

Disability Rights Legal Center



Cancer Legal Resource Center

**Cancer Legal Resource Center**

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## Health Insurance in New Mexico

### Types of Private Health Insurance

#### Group vs. Individual Insurance

Group insurance is usually offered through your employer or some form of a trade association (ex. a union, etc.). Individual insurance means that you are contracting directly with an insurance company (ex. when you purchase a plan from Blue Cross or Blue Shield, etc.). People who purchase group or individual health insurance plans are called “members” of that insurance company.

#### HMO, PPO, and POS Plans

There are three types of managed care plans. There are HMO, PPO, and POS plans.

*HMO* stands for a health maintenance organization. There are generally two forms: 1) independent physician associations (IPAs), and 2) stand alone facilities. IPAs have physicians that practice in their own offices and sometimes join with other providers to form a medical group.

*PPO* stands for Preferred Provider Organization. A PPO is a group of health care providers who have agreed to provide services to an insurance company’s members at a reduced rate.

*POS* stands for Point of Service Plan. A POS Plan is a cross between an HMO and a PPO. Members of a POS plan decide which type of service they want to use at the point when they are ready to use it.

HMO	PPO	POS
Participating doctors and hospitals. Generally have a primary care physician who coordinates care	Usually many health care provider and hospital choices	Can see providers in- or out-of-network
HMO	PPO	POS
Generally have to select doctors and hospitals from within the participating group	Can select from all participating providers	If selecting within network, generally have a minimal co-pay. If selecting from larger group, member will pay more
Limited choices	More choices in doctors, specialists, overall providers	More choice when needed
Usually less expensive	Usually more expensive	Cost is between that of a PPO and an HMO

### What to consider when choosing a health insurance plan

- 1) Look at the summary of *benefits*. What benefits are included? What benefits are excluded?
- 2) Look at *costs*. How much are the monthly premiums, annual deductibles, and co-payments?
- 3) When are the *enrollment periods*? Do they offer annual open enrollment periods to make changes to your policy?
- 4) How much *flexibility* do they offer? Can you change plans if you need to? How?

Health insurance companies are required to renew an individual's existing health coverage, but there is no cap on the rate increases companies may impose at the time of renewal. This is called guaranteed renewability. Guaranteed renewability is not portable, so you do not have the right to switch to another company or even another product offered by the same company.

### **Ways to Get and Keep Health Insurance**

#### Employment-Based Health Insurance

The most common way that people obtain health insurance coverage is through their own employment or a family member's employment. There are certain rights that are guaranteed to people who are insured through their own or a family member's employment. These rights have to do with the continuation of coverage during certain leaves of absence (under the Family and Medical Leave Act) or upon termination of employment (see COBRA, discussed below). Persons with employment-based health insurance are also protected from health insurance discrimination based on their pre-existing conditions under the Health Insurance Portability & Accountability Act (see HIPAA, discussed below).

#### COBRA

COBRA is a federal law that allows you to continue the same health insurance coverage that you had through your or your family member's employer. It's the same health insurance policy you had when you were employed, so you don't have to worry about changing providers.

COBRA is available to an employee or family member after an employee has terminated their employment or has reduced their work hours to a point that they are no longer eligible to receive coverage from their employer. This termination or reduction in hours is referred to as a "qualifying event." Other qualifying events for COBRA are divorce or death of a spouse (when the person seeking COBRA coverage was insured by a plan provided through the spouse's employment), or a child aging out of a parent's health insurance policy.

Federal law defines the terms of COBRA coverage and its availability as follows:

- COBRA applies to employers with 20 or more employees.
- COBRA coverage generally lasts for 18 months.<sup>1</sup>
- The cost of the monthly premium paid by the employee can be up to 102% of what the employer was paying for the same benefits.
- The person insured is responsible for the full premium for the coverage.
- Who is responsible for notifying the health plan of the qualifying event depends on which qualifying event has occurred.
- A health plan has 14 days after the plan administrator is notified of the qualifying event to notify the employee of the right to elect COBRA.
- An employee must elect COBRA within 60 days after being notified of their COBRA rights. The employee then has 45 days after electing coverage to pay the initial premium.

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<sup>1</sup> COBRA coverage can last up to 29 months if the person insured has a qualifying disability, or up to 36 months if the person became eligible for COBRA coverage because of certain qualifying events or a combination of qualifying events.

If you elect COBRA coverage, you will have to pay the premiums for each month since you became eligible. So, even if you wait until the last day of your eligibility to elect COBRA coverage, you will still have to back-pay the premiums to the date your eligibility began.

### New Mexico State Continuation Coverage

New Mexico has its own mini-COBRA law similar to the federal COBRA law. The state regulated COBRA program offers continuation of group health benefits to qualifying employees for a period of six months. To qualify for mini-COBRA, an employee must have been covered under the group health plan for at least 6 months and must be eligible through a qualifying event. A COBRA qualified individual must elect their COBRA coverage within 30 days of the loss of their eligibility for group health coverage. Monthly premiums under the mini-COBRA program are the sole responsibility of the employee. Conversion plans are available to any person that elects to convert their COBRA coverage into an individual health plan. For those that are exhausting their COBRA coverage, the state high-risk pool offers guaranteed individual health insurance if accepted within 63 days of the COBRA termination date. (See section on New Mexico Major Risk Insurance Plan below for details.)

- New Mexico state continuation coverage applies to employers with 2-19 employees.
- Continuation coverage generally lasts for 6 months.
- The cost of the monthly premium paid by the employee is 100% of what the employer was paying for the same benefits.

### Health Insurance Portability & Accountability Act (HIPAA)

HIPAA prohibits health insurance discrimination against individuals based on their pre-existing conditions, when going from a group health insurance plan to another group health insurance plan or from a group plan to a HIPAA guarantee issue plan.

HIPAA also: 1) provides a federal right to an individual health insurance plan (called a guarantee issue plan); 2) reduces the maximum pre-existing condition exclusion period to 12 months; and 3) gives you credit for the time that you had health insurance coverage in the past to eliminate or reduce a pre-existing condition exclusion period.

### *Guarantee Issue Plan*

Normally when you apply for an individual health insurance plan, you are required to go through a process called medical underwriting. During this process, the insurance company looks at your past and current medical condition in order to decide whether or not they want to issue you a health plan. If you currently have, or in the past have had, a serious medical condition, the insurance company will likely decide that it is not worth the risk to them to issue you a health plan, and they will deny you coverage.

A guarantee issue plan, also known as a “federally insured plan” or “HIPAA plan,” is an individual health insurance plan that you have a right to purchase under federal law. A HIPAA plan isn’t a specific plan – it’s just a right to purchase an individual plan.

In New Mexico, HIPAA plans are available through the New Mexico Health Insurance Alliance (NMHA)<sup>2</sup> and the New Mexico Medical Insurance Pool (NMMIP).<sup>3</sup> NMHA and NMMIP also offer non-HIPAA plans, so be sure to use words “HIPAA plan” when you apply.

A HIPAA plan is different than COBRA coverage. Under COBRA, you keep the same health insurance you had through your employer. Under HIPAA you are buying new insurance, so you need to compare all of the available plans and pick the one that is right for you. Compare the premiums, deductibles, and co-

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<sup>2</sup> For more information about the New Mexico Health Insurance Alliance visit: <http://www.nmhia.com/>

<sup>3</sup> For more information about the New Mexico Medical Insurance Pool visit: <http://www.nmmip.com/>

payments. Check to make sure your healthcare providers accept any insurance plan you are considering, and check to make sure that your prescription drugs are on the formulary list of drugs covered by the plan.

You must meet the following requirements to be eligible for a HIPAA plan:

- You must exhaust your COBRA coverage, meaning that you use all 18 months of COBRA coverage, and any additional COBRA coverage available to you, including state continuation coverage.
- You cannot have a break in coverage longer than 63 days.
- You must be ineligible for Medicare, Medicaid, or any other form of group coverage.

#### *Pre-existing Condition Exclusion Period (PECEP)*

When you are going from one employer's group health plan to another employer's plan, the new plan is required to insure you, but they can impose a PECEP, which means that for a certain period of time, they will not cover any treatment or services related to a pre-existing medical condition. Before HIPAA, a two-year PECEP was the industry standard. HIPAA limited the maximum PECEP that may be imposed to one year. New Mexico has a PECEP of 6-months.

#### *Creditable Coverage*

Creditable coverage is any previous period of health insurance coverage that was not interrupted by a break in coverage of more than 63 days. HIPAA reduces any PECEP by the length of time that you previously had creditable coverage. Example: If you previously had coverage for four months, have not had a break in coverage of more than 63 days, and your new insurance plan has a PECEP of 12 months, then you get a credit for your 4 previous months of coverage, leaving you with only 8 months left on your PECEP. So, if you have 12 months or more of previous health insurance coverage, and you never have a break in coverage of more than 63 days, you will never face a PECEP.

Almost all types of health insurance can qualify as creditable coverage. (Medicare, Medicaid, group, individual, COBRA, and HIPAA plans can all qualify.) One exception is student health insurance plans because they are not typically a full policy with catastrophic coverage. If a particular condition was not covered by the policy that you are claiming as creditable coverage, then your new health plan may still subject that condition to a PECEP.

To show that you have creditable coverage, call your insurance company to request a "certificate of creditable coverage," which lists the dates that you have been insured by that company. If you have been insured by multiple companies, you need certificates of creditable coverage from each one.

#### New Mexico Major Risk Insurance Plan

The New Mexico Medical Insurance Pool (NMMIP) provides access to health insurance coverage to residents of New Mexico who are denied health insurance and considered uninsurable.

NMMIP also provides health coverage to New Mexicans who have exhausted COBRA benefits and have no other health insurance options available to them.

NMMIP is administered by Blue Cross and Blue Shield of New Mexico, who handles eligibility, enrollment, member services and claims processing.

#### **You can qualify for the Pool if:**

- You are a resident of New Mexico
- You have proof of rejection from comprehensive healthcare coverage
- You have proof of a quote for a premium rate that is higher than the Pool's qualifying rate; or

- You have a rider, waiver or limitation in your current policy that limits your coverage due to a health condition; or
- You are/will be involuntarily terminated from your plan because the carrier stopped selling such coverage in New Mexico; or
- You are moving to New Mexico and were covered by a High Risk Pool in another state; or
- You had coverage under the New Mexico Health Insurance Alliance and want to transfer to the Pool; or
- You have reached the maximum allowable coverage limit of your current health insurance plan; or
- You meet HIPAA eligibility criteria.

**You are NOT eligible for the Pool if:**

- You have other comprehensive coverage
- You are, or become, eligible for other comprehensive coverage
- You voluntarily dropped your most recent coverage and it was within the last 12 months
- You were terminated from coverage for fraud or nonpayment of premiums
- You are in prison

**Handling Health Insurance Disputes**

If you disagree with a decision that your health insurance provider has made regarding coverage, you have the right to appeal that decision. The appeals process varies depending on what state you live in.

In New Mexico, you must first exhaust your health plan’s internal appeals process, and then you can request an external review of the decision.

*Internal review*

This is the health plan’s own review of its decision. There are state and federal laws and rules that apply to internal review processes. The internal review must be complete in whole within 20 working days.

*External or independent review*

This is a reconsideration of the health plan’s determination by an outside, independent organization. In New Mexico, reviews are conducted by the New Mexico Insurance Division.

Before you begin an appeal, understand your coverage and applicable laws.

An *employer-sponsored* health plan is one that a person can get through their own employment or through a family member’s employment. The employer usually makes a contribution toward the cost of the employee’s coverage. An *individually purchased* plan is one that you purchase directly from a health plan. The person purchasing the insurance pays the entire premium. Different laws apply depending on whether your plan is employer-sponsored or individually-purchased.

If your plan is an employer-sponsored plan, you need to know whether it is a *self-insured* plan. A self-insured plan is one in which the employer does not contract with an insurance company to insure their employees. Instead, the employer does their own risk pooling like an insurance company would, and pays directly for their employees’ health costs. Since self-insurance does not involve a contract between an insurance company and an employer, it is not subject to state insurance regulations. Federal laws still apply to self-insured plans.

Know what is covered and what is not covered by your plan. Also know what procedures and deadlines are required by your plan.

Next, exhaust your plan's internal complaint process.

If you have a problem with your health plan, you have the right to file a complaint with your health plan. A complaint can also be called a grievance or an appeal. You may be able to file your complaint by phone, mail, or on the internet.

You must exhaust your plan's internal grievance process before you may pursue external review through the Department of Insurance.

If your problem is not urgent, your health plan must give you a decision within *20 working days*.

If your problem is urgent, meaning there is a serious threat to your health, your health plan must give you a decision within *72 hours*.

Then, you may request external review.<sup>4</sup>

There are two types of appeals –

**Adverse:** Denials of coverage for services the health plan determines are not medically necessary.

**Administrative:** Any other aspect of a health benefits plan, such as:

- Administrative practices of the insurer that affects the health care services;
- Claims payment, handling or reimbursement for health care services; and
- Terminations of coverage.

*Adverse External Review:* The Insurance Division will complete the review within 45 working days or 72 hours for expedited reviews unless determined otherwise.

*Administrative External Review:* A written decision will be given within 20 days of the request for review.

If an external review is not granted, then you may file a written complaint with the Office of Insurance.

The decision of the external review entity is binding on the plan.

## **Resources in New Mexico**

For Assistance With Insurance Disputes or Questions About State Health Insurance Continuation Coverage

**New Mexico Public Regulation Commission Insurance Division**

P.E.R.A. Bldg., 4th Floor

1120 Paseo de Peralta

Santa Fe, New Mexico 87501

(800) 947-4722 or (505) 827-4601

<http://www.nmprc.state.nm.us/id.htm>

For Questions About COBRA

**U.S. Department of Labor**

**Employee Benefits Security Administration**

525 South Griffin St, Rm 900

Dallas, TX 75202-5025

(972) 850-4500

<http://www.dol.gov/ebsa/>

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<sup>4</sup> For more information about the external review process please visit: <http://www.nmprc.state.nm.us/mhcb.htm>

For Questions About Premium Assistance Programs:

**New Mexico Department of Medicaid Services**

NM Human Services Department  
Medical Assistance Division  
P.O. Box 2348  
Santa Fe, NM 87504-2348  
(888) 997-2583

For Questions About HIPAA

**New Mexico Department of Insurance**

P.E.R.A. Bldg., 4th Floor  
1120 Paseo de Peralta  
Santa Fe, New Mexico 87501  
(800) 947-4722 or (505) 827-4601

For Questions About the New Mexico Health Insurance Alliance

**New Mexico Health Insurance Alliance**

1660 Old Pecos Trail, Suite F  
Santa Fe, NM 87505  
(800) 204-4700

For Questions About the New Mexico Major Risk Insurance Plan

**New Mexico Medical Insurance Pool**

P.O. Box 6726  
Santa Fe NM, 87502  
(505) 424-7105

For Assistance for Children

**New Mexico Premium Assistance for Kids**

(888) 997-2583

For Questions About Medicaid

**New Mexico Human Services Department**

(505) 827-7750

For Questions About Medicare

**U.S. Department of Health & Human Services**

Centers for Medicare & Medicaid Services (CMS)  
(800) 633-4227

**Health Insurance Benefits Counseling Assistance**

2550 Cerrillo Road  
Santa Fe, NM 87505  
(800) 432-2080 or (505) 476-4799

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