

TITLE 13 INSURANCE
CHAPTER 10 HEALTH INSURANCE
PART 10 MEDICAL INSURANCE POOL PLAN OF OPERATION

13.10.10.1 ISSUING AGENCY: Office of Superintendent of Insurance.
 [11/30/1998; 13.10.10.1 NMAC - Rn & A, 13 NMAC 10.10.1, 4/13/2001; A, 9/01/2020]

13.10.10.2 SCOPE: This rule applies to all insurers as defined in Section 59A-54-3 NMSA 1978.
 [11/30/1998; 13.10.10.2 NMAC - Rn, 13 NMAC 10.10.2, 4/13/2001]

13.10.10.3 STATUTORY AUTHORITY: Section 59A-54-17 NMSA 1978.
 [11/30/1998; 13.10.10.3 NMAC - Rn, 13 NMAC 10.10.3, 4/13/2001]

13.10.10.4 DURATION: Permanent.
 [11/30/1998; 13.10.10.4 NMAC - Rn, 13 NMAC 10.10.4, 4/13/2001]

13.10.10.5 EFFECTIVE DATE: November 30, 1998, unless a later date is cited at the end of a section.
 [11/30/1998; 13.10.10.5 NMAC - Rn & A, 13 NMAC 10.10.5, 4/13/2001]

13.10.10.6 OBJECTIVE: The purpose of this rule is to implement the Medical Insurance Pool Act, Chapter 59A, Article 54 NMSA 1978.
 [11/30/1998; 13.10.10.6 NMAC - Rn, 13 NMAC 10.10.6, 4/13/2001; A, 8/31/2006]

13.10.10.7 DEFINITIONS: In addition to the definitions in Section 59A-54-3 NMSA 1978, as used in this rule:

- A.** Act means the Medical Insurance Pool Act, Chapter 59A, Article 54 NMSA 1978.
- B.** plan or plan of operation means this rule.

[11/30/1998; 13.10.10.7 NMAC - Rn, 13 NMAC 10.10.7, 4/13/2001; A, 8/31/2006]

13.10.10.8 MEMBERSHIP:

A. All insurers admitted in New Mexico as of June 19, 1987 shall be members of this pool. Each insurer admitted after June 19, 1987 shall automatically become a member of the pool on the date of its admission. An insurer which ceases to be admitted after June 19, 1987 shall automatically cease to be a member effective on the day following the termination or expiration of its certificate of authority to transact health insurance; provided, however, that such insurer shall remain liable for any assessment based on net losses sustained by the pool prior to the cessation of its status as a member in the pool.

B. The board shall make all determinations regarding the eligibility of insurers as pool members. If an insurer is aggrieved by a final action or decision of the board, or if the board does not act on such complaint within 60 days, the insurer may appeal to the superintendent within 60 days after the action or decision of the board or the board's failure to act on such complaint.

C. Any member who is determined by the board to have failed to pay, in a timely fashion, any assessment or penalty due to the pool shall cease to be a member. The superintendent shall be advised of any insurer failing to continue its membership.

[11/30/1998; 13.10.10.8 NMAC - Rn, 13 NMAC 10.10.8, 4/13/2001; A, 9/01/2020]

13.10.10.9 BOARD OF DIRECTORS:

A. Appointed members. The superintendent shall announce his appointments to the board at the annual membership meeting.

B. Elected members.

(1) Prior to the annual membership meeting, members shall be contacted by mail by the administrator, or as otherwise directed by the board, to solicit nominations to succeed each board director who was elected by the general membership of the pool and whose term is scheduled to expire on June 30 of that year. If applicable, such nominee will ensure the required representation as set forth in Subsection C of Section

59A-54-4 NMSA 1978. Such nominees shall be made known to the members of the pool at least 30 days prior to the annual membership meeting.

(2) The board shall compile a list of all members of the pool. At least 30 days prior to the annual membership meeting, a notice and proxy shall be sent to all members of the pool soliciting votes for membership on the board.

(3) At the annual membership meeting, the pool administrator shall tabulate the results and prepare a list of the nominees who have received the most votes for election to the board. Each pool member shall be entitled to cast one vote in electing a member to the board and shall be permitted to cast such vote in person or by proxy.

(4) In order to achieve consistent participation and representation, each elected member of the pool shall designate a person to serve on the board as its representative, with the ability to reappoint a person in the case of a permanent vacancy, with the provision for one identified alternate person.

C. **Succession.** The appointed members of the board of directors shall serve until their successors have been duly appointed to serve. The previously elected members of the board of directors shall serve until the end of their term, until they resign, or until they are no longer eligible under the law to be a member of the board of directors, whichever occurs first.

[11/30/1998; 13.10.10.9 NMAC - Rn, 13 NMAC 10.10.9, 4/13/2001; A, 8/31/2006; A, 12/31/09; A, 9/01/2020]

13.10.10.10 ANNUAL MEMBERSHIP MEETING: An annual meeting of the board shall be held no later than March 31 of each year, at such time and place as the board may determine. At each annual meeting, the board shall:

A. review the plan and submit to the superintendent any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the pool; review each outstanding contract or agreement, if any, and make necessary or desirable corrections, improvements, or additions;

B. review operating expenses and outstanding contractual obligations and determine if an assessment is necessary for the proper administration of the pool and, if so, the amount; if such assessment is deemed to be necessary, the board shall levy such assessment based on the criteria set forth in Section 59A-54-10 NMSA 1978; the board may adopt other or additional methods of adjusting the formula to achieve equity of assessments among pool members; the board may abate or defer in any part the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations; the assessment shall be imposed annually as provided by Subsection F of Section 59A-54-5 NMSA 1978 by the pool administrator; any assessment of less than \$50 may be deferred by the board;

C. review operating policies and practices, policy forms, and rates for coverage issued by the pool;

D. review, consider, and act on any other matters deemed by it to be necessary and proper for the administration of the pool;

E. review and evaluate the performance of the pool administrator.

[11/30/1998; 13.10.10.10 NMAC - Rn, 13 NMAC 10.10.10, 4/13/2001; A, 9/01/2020]

13.10.10.11 MEETING PROCEDURES:

A. **Special meetings.** Special meetings of the board may be called by a majority of the directors or the chairman of the board, and will be held at the time and place fixed by the person calling the special meeting.

B. **Notice.** Written notice stating the time, place and, if a special meeting, the purpose, will be delivered either personally or by email at the direction of the person calling the meeting, to each director at least 24 hours before the scheduled date of the meeting. If mailed, a notice is deemed delivered when deposited, postage or charges prepaid, addressed to the director. If emailed, a notice is deemed delivered when sent, addressed to the director. The board may establish dates and times for regularly scheduled meetings.

C. **Quorum.** A majority of the current members of the board in attendance either in person or by telephone will constitute a quorum at board meetings. The act of a majority of directors voting in person or by written proxy at a meeting at which a quorum is present will be the act of the board, except a two-thirds majority of the entire board is required for actions dealing with the levy of assessments, approval and discharge of the pool administrator, removal of officers, or for the pool to borrow money or to encumber assets of the pool. The directors may act only as a board with each director having one vote.

D. Proxy. A written proxy may be given only to other board members and shall be submitted to the chair at the time the vote is taken. No director shall be allowed to cast more than one proxy vote. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if a consent in writing setting forth the action so taken is signed, either wet-ink or electronically, by all of the directors.

E. Waiver of notice. Whenever any notice is required to be given to any director, a waiver thereof in writing signed or emailed by the person entitled to the notice is equivalent to the giving of timely notice. The attendance of a director at a meeting constitutes a waiver of notice of the meeting except when attendance is for the sole purpose of objecting because the meeting is not lawfully called or convened.

F. Record of meetings. A written record of the proceedings of each board meeting shall be made. The original of this record shall be retained by the administrator, or as otherwise directed by the board, and a copy shall be forwarded to all members of the board for approval at a subsequent board meeting. Copies shall be available upon request.

G. Participation methods. Members of the board, or any committee designated by the board, may participate in a meeting of the board, or of any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

H. Consent required for action without meeting. Any action required by the act or this plan to be taken at a meeting of the board, or any action which may be taken at a meeting of the board or of a committee of the board, may be taken without a meeting if a consent in writing, setting forth the actions so taken, is signed, either wet-ink or electronically, by all of the directors, or all of the members of the committee, as the case may be. The consent to action without a meeting shall have the same effect as a unanimous vote of the board or of the committee taking the action.

[11/30/1998; 13.10.10.11 NMAC -Rn & A, 13 NMAC 10.10.11, 4/13/2001; A, 8/31/2006; A, 12/31/2009; A, 9/01/2020]

13.10.10.12 OFFICERS:

A. The officers of the board will be the chairman of the board, a vice-chairman, a secretary and treasurer, and such other officers as the board may decide, who will be elected annually by the board at its annual meeting to serve until their successors are elected and qualified. An officer, except the chairman, may be removed with or without cause by the board, or may resign. Vacancies and newly created offices will be filled by the board. One person may hold more than one office, but no person may be both chairman of the board and secretary. Officers will perform the duties, and will have the power and authority, assigned by the board, incident to the office, and provided in this plan.

B. The chairman of the board shall preside at meetings of the board and shall assume such duties as shall be designated from time to time by the board. The chairman, when authorized by the board, will execute and deliver documents in the name of the pool.

C. The vice-chairman of the board shall function in the absence of the chairman.

D. The secretary will review the records of the pool and the minutes of the proceedings of the directors; will give all notices required; and when authorized will execute, attest, seal, and deliver documents of the board.

E. The treasurer will be responsible for reviewing financial records and accounts for the pool.
[11/30/1998; 13.10.10.12 NMAC - Rn, 13 NMAC 10.10.12, 4/13/2001; A, 9/01/2020]

13.10.10.13 COMMITTEES:

A. Appointment. The board shall appoint such committees as it may from time to time deem necessary. Such committees may include, but are not limited to, an executive, finance, policy, procurement and legal committees.

B. Delegation of authority. The board may authorize a committee to take any action that the board has the power to take except for action on assessments, premiums, changes in policy benefits, and changes in the plan of operation as long as the motion to delegate the authority passes by a vote sufficient to fulfill the vote requirements for the board itself to take the delegated action.

C. Expenses. Members of special or standing committees may be allowed expenses for attending committee meetings as determined by the board subject to the Per Diem and Mileage Act.

[11/30/1998; 13.10.10.13 NMAC - Rn, 13 NMAC 10.10.13, 4/13/2001; A, 12/31/2009; A, 9/01/2020]

13.10.10.14 OPERATIONS: In addition to the powers granted in Section 59A-54-7 NMSA 1978:

A. The board may employ such persons, firms, or corporations to perform such executive and administrative functions as are necessary for the board's performance of the duties imposed on the pool. The board may use the mailing address of the pool administrator or as otherwise directed by the board. Such persons, firms, or corporations shall keep such records of its activities as may be required by the board. The pool administrator shall maintain the financial records of the pool. Board records and documents may be maintained by the administrator or as otherwise directed by the board.

B. The board may hire or contract with such persons or organizations as attorneys at law, actuaries, accountants, claims personnel, and such other specialists or persons or organizations with expertise in such areas and whose advice or assistance is deemed by the board to be necessary to the discharge of its duties imposed by law. The board may agree to compensate such persons or organizations so as to best serve the interest of the pool and the public.

C. The board may open one or more bank accounts for use in pool business. The board may make reasonable delegations of deposit and withdrawal authority to such accounts consistent with prudent fiscal policy. The board may borrow money from any person or organization, including a member or from a contracting firm or entity as the board may deem advantageous for the pool and the public. The pool administrator is responsible for handling, safeguarding, and disbursing the funds of the pool subject and responsible to the board.

D. The board may review the act and other appropriate insurance laws and regulations in order to make recommendations to the superintendent for the improved operation of the pool.

E. The board shall promptly inform the superintendent of the failure of any member to pay an assessment after 30 days' written notice to the member that payment is due. If a member fails to pay its assessment and penalty within 30 days' written notice of the penalty, the board may disenroll the member from the pool. The penalty and notice and any notice of disenrollment shall be mailed by registered mail return receipt requested. If a member loses its membership status, the pool administrator shall promptly forward notice of disenrollment to the superintendent. Reinstatement of membership can only occur if all assessments and penalties still owing are paid in full and if the superintendent notifies the pool that the former member has a current certificate of authority to transact insurance business in New Mexico.

F. A penalty of one percent of the unpaid assessment or \$1,000.00, whichever is larger, plus interest on the assessment will be assessed against delinquent members. Interest shall be paid at a rate of prime rate plus two percent per annum. The prime rate shall be defined as the prime rate as published in the money rates section of the Wall Street journal on the last day of publication prior to the date the unpaid assessment is paid. If an insurer wishes to contest an assessment but is willing to pay, under protest, the amount of the assessment during the pendency of the adjudication process, no penalty will be assessed. If the member is successful in its protest, then the pool shall refund the amount of the assessment to the member and pay the member interest at the rate earned by the pool in the interim. The fact that a member is paying under protest must be disclosed at the time of payment.

[11/30/1998; 13.10.10.14 NMAC - Rn & A, 13 NMAC 10.10.4, 4/13/2001; A, 9/01/2020]

13.10.10.15 POOL RESPONSIBILITIES:

A. The pool will provide and accept applications for health insurance, and for any other insurance plans developed by the board, which contain standard policy provisions as specified by the act.

B. The pool shall develop a plan for the periodic advertising of the general availability of health insurance coverage from the pool.

C. The pool may develop and promulgate a list of health conditions, the existence of which would make an applicant eligible for coverage without demonstrating the need for rejection of coverage by one carrier.

D. The pool may adopt any additional provisions necessary or proper for the execution of the powers and duties of the pool.

[11/30/1998; 13.10.10.15 NMAC - Rn, 13 NMAC 10.10.15, 4/13/2001]

13.10.10.16 INTERESTED PARTIES: No contract or transaction between the pool and one or more of its directors, or between the pool and any other corporation, partnership, association, or other organization in which

one or more of its directors are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director is present at or participates in the meeting of the board or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if:

A. the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the board or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or

B. the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the directors entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the directors; or

C. the contract or transaction is fair to the pool as of the time it is authorized, approved, or ratified, by the board, or a committee thereof; common or interested directors may be counted in determining the presence of a quorum at a meeting of the board or of a committee which authorizes the contract or transaction. [11/30/1998; 13.10.10.16 NMAC - Rn, 13 NMAC 10.10.16, 4/13/2001]

13.10.10.17 RECORDS AND REPORTS:

A. The fiscal year of the pool shall coincide with the calendar year.

B. The board shall make an annual report to the superintendent as required by the act. The annual report shall include an audited financial report for the preceding calendar year in a form approved by the superintendent and a review of the activities of the pool during the preceding calendar year. [11/30/1998; 13.10.10.17 NMAC - Rn, 13 NMAC 10.10.17, 4/13/2001; A, 9/01/2020]

13.10.10.18 BROKER/AGENT POLICY:

A. The board may enter into an agreement with a licensed insurance broker or agent to submit pool applications for insurance coverage.

B. The applications submitted must conform to pool rules and regulations.

C. Upon submission of an application by the broker or agent and issuance of a policy by the pool, the broker or agent shall become entitled to a referral fee established by the board.

D. In order to be entitled to the payment established by the board, the broker or agent must execute an agreement entered into between the pool and the broker or agent.

E. No broker or agent shall be authorized to accept applications for pool coverage unless he or she has an errors and omissions insurance policy in an amount not less than \$500,000. Proof of such coverage must be provided to the pool administrator.

[11/30/1998; 13.10.10.18 NMAC - Rn & A, 13 NMAC 10.10.18, 4/13/2001]

13.10.10.19 INDEMNIFICATION:

A. All persons, except the superintendent and his staff, described in the act shall be indemnified by the pool for all expenses incurred in the defense of any action, suit, or proceeding brought against such person on account of any action taken by him in the performance of his powers and duties under the act, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance, or reckless disregard of the responsibilities of his office. In the event of settlement before final adjudication, such indemnity shall be provided only if the pool is advised by independent counsel that such person did not, in such counsel's opinion, commit such a breach of duty. The expense of such indemnification shall be assessed against member insurers in accordance with Section 59A-54-10 NMSA 1978. Any reference to persons in this section shall include the board or a committee thereof.

B. The indemnification provided by this section will not be deemed exclusive of any other rights to which those indemnified may be entitled under any other laws, including but not limited to Section 59A-54-18 NMSA 1978, agreements, votes of disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and will continue as to a person who has ceased to be a director, employee, or agent and will inure to the benefit of the heirs and personal representative of that person.

C. The pool, upon resolution adopted by the board, may purchase and maintain insurance on behalf of any person who is or was a director, employee, or agent of the pool who, while a director, employee, or

agent of the pool, is or was serving at the request of the pool as a director, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise or employee benefit plan, against any liability asserted against and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the pool would have the power to indemnify the person against such liability under the provisions of this section.

[11/30/1998; 13.10.10.19 NMAC - Rn, 13 NMAC 10.10.19, 4/13/2001; A, 9/01/2020]

13.10.10.20 CONFORMITY TO STATUTE: In case of a conflict between the provisions of the act and this plan, the provisions of the act shall control.

[11/30/1998; 13.10.10.20 NMAC - Rn, 13 NMAC 10.10.20, 4/13/2001]

13.10.10.21 GRIEVANCE PROCEDURES: Any person, including any pool member, applicant for coverage, or any claimant, aggrieved by actions of the pool, shall submit their complaints in writing to the pool administrator and those complaints shall be resolved in accordance with grievance procedures established by the board. The grievance procedures must be exhausted before commencement of any suit against the pool, the pool administrator, or the board.

[11/30/1998; 13.10.10.21 NMAC - Rn, 13 NMAC 10.10.21, 4/13/2001]

13.10.10.22 INITIAL ASSESSMENTS: Each insurer, as defined in Section 59A-54-3 NMSA 1978 shall be assessed an initial assessment of \$500 at the time it becomes a member of the pool.

[11/30/1998; 13.10.10.22 NMAC - Rn, 13 NMAC 10.10.22, 4/13/2001]

13.10.10.23 PREMIUM INFORMATION: All reports regarding premium information requested of the members by the pool for purposes of determining assessment amounts must be signed by an officer of the member. No adjustments to that premium information will be accepted from any member after the date for submission of the information has passed, with the exception of errors relating to categories of premiums not allowed to be assessed by the Act or other laws.

[11/30/1998; 13.10.10.23 NMAC - Rn, 13 NMAC 10.10.23, 4/13/2001; A, 9/01/2020]

13.10.10.24 ASSESSMENT POLICY:

A. Interim and final assessments to pool members shall be mailed at least 30 days prior to the due date for payment.

B. To determine the amount of premium upon which a member's final assessment will be based for a particular year, the administrator shall mail the reporting form to each member no later than April 1 of the following year. The reporting form shall be completed, signed by an officer of the member, and returned to the pool. The amount of premium reported shall be reviewed by the pool administrator with the assistance of the Office of Superintendent of Insurance.

C. Any proposed adjustment to the amount of premium reported shall be reviewed for approval by the board. If any adjustment to the amount of premium is made as a result of that review, the member affected by the adjustment will be notified in writing of the adjustment.

D. Any member who wishes to appeal the amount of its interim or final assessment may do so in writing to the board. Any appeal must be submitted to the board within 30 days of notice of the assessment. The submission must include the basis for the appeal and all relevant facts and legal argument the appellant wishes the board to have before it when deciding the appeal. At the discretion of the board, oral presentations to the board may be allowed.

[13.10.10.24 NMAC - N, 4/13/2001; A, 9/01/2020]

13.10.10.25 REFUNDS AND ADJUSTMENTS: After the final assessments for a particular year have been determined and collected, the pool administrator and the board shall determine if any member has overpaid its assessments. If any such overpayment has been made, the pool administrator, upon approval by the board, shall refund to the member the amount of the overpayment. No interest shall be paid by the pool on the overpayment, unless such payment was paid under protest as specified in Subsection F of Section 14 of this rule.

[13.10.10.25 NMAC - N, 4/13/2001; A, 9/01/2020]

HISTORY OF 13.10.10 NMAC:**Pre-NMAC History:**

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

NMCHIP 87-1, Plan of Operation, on March 20, 1989.

Other History:

13 NMAC 10.10, Health Insurance - Comprehensive Health Insurance Pool Plan of Operation, filed 11/12/1998; reformatted, renumbered and amended from 13 NMAC 10.10 to 13.10.10 NMAC, effective 4/13/2001.