

**TITLE 13        INSURANCE**  
**CHAPTER 10    HEALTH INSURANCE**  
**PART 40        VACCINE PURCHASING FUND**

**13.10.40.1        ISSUING AGENCY:** Office of Superintendent of Insurance (“OSI”).  
[13.10.40.1 NMAC - N, 01/01/2023]

**13.10.40.2        SCOPE:** These rules apply to every “health insurer” and “group health plan,” as defined in the Vaccine Purchasing Act (“VPA”), who are providing coverage to residents of New Mexico, regardless of location of the policy, and are therefore subject to compliance obligations under Sections 24-5A-1 through 24-5A-9 NMSA 1978. For purposes of this rule, a multiple employer welfare arrangement as defined in Section 59A-1-8.1 NMSA 1978 is considered a “health insurer” subject to the VPA.  
[13.10.40.2 NMAC - N, 01/01/2023]

**13.10.40.3        STATUTORY AUTHORITY:** This rule is issued pursuant to Section 24-5A-8 NMSA 1978.  
[13.10.40.3 NMAC - N, 01/01/2023]

**13.10.40.4        DURATION:** Permanent.  
[13.10.40.4 NMAC - N, 01/01/2023]

**13.10.40.5        EFFECTIVE DATE:** January 1, 2023, unless a later date is cited at the end of a section.  
[13.10.40.5 NMAC - N, 01/01/2023]

**13.10.40.6        OBJECTIVE:** To establish procedures to implement and enforce the provisions of the VPA.  
[13.10.40.6 NMAC - N, 01/10/2023]

**13.10.40.7        DEFINITIONS:** All definitions of terms found in Section 24-5A-2 NMSA 1978 are incorporated herein as though stated fully. The following definitions apply to this rule only:

- A.        “covered employer”** means any employer who offers group health insurance coverage to a resident of New Mexico through a group health plan or policy issued by a health insurer; and
- B.        “day” or “days”** shall be calculated as follows, unless otherwise specified:
  - (1)**        one to 10 days means only working days and excludes weekends and state holidays; and
  - (2)**        11 or more days means calendar days, including weekends and state holidays.

[13.10.40.7 NMAC - N, 01/01/2023]

**13.10.40.8        REPORTING AND PAYMENT REQUIRED:** As directed in these rules, every health insurer and group health plan shall annually report to the superintendent the number of insured children who are residents of New Mexico under each policy and plan, who were under the age of 19 as of the previous December 31<sup>st</sup>, even if that number is zero.

**A.        Report deadline.** The required report is due by the date established by the superintendent, but no later than July 31<sup>st</sup> of each year.

**(1)**        The superintendent may extend the deadline for good cause. A reporter must file a request for an extension, with the reason for the request, at least five days before the report is due.

**(2)**        Failure to report by this deadline shall result in a \$500 a day penalty pursuant to Subsection B of Section 24-5A-7 NMSA 1978. The superintendent shall issue written notice of failure to submit a timely report which specifies the statutory penalty to the designated contact person for each health insurer or group health plan.

**B.        Report contents.** The annual report shall include all information requested by the superintendent and, at a minimum, shall provide:

**(1)**        the number of children who were enrolled in or participated in the plan during any part of the prior year, and who were under the age of 19 as of December 31<sup>st</sup>, excluding any children who are not residents of New Mexico, were enrolled in Medicaid or in any medical assistance program administered by the department or the human services department, and children who are members of a Native American tribe.

**(2)**        the name of a designated contact person, including title, email address, and office phone number.

(a) If the contact changes prior to the billing cycle referenced in the table below or the following year's reporting cycle, then an updated contact shall be provided to the department and the superintendent as soon as practicable after the change occurs, but no later than 30 days after the change.

(b) Communications to and from the designated contact shall be treated as communications between the superintendent and the health insurer or group health plans for all purposes under the VPA. Failure to provide or update contact information shall not relieve a health insurer or group health plan of any obligation under the VPA.

(3) the names of employers or groups on behalf of whom the data is submitted.

(4) if a group health plan or health insurer did not cover any children during the prior year, an attestation of that circumstance.

(5) the annual report shall be submitted even if the number of children to report is zero.

**C. Method of reporting.** A health insurer or group health plan shall report in the method prescribed by the superintendent. All such reports to the office of the superintendent shall be copied to the department at [vpa.fund@state.nm.us](mailto:vpa.fund@state.nm.us).

**D. Responsibility for reporting.** A health insurer or group health plan is solely responsible for reporting. A group health plan may delegate reporting obligations to an employer group or plan administrator, but the group health plan or health insurer remains responsible for any late report or reporting error, and corresponding statutory penalties.

**E. Mid-year plan termination.** If an employer terminates its plan with a health insurer or group health plan mid-year, the new health insurer or group health plan shall be responsible for reporting and shall be responsible for reimbursing the vaccine purchasing fund for coverage of the prior years' insured children.

**F. Report changes.** An erroneous report may be changed only as approved by the superintendent or upon determination of a good faith discrepancy in accordance with Subsection C of Section 24-5A-7 NMSA 1978.

**G. Receivership report.** Before any health insurer is placed into receivership, it shall report its latest count of covered children to the superintendent.

[13.10.40.8 NMAC - N, 01/01/2023]

#### **13.10.40.9 BILLING AND ENFORCEMENT:**

**A. Billing cycle.** The department shall send out the invoices to each health insurer and each group health plan for one-fourth of its proportionate share of the estimated amount and reserve calculated pursuant to Subsection B of this Section, as required by Subsection D of Section 25-5A-3 NMSA 1978, according to the following billing cycle:

Billing Cycle	Department's Invoices Date	Insurer's and Group Health Plan's Due Date
July 1 to September 30	September 1	October 1
October 1 to December 31	December 1	January 1
January 1 to March 31	March 1	April 1
April 1 to June 30	June 1	July 1

**B. Payment.** A health insurer or group health plan shall remit payment to the department's fiscal agent in the manner directed by the department in the invoice, with a corresponding notification of remittance to [vpa.fund@state.nm.us](mailto:vpa.fund@state.nm.us).

(1) The annual amount to be reimbursed by each health insurer or group health plan shall be a fraction, the denominator of which is the total number of insured children reported by all health insurers and group health plans and the numerator of which is the number of insured children reported by such health insurer or group health plan, multiplied by the total amount as determined by the department to be expended annually in the corresponding year.

(2) Failure to remit payment within 30 days receipt of the invoice will result in the issuance of a penalty pursuant to Subsection D of Section 24-5A-7 NMSA 1978.

**C. Provider prohibition.** To avoid duplication of payment, any providers who administer vaccines are prohibited from billing health insurers and group health plans for the cost of any vaccine which was provided to them by the department.

**D. Initial review.** Each health insurer or group health plan may request an initial administrative review of their invoice by the department in the event of a dispute over the invoice amount.

(1) The health insurer or group health plan may submit a letter requesting an initial administrative review of the invoice and any supporting documents to the immunization program manager or designee within 10 days of receipt of the department's invoice. Such requests shall be submitted to the immunization program manager at P.O. Box 26110, Santa Fe, NM 87502-6110, and via email at [vpa.fund@state.nm.us](mailto:vpa.fund@state.nm.us). The health insurer or group health plan shall send a copy of the request to OSI.

(2) Within 10 working days of receipt of the request for an initial administrative review of the invoice, the department of health's immunization program manager or designee shall review the request for an initial administrative review of the invoice and any supporting documents. After the administrative review is complete the department's immunization program manager or designee shall notify the health insurer or group health plan by mail if the invoice amount will remain unchanged or modified.

(a) If a modified invoice is issued by the department then payment is due within five days of receipt of the modified invoice or on the due date identified in the original invoice, whichever is later.

(b) If the invoice remains unchanged then the invoice amount is due within five days of receipt of the department's decision or on the due date identified in the original invoice, whichever is later.

**E. Referral.** The department shall refer to the superintendent any health insurer or group health plan that has failed to fully reimburse, including any applicable late penalties, the department within 30 days of the date of invoice. Referrals for invoices subject to review as authorized in Subsection D shall be made within 30 days of the department's decision.

**F. Notices.** Within 10 days of receipt of report of delinquent account, the superintendent shall;

(1) Inform a delinquent health insurer or group health plan of the failure to timely pay the invoice, the invoice amount, the \$500 a day civil penalty, calculated from the date payment on the invoice was due, and any applicable interest.

(2) Notices shall be delivered in writing to the group health plan or health insurer's designated contact person, and include instructions about how to remit payment.

(3) The superintendent shall provide a copy of this notice to the department.

**G. Interest.** Interest on late payments and penalties shall accrue at the post-judgment interest rate in effect at the time of default.

[13.10.40.9 NMAC - N, 01/01/2023]

**13.10.40.10 PUBLICATION:** The superintendent shall, by January 31<sup>st</sup> of each calendar year, make publicly available on their website, a comprehensive list of all health insurers and group health plans that a) maintained compliance with the VPA in the preceding year, b) failed to comply with reporting requirements under the VPA, and c) failed to make timely payments under the VPA.

[13.10.40.10 NMAC - N, 01/01/2023]

#### **13.10.40.11 ACCOUNTING OF THE FUND:**

**A. Expenditures.** Money in the fund shall be expended only for the purposes specified in the VPA, by warrant issued by the secretary of finance and administration pursuant to vouchers approved by the secretary of health.

**B. Audit.** The fund shall be audited in the same manner as other state funds are audited, and all records of payments made from the fund shall be open to the public.

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

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

**E. Estimate.** July 1 of each year thereafter, the department shall estimate the amount to be expended annually by the department to purchase, store, and distribute vaccines recommended by the advisory committee on immunization practices to all insured children in the state, including a reserve of ten percent of the amount estimated.

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

[13.10.40.11 NMAC - N, 01/01/2023]

**13.10.40.12 HEARING RIGHTS:** Any person aggrieved by any action, threatened action, or failure to act by the superintendent shall have the same right to a hearing before the superintendent with respect thereto as provided for in general under Chapter 59A, Article 4 NMSA 1978 and the implementing rules. There shall be no right to hearing by the department.

[13.10.40.12 NMAC - N, 01/01/2023]

**History of 13.10.40 NMAC: [RESERVED]**