



The Legislature
of the
State of New Mexico

49th Legislature, Second Session

LAWS 2010

CHAPTER 95

SENATE BILL 148

Introduced by

SENATOR NANCY RODRIGUEZ



FOR THE LEGISLATIVE HEALTH AND
HUMAN SERVICES COMMITTEE

CHAPTER 95

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

1 each year, the board shall submit to the superintendent an
2 audited financial report for the preceding calendar year in a
3 form approved by the superintendent." _____

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Diane D. Denish

Diane D. Denish, President
Senate

Lenore M. Naranjo
Lenore M. Naranjo, Chief Clerk
Senate

Ben Lujan
Ben Lujan, Speaker
House of Representatives

Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this 9th day of March, 2010

Bill Richardson
Governor Bill Richardson
State of New Mexico

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