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

13.10.40.1 ISSUING AGENCY: Office of Superintendent of Insurance.
[13.10.40.1 NMAC – Rp, 13.10.40.1 NMAC, 05/06/2025]

13.10.40.2 SCOPE: These rules apply to every "health insurer" and "group health plan," as defined in the Vaccine Purchasing Act (VPA), 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 "group health plan" subject to the VPA.
[13.10.40.2 NMAC – Rp, 13.10.40.2 NMAC, 05/06/2025]

13.10.40.3 STATUTORY AUTHORITY: This rule is issued pursuant to the State Rules Act, Sections 14-4-1 *et seq*. NMSA 1978, Sections 24-5A-6, 24-5A-7, 24-5A-8 NMSA 1978 of the Vaccine Purchasing Act, and Section 59A-2-9 NMSA1978.
[13.10.40.3 NMAC – Rp, 13.10.40.3 NMAC, 05/06/2025]

13.10.40.4 DURATION: Permanent.
[13.10.40.4 NMAC – Rp, 13.10.40.4 NMAC, 05/06/2025]

13.10.40.5 EFFECTIVE DATE: May 6, 2025, unless a later date is cited at the end of a section.
[13.10.40.5 NMAC – Rp, 13.10.40.5 NMAC, 05/06/2025]

13.10.40.6 OBJECTIVE: To establish procedures to implement and enforce the provisions of the VPA.
[13.10.40.6 NMAC – Rp, 13.10.40.6 NMAC, 05/06/2025]

13.10.40.7 DEFINITIONS: The following definitions apply to this rule and to the implementation of this rule only:

A. "advisory committee or immunization practices" has the same meaning as defined in Subsection A of Section 24-5A-2 NMSA 1978;

B. "billing cycle" means:

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

C. "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;

D. "covered lives" means 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, 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;

E. "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;

F. "department" has the same meaning as defined in Subsection B of Section 24-5A-2 NMSA 1978;

G. "erroneous" means incorrect or inaccurate related to a report required to be filed pursuant to the VPA that may include over reported covered lives or underreported covered lives.

H. "fund" has the same meaning as defined in Subsection C of Section 24-5A-2 NMSA 1978;

I. **"group health plan"** has the same meaning as defined in Subsection D of Section 24-5A-2 NMSA 1978;

J. **"health insurance coverage"** has the same meaning as defined in Subsection E of Section 24-5A-2 NMSA 1978;

K. "**health insurer"** has the same meaning as defined in Subsection F of Section 24-5A-2 NMSA 1978;

L. **"insured child"** has the same meaning as defined in Subsection G of Section 24-5A-2 NMSA 1978;

M. **"late report"** means a report submitted after the due date established by the office of superintendent;

N. **"non-report"** means a group health plan or health insurer who fails to submit a report by the established due date;

O. **"office of superintendent"** has the same meaning as defined in Subsection H of Section 24-5A-2 NMSA 1978;

P. **"OSI"** means the office of superintendent of insurance;

Q. **"policy"** has the same meaning as defined in Subsection I of Section 24-5A-2 NMSA 1978;

R. **"provider"** has the same meaning as defined in Subsection J of Section 24-5A-2 NMSA 1978;

S. **"TPA"** means a third party administrator;

T. **"VPA"** means the vaccine purchasing act, Chapter 24, Article 5A, NMSA 1978; and,

U. **"vaccines for children program"** has the same meaning as defined in Subsection K of Section 24-5A-2 NMSA 1978.

[13.10.40.7 NMAC – Rp, 13.10.40.7 NMAC, 05/06/2025]

13.10.40.8 **REPORTING REQUIRED:** As directed in these rules, every health insurer and group health plan shall annually report to the office of 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 even if that number is zero.

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

(1) Late reports: If a report is submitted after the deadline set by the office of superintendent, the group health plan or health insurer is subject to penalties as set forth below.

(2) Non-Reports: If a report is not submitted by the due date set by the office of superintendent, the group health plan or health insurer is subject to penalties as set forth below.

(3) 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 office of 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 office of superintendent and, at a minimum, shall provide:

(1) the number of covered lives.

(2) the name of a designated contact person(s) for the reporting organization and the group health plan, or health insurer, including title, a current email address, and office phone number.

(a) If the contact person(s) name, title, email address or office phone number changes prior to the billing cycle or the following year's reporting cycle, then an updated contact shall be provided to the department and the office of superintendent as soon as practicable after the change occurs, but no later than 30 days after the change.

(b) Contact person(s) name, title, email address, or office phone number changes made to the OSI must be submitted via the VPA reporting system located on the OSI VPA page website.

(c) Communications to and from the designated contact shall be treated as communications between the office of 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.

(d) Failure to provide or update contact person(s) name, title, email address, or office phone number shall not relieve a group health plan or health insurer of their obligations 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 office of superintendent.

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. The office of superintendent is not obligated to remind a group health plan or health insurer of their obligations under the VPA.

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

(1) A request to amend a report shall be sent to: vpa.data@osi.nm.gov.

(2) A report amendment must explain the erroneous reporting to the number of covered lives, reporting organization name, contact person(s) name, title, email address, or office phone number to the reporting organization or TPA or group health plan, FEIN's for group health plan.

(3) A report amendment will only be accepted if the dispute was submitted within thirty days of the date of the first quarter invoice.

(4) Requests to amend a report for over or under reported covered lives received by the office of superintendent after the 30-day date of the first quarter invoice, will be rejected by the office of superintendent and must be reconciled by the group health plan or health insurer on the following year's VPA report.

(5) The office of superintendent will allow a reconciliation of the previous year's report only once, and will not accept any report amendment requests for any other reporting year but the year that immediately precedes the current reporting year unless there is an under reporting of covered lives.

G. Penalties.

(1) Report discrepancies are subject to civil penalty of five hundred dollars ($500) for each report filed for which the office of superintendent determines there is such a discrepancy pursuant to Subsection C of Section 24-5A-7 NMSA 1978.

(2) A failure of a health insurer or group health plan to make a timely payment of an amount invoiced pursuant to Subsection D of Section 24-5A-3 NMSA 1978 shall be subject to a civil penalty of five hundred dollars ($500) for each day from the date the payment is due pursuant to Subsection D of 24-5A-7 NMSA 1978.

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

[13.10.40.8 NMAC – Rp, 13.10.40.8 NMAC, 05/06/2025]

13.10.40.9 BILLING AND ENFORCEMENT:

A. Billing and initial review of invoices shall be conducted by the department pursuant to the VPA and to 7.5.4.13 NMAC.

B. Referral. The department shall refer to the office of superintendent any health insurer or group health plan that has failed to fully reimburse the department, including any applicable late penalties, within 30 days of the date of invoice. Referrals for invoices subject to review shall be made within 30 days of the department's decision. The department is responsible for resolving any questions or disputes that involve:

(1) basis for billing with covered entities that are responsible for paying the annual amount for the total covered lives reported as of December 31; and

(2) requests for reconciling and payment of invoices when a covered entity has closed, is going out of business, has a plan termination, is in receivership, or when a health plan exits the market.

C. Notices. Within 10 days of receipt of report of delinquent account, the office of 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 shall include instructions about how to remit payment.

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

[13.10.40.9 NMAC – Rp, 13.10.40.9 NMAC, 05/06/2025]

13.10.40.10 PUBLICATION: The office of superintendent shall, by January 31 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; or

C. failed to make timely payments under the VPA.

[13.10.40.10 NMAC – Rp, 13.10.40.10 NMAC, 05/06/2025]

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 – Rp, 13.10.40.11 NMAC, 05/06/2025]

13.10.40.12 HEARING RIGHTS: Any person aggrieved by any action, threatened action, or failure to act by the office of superintendent shall have the same right to a hearing before the office of 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.

A. A health insurer aggrieved pursuant to the VPA may request an informal hearing or an administrative review with the office of superintendent pursuant to their rules. The health insurer shall notify the immunization program manager if they are pursuing an informal hearing or administrative review with the office of superintendent via email at vpa.fund@doh.nm.gov.

B. A health insurer aggrieved pursuant to the VPA may appeal from an order of the superintendent made after an informal hearing or an administrative hearing pursuant to Section 59A-4-20, NMSA 1978. The appeal from the office of superintendent's order shall be taken to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[13.10.40.12 NMAC – Rp, 13.10.40.12 NMAC, 05/06/2025]

History of 13.10.40 NMAC:

13.10.40 NMAC, Vaccine Purchasing Fund, filed 01/01/2023 was repealed and replaced by 13.10.40 NMAC, Vaccine Purchasing Fund, effective 05/06/2025.