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WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

1995-96

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Assembly

(Assembly, Senate or Joint)

Committee on Insurance, Securities and Corporate Policy...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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THE REGIONAL HEALTH CARE VOLUNTARY PURCHASING ALLIANCE MODEL ACT

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Purpose and Intent

This Act shall be known as the Regional Health Care Voluntary Purchasing Alliance Act.

The purpose of this Act is to improve the fairness, efficiency and competition in the pricing and delivering of health care coverage for employers with no more than [insert number] employees. It does so by allowing for the establishment by the state of regional purchasing entities that are referred to as purchasing alliances through which eligible small employers, and self-employed individuals can purchase health coverage. Another goal is to avoid jurisdictional confusion and unnecessary and expensive bureaucracy within the purchasing alliances and state government by clarifying the respective roles and jurisdiction of existing regulatory agencies and the purchasing alliances. This Act provides a mechanism for small employers to join together solely for the purpose of procuring health insurance and operates as an exception to existing false group or fictitious group laws. In addition, the intent of the Act is to avoid creating an undue burden on small employers when purchasing health care coverage through a purchasing alliance.

This Act is also intended to provide a meaningful choice of high quality, fairly priced health care plans and health care coverage for member small employers, employees and individuals of purchasing alliances through a system that is fair, efficient and accountable to its members and includes procedural and substantive protections.

The purchasing alliances, through an open and fair competitive procurement process, shall contract with qualified group carriers to provide a meaningful choice of carriers providing health benefit plans to purchasing alliance enrollees.

Drafting Note: In order that states might choose which approach would best accommodate their needs, the National Association of Insurance Commissioners (NAIC) has developed several purchasing alliance model acts to address the problems of providing health care coverage to small employers and their employees. In doing this, the NAIC is not expressing a preference for one model over another. This Act assumes that a state has already adopted substantially the most recent version of the NAIC's Small Employer Health Insurance Availability Model Act to ensure that the purchasing alliance operates properly. For example, it is imperative that the qualified health benefit plans issued to the purchasing alliances and the policies issued directly to small employers who are not members of a purchasing alliance operate under the same rating, underwriting, enrollment and participation requirements.

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Absent strong market reforms, such as guaranteed issue of all products sold in the small group market, a voluntary purchasing alliance will become a high risk pool. The Regional Health Care Voluntary Purchasing Alliance Model Act is intended to be a portion of a larger program of underwriting reforms in the general small group market and would necessarily use the same terms and definitions.

Drafting Note: States may consider expanding alliance eligibility to include individuals, state employees, and other designated population groupings that are eligible to purchase health insurance coverage through a purchasing alliance. However, in expanding eligibility prior to universal coverage, states should be careful to avoid burdening the purchasing alliances with high-risk individuals or groups. If population groupings other than small employers are eligible to purchase coverage through an alliance, underwriting and rating parity should be required for inside and outside the alliance.

Section 1. Definitions

- A. "Adjusted community rating" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- B. "Alliance service area" means a clearly defined, non-overlapping and exclusive geographical area determined by the state board for the purpose of defining the regions in which the purchasing alliances will operate.
- C. "Antitrust laws" means state laws intended to protect commerce from unlawful restraints, monopolies and unfair business practices.
- D. "Carrier" or "small group carrier" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- E. "Carrier service area" or "participating carrier service area" means a geographic region in which a carrier is licensed to operate.
- F. "Commissioner" has the same meaning as in Section [insert reference to the chief insurance regulatory official of the state].

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears. Where jurisdiction of managed care organizations lies with some other state agency, or dual state regulation occurs, a state should add additional language referencing that agency to ensure the appropriate coordination of responsibilities.

- G. "Dependent" means the same as defined in Section [insert reference to state insurance laws defining dependent].

Drafting Note: States without a statutory definition of dependent may wish to use the following definition:

"Dependent" means a spouse; an unmarried child under the age of [nineteen (19)] years; an unmarried child who is a full-time student under the age of [insert maximum age] and who is financially dependent upon the enrollee; and an unmarried child of any age who is medically certified as disabled and dependent upon the enrollee.

If using suggested definition, states should insert a maximum age for student dependents that is consistent with other state laws. States also may wish to include other individuals defined as dependents by state law. The term child above is not intended to be limited to natural children of the enrollee.

- H. "Eligible employee" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- I. "Enrollee" means an eligible employee, self-employed individual or a dependent of an eligible employee who is enrolled in a qualified health benefit plan offered through a purchasing alliance by a participating carrier.

Drafting Note: The Act assumes that a small employer group includes self-employed individuals. This term should be deleted from the definition of "enrollee" if the minimum size of a small employer group is two or more.

- J. "Health benefit plan" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- K. "Late enrollee" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- L. "Limited benefit health insurance" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- M. "Member small employer" means a small employer who enrolls in a purchasing alliance.
- N. "Participating carrier" means a carrier that contracts with a purchasing alliance to provide coverage to enrollees under a qualified health benefit plan.
- O. "Premium" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- P. "Purchasing alliance" or "alliance" means a non-risk-bearing nonprofit corporation established pursuant to this Act under Section [insert statutory reference to nonprofit corporation law] to provide health insurance through multiple unaffiliated participating carriers to member small employers, their eligible employees and dependents within an alliance service area.
- Q. "Purchasing alliance board" or "alliance board" means the board of directors of a purchasing alliance.
- R. "Qualified carrier" means a carrier designated by the state board to offer health insurance to purchasing alliances.
- S. "Qualified health benefit plan" means the standard, basic or other standardized guaranteed issue health benefit plan approved by the state board and offered by a purchasing alliance to member small employers, their eligible employees and dependents. The term shall also include optional group vision and dental benefit plans and, with the prior approval of the commissioner, other limited benefit health insurance.

Drafting Note: Under the guaranteed issue provision of the small employer health insurance availability model act, carriers offering a particular health benefit plan designed through a purchasing alliance will also have to offer and issue that plan to small employers outside of the purchasing alliance.

- T. "Small employer" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- U. "State board" means the state purchasing alliance oversight board established by this Act to oversee the activities of the purchasing alliances.

Section 2. Jurisdiction of the Commissioner; Penalties

- A. Except as authorized by this Act, no person or entity may market, sell, offer or arrange for a package of one or more health benefit plans underwritten by two (2) or more carriers to two (2) or more small employers or their eligible employees.
- B. A person or entity not established under this Act as a purchasing alliance and engaged in the purchase, sale, marketing or distribution of health insurance or health care benefit plans shall not hold itself out as an alliance, health insurance purchasing alliance, purchasing alliance or health insurance purchasing cooperative, or otherwise use a confusing similar name.
- C. Nothing in this Act shall be deemed to be in conflict with or in limitation of the duties and powers granted to the commissioner under the laws of this state.
- D. The state board and alliance boards shall report to the commissioner suspected or alleged law violations.
- E. Violations of this Act shall be subject to the penalties contained in [insert sections of state law containing penalty provisions].

Drafting Note: The range of regulatory actions, processes, remedies and penalties to be specified here should be at least as broad as those available to the commissioner when he or she investigates or sanctions entities under the insurance laws.

Section 3. Establishment of the State Purchasing Alliance Oversight Board; Membership; Terms; Conflicts of Interest

- A. A state purchasing alliance oversight board is established within the office of the commissioner and shall provide oversight of the purchasing alliances.

Drafting Note: The state board is established within the office of the commissioner to capitalize on the existing expertise that is needed to establish purchasing alliance operations in each of the alliance service areas. It is anticipated that the commissioner's office will require additional funding in order to carry out these duties. However, it is the intent of this Act to keep the roles of the state board and the commissioner clearly delineated. The role of the state board is to oversee the operations of the purchasing alliances. Simply put, the commissioner continues as the regulator of all insurance activities within the state. The state board oversees the purchasing alliances for the benefit of their enrollees.

- B. The initial state board shall consist of nine (9) members, as follows:
 - (1) Three (3) appointed by the governor, including: two (2) who expect to be owners or managers of a member small employer of the purchasing alliance, and one who expects to be an employee enrollee of the purchasing alliance;
 - (2) Two (2) appointed by the legislature upon the recommendation of the speaker of the house, including: one who expects to be an owner or manager of a member small employer of the purchasing alliance, and one who expects to be an employee enrollee of the purchasing alliance;
 - (3) Two (2) appointed by the legislature upon recommendation of the president (pro tempore) of the senate, including: one who expects to be an owner or manager of a member small employer of the purchasing alliance, and one who expects to be an employee enrollee of the purchasing alliance;
 - (4) The commissioner shall appoint one member; and

- (5) The state's chief health officer shall appoint one member.
- C. In reference to small employer and employee representatives appointed to the state board pursuant to Subsection B, subsequent appointments shall be made using small employers and employees who are participating in the purchasing alliance.
- D. Members of the state board shall receive reimbursement for travel and subsistence at the rates specified in [insert reference to state rules regarding reimbursements].
- E. The term for members appointed to serve on the state board is four (4) years, except that the initial terms of one employee and one employer appointed by the governor, one employee appointed by the Senate and one employer appointed by the House shall expire two (2) years after the effective date of this Act. The initial term of the board shall commence on the effective date of this Act.
- F. At the end of a term, a member shall continue to serve until a successor is appointed. A member who is appointed after a term has begun serves only for the remainder of the term and until a successor is appointed.
- G. The state board shall elect officers biennially.
- H. The state board shall meet at least quarterly at the times and places it determines. The meeting and procedures shall be governed by the procedures and policies set forth in [insert citation to state open meetings law]. A majority of the fully authorized membership of the board is a quorum.
- I. No state board members or members of their households may be employed by, be a consultant for, be a member of the board of directors of, be affiliated with an agent of, or otherwise be a representative of a carrier or other insurer, a health care provider or agent or broker. This provision shall not preclude a state board member from purchasing coverage through a purchasing alliance.
- J. The state board members shall be subject to the provisions of [insert section of state law which controls the ethics of public officials].

Drafting Note: States should review their ethics laws to ensure prohibition or limitation on the amount of stock that the state board members can own in the entities described in Section 3I. If no prohibition or limitation exists, a state should consider drafting language to do so.

- K. No cause of action or liability of any nature or kind shall arise against a member of the state board, or its employees or agents, for an action taken in good faith by them in the performance of their powers and duties.

Section 4. Powers of the State Board

- A. The state board shall:
- (1) Establish no less than [insert number] and no more than [insert number] alliance service areas in this state no later than [insert date]. In establishing these areas, the state board shall assure that every location in the state is a part of an alliance service area.

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The state board shall consider potential size of enrollment populations, geographic compactness, transportation patterns, metropolitan statistical areas, availability of health and medical resources (especially for disadvantaged populations or areas), unique regional health care problems, medical referral patterns, existing rating territories, health care cost variations, carrier service areas and availability of managed care arrangements. The state board may redefine alliance service areas when:

- (a) Insufficient numbers of enrollees, managed care arrangements, health care providers or participating carriers are available to make the requirements feasible; or
 - (b) Other operational considerations occur that are deemed appropriate by the state board;
- (2) Establish and contract, as required, with the purchasing alliance in each designated alliance service area to carry out the purpose of this Act;
 - (3) Coordinate the qualification of small group carriers eligible to respond to the request for proposals for participating carriers issued by the purchasing alliances. Each small group carrier must seek qualification from the state board in order to be eligible to respond to a request for proposal to participate in a particular purchasing alliance as a participating carrier. The state board shall administer the qualification of small group carriers in accordance with the following:

Drafting Note: The commissioner licenses and regulates small group carriers that are eligible to sell health insurance coverage to the small group marketplace. Carriers that comply with the state's small group reform measures and other regulatory requirements are referred to as "small group carriers." Small group carriers interested in offering coverage through a purchasing alliance must apply to and be qualified by the state board to do so, using the process described above. A small group carrier whose application is approved by the state board is called a "qualified carrier". A qualified carrier is eligible to respond to requests for proposals issued by the purchasing alliances for offering health insurance coverage to member small employers, their eligible employees and dependents. If a carrier's proposal is approved and it signs a contract with one or more of the purchasing alliances to provide health insurance coverage, it is referred to as a "participating carrier." It is important to note that the state board does not regulate in the insurance sense participating carriers, but merely decides which carriers are eligible to respond to the request for proposals for participating carriers issued by the purchasing alliances. Regulatory oversight remains the responsibility of the commissioner.

- (a) The state board shall request from the commissioner a list of small group carriers that: (i) are licensed carriers as set forth in Section [insert reference to small employer health insurance availability law]; (ii) satisfy the financial requirements required under Section [insert section of state law on capital and surplus requirements]; (iii) have a demonstrated capacity to administer health benefit plans; and (iv) are otherwise in good standing. The commissioner shall update this list as requested, but not less than on a quarterly basis;
- (b) The state board, in consultation with the commissioner, shall develop and make available a list of objective criteria that must be met by small group carriers in order to become qualified carriers eligible to respond to the request for proposals for participating carriers that are issued by the purchasing alliances;

- (c) In order to be eligible to be designated as a qualified carrier, a carrier must be able to demonstrate the following minimum qualifying and operating characteristics:
- (i) That it is licensed and approved as a small employer carrier and in good standing with the commissioner;
 - (ii) That it has the demonstrated ability or capacity to administer health benefit plans;
 - (iii) That it has the ability to provide enrollees reasonable access to covered services within the alliance service area;
 - (iv) That it has the ability to arrange and pay for the appropriate quality, level and type of health care or claims payment services;
 - (v) That it has the ability to provide information on enrollee satisfaction based on standard surveys as may be prescribed by the state board, and to meet reasonable satisfaction and other minimum service measures as may be established;
 - (vi) That it has the ability to provide standard data elements in a manner prescribed by the commissioner; and

Drafting Note: States may want to base the data requirements, at least in part, on the data reporting standards under development for all health carriers by the NAIC standards in common use by recognized national accreditation entities or by national health care data collection initiatives.

- (vii) That it has the ability to meet basic quality of care standards established by the commissioner.

Drafting Note: Commissioners may want to allow qualified carriers to meet the requirements for quality assurance standards established by the commissioner by receiving and maintaining accreditation from recognized private accreditation entities. Under this approach the commissioner would periodically affirm that the standards in use by the private accreditation entity meets or exceeds the standards he or she establishes for use in the state. Once affirmed, qualified carriers holding accreditation by the private entities can be deemed as having met the desired standards until such time as the private accreditation entity is again reviewed by the commissioner.

- (d) Each small group carrier wishing to become a qualified carrier must submit a completed application to the state board. The state board shall evaluate, with the assistance of the commissioner and other professionals as may be required, each completed application to determine whether the objective criteria established by the state board have been satisfied. If the state board approves the response, the carrier shall be registered in the state as a qualified carrier;
- (e) When a small group carrier does not qualify based upon the criteria set forth in Section 4A(3)(c), the state board may take into account unique services or needs not currently being met within an alliance service area for an identifiable segment of the community. In such cases, the state board may grant waivers on a limited basis allowing small employer carriers, who would not otherwise be qualified to provide coverage to an underserved population;

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- (4) Review and update the application and qualification process at least once every three (3) years. The review shall include input from the purchasing alliance boards. After the review is completed, the state board may issue a revised application setting forth new criteria;
- (5) Conduct or arrange for periodic reviews of the performance of the purchasing alliances and participating carriers to assure compliance with this Act in consultation with the commissioner;
- (6) Provide to the commissioner, governor and legislature a summary of these reviews at least biennially, which shall include, but not be limited to, an accounting of all outside revenues received by the state board and purchasing alliances and all internal and independent audits, and make the summary available to the public;
- (7) Periodically review and consider comments by purchasing alliance boards relative to services, quality of care, cost, grievance procedures, access and administrative efficiency;
- (8) Develop standard enrollment procedures to be used within each purchasing alliance;

Drafting Note: To assure efficient and cost effective interactions between a regional purchasing alliance and its member small employers, between a regional purchasing alliance and its participating carriers, and between one regional purchasing alliance and another, states may consider requiring that all regional purchasing alliances contract with a common administrator. At a minimum it is important that common procedures be adopted for addressing issues which impact more than one alliance, e.g., enrollment procedures for an employer whose employees work or reside in multiple regional purchasing alliance service areas.

- (9) Publish educational materials, plan descriptions and comparison sheets describing participating carriers and the qualified health benefit plans being offered within the purchasing alliances for enrolling small employers and their eligible employees and make reasonable efforts to notify all small employers of their option to join a purchasing alliance;

Drafting Note: The NAIC is in the process of evaluating standards and reporting measures that might be used in developing comparison sheets. A number of accrediting organizations and other groups are also developing report cards that might be considered for inclusion under this Act.

- (10) Establish conditions of participation for small employers that conform to the requirements of this Act and Section [insert reference to small employer health insurance availability law] and include, but are not limited to the following:
 - (a) Provide assurances that the small employers are bona fide employer groups;
 - (b) Assure that small employers that meet the requirements established by the state board and this Act may purchase health care coverage through a purchasing alliance from a participating carrier;

Drafting Note: Each state should insert one of the following alternatives for Subparagraph (c).

- (c) **[Alternative A (pure employee choice):** Offer to all member small employer's eligible employees a choice of all participating carriers in the alliance service area; and]
- [Alternative B (modified employee choice):** Offer to all member small employer's eligible employees a choice of at least three (3) participating carriers in the alliance service area and chosen by the employer, one of which must provide out-of-network coverage if available, and at least one managed care plan if available; and]
- (d) Establish procedures and mechanisms for billing and collection of premiums from member small employers (including any share of the premium paid by enrollees);
- (11) Appoint advisory committees that include persons with expertise in health benefits management and marketing and representatives of participating carriers, consumers, small businesses or health care providers, as may be deemed necessary to carry out the purposes of this Act. In addition, the state board may appoint local beneficiary advisory councils to evaluate purchasing alliance functions and the performance of participating carriers in order to assess the efficacy of the operations for member small employees;
- (12) Develop standard procedures for the resolution of grievances and disputes between the purchasing alliances and participating carriers, and between the purchasing alliances and member small employers; and
- (13) Develop a standardized request for proposal form for use by the purchasing alliances when soliciting health insurance coverage from qualified carriers.

Drafting Note: In order to decrease the administrative costs associated with responding to multiple RFP's from all or most of the purchasing alliances, it is important that the same standardized request for proposal (RFP) form be used by all of the purchasing alliances. This will also enhance the ability of the state board to uniformly compare the effectiveness and performance of each of the purchasing alliances. While the terms, conditions and format of the RFP should be standardized, the form may allow for a section that recognizes unique contractual differences necessary in a particular purchasing alliance.

B. The state board may:

- (1) Sue or be sued, including taking action necessary for securing legal remedies on behalf of or against the purchasing alliances, member small employers, enrollees, a state board member or other parties subject to this Act;
- (2) Approve all assessments made upon member small employers by the purchasing alliances for costs incurred or anticipated in connection with the operation of the purchasing alliances;
- (3) Review all matters of dispute between a purchasing alliance and a participating carrier;
- (4) Review information and recommendations from consumers, small employers, purchasing alliances, participating carriers, or health care providers, and other sources. Upon review, the state board may issue reports or otherwise make recommendations to improve the delivery or purchase of health care;

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- (5) Establish administrative and accounting procedures for operating the purchasing alliances, providing services to member small employers and enrollees; and
 - (6) Issue model legal documents for the purchasing alliances which may include articles of incorporation, bylaws and purchasing alliance participation agreements with participating carriers.
- C. If review by the state board reveals that a purchasing alliance is not carrying out its duties or acting in the best interests of its enrollees, the state board may relieve the purchasing alliance board of its duties and in the interim may assume, or appoint an entity that assumes, the duties of the purchasing alliance until a new purchasing alliance board is appointed.

Section 5. Purchasing Alliances Authorized

- A. Each purchasing alliance shall operate under the supervision of a purchasing alliance board of directors, which shall consist of no more than nine (9) members. The majority of members on each purchasing alliance board shall be member employers.
- (1) The state board shall initially appoint the members. In so doing, the state board shall consider, among other things, the alliance service area's geographical, ethnic, gender, and workforce diversity, as well as the expertise of consumer and business interests, needed to oversee purchasing alliance operations.
 - (2) Subsequent members of the purchasing alliance board of directors shall be elected pursuant to the purchasing alliance's bylaws.
 - (3) Of the initially appointed members of each purchasing alliance board, five (5) members shall be designated to serve two-year terms and the remaining four (4) members shall serve four-year terms. Thereafter, the term of an elected member shall be four (4) years.
 - (4) Vacancies on the purchasing alliance board shall be filled for the remaining period of the term by a majority vote of the remaining purchasing alliance board members. A member who was appointed after the beginning of a term may serve for the remainder of that term and until a qualified successor is elected for a new term.
 - (5) A member who serves two (2) consecutive full four-year terms may not be re-elected for four (4) years after completion of those terms.
 - (6) The purchasing alliance board shall elect officers from among its members every two (2) years. Officers may not serve more than two (2) consecutive terms in an office.
 - (7) Each purchasing alliance board shall adopt bylaws. The bylaws shall be subject to review and approval by the state board.

- B. The purchasing alliance board shall meet at least quarterly at times and places as it determines necessary to operate in accordance with this Act. The meetings shall be governed by the procedures and policies set forth in Section [insert reference to existing state open meetings law].
- C. A purchasing alliance board member or members of their households may not be employed by, be a consultant for, be a member of the board of directors of, be affiliated with an agent of, or otherwise be a representative of a carrier or other insurer, a health care provider or agent or broker. This provision shall not preclude a purchasing alliance board member from purchasing coverage through an alliance.
- D. The purchasing alliance board members shall be subject to the provisions of [insert section of state law which controls the ethics of public officials].

Drafting Note: States should review their ethics laws to ensure prohibition or limitation on the amount of stock that purchasing alliance board members can own in the entities described in Section 5.C. If no prohibition or limitation exists, a state should consider drafting language to do so.

- E. No cause of action or liability of any nature or kind shall arise against a member of a purchasing alliance board, or its employees or agents, for any action taken in good faith by them in the performance of their duties.
- F. The purchasing alliance board shall not employ or hire employees or agents that have conflicts of interest with the operations and activities of the purchasing alliance.

Section 6. Powers and Duties of and Restrictions on Purchasing Alliances

- A. In addition to other powers granted to nonprofit corporations under state law, a purchasing alliance shall have the following powers and duties:
 - (1) Appoint an executive director to serve as the chief operating officer of the purchasing alliance who may employ other staff as needed to administer the purchasing alliance. The executive director shall serve at the pleasure of the purchasing alliance board;
 - (2) Establish advisory committees as necessary to assist with carrying out the duties established pursuant to this section. Consumer representatives shall serve on all such advisory committees;
 - (3) Coordinate its operations with other purchasing alliances, including those operations where the purchasing alliances are in the same or different states, when the state board and the commissioner in each state deem that interstate coordination is in the best interests of enrollees. Coordination may include adoption of joint operating rules, staff and activities;
 - (4) Make recommendations to the state board and provide other information that may be requested by the state board;
 - (5) Prepare annual reports on the operations of the purchasing alliance, including program and financial operations as required by the state board, and provide for annual internal and independent audits;

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- (6) Receive and accept grants, state funds or anything of value from a public or private agency; and receive and accept contributions from any legitimate source of money, property, labor or any other thing of value. However, the purchasing alliance board shall not accept anything of value from a person or entity that might have a vested interest in the decisions of the board except with the express permission of the commissioner;
- (7) Contract with at least three (3) unaffiliated participating carriers to ensure that enrollees have a choice from among a reasonable number competing carriers and types of health benefit plans which include the basic and standard health benefits plans required by Section [cite small employer health insurance availability law]. The commissioner may, upon a showing of good cause, waive the requirement to have at least three (3) unaffiliated participating carriers throughout all portions of the purchasing alliance's service area;

Drafting Note: Coverage through a purchasing alliance of employees who work and reside outside of the state can create administrative problems due to the application of such other states' extraterritorial mandated benefit laws. Moreover, many participating carriers, notably local HMOs, will not be able to provide coverage for out-of-state residents in any event. Purchasing alliances may wish to address this by issuing a separate request for proposal for the purpose of contracting with carriers to provide out-of-state coverage.

- (8) Enter into contracts with member small employers;
- (9) In instances where not already provided for by the state board:
 - (a) Establish procedures and mechanisms for billing and collection of premiums from member small employers (including any share of the premium paid by employee enrollees); and
 - (b) Establish procedures for annual open enrollment periods;
- (10) Impose reasonable fees upon member small employers for necessary costs incurred in connection with the operation of the purchasing alliance;
- (11) Provide that in the event a member small employer terminates coverage purchased through the purchasing alliance, the former member small employer shall be ineligible to purchase a health benefit plan through the purchasing alliance for a period of twelve (12) months, except as permitted by the state board for good cause;
- (12) Contract, as authorized by the state board, with qualified, independent third parties for services necessary to carry out the powers and duties of the purchasing alliance, including contracts with agents and brokers to assist in contracting with participating carriers and member small employers and to assist the purchasing alliance in educational, marketing, service, grievance and administrative activities. Unless permission is specifically granted by the purchasing alliance board, a third party hired may not release, publish or otherwise use information to which the third party has access under its contract. Except with the express written approval of the state board, no entity may act, directly or through an affiliated company, in a purchasing alliance service area both as a participating carrier and a third party under contract to the purchasing alliance;

- (13) Provide to member small employers comparison sheets, in accordance with state board rules, describing participating carriers and the qualified health benefit plans available through the purchasing alliance;
 - (14) Offer health insurance coverage through multiple unaffiliated participating carriers to all small employers, their eligible employees and dependents;
 - (15) Develop a marketing plan specifically designed for the purchasing alliance's service area using the marketing standards established by the state board; and
 - (16) Use the standardized request for proposal format for participating carriers to provide qualified health benefit plans to member small employers, their eligible employees and dependents as provided by the state board.
- B. Purchasing alliances shall place premiums, operating funds and all other funds received by it in a trust account.
- C. Purchasing alliances may not:
- (1) Purchase health care services, assume risk for the cost or provision of health care services, or otherwise contract with health care providers for the provision of health care services to enrollees;
 - (2) Exclude a small employer or eligible employee or dependent of an eligible employee from membership in the purchasing alliance who agrees to pay fees for membership and the premium for coverage through the purchasing alliance and who abides by the bylaws and rules of the purchasing alliance;
 - (3) Prohibit the participation of small employers, or differentiate classes of membership, based on industry type, experience, age, gender, family status, education, health status, income or other means in conflict with the rating methodology specified in Section [insert reference to small employers health insurance availability law];
 - (4) Commit an act constituting a rebate prohibited pursuant to Section [insert applicable section of state law];
 - (5) Charge a fee not directly related to the operation of the purchasing alliance or for non-health care related activities;
 - (6) As a condition of membership, require a small employer, eligible employee or dependent to subscribe to limited health benefit insurance or non-health care related products or services;
 - (7) Operate the purchasing alliance or market the purchasing alliance in a county or primary metropolitan statistical area in a way which would cause the purchasing alliance to select a risk pool with actuarially projected health care utilization over a two-year period which is below the projected average for all individuals residing in that county or primary metropolitan statistical area.

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The measurement and composition of projected utilization by members of the purchasing alliance to all individuals shall be done on a county or primary metropolitan statistical area basis and not across all members of the purchasing alliance;

- (8) Engage in a competitive act or practice that results in the selection of member small employers and enrollees based on any of the risk factors specified in Paragraph (3) of this subsection or small employer size;
- (9) Require or take an action inconsistent or in conflict with state laws or regulations of the commissioner; or
- (10) Provide products or services other than those specifically authorized in this Act.

Section 7. Requirements of Participating Carriers

A. In every purchasing alliance in which it participates, a participating carrier shall:

- (1) Offer only qualified health benefit plans;
- (2) Provide for the collection and reporting to the state board and to the appropriate purchasing alliance of information on the performance of the participating carrier regarding the effectiveness and outcomes in providing selected services. The data reporting requirements adopted by the state board shall be based on and consistent with national or state standards and should not impose an unreasonable cost for compliance;
- (3) Establish premium rates for each qualified health benefit plan in accordance with the rating method described in Section [insert reference to small employer health insurance availability law];
- (4) Comply with all rules and regulations regarding underwriting, claims handling, sales, solicitation, licensing, fair marketing, unfair trade practices, the provisions of this Act and other applicable state statutes;
- (5) Comply with all rules and regulations regarding adjusted community rating as specified in [cite applicable section of small employer health insurance availability law], except that the purchasing alliance and a participating carrier may negotiate only the administrative expense component of the premium rates charged for coverage offered through the alliance where the carrier can demonstrate net administrative cost savings for its alliance business. For the purposes of this paragraph, administrative expenses are limited to marketing expenses, acquisition expenses, the cost of paying claims, commissions, and maintenance expenses;

Drafting Note: Participating carriers must be required to use the same rating methodology inside and outside the alliance. Alliances should be permitted to negotiate with carriers only on administrative costs. Claim costs must be uniform across a carrier's entire small employer group market and not be subject to negotiation.

- (6) Issue coverage under a health benefit plan to an enrollee who elects to be covered in the manner required under this Act and the provisions of Section [insert reference to small employer health insurance availability law].

- B. After notice and hearing, the state board may place a participating carrier on probation, or suspend or revoke its designation as a qualifying carrier if it fails to maintain compliance with the requirements listed in this Act. In cases of noncompliance, participating carriers shall be afforded reasonable time to correct the areas of deficiency. If the participating carrier fails to comply after that time period, the state board shall revoke the qualification status as a qualified carrier. Carriers subject to revocation shall be afforded the opportunity to appeal the decision of the state board in accordance with the state administrative procedures act or other applicable state law.
- C. Notwithstanding anything to the contrary in Section [cite guaranteed renewability section of the small employer health insurance availability law], in the event the participating carrier elects to terminate its contract with a purchasing alliance, the participating carrier shall:
- (1) Provide advance notice of its decision to the purchasing alliance board, and;
 - (2) Provide notice of the decision at least 180 days prior to the nonrenewal of a qualified health benefit plan to the member small employers and enrollees. A participating carrier that elects not to renew a health benefit plan with a purchasing alliance shall be prohibited from writing new business through the purchasing alliance for a period of three (3) years from the date of the notice to the purchasing alliance or until the purchasing alliance, with the concurrence of the commissioner, invites the former participating carrier to renew participation, whichever is sooner.
- D. In the event that renewal or the acceptance of additional applications for coverage would place the participating carrier in a financially impaired condition, the state board, upon the counsel of the purchasing alliance board and upon the approval by the commissioner, may recommend that the participating carrier be excused from issuing coverage in accordance with this Act until the impairment is remedied.

Section 8. Purchasing Alliance Contracts

- A. A contract between the purchasing alliance and a participating carrier shall specify how all premiums will be transmitted, on what basis, and the penalties and grace periods for payments.
- B. A contract between the purchasing alliance and a member small employer shall provide:
- (1) For administrative purposes, the purchasing alliance will be the policyholder or contract holder of the qualified health benefit plan on behalf of member small employers, their eligible employees and dependents;
 - (2) Provide that the participating carrier will issue a certificate of coverage, or equivalent document, specifying the essential features of the qualified health benefit plan's coverage to each enrolled eligible employee; and
 - (3) Provide that all eligible employees of the small employer who obtains coverage under the qualified health benefit plan offered by the small employer must obtain coverage through the purchasing alliance.

Section 9. Marketing Qualified Health Benefit Plans

- A. The state board shall establish marketing standards for use by purchasing alliance boards and participating carriers.
- B. Any marketing, advertisement or educational material for qualified health benefit plans sold through purchasing alliances shall be approved by the state board prior to its use. The state board shall review all materials submitted to it and the materials shall be deemed approved if not disapproved within [insert number] days. The purchasing alliance may, through its contracts with participating carriers, deem certain classes of materials to be approved.
- C. This section shall not be construed to prohibit or to compel the purchasing alliance or a participating carrier from using the services of an agent or broker.
- D. A participating carrier, agent, broker, contractor or producer of a participating carrier, or independent insurance agent, broker, contractor or producer may not engage, directly or indirectly, in an activity or marketing practice that would encourage member small employers or eligible employees to:
 - (1) Refrain from enrolling in a qualified health benefit plan offered through the purchasing alliance because of their health status or claims experience;
 - (2) Seek coverage from other participating carriers because of their health status or claim experience; or
 - (3) Enroll or fail to enroll in the purchasing alliance because of their health status or claims experience.

Section 10. Risk Adjustment Mechanism

The commissioner may establish a payment mechanism to adjust for the amount of risk covered by each participating carrier. The commissioner may appoint an advisory committee composed of individuals that have risk adjustment and actuarial expertise to help establish the risk adjusters.

Drafting Note: Some states may prefer to develop a risk adjustment mechanism that applies to the entire small group market and not simply to business written by participating carriers through the purchasing alliance. A risk adjustment mechanism that operates across the entire small group market would preserve the principle of uniform rating and underwriting rules both inside and outside of the alliance and would minimize incentives for carriers to either steer high-risk business to the alliance or avoid participating in the alliance altogether.

Section 11. Antitrust Protection

- A. If a purchasing alliance develops standards that have the potential to exclude a participating carrier from offering a qualified health benefit plan or requires a participating carrier to engage in a practice or course of conduct that restricts competition, the state board shall approve the standards prior to their use.
- B. The state board shall prescribe the form and procedure for application for approval under this section. The state board may permit a purchasing alliance to file an operating plan on an annual basis to obtain approval or may require a separate application for each exclusion or requirement.
- C. The state board may approve an application under this section only if it finds that:

- (1) The exclusion will not significantly affect the competitiveness of the affected market; or
 - (2) The effect on the competitiveness of the affected market is justified because the exclusion or requirement is reasonably necessary to accomplish a purpose which is expected to benefit consumers by improving the quality or efficiency of the provision of health care coverage or health care delivery.
- D. The state board shall actively supervise the purchasing alliances and participating carriers to ensure that actions taken affecting market competition are not for private interest, but to accomplish the legislative intent of this Act.
- E. A purchasing alliance, its employees and agents, and participating carriers are exempt from state antitrust law for an act or omission which is permitted or required in accordance with this Act.

Section 12. Program Evaluation

The state board shall make a report not later than [insert date] to the governor, commissioner and the legislature of at least the following:

- A. The progress achieved in assuring affordable health care coverage to employees of member small employers;
- B. The possible need, if any, for financial incentives or other mechanisms to increase participation in the purchasing alliance;
- C. The benefits, if any, of exclusive purchasing of health insurance through the purchasing alliance for all small employers who choose to purchase health coverage; and
- D. The need to provide choices of additional or supplemental benefit designs beyond the basic and standard benefit plans; and
- E. Other changes in the law or procedure that would approve the overall efficiency, further reduce costs and improve fairness.

Section 13. Effective Date

This Act shall be effective [insert date].

Drafting Note: Each state should draft to be consistent with that state's procedures for establishing an effective date.

Legislative History (all references are to the Proceedings of the NAIC).

1995 Proc. 2nd Quarter (adopted).

Regional Health Care Voluntary Purchasing Alliance



THE PRIVATE HEALTH CARE VOLUNTARY PURCHASING ALLIANCE MODEL ACT

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Purpose and Intent

This Act shall be known as the Private Health Care Voluntary Purchasing Alliance Model Act.

The purpose of this Act is to improve the fairness, efficiency and competition in the pricing and delivering of health care coverage for employers with no more than [insert number] employees. It does so by allowing for the establishment of private competing purchasing entities (purchasing alliances) through which eligible small employers, and self-employed individuals can purchase health coverage. Another goal is to avoid jurisdictional confusion and unnecessary and expensive bureaucracy within a purchasing alliance and state government by clarifying the respective roles and jurisdiction of existing regulatory agencies and a purchasing alliance. This Act provides a mechanism for small employers to join together solely for the purpose of procuring health insurance and operates as an exception to existing false group or fictitious group laws. In addition, the intent of the Act is to avoid creating an undue burden on small employers when purchasing health care coverage through a purchasing alliance.

This Act is also intended to provide a meaningful choice of high quality, fairly priced health care providers and health care coverage for member small employers, employees and individuals of a purchasing alliance through a system that is fair, efficient and accountable to its members and includes procedural and substantive protections.

It is envisioned that a purchasing alliance, through an open and fair competitive procurement process, will contract with qualified group carriers to provide a meaningful choice of carriers providing health benefit plans to purchasing alliance members.

Drafting Note: In order that states might choose which approach would best accommodate their needs, the National Association of Insurance Commissioners (NAIC) has developed several purchasing alliance model acts to address the problems of providing health care coverage to small employers and their employees. In doing this, the NAIC is not expressing a preference for one model over another. This Act assumes that a state has already adopted substantially the most recent version of the NAIC's Small Employer Health Insurance Availability Model Act to ensure that a purchasing alliance formed under this Act operates properly.

For example, it is imperative that health benefit plans issued to purchasing alliances and policies issued directly to small employers who are not members of a purchasing alliance operate under the same rating, underwriting, enrollment and participation requirements. Absent strong market reforms, such as guaranteed issue of all products sold in the small group market, a voluntary purchasing alliance will become a high risk pool. The Private Health Care Voluntary Purchasing Alliance Model Act is intended to be a portion of a larger program of underwriting reforms in the general small group market and would necessarily use the same terms and definitions.

Private Health Care Voluntary Purchasing Alliance

Drafting Note: States may consider expanding alliance eligibility to include individuals, state employees, and other designated population groupings that are eligible to purchase health insurance coverage through a purchasing alliance. However, in expanding eligibility prior to universal coverage, states should be careful to avoid burdening a purchasing alliance with high-risk individuals or groups. If population groupings other than small employers are eligible to purchase coverage through an alliance, underwriting and rating parity should be required inside and outside the alliance.

Section 1. Definitions

- A. "Adjusted community rating" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- B. "Board" means a purchasing alliance board.
- C. "Business plan" means the plan of operation of the health care purchasing alliance.
- D. "Carrier" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- E. "Commissioner" has the same meaning as in Section [insert reference to the chief insurance regulatory official of the state].

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears. Where jurisdiction of managed care organizations lies with some other state agency, or dual state regulation occurs, a state should add additional language referencing that agency to ensure the appropriate coordination of responsibilities.

- F. "Dependent" has the same meaning as in Section [insert reference to small employer health insurance availability law].

Drafting Note: States without a statutory definition of dependent may wish to use the following definition:

"Dependent" means a spouse; an unmarried child under the age of [nineteen (19)] years; an unmarried child who is a full-time student under the age of [insert maximum age] and who is financially dependent upon the enrollee; and an unmarried child of any age who is medically certified as disabled and dependent upon the enrollee.

When using this definition, states should insert a maximum age for student dependents that is consistent with other state laws. States also may wish to include other individuals defined as dependents by state law. The term child above is not intended to be limited to natural children of the enrollee.

- G. "Eligible employee" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- H. "Enrollee" means an eligible employee, self-employed individual or a dependent of an eligible employee who is enrolled in a health benefit plan offered through the purchasing alliance by a participating carrier.

Drafting Note: The Act assumes that a small employer group includes self-employed individuals. This term should be deleted from the definition of "enrollee" if the minimum size of a small employer group is two or more.

- I. "Health benefit plan" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- J. "Late enrollee" has the same meaning as in Section [insert reference to small employer health insurance availability law].
- K. "Limited benefit health insurance" has the same meaning as in Section [insert reference to small employer health insurance availability law].

- L. "Member small employer" means a small employer who enrolls in a purchasing alliance.
- M. "Participating carrier" means a carrier that contracts with a purchasing alliance to provide coverage to enrollees under a health benefit plan.
- N. "Purchasing alliance" or "alliance" means a non-risk bearing nonprofit corporation licensed pursuant to this Act established under [insert statutory reference to nonprofit corporation act] to provide health insurance through multiple unaffiliated participating carriers to member small employers and their employees within a defined service area authorized by the commissioner.
- O. "Small employer" has the same meaning as in Section [insert reference to small employer health insurance availability law].

Drafting Note: Definitions that reference small employer health insurance availability statutes may be deleted if a state places this Act within the same statutory chapter.

Section 2. Jurisdiction of the Commissioner; Penalties

- A. The commissioner shall have the authority to regulate the establishment and conduct of purchasing alliances as set forth in this Act.
- B. No person or entity may market, sell, offer, or arrange for a package of one or more health benefit plans underwritten by two (2) or more carriers to two (2) or more small employers or their eligible employees without first being licensed by the commissioner pursuant to this Act.
- C. A person or entity not licensed by the commissioner as a purchasing alliance and engaged in the purchase, sale, marketing or distribution of health insurance or health care benefit plans shall not hold itself out as an alliance, health insurance purchasing alliance, purchasing alliance, health insurance purchasing cooperative or purchasing cooperative, or otherwise use a confusingly similar name.
- D. Nothing in this Act shall be deemed to be in conflict with or limit the duties and powers granted to the commissioner under the laws of this state.
- E. Purchasing alliances shall report to the commissioner any suspected or alleged law violations.
- F. Violations of this Act shall be subject to the penalties contained in [insert reference to state law penalty provisions].

Drafting Note: The range of regulatory actions, processes, remedies and penalties to be specified here should be least as broad as those available to the commissioner when he or she sanctions entities under the insurance laws.

Section 3. Purchasing Alliance Application and Licensing Process

- A. An application in a form designated by the commissioner shall be completed and filed with the commissioner by an authorized representative of the board of the nonprofit corporation established as a precursor to being granted a purchasing alliance license. An application will not be deemed filed until all information necessary to properly process the application has been received by the commissioner.

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Upon filing, the commissioner will make a determination concerning the application and will provide notice of the determination to the applicant. If approved, a copy of a license, in a form designed by the commissioner, shall be provided to the purchasing alliance. The license shall serve as authorization to operate pursuant to this Act.

- B. Each applicant and duly licensed purchasing alliance shall file with the commissioner the following information or documents:
- (1) A business plan for approval by the commissioner. The business plan is a detailed, written plan of operations explaining how the applicant intends to meet the public policy objectives of reduced cost, increased access and improved quality within the small employer marketplace. The business plan is a written commitment by the alliance. Material changes in policy or operations of the business plan are subject to the prior approval of the commissioner on the same basis as the original business plan. The business plan shall include, but not be limited to, the following information:
 - (a) The specific steps planned to advance cost control and quality improvement, and to improve access to health insurance or health care services. The business plan shall affirmatively demonstrate that the alliance will have the technical expertise and physical capacity to serve a significant group of small employers and their eligible employees not currently being served by a purchasing alliance. Significant means at least ten percent (10%) of the population within the proposed service area. The business plan shall affirmatively demonstrate that the alliance will reduce cost, improve quality and improve access to health insurance or health care services; and
 - (b) The scope of services to be offered in the proposed service area and the resources and expertise to be used to implement and administer those services. An alliance shall demonstrate the technical and physical capacity to serve a significant group of small employers and their eligible employees over a wide territory. An alliance shall demonstrate the technical and physical capacity to provide service quality throughout the entire alliance service area;
 - (2) The applicant's nonprofit articles of incorporation, bylaws and other formation and business operation documents. An alliance shall demonstrate to the satisfaction of the commissioner that its corporate governance makes it an appropriate and effective representative of small employers and their eligible employees' interests within the proposed service area. An alliance shall demonstrate that it is more than a marketing or distribution channel for a single product or the products of a single carrier. An alliance shall organize and facilitate competition between multiple unaffiliated carriers;
 - (3) A list of officers and directors of the applicant and the contract administrator, if one is employed, and personal biographical information or firm descriptions for each. The officers, directors and contract administrator shall not have a prior record of administrative, civil or criminal violations within any financial service industry.

The personal biographical information and firm descriptions shall demonstrate by clear and convincing evidence that those involved in the operation of the alliance have the expertise, experience and character to effectively and professionally represent small employers and their eligible employees in a fiduciary capacity;

- (4) Evidence of adequate security and prudence in the accounting, deposit, collection, handling and transfer of moneys. An alliance shall affirmatively demonstrate adequate financial controls to the satisfaction of the commissioner as a condition of licensure;
- (5) The small employers and their eligible employees to which the alliance will be marketing. An alliance shall demonstrate to the satisfaction of the commissioner that it will extend alliance coverages to a significant group of small employers and their eligible employees not currently served by an alliance;
- (6) Disclosure of any preexisting oral or written agreements;

Drafting Note: Preexisting agreements may raise questions of conflict or demonstrate the intention to create a marketing channel for a single product or single carrier. Conversely, pre-existing agreements may assist in affirmatively demonstrating technical or physical capacity to serve a service area or to extend alliance services to a significant group of small employers and their eligible employees not currently served by an alliance.

- (7) Quarterly financial statements and annual reports on forms approved by the commissioner. The financial statements and annual reports shall be designed to ensure the operation of the alliance in a sound financial fashion, to ensure the alliance is not a risk-bearing entity, to ensure sound financial controls and money management, and to prevent mismanagement or misappropriation of funds either through neglect or malfeasance;
- (8) Reports of material changes in the policy or operations of the business plan. The changes are subject to approval by the commissioner prior to implementation by the alliance; and
- (9) Any other information required by the commissioner deemed pertinent to the policies and operation of the alliance.

- C. Financial and performance audits or examinations of the alliance shall be conducted on a regular basis by the commissioner. The commissioner may require audited financial statements from an alliance. Reasonable costs of examinations or audits are to be paid by the alliance. The commissioner may impose conditions on licensure, or continued licensure, for example, the removal and replacement of managerial, marketing staff or third party contractors to remedy compliance or performance problems.

Section 4. Grounds for Denial, Nonrenewal, Suspension or Revocation of License

In addition to any other grounds specified in this Act, the following constitute grounds for denial, nonrenewal, suspension or revocation of an application or existing license, following notice and an opportunity for hearing:

- A. Failure to comply with the provisions of this Act;

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- B. Failure to disclose a preexisting oral or written agreement during the alliance application process;
- C. Failure to comply with and carry out the purchasing alliance business plan filed with the commissioner;
- D. Failure to have adequate controls or failure to follow approved procedures;
- E. Failure to meet minimum standards in a financial or performance audit or examination;
- F. Failure to extend alliance health benefit plan coverages to a significant group of small employers and their eligible employees not currently served by an alliance;
- G. Failure to comply with a lawful order of the commissioner;
- H. Committing an unfair or deceptive act or practice as defined in [insert reference to unfair trade practices act];
- I. Filing any necessary form with the commissioner that contains fraudulent information or omission;
- J. Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a person or participating carrier otherwise not entitled to the alliance and that have been entrusted to the alliance in its fiduciary capacity;
- K. Failure to demonstrate through clear and convincing evidence that it will extend alliance services to a significant group of buyers not currently being served by an alliance; or
- L. Failure to demonstrate through clear and convincing evidence that it will reduce the cost, improve the quality, and improve access to or choice of affordable health insurance or health care services.

Section 5. Conflicts of Interest

No board members or members of their household nor any management personnel of the alliance may be employed by, be a consultant for, be a member of the board of directors of, be affiliated with an agent of, or otherwise be a representative of any carrier or other insurer, a health care provider, agent or broker. This provision shall not preclude a board member from purchasing coverage through an alliance.

Drafting Note: States should review their ethics laws to ensure prohibition or limitation on the amount of stock that a board members can own in the entities described in Section 5. If no prohibition or limitation exists, a state should consider drafting language to do so.

Section 6. Additional Powers of and Restrictions on Purchasing Alliances

In addition to the powers granted to it in Section [insert reference to nonprofit corporation act]:

- A. A purchasing alliance may do any of the following:

- (1) Set reasonable fees for membership, which may vary by employer size, in the purchasing alliance that will finance reasonable and necessary costs incurred in administering the purchasing alliance;
- (2) Define and offer other health benefit plans in addition to the standard and basic health benefit plans promulgated pursuant to [insert reference to small employer health insurance availability law]. The alliance may also incidentally offer optional group vision and dental benefit plans and, with the prior approval of the commissioner, other limited benefit health insurance to enrollees;

Drafting Note: Under the guaranteed issue provision of the small employer health insurance availability model act, carriers offering a particular health benefit plan designed through a purchasing alliance will also have to offer and issue that plan to any small employer outside of the purchasing alliance.

- (3) Require as a condition of membership that all employers include all their employees or a minimum percentage of employees in coverage purchased through the purchasing alliance. The purchasing alliance may require an employer making membership application to the purchasing alliance that would entail entering fewer than 100 percent of the employer's eligible employees or dependents to demonstrate that the resultant membership will not result in an adverse selection group being brought into the purchasing alliance or that the action would otherwise act as a form of risk selection or risk avoidance;
- (4) Provide premium collection services for health benefit plans offered through the purchasing alliance;
- (5) Reject or allow a carrier to reject an employer from membership or drop or allow a carrier to drop a member small employer if the member employer or any of its eligible employees fail to pay premiums or engage in fraud or material misrepresentation in connection with a health benefit plan purchased through the purchasing alliance. If a member small employer or enrollee is dropped from coverage, the enrollee shall be entitled to continuation and conversion coverage to the extent provided for under applicable state or federal continuation laws and the state conversion law;
- (6) Contract with qualified independent third parties for any service necessary to carry out the powers and duties authorized or required by this Act;
- (7) Contract with licensed insurance agents or brokers to market and service coverage made available through the purchasing alliance to its members. Compensation for agents and brokers may not vary based on the actual or expected health status or medical utilization of the group to which coverage is sold;
- (8) Exclude a carrier or freeze enrollment in a carrier for failure to achieve established quality, access or information reporting standards of the purchasing alliance;
- (9) Require that member employers and their eligible employees continue to pay administrative fees that are part of the contract with the purchasing alliance if a member employer or enrollee cancels prior to completion of a contract period;

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- (10) Have the authority to develop uniform standards for data to be provided by participating carriers and providers. The purchasing alliance may collect data necessary for evaluation of the performance of participating carriers and their provider networks by consumers, providers, employers and the commissioner. In formulating data collection standards, the board may use standards based on, and consistent with, existing state, National Association of Insurance Commissioners (NAIC), and national health care data collection initiatives and shall take into account their feasibility and cost-effectiveness; and
- (11) Negotiate with participating carriers the administrative expense component of the premium rates charged for coverage offered through the alliance consistent with Section 8D.

B. A purchasing alliance shall not:

- (1) Purchase health care services, assume risk for the cost or provision of health services, or otherwise contract with health care providers for the provision of health care services to enrollees;
- (2) Exclude a small employer or eligible employee or dependent of an eligible employee from membership in the purchasing alliance who agrees to pay fees for membership and the premium for coverage through the purchasing alliance and who abides by the bylaws and rules of the purchasing alliance;
- (3) Prohibit the participation of small employers, or differentiate classes of membership, based on industry type, experience, age, gender, family status, education, health status, income or other means in conflict with the rating methodology specified in Section [insert reference to small employers health insurance availability law];
- (4) Commit an act constituting a rebate prohibited pursuant to [insert applicable section of state law];
- (5) Charge a fee not directly related to the operation of the purchasing alliance or for non-health care related activities;
- (6) As a condition of membership, require a small employer, eligible employee or dependent to subscribe to limited benefit health insurance or non-health care related products or services;
- (7) Operate the purchasing alliance or market the purchasing alliance in a county or primary metropolitan statistical area in a way which would cause the purchasing alliance to select a risk pool with actuarially projected health care utilization over a two-year period which is below the projected average for all individuals residing in that county or primary metropolitan statistical area. The measurement and composition of projected utilization by members of the purchasing alliance to all individuals shall be done on a county or primary metropolitan statistical area basis and not across all members of the purchasing alliance;

- (8) Engage in any competitive act or practice that results in the selection of member small employers and enrollees based on any of the risk factors specified in Paragraph (3) of this subsection or small employer size; or
- (9) Require or take any action inconsistent or in conflict with state laws or regulations.

Section 7. Operation of Purchasing Alliances

The board shall:

- A. Operate the purchasing alliance;
- B. Develop and make available a list of objective criteria that participating carriers must meet in order to be eligible to participate in the purchasing alliance;
- C. Contract with at least three (3) unaffiliated participating carriers to ensure that enrollees have a choice from among a reasonable number of competing carriers and types of health benefit plans that include the basic and standard health benefits plans required by Section [cite small employer health insurance availability law]. The commissioner may, upon a showing of good cause, waive the requirement to have at least three (3) unaffiliated participating carriers throughout all portions of the purchasing alliance's service area.;

Drafting Note: Coverage through a purchasing alliance of employees who work and reside outside of the state can create administrative problems due to the application of other states' extraterritorial mandated benefit laws. Moreover, many participating carriers, notably local HMOs, will not be able to provide coverage for out-of-state residents in any event. Purchasing alliances may wish to address this by issuing a separate request for proposal for the purpose of contracting with carriers to provide out-of-state coverage.

- D. Develop standard enrollment procedures;
- E. Publish educational materials, plan descriptions and comparison sheets describing participating carriers and the health benefit plans available through the purchasing alliance for use in enrolling small employers and their eligible employees. The information may include an assessment of utilization management procedures and the level of quality and cost effective care;

Drafting Note: A number of accrediting organizations and other groups are developing report cards that might be considered for inclusion under this Act. In addition, the NAIC is in the process of evaluating standards and reporting measures that might be used in a comparison sheet.

- F. Establish conditions for participation of small employers that conform to the requirements of this act and Section [insert reference to small employer health insurance availability law] and that include, but are not limited to, assurances that the small employer is a bona fide employer group and provision for prepayment of premiums or other mechanisms to assure that payment will be made for coverage;
- G. In enrolling member small employers, provide that each eligible employee is permitted to enroll in any health benefit plan offered by any participating carrier so long as the health plan provides coverage where he or she works or lives;

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- H. Request from the commissioner certification that all participating carriers are licensed small group carriers as set forth in Section [insert reference to small group law], and that the carriers satisfy the financial requirements established under Section [insert section] of the laws of the state;
- I. Receive, review and act, as appropriate, on grievances by member small employers or enrollees;
- J. Review information and recommendations from consumers, employers, participating carriers or health care providers and other sources. After the review, the board may issue reports or otherwise make recommendations to improve the delivery or purchase of health care;
- K. Establish administrative and accounting procedures for operating the purchasing alliance and for providing services to member small employers and employee enrollees;
- L. Prepare an annual report on the operations of the purchasing alliance to the commissioner, which shall include an accounting of all outside revenues received by the board and internal and independent audits and any other information the commissioner may require;
- M. Establish procedures for billing and collection of premiums from member small employers (including any share of the premium paid by employee enrollees);
- N. Establish procedures for annual or rolling open enrollment periods during which an employee enrolled in a health benefit plan through the purchasing alliance may elect to enroll in any health benefit plan that is available through the purchasing alliance and that provides health coverage where he or she lives or works and during which late enrollees may elect to enroll in any health benefit plan that is available through the purchasing alliance and that provides health coverage where he or she lives or works;
- O. Provide that in the event a member small employer terminates coverage purchased through the purchasing alliance, the former member small employer shall be ineligible to purchase a health benefit plan through the purchasing alliance for a period of twelve (12) months;
- P. Maintain a trust account or accounts for deposit of all moneys received and collected or the operation of the purchasing alliance. A purchasing alliance, its board members, employees and agents shall have a fiduciary duty with respect to all moneys received or owed to it to assure payments of its obligations and a full accounting to its members and the commissioner;
- Q. Assure the offering of the same premiums and prices on negotiated health care services to all member classes equally; and
- R. Treat all members within a class equally with regard to membership and administrative fees and benefits of membership.

Section 8. Participating Carriers

- A. In order to be eligible to be a participating carrier, a carrier must be able to demonstrate the following operating characteristics satisfactory to the board:
- (1) Be licensed and approved as a small employer carrier, and in good standing with the commissioner;
 - (2) The ability to administer health benefit plans, to provide adequate service, and to comply with all contractual requirements of the purchasing alliance;
 - (3) The ability to provide enrollees with reasonable access to covered services;
 - (4) The ability to provide coverage for enrollees in any service area in which the carrier plans to participate through the purchasing alliance;
 - (5) The ability to arrange and pay for the appropriate quality, level and type of health care services;
 - (6) The ability to provide data required by the board, including information on enrollee satisfaction based on standard surveys as may be prescribed and to meet reasonable satisfaction measures as may be established;
 - (7) The ability to provide standard data elements in a manner prescribed by the board;
 - (8) The ability to meet basic quality of care standards established by the commissioner and other relevant regulators;
 - (9) Strong financial condition;
 - (10) Adequate administrative management;
 - (11) A procedure to address enrollee grievances and appeals;
 - (12) The ability to achieve satisfactory enrollment levels within the service area in which the carrier is licensed; and
 - (13) All other criteria established by the board.
- B. Carriers that contract with or employ health care providers shall have mechanisms to accomplish all of the following in a manner satisfactory to the board, in consultation with the carrier's licensing agency:
- (1) Review the quality of care covered;
 - (2) Review the appropriateness of care covered; and
 - (3) Provide accessible health care services.
- C. In evaluating which carriers may participate in the purchasing alliance, the board shall consider:

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- (1) Minimum geographic service and participation requirements, maximum thresholds for premium rates, and standards for determining whether a carrier operates efficiently;
- (2) The ability of a carrier to provide services within the purchasing alliance service area;
- (3) Pricing and the competitiveness of each bid from a carrier; and
- (4) The effect of contracting with additional carriers on the administrative costs of the purchasing alliance and member small employers, the efficiency of the purchasing alliance, and the competitiveness of the premiums that will be paid to participating carriers.

D. Every participating carrier shall:

- (1) Meet the standards established by the board pursuant to this Act;
- (2) Provide data required by the board;
- (3) Comply with all rules and regulations regarding underwriting, claims handling, sales, solicitation, licensing, fair marketing, unfair trade practices, the provisions of this Act and other applicable state statutes;
- (4) Comply with all rules and regulations regarding adjusted community rating as specified in Section [cite applicable section of small employer health insurance availability law], except that the purchasing alliance and a participating carrier may negotiate only the administrative expense component of the premium rates charged for coverage offered through the alliance where the carrier can demonstrate net administrative cost savings for its alliance business. For the purposes of this paragraph, administrative expenses are limited to marketing expenses, acquisition expenses, the cost of paying claims, commissions and maintenance expenses;

Drafting Note: Participating carriers should be required to use the same rating methodology inside and outside the alliance. Alliances should be permitted to negotiate with carriers only on administrative costs. Claim costs must be uniform across a carrier's entire small employer group market and not be subject to negotiation.

- (5) Enroll and dis-enroll individuals as directed by the purchasing alliance or its designee; and
- (6) Comply with any other requirement established by the board pursuant to this Act.

E. In contracts with participating carriers, the board may establish performance standards for specific contractual elements and penalties for failure to fulfill specific contractual obligations.

Drafting Note: This section does not specifically address the board's inherent power to cancel a contract in response to a participating carrier's breach of contract.

F. Nothing in this Act shall prohibit a participating carrier from contracting with particular health care providers or types, classes or categories of health care providers or setting reimbursement methodology.

G. Notwithstanding anything to the contrary in Section [cite guaranteed renewability section of the small employer health insurance availability law], in the event the participating carrier elects to terminate its participating agreement with a purchasing alliance, the participating carrier shall:

- (1) Provide advance notice of its decision to the board; and
- (2) Provide notice of the decision at least 180 days prior to the nonrenewal of any health benefit plan to the member small employers and enrollees. A participating carrier that elects not to renew a health benefit plan with a purchasing alliance shall be prohibited from writing new business through the purchasing alliance for a period of three (3) years from the date of the notice to the purchasing alliance or until the purchasing alliance, with the concurrence of the commissioner, invites the former participating carrier to renew participation, whichever is sooner.

Section 9. Contracts with Member Small Employers and Participating Carriers

- A. Contracts between the board and participating carriers shall specify how all premiums will be transmitted, and penalties and grace periods for payments.
- B. Contracts between purchasing alliances and member small employers shall provide:
 - (1) For administrative purposes, the purchasing alliance will be the policyholder or contract holder of the health benefit plan on behalf of member small employers, their eligible employees and dependents;
 - (2) Provide that the participating carrier will issue a certificate of coverage, or equivalent document, specifying the essential features of the health benefit plan's coverage to each enrolled eligible employee; and
 - (3) Provide that all eligible employees of the small employer who obtains coverage under the health benefit plan offered by the small employer must obtain coverage through the purchasing alliance.

Section 10. Marketing Health Benefit Plans

- A. The board shall establish marketing standards to be used by participating carriers.
- B. Any marketing, advertisement or educational material for health benefit plans sold through the purchasing alliance shall be approved by the board prior to its use. The board shall review all materials submitted to it and the materials shall be deemed approved if not disapproved within [insert number days]. The board may, through its contracts with participating carriers, deem certain classes of materials to be approved.
- C. This section shall not be construed to prohibit or to compel the purchasing alliance or a participating carrier from using the services of an agent or broker.

Drafting Note: States are reminded that this section is not intended to modify any existing statutes that require the licensing of individuals who provide advice on insurance coverage or who solicit sales of insurance.

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- D. A participating carrier, agent, broker, contractor or producer of a participating carrier, or independent insurance agent, broker, contractor or producer may not engage, directly or indirectly, in an activity or marketing practice that would encourage member small employers or eligible enrollees to:
- (1) Refrain from enrolling in a health benefit plan offered through the purchasing alliance because of their health status or claims experience;
 - (2) Seek coverage from other participating carriers because of their health status or claim experience; or
 - (3) Enroll or fail to enroll in the purchasing alliance because of their health status or claims experience.

Section 11. Solvency

In the event a purchasing alliance becomes insolvent, the commissioner shall maintain jurisdiction of the alliance for purposes of protection of the interests of the alliance enrollees.

Section 12. Purchasing Alliance Evaluation

The board shall make a report not later than [insert date] to the commissioner of at least the following:

- A. The progress achieved in assuring affordable health care coverage to eligible employees of member small employers;
- B. The need, if any, for financial incentives or other mechanisms to increase participation in the purchasing alliance;
- C. The benefits, if any, of exclusive purchasing of health insurance through the purchasing alliance for all small employers who choose to purchase health coverage; and
- D. Other changes in the law or procedure that would improve the overall efficiency, further reduce costs and improve fairness.

Section 13. Effective Date

This Act shall be effective [insert date].

Drafting Note: Each state should draft to be consistent with that state's procedures for establishing an effective date.

Legislative History (all references are to the Proceedings of the NAIC).

1995 Proc. 2nd Quarter (adopted).