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AN ACT

RELATING TO HEALTH INSURANCE; ELIMINATING GENDER AS A HEALTH  
INSURANCE RATING FACTOR.

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

Section 1. Section 59A-18-13.1 NMSA 1978 (being Laws  
1994, Chapter 75, Section 26, as amended) is amended to read:

"59A-18-13.1. ADJUSTED COMMUNITY RATING.--

A. Every insurer, fraternal benefit society,  
health maintenance organization or nonprofit health care plan  
that provides primary health insurance or health care  
coverage insuring or covering major medical expenses shall,  
in determining the initial year's premium charged for an  
individual, use only the rating factors of age, gender  
pursuant to Subsection B of this section, geographic area of  
the place of employment and smoking practices, except that  
for individual policies the rating factor of the individual's  
place of residence may be used instead of the geographic area  
of the individual's place of employment.

B. In determining the initial and any subsequent  
year's rate, the difference in rates in any one age group  
that may be charged on the basis of a person's gender shall  
not exceed another person's rates in the age group by more  
than the following percentage of the lower rate for policies  
issued or delivered in the respective year; provided,

1 however, that gender shall not be used as a rating factor for  
2 policies issued or delivered on or after January 1, 2014:

- 3 (1) twenty percent for calendar year 2010;
- 4 (2) fifteen percent for calendar year 2011;
- 5 (3) ten percent for calendar year 2012; and
- 6 (4) five percent for calendar year 2013.

7 C. No person's rate shall exceed the rate of any  
8 other person with similar family composition by more than two  
9 hundred fifty percent of the lower rate, except that the  
10 rates for children under the age of nineteen or children aged  
11 nineteen to twenty-five who are full-time students may be  
12 lower than the bottom rates in the two hundred fifty percent  
13 band. The rating factor restrictions shall not prohibit an  
14 insurer, fraternal benefit society, health maintenance  
15 organization or nonprofit health care plan from offering  
16 rates that differ depending upon family composition.

17 D. The provisions of this section do not preclude  
18 an insurer, fraternal benefit society, health maintenance  
19 organization or nonprofit health care plan from using health  
20 status or occupational or industry classification in  
21 establishing:

- 22 (1) rates for individual policies; or
- 23 (2) the amount an employer may be charged  
24 for coverage under the group health plan.

25 E. As used in Subsection D of this section,

1 "health status" does not include genetic information.

2 F. The superintendent shall adopt regulations to  
3 implement the provisions of this section."

4 Section 2. Section 59A-23B-1 NMSA 1978 (being Laws  
5 1991, Chapter 111, Section 1) is amended to read:

6 "59A-23B-1. SHORT TITLE.--Chapter 59A, Article 23B  
7 NMSA 1978 may be cited as the "Minimum Healthcare Protection  
8 Act"."

9 Section 3. Section 59A-23B-6 NMSA 1978 (being Laws  
10 1991, Chapter 111, Section 6, as amended) is amended to read:

11 "59A-23B-6. FORMS AND RATES--APPROVAL OF THE  
12 SUPERINTENDENT--ADJUSTED COMMUNITY RATING.--

13 A. All policy or plan forms, including  
14 applications, enrollment forms, policies, plans,  
15 certificates, evidences of coverage, riders, amendments,  
16 endorsements and disclosure forms, shall be submitted to the  
17 superintendent for approval prior to use.

18 B. No policy or plan may be issued in the state  
19 unless the rates have first been filed with and approved by  
20 the superintendent. This subsection shall not apply to  
21 policies or plans subject to the Small Group Rate and  
22 Renewability Act.

23 C. In determining the initial year's premium or  
24 rate charged for coverage under a policy or plan, the only  
25 rating factors that may be used are age, gender pursuant to

1 this subsection, geographic area of the place of employment  
2 and smoking practices, except that for individual policies  
3 the rating factor of the individual's place of residence may  
4 be used instead of the geographic area of the individual's  
5 place of employment. In determining the initial and any  
6 subsequent year's rate, the difference in rates in any one  
7 age group that may be charged on the basis of a person's  
8 gender shall not exceed another person's rate in the age  
9 group by more than the following percentage of the lower rate  
10 for policies issued or delivered in the respective year;  
11 provided, however, that gender shall not be used as a rating  
12 factor for policies issued or delivered on or after January  
13 1, 2014:

- 14 (1) twenty percent for calendar year 2010;
- 15 (2) fifteen percent for calendar year 2011;
- 16 (3) ten percent for calendar year 2012; and
- 17 (4) five percent for calendar year 2013.

18 D. No person's rate shall exceed the rate of any  
19 other person with similar family composition by more than two  
20 hundred fifty percent of the lower rate, except that the  
21 rates for children under the age of nineteen or children aged  
22 nineteen to twenty-five who are full-time students may be  
23 lower than the bottom rates in the two hundred fifty percent  
24 band. The rating factor restrictions shall not prohibit an  
25 insurer, society, organization or plan from offering rates

1 that differ depending upon family composition.

2 E. The provisions of this section do not preclude  
3 an insurer, fraternal benefit society, health maintenance  
4 organization or nonprofit healthcare plan from using health  
5 status or occupational or industry classification in  
6 establishing:

7 (1) rates for individual policies; or

8 (2) the amount an employer may be charged  
9 for coverage under a group health plan.

10 F. As used in Subsection E of this section,  
11 "health status" does not include genetic information.

12 G. The superintendent shall adopt regulations to  
13 implement the provisions of this section."

14 Section 4. Section 59A-23C-5.1 NMSA 1978 (being Laws  
15 1994, Chapter 75, Section 33, as amended) is amended to read:

16 "59A-23C-5.1. ADJUSTED COMMUNITY RATING.--

17 A. A health benefit plan that is offered by a  
18 carrier to a small employer shall be offered without regard  
19 to the health status of any individual in the group, except  
20 as provided in the Small Group Rate and Renewability Act.

21 The only rating factors that may be used to determine the  
22 initial year's premium charged a group, subject to the  
23 maximum rate variation provided in this section for all  
24 rating factors, are the group members':

25 (1) ages;

1 (2) genders pursuant to Subsection B of  
2 this section;

3 (3) geographic areas of the place of  
4 employment; or

5 (4) smoking practices.

6 B. In determining the initial and any subsequent  
7 year's rate, the difference in rates in any one age group  
8 that may be charged on the basis of a person's gender shall  
9 not exceed another person's rate in the age group by more  
10 than the following percentage of the lower rate for policies  
11 issued or delivered in the respective year; provided,  
12 however, that gender shall not be used as a rating factor for  
13 policies issued or delivered on or after January 1, 2014:

14 (1) twenty percent for calendar year 2010;

15 (2) fifteen percent for calendar year 2011;

16 (3) ten percent for calendar year 2012; and

17 (4) five percent for calendar year 2013.

18 C. No person's rate shall exceed the rate of any  
19 other person with similar family composition by more than two  
20 hundred fifty percent of the lower rate, except that the  
21 rates for children under the age of nineteen or children aged  
22 nineteen to twenty-five who are full-time students may be  
23 lower than the bottom rates in the two hundred fifty percent  
24 band. The rating factor restrictions shall not prohibit a  
25 carrier from offering rates that differ depending upon family

1 composition.

2 D. The provisions of this section do not preclude  
3 a carrier from using health status or occupational or  
4 industry classification in establishing the amount an  
5 employer may be charged for coverage under a group health  
6 plan.

7 E. As used in Subsection D of this section,  
8 "health status" does not include genetic information.

9 F. The superintendent shall adopt regulations to  
10 implement the provisions of this section."

11 Section 5. Section 59A-56-6 NMSA 1978 (being Laws  
12 1994, Chapter 75, Section 6, as amended) is amended to read:

13 "59A-56-6. BOARD--POWERS AND DUTIES.--

14 A. The board shall have the general powers and  
15 authority granted to insurance companies licensed to transact  
16 health insurance business under the laws of this state.

17 B. The board:

18 (1) may enter into contracts to carry out  
19 the provisions of the Health Insurance Alliance Act,  
20 including, with the approval of the superintendent,  
21 contracting with similar alliances of other states for the  
22 joint performance of common administrative functions or with  
23 persons or other organizations for the performance of  
24 administrative functions;

25 (2) may sue and be sued;

1 (3) may conduct periodic audits of the  
2 members to assure the general accuracy of the financial data  
3 submitted to the alliance;

4 (4) shall establish maximum rate schedules,  
5 allowable rate adjustments, administrative allowances,  
6 reinsurance premiums and agent referral, servicing fees or  
7 commissions subject to applicable provisions in the Insurance  
8 Code. In determining the initial year's rate for health  
9 insurance, the only rating factors that may be used are age,  
10 gender pursuant to this section, geographic area of the place  
11 of employment and smoking practices. In any year's rate, the  
12 difference in rates in any one age group that may be charged  
13 on the basis of a person's gender shall not exceed another  
14 person's rates in the age group by more than the following  
15 percentage of the lower rate for policies issued or delivered  
16 in the respective year; provided, however, that gender shall  
17 not be used as a rating factor for policies issued or  
18 delivered on or after January 1, 2014:

19 (a) twenty percent for calendar year  
20 2010;

21 (b) fifteen percent for calendar year  
22 2011;

23 (c) ten percent for calendar year  
24 2012; and

25 (d) five percent for calendar year



1 2013.

2 No person's rate shall exceed the rate of any other  
3 person with similar family composition by more than two  
4 hundred fifty percent of the lower rate, except that the  
5 rates for children under the age of nineteen may be lower  
6 than the bottom rates in the two hundred fifty percent band.  
7 The rating factor restrictions shall not prohibit a member  
8 from offering rates that differ depending upon family  
9 composition;

10 (5) may direct a member to issue policies  
11 or certificates of coverage of health insurance in accordance  
12 with the requirements of the Health Insurance Alliance Act;

13 (6) shall establish procedures for  
14 alternative dispute resolution of disputes between members  
15 and insureds;

16 (7) shall cause the alliance to have an  
17 annual audit of its operations by an independent certified  
18 public accountant;

19 (8) shall conduct all board meetings as if  
20 it were subject to the provisions of the Open Meetings Act;

21 (9) shall draft one or more sample health  
22 insurance policies that are the prototype documents for the  
23 members;

24 (10) shall determine the design criteria to  
25 be met for an approved health plan;

1 (11) shall review each proposed approved  
2 health plan to determine if it meets the alliance-designed  
3 criteria and, if it does meet the criteria, approve the plan;  
4 provided that the board shall not permit more than one  
5 approved health plan per member for each set of plan design  
6 criteria;

7 (12) shall review annually each approved  
8 health plan to determine if it still qualifies as an approved  
9 health plan based on the alliance-designed criteria and, if  
10 the plan is no longer approved, arrange for the transfer of  
11 the insureds covered under the formerly approved plan to an  
12 approved health plan;

13 (13) may terminate an approved health plan  
14 not operating as required by the board;

15 (14) shall terminate an approved health  
16 plan if timely claim payments are not made pursuant to the  
17 plan; and

18 (15) shall engage in significant marketing  
19 activities, including a program of media advertising, to  
20 inform small employers and eligible individuals of the  
21 existence of the alliance, its purpose and the health  
22 insurance available or potentially available through the  
23 alliance.

24 C. The alliance is subject to and responsible for  
25 examination by the superintendent. No later than March 1 of

