The Legislature
of the
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER 5

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILL 121, with emergency clause

Introduced by

EMERGENCY CLAUSE
CHAPTER 5

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. SHORT TITLE.--This act may be cited as the "Vaccine Purchasing Act".

SECTION 2. DEFINITIONS.--As used in the Vaccine Purchasing Act:

A. "advisory committee on immunization practices" means the group of medical and public health experts that develops recommendations on how to use vaccines to control diseases in the United States, established under Section 222 of the federal Public Health Service Act;

B. "department" means the department of health;

C. "fund" means the vaccine purchasing fund;

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

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

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

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

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

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

G. "insured child" means a child under the age of nineteen who is eligible to receive health insurance coverage from a health insurer or medical care pursuant to a group health plan;

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

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

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

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

SECTION 3. STATEWIDE VACCINE PURCHASING PROGRAM.--

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

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

(2) maintain and improve immunization rates;

(3) facilitate the acquisition by providers
of vaccines for childhood immunizations recommended by the
advisory committee on immunization practices; and

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

B. The department shall:

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

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

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

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

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

(6) credit all receipts collected from
health insurers and group health plans pursuant to the
Vaccine Purchasing Act to the fund.

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

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

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

SECTION 4. VACCINE PURCHASING FUND.--

A. The "vaccine purchasing fund" is created in the
state treasury. The fund consists of amounts reimbursed to
the state by health insurers and group health plans pursuant
to the Vaccine Purchasing Act and of appropriations from, and
transfers made to, the fund. Money in the fund shall be
expended only for the purposes specified in the Vaccine
Purchasing Act, by warrant issued by the secretary of finance
and administration pursuant to vouchers approved by the
secretary of health.

B. Money from the fund may be appropriated to the
department to be expended only as authorized in Section 5 of
the Vaccine Purchasing Act.
C. The fund shall be audited in the same manner as other state funds are audited, and all records of payments made from the fund shall be open to the public.

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

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

SECTION 5. AUTHORIZED USES OF THE VACCINE PURCHASING FUND.--

A. The fund shall be used for the purchase, storage and distribution of vaccines, as recommended by the advisory committee on immunization practices, for insured children who are not eligible for the vaccines for children program.

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

C. The fund shall not be used:
(1) for the purchase, storage and
distribution of vaccines for children who are eligible for
the vaccines for children program;

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

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

SECTION 6. REPORTING.--

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

(1) promulgate rules requiring each health
insurer and group health plan to report the number of
children it insured who were under the age of nineteen as of
December 31, 2014 and to annually report the number of
children it insures who will be under the age of nineteen as
of December 31 of each subsequent year to the office of
superintendent, excluding from such reports children who are
enrolled in medicaid or in any medical assistance program
administered by the department or the human services
department and children who are American Indian or Alaska
Natives; and

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

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

C. A health insurer's or group health plan's reimbursement to the department pursuant to the Vaccine Purchasing Act shall be deemed payment for clinical services and activities to promote health care quality for the purpose of calculating a health insurer's or group health plan's medical loss ratio.

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

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

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

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

SECTION 8. POWERS AND AUTHORITY.—The department and
the office of superintendent shall promulgate and enforce
such rules as may be necessary to carry out the provisions of
the Vaccine Purchasing Act.

SECTION 9. APPLICABILITY.—The provisions of the
Vaccine Purchasing Act:

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

B. apply to policies, plans, contracts and
certificates delivered or issued for delivery or renewed,
extended or amended in this state on or after
January 1, 2015.

SECTION 10. EMERGENCY.—It is necessary for the public
peace, health and safety that this act take effect immediately.
Approved by me this 20th day of March, 2015