

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 50 INSURANCE
PART 7 WAIVER OF PARTICIPATION IN AUTHORITY COVERAGE OFFERINGS BY
SCHOOL DISTRICTS AND CHARTER SCHOOLS-MINIMUM BENEFIT AND
STANDARDS

6.50.7.1 ISSUING AGENCY: New Mexico Public School Insurance Authority.
[6.50.7.1 NMAC - Rp, 6 NMAC 50.7.1, 09/01/2014]
[The address of the New Mexico Public School Insurance Authority is 410 Old Taos Highway, Santa Fe, New Mexico 87501.]

6.50.7.2 SCOPE: This part applies to all school districts and charter schools.
[6.50.7.2 NMAC - Rp, 6 NMAC 50.7.2, 09/01/2014]

6.50.7.3 STATUTORY AUTHORITY: Subsection D of Section 22-29-7, NMSA 1978, directs the authority to promulgate necessary rules, regulations and procedures for the implementation of the New Mexico Public School Insurance Authority Act, Section 22-29-1 et seq., NMSA 1978.
[6.50.7.3 NMAC - Rp, 6 NMAC 50.7.3, 09/01/2014]

6.50.7.4 DURATION: Permanent.
[6.50.7.4 NMAC - Rp, 6 NMAC 50.7.4, 09/01/2014]

6.50.7.5 EFFECTIVE DATE: September 1, 2014 unless a later date is cited at the end of a section.
[6.50.7.5 NMAC - Rp, 6 NMAC 50.7.5, 09/01/2014]

6.50.7.6 OBJECTIVE: The objective of this part is to establish the procedures for school districts and charter schools to obtain a waiver of participation in authority coverage offerings.
[6.50.7.6 NMAC - Rp, 6 NMAC 50.7.6, 09/01/2014]

6.50.7.7 DEFINITIONS:
A. “Individual line of coverage” means either “risk-related” or “group health insurance” as those terms are defined in Section 22-29-3 NMSA 1978.
B. “Minimum benefit standards” means the coverages required by the authority in its requests for proposal to the various insurance carriers.
C. “Minimum financial standards” means the premiums, deductibles, limits of liability, coinsurance and other financial parameters associated with the authority coverages as set forth in the requests for proposal sent to the various insurance carriers.
[6.50.7.7 NMAC - Rp 6 NMAC 50.7.7, 09/01/2014]

6.50.7.8 WAIVER OF PARTICIPATION: School districts and charter schools shall participate in and accept all authority offerings, unless the school district or charter school has applied for and been granted a waiver for an individual line of coverage by the authority board. If a waiver is granted for an individual line of coverage, the school district or charter school will not be provided any insurance protection or coverage by the authority for the perils covered by that individual line of coverage. The school district or charter school receiving the waiver accepts the obligation to obtain its own insurance protection for the perils covered by the individual line of coverage for which the waiver is granted. A school district or charter school that has been granted a waiver for an individual line of coverage shall be prohibited from participating in that individual line of coverage during the contract period, provided, however, the district or charter school may, if the authority contract period exceeds four years, again seek participation. However, a school district or charter school may, if the authority contract period exceeds four years, again seek participation as if it were an other educational entity pursuant to 6.50.4.8 NMAC.
[6.50.7.8 NMAC - Rp, 6 NMAC 50.7.8, 09/01/2014]

6.50.7.9 RESPONSIBILITIES OF SCHOOL DISTRICTS AND CHARTER SCHOOLS WHICH
WAIVE PARTICIPATION IN AUTHORITY COVERAGES:
A. A school district or charter school may waive participation in either the risk related or group

health insurance or both. Pursuant to Subsections C and D of Section 22-29-9, a school district or charter school must waive all risk-related or all group health insurance coverages or must petition for participation in the remaining coverages offered by the authority in that particular individual line of coverage.

B. Should a school district or charter school waive participation in an individual line of coverage, the school district or charter school shall be responsible for the following charges:

(1) For risk related coverages, the school district or charter school shall forfeit to the authority any right to any return premiums or reserves and shall be responsible to pay to the authority on demand the cost of any prior losses in excess of premium and all the appropriate expenses of the authority in defending, settling and administering any such losses;

(2) For group health insurance, the school district or charter school shall forfeit to the authority any right to any return premium or reserves it may be entitled to. The school district or charter school shall also pay to the authority any funds paid for prior incurred claims of the school district or charter school in excess of premium paid by the school district or charter school and shall pay to the authority all the appropriate expenses of the authority in defending, settling and administering such claims.

C. Any school district or charter school waiving participation in an individual line of coverage shall pay to the authority any sums determined by the authority to be due in order to hold safe and harmless all other members of the authority from any adverse financial impact caused by the waiver of coverage. An accounting of funds and amounts owed by the school district or charter school shall not be due from the authority until two years after the waiver of participation has taken effect.

[6.50.7.9 NMAC - Rp, 6 NMAC 50.7.9, 09/01/2014]

6.50.7.10 MINIMUM BENEFIT AND FINANCIAL STANDARDS: Minimum benefit and financial standards shall be established by the authority pursuant Subsection B of Section 22-29-9, NMSA 1978, at the time of the request for proposal process for the line or lines of coverage proposed to be solicited by the authority. The terms and conditions of the requests for proposal which specify the minimum benefits and financial standards which the authority requires potential carriers to respond to shall also constitute the minimum benefit and financial standards which any district seeking a waiver of coverage must match.

[6.50.7.10 NMAC - Rp, 6 NMAC 50.7.10, 09/01/2014]

6.50.7.11 BOARD PROCEDURE FOR CONSIDERING REQUESTS FOR WAIVER:

A. In the event the authority determines it will issue a request for proposal for either risk-related or group health insurance because of termination of an existing contract during its term or because of expiration of an existing contract pursuant to the contractual term limit, the authority shall issue a schedule for the procurement. The request for proposal shall contain a proposed time schedule for responsive offers. The authority shall also set a target date for selection of a carrier. Sixty days prior to the carrier selection target date, the authority shall, by ordinary mail, send to each school district and charter school a copy of the authority's request for proposal notifying the school districts and the charter schools that the request for proposal sets forth the minimum benefits and financial standards for purposes of their opportunity to waive participation in the individual line of coverage being procured. The authority shall in the notice to the school districts and charter schools establish a deadline within which time any school district or charter school desiring a waiver must submit documentation of its proposal matching the authority's minimum benefits and financial standards. A copy of 6.50.7 NMAC shall be enclosed with the notice.

B. A school district or charter school that plans to file a request for waiver for any individual line of coverage shall within 14 calendar days after receiving notice from the authority as required by Subsection A of 6.50.7.11 NMAC above, file a notice of intent to file a request for waiver for that particular individual line of coverage. The purpose of this preliminary filing is to permit the authority to structure its request for proposal to give notice to any proposed bidders of the approximate number of school districts and charter schools that may attempt to waive participation in that individual line of coverage, since this can have a significant effect on the procurement process.

C. Any school district or charter school that has filed a notice of intent to file a request for waiver, may, if the school district or charter school desires to continue its waiver efforts, seek proposals for insurance through a request for proposal in accordance with state law. The school district's or charter school's request for proposal shall, as a minimum, contain the minimum employee benefits and financial standards or the risk-related minimum benefits and financial standards as required by the authority's request for proposal. The school district or charter school may include additional coverages or additional limits in its request for proposal.

D. After the school district or charter school receives responses to its request for proposals and still desires to continue to seek a waiver, it shall prepare a request for waiver which affirmatively sets forth the

coverages, the premiums and a summary of the school district's or charter school's data with respect to each of the criteria set forth in 6.50.7.12 NMAC.

E. The request for waiver of participation with all documentation shall be filed with the authority on or before the date on which the authority's request for proposal requires proposals to be received.

F. Any school district or charter school that does not timely file a notice of intent to file for a waiver of participation or a request for waiver of participation is prohibited from waiving out of the authority coverage.

G. When the authority receives a request for a waiver of participation, the authority shall immediately send a notice to the school district or charter school setting forth the time and place for a public board meeting to consider approval or rejection of the waiver request. Since time is of the essence, if necessary, the board shall call a special meeting in accordance with the Open Meetings Act, Section 10-15-1 et seq., NMSA 1978, to consider the waiver request.

H. At the meeting, the school district or charter school will present its proposed coverages and the costs of those coverages. Then, the authority's executive director will explain the comparable coverages to be offered by the authority and their costs. The board shall review all documents and information presented orally and in writing and then shall either make its decision at the meeting or notify the school district or charter school of the decision in writing within five calendar days after the meeting.

I. The decision of the authority board to grant or deny a waiver of participation is final. Any district denied a waiver of participation may appeal such decision. An appeal shall be taken within thirty days from the date of the board action. Such appeal is on the record made before the authority board and the board decision may be reversed only if shown upon a review of the whole record to be arbitrary, capricious or in violation of law. [6.50.7.11 NMAC - Rp, 6 NMAC 50.7.11, 09/01/2014]

6.50.7.12 APPROVAL OR DISAPPROVAL OF REQUEST FOR WAIVER OF PARTICIPATION:

The authority board shall approve or disapprove a waiver of participation based on the documentation submitted by the school district or charter school. The board shall grant a waiver to a school district or charter school that shows evidence to the satisfaction of the board that:

A. In the event the waiver is with regard to group health insurance:

(1) that the school district or charter school has secured a valid written enforceable commitment from an insurer to provide group health insurance;

(2) that the coverage committed to the school district or charter school and the plan benefits for their employees is at least as beneficial as the plan being procured by the authority;

(3) that there are no more exclusions from coverage and the exclusions are not broader than those set out in the authority's request for proposals;

(4) that the deductibles, stop loss, out of pocket costs, etc., if any, result in no more costs to the employees than would occur pursuant to the authority's request for proposals;

(5) that any cost containment features not result in any higher costs or burdens on the employees than would result under the authority's request for proposals;

(6) that the prospective insurer of the school district or charter school have the same or greater rating as that required in the authority's request for proposals;

(7) that the notice of intent to request a waiver has been timely filed;

(8) that the request for waiver of participation has been timely filed;

(9) that all the data required to be included in the request for waiver of participation has been timely supplied;

(10) that the proposed insurer for the school district or charter school has satisfactorily demonstrated to the school district or charter school and to the authority that the insurer in its proposal to the school district or charter school has adequately accounted in its rates for such items as school district or charter school experience, incurred but not reported losses, medical inflation trends and other relevant factors for the purpose of allowing the school district or charter school and the authority to determine the future viability of the plan, if rates are under-quoted at inception and whether the proposed insurer for the school district or charter school meets the minimum financial standards of the authority; and

(11) that the total group health insurance offering available in that school district or charter school compares favorably in all respects with the authority's request for proposals;

B. In the event the waiver is with regard to risk-related insurance:

(1) that the school district or charter school has secured a valid written enforceable commitment from an insurer to provide risk-related insurance;

- (2) that there are no more exclusions from coverage and the exclusions are not broader than those in the authority's request for proposal;
- (3) that the deductibles, self insured retention, etc., if any, are no higher or result in any more costs to the school district or charter school than would occur pursuant to the authority's request for proposal;
- (4) that any cost containment features not result in any higher costs or burdens on the school district or charter school than would result under the authority's request for proposals;
- (5) that the prospective insurers of the school district or charter school provide coverages as broad as is required in the authority's request for proposals;
- (6) that the prospective insurers of the school district or charter school have the same or greater rating as required in the authority's request for proposals;
- (7) that the notice of intent to request a waiver has been timely filed;
- (8) that the request for waiver of participation has been timely filed;
- (9) that all the data required to be included in the request for waiver of participation has been included; and
- (10) that the proposed insurer for the school district or charter school has satisfactorily demonstrated to the school district or charter school and to the authority that the insurer in its proposal to the school district or charter school has adequately accounted in its rates for such items as school district or charter school experience, incurred but not reported losses, the nature of existing coverage(claims made or occurrence) and other relevant factors for the purpose of allowing the school district or charter school and the authority to determine the future costs of coverages, to determine if rates are under-quoted at inception and whether the proposed insurer for the school district or charter school meets the minimum financial standards of the authority.

[6.50.7.12 NMAC - Rp, 6 NMAC 50.7.12, 09/01/2014]

6.50.7.13 WITHDRAWAL, FAILURE TO FOLLOW PROCEDURES, EXPIRATION OF WAIVERS:

- A. A request for waiver may be withdrawn at any time prior to or at the scheduled meeting.
- B. Failure to follow the procedures set forth in this rule shall be adequate reason for rejection of the request for waiver.
- C. Any waiver granted shall automatically expire at the end of the authority insurance contract for the line of coverage.

[6.50.7.13 NMAC - Rp, 6 NMAC 50.7.13, 09/01/2014]

6.50.7.14 AUTOMATIC WAIVER ALLOWED: School districts and charter schools are entitled to an automatic waiver for any line of coverage where the employee pays the full amount of the premium. If the school district or charter school desires insurance protection for a particular line of employee-pay-all coverage, the school district or charter school must affirmatively petition the authority for coverage. In granting the coverage the board shall first determine that the school district or charter school meets the minimum participation requirements as established by the board from time to time, that the school district or charter school will carry the coverage through the end of the contract period and that approval will not jeopardize the stability of the fund.

[6.50.7.14 NMAC - Rp, 6 NMAC 50.7.14, 09/01/2014]

HISTORY of 6.50.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

- NMPSIA 86-101, Risk-Related Minimum Benefits and Risk-Related Financial Standards, filed 10-31-86;
- NMPSIA 86-102, Waiver Of Participation For Risk-Related Coverages, filed 10-31-86;
- NMPSIA 86-203, Waiver of Participation for Employee-Benefit Coverages, filed 10-31-86;
- NMPSIA 88-2, Definitions, filed 11-4-88;
- NMPSIA 93-10, Employee-Benefit and Risk Related Minimum Benefit and Financial Standards Participation Waiver, filed 03-22-93;
- NMPSIA 86-2, Definitions, filed 10/31/86;
- NMPSIA 93-1, Definitions, filed 3/22/93.

History of Repealed Material:

6 NMAC 50.7, Employee-Benefit and Risk-Related Minimum Benefit and Financial Standards Participation Waiver, filed 10/1/97- Repealed effective 09/01/2014.