

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal



DEPUTY SUPERINTENDENT
Robert E. Doucette, Jr.

BULLETIN 2020-018

October 1, 2020

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OFFICE OF SUPERINTENDENT OF INSURANCE

TO: EVERY INSURER WHO SELLS, OR OFFERS TO SELL, A NEW MEXICO RESIDENT EXCEPTED BENEFITS UNDER A MASTER POLICY ISSUED TO AN OUT-OF-STATE GROUP

RE: RECISSION OF BULLETIN 2019-006

Section 59A-18-12 NMSA 1978 provides that no insurance policy can be sold in New Mexico until a copy of the form has been filed and approved by the superintendent of insurance. Pursuant to Section 59A-18-1 NMSA 1978, this filing and approval requirement applies to every insurance “policy” that covers “individuals resident, or risks located, or insurance protection to be rendered” in New Mexico. Section 59A-18-2 NMSA 1978 defines “policy” to mean “any contract of insurance, indemnity, health care, suretyship or annuity between the insurer and the insured, *by whatever name such contract is called*, and includes all clauses, riders, endorsements and papers which are a part thereof.” (Emphasis added)

When a person subscribes to insurance offered through a group, a contractual relationship is formed between that person and the issuer of the group insurance contract. “[*B*]y *whatever name such contract is called*”, it constitutes an insurance “policy” as that term is defined in Section 59A-18-2 NMSA 1978. If that contract, or policy, covers, or is offered to, a New Mexico resident, it is subject to the filing and approval requirements of Section 59A-18-12 NMSA 1978.

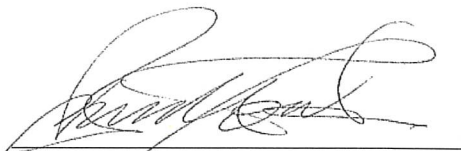
Section 59A-23G-3 NMSA 1978 directs the superintendent to adopt and promulgate rules to establish specific standards that set the manner, content and required disclosures for the sale of excepted benefits plans. Pursuant to that directive, the Office of Superintendent of Insurance promulgated 13.10.34 NMAC. Those rules apply to certain excepted benefits plans “issued in this state, and to any such contract issued to a group located outside of this state, if any covered person

resides in this state.” 13.10.34.2(B) NMAC. This rule clarifies that an insurer cannot sell a New Mexico resident excepted benefits under a plan issued to an out-of-state group, unless the plan complies with New Mexico law and has been approved by the superintendent.

Bulletin 2019-006 directs insurers who offer excepted benefits products to New Mexico residents through a master policy issued to a group located outside of New Mexico to provide a listing of those policy forms, and a certification that the forms comply with New Mexico law. That directive does not comport with the requirements of Sections 59A-23G-3, 59A-18-12, 59A-18-1 NMSA 1978 or 13.10.34 NMAC. The directive to provide an informational only filing could erroneously be construed to suggest that the superintendent cannot, or will not, review the described forms for compliance with New Mexico law. Because the superintendent is authorized to substantively review all excepted benefit forms that are offered for sale to residents of New Mexico, whether sold individually or through an out-of-state association or group, the superintendent rescinds Bulletin 2019-006.

If you have questions regarding this Bulletin, please contact Todd Baran at todd.baran@state.nm.us

ISSUED this 1st day of October, 2020.



RUSSELL TOAL
Superintendent of Insurance