

104TH CONGRESS
1ST SESSION

S. 1062

To amend the Employee Retirement Income Security Act of 1974 to increase the purchasing power of individuals and employers, to protect employees whose health benefits are provided through multiple employer welfare arrangements, to provide increased security of health care benefits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 21 (legislative day, JULY 10), 1995

Mr. JEFFORDS (for himself and Mr. NUNN) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Employee Retirement Income Security Act of 1974 to increase the purchasing power of individuals and employers, to protect employees whose health benefits are provided through multiple employer welfare arrangements, to provide increased security of health care benefits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF ERISA.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Employer Group Purchasing Reform Act of 1995”.

1 (b) AMENDMENT OF ERISA.—Except as otherwise
2 expressly provided, whenever in this Act an amendment
3 is expressed in terms of an amendment to a section or
4 other provision, such reference shall be treated as a ref-
5 erence to a section or other provision of the Employee Re-
6 tirement Income Security Act of 1974.

7 **SEC. 2. DEFINITIONS AND SPECIAL RULES.**

8 Section 3(1) (29 U.S.C. 1002(1)) is amended—

9 (1) by striking “(1) The terms” and inserting
10 “(1)(A) The terms”; and

11 (2) by adding at the end thereof the following
12 new subparagraphs:

13 “(B)(i) The term ‘employee benefit group
14 health plan’ means any plan or arrangement (wheth-
15 er fully insured or self-funded) that provides, or
16 pays for health benefits (such as physician and hos-
17 pital benefits). Such term does not include any of
18 the following, or a combination thereof:

19 “(I) Coverage only for accidental death,
20 dismemberment, dental, or vision.

21 “(II) Coverage providing wages or pay-
22 ments in lieu of wages for any period during
23 which the employee is absent from work on ac-
24 count of sickness or injury.

1 “(III) A medicare supplemental policy (as
2 defined in section 1882(g)(1) of the Social Se-
3 curity Act).

4 “(IV) Coverage issued as a supplement to
5 liability insurance.

6 “(V) Workers’ compensation or similar in-
7 surance.

8 “(VI) Automobile medical payment insur-
9 ance.

10 “(VII) A long-term care insurance policy,
11 including a nursing home fixed indemnity pol-
12 icy.

13 “(VIII) Any plan or arrangement not de-
14 scribed in any preceding subparagraph that
15 provides for benefit payments, on a periodic
16 basis, for a specified disease or illness or period
17 of hospitalization without regard to the costs in-
18 curred or services rendered during the period to
19 which the payments relate.

20 “(IX) Coverage provided through a State
21 risk pool, uncompensated care pool, or similar
22 subsidized program.

23 “(X) Such other plan or arrangement as
24 the Secretary determines is not an employee
25 benefit group health plan.

1 “(ii) The term ‘health insurer’ means an entity
2 which is licensed and authorized under State law to
3 offer health service insurance or health indemnity in-
4 surance contracts, including the following:

5 “(I) a licensed insurance company;

6 “(II) a licensed prepaid network plan (such
7 as a preferred provider organization or health
8 maintenance organization); or

9 “(III) any other entity (other than an en-
10 tity described in paragraph (12)) (providing a
11 plan of health insurance or health benefits) with
12 respect to which State insurance laws are not
13 preempted under section 514 of this Act.

14 “(iii) The term ‘prepaid network plan’ means
15 an employee benefit group health plan that arranges
16 for the financing and delivery of health care services
17 to persons covered under such health plan, in whole
18 or in part, through arrangements with providers to
19 furnish such health care services.

20 “(C) The term ‘health plan purchasing coali-
21 tion’ has the meaning given such term in section
22 802(a).

23 “(D) The term ‘fully insured health plan’
24 means an arrangement under which all benefits
25 (with the exception of co-payments and deductibles)

1 are provided in an amount that is guaranteed under
2 a policy of insurance issued by a health insurer.

3 “(E) The term ‘self-funded health plan’ means
4 an employee benefit group health plan under which
5 the employer or plan sponsor retains substantial risk
6 for providing benefits under the plan as provided by
7 regulations promulgated by the Secretary of
8 Labor.”.

9 **TITLE I—EMPLOYEE GROUP**
10 **HEALTH PLAN SECURITY**

11 **SEC. 101. EMPLOYEE BENEFIT GROUP HEALTH PLAN NON-**
12 **DISCRIMINATION REQUIREMENTS.**

13 Section 510 (29 U.S.C. 1140) is amended—

14 (1) by striking “510. It shall” and inserting
15 “510. (a) IN GENERAL.—It shall”; and

16 (2) by adding at the end thereof the following
17 new subsections:

18 “(b) EMPLOYEE BENEFIT GROUP HEALTH PLAN
19 NONDISCRIMINATION REQUIREMENTS.—

20 “(1) IN GENERAL.—An employee benefit group
21 health plan (whether fully insured or self-funded) in
22 force on or after the date of enactment of this sub-
23 section, may not deny any coverage or establish eli-
24 gibility, continuation, enrollment, or contribution re-
25 quirements for participants or beneficiaries based on

1 health status, medical condition, claims experience,
2 receipt of health care, medical history, anticipated
3 need for health care, evidence of insurability, or dis-
4 ability of a participant or beneficiary.

5 “(2) HEALTH PROMOTION EXCEPTION.—Noth-
6 ing in this subsection shall prevent an employee ben-
7 efit group health plan from establishing discounts
8 for participation in programs of health promotion or
9 disease prevention.

10 “(3) LIMITATION ON PREEXISTING CONDITION
11 EXCLUSIONS AND LIFETIME LIMITS.—

12 “(A) IN GENERAL.—An employee benefit
13 group health plan (fully insured or self-funded)
14 may impose a limitation or exclusion of benefits
15 relating to treatment of a condition based on
16 the fact that the condition preexisted the effec-
17 tive date of the plan with respect to a partici-
18 pant or beneficiary only if—

19 “(i) the condition was diagnosed or
20 treated during the 6-month period prior to
21 the date of enrollment in the health plan;

22 “(ii) the limitation or exclusion ex-
23 tends for a period of not more than 12
24 months after the date of enrollment in the
25 health plan;

1 “(iii) the limitation or exclusion does
2 not apply to an individual who, within 30
3 days of the date of birth of the individual,
4 was covered under the plan; and

5 “(iv) the limitation or exclusion does
6 not apply to a pregnancy existing on the
7 effective date of coverage.

8 “(c) CREDITING OF QUALIFYING PREVIOUS COV-
9 ERAGE.—

10 “(1) IN GENERAL.—An employee benefit group
11 health plan (whether fully insured or self-funded)
12 shall provide that if a participant or beneficiary is
13 in a period of previous qualifying coverage as of the
14 date of enrollment under such plan, any period of
15 exclusion or limitation of coverage with respect to a
16 preexisting condition shall be reduced by 1 month
17 for each month in which the participant or bene-
18 ficiary was in the period of previous qualifying cov-
19 erage.

20 “(2) DISCHARGE OF DUTY.—The duty of an
21 employer or plan sponsor to verify previous qualify-
22 ing coverage with respect to a participant or bene-
23 ficiary is effectively discharged when such plan spon-
24 sor provides documentation to a participant or bene-
25 ficiary at the time such participant or beneficiary be-

1 comes ineligible for coverage under the group health
2 plan verifying—

3 “(A) the dates that the participant or ben-
4 eficiary was covered under such previous quali-
5 fying coverage;

6 “(B) the benefits and cost-sharing ar-
7 rangement available to the participant or bene-
8 ficiary under such previous qualifying coverage;
9 and

10 “(C) the preexisting condition limitations
11 or exclusions, if any, that applied to the plan
12 under such previous qualifying coverage.

13 “(3) DEFINITION.—The term ‘previous qualify-
14 ing coverage’ means the period beginning on the
15 date a participant or beneficiary is enrolled under a
16 health plan and ends on the date the participant or
17 beneficiary is not so enrolled for a continuous period
18 of more than 30 days (without regard to any waiting
19 period).

20 “(d) LIFETIME LIMITS.—An employee benefit group
21 health plan (whether fully insured or self-funded) may not
22 impose a catastrophic or lifetime limit with respect to cov-
23 erage under the plan.”.

1 **SEC. 102. DISCLOSURE REQUIREMENTS.**

2 (a) DISCLOSURE OF INFORMATION BY INSURERS.—
3 Part 1 of subtitle B of title I (29 U.S.C. 1021 et seq.)
4 is amended by adding at the end thereof the following new
5 section:

6 **“SEC. 112. DISCLOSURE OF INFORMATION BY INSURERS.**

7 “(a) IN GENERAL.—In connection with the offering
8 for sale of any employee benefit group health plan to an
9 employer or plan sponsor, an insurer shall make a reason-
10 able disclosure, as part of its solicitation and sales mate-
11 rials, of—

12 “(1) the provisions of the group health plan
13 concerning the insurer’s right to change premium
14 rates and the factors that affect changes in premium
15 rates;

16 “(2) the provisions of such plan relating to re-
17 newability of policies and contracts;

18 “(3) the provisions of such plan relating to any
19 preexisting condition provision; and

20 “(4) descriptive information about the benefits
21 available under all benefit plans for which the em-
22 ployer is qualified.

23 Information shall be provided under this subsection in a
24 manner determined to be understandable by the typical
25 plan participant and beneficiary, and shall be accurate and

1 comprehensive to reasonably inform employers and par-
2 ticipants of their rights and obligations under the plan.

3 “(b) EXCEPTION.—With respect to the requirements
4 of subsection (a), any information that is determined by
5 the insurer to be proprietary and trade secret information,
6 or competitively sensitive information, shall not be subject
7 to the disclosure requirements of such subsection except
8 as agreed to by the insurer.”.

9 (b) DISCLOSURE TO PARTICIPANTS AND BENE-
10 FICIARIES IN SELF-FUNDED EMPLOYEE BENEFIT GROUP
11 HEALTH PLANS.—Part 1 of subtitle B of title I (29
12 U.S.C. 1021 et seq.) (as amended by subsection (a)) is
13 further amended by adding at the end thereof the follow-
14 ing new section:

15 **“SEC. 113. DISCLOSURE TO PARTICIPANTS AND BENE-**
16 **FICIARIES IN SELF-FUNDED EMPLOYEE BEN-**
17 **EFIT GROUP HEALTH PLANS.**

18 “(a) REQUIREMENT.—

19 “(1) IN GENERAL.—Each self-funded employee
20 benefit group health plan shall issue to each partici-
21 pant and beneficiary, in language determined to be
22 easily understandable by the typical participant or
23 beneficiary, a statement indicating—

1 “(A)(i) that the plan is enforced under this
2 Act and is not a licensed health plan under the
3 laws of any State;

4 “(ii) that the plan is not required to pro-
5 vide any State-mandated benefits; and

6 “(iii) that the plan is not required to par-
7 ticipate in State guarantee funds; and

8 “(B) that, if the plan does not pay all ben-
9 efits for which participants or beneficiaries are
10 eligible under the arrangement, responsibility
11 for payment for medical care may to some ex-
12 tent remain with the participant or beneficiary.

13 “(2) TIME FOR DISCLOSURE.—The infor-
14 mation described in paragraph (1) shall be pro-
15 vided to each participant and beneficiary within
16 30 days after the close of each fiscal year of the
17 arrangement and within such reasonable time
18 before commencing coverage under the arrange-
19 ment as the Secretary shall prescribe by regula-
20 tion.

21 “(b) NOTICE OF MATERIAL CHANGES.—

22 “(1) IN GENERAL.—Each self-funded health
23 plan shall issue to each participant and beneficiary,
24 in language determined to be easily understandable
25 to the typical participant or beneficiary, a notice de-

1 scribing any material change in the terms of the
2 plan.

3 “(2) TIME FOR DISCLOSURE.—The notice re-
4 ferred to in paragraph (1) shall be issued to each
5 participant and beneficiary within 30 days after the
6 earlier of the date of the adoption of the material
7 change involved or the effective date thereof.”.

8 **SEC. 103. PLAN TERMINATION REQUIREMENTS.**

9 Part 6 of subtitle B of title I (29 U.S.C. 1161 et
10 seq.) is amended by adding at the end thereof the follow-
11 ing new section:

12 **“SEC. 610. GROUP HEALTH PLAN TERMINATION NOTIFICA-
13 TION REQUIREMENTS.**

14 “(a) IN GENERAL.—Not later than 90 days prior to
15 the termination of any employee benefit group health plan
16 (whether the plan is fully insured or self-funded), the plan
17 sponsor shall notify each participant and beneficiary of
18 such termination. During such 90-day period, an employer
19 may not—

20 “(1) modify benefits as described in the most
21 recent plan document; or

22 “(2) modify employer contribution rates.

23 “(b) PROOF OF PLAN INVOLUNTARY TERMINATION
24 POLICY.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (4), the plan sponsor shall submit to the Sec-
3 retary, for each self-funded employee benefit group
4 health plan, evidence of the existence of a plan invol-
5 untary termination policy. Such termination policy—

6 “(A) shall be submitted on an annual
7 basis;

8 “(B) shall be issued either by—

9 “(i) a State-licensed insurer; or

10 “(ii) a United States domiciled State-
11 licensed captive insurer, as determined in
12 regulations promulgated by the Secretary;

13 “(C) shall provide each participant or ben-
14 efiary 90 days of coverage beyond the date of
15 plan termination; and

16 “(D) shall provide for all outstanding ben-
17 efit payments covered under the plan.

18 “(2) ISSUANCE.—The requirements of para-
19 graph (1) may be met through surety bonds, letters
20 of credit, or other appropriate security to the extent
21 provided in regulations issued by the Secretary.

22 “(3) COVERAGE.—For purposes of this para-
23 graph (1)(C), the term ‘coverage’ means coverage
24 for the same benefits as described in the latest sum-
25 mary plan document.

1 “(4) EXCEPTION.—Notwithstanding the re-
2 requirements of this section, a self-funded employee
3 benefit group health plan that is subject to the re-
4 quirements of this section, shall not be required to
5 meet the requirements of paragraphs (1) and (2)
6 if—

7 “(A) in the case of an employee benefit
8 group health plan or plans maintained by a sin-
9 gle employer, the employer has received at least
10 a AAA bond credit rating or an equivalent cred-
11 it rating from a credit rating agency certified
12 for such purpose by the Secretary; and

13 “(B) in the case of an employee benefit
14 group health plan that is multiemployer plan
15 that is collectively bargained and meets the re-
16 quirements of section 302 of the Labor Man-
17 agement Relations Act of 1947 (29 U.S.C.
18 186), the trustees of the plan have entered into
19 withdrawal liability agreements with the con-
20 tributing employers to the plan which are ap-
21 proved by the Secretary.

22 The requirements of subparagraphs (A) and (B) are
23 met with respect to an employee benefit group
24 health plan if the plan submits on an annual basis

1 to the Secretary a statement of compliance with ei-
2 ther such paragraph.”.

3 **TITLE II—MULTIPLE EMPLOYER**
4 **WELFARE ARRANGEMENT RE-**
5 **FORM**

6 **SEC. 201. DEFINITIONS.**

7 (a) CLARIFICATION OF STATUS OF PLANS MAIN-
8 TAINED BY PARTICIPATING EMPLOYERS UNDER MUL-
9 TIPLE EMPLOYER WELFARE ARRANGEMENTS.—Section
10 3(1)(A) (29 U.S.C. 1002(1)) (as amended by section 2)
11 is further amended by adding at the end the following new
12 sentence: “Irrespective of whether a multiple employer
13 welfare arrangement is (or is treated as) a plan under this
14 title, each participating employer under such arrangement
15 shall be treated as maintaining by means of such arrange-
16 ment an employee welfare benefit plan under which the
17 employees of such employer who are covered under such
18 arrangement are the participants.”.

19 (b) MODIFICATIONS TO DEFINITION OF MULTIPLE
20 EMPLOYER WELFARE ARRANGEMENT.—Paragraph (40)
21 of section 3 (29 U.S.C. 1002(40)) is amended by adding
22 at the end the following new subparagraph:

23 “(C)(i) The term ‘multiple employer welfare ar-
24 rangement’ includes an employee welfare benefit
25 plan which is established or maintained for the pur-

1 pose of offering or providing any benefit described
2 in paragraph (1) to individuals (or their bene-
3 ficiaries) who perform services pursuant to an em-
4 ployee leasing arrangement if—

5 “(I) under such employee leasing arrange-
6 ment the lessor does not retain, both legally
7 and in fact, the right of direction and control
8 within the scope of employment over the indi-
9 viduals whose services are supplied under the
10 arrangement,

11 “(II) under the employee leasing arrange-
12 ment the lessor’s responsibility for payment of
13 wages, payroll related taxes, and employee ben-
14 efits of such individuals is, either legally or in
15 fact, dependent upon payment by the lessee to
16 the lessor for its services,

17 “(III) employee leasing services provided
18 under the employee leasing arrangement are so-
19 licited, advertised, or marketed through or by li-
20 censed insurance agents or brokers, or

21 “(IV) any owner or director of, any part-
22 ner in, or any relative of, the lessee is an em-
23 ployee of the lessor or is eligible to participate
24 in the employee welfare benefit plan or other
25 arrangement.

1 “(ii) For purposes of this subparagraph, the
2 term ‘employee leasing arrangement’ means any
3 labor leasing arrangement, staff leasing arrange-
4 ment, extended employee staffing or supply arrange-
5 ment, or other arrangement under which one busi-
6 ness or other entity (referred to in this subpara-
7 graph as the ‘lessee’) receives, under a lease or other
8 arrangement entered into with any other business or
9 other entity (referred to in this subparagraph as the
10 ‘lessor’), services of individuals to be performed
11 under such lease or other arrangement.”.

12 (c) REGISTRATION REQUIREMENTS FOR MEWA’S.—
13 Paragraph (40) of section 3 (29 U.S.C. 1002(40)) as
14 amended by subsection (c), is further amended by adding
15 at the end the following new subparagraph:

16 “(D) The Secretary shall by regulation provide
17 for the registration of multiple employer welfare ar-
18 rangement with the Secretary on an annual basis.”.

19 (d) CLARIFICATION OF TREATMENT OF SINGLE EM-
20 PLOYER ARRANGEMENTS.—Section 3(40)(B) (29 U.S.C.
21 1002(40)(B)) is amended—

22 (1) in clause (i)—

23 (A) by inserting “for any plan year of any
24 such plan, or any fiscal year of any such other
25 arrangement,” after “single employer”; and

1 (B) by inserting “during such year or at
2 any time during the preceding 1-year period”
3 after “common control”;

4 (2) in clause (iii)—

5 (A) by striking “common control shall not
6 be based on an interest of less than 25 percent”
7 and inserting “an interest of greater than 25
8 percent may not be required as the minimum
9 interest necessary for common control”;

10 (B) by striking “similar to” and inserting
11 “consistent and coextensive with”; and

12 (C) by striking “and” at the end;

13 (3) by redesignating clause (iv) as clause (v);

14 and

15 (4) by inserting after clause (iii) the following
16 new clause:

17 “(iv) in determining, after the application of
18 clause (i), whether benefits are provided to employ-
19 ees of two or more employers, the arrangement shall
20 be treated as having only 1 participating employer
21 if, after the application of clause (i), the number of
22 individuals who are employees and former employees
23 of any one participating employer and who are cov-
24 ered under the arrangement is greater than 85 per-
25 cent of the aggregate number of all individuals who

1 are employees or former employees of participating
2 employers and who are covered under the arrange-
3 ment.”.

4 **SEC. 202. MODIFICATION OF PREEMPTION RULES FOR**
5 **MULTIPLE EMPLOYER WELFARE ARRANGE-**
6 **MENTS.**

7 (a) STATE LAWS NOT PREEMPTED.—Subparagraph
8 (A) of section 514(b)(6) (29 U.S.C. 1144(b)(6)(A)) is
9 amended to read as follows:

10 “(A) In the case of a multiple employer welfare ar-
11 rangement which is an employee benefit group health plan
12 (whether fully insured or self-funded) in addition to this
13 title, any law of any State which regulates insurance may
14 apply.”.

15 (b) OTHER PREEMPTION RULES.—Section 514(b)(6)
16 (29 U.S.C. 1144(b)(6)) is amended by striking subpara-
17 graphs (B) and (C) and inserting in lieu thereof the fol-
18 lowing new subparagraph:

19 “(B) Nothing in this title shall be construed as pro-
20 hibiting a State from—

21 “(i) requiring any person to provide information
22 or documentation which the insurance commissioner
23 (or similar official) of the State deems necessary to
24 enable the State to determine whether an entity is
25 a multiple employer welfare arrangement, or

1 “(ii) applying generally applicable licensing re-
2 quirements with respect to the services of contract
3 administrators or other licensed professionals whose
4 services are provided to a multiple employer welfare
5 arrangement.”.

6 **SEC. 203. APPLICATION OF CRIMINAL PENALTIES.**

7 (a) IN GENERAL.—Section 501 (29 U.S.C. 1131) is
8 amended by adding at the end the following new sub-
9 section:

10 “(b) Any person who, in connection with a multiple
11 employer welfare arrangement established or maintained
12 for the purpose of offering or providing any employee ben-
13 efit group health plan benefit to employees or their bene-
14 ficiaries, willfully and knowingly makes a false representa-
15 tion to any employer, any employee, any employee’s bene-
16 ficiary, any State, or the Secretary as to the status of the
17 arrangement under this Act, or as to the relationship of
18 the arrangement to any employer or to any employee orga-
19 nization (including any national or international employee
20 organization or federation of such organizations), shall,
21 upon conviction, be fined not more than \$5,000 (\$100,000
22 in the case of persons other than individuals), or be im-
23 prisoned not more than 1 year, or both.”.

1 (b) CONFORMING AMENDMENT.—Section 501 (29
2 U.S.C. 1131) is amended by inserting “(a)” after “SEC.
3 501.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to any action taken on or after
6 the date of the enactment of this Act.

7 **TITLE III—HEALTH PLAN** 8 **PURCHASING COALITIONS**

9 **SEC. 301. HEALTH PLAN PURCHASING COALITIONS.**

10 (a) IN GENERAL.—Subtitle B of title I (42 U.S.C.
11 1021 et seq.) is amended by adding at the end thereof
12 the following new part:

13 **“Part 7—Health Plan Purchasing Coalitions**

14 **“SEC. 801. APPLICABILITY.**

15 “The requirements of this part shall apply to all reg-
16 istered health plan purchasing coalitions.

17 **“SEC. 802. HEALTH PLAN PURCHASING COALITIONS.**

18 “(a) DEFINITION.—As used in this part, the term
19 ‘health plan purchasing coalition’ means a group of indi-
20 viduals or employers that, on a voluntary basis and in ac-
21 cordance with this section, form an entity for the purpose
22 of providing insured health plans for its membership. An
23 insurer, agent, broker or any other individual or entity en-
24 gaged in the sale of insurance may not form or underwrite
25 a coalition.

1 “(b) CERTIFICATION.—

2 “(1) IN GENERAL.—A State shall certify health
3 plan purchasing coalitions that meet the require-
4 ments of this section. Each coalition shall be char-
5 tered under State law and registered with the Sec-
6 retary of Labor.

7 “(2) STATE REFUSAL TO CERTIFY.—If a State
8 fails to implement a program for certifying health
9 plan purchasing coalitions in accordance with the
10 standards under this Act, the Secretary shall certify
11 and oversee the operations of such coalitions in such
12 State.

13 “(3) INTERSTATE COALITIONS.—

14 “(A) IN GENERAL.—For purposes of this
15 section, a health plan purchasing coalition oper-
16 ating in more than one State shall be certified
17 by the State in which the coalition is domiciled.

18 “(B) CHARTER.—An interstate health plan
19 purchasing coalition shall be chartered by each
20 State in which such coalition conducts business
21 (such as offering membership to individuals or
22 entities in a State or offering enrollment in
23 health plans operating in a State). States may
24 enter into cooperative arrangements for the

1 purpose of certifying and overseeing the oper-
2 ation of such coalitions.

3 “(C) DOMICILE.—For purposes of sub-
4 paragraph (A), a health plan purchasing coali-
5 tion shall be considered to be domiciled in the
6 State in which the most participants and bene-
7 ficiaries of the coalition are located.

8 “(4) STATE LOCATION OF PARTICIPANTS AND
9 BENEFICIARIES.—

10 “(A) IN GENERAL.—A health plan pur-
11 chasing coalition shall be treated as covering
12 participants and beneficiaries located in a State
13 only if the minimum required number of mem-
14 bers who are covered under the coalition as par-
15 ticipants and beneficiaries are located in such
16 State, except that if the minimum required
17 number of such individuals are not located in
18 any State, such arrangement shall be treated as
19 covering participants and beneficiaries in any
20 State in which any participant or beneficiary is
21 located.

22 “(B) MINIMUM REQUIRED NUMBER.—For
23 purposes of subparagraph (A), the minimum re-
24 quired number is the greater of—

1 “(i) 5 percent of the total number of
2 individuals described in subparagraph (A),
3 or

4 “(ii) 100.

5 “(C) LOCATION OF INDIVIDUALS IN
6 STATE.—For purposes of subparagraph (A), a
7 participant or beneficiary shall be treated as lo-
8 cated in a State if such participant or bene-
9 ficiary is employed in such State or the address
10 of such participant or beneficiary last known by
11 the coalition is located in such State.

12 “(c) BOARD OF DIRECTORS.—

13 “(1) IN GENERAL.—Each health plan purchas-
14 ing coalition shall be governed by a Board of Direc-
15 tors that shall be responsible for ensuring the per-
16 formance of the duties of the coalition under this
17 section. The Board shall be composed of a broad
18 cross-section of representatives of employers, em-
19 ployees, and individuals participating in the coal-
20 ition. An insurer, agent, broker or any other individ-
21 ual or entity engaged in the sale of insurance may
22 not hold or control any right to vote with respect to
23 a coalition.

24 “(2) LIMITATION ON COMPENSATION.—A
25 health plan purchasing coalition may not provide

1 compensation to members of the Board of Directors.
2 The coalition may provide reimbursements to such
3 members for the reasonable and necessary expenses
4 incurred by the members in the performance of their
5 duties as members of the Board.

6 “(3) CONFLICT OF INTEREST.—No member of
7 the Board of Directors (or family members of such
8 members) nor any management personnel of the coa-
9 lition may be employed by, be a consultant for, be
10 a member of the board of directors of, be affiliated
11 with an agent of, or otherwise be a representative of
12 any health plan or other insurer, health care pro-
13 vider, or agent or broker. Nothing in the preceding
14 sentence shall limit a member of the Board from
15 purchasing coverage from a health plan offered
16 through the coalition.

17 “(d) MEMBERSHIP AND MARKETING AREA.—

18 “(1) MEMBERSHIP.—

19 “(A) IN GENERAL.—A health plan pur-
20 chasing coalition may establish limits on the
21 size of employers who may become a member of
22 the coalition, and may determine whether to
23 permit individuals to become members. Upon
24 the establishment of such membership require-
25 ments, the coalition shall, except as provided in

1 subparagraph (B), accept all employers (or in-
2 dividuals) residing within the area served by the
3 coalition who meet such requirements as mem-
4 bers on a first come, first-served basis.

5 “(B) CAPACITY LIMITS.—A health plan
6 purchasing coalition may cease accepting em-
7 ployers or individuals as members of the coal-
8 tion if—

9 “(i) the coalition ceases to permit any
10 new employers or individuals to become
11 members; and

12 “(ii) the coalition can demonstrate to
13 the State (or the Secretary in the case of
14 coalitions certified by the Secretary) that
15 the financial or other capacity of coalition
16 to serve current members will be impaired
17 if the coalition is required to accept other
18 members.

19 “(2) MARKETING AREA.—A State may establish
20 rules regarding the geographic area that must be
21 served by a health plan purchasing coalition. With
22 respect to a State that has not established such
23 rules, a health plan purchasing coalition operating in
24 the State shall define the boundaries of the area to
25 be served by the coalition, except that such bound-

1 aries may not be established on the basis of health
2 status or insurability.

3 “(e) DUTIES AND RESPONSIBILITIES.—

4 “(1) IN GENERAL.—A health plan purchasing
5 coalition shall—

6 “(A) enter into agreements with at least
7 three, unaffiliated insured health plans, except
8 that the requirement of subparagraph shall not
9 apply in regions (such as remote or frontier
10 areas) in which compliance with such require-
11 ment is not possible;

12 “(B) enter into agreements with employers
13 and individuals who become members of the co-
14 alition;

15 “(C) participate in any program of risk-ad-
16 justment or reinsurance, or any similar pro-
17 gram, that is established by the State;

18 “(D) prepare and disseminate comparative
19 health plan materials (including information
20 about cost, quality, benefits, and other informa-
21 tion concerning health plans offered through
22 the coalition);

23 “(E) actively market to all eligible employ-
24 ers and individuals residing within the service
25 area; and

1 “(F) act as an ombudsman for health plan
2 enrollees.

3 “(2) PERMISSIBLE ACTIVITIES.—A health plan
4 purchasing coalition may perform such other func-
5 tions as determined by the Board of Directors or the
6 State (or the Secretary in the case of a coalition cer-
7 tified by the Secretary) to further the purposes of
8 this part, including, but not limited to—

9 “(A) the collection and distribution of pre-
10 miums and the performance of other adminis-
11 trative functions;

12 “(B) the collection and analysis of surveys
13 of health plan enrollee satisfaction;

14 “(C) the charging of a membership fee to
15 enrollees (such fees may not be based on health
16 status) and the charging of participation fees to
17 health plans;

18 “(D) cooperating with employers that self-
19 fund for the purpose of negotiating with provid-
20 ers and health plans; and

21 “(E) otherwise contracting and negotiating
22 with health plans and health care providers.

23 “(f) LIMITATIONS ON COALITION ACTIVITIES.—A
24 health plan purchasing coalition shall not—

1 “(1) perform any activity relating to the licens-
2 ing of health plans;

3 “(2) assume financial risk in relating to any
4 health plan;

5 “(3) perform any other activities that conflict
6 or are inconsistent with the performance of its du-
7 ties under this part;

8 “(4) establish eligibility, continuation, enroll-
9 ment, or contribution requirements for individuals
10 based on health status, medical condition, claims ex-
11 perience, receipt of health care, medical history, evi-
12 dence of insurability, or disability of the individual;
13 and

14 “(5) operate on a for-profit or other basis
15 where the legal structure of the coalition (as deter-
16 mined under guidelines developed by the Secretary)
17 permits profits to be made and not returned to the
18 members of the coalition.

19 “(g) RULES OF CONSTRUCTION.—Nothing in this
20 section shall be construed to—

21 “(1) require that a State organize, operate, or
22 otherwise create health care purchasing coalitions;

23 “(2) otherwise require the establishment of
24 health care purchasing coalitions;

1 “(3) require individuals or employers to pur-
2 chase health plans through a health care purchasing
3 coalition;

4 “(4) require that a health plan purchasing coa-
5 lition be the only type of health insurance purchas-
6 ing arrangement permitted to operate in a State; or

7 “(5) establish a purchasing coalition as an em-
8 ployee welfare benefit plan.

9 “(h) HEALTH PLAN PURCHASING COALITION RELA-
10 TIONSHIP TO PLAN SPONSORS.—

11 “(1) IN GENERAL.—With respect to a health
12 plan purchasing coalition, each employer or plan
13 sponsor member shall be treated as maintaining an
14 employee welfare benefit plan on behalf of the plan
15 participants and beneficiaries under the plan in-
16 volved.

17 “(2) COALITION AS PLAN ADMINISTRATOR.—A
18 health plan purchasing coalition may act as the plan
19 administrator for any employer member of the coali-
20 tion. In acting as such a plan administrator the coa-
21 lition may—

22 “(A) collect and distribute premiums;

23 “(B) manage COBRA continuation cov-
24 erage requirements;

1 “(C) provide summary plan description
2 material to participants and beneficiaries; and

3 “(D) carry out any other administrative
4 activities determined appropriate by the coali-
5 tion.”.

6 (b) LIMITED PREEMPTION.—Section 514 (29 U.S.C.
7 1144) is amended by adding at the end thereof the follow-
8 ing new subsection:

9 “(e)(1) Notwithstanding any other provision of this
10 section, with respect to a health plan purchasing coalition
11 that meets the requirements of part 7, the following State
12 laws shall be preempted:

13 “(A) State fictitious group laws.

14 “(B) State rating requirement laws, except to
15 the extent necessary to comply with the require-
16 ments of paragraph (2).

17 “(C) State mandated benefit laws, except to the
18 extent necessary to comply with the requirements of
19 paragraph (3).

20 “(D) Other State laws that directly conflict
21 with the requirements in such part 7.

22 “(2) With respect to a State rating requirement law,
23 a health plan purchasing coalition—

24 “(A) may not permit premium rates for health
25 plans to vary among employers or individuals that

1 are members of a health plan purchasing coalition in
 2 excess of the amount of such variations that would
 3 be permitted under such State rating laws among
 4 employers that are not members of the coalition; and

5 “(B) with respect to premium rates negotiated
 6 by the coalition, may permit such rates to be less
 7 than rates that would otherwise be permitted under
 8 State law if such rating differential is not based on
 9 differences in health status or demographic factors.

10 “(3) With respect to a State mandated benefit law,
 11 a health plan purchasing coalition—

12 “(A) may apply any small group reform plan
 13 design of the State to health plans offered by the co-
 14 alition; or

15 “(B) if the State has no specific small group
 16 plan design, may design a plan that shall apply to
 17 all health plans offered by the coalition.”.

18 **SEC. 302. COOPERATION BETWEEN FEDERAL AND STATE**

19 **AUTHORITIES.**

20 Section 506 (29 U.S.C. 1136) is amended by adding
 21 at the end the following new subsection:

22 “(c) RESPONSIBILITY WITH RESPECT TO MULTIPLE
 23 EMPLOYER WELFARE ARRANGEMENTS AND HEALTH
 24 PLAN PURCHASING COALITIONS.—

25 “(1) STATE ENFORCEMENT.—

1 “(A) AGREEMENTS WITH STATES.—A
2 State may enter into an agreement with the
3 Secretary for delegation to the State of some or
4 all of the Secretary’s authority under sections
5 502 and 504 to enforce the provisions of this
6 title applicable to multiple employer welfare ar-
7 rangements and health plan purchasing coal-
8 tions.

9 “(B) DELEGATIONS.—Any department,
10 agency, or instrumentality of a State to which
11 authority is delegated pursuant to an agree-
12 ment entered into under this paragraph may, if
13 authorized under State law, exercise the powers
14 of the Secretary under this title which relate to
15 such authority.

16 “(C) CONCURRENT AUTHORITY OF THE
17 SECRETARY.—If the Secretary delegates author-
18 ity to a State in an agreement entered into
19 under subparagraph (A), the Secretary may
20 continue to exercise such authority concurrently
21 with the State.

22 “(2) ASSISTANCE TO STATES.—The Secretary
23 may—

24 “(A) provide enforcement assistance to the
25 States with respect to multiple employer welfare

1 arrangements, including coordinating Federal
2 and State efforts through the establishment of
3 cooperative agreements with appropriate State
4 agencies under which the Pension and Welfare
5 Benefits Administration keeps the States in-
6 formed of the status of its cases and makes
7 available to the States information obtained by
8 it,

9 “(B) provide continuing technical assist-
10 ance to the States with respect to issues involv-
11 ing multiple employer welfare arrangements
12 and this Act,

13 “(C) assist the States in obtaining from
14 the Office of Regulations and Interpretations
15 timely and complete responses to requests for
16 advisory opinions on issues described in sub-
17 paragraph (B), and

18 “(D) distribute copies of all advisory opin-
19 ions described in subparagraph (C) to the State
20 insurance commissioner of each State.”.

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