

NEW MEXICO STATE STATUTE

ARTICLE 29

Public School Insurance Authority

Section

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22-29-1. Short title.

Chapter 22, Article 29 NMSA 1978 may be cited as the "Public School Insurance Authority Act".

22-29-2. Purpose of act.

The purpose of the Public School Insurance Authority Act is to provide comprehensive core insurance programs, including reimbursement coverage for the costs of providing due process to students with disabilities, for all participating public schools, school board members, school board retirees and public school employees and retirees by expanding the pool of subscribers to maximize cost containment opportunities for required insurance coverage.

22-29-3. Definitions.

As used in the Public School Insurance Authority Act:

- A. "authority" means the public school insurance authority;
- B. "board" means the board of directors of the authority;
- C. "charter school" means a school organized as a charter school pursuant

to the provisions of the Charter Schools Act [Chapter [22](#), Article [8B](#) NMSA 1978];

- D. "director" means the director of the authority;
- E. "due process reimbursement" means the reimbursement of a school district's or charter school's expenses for attorney fees, hearing officer fees and other reasonable expenses incurred as a result of a due process hearing conducted pursuant to the federal Individuals with Disabilities Education Improvement Act;
- F. "educational entities" means state educational institutions as enumerated in Article [12](#), Section [11](#) of the constitution of New Mexico and other state diploma, degree-granting and certificate-granting post-secondary educational institutions, regional education cooperatives and nonprofit organizations dedicated to the improvement of public education and whose membership is composed exclusively of public school employees, public schools or school districts;
- G. "fund" means the public school insurance fund;
- H. "group health insurance" means coverage that includes life insurance, accidental death and dismemberment, medical care and treatment, dental care, eye care and other coverages as determined by the authority;
- I. "risk-related coverage" means coverage that includes property and casualty, general liability, auto and fleet, workers' compensation and other casualty insurance; and
- J. "school district" means a school district as defined in Subsection R of Section [22-1-2](#) NMSA 1978, excluding any school district with a student enrollment in excess of sixty thousand students.

22-29-4. Authority created.

There is created the "public school insurance authority", which is established to provide for group health insurance, other risk-related coverage and due process reimbursement with the exception of the mandatory coverage provided by the risk management division on the effective date of the Public School Insurance Authority Act.

22-29-5. Board created; membership; duties.

- A. There is created the "board of directors of the public school insurance authority". The board shall be composed of nine members, consisting of the following:
 - (1) one member to be selected by the state board [department] of education;
 - (2) one school business official to be selected by the New Mexico school administrators;
 - (3) one board member of the New Mexico school boards association to

- be selected by the association;
- (4) one superintendent to be selected by the New Mexico superintendents' association;
 - (5) three members to be selected by the New Mexico national education association and the New Mexico federation of teachers with the intent that representation be proportional to their respective membership, provided that each of these three members be currently employed as public school teachers employed by participating entities;
 - (6) one member to be selected by the board from lists submitted by the participating educational entities; and three members to be appointed by and serve at the pleasure of the governor; such members shall not be employed by or on behalf of or be contracting with an employer participating in or eligible to participate in the public school insurance authority.
- B. Each member of the board shall serve at the pleasure of the party by which he has been appointed for a term not to exceed three years. Any board member who has been appointed and who misses four meetings of the board during a fiscal year shall be replaced and shall forfeit his position on the board, and his replacement shall be made by the organization affected. The board shall set minimum terms of appointment and shall elect from its membership a president, vice president and secretary.
- C. The board has the authority to hire a director and appoint such other officers and employees as it may deem necessary and has the authority to contract with consultants or other professional persons or firms as may be necessary to carry out the provisions of the Public School Insurance Authority Act. The board has the authority to provide for its full- and part-time employees, as it deems necessary, employee benefits insurance on the same basis as a member public school district may provide such employee benefits. In addition, the board has the authority to provide to members of the board and the employees risk coverages of the same scope and limitations as are allowed its member school districts to be provided to their local school boards. The board has the authority to provide employees an irrevocable option of qualifying for coverage under either the Educational Retirement Act [Chapter 22, Article 11NMSA 1978] or the Public Employees Retirement Act [Chapter 10, Article 11NMSA 1978].
- D. The members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

22-29-6. Fund created; budget review; premiums.

- A. There is created the "public school insurance fund". All income earned

on the fund shall be credited to the fund. The fund is appropriated to the authority to carry out the provisions of the Public School Insurance Authority Act. Any money remaining in the fund at the end of each fiscal year shall not revert to the general fund.

- B. The board shall determine which money in the fund constitutes the long-term reserves of the authority. The state investment officer shall invest the long-term reserves of the authority in accordance with the provisions of [Sections 6-8-1](#) through [6-8-16](#) NMSA 1978. The state treasurer shall invest the money in the fund that does not constitute the long-term reserves of the fund in accordance with the applicable provisions of [Chapter 6, Article 10](#) NMSA 1978.
- C. All appropriations shall be subject to budget review through the department of education [public education department], the state budget division of the department of finance and administration and the legislative finance committee.
- D. The authority shall provide that premiums are collected from school districts and charter schools participating in the authority sufficient to provide the required insurance coverage and to pay the expenses of the authority. All premiums shall be credited to the fund.
- E. Any reserves remaining at the termination of an insurance contract shall be disbursed to the individual school districts, charter schools and other participating entities on a pro rata basis.
- F. Disbursements from the fund for purposes other than procuring and paying for insurance or insurance-related services, including but not limited to third-party administration, premiums, claims and cost containment activities, shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his designee; provided that the chairman of the board may sign vouchers if the position of director is vacant.

22-29-7. Authority; duties.

In order to effectuate the purposes of the Public School Insurance Authority Act, the authority has the power to:

- A. enter into professional services and consulting contracts or agreements as necessary;
- B. collect money and provide for the investment of the fund;
- C. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;
- D. promulgate necessary rules, regulations and procedures for implementation of the Public School Insurance Authority Act;
- E. by rule, establish a policy to be followed by participating members relating to the use of volunteers. The policy shall be distributed to participating members and posted upon the authority's web site;
- F. by rule, establish a policy to be followed by participating members relating

- to the use of school facilities by private persons; provided that the policy shall relate only to liability and risk issues and shall not affect the rights and responsibilities of local school boards to determine how, when and by whom school district facilities are used. The policy shall be distributed to participating members and posted upon the authority's web site;
- G. provide public liability coverage for health care liability of health care student interns currently enrolled in health care instructional programs provided by any member;
 - H. insure, by negotiated policy, self-insurance or any combination thereof, participating members against claims of bodily injury, personal injury or property damage related to the use of school facilities by private persons; provided that the coverage shall be subject to the following conditions:
 - (1) no more than one million dollars (\$1,000,000) shall be paid for each occurrence; and
 - (2) the coverage shall only apply if the participating member was following the policy adopted by the authority pursuant to Subsection F of this section;
 - I. negotiate new insurance policies covering additional or lesser benefits as determined appropriate by the authority, but the authority shall maintain all coverage levels required by federal and state law for each participating member. In the event it is practical to self-insure wholly a particular line of coverage, the authority may do so;
 - J. procure lines of insurance coverage in compliance with the provisions of the Health Care Purchasing Act [Chapter [13](#), Article [1](#)NMSA 1978] and the competitive sealed proposal process of the Procurement Code [[13-1-28](#) through [13-1-199](#) NMSA 1978]; provided that any group medical insurance plan offered pursuant to this section shall include effective cost-containment measures to control the growth of health care costs. The board shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection; and
 - K. purchase, renovate, equip and furnish a building for the board.

22-29-8. Receipts and disbursements; issuance of warrants, purchase orders and contracts; deposit of funds.

- A. All premiums and other money collected by the authority shall be deposited in the fund. Except as provided in Subsection F of [Section 22-2-6.6](#) NMSA 1978 [[22-29-6](#) NMSA 1978], funds shall be disbursed directly by the authority, but receipts and disbursements are subject to audit by the state auditor. Except as provided in that subsection, the authority is not required to submit proposed vouchers, purchase orders or contracts to the department of finance and administration as otherwise provided by law. The department of finance and administration shall not require the authority to rebid or to disapprove

any contractual arrangements determined by the board to be in the best interests of the authority.

- B. Except as provided in Subsection F of [Section 22-2-6.6](#) NMSA 1978 [[22-29-6](#) NMSA 1978], the board shall issue warrants in the name of the authority against funds of the authority in payment of its lawful obligations, issue purchase orders and contract for goods or services in the name of the authority. The authority shall provide its own warrant, purchase order and contract forms as well as other supplies and equipment.

22-29-9. Participation; waivers.

- A. School districts and charter schools shall participate in the authority, unless the school district or charter school is granted a waiver by the board.
- B. In determining whether a waiver should be granted, the board shall establish minimum benefit and financial standards for the desired line of coverage. These minimum benefit and financial standards and the proposed time schedule for responsive offers shall be sent to all school districts and charter schools at the time the request for proposals for the desired line of coverage is issued. Any school district or charter school seeking a waiver of coverage shall match the minimum benefit and financial standards set forth in the request for proposals for the desired line of coverage. School districts and charter schools shall submit documentation of their proposals matching the board's minimum benefit and financial requirements prior to the deadline established by the board. The authority has the power to approve or disapprove a waiver of participation based on the documentation submitted by the school district or charter school regarding the benefit and financial standards established by the board. The board shall grant a waiver to a school district or charter school that requests a waiver and that has met the minimum benefit and financial standards within the time schedule established by the board. Once the board awards the insurance contract, no school district or charter school shall be granted a waiver for the entire term of the contract.
- C. Any school district or charter school granted a waiver of participation for health insurance shall be required to petition for participation in other kinds of group insurance coverage and shall be required to meet the requirements established by the authority prior to participation in other kinds of group insurance coverage. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract. Provided, however, that if the authority contracts for a line or lines of coverage for a period of eight years, the board may establish procedures and preconditions for authorizing a school district or charter

- school which has been granted a waiver to again participate in the coverage after the expiration of the first four years of coverage.
- D. Any school district or charter school granted a waiver of participation for workers' compensation shall be required to petition for participation in other risk-related coverages and shall be required to meet the requirements established by the authority prior to participation in other kinds of risk-related coverages. A school district or charter school which has been granted a waiver shall be prohibited from participating in the coverage for which a waiver was granted for the entire term of the authority's insurance contract.
 - E. Educational entities may petition the authority for permission to participate in the insurance coverage provided by the authority. To protect the stability of the fund, the authority shall establish reasonable terms and conditions for participation by educational entities.
 - F. A participating school district or charter school may separately provide for coverage additional to that offered by the authority.
 - G. The local districts, charter schools or the authority, as appropriate, may provide for marketing and servicing to be done by licensed insurance agents or brokers who should receive reasonable compensation for their services.

22-29-10. Group insurance contributions.

- A. Group insurance contributions for school districts, charter schools and participating entities in the authority shall be made as follows:
 - (1) at least seventy-five percent of the cost of the insurance of an employee whose annual salary is less than fifteen thousand dollars (\$15,000);
 - (2) at least seventy percent of the cost of the insurance of an employee whose annual salary is fifteen thousand dollars (\$15,000) or more but less than twenty thousand dollars (\$20,000);
 - (3) at least sixty-five percent of the cost of the insurance of an employee whose annual salary is twenty thousand dollars (\$20,000) or more but less than twenty-five thousand dollars (\$25,000); or
 - (4) at least sixty percent of the cost of the insurance of an employee whose annual salary is twenty-five thousand dollars (\$25,000) or more.
- B. Within available revenue, school districts, charter schools and participating entities in the authority may contribute up to eighty percent of the cost of the insurance of all employees.
- C. Whenever a school district, charter school or participating entity in the authority offers to its employees alternative health plan benefit options, including health maintenance organizations, preferred provider organizations or panel doctor plans, the school district, charter school or participating entity may pay an amount on behalf of the employee and family member for the indemnity health insurance plan sufficient to result in equal employee monthly costs to the cost of the health

maintenance organization plans, preferred provider organization plans or panel doctor plans, regardless of the percentage limitations in the Public School Insurance Authority Act. School districts, charter schools and participating entities in the authority may pay up to one hundred percent of the first fifty thousand dollars (\$50,000) of term life insurance.

22-29-11. Expenditure of insurance proceeds for public schools.

Payment for a claim under property insurance coverage for property damage to public school facilities may be paid directly to the school district, or, pursuant to the Procurement Code [13-1-28 through 13-1-199 NMSA 1978], the insurance proceeds may be expended by the insurer to repair the damage. If the payment is made directly to the school district, without further approval of the authority or any insurance carrier, the proceeds of the insurance payment may be expended by the school district to repair or replace the damaged facility if:

- A. the school district complies with the Procurement Code; and
- B. contracts for the repair or replacement are approved by the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, provided that:
 - (1) the cost of settlement of the insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contracts; and
 - (2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them.

History: Laws 2005, ch. 274, § 18.

22-29-12. Due process reimbursement.

The authority shall include due process reimbursement in its self-insured retention risk pool. Each year, the legislature shall authorize the board to collect the due process reimbursement premium from member districts and charter schools to cover the cost of due process reimbursement. From the authorization, the board shall allocate due process reimbursement premiums based on a school district's or charter school's claims experience and other criteria determined by the board. A single due process reimbursement shall not exceed one hundred thousand dollars (\$100,000).

Prior to the beginning of each fiscal year, the authority shall determine the amount of money available in the fund for special education due process reimbursements. The authority shall set forth in its general liability memorandum of coverage the provisions for distribution of that amount for due process reimbursements to school districts and charter schools, including:

- A. the process by which school districts and charter schools submit claims for reimbursement by the end of the fiscal year; and
- B. the method for distributing the money available to school districts and charter schools on a pro rata basis if the available money is not sufficient to cover all claims.