



The Legislature
of the
State of New Mexico

49th Legislature, 2nd Session

LAWS 2010

CHAPTER 94

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR

HOUSE BILL 12

Introduced by



CHAPTER 94

AN ACT

1
2 RELATING TO HEALTH COVERAGE; ENACTING NEW SECTIONS OF CHAPTER
3 59A, ARTICLE 22 NMSA 1978 AND THE SMALL GROUP RATE AND
4 RENEWABILITY ACT TO SET MINIMUM REIMBURSEMENT LEVELS FOR
5 DIRECT SERVICES; ENACTING A NEW SECTION OF THE HEALTH
6 MAINTENANCE ORGANIZATION LAW TO SET MINIMUM REIMBURSEMENT
7 LEVELS FOR DIRECT SERVICES; ENACTING A NEW SECTION OF THE
8 NONPROFIT HEALTH CARE PLAN LAW TO SET MINIMUM REIMBURSEMENT
9 LEVELS FOR DIRECT SERVICES.

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

12 Section 1. A new section of Chapter 59A, Article 22
13 NMSA 1978 is enacted to read:

14 "HEALTH INSURERS--DIRECT SERVICES.--

15 A. A health insurer shall make reimbursement for
16 direct services at a level not less than eighty-five percent
17 of premiums across all health product lines, except
18 individually underwritten health insurance policies, contracts
19 or plans, that are governed by the provisions of Chapter 59A,
20 Article 22 NMSA 1978, the Health Maintenance Organization Law
21 and the Nonprofit Health Care Plan Law. Reimbursement shall
22 be made for direct services provided over the preceding three
23 calendar years, but not earlier than calendar year 2010, as
24 determined by reports filed with the insurance division of the
25 commission. Nothing in this subsection shall be construed to

1 preclude a purchaser from negotiating an agreement with a
2 health insurer that requires a higher amount of premiums paid
3 to be used for reimbursement for direct services for one or
4 more products or for one or more years.

5 B. For individually underwritten health care
6 policies, plans or contracts, the superintendent shall
7 establish, after notice and informal hearing, the level of
8 reimbursement for direct services, as determined by the
9 reports filed with the insurance division, as a percent of
10 premiums. Additional informal hearings may be held at the
11 superintendent's discretion. In establishing the level of
12 reimbursement for direct services, the superintendent shall
13 consider the costs associated with the individual marketing
14 and medical underwriting of these policies, plans or contracts
15 at a level not less than seventy-five percent of premiums. A
16 health insurer writing these policies shall make reimbursement
17 for direct services at a level not less than that level
18 established by the superintendent pursuant to this subsection
19 over the three calendar years preceding the date upon which
20 that rate is established, but not earlier than calendar year
21 2010. Nothing in this subsection shall be construed to
22 preclude a purchaser of one of these policies, plans or
23 contracts from negotiating an agreement with a health insurer
24 that requires a higher amount of premiums paid to be used for
25 reimbursement for direct services.

1 C. An insurer that fails to comply with the
2 reimbursement requirements pursuant to this section shall
3 issue a dividend or credit against future premiums to all
4 policyholders in an amount sufficient to assure that the
5 benefits paid in the preceding three calendar years plus the
6 amount of the dividends or credits are equal to the required
7 direct services reimbursement level pursuant to Subsection A
8 of this section for group health coverage and blanket health
9 coverage or the required direct services reimbursement level
10 pursuant to Subsection B of this section for individually
11 underwritten health policies, contracts or plans for the
12 preceding three calendar years. If the insurer fails to issue
13 the dividend or credit in accordance with the requirements of
14 this section, the superintendent shall enforce these
15 requirements and may pursue any other penalties as provided by
16 law, including general penalties pursuant to Section 59A-1-18
17 NMSA 1978.

18 D. After notice and hearing, the superintendent
19 may adopt and promulgate reasonable rules necessary and proper
20 to carry out the provisions of this section.

21 E. For the purposes of this section:

22 (1) "direct services" means services
23 rendered to an individual by a health insurer or a health care
24 practitioner, facility or other provider, including case
25 management, disease management, health education and

1 promotion, preventive services, quality incentive payments to
2 providers and any portion of an assessment that covers
3 services rather than administration and for which an insurer
4 does not receive a tax credit pursuant to the Medical
5 Insurance Pool Act or the Health Insurance Alliance Act;
6 provided, however, that "direct services" does not include
7 care coordination, utilization review or management or any
8 other activity designed to manage utilization or services;

9 (2) "health insurer" means a person duly
10 authorized to transact the business of health insurance in the
11 state pursuant to the Insurance Code but does not include a
12 person that only issues a limited-benefit policy intended to
13 supplement major medical coverage, including medicare
14 supplement, vision, dental, disease-specific, accident-only or
15 hospital indemnity-only insurance policies, or that only
16 issues policies for long-term care or disability income; and

17 (3) "premium" means all income received from
18 individuals and private and public payers or sources for the
19 procurement of health coverage, including capitated payments,
20 self-funded administrative fees, self-funded claim
21 reimbursements, recoveries from third parties or other
22 insurers and interests less any premium tax paid pursuant to
23 Section 59A-6-2 NMSA 1978 and fees associated with
24 participating in a health insurance exchange that serves as a
25 clearinghouse for insurance."

1 Section 2. A new section of the Small Group Rate and
2 Renewability Act is enacted to read:

3 "HEALTH INSURERS--DIRECT SERVICES.--

4 A. A health insurer shall make reimbursement for
5 direct services at a level not less than eighty-five percent
6 of premiums across all health product lines over the preceding
7 three calendar years, but not earlier than calendar year 2010,
8 as determined by reports filed with the insurance division of
9 the commission. Nothing in this subsection shall be construed
10 to preclude a purchaser from negotiating an agreement with a
11 health insurer that requires a higher amount of premiums paid
12 to be used for reimbursement for direct services for one or
13 more products or for one or more years.

14 B. An insurer that fails to comply with the
15 eighty-five percent reimbursement requirement in Subsection A
16 of this section shall issue a dividend or credit against
17 future premiums to all policyholders in an amount sufficient
18 to assure that the benefits paid in the preceding three
19 calendar years plus the amount of the dividends or credits
20 equal eighty-five percent of the premiums collected in the
21 preceding three calendar years. If the insurer fails to issue
22 the dividend or credit in accordance with the requirements of
23 this section, the superintendent shall enforce the
24 requirements and may pursue any other penalties as provided by
25 law, including general penalties pursuant to Section 59A-1-18

1 NMSA 1978.

2 C. After notice and hearing, the superintendent
3 may adopt and promulgate reasonable rules necessary and proper
4 to carry out the provisions of this section.

5 D. For the purposes of this section:

6 (1) "direct services" means services
7 rendered to an individual by a health insurer or a health care
8 practitioner, facility or other provider, including case
9 management, disease management, health education and
10 promotion, preventive services, quality incentive payments to
11 providers and any portion of an assessment that covers
12 services rather than administration and for which an insurer
13 does not receive a tax credit pursuant to the Medical
14 Insurance Pool Act or the Health Insurance Alliance Act;
15 provided, however, that "direct services" does not include
16 care coordination, utilization review or management or any
17 other activity designed to manage utilization or services;

18 (2) "health insurer" means a person duly
19 authorized to transact the business of health insurance in the
20 state pursuant to the Insurance Code but does not include a
21 person that only issues a limited-benefit policy intended to
22 supplement major medical coverage, including medicare
23 supplement, vision, dental, disease-specific, accident-only or
24 hospital indemnity-only insurance policies, or that only
25 issues policies for long-term care or disability income; and

1 (3) "premium" means all income received from
2 individuals and private and public payers or sources for the
3 procurement of health coverage, including capitated payments,
4 self-funded administrative fees, self-funded claim
5 reimbursements, recoveries from third parties or other
6 insurers and interests less any premium tax paid pursuant to
7 Section 59A-6-2 NMSA 1978 and fees associated with
8 participating in a health insurance exchange that serves as a
9 clearinghouse for insurance."

10 Section 3. A new section of the Health Maintenance
11 Organization Law is enacted to read:

12 "HEALTH MAINTENANCE ORGANIZATIONS--DIRECT SERVICES.--

13 A. A health maintenance organization shall make
14 reimbursement for direct services at a level not less than
15 eighty-five percent of premiums across all health product
16 lines, except individually underwritten health insurance
17 policies, contracts or plans, that are governed by the
18 provisions of Chapter 59A, Article 22 NMSA 1978, the Health
19 Maintenance Organization Law and the Nonprofit Health Care
20 Plan Law. Reimbursement shall be made for direct services
21 provided over the preceding three calendar years, but not
22 earlier than calendar year 2010, as determined by reports
23 filed with the insurance division of the commission. Nothing
24 in this subsection shall be construed to preclude a purchaser
25 from negotiating an agreement with a health maintenance

1 organization that requires a higher amount of premiums paid to
2 be used for reimbursement for direct services for one or more
3 products or for one or more years.

4 B. For individually underwritten health care
5 policies, plans or contracts, the superintendent shall
6 establish, after notice and informal hearing, the level of
7 reimbursement for direct services, as determined by the
8 reports filed with the insurance division, as a percent of
9 premiums. Additional informal hearings may be held at the
10 superintendent's discretion. In establishing the level of
11 reimbursement for direct services, the superintendent shall
12 consider the costs associated with the individual marketing
13 and medical underwriting of these policies, plans or contracts
14 at a level not less than seventy-five percent of premiums. A
15 health insurer or health maintenance organization writing
16 these policies, plans or contracts shall make reimbursement
17 for direct services at a level not less than that level
18 established by the superintendent pursuant to this subsection
19 over the three calendar years preceding the date upon which
20 that rate is established, but not earlier than calendar year
21 2010. Nothing in this subsection shall be construed to
22 preclude a purchaser of one of these policies, plans or
23 contracts from negotiating an agreement with a health insurer
24 or health maintenance organization that requires a higher
25 amount of premiums paid to be used for reimbursement for

1 direct services.

2 C. A health maintenance organization that fails to
3 comply with the reimbursement requirements pursuant to this
4 section shall issue a dividend or credit against future
5 premiums to all policy or contract holders in an amount
6 sufficient to assure that the benefits paid in the preceding
7 three calendar years plus the amount of the dividends or
8 credits are equal to the required direct services
9 reimbursement level pursuant to Subsection A of this section
10 for group health coverage and blanket health coverage or the
11 required direct services reimbursement level pursuant to
12 Subsection B of this section for individually underwritten
13 health policies, contracts or plans for the preceding three
14 calendar years. If the insurer fails to issue the dividend or
15 credit in accordance with the requirements of this section,
16 the superintendent shall enforce these requirements and may
17 pursue any other penalties as provided by law, including
18 general penalties pursuant to Section 59A-1-18 NMSA 1978.

19 D. After notice and hearing, the superintendent
20 may adopt and promulgate reasonable rules necessary and proper
21 to carry out the provisions of this section.

22 E. For the purposes of this section:

23 (1) "direct services" means services
24 rendered to an individual by a health maintenance organization
25 or a health care practitioner, facility or other provider,

1 including case management, disease management, health
2 education and promotion, preventive services, quality
3 incentive payments to providers and any portion of an
4 assessment that covers services rather than administration and
5 for which an insurer does not receive a tax credit pursuant to
6 the Medical Insurance Pool Act or the Health Insurance
7 Alliance Act; provided, however, that "direct services" does
8 not include care coordination, utilization review or
9 management or any other activity designed to manage
10 utilization or services;

11 (2) "health maintenance organization" means
12 any person who undertakes to provide or arrange for the
13 delivery of basic health care services to enrollees on a
14 prepaid basis, except for enrollee responsibility for
15 copayments or deductibles, but does not include a person that
16 only issues a limited-benefit policy or contract intended to
17 supplement major medical coverage, including medicare
18 supplement, vision, dental, disease-specific, accident-only or
19 hospital indemnity-only insurance policies, or that only
20 issues policies for long-term care or disability income; and

21 (3) "premium" means all income received from
22 individuals and private and public payers or sources for the
23 procurement of health coverage, including capitated payments,
24 self-funded administrative fees, self-funded claim
25 reimbursements, recoveries from third parties or other

1 insurers and interests less any premium tax paid pursuant to
2 Section 59A-6-2 NMSA 1978 and fees associated with
3 participating in a health insurance exchange that serves as a
4 clearinghouse for insurance."

5 Section 4. A new section of the Nonprofit Health Care
6 Plan Law is enacted to read:

7 "HEALTH INSURERS--DIRECT SERVICES.--

8 A. A health care plan shall make reimbursement for
9 direct services at a level not less than eighty-five percent
10 of premiums across all health product lines, except
11 individually underwritten health care policies, contracts or
12 plans, that are governed by the provisions of Chapter 59A,
13 Article 22 NMSA 1978, the Health Maintenance Organization Law
14 and the Nonprofit Health Care Plan Law. Reimbursement shall
15 be made for direct services provided over the preceding three
16 calendar years, but not earlier than calendar year 2010, as
17 determined by reports filed with the insurance division of the
18 commission. Nothing in this subsection shall be construed to
19 preclude a purchaser from negotiating an agreement with a
20 health insurer that requires a higher amount of premiums paid
21 to be used for reimbursement for direct services for one or
22 more products or for one or more years.

23 B. For individually underwritten health care
24 policies, plans or contracts, the superintendent shall
25 establish, after notice and informal hearing, the level of

1 reimbursement for direct services as determined as a percent
2 of premiums. Additional hearings may be held at the
3 superintendent's discretion. In establishing the level of
4 reimbursement for direct services, the superintendent shall
5 consider the costs associated with the individual marketing
6 and medical underwriting of these policies, plans or contracts
7 at a level not less than seventy-five percent of premiums. A
8 health insurer writing these policies, plans or contracts
9 shall make reimbursement for direct services at a level not
10 less than that level established by the superintendent
11 pursuant to this subsection over the three calendar years
12 preceding the date upon which that rate is established, but
13 not earlier than calendar year 2010. Nothing in this
14 subsection shall be construed to preclude a purchaser of one
15 of these policies, plans or contracts from negotiating an
16 agreement with a health insurer that requires a higher amount
17 of premiums paid to be used for reimbursement for direct
18 services.

19 C. A health care plan that fails to comply with
20 the reimbursement requirements pursuant to this section shall
21 issue a dividend or credit against future premiums to all
22 policyholders in an amount sufficient to assure that the
23 benefits paid in the preceding three calendar years plus the
24 amount of the dividends or credits are equal to the required
25 direct services reimbursement level pursuant to Subsection A

1 of this section for group health coverage and blanket health
2 coverage or the required direct services reimbursement level
3 pursuant to Subsection B of this section for individually
4 underwritten health policies, contracts or plans for the
5 preceding three calendar years. If the insurer fails to issue
6 the dividend or credit in accordance with the requirements of
7 this section, the superintendent shall enforce these
8 requirements and may pursue any other penalties as provided by
9 law, including general penalties pursuant to Section 59A-1-18
10 NMSA 1978.

11 D. After notice and hearing, the superintendent
12 may adopt and promulgate reasonable rules necessary and proper
13 to carry out the provisions of this section.

14 E. For the purposes of this section:

15 (1) "direct services" means services
16 rendered to an individual by a health care plan, health
17 insurer or a health care practitioner, facility or other
18 provider, including case management, disease management,
19 health education and promotion, preventive services, quality
20 incentive payments to providers and any portion of an
21 assessment that covers services rather than administration and
22 for which a health care plan or a health insurer does not
23 receive a tax credit pursuant to the Medical Insurance Pool
24 Act or the Health Insurance Alliance Act; provided, however,
25 that "direct services" does not include care coordination,

1 utilization review or management or any other activity
2 designed to manage utilization or services;

3 (2) "health care plan" means a nonprofit
4 corporation authorized by the superintendent to enter into
5 contracts with subscribers and to make health care expense
6 payments but does not include a person that only issues a
7 limited-benefit policy intended to supplement major medical
8 coverage, including medicare supplement, vision, dental,
9 disease-specific, accident-only or hospital indemnity-only
10 insurance policies, or that only issues policies for long-term
11 care or disability income; and

12 (3) "premium" means all income received from
13 individuals and private and public payers or sources for the
14 procurement of health coverage, including capitated payments,
15 self-funded administrative fees, self-funded claim
16 reimbursements, recoveries from third parties or other
17 insurers and interests less any premium tax paid pursuant to
18 Section 59A-6-2 NMSA 1978 and fees associated with
19 participating in a health insurance exchange that serves as a
20 clearinghouse for insurance."

21
22
23
24
25

Ben Lujan

BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES

Stephen R. Arias

STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES

Diane D. Denish

DIANE D. DENISH, PRESIDENT
SENATE

Lenore M. Naranjo

LENORE M. NARANJO, CHIEF CLERK
SENATE

Approved by me this 9th day of March, 2010

Bill Richardson

BILL RICHARDSON, GOVERNOR
STATE OF NEW MEXICO

3010 FEB 52 PM 3:53

RECEIVED

SECRETARY OF STATE
OFFICE OF

10 MAR -2 PM 1:13

RECEIVED