts and
25 certificates delivered or issued for delivery or renewed,

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1 extended or amended in this state on or after January 1, 2015.

2 SECTION 10. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

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