

# MAKING HEALTH CARE REFORM WORK FOR SMALL BUSINESS IN NEW MEXICO

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## I. Executive Summary

The Affordable Care Act (ACA) addresses many of the most significant barriers to insurance for New Mexico small business.

Because states have a great deal of discretion in how they interpret and implement the ACA, choices made by New Mexico will determine how effectively ACA addresses barriers to health insurance coverage.

Some small business benefits of ACA, like employer tax credits, are already available, and some, like the small business health insurance exchange, will take effect in January 2014.

In New Mexico and the US overall, employment is the single largest source of health insurance coverage, roughly half of Americans and 39% of New Mexico residents are insured through an employer, yet ***one quarter of New Mexicans who have a job (205,846 workers) are uninsured.***

Uninsured workers have uninsured families. Almost a quarter million uninsured New Mexicans ages 18-64 live in households that include at least one full time worker.

The small business health insurance exchange (aka Small Business Health Options Program or SHOP exchange) established under ACA could greatly enhance access to high-quality affordable coverage for employees of New Mexico small business.

Exchanges are competitive marketplaces where individuals and small employers can directly and efficiently compare private health insurance options on the basis of price, quality, and other factors

A large number of small employers must participate in the SHOP exchange for it to succeed. ACA requires that state health insurance exchanges begin operating on or before January 1, 2014.

Two thirds of the 55,000 New Mexicans expected to enroll in insurance through the New Mexico health insurance exchanges in 2014 will be employees of small business who purchase policies through the SHOP.

At this point, however, most New Mexico small employers know very little about the Affordable Care Act, the SHOP or the small employer tax credits.

This lack of awareness suggests that New Mexico's 28,000 small employers are ill-prepared to play the important role expected of them in increasing the number of insured New Mexicans.

The ACA includes penalties for individuals and businesses that do not obtain insurance. However, "small employers" (businesses with fewer than 50 employees) are exempt from these penalties.

Non-profit organizations are a substantial share of New Mexico small business and employ thousands. Non-profits are subject to the provisions of the Affordable Care Act in the same way other firms are and are eligible for similar incentives.

New Mexicans are less likely than most Americans to be insured by their employer for a variety of reasons that include relatively low wages and high rates of unemployment, under-employment and poverty.

The scarcity of large employers also contributes to New Mexico's lower rate of employer-sponsored health insurance.

Twenty-eight percent of New Mexico businesses with fewer than fifty employees offer health insurance to their employees compared to ninety-six percent of businesses with fifty or more employees.

Health insurance is less costly for larger firms because their large employee groups constitute more stable risk pools which enable insurers to charge lower premiums and because the per-employee cost of administrative overhead is lower for larger groups.

Larger employers are often able to offer higher value insurance than small businesses can. The actuarial value of health insurance plans purchased by small firms has been shown to be lower on average than that of plans purchased by larger firms. Policies purchased by small businesses may also entail higher employee premiums and cost-sharing.

States have authority to make important decisions about how the SHOP exchange will work. Operational structure, governance, certification of qualified health plans, enrollment and outreach strategies will all be determined at the state level.

To attract enough participants to succeed, the SHOP will have to aggressively market itself to small employers by demonstrating that it offers the same services offered elsewhere, with less administrative hassle, higher value plans and more affordable coverage. The need for aggressive outreach to attract participants is evidenced by the fact that twenty-one percent of low income children in New Mexico remain uninsured despite having been eligible for Medicaid for many years.

The decisions New Mexico makes in establishing the SHOP exchange will help determine how attractive it is to employers.

The SHOP has three built-in advantages over other sources of insurance: (1) Small employer tax credits are only available for policies purchased on the SHOP; (2) The SHOP will screen employees to determine their ability to afford the coverage offered on the SHOP and, if coverage on the SHOP is unaffordable, route them to more affordable options on the individual exchange or through Medicaid; (3) Employees of businesses that participate in the SHOP may have a greater variety of coverage options to choose from than they would have if their employer obtained insurance in the external small group market.

Governance of the exchanges remains a contentious issue. Proposed federal regulations allow insurers and others with a financial interest to serve on the exchange board so long as they do not constitute a majority of members.

Allowing industry a role in exchange governance is unlikely to produce the highest value for consumers because conflict of interest will be almost avoidable.

Although industry expertise will be of tremendous value to the board, industry is certain to be well-represented before the exchange board with or without a formal role in exchange governance

The 2011 legislation establishing a New Mexico health insurance exchange created an eleven member board consisting of three members appointed by the Governor, three members appointed by the Superintendent of Insurance, four members chosen by the New Mexico Legislature and the Secretary of the State Human Services Department.

The bill prohibited the five board members not appointed by the Governor or the Superintendent of Insurance from being employed or consulting for the health care or health finance industries.

The 2011 legislation also required that the board be composed so as to “assure representation of the state’s Native American population, ethnic diversity, cultural diversity and geographic diversity.” And that all board members have knowledge or experience in healthcare, health policy or health insurance.

The 2011 New Mexico exchange legislation would have established the exchange as a quasi-governmental non-profit organization with a government appointed board. A quasi-governmental entity has more flexibility in hiring and procurement than does a traditional government agency but is subject to more government oversight and accountability than is a private non-profit.

New Mexico’s exchange establishment grant application designates the New Mexico Health Insurance Alliance (NMHIA) as the home of the state exchanges. The NMHIA is an existing quasi-governmental nonprofit established by the state Legislature in 1994 to provide insurance to small businesses and individuals unable to obtain insurance in the private insurance market.

If the NMHIA is to house the exchanges, certain changes, including a restructuring of its fourteen member oversight board which currently includes five insurance carrier representatives, will probably be necessary to conform to federal law.

To compete with plans offered in the regular small group market, the SHOP exchange must capitalize on administrative efficiencies, collaborate with external partners, be exceptionally easy to use and provide excellent customer service.

Features contributing to ease of use include a single point of entry for employers; an easy-to-use Web site that provides comparative plan information in a simple, accessible format; a single application; a call center; and a single premium payment for each employer.

Integrating the functions of the individual and SHOP exchanges will enhance the administrative and operational efficiencies of both.

Insurance brokers will be key allies for effective communication between the business community and the exchange.

Navigators will also enhance access to the exchange. Under ACA “navigators” are entities that perform educational and outreach for exchanges and facilitate enrollment in QHP’s. Assistance from navigators may be especially valuable to remote rural employers with limited understanding of the health care and insurance systems.

ACA addresses the four primary barriers to health insurance for small business identified by the US Small Business Administration: (1) uncertainty (2) rating and risk practices (3) low wage workers (4) high cost. How well New Mexico implements these provisions will determine how effective they are.

The uncertainty of future insurance costs may deter some employers from obtaining coverage. The exchanges create larger, more stable pools which should decrease price volatility and increase employer confidence in the future stability of health insurance costs.

Insurance market reforms will make it harder for insurers to discriminate against employers based on the health status of their employees or dependents.

Businesses that employ low wage workers may not provide health insurance because low wage workers often prefer higher wages to health insurance. This is particularly true for relatively young, healthy low wage workers.

Roughly half of employed, uninsured New Mexicans ages 19-64 will become eligible for Medicaid in 2014. The expansion of Medicaid to low income adults will benefit employers by giving them healthier, more productive workers without the cost or administrative burden of providing health insurance.

Low wage workers with income too high to qualify for Medicaid will be able to obtain government subsidized health insurance on the individual insurance exchange. This too will confer upon employers the benefits of insured workers without the cost or administrative burden of providing insurance themselves.

Health insurance exchanges are responsible for connecting enrollees with tax credits and cost-sharing subsidies and for ensuring that Medicaid eligible clients are enrolled in Medicaid and not a more costly plan. Thus, efforts made by the state to attract participation in the health insurance exchanges will automatically increase utilization of federal subsidies and enrollment in Medicaid.

Small businesses that pay average annual wages below \$50,000 and obtain employee coverage on the SHOP exchange can qualify for federal income tax credits for up to fifty percent of their contribution for employee health insurance.

The small business tax credits are a short-term (two year) incentive to encourage small, lower wage employers to start offering insurance. If employers are to continue offering insurance after the incentive period expires they must have an affordable, stable source of coverage. Thus, for the tax credits to achieve their purpose, the SHOP exchange must be successful.

Most New Mexico small employers do not know about the ACA tax credits. In a national survey, only half of small employers who don't offer insurance were aware that the credits even existed.

Adverse selection is a great threat to the viability of the SHOP exchange. If a disproportionate number of people who have high health expenses enroll in coverage through the SHOP exchange, while healthier people instead choose plans offered through the small business markets *outside* the exchange, the SHOP Exchange is very likely to fail.

ACA contains several provisions to discourage or mitigate adverse selection.

Policies to mitigate adverse selection rely on complex risk adjustment provisions. The effectiveness of these policies will depend on the technical competence and enforcement efforts of state regulators.

ACA contains risk adjustment provisions whereby plans both inside and outside the exchange with above-average proportions of healthy, low-cost enrollees subsidize plans with high concentrations of less healthy, higher cost enrollees.

Under ACA insurers that operate both inside and outside of the exchange treat all of their enrollees as a single group when setting premiums. Requiring a “single risk pool” will reduce insurers’ ability to segregate enrollees by health status, and thus the potential for adverse selection.

To prevent adverse selection from undermining the exchange, restrictions and requirements that apply to SHOP plans must also apply to plans offered outside the exchange.

New Mexico small businesses are highly heterogeneous which makes efficient outreach on a topic as complicated as health insurance reform challenging.

The nonprofit sector is a significant and fast-growing portion of New Mexico’s economy. There is no comprehensive registry of New Mexico non-profits by number of employees. However, both nationally and in New Mexico, growth in the nonprofit sector has far outpaced growth in the rest of the private economy and in government.

Nonprofit organizations are exempt from most federal taxes and many provisions of the Affordable Care Act are administered through the federal tax system. However, the provisions of the Affordable Care Act apply to nonprofit employers in much the same way as they do to other employers.

Establishment data from the US Census, however, reveal that the majority of New Mexico small businesses can be characterized into a large but still manageable group of industrial subcategories, most of which are represented by at least one well established trade association and/or subject to some form of state regulatory oversight which could function as a portal for outreach.

Two-thirds of New Mexico private sector businesses with one to fifty employees are clustered in six sectors. Fifteen percent of small businesses are in retail, twelve percent are in construction and eleven percent of small business establishments provide professional and technical services. Health Care and Social Assistance, “Other Services” and Accommodation and Food Service each account for about ten percent of small business establishments.

Trade associations and state regulators can be gateways to these businesses and can partner in designing and disseminating industry-specific outreach materials about the benefits of employee health insurance, the mechanics of the health insurance exchanges and the availability of tax credits.

Even small businesses that opt not to provide insurance for their employees can benefit from the exchanges and contribute to their success by providing their employees with information about the individual exchange and actively encouraging them to seek coverage there.

Employers unable to provide employee coverage can also encourage employees to obtain coverage by offering to contribute to the cost of insurance purchased by employees on the individual exchange.

## II. Recommendations

The Affordable Care Act is a federal law, but states have a great deal of authority in how they interpret and implement it. Decisions made by New Mexico policymakers will therefore determine the extent to which ACA eliminates barriers to insurance for small business.

ACA contains numerous provisions that are potentially beneficial to small business. The SHOP exchange is the most significant of these. The exchange is the central hub connecting all of the small business incentives and its success is key to their effectiveness. Thus policymakers must give top priority to programs and policies that strengthen and sustain the SHOP exchange by focusing on attracting and retaining small employers and minimizing adverse selection.

Attract small businesses to the exchange by investing in extensive, targeted outreach to small employers.

Engage industry groups and state boards and commissions in the targeting, design and implementation of the outreach.

Health insurance exchanges are responsible for connecting enrollees with tax credits and cost-sharing subsidies and for ensuring that Medicaid eligible clients are enrolled in Medicaid and not a more costly plan. Thus, efforts made by the state to attract participation in the health insurance exchanges will automatically increase utilization of federal subsidies and enrollment in Medicaid.

Maximally leverage the exchange's regulatory authority to reduce adverse selection and maintain the critical cost/quality balance for insurance offerings

Prevent adverse selection by adopting and rigorously enforcing rules to prevent avoidance of risk pooling requirements through the creation of subsidiary or affiliate companies.

To prevent adverse selection, equalize the regulation of plans offered inside and outside the exchange without compromising oversight of either. Significant differences between the restrictions placed on plans offered on the exchange and those offered in the regular insurance market will heighten the potential for adverse selection in the exchange. State regulators must not, however, use this potential disparity as a justification for under-regulating the exchange, rather state regulation of plans offered outside the exchange should mirror, to the greatest extent possible, regulation within the exchange and be just as scrupulously enforced.

Mitigate adverse selection by embrace and adequately resource the regulatory functions of the SHOP exchanges to ensure that complex risk adjustment provisions are effectively administered.

Limit the presence of industry on the governing board to ensure that the exchange prioritizes the interests of consumers and small employers and that the strict regulations necessary to prevent and mitigate adverse selection are adopted and rigorously enforced.

Adopt a quasi-governmental organizational structure for the exchange to maximize flexibility in hiring and procurement without compromising public oversight, transparency or the interests of consumers

Maximize operational efficiencies and take full advantage of opportunities to facilitate seamless transitions for employers and employees when changes in jobs or employment status occur.

Prioritize customer service and administrative ease

Small employers, even those that opt not to offer employee coverage, can contribute to the success of the exchanges by encouraging employees to seek coverage and offering to offset some of the out-of-pocket cost. Efforts should thus be made to actively engage even those employers unlikely to participate in the SHOP or provide coverage.

### III. Introduction

Providing health insurance coverage to the employees of small businesses is one of the most pressing insurance challenges facing New Mexico and the nation as a whole. The Affordable Care Act (ACA) addresses many of the most significant barriers to insurance for small business. However, because states have a great deal of discretion in how they interpret and implement the ACA, state policymakers will play an important role in determining how effectively ACA addresses these barriers for New Mexico business.

Some small business benefits of ACA, like tax credits for the purchase of health insurance, are already available, and some like the small business health insurance exchange, will take effect in January 2014.

The New Mexico Office of Health Care Reform estimates that roughly two thirds of policies obtained on the New Mexico Exchanges in 2014 will be obtained for or by employees of small businesses<sup>1</sup>. Unfortunately, most New Mexico small employers know little about the Affordable Care Act and how the health insurance exchanges and subsidies can help small employers provide health benefits to their employees<sup>2</sup>. This lack of awareness about such an important bottom-line issue is not surprising given the complexity of the legislation, the uncertainty about its implementation and the gross over-abundance in the media of political propaganda about ACA. It is troubling because it indicates that New Mexico employers are ill-prepared to play the important role expected of them in ensuring that New Mexicans gain health insurance coverage as a result of the ACA.

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<sup>1</sup> State of New Mexico Level I Health Insurance Exchange Establishment Grant

<http://www.hsd.state.nm.us/pdf/hcr/NM%20Health%20Insurance%20Exchange%20Establishment%20Grant.pdf>

<sup>2</sup> New Mexico Small Employers. Office of Health Care Reform, New Mexico Human Services Department. Health Insurance Exchange Planning Grant FY-2011-PSC # 11-630-1001-0003 Policy Connections, LLC. July 2011.

This report highlights the features of ACA that most directly impact small business and identifies steps the state of New Mexico can take to ensure that these provisions are implemented in a way that benefits small business the most. In doing so, it seeks to ensure that implementation of federal healthcare reform improves access to affordable health insurance for New Mexico small businesses and their employees and thus enhances our state's economic health by reducing cost and increasing productivity for small business.

This report details the major provisions of the Act that affect small business and discusses how they are likely to impact businesses in New Mexico. It describes how businesses can access these benefits and lists the steps the public sector should take to ensure that the provisions of ACA are maximally beneficial to New Mexico businesses and the state economy.

## IV. Background

### *The Affordable Care Act*

The Patient Protection and Affordable Care Act (ACA) along with the Health Care and Education Reconciliation Act of 2010 form the basis of federal health care reform, the objective of which is to improve health and reduce health care costs by increasing access to high value, affordable health insurance for Americans regardless of income or health status. ACA includes numerous provisions, the most well-known and significant of which include:

Minimum quality standards for health insurance policies are established and annual lifetime coverage caps are prohibited.

Insurers must offer the same premium for the same plan to all applicants of the same age and geographical location without regard to most pre-existing conditions.

State health insurance exchanges will provide a marketplace where individuals and small businesses can compare policies and premiums, buy insurance and access large government health insurance subsidies.

With some exceptions for religious preference or financial hardship, *everyone* must obtain health insurance or be subject to penalties. This very contentious provision is known as the "individual mandate."

Businesses that employ fifty or more people and do not offer health insurance to workers will be assessed a penalty if their employees obtain federally subsidized insurance on the individual exchange.

Businesses with fewer than fifty employees are exempt from the penalties for not providing insurance.

Businesses with fewer than twenty-five employees and a large share of low wage workers qualify for tax credits of up to fifty percent of their health insurance costs.

Medicaid eligibility for low income adults is dramatically increased.

Low-income individuals and families with income too high to qualify for Medicaid will be eligible for tax credits and other federal subsidies to make insurance purchased on state health insurance exchanges more affordable.

Insurers must spend a certain percent of premium dollars on eligible expenses or provide rebates to consumers.

An “essential benefits package” is defined. Cost sharing, in the form of co-payments, co-insurance, and deductibles, is prohibited for preventive care within the essential benefits package.

Medicare reimbursements are restructured

Because they impact the costs of health insurance and health care and improve the health of individuals, all the provisions of the ACA have a potential impact on small business. However, some provisions, like the tax credits, small business health insurance exchanges, Medicaid eligibility for low income adults and exemption from penalties will provide the most immediate and direct benefits to small businesses.

### *Uninsured workers in New Mexico*

Approximately 424,400 New Mexicans lack health insurance. Eighty percent of New Mexico’s uninsured (approximately 338,000 individuals) are working-age adults and almost half of the uninsured (205,846 individuals) are employed. In New Mexico and the U.S. overall, employment is the single largest source of health insurance, yet one quarter of New Mexicans who have a job are uninsured.

TABLE 1: NEW MEXICANS AGES 18 TO 64: EMPLOYMENT AND INSURANCE, 2010

All adults ages 18-64	1,488,230	
Employed	838,859	<b>100%</b>
With health insurance coverage	633,013	<b>75%</b>
With private health insurance	577,939	69%
With public coverage	78,826	9%
No health insurance coverage	205,846	<b>25%</b>

Source: US Census Bureau, American Community Survey Table B27011: HEALTH INSURANCE COVERAGE STATUS AND TYPE BY EMPLOYMENT STATUS BY AGE

As illustrated in Table 2, almost 248,000 uninsured New Mexicans ages 18-64 live in households that include at least one full time worker.

Table 2: Distribution of Non-Elderly Uninsured by Family Work Status, New Mexico and US, 2010

	NM	NM	US	US
	number	percent	number	percent
At Least 1 Full Time Worker in Family	247,600	59%	29,831,500	61%
Part Time Workers only	66,300	16%	7,688,700	16%
Non Workers only	103,100	25%	11,591,700	24%
Total	417,000	100%	49,111,900	100%

Source: Kaiser Family Foundation StateHealthFacts.org <http://statehealthfacts.org/profileind.jsp?ind=135&cat=3&rqn=33>

### What is “Small Business”?

Much is made of the important role small businesses play in our communities and economies. However, the term “small business” has no single, agreed upon definition. The “size” of a business can be determined by revenue, assets, number of employees or some combination of these and other factors. For purposes of this analysis, small businesses are defined as those that employ at least one and no more than fifty employees. It does not include sole proprietorships in which the owner is the only employee<sup>3</sup>. “Employees” do not include independent contractors. These definitions are drawn from the Affordable Care Act and from recent New Mexico legislation. Non-profit organizations are a substantial share of New Mexico small business and employ thousands. Non-profits are subject to the provisions of the Affordable Care Act in the same way other firms are and are eligible for similar incentives.

In 2011, legislation creating New Mexico health insurance exchanges pursuant to the Affordable Care Act passed both houses of the New Mexico Legislature but was vetoed by the Governor. This legislation (Senate Corporations Committee Substitute for Senate bills 38 and 370, Feldman<sup>4</sup>), *The New Mexico Health Insurance Exchange Act*, defined a small employer as “a person that is actively engaged in a business that employed an average of at least one but not more than fifty full-time-equivalent employees on business days during the preceding calendar year.”. The legislation made provisions for increasing the threshold to 100 employees on the recommendation of the Executive but at the discretion of the Legislature, on or before January 1, 2016.

There is no prototypical small business. Not only do businesses with fewer than fifty employees run the gamut from home-based consultancies to corporate call centers, they cross the spectrum of industries and professions. They are represented in every industrial sector and are located throughout the state.

<sup>3</sup> IRS Notice 2010-44 Section 45R – Tax Credit for Employee Health Insurance Expenses of Small Employers <http://www.irs.gov/pub/irs-drop/n-10-44.pdf>

<sup>4</sup> <http://www.nmlegis.gov/Sessions/11%20Regular/final/SB0038.pdf>

Small businesses are organized as for-profits, non-profits, C-corporations, LLC's and partnerships. Some small businesses are not incorporated at all. Some firms have physical locations; others operate out of cars and people's homes.

*Table 3 shows that although small businesses are represented in all of New Mexico's industrial sectors, two-thirds of businesses with fewer than fifty employees are clustered in six sectors. Fifteen percent of small businesses are in retail, twelve percent are in construction and eleven percent of small business establishments provide professional and technical services. Health Care and Social Assistance, "Other Services" and Accommodation and Food Service each account for about ten percent of small business establishments. A more detailed analysis of New Mexico small businesses by industrial sector is provided in Section V of this report.*

Table 3: New Mexico Private Sector Business Establishments by Sector and Size, 2010

	TOTAL ESTABLISHMENTS	PERCENT W UNDER 10 EMPLOYEES	PERCENT W UNDER 50 EMPLOYEES	SHARE OF ALL ESTABLISHMENTS WITH UNDER 10 EMPLOYEES	SHARE OF ALL ESTABLISHMENTS WITH UNDER 50 EMPLOYEES	AVERAGE ANNUAL WAGE
RETAIL TRADE	6,948	71%	95%	15%	15%	\$ 22,775
CONSTRUCTION	5,101	79%	97%	12%	12%	\$ 38,668
PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES	4,809	83%	98%	12%	11%	\$ 63,383
HEALTH CARE AND SOCIAL ASSISTANCE	4,721	65%	92%	9%	10%	\$ 39,855
OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)	4,070	82%	99%	10%	9%	\$ 23,846
ACCOMMODATION AND FOOD SERVICES	4,057	43%	91%	5%	9%	\$ 14,611
FINANCE AND INSURANCE	2,898	83%	98%	7%	7%	\$ 47,660
REAL ESTATE AND RENTAL AND LEASING	2,324	91%	99%	6%	5%	\$ 30,767
WHOLESALE TRADE	1,994	72%	97%	4%	5%	\$ 44,573
ADMINISTRATIVE & SUPPORT WASTE MANAGEMENT & REMEDIATION &	1,917	74%	94%	4%	4%	\$ 25,999
MANUFACTURING	1,437	68%	93%	3%	3%	\$ 44,080
TRANSPORTATION AND WAREHOUSING	1,336	75%	95%	3%	3%	\$ 33,990
INFORMATION	836	71%	95%	2%	2%	\$ 40,750
MINING, QUARRYING & OIL AND GAS EXTRACTION	688	60%	90%	1%	1%	\$ 58,850
ARTS, ENTERTAINMENT AND RECREATION	661	74%	92%	2%	1%	\$ 21,494
EDUCATIONAL SERVICES	607	69%	92%	1%	1%	\$ 27,504
UTILITIES	227	69%	93%	0%	0%	\$ 71,923
MANAGEMENT OF COMPANIES AND ENTERPRISES	206	59%	88%	0%	0%	\$ 54,756
FORESTRY, FISHING, HUNTING AND AGRICULTURE	95	91%	99%	0%	0%	\$ 34,432
NOT CLASSIFIED	54	100%	100%	0%	0%	\$ 11,594
TOTAL ESTABLISHMENTS	44,986	73%	95%			\$ 34,712

Source: US Census Bureau, County Business Patterns, 2009 <http://www.census.gov/econ/cbp/index.html>

**Employer Sponsored Health Insurance: Why Size Matters**

Employers are the single largest source of health insurance in both New Mexico and in the US overall. Roughly half of Americans and 39% of New Mexico residents are insured through an employer. The percentages of non-elderly adults who obtain their insurance through employment are even higher – fifty-nine percent for the U.S. and forty-nine percent for New Mexico.

New Mexicans are less likely than most Americans to be insured by their employer for a variety of reasons that include relatively low wages and high rates of unemployment, under-employment and poverty.

The relative scarcity of large employers also contributes to New Mexico’s lower rate of employer sponsored health insurance. Employees of large companies are more likely than employees of smaller companies to be insured by their employer because large businesses are more likely than small businesses to offer insurance to their employees. In addition, the coverage offered by large employers is often of higher value than that offered by small employers. Larger employers can often offer their employees more and better health insurance options than can small employers because, as will be explained later in this report, their average insurance cost per-employee can be considerably lower.

*Table 4 shows that while the size distribution of establishments in New Mexico is fairly comparable to that of the US overall, for instance fifty-seven percent of New Mexico establishments and fifty-eight percent of US establishments employ fewer than 10 workers, the percent of all workers employed in smaller establishments is higher for New Mexico than it is for the US. This is particularly evident when comparing the percent of New Mexico workers employed in establishments with more than fifty workers (67.1%) to the percent of US workers employed in establishments with more than fifty workers (72.5%).*

**Table 4: Business establishments by number of employees, NM and US, 2010**

	Number of Employees							
	Less than 10		10 to 24		Under 50		50 or more	
	NM	US	NM	US	NM	US	NM	US
Percent of Establishments	57.0%	58.0%	10.8%	11.8%	72.7%	74.4%	27.3%	25.6%
Percent of Employees	13.6%	11.8%	11.0%	9.1%	32.9%	27.5%	67.1%	72.5%

Source: Agency for Health Care Research and Quality, Medical Expenditure Panel Survey State IC Tables, 2010. [http://meps.ahrq.gov/mepsweb/data\\_stats/state\\_tables.jsp?regionid=25&year=2010](http://meps.ahrq.gov/mepsweb/data_stats/state_tables.jsp?regionid=25&year=2010)

There are a two principle reasons for the higher rates of insurance by larger firms. First, large employee groups create more stable risk pools which enables insurers to charge lower premiums. The small risk pools that small employers offer insurers, by contrast, are inherently unstable and less able to absorb the additional costs of older and less healthy employees and dependents. The unpredictability and sensitivity to the health status of a few individuals drives premiums up and makes cost increases more difficult to predict. Small employers are also more likely than large employers to be severely impacted by adverse selection. Adverse selection occurs when a relatively large percentage of less healthy people seek insurance in a given pool, driving up costs for all risk pool participants and causing healthier pool participants to leave the pool in search of lower cost alternatives.

Table 5: New Mexico Business Establishments by Number of Employees, 2010

	Number of employees				
	Total	Less than 10	10-24	Less than 50	50 or more
Number of establishments	40,158	22,891	4,349	29,190	10,968
Percent of number of establishments	100%	57.0%	10.8%	72.7%	27.3%
Percent of establishments that offer health insurance	46.8%	21.6%	43.0%	28.2%	96.1%
Number of employees	565,894	77,209	62,035	186,325	379,569
Percent of number of employees	100%	13.6%	11.0%	32.9%	67.1%
Percent of employees in establishments that offer health insurance	80.2%	29.4%	42.7%	44.7%	97.6%
Percent of employees that are enrolled in health insurance at establishments that offer health insurance	53.9%	54.7%	46.1%	45.6%	55.8%
Percent of full-time employees eligible for health insurance at establishments that offer health insurance	86.0%	91.6%	86.6%	84.0%	86.5%

Source: Agency for Health Care Research and Quality, Medical Expenditure Panel Survey State IC Tables, 2010.

[http://meps.ahrq.gov/mepsweb/data\\_stats/state\\_tables.jsp?regionid=25&year=2010](http://meps.ahrq.gov/mepsweb/data_stats/state_tables.jsp?regionid=25&year=2010)

Adverse selection is a bigger problem for small employers because the relatively high cost of the insurance they often offer deters healthy people from enrolling and thereby increases the risk pool's concentration of less healthy people who don't have lower cost alternatives. Because the risk pool is small the shift toward a higher cost cohort increases premiums significantly and drives even more healthy pool participants away.

Second, the per-employee administrative costs of insurance are lower for large employers than for they are for small employers because large companies have more employees over which to average their overhead costs. Higher turnover rates in small businesses may exacerbate this effect. A 2003 study by the US Small Business Administration<sup>5</sup> found that administrative expenses for insurers of small firm health insurance plans make up twenty-five to twenty-seven percent of premiums compared to five to eleven percent for large companies with self-insured health plans.

<sup>5</sup> Chu, Rose C. and Trapnell, Gordon R. *Study of the Administrative Costs and Actuarial Values of Small Health Plans*. U.S. Small Business Administration, Office of Advocacy, January 2003

Table 5 shows New Mexico private business establishments with employees by number of employees and the U.S. overall. The third row of the table, entitled “Percent that Offer Health Insurance” shows the percent of establishments of a given size that offer insurance to their workers. The fifth row, “Percent of Employees” shows how employees are distributed across establishments of different sizes. “Percent of Employees in establishments that offer health insurance” shows the percentage of all workers employed in establishments of a given size that have access to employer-sponsored health insurance. Table 5 illustrates the striking difference between in insurance offer rates for large and small businesses. Twenty-eight percent of New Mexico businesses with fewer than fifty employees offer health insurance to their workers compared to ninety-six percent of businesses with more than fifty employees.

Some of the higher costs of health insurance get passed on to small business employees. On average in the U.S., small business employees pay higher premiums for employer sponsored insurance<sup>6</sup>. In order to keep premiums affordable small employers may offer plans that cover less and/or entail more cost sharing. The 2003 SBA study cited earlier found that the actuarial value of health insurance plans for firms with fewer than ten employees averaged seventy-eight percent of expected costs, while the actuarial value of health insurance plans for firms with 1,000 or more employees averaged eighty-three percent of expected costs<sup>7</sup>.

Table 6: Premiums at New Mexico Business Establishments that Offer Health Insurance, 2010

	Employees		
	Less than 50	50 or more	Difference
Average total single premium per enrolled employee	\$5,303	\$4,667	14%
Average total employee contribution per enrolled employee for single coverage	\$1,242	\$1,164	7%
Percent of total premiums contributed by employees (single coverage)	23%	25%	-6%
Average total family premium per enrolled employee	\$13,697	\$14,142	-3%
Average total employee contribution per enrolled employee (family coverage)	\$3,504	\$4,020	-13%
Percent of total premiums contributed by employees enrolled in family coverage	26%	28%	-10%

Source: Agency for Health Care Research and Quality, Medical Expenditure Panel Survey State IC Tables, 2010.  
[http://meps.ahrq.gov/mepsweb/data\\_stats/state\\_tables.jsp?regionid=25&year=2010](http://meps.ahrq.gov/mepsweb/data_stats/state_tables.jsp?regionid=25&year=2010)

Table 6 illustrates the differences in premiums for employer sponsored insurance paid by employees of small and large businesses in New Mexico. Total premiums for single coverage are fourteen percent higher on average for employees of businesses with fifty or fewer employees. About half of this cost differential is absorbed by employers. In contrast, premiums for family coverage are somewhat lower for employees of small businesses. Small business employees pay on average thirteen percent less for family coverage than do employees of larger businesses.

<sup>6</sup> ibid

<sup>7</sup> ibid

Table 7 Cost Sharing in Employer Sponsored Health Insurance by Establishment Size, New Mexico 2010

	Employees		
	Under 50	50 or more	Difference
Percent of employees enrolled in a health insurance plan that had a deductible	74%	79%	-6%
Average deductible per employee enrolled with single coverage in a health insurance plan that had a deductible	\$959	\$844	14%
Average family deductible per employee enrolled with family coverage in a health insurance plan that had a deductible	\$2,522	\$1,779	42%
Percent of employees enrolled in a health insurance plan that had a copayment for a physician office visit	81%	77%	5%
Average copayment for an office visit to a physician	\$25	\$23	9%
Average coinsurance (percent) for an office visit to a physician per employee enrolled in a health insurance plan that had a physician coinsurance	20%	19%	4%

Source: Agency for Health Care Research and Quality, Medical Expenditure Panel Survey State IC Tables, 2010.  
[http://meps.ahrq.gov/mepsweb/data\\_stats/state\\_tables.jsp?regionid=25&year=2010](http://meps.ahrq.gov/mepsweb/data_stats/state_tables.jsp?regionid=25&year=2010)

Table 7 shows the difference in cost sharing for employer sponsored health insurance by establishment size. Employees of establishments with more than fifty employees are slightly more likely than employees of smaller businesses to be enrolled in a plan that includes a deductible. The other measures of cost sharing, including deductible amounts, copayments and coinsurance all suggest that insured employees of small business pay more out-of-pocket for health care than insured employees of larger businesses.

## V. Barriers to Small Business Coverage

A 2010 report prepared for the U.S. Small Business Administration breaks the barriers to health insurance for small business into four primary categories: low wage workers, rating and risk practices, higher cost and uncertainty<sup>8</sup>. The Affordable Care Act addresses all of these factors. But, because the ACA leaves a great deal of discretion to the states, New Mexico has an important role in determining how effective these provisions ultimately are. The barriers to coverage, how they are addressed in ACA, and what New Mexico can do to ensure their mitigation, are summarized here and in Table 8, but are also described in substantially more detail in the sections of this report dealing with the specific provisions of ACA.

<sup>8</sup> Small Business Administration. Office of Advocacy. September 2011. Health Insurance in the Small Business Market Availability, Coverage, and the Effect of Tax Incentives <http://www.sba.gov/sites/default/files/386tot.pdf>  
 Making Health Care Reform Work for Small Business in New Mexico  
 March, 2012

## Low Wage Workers

Businesses that employ low wage workers have a difficult time obtaining affordable health insurance because low wage workers who are often struggling to afford necessities such as adequate food and housing, if given a choice, tend to prefer higher wages to health insurance. This is particularly true for relatively young, healthy low wage workers who have even less incentive to trade wages for insurance coverage they are unlikely to use. In a 2006 study a large number of small employers cited lack of demand by their employees as a significant reason for not offering employee coverage<sup>9</sup>. In addition, the income tax advantages of receiving health insurance in lieu of wages are of little value to workers with minimal or no income tax liability. Finally, the coverage of low income children under Medicaid further reduces the incentive for low wage parents who may value their children's health care over their own to seek insurance through their employer.

Several provisions of ACA increase access to coverage for low wage workers. The most significant of these is the expansion of Medicaid to non-elderly adults under 138% of the federal poverty level. Medicaid eligible workers will be automatically enrolled in Medicaid at no cost to themselves or their employer if they seek coverage through the individual or small business health insurance exchanges. Employers benefit from the Medicaid expansion because they gain healthier, more productive workers whose insurance is paid for entirely by government.

Low income workers with income too high to qualify for Medicaid will be eligible to obtain government subsidized health insurance on the individual health insurance exchange. This too will give employers the benefits of insured employees without the cost or administrative burden of providing that insurance themselves.

Finally, small businesses with relatively low average wages that obtain employee coverage on the small business exchange can qualify for federal income tax credits equal to as much as 50% of their contribution.

Small employers of low wage workers can help ensure that their employees obtain the benefits to which they are entitled by providing them with information about Medicaid and the individual exchanges and encouraging them to enroll. The health insurance exchanges are also responsible for connecting enrollees with the subsidies they qualify for and ensuring that Medicaid eligible clients are enrolled in Medicaid and not a more costly plan. Therefore, efforts made by the state to attract participation in the health insurance exchanges will automatically increase utilization of subsidies and enrollment in Medicaid.

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<sup>9</sup> Hirth, Richard A., Baughman, Reagan, Chernew, Michael, and Shelton, Emily. *Worker Preferences, Sorting and Aggregate Patterns of Health Insurance Coverage*. February 9, 2006

### ***Risk Practices and Adverse Selection***

Insurance is based on the idea that when a group of people pool their medical expenses the high medical costs of the few will be offset by the lower medical costs of the many and the resulting average cost will be affordable for all. The larger the group, the better this works. Conversely, the smaller the group is, the more likely it is that the high medical expenses of any one member will drive up the average cost and thereby increase costs for everyone. This built-in price instability often makes health insurance inaccessible or unaffordable to small businesses. Insurance market reforms, including the requirement that insurers offer same premium for the same plan to all applicants of the same age and geographical location without regard to most pre-existing conditions, will help to ensure that all small employers can access coverage, although affordability will remain a significant barrier for some.

Small groups are also more vulnerable than large ones to adverse selection. Adverse selection poses a serious threat to plans offered on the small business exchange and to small groups in general. ACA contains several provisions that will either discourage adverse selection or help to offset its impact on risk pools with high concentrations of high cost enrollees. Effectively mitigating the impact of adverse selection requires highly complex risk adjustment techniques. How effective these techniques are at keeping SHOP plans viable will depend on the technical competence, scrupulous monitoring and consistent enforcement of state regulators. Thus, the State of New Mexico must emphasize and adequately resource the regulatory functions of the health insurance exchanges and other state insurance regulators.

Adverse selection will be an even greater threat to the viability of the small business exchange if the restrictions that apply to plans it offers do not apply to plans offered outside the exchange. Thus, New Mexico should, to the greatest extent possible, equalize the restrictions and requirements placed on plans and insurers operating inside and outside the exchange.

The need for such strict regulatory enforcement calls for a governing body that does not include representatives of the regulated industries.

### ***Higher Costs***

Small groups face higher operating costs because the relatively fixed administrative cost of offering insurance is spread over relatively few people. The lack of “economies of scale” makes the per-enrollee cost of offering insurance higher for smaller businesses.

## Uncertainty

Employee health insurance can be a large component of overall cost, especially for small business. Because the costs of ensuring small pools are so volatile, premiums can change dramatically from year-to-year. Even when faced with a price increase that renders insurance unaffordable, small employers may have a difficult time discontinuing coverage because employees value it so much. Thus, the uncertainty of future insurance costs may deter employers from obtaining coverage in the first place. The health insurance exchanges create larger, more stable risk pools which should substantially decrease price volatility. Monitoring of plan performance on the exchanges should help to maintain the value and stability of the products offered. However, once again, New Mexico has an important role to play in ensuring that these provisions of ACA are maximally effective at protecting small business. The state can accomplish this by attracting the maximum number of participants to the SHOP exchange and using its regulatory role to aggressively combat adverse selection.

Barrier	Why	ACA Provisions	New Mexico Role
Low Wage Workers	Low wage workers, especially young healthy ones, prefer wages to non-wage benefits, may be unable to afford cost sharing, have children insured by Medicaid	Medicaid Expansion to low income adults, Individual Exchange Credits & Cost Sharing SHOP Exchange and Credits	Outreach to employers about Medicaid and the Individual and SHOP Exchanges. Maximize Medicaid enrollment opportunities.
Rating & Risk Practices	Small pools are sensitive to health status of individual members and vulnerable to adverse selection.	Insurance market reforms including guaranteed issue, Risk adjustment provisions including single pool	Adopt and adequately resource the enforcement strong regulations both inside and outside the exchange to ensure the correct functioning of risk adjustment mechanisms. Equalize, to the greatest extent possible, regulation inside and outside the Exchange.
Higher Costs	Small groups have higher average administrative cost per enrollee	SHOP Exchange	Maximize administrative efficiencies on the exchanges. Emphasize ease of use and customer service.

## VI. Affordable Care Act: Significant Provisions for Small Business

### *Insurance Market Reforms*

In small groups there are relatively few total enrollees over which to spread risk and cost. Consequently, the presence of even a couple of individuals with high medical costs in an otherwise healthy small group can make coverage of the group prohibitively expensive. Insurance market reforms will help remove this barrier to coverage for small employers by making it harder for insurers to discriminate on the basis of health status. Under ACA, Small group health insurance must be offered on a guaranteed-issue basis, meaning that a small employer group cannot be denied coverage due to the health status of its employees or their dependents. Waiting periods for coverage cannot exceed ninety days. In addition, health insurers are required to allow all small employers equal access to their small employer plans. That said, some variation in rates based on the demographics, health status, and claims experience of the group is allowed, although the extent of this variation is restricted.

The Affordable Care Act provides for the establishment of Consumer Operated and Oriented Plans (CO-OP's), non-profit member-controlled insurance companies created to offer insurance on state exchanges. New Mexico Health Connections was recently awarded a \$70 million federal grant to establish a New Mexico CO-OP. The Health Connections CO-OP is expected to enroll fifteen to twenty thousand clients in its first year of operation and to double or triple enrollment in subsequent years. The CO-OP model emphasizes consumer governance and an integrated health care delivery system that focuses on health outcomes and incentivizes preventative care. Health Connections plans to adopt innovative approaches to reducing health costs and improving outcomes that include prevention, early detection, chronic disease management, cultural competence and support for the adoption of innovative service delivery mechanisms by practicing physicians<sup>10</sup>. Once it begins selling plans in October 2013, the CO-OP will compete with plans offered by other insurers on the exchange and is expected to offer a choice of coverage attractive to many New Mexico small businesses.

### *Medicaid Expansion*

Fifty-six percent of New Mexico's non-elderly uninsured have household income below 139% FPL. Therefore, it is reasonable to expect that roughly half of employed uninsured adults will become eligible for Medicaid in 2014. To the extent that these employees enroll in Medicaid, business owners, particularly those with a large percentage of low wage workers, will automatically and without cost reap the health and productivity benefits of an insured workforce.

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<sup>10</sup> <http://www.nmhealthconnections.org/faqs>

Note: At the time of this writing, federal regulations pursuant to ACA and pertaining to many of the health insurance exchange issues addressed herein had been drafted and submitted for public comment by the Health and Human Services Department but not yet adopted. The proposed rules were published in the federal register on July 15, 2011 and the public comment period closed October 31, 2011. Although they have not yet been formally adopted, these rules provide the best guidance available on the likely direction of federal policymaking as it pertains to the exchange and thus the likely next steps for the states. These rules are referenced throughout the foregoing text and footnoted accordingly. They are available at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17610.pdf>

### ***Small Business Health Insurance Exchange***

The New Mexico small business health insurance exchange established under the Affordable Care Act has tremendous potential to enhance access to high quality affordable coverage for employees of small business. The New Mexico Office of Healthcare Reform estimates that when the exchanges come on line in 2014 they will provide health insurance to 55,000 New Mexicans, two thirds of which will be employees of small business participating in the SHOP exchange<sup>11</sup>. The extent to which New Mexico's exchange actually realizes its potential to cover this historically underserved population depends on its ability to attract small business participation by offering a range of high quality affordable coverage choices not available elsewhere. The attractiveness of the exchange to small business will therefore be determined in part by how New Mexico structures its governance, organization and operations of the to ensure that the highest quality products are offered at the lowest possible cost.

### ***Health Insurance Exchanges: The Centerpiece of Reform***

The Affordable Care Act requires states to establish health insurance exchanges (HIE's). Exchanges are the centerpiece of health insurance reform. They allow small groups to consolidate their purchasing power, offer insurers larger and more stable risk pools and reduce administrative costs for the system as a whole. Exchanges are intended to provide competitive marketplaces for individuals and small employers to directly and efficiently compare available private health insurance options on the basis of price, quality and other factors.

The HIE is actually two separate but linked exchanges – one for individuals (the individual exchange) and one for small businesses with at least one<sup>12</sup> but no more than fifty employees (The Small Business Health Options Program or SHOP Exchange).

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<sup>11</sup> New Mexico Small Employers. Office of Health Care Reform, New Mexico Human Services Department. Health Insurance Exchange Planning Grant FY-2011-PSC # 11-630-1001-0003 Policy Connections, LLC. July 2011.

<sup>12</sup> Self-employed individuals operating businesses with no other employees would purchase insurance on the individual exchange

In addition to providing a marketplace for health insurance products and information, the exchanges will regulate the products offered. Plans offered on the exchanges, referred to as Qualified Health Plans (QHP's), will be required to meet quality and disclosure standards and their performance will be monitored by the exchanges. Under ACA federal tax credits and cost-sharing subsidies will be made available to individuals, families and small businesses to offset the costs of health coverage purchased through state exchanges. Accordingly, a third key responsibility of the exchanges will be to connect businesses and individuals with all the programs and subsidies for which they qualify.

### ***Differentiation: The Key to a Viable Exchange***

A large number of small employers must participate in the SHOP exchange for it to succeed. The SHOP exchange will provide small employers a new, hopefully more attractive, source of health insurance, but it will not necessarily be the one they choose. Employers may instead opt to continue with the coverage they already have, purchase coverage outside the exchange through a broker, purchase coverage from a competing private exchange, self-insure or simply not provide insurance at all. To attract participants, the SHOP exchange must offer employers something better than they can obtain elsewhere.

The SHOP exchange has three built-in advantages over other sources of insurance:

1. Small Employer Tax Credits are only available for policies purchased on the SHOP exchange.
2. The SHOP will screen employees to determine their ability to afford the coverage offered on the SHOP and, if coverage on the SHOP is unaffordable, route them to more affordable options on the individual exchange or through Medicaid.
3. Employees of businesses that participate in the SHOP will have a greater variety of coverage options to choose from than they would have if their employer obtained insurance elsewhere.

But, even with these built-in advantages, in order to secure the market share it needs to survive, the SHOP will have to aggressively market itself to small employers by demonstrating that it offers the same services offered elsewhere, less administrative hassle, higher value and more affordable coverage.

### ***Establishing the Exchange: Key Decisions for New Mexico***

ACA requires that exchanges begin operating on or before January 2014. The federal government will subsidize state exchanges until January 1, 2015, by which time exchanges must generate enough revenue to be financially self-sustaining.

If, by January 1, 2013 a state cannot demonstrate its readiness to operate an exchange by January 2014, the federal government may step in to establish and operate an exchange. Operating state exchanges is clearly *not* something the federal government wants to do and the federal regulations promulgated under ACA seem geared to encourage states to embrace ownership of their exchanges by allowing states maximum flexibility in their establishment and operations.

Under the proposed federal regulations<sup>13</sup> states are allowed significant discretion in making decisions about operational structure, governance, certification of qualified health plans, enrollment and outreach strategies. States may operate the exchanges through a government entity (either an existing agency or a new independent entity) or through a nonprofit. In addition, state exchanges may contract with other entities, including state Medicaid agencies but not including insurers, to carry out some of their functions.

The SHOP Exchange can be maximally effective in aiding small business if it offers a variety of high quality plans at affordable prices with minimal administrative burden to participants. New Mexico can help ensure this by:

1. Choosing a governance structure that prioritizes the interests of consumers and small employers
2. Choosing an organizational structure that affords the maximum flexibility without compromising the interests of consumers
3. Maximizing operational efficiencies and taking maximum advantage of opportunities to facilitate seamless transitions for employers and employees when changes in jobs or employment status occur.
4. Prioritizing customer service and administrative ease
5. Maximally leveraging the exchange's regulatory authority to reduce adverse selection and maintain the critical cost/quality balance for insurance offerings
6. Equalizing the regulation of plans offered inside and outside the exchange without compromising oversight of either.
7. Conducting extensive, effective outreach to small employers

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<sup>13</sup> **Federal Register** / Vol. 76, No. 136 / Friday, July 15, 2011 / Proposed Rules <http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17610.pdf>

## Governance

The role of insurance companies, agents, brokers and others with a financial interest in the sale of insurance in the governance of the exchange is one of the most contentious issues New Mexico must address in setting up its exchange. Insurers, agents and brokers have a great deal of expertise in health care finance. However, given that the role of the exchanges is to oversee insurance markets, allowing industry oversight of their regulator is problematic at best. Proposed federal regulations<sup>14</sup> allow insurers and others with a financial interest to serve on the exchange board so long as they do not constitute a majority; but also require that a majority of voting members have experience relevant to health care financing or delivery or public health or health policy.

The 2011 legislation creating a New Mexico health insurance exchange that passed both houses of the Legislature before being vetoed by the Governor provided for an exchange board consisting of eleven voting members as follows:

1. The Secretary of the New Mexico Human Services Department or state Medicaid director
2. Three members selected by the Governor from the New Mexico Health Insurance Alliance (NMHIA) board of directors who represent qualified employers
3. Three members chosen by the superintendent of insurance from the New Mexico Medical Insurance Pool (NMMIP) Board of Directors, who represent individual health insurance consumers.
4. One member each chosen by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader and the House Minority Leader

The Superintendent of Insurance is included on the board as a nonvoting ex-officio member.

Under the proposed legislation, with the exception of the six appointments made by the Governor and the Superintendent of Insurance, board members were prohibited from being employed or under contract to health care providers or “the health care services finance or coverage sectors”. However, both the NMHIA and NMMIP boards include insurers, thus industry representatives could conceivably be appointed to the exchange board by either the Governor or the superintendent.

If the Governor attempts to establish the exchange by executive order, which appears likely given her unwillingness to allow exchange legislation to be heard during the 2012 state legislative session, the issue of board composition is likely to be revisited and a more industry-intensive governance structure is possible.

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<sup>14</sup> *ibid*

The 2011 legislation also required that the board be composed so as to “assure representation of the state’s Native American population, ethnic diversity, cultural diversity and geographic diversity.” And that all board members have knowledge or experience in healthcare, health policy or health insurance.

Although industry expertise will no doubt be of tremendous value to the board, the political reality is that industry will be well-represented before the exchange board with or without a formal role in governance, just as it is in all other pertinent legislative and regulatory matters. Thus, the proposed federal rules and the failed New Mexico statute allowing industry a role in exchange governance, but limiting that role to less than a majority, are unlikely to produce the highest value outcome for consumers. Both the proposed federal regulations and the 2011 New Mexico legislation require that the exchanges have conflict of interest, ethics, and transparency standards; that board members disclose financial conflicts of interest; and that boards meet in public with public notice and opportunity for public comment. However, enforcing meaningful conflict of interest standards while maintaining a quorum could prove very difficult with a substantial industry presence on the board. In addition, even in a voting minority, well-resourced industry representatives may well come to dominate the board. All that being said, industry and professional “self-regulation” is already extremely widespread and generally accepted as the norm in New Mexico’s many other state-administered boards and commissions.

### ***Organizational Structure***

Under ACA, an exchange can be established as a government agency or a non-profit organization. Organizing the exchange as a quasi-governmental non-profit would capture important advantages of both approaches. A quasi-governmental organization is one created by government and subject to its guidance but otherwise separate and autonomous. Such a structure allows more flexibility in hiring and procurement than would be possible in a traditional government agency. Organizing the exchange as a quasi-governmental agency can also encourage private sector participation in the exchange by minimizing some of the stigma and mistrust associated with government bureaucracy. Accountability can be preserved by requiring that board members be appointed by government and that the exchange and the board adhere to government ethics and transparency standards.

In the 2011 Legislature, legislation was introduced that created a New Mexico Health Insurance Exchange that passed both houses of the Legislature before being vetoed by the Governor. The exchange was established as a nonprofit public corporation, governed by a board of directors, subject to the Tort Claims Act, but otherwise not considered a governmental entity. The bill required the exchange to operate in a manner “consistent with” the New Mexico Governmental Conduct Act, Inspection of Public Records, Financial Disclosure and Open Meetings Acts but explicitly exempted it from compliance with the state Procurement Code or the Personnel Act.

New Mexico's application for federal funding to establish the state exchanges designates an existing quasi-governmental nonprofit, the Health Insurance Alliance (NMHIA), as the entity in which they will be housed. Established in 1994, NMHIA is a nonprofit public corporation created by state statute<sup>15</sup> with a fourteen-member board. The NMHIA is an alliance of health insurers that provides a variety of health insurance plans to small businesses and individuals who do not qualify for other private coverage. Housing the exchange in an existing organization rather than building a new one from the bottom up is expected to expedite the process of setting up the exchange and hopefully produce some efficiencies. The NMHIA's mission is sufficiently similar to that of the exchanges to make it a logical candidate to house the exchanges. However, NMHIA will have to revisit some of its policies in order to conform to federal law governing the exchanges. Probable changes at the NMHIA include a restructuring of its board, which currently includes five members appointed by insurance carriers.

### ***Maximizing Administrative Efficiencies***

There are myriad administrative and operational efficiencies to be gained from integrating the functions of the individual and SHOP exchanges to the greatest extent possible. The two exchanges have many opportunities to combine and leverage compatible administrative functions and may ultimately merge their risk pools

Operational efficiencies can also be achieved by partnering with external entities to perform certain functions. Because they are so integral to the purchase and management of health insurance for many small businesses, insurance brokers will be key allies for effective communication between the business community and the exchange. Insurance brokers often serve as the de-facto "HR Department" for small businesses. Brokers help businesses obtain health insurance, assist in the comparison and evaluation of health plan options, provide employee benefit education and handle enrollment changes. Brokers may also administer wellness programs, facilitate COBRA enrollment and assist with flexible spending accounts.

### ***Customer Service and Ease of Use***

To compete effectively with plans offered in the regular small group market for small business participants the SHOP exchange must be exceptionally easy to use and provide excellent customer service. Features contributing to ease of use include a single point of entry for employers; an easy-to-use Web site that provides comparative plan information in a simple, accessible format; a single application; a call center; and a single premium payment for each employer<sup>16</sup>.

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<sup>15</sup> The Health Insurance Alliance Act, 59A-56 NMSA 1978

<sup>16</sup> T. Gardiner, "Health Insurance Exchanges of Past and Present Offer Examples of Features That Could Attract Small-Business Customers," *Health Affairs*, Feb. 2012 31(2):284–89.

<http://content.healthaffairs.org/content/31/2/284.abstract>

The effective use of navigators will also contribute to ease of use. Under ACA “navigators” are entities that perform educational and outreach for exchanges and facilitate enrollment in QHP’s. Assistance from navigators may be especially valuable to remote rural employers with limited understanding of the health care and insurance systems. Appropriate licensure and oversight of navigators remains a contentious issue because although increasing access to the health insurance system is key to reform, a poorly informed navigator could easily do more harm than good. Proposed federal regulations require states to permit at least one category of entity in addition to licensed insurance agents and brokers to serve as navigators<sup>17</sup>.

### ***Small Business Tax Credits***

The small business tax credits can offset a substantial portion of the cost of providing health insurance for small business and can therefore induce businesses to begin providing insurance, pay a larger percentage of the cost of employee insurance and/or begin purchasing their insurance on the small business exchange when it comes on line in 2014. However, even though the ACA employer tax credits have been available since 2010 and most New Mexico small businesses could qualify for them, most New Mexico small business owners are unaware that they exist. Hence, in order for tax credits to help small business insure workers their availability and benefits must be far better publicized.

The tax credits, although potentially beneficial in the short run, have two important drawbacks that must be recognized in order that the credits not be regarded as a panacea and distract from other efforts essential to making health care reform work for small business. First, although generous, the small employer tax credits can only be utilized for two years by any one employer. If employers who start providing insurance because of the credit are to continue offering insurance after the incentive period expires they must have an affordable, stable source of coverage. Thus, for the tax credits to achieve their purpose, the SHOP exchange must become successful almost immediately.

Second, tax credits in general are highly inefficient incentives because they tend to reward businesses for actions they would have taken with or without the credit. Although the small business tax credits can make a substantial short-term dent in the cost of health insurance for eligible businesses and will therefore encourage some employers who previously haven’t offered insurance to begin doing so, like all tax credits, they work only at the margin, for the relatively small number of businesses that are teetering on the brink of providing insurance, but aren’t quite there yet. To the extent that the tax credit pushes these businesses “over the edge” and into providing insurance or offering better insurance to more employees, they will achieve their purpose, but the majority of the credits’ benefits and thus the public sector dollars will accrue to businesses that are already providing health insurance and would have continued to do so with or without the credit.

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<sup>17</sup> Federal Register / Vol. 76, No. 136 / Friday, July 15, 2011 / Proposed Rules <http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17610.pdf>

The Affordable Care Act provides income tax credits to small businesses that offer health insurance to their employees and pay at least fifty percent of the cost. Businesses make take the credits for up to two years. Until the SHOP exchange comes on-line in January 2014, employers can receive a credit of up to thirty-five percent of their contribution toward employee health insurance premiums. Small tax-exempt employers such as charities can receive a twenty-five percent credit against their Medicare and federal employee withholding tax liabilities. Beginning 2014, the small business credit will only be available for insurance purchased on the SHOP exchange. The maximum credit will then increase to 50% of employer insurance costs and thirty-five percent of insurance costs for small non-profits. Eligible small businesses can also claim a business expense deduction for insurance premiums in excess of the credit, further diminishing their federal income tax liability.

The small business tax credits are allocated on a sliding scale based on firm size and average wage. Firms with fewer than ten employees and an average wage below \$25,000 are eligible for the maximum credit. The credit phases out for firms with more than ten employees and/or average wages above \$25,000 and it is not available to firms with more than twenty-five employees or average annual wages above \$50,000.

Roughly two-thirds of New Mexico businesses and over ninety-five percent of New Mexico small businesses have fewer than twenty-five employees and the vast majority of these pay an average wage of under \$50,000<sup>18</sup>, so a large fraction of employers are technically eligible for the tax credit. However, it is important to note that the credits are non-refundable, meaning that an employer must have income tax liability to utilize the credits and a significant number of New Mexico small businesses do not. That said, employers may carry unused credits back one year and carry them forward twenty years which may enhance their value to businesses that cannot use them right away.

*Table 9 provides several examples of the ACA employer credits available beginning January 2014 for health insurance purchased on the SHOP exchange. Examples assume a varying number of full time equivalent employees, average wages and percent of employees who accept the employer's offer of insurance ("Employees Covered"), but hold constant the annual premium per employee at \$5,000. The employer's share of the annual premium is also held constant at fifty percent. The table shows the decrease in the total credit that occurs when the number of full time equivalent employees exceeds ten and/or the average wage exceeds \$25,000. Employer A qualifies for the maximum credit. She has ten FTE's and pays an average wage of \$25,000. The credit offsets a full fifty percent of Employer A's employee premium costs. Employer B qualifies for less than the maximum credit because although his average wage of \$20,000 is below the \$25,000 threshold, he employs more the ten FTE's. The additional employees reduce Employer B's credit to thirty-three percent of his total expenditure on employee premiums. Employer C also qualifies for less than the maximum credit. She has*

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<sup>18</sup> Agency for Health Care Research and Quality, Medical Expenditure Panel Survey State IC Tables, 2010. [http://meps.ahrq.gov/mepsweb/data\\_stats/state\\_tables.jsp?regionid=25&year=2010](http://meps.ahrq.gov/mepsweb/data_stats/state_tables.jsp?regionid=25&year=2010)

twenty FTE's and pays an average annual wage of \$30,000. Her credit is reduced by two thirds for the extra employees and an additional twenty percent for the higher average wage. As a result, the tax credit reduces Employer C's employee premium cost by seven percent. It is important to keep in mind that the employer tax credit is not the only income tax advantage for offering employee coverage. Employer costs in excess of those offset by the credit remain deductible. Thus, although Employer C only gets seven percent of the premiums she pays on behalf of her employees back in the tax credit, the remaining ninety-three percent of premiums are deductible from her federal **and** state taxable income. The benefit of these deductions depends on Employer C's state and federal tax rates.

Table 9: Small Employer Tax Credit Examples

	Employer A	Employer B	Employer C	Employer D
Full Time Equivalent employees	10	15	20	10
Average annual wages	\$ 25,000	\$ 20,000	\$ 30,000	\$ 35,000
Employees covered	8	12	20	20
Premium per employee	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000
Employer share of premium	50%	50%	50%	50%
Employer contribution	\$ 2,500	\$ 2,500	\$ 2,500	\$ 2,500
Credit	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250
Phase out % for over 10 employees	0%	33%	67%	0%
Phase out for average wages over \$25k	0%	0%	20%	40%
Total Credit 2010-13	\$7,000	\$7,000	\$1,750	\$4,200
Total Credit 2014	\$ 10,000	\$10,000	\$ 2,500	\$ 6,000
Percent of employer cost offset by credit (2014)	50%	33%	7%	30%

Approximately 24,800 New Mexico small businesses, or almost ninety percent of all New Mexico employers with fewer than twenty-five employees, pay average wages below \$25,000. If they offered insurance to their employees and paid at least fifty percent of the cost, about 5,500 of these businesses would qualify for the maximum small employer tax credit.

Table 10: Small Employers by Average Wage, New Mexico and US 2010

	Total Businesses with 25 or fewer employees		Employers with 25 or fewer employees and an average wage < \$50k		Employers with 10 or fewer employees and an average wage <\$25k	
	Number	Percent of private small business	Number	Percent of total	Number	Percent of total
New Mexico	27,900	96%	24,800	88.9%	5,500	19.7%
US	4,798,300	98%	4,015,300	83.7%	1,198,700	25.0%

Source: Lewin Group estimates for Families USA and Small Business Majority, 2010.  
<http://www.familiesusa.org/assets/pdfs/health-reform/Helping-Small-Businesses.pdf>

Surveys and focus groups of small employers conducted as part of the exchange planning process indicate that most New Mexico small employers do not know about the ACA tax credits<sup>19</sup>. These findings are consistent with national data from the national Employer Benefits Survey which found that less than thirty percent of small employers who offered insurance to their employees had attempted to ascertain their eligibility for the ACA tax credits and that only half of small employers who didn't offer insurance were aware that the credits even existed<sup>20</sup>. Also revealing is the fact that when made aware of the credits, only fifteen percent of small employers who didn't currently offer insurance to their employees said that they would now consider offering it.

### ***Preventing and Mitigating Adverse Selection***

Adverse selection poses a serious threat to the viability of the SHOP Exchange. Provisions of ACA that prevent insurers from discriminating on the basis of health status leave insurers vulnerable to adverse selection. Because some features of ACA may apply only to insurers operating inside exchanges, plans offered on the SHOP may be even more vulnerable to adverse selection than other plans. Although several provisions of the Affordable Care Act reduce the potential for adverse selection against the Exchanges, they do not prevent it altogether and states have considerable latitude in how they interpret and enforce them. If New Mexico's SHOP Exchange is to truly benefit small employers by providing lasting, high-value, low-cost alternatives to coverage obtained in the regular insurance market, New Mexico must adopt rules and rigorously implement programs to protect the SHOP from adverse selection.

To succeed, the SHOP Exchange must attract both a large number of employers *and* a substantial number of healthy employees and dependents. "Adverse Selection" is the phenomena whereby the concentration of unhealthy people in a risk pool increases and the relative share of healthy people decreases, driving the cost of coverage up because there are relatively few inexpensive healthy participants over which to spread the higher costs incurred by the less healthy ones. The higher proportion of participants with high medical costs makes the pool increasingly expensive to insure. As a result, premiums increase and even more healthy people leave the pool because they can obtain less expensive coverage elsewhere. Eventually, if left unchecked, adverse selection will render the risk pool insolvent. If a disproportionate number of people who have high health expenses enroll in coverage through the SHOP Exchanges, while healthier people instead choose plans offered through the small business markets *outside* the exchange, the SHOP Exchange is very likely to fail.

The Affordable Care Act takes several steps to mitigate adverse selection against the SHOP Exchanges.

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<sup>19</sup> New Mexico Small Employers. Office of Health Care Reform, New Mexico Human Services Department. Health Insurance Exchange Planning Grant FY-2011-PSC # 11-630-1001-0003 Policy Connections, LLC. July 2011.

<sup>20</sup> Kaiser Family Foundation Employer Health Benefits 2011 Annual Survey  
<http://ehbs.kff.org/Default.aspx?page=list&id=2>

First, it requires insurers that sell coverage both inside and outside the SHOP to offer similar packages of essential benefits and charge their small-group subscribers the same rates regardless of whether the coverage is purchased through the exchanges or in the external insurance market.

Second, ACA limits eligibility for small business tax credits to employers who purchase coverage on the SHOP exchange, making the SHOP a relatively more attractive place to purchase coverage, regardless of health status. However, the small business tax credits are available for only two years and most beneficial for businesses with 10 or fewer employees and a large proportion of low wage workers. Thus, limiting the tax credits to policies purchased on the Exchange will only discourage adverse selection by this small subset of employers and not by the many small businesses that do not qualify for the credits.

Limiting of open and special enrollment periods helps to deter adverse selection. However, enrollment periods must be sufficiently long to protect the interests of consumers and exceptions must be made for special circumstances such as change or loss of employment, marriage or the birth of a child. Proposed federal regulations require that applications be accepted during an initial open enrollment period between October 1, 2013 and February 28, 2014, and thereafter during an annual open enrollment period between October 15 and December 7. Sixty day special enrollment periods for circumstances including loss of employment-related coverage; the gaining of a new dependent through marriage, birth, adoption, or placement for adoption; certain changes by a QHP; eligibility for a premium tax credit; or a move are also provided for.

ACA contains risk adjustment provisions that enable plans with a relatively high proportion of less-healthy enrollees to remain viable despite adverse selection by helping to offset their higher costs. The risk adjustment provisions require that plans with above-average proportions of healthier enrollees and thus lower costs make payments that subsidize the plans with above-average concentrations of high cost enrollees. These provisions apply to plans both inside and outside the exchange, which will help offset the destabilizing impact of adverse selection on plans in the Exchange. However, risk adjustment is, at best, an inexact science. Collecting accurate and consistent data on enrollee health status from insurers is a complex regulatory task and, even with perfect data, estimating the correct payments is challenging and imprecise. To effectively offset the impact of adverse selection, New Mexico will have to assure that this function is adequately implemented, resourced and monitored. Yet, even under the best of circumstances and the most rigorous implementation, risk adjustment provisions are not expected to be fully compensate pools with above-average concentrations of high cost enrollees<sup>21</sup>.

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<sup>21</sup> Center on Budget and Policy Priorities August 17, 2010 States Should Structure Insurance Exchanges to Minimize Adverse Selection <http://www.cbpp.org/cms/index.cfm?fa=view&id=3267>)

A fifth provision of the Affordable Care Act meant to guard against adverse selection is the requirement that insurers that operate both inside and outside of the exchange treat all of their enrollees as a single group when setting premiums. Requiring a “single risk pool” will reduce insurers’ ability to segregate enrollees by health status, and thus the potential for adverse selection, because the prices charged by an insurer for the same coverage offered both inside and outside the exchange by the must be the same. Enforcing this provision will require audits and the adoption of rules to prevent avoidance of the risk pooling requirement through the creation of subsidiary or affiliate companies<sup>22</sup>.

All of these provisions, although potentially beneficial, must be scrupulously administered and enforced. This is a difficult task for any regulator, but especially challenging for a newly established regulatory entity, operating in an entirely new paradigm, with substantial budget constraints and a governing board composed at least in part by representatives of the industries subject to the strict policing.

Significant differences between the restrictions placed on plans offered on the exchange and those offered in the regular insurance market with further exacerbate the potential for adverse selection in the exchange. However, for reasons discussed above, state regulators must not use this potential disparity as a justification for under-regulating the exchange, rather state regulation of plans offered outside the exchange should mirror, to the greatest extent possible, regulation within the exchange and be just as scrupulously enforced.

## V. Engaging New Mexico Small Business

Offering small businesses high value insurance for a relatively low price will not be enough to guarantee the success of the SHOP exchange. If the SHOP exchange is to succeed an aggressive, multi-faceted effort to educate and attract small businesses must be undertaken. The fact that over twenty percent of low-income children in New Mexico remain uninsured despite the ready availability of free health insurance through Medicaid is potent evidence that simply making coverage available is not sufficient to ensure uptake<sup>23</sup>.

An education and outreach plan to maximize participation in the SHOP exchange must be developed and implemented. The plan should address:

1. Strategic partnerships with trade groups, professional associations and unions to develop and disseminate industry specific outreach materials in accessible language and through trusted portals.

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<sup>22</sup> Hall, Mark A. May 2011. *Risk Adjustment Under the Affordable Care Act: A Guide for Federal and State Regulators* Commonwealth Fund Issue Brief <http://www.commonwealthfund.org/Publications/Issue-Briefs/2011/May/Risk-Adjustment-Under-the-ACA.aspx>

<sup>23</sup> New Mexico: Health Insurance Coverage of Children 0-18 Living in Poverty (under 100% FPL), states (2009-2010), U.S. (2010). Kaiser Family Foundation State Health Facts. <http://www.statehealthfacts.org/profileind.jsp?ind=128&cat=3&rgn=33&cmprgn=1>

2. Outreach to professional associations and regulatory oversight boards of industries and professions that provide financial guidance to small business including the New Mexico Bar Association, the Public Accountancy Board and the CPA Society to help ensure that their members are providing information about the exchanges, tax credits and other subsidies to their clients.
3. Engaging isolated rural employers.
4. Communicating with employers and employees with limited English.
5. Educating employers that don't offer insurance or plan participate in the exchange about the benefits of an insured workforce so that they will encourage their employees to seek insurance through the individual exchange and contribute to the cost of coverage obtained there.

New Mexico small businesses are highly heterogeneous. Establishment data from the US Census was used to examine the characteristics of New Mexico businesses with fewer than fifty employees and establish some commonalities that could be used to target outreach within this diverse group of businesses. The data revealed that the majority of New Mexico small businesses can be characterized into a large but still manageable group of industrial subcategories, most of which are represented by at least one well established trade association and/or subject to some form of state regulatory oversight. State boards and commissions and trade associations can be gateways to these businesses and can partner in designing and disseminating industry-specific outreach materials about the benefits of employee health insurance, the mechanics of the health insurance exchanges and the availability of tax credits.

There is no prototypical small business. Not only do businesses with fewer than fifty employees run the gamut from sole proprietorships to corporate call centers, they cross the spectrum of industries and professions. They are represented in every industrial sector and are located throughout the state. Small businesses are organized as for-profits, non-profits, C-corporations, LLC's and partnerships. Some small businesses are not incorporated at all. Some firms have physical locations; others operate out of people's homes and cars. This diversity means that there is no single trade association or regulatory mechanism that communicates regularly with all small businesses and could serve as an efficient portal for communication about health care reform.

As part of the health insurance exchange planning process, the New Mexico Office of Health Care Reform made presentations, conducted focus groups and sought input from small employers and small employer organizations throughout New Mexico. This highly instructive feedback was compiled in a June 2011 report by Policy Connections LLC<sup>24</sup>, which identified several major challenges to effective communication about the ACA with small business.

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<sup>24</sup> New Mexico Small Employers. Office of Health Care Reform, New Mexico Human Services Department. Health Insurance Exchange Planning Grant FY-2011-PSC # 11-630-1001-0003 Policy Connections, LLC. July 2011.

The key findings of the Policy Connections report include:

1. Most small employers in New Mexico have little specific knowledge of the Affordable Care Act, the health insurance exchanges or the small business tax credits.
2. Most small employers are unaware that the ACA contains provisions that can enhance their ability to provide insurance for their employees.
3. The heterogeneity of small business makes it difficult to efficiently target outreach. There is no single “affinity group” that represents them all. Rather, small businesses are represented by a broad range of professional and industrial associations.
4. Small employers are reluctant to take time away from their businesses to participate in focus groups or meetings about ACA, thus other means of communication must be utilized to engage them.

Table 11: Private Sector Business Establishments by Sector and Size, NM 2010

	TOTAL ESTABLISHMENTS	PERCENT W UNDER 10 EMPLOYEES	PERCENT W UNDER 50 EMPLOYEES	SHARE OF ALL ESTABLISHMENTS WITH UNDER 10 EMPLOYEES	SHARE OF ALL ESTABLISHMENTS WITH UNDER 50 EMPLOYEES	AVERAGE ANNUAL WAGE
RETAIL TRADE	6,948	71%	95%	15%	15%	\$ 22,775
CONSTRUCTION	5,101	79%	97%	12%	12%	\$ 38,668
PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES	4,809	83%	98%	12%	11%	\$ 63,383
HEALTH CARE AND SOCIAL ASSISTANCE	4,721	65%	92%	9%	10%	\$ 39,855
OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)	4,070	82%	99%	10%	9%	\$ 23,846
ACCOMMODATION AND FOOD SERVICES	4,057	43%	91%	5%	9%	\$ 14,611
FINANCE AND INSURANCE	2,898	83%	98%	7%	7%	\$ 47,660
REAL ESTATE AND RENTAL AND LEASING	2,324	91%	99%	6%	5%	\$ 30,767
WHOLESALE TRADE	1,994	72%	97%	4%	5%	\$ 44,573
ADMINISTRATIVE & SUPPORT WASTE MANAGEMENT & REMEDIATION &	1,917	74%	94%	4%	4%	\$ 25,999
MANUFACTURING	1,437	68%	93%	3%	3%	\$ 44,080
TRANSPORTATION AND WAREHOUSING	1,336	75%	95%	3%	3%	\$ 33,990
INFORMATION	836	71%	95%	2%	2%	\$ 40,750
MINING, QUARRYING & OIL AND GAS EXTRACTION	688	60%	90%	1%	1%	\$ 58,850
ARTS, ENTERTAINMENT AND RECREATION	661	74%	92%	2%	1%	\$ 21,494
EDUCATIONAL SERVICES	607	69%	92%	1%	1%	\$ 27,504

UTILITIES	227	69%	93%	0%	0%	\$ 71,923
MANAGEMENT OF COMPANIES & ENTERPRISES	206	59%	88%	0%	0%	\$ 54,756
FORESTRY, FISHING, HUNTING & AGRICULTURE	95	91%	99%	0%	0%	\$ 34,432
NOT CLASSIFIED	54	100%	100%	0%	0%	\$ 11,594
TOTAL ESTABLISHMENTS	44,986	73%	95%	100%	100%	\$ 34,712

Source: US Census Bureau, County Business Patterns, 2009 <http://www.census.gov/econ/cbp/index.html>

### *New Mexico Small Business by Industrial Sector*

Table 10 shows that although small businesses are represented in all of New Mexico's industrial sectors, two-thirds of businesses with fewer than fifty employees are clustered in six sectors. Fifteen percent of small businesses are in retail, twelve percent in construction and eleven percent of small business establishments provide professional and technical services. Health Care and Social Assistance, "Other Services" and Accommodation and Food Service each account for about 10% of small business establishments.

Data for New Mexico on the provision of health insurance by employers is not readily available at the level of industrial sector and firm size detail shown in Table 10. However, national data, presented in Table 11 below, suggests that, with the notable exception of Professional and Technical Services, businesses with fewer than fifty employees in six sectors into which New Mexico small businesses tend to cluster have a below-average likelihood of providing health insurance to their employees. Thus, outreach to business and business associations in retail, construction, food service and health care would likely reach a large percentage of eligible businesses **and** a large percentage of uninsured workers.

**Table 12: Percent of Private Sector Establishments that offer Health Insurance by Industrial Sector and Size, US 2010**

	TOTAL	LESS THAN 10 EMPLOYEES	LESS THAN 50 EMPLOYEES
MINING AND MANUFACTURING	68%	43%	58%
WHOLESALE TRADE	68%	45%	55%
PROFESSIONAL SERVICES	57%	40%	47%
FINANCIAL SERVICES AND REAL ESTATE	68%	37%	45%
ALL SECTORS	54%	32%	39%
CONSTRUCTION	42%	31%	39%
UTILITIES AND TRANSP.	55%	24%	33%
RETAIL TRADE	57%	24%	32%
OTHER SERVICES	43%	24%	30%
Agric., fish & forestry	27%	21%	24%

Source: Agency for Health Care Research and Quality, Medical Expenditure Panel Survey State IC Tables, 2010. [http://meps.ahrq.gov/mepsweb/data\\_stats/state\\_tables.jsp?regionid=25&year=2010](http://meps.ahrq.gov/mepsweb/data_stats/state_tables.jsp?regionid=25&year=2010)

**Subsector Analysis**

A deeper look at the data for each of the six industrial sectors into which New Mexico small businesses tend to cluster reveals that many businesses are concentrated in identifiable subsectors and professions, many of which are represented by active and well-established trade associations and licensing boards. These associations and boards could be very helpful in designing and disseminating industry-specific ACA outreach materials to their membership and licensees.

**Construction**

A large percentage of construction businesses with fewer than fifty employees are concentrated in a small handful of subspecialties – residential building, commercial building, electrical, mechanical and finishing contractors -- each of which is represented by at least one trade association and/or trade union and subject to licensure and continued professional education requirements by the New Mexico Construction Industries Division. Builders and contractors must also obtain building permits from state and/or local authorities for their projects

**Table 13: New Mexico Construction Establishments Fewer than 50 Employees**

	Establishments	Percent of Establishments	Percent of Employees
ALL CONSTRUCTION	4,940	100%	100%
BUILDING CONSTRUCTION	1,726	35%	22%
Residential building const.	1,303	26%	11%
<i>New single-family</i>	712	14%	6%
<i>Residential remodelers</i>	408	8%	3%
Nonresidential buildings	423	9%	12%
HEAVY & CIVIL ENGINEERING	333	7%	20%
SPECIALTY TRADE CONTRACTORS	2,881	58%	58%
Foundation, structure	642	13%	14%
Building equipment	1,289	26%	26%
<i>Electrical contractors</i>	602	12%	12%
<i>Plumbing &amp; mechanical</i>	662	13%	13%
Building finishing	595	12%	9%

Source: US Census Bureau, County Business Patterns, 2009  
<http://www.census.gov/econ/cbp/index.html>

**Health Care and Social Assistance**

Two thirds of Health Care and Social Assistance (HCSA) establishments with fewer than fifty employees provide ambulatory care services in outpatient clinics and practitioner offices. Eleven percent of HCSA establishments with fewer than fifty employees provide social services to individuals and families; over half of these provide child daycare services.

Health care practitioners have well-established professional associations and are regulated by state licensing boards, many of which require ongoing continuing professional education, which could provide an excellent opportunity to provide them information on health care reform. New Mexico child care providers are represented by at least two professional associations. Several child care licensing bodies are also active in the state. In addition, the majority of New Mexico child care centers participate in government subsidy programs that require regular interaction with state and/or federal government.

**Table 14: New Mexico Health Care Establishments with Less than 50 Employees**

	Establishments	Percent of Establishments	Percent of Employees
HEALTH CARE & SOCIAL ASSISTANCE	4,352	100%	100%
AMBULATORY HEALTH CARE SERVICES	3,054	70%	36%
<i>Offices of physicians</i>	1,009	23%	10%
<i>Offices of dentists</i>	622	14%	5%
<i>Offices of other practitioners</i>	866	20%	4%
<i>Outpatient care centers</i>	274	6%	5%
HOME HEALTH CARE SERVICES	131	3%	9%
HOSPITALS	4	0%	0%
NURSING AND RESIDENTIAL CARE FACILITIES	274	6%	n/a
SOCIAL ASSISTANCE	1,020	23%	23%
<i>Individual and family services</i>	502	12%	14%
<i>Child daycare services</i>	385	9%	5%

Source: US Census Bureau, County Business Patterns, 2009 <http://www.census.gov/econ/cbp/index.html>

### **Accommodation and Food Service**

Eighty-one percent of Accommodation and Food Service businesses with fewer than fifty employees provide food service. The vast majority of these are restaurants. Thus, the New Mexico Restaurant Association would likely be an excellent partner in providing information about health care reform to businesses in this sector.

**Table 15: New Mexico Hospitality Establishments with Less than 50 Employees**

	Establishments	Percent of Establishments	Percent of employees
Accommodation and food services	3,708	100%	100%
Accommodation	719	19%	20%
Food services & drinking places	2,989	81%	80%

Source: US Census Bureau, County Business Patterns, 2009 <http://www.census.gov/econ/cbp/index.html>

## Other Services

Like its name suggests, “Other Services” is a fairly heterogeneous collection of services including dry cleaners, beauticians, funeral parlors, political organizations and many others that don’t fit readily into another industrial category. Religious organizations are the largest single cluster in this category, constituting over a quarter of establishments. “Other Services” also includes 303 beauty salons with a total of over 1,600 employees. Salons and cosmetologists are subject to state and local regulation and licensure.

Table 16: New Mexico “Other Services” Establishments with Less than 50 Employees

	Establishments	Percent Establishments	Percent Employees
OTHER SERVICES (EXCEPT PUBLIC ADMINISTRATION)	4,019	100%	100%
REPAIR AND MAINTENANCE SERVICES	1,370	34%	29%
PERSONAL AND LAUNDRY SERVICES	794	20%	20%
Hair, Nail & Skin Care	331	8%	6%
RELIGIOUS, GRANT-MAKING, CIVIC & PROFESSIONAL ORGS	1,855	46%	51%
Religious organizations	1,021	25%	31%
Professional organizations	317	8%	8%

Source: US Census Bureau, County Business Patterns, 2009 <http://www.census.gov/econ/cbp/index.html>

## Retail

The major sub-categories of retailers with less than fifty employees include car dealers, hardware stores, building and garden supply vendors, grocery stores, clothing stores and gas stations. The New Mexico Retail Association represents most retailers. Car dealers are represented by the New Mexico Automotive Dealers and the New Mexico Independent Automobile Association; gas stations are represented by the Petroleum Marketers Association.

Table 17: New Mexico Retail Establishments with Less than 50 Employees

	Establishments	Percent of Establishments	Percent of Employees
RETAIL TRADE	6,625	100%	100%
Miscellaneous store retailers	1,005	15%	7%
Gasoline stations	918	14%	10%
Clothing stores	884	13%	7%
Motor vehicle and parts dealers	801	12%	12%
Building material & garden equipment and supplies	537	8%	8%
Health and personal care stores	447	7%	5%
Food and beverage stores	441	7%	14%
Furniture stores	394	6%	3%

Sporting goods, hobby, book & music stores	361	5%	4%
Non-store retailers	331	5%	3%
Electronics and appliance stores	271	4%	2%
General merchandise stores	235	4%	n/a

Source: US Census Bureau, County Business Patterns, 2009  
<http://www.census.gov/econ/cbp/index.html>

### **Professional and Technical Services**

Jobs in the Professional and Technical Services sector pay higher average wages and are more likely to provide access to health insurance than are jobs in the other five sectors into which New Mexico small businesses cluster. Establishments in this sector cluster into several major subsectors: Legal Services (25% of establishments), Accounting and Tax Preparation (15% of establishments), Architecture and Engineering (17% of establishments), Computer Systems Design (10% of establishments) and “Consulting” (14%). With the exception of “Consulting” which is a hodgepodge of firms, typically with fewer than five employees, in a wide variety of scientific, technical and management disciplines, the sub-categories within Professional and Technical Services are regulated by state licensing boards and most are also represented by trade associations.

**Table 18: NM Professional and Technical Service Establishments with Less than 50 Employees**

	Establishments	Percent of Employees	Percent of Establishments
Professional, scientific & technical	4,696	100%	1
Legal	1,185	25%	12%
Accounting, tax preparation & payroll	730	16%	10%
Architectural, engineering & related	806	17%	22%
Specialized design services	135	3%	1%
Computer systems design and related	467	10%	8%
Management and technical consulting	670	14%	6%
Scientific research and development	165	4%	n/a
Advertising, public relations and related	160	3%	1%
Other professional, scientific and technical	378	8%	6%

Source: US Census Bureau, County Business Patterns, 2009 <http://www.census.gov/econ/cbp/index.html>

### **Nonprofit Employers**

The private sector employers discussed above include many nonprofit organizations. The nonprofit sector is a significant and fast-growing portion of New Mexico’s economy. Both in New Mexico and nationally, growth in the nonprofit sector has far outpaced growth in the rest of the private economy and in government.

Nonprofit organizations are exempt from most federal taxes and many provisions of the Affordable Care Act are administered through the federal tax system. However, the provisions of the Affordable Care Act apply to nonprofit employers in much the same way as they do to other employers.

According to the National Center for Charitable Statistics, 6,756 New Mexico nonprofit organizations filed an IRS form 990 for tax year 2010<sup>25</sup>. These organizations reported \$5.6 billion in revenue (about 7% of state gross domestic product) and \$13.7 billion in assets. Over 50,000 New Mexicans, or more than one in twenty paid workers, are employed in the nonprofit sector<sup>26</sup>.

New Mexico nonprofits provide a diverse spectrum of goods and services. Almost half of New Mexico nonprofit revenue, or about \$2.7 billion, was generated by the 200 New Mexico nonprofits in the health care sector.

Data on employment by New Mexico nonprofits is incomplete. Table 19 gives employment data for the 1,682 nonprofit organizations listed in the New Mexico non-profit directory compiled by the New Mexico Center for Nonprofit Excellence<sup>27</sup> for which employment data are available<sup>28</sup>.

**Table 19: NM Nonprofits Listed in the Nonprofit Directory by Number of Employees**

Number of Employees	Number of Nonprofits
All Volunteer	755
1-5 FTE	551
6-9 FTE	98
10-29 FTE	155
30-59 FTE	59
60-99 FTE	26
100+ FTE	38

Source: New Mexico Center for Nonprofit Excellence  
<http://www.centerfornonprofitexcellence.org>

The success of health care reform in New Mexico depends to a large extent on the success of the SHOP exchange. For the SHOP exchange to succeed a large number of small businesses must participate. Small businesses are a diverse group and thus a “one size fits all” outreach strategy is not likely to attract enough participants to the SHOP exchange.

<sup>25</sup> [www.nccsdataweb.urban.org](http://www.nccsdataweb.urban.org)

<sup>26</sup> A 2006 report by the UNM Bureau of Business and Economic Research (The Economic Impact of Non-Profit Organizations in New Mexico 2006 UNM Bureau of Business and Economic Research <http://bber.unm.edu/pubs/EconImpactofNMNonprofits.pdf>) estimated that the non-profit sector employed at least 44,300 New Mexicans in 2005. Since then, revenue reported to the IRS by this sector has increased by over 35%, thus 50,000 is an extremely conservative lower bound estimate of employment by New Mexico nonprofits.

<sup>27</sup> United Way of Central New Mexico, Center for Nonprofit Excellence <http://www.centerfornonprofitexcellence.org/>

<sup>28</sup> The directory includes an additional 452 nonprofit organizations, some with substantial revenue, for which employment data are not available

Instead, outreach must be tailored to specific concerns of specific industries and occupations. Fortunately, most New Mexico small businesses are clustered in several industries and, within those industries, a large, but manageable number of industrial subcategories many of which are represented by trade associations and/or regulated by state boards or commissions. These boards, commissions and trade groups should be partners in the design and implementation of industry-specific outreach strategies.

High participation rates are key to the success of both the SHOP and the individual exchanges. Even small businesses that opt *not* to provide insurance for their employees can benefit from the exchanges and contribute their success by providing their employees with information about the individual exchange and actively encouraging them to seek coverage there. These employers can further assist their employees in obtaining coverage by reimbursing part of the cost of insurance purchased on the individual exchange.

## VI. Future Research

The Affordable Care Act presents many opportunities for New Mexico businesses and thus New Mexico's economy overall. However, like the businesses they represent, many business organizations, chambers of commerce and economic development organizations lack the information they need to take full advantage of the Act's potential benefits. Further research is needed to guide the economic development community in how best utilize the Affordable Care Act to create and sustain economic opportunity.

## VI. Conclusion

Businesses with fewer than fifty employees have nothing to lose and everything to gain from the implementation of federal health care reform. Health insurance exchanges will make purchasing insurance more understandable, efficient and affordable. Tax credits will offset the cost. Guaranteed issue will mean that small employers won't be precluded from offering insurance to their workers because one employee or their dependent has a pre-existing condition and the expansion of Medicaid to over 200,000 new working age adults will mean that employers who can't provide insurance to their low wage workers will still get the benefits of an insured and therefore healthier workforce.

The ability to provide affordable insurance helps employers attract and retain employees and can improve employee health and therefore productivity. And, for the ninety-five percent of New Mexico employers with fewer than fifty employees, there will be no penalties for not offering coverage. In fact, the contentious "employer mandate" that requires large employers who don't offer insurance to their workers to offset the cost if their employees seek federally subsidized health insurance elsewhere, will apply only to the roughly one percent of New Mexico businesses with more than fifty employees who don't already offer insurance.

The ACA contains a wealth of opportunities for New Mexico small business to obtain affordable, high value health insurance coverage for their employees. Because states have a great deal of discretion in how they interpret and implement the ACA, policies adopted by the state of New Mexico will play an important role in determining if businesses take can full advantage of the benefits available to them and their employees.

The health insurance exchanges are the central hub connecting all the features of ACA that directly benefit small business. New Mexico must therefore prioritize adoption and rigorous implementation of policies and programs that will ensure the long term success of both the SHOP and individual exchanges.