

THE SINGLE HEALTH CARE VOLUNTARY PURCHASING ALLIANCE MODEL ACT

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Purpose and Intent

This Act shall be known as the Single 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 by the state of a centralized purchasing entity (purchasing alliance) 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 alliance and state government by clarifying the respective roles and jurisdiction of existing regulatory agencies and the 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 the purchasing alliance.

The 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 the purchasing alliance through a system that is fair, efficient and accountable to its members and includes procedural and substantive protections.

The purchasing alliance, 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 both the purchasing alliance and existing markets 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 Single 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: This Act establishes the purchasing alliance as a state agency. However, states may wish to establish the purchasing alliance as a state-chartered, nonprofit organization. States may also consider establishment under an existing state agency such as the office of the commissioner. 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 alliance with high-risk individuals or groups. If population groupings other than small employers are eligible to purchase coverage through the 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 [cite reference to small employer health insurance availability law].
- B. “Antitrust laws” means state laws intended to protect commerce from unlawful restraints, monopolies and unfair business practices.
- C. “Board” means the state purchasing alliance board authorized pursuant to this Act.
- D. “Carrier” has the same meaning as in Section [insert reference to small employer health insurance availability law] and for the purposes of this Act shall include carriers that are authorized to offer dental benefits pursuant to [insert reference to applicable state statutes dealing with dental-only carriers] for the limited purpose of enabling dental-only carriers to offer dental benefits through an alliance, either in conjunction with a small group carrier or on a stand-alone basis. These carriers shall be subject to the terms of this Act relating to participating carriers but shall not be required to qualify as small group carriers pursuant to Section 6A(1) of this Act.

Drafting Note: Most states provide for the licensing of dental-only carriers authorized to offer dental benefits. Inclusion of dental-only carriers in the definitions of “small group carrier” and “participating carrier” is designed to enable these carriers to offer dental-only benefits through an alliance without requiring them to be “small group carriers” pursuant to a state’s small employer health insurance availability law. These dental-only carriers are required to comply with all of the Act’s provisions except those which would otherwise require qualified carriers to offer health benefits other than dental benefits.

- 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 state insurance law 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.

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. “Fund” means the state purchasing alliance fund established under Section 11.
- 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 the purchasing alliance.
- N. “Participating carrier” means a carrier that contracts with the purchasing alliance to provide coverage to enrollees under a health benefit plan and for the purposes of this Act shall include carriers that are authorized to offer dental benefits pursuant to [insert reference to applicable state statutes dealing with dental-only carriers] for the limited purpose of enabling dental-only carriers to offer dental benefits through an alliance, either in conjunction with a small group carrier or on a stand-alone basis. These carriers shall be subject to the terms of this Act relating to participating carriers but shall not be required to qualify as small group carriers pursuant to Section 6A(1) of this Act.
- O. “Purchasing alliance” means the state agency established by this Act to provide health insurance through multiple unaffiliated participating carriers to member small employers and their employees throughout the state.
- P. “Regional service areas” means clearly defined, non-overlapping and exclusive geographical regions encompassing the entire state as determined by the board.
- Q. “Small employer” has the same meaning as in Section [insert reference to small employer health insurance availability law].

Drafting Note: Definitions that reference the small employer health insurance availability law may be deleted if placement of this Act is within the availability law.

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 board shall report to the commissioner suspected or alleged law violations.
- E. Violations of this Act shall be subject to the penalties contained in Sections [insert sections of state law 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 Board; Membership; Terms; Conflicts of Interest

- A. A state purchasing alliance, which shall be operated by the board, is established as a state agency.

Drafting Note: It is the intent of this Act to keep the roles of the board and commissioner clearly delineated. The role of the board is to oversee the operations of the purchasing alliance. Simply put, the commissioner continues as the “regulator” of all insurance activities within the state. The board operates the purchasing alliance for the benefit of its enrollees.

- B. The initial 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 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 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 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 board shall elect officers biennially.
- H. The 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 open meetings law]. A majority of the fully authorized membership of the board is a quorum.
- I. No board members or members of their households nor the executive director 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 board member from purchasing coverage through the alliance.
- J. The executive director and 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 executive director and board members can own in the entities described in Section 3J. 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 board, or its employees or agents, for any action taken in good faith by them in the performance of their powers and duties as defined in Sections 4 and 5.

Section 4. Powers of the Board

- A. The board may do the following:
 - (1) Enter into contracts with participating carriers to provide health benefits to eligible employees and their dependents. The board shall not be required to specify the amounts encumbered for each contract, but may allocate funds to each contract based on projected and actual subscriber enrollments. The board may establish performance standards for specific contractual elements and penalties for failure to fulfill contractual obligations;

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

- (2) Contract with qualified, independent third parties for services necessary to carry out the powers and duties of the purchasing alliance. Unless permission is specifically granted by the board, a third party hired by the purchasing alliance 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 board, an entity may not act, directly or through an affiliated company, in the same regional service area both as a participating carrier and a third party under contract to the purchasing alliance;
- (3) Enter into all other contracts as are necessary to carry out the powers and duties of this Act;
- (4) Sue or be sued, including taking action necessary for securing legal remedies on behalf of, or against the purchasing alliance, member small employers, enrollees, a board member or other parties subject to this Act;
- (5) Employ staff necessary to carry out the powers and duties of this Act;
- (6) Appoint advisory committees that may include persons with expertise in health benefits management and marketing and representatives of participating carriers, consumer groups, health care providers, and others as may be deemed necessary to carry out the purposes of this Act.
- (7) 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 employers and enrollees;
- (8) Receive and accept grants, funds or anything of value from a public or private agency; and receive and accept contributions from a legitimate source of money, property, labor or any other thing of value. However, the 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;
- (9) 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 employers health insurance availability model act, carriers offering a particular health benefit plan designed through the purchasing alliance will also have to offer and issue that plan to small employers outside of the purchasing alliance.

Drafting Note: States may wish to exempt the alliance from having to purchase the basic and standard health benefit plans that carriers are obligated to offer under state laws. It may be desirable to do this if it is the view that the alliance is the ultimate consumer on behalf of its members and should, accordingly, be able to make the decision whether to accept or reject, on behalf of its members, the health benefit plans that are required to be offered by all carriers who sell in the small employer marketplace.

This approach would allow small employers who desire not to purchase the basic or standard plans to join the alliance and would provide the most flexible system for the board to then actively negotiate a more favorable benefit structure for its members. It would also be necessary to allow for this exemption in Section 5A(8).

- (10) Assess member small employers a reasonable fee for costs incurred or anticipated in connection with the operation of the purchasing alliance;
- (11) Undertake activities necessary to administer the purchasing alliance, including marketing and publicizing the purchasing alliance, and assuring participating carrier, small employer, and enrollee compliance with purchasing alliance requirements;
- (12) Establish conditions and procedures for participation of:
 - (a) Small employers and eligible employees;
 - (b) Participating carriers; and
 - (c) Agents or brokers;
- (13) Negotiate with participating carriers the administrative expense component of the premium rates charged for coverage offered through the alliance consistent with Section 6D;
- (14) Apportion the state into regional service areas in which multiple unaffiliated participating carriers will provide coverage to enrollees; and
- (15) Exercise all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed by this Act.

Drafting Note: States may wish to allow the purchasing alliance to keep certain contract terms with participating carriers and third party administrators confidential. Accordingly, states may need to review and change existing statutes that may prohibit this.

- B. Any contract entered into pursuant to this Act shall be exempt from the provisions of Section [insert law relating to competitive bidding].

Section 5. Operation of the Purchasing Alliance

- A. The board shall:
 - (1) Establish and operate the purchasing alliance, which shall be a statewide entity offering health benefit plans to all small employers in the state;
 - (2) Employ an executive director to oversee and direct the administrative functions of the purchasing alliance;

Drafting Note: States should consider whether the executive director and other staff should be exempt from civil service requirements.

- (3) Develop model contracts which detail for potential contractors the requirements of the purchasing alliance;
- (4) Provide a copy of the model contract to interested carriers, detailing the contractual terms for participation in the purchasing alliance;
- (5) Develop and make available a list of objective criteria that must be met by participating carriers in order to be eligible to participate in the purchasing alliance;

- (6) Specify in contracts with participating carriers how all premiums will be transmitted together with inclusion of appropriate language for penalties and grace periods on late payments of premiums;
- (7) Contract with at least three (3) unaffiliated carriers in each regional service area to ensure that enrollees have a choice from among a reasonable number of differing types of competing carriers and health benefit plans that include the basic and standard health benefits plans required by [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 regional service areas;

Drafting Note: Coverage through the 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. The purchasing alliance 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) Develop standard enrollment procedures to be used by the purchasing alliance;
- (9) 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;

Drafting Note: The NAIC is in the process of evaluating standards and reporting measures that might be used in comparison guides. 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 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. The board shall specify in contracts with member small employers that the purchasing alliance will be the master contract holder of the health benefit plan policy on behalf of member small employers and enrollees. These contracts shall also provide that all eligible employees of the small employer who obtain coverage under the health benefit plan offered by the small employer must obtain coverage through the purchasing alliance;
- (11) In enrolling member small employers, the purchasing alliance shall provide that each eligible employee is permitted to enroll in any health benefit plan offered by any participating carrier so long as the health benefit plan provides coverage where he or she works or lives;
- (12) Request from the commissioner certification that all participating carriers are in good standing and licensed as small group carriers as set forth in Section [insert reference to small employer health insurance availability law], and that the carriers satisfy the financial requirements established under Section [insert reference to capital and surplus law];
- (13) Receive, review and act, as appropriate, on grievances by member small employers or enrollees;

- (14) 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 benefits;
 - (15) Establish administrative and accounting procedures for operating the purchasing alliance and for providing services to member small employers and enrollees;
 - (16) Prepare an annual report on the operations of the purchasing alliance for the commissioner, legislature and the governor, which shall include, but not be limited to, an accounting of all outside revenues received by the board and all internal and independent audits;
 - (17) Establish procedures and mechanisms for billing and collection of premiums from member small employers (including any share of the premium paid by enrollees);
 - (18) Establish procedures for annual or rolling open enrollment periods during which:
 - (a) An enrollee may elect to enroll in any other health benefit plan that is available through the purchasing alliance and that provides health coverage where he or she lives or works; and
 - (b) Any 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;
 - (19) Place into its contracts between the purchasing alliance and member small employers the following:
 - (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;
 - (20) 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; and
 - (21) Publicly disclose grants, funds or anything of value received pursuant to Section 4A(8).
- B. The board may develop uniform standards for data to be provided by participating carriers and providers. The purchasing alliance may collect and disseminate data necessary for evaluation of

the performance of participating carriers and their provider networks by consumers, providers, employers and the state. 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.

C. The board may not:

- (1) Purchase health care services, assume risk for the cost or provision of health service, 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. 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 this subsection or small employer size; or
- (9) Require or take any action inconsistent or in conflict with state laws or regulations of the commissioner.

Section 6. Requirements for Participating Carriers

- A. In order to be eligible to be a participating carrier, a carrier must be able to satisfactorily demonstrate to the board the following operating characteristics:
- (1) That they are licensed, approved as a small employer carrier, and in good standing with the commissioner;
 - (2) The ability to administer a health benefit plan, 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 arrange and pay for the appropriate quality, level and type of health care services;
 - (5) The ability to provide data required by the board, including information on enrollee satisfaction, including standard surveys as may be prescribed by the board and to meet reasonable satisfaction measures as may be established by the board;
 - (6) The ability to provide standard data elements in a manner prescribed by the board;
 - (7) The ability to meet quality of care standards established by the commissioner and other relevant regulators;
 - (8) Strong financial condition;
 - (9) Adequate administrative management;
 - (10) A procedure to address enrollee grievances and appeals;
 - (11) The ability to achieve satisfactory enrollment levels within the service area in which the carrier is licensed; and
 - (12) All other criteria established by the board.
- B. In evaluating which carriers may participate in the purchasing alliance, the board shall consider, among other factors:
- (1) Minimum regional service area 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 a regional 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.

- C. Participating 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.
- 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;
 - (5) Enroll and dis-enroll individuals in the manner specified by the board or its designee; and
 - (6) Comply with other requirements established by the board pursuant to this Act.
- E. Nothing in this Act shall prohibit participating carriers from contracting with particular health care providers or types, classes or categories of health care providers or setting reimbursement methodology.
- F. 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 the 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 a health benefit plan to the member small employers and enrollees. A participating carrier that elects not to renew a health benefit plan with the purchasing alliance shall be prohibited

from writing new business through the 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 7. Marketing Health Benefit Plans

- A. The board shall establish marketing standards for use 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 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.

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

- 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 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 8. 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 9. Antitrust Protection

The purchasing alliance, its employees and agents, and participating carriers are exempt from state antitrust law for an act or omission that is permitted or required by this Act or authorized or required by the board in accordance with this Act.

Section 10. State Health Care Purchasing Alliance Fund

- A. There is established in the office of the State Treasurer the State Health Care Purchasing Alliance Fund. All moneys received by the fund shall be placed in an interest-bearing account and interest or other income derived thereon shall be credited to the fund. Moneys in the fund shall be continuously appropriated to the board, without regard to fiscal year, for the purposes specified in this Act.
- B. The account and all funds shall be wholly and completely the property of the state and at all times available for audit by the state. Funds in the account may be derived from the following sources:
 - (1) Employer premiums;
 - (2) Employer participation fees;
 - (3) Employer late fees;
 - (4) Employer reinstatement fees;
 - (5) Agent and broker fees paid by the employer;
 - (6) Developmental costs paid by the state;
 - (7) Interest earned on the account;
 - (8) Funds paid by the participating carriers for a pooled marketing effort; or
 - (9) Other lawful sources.
- C. Funds from the account may be withdrawn by the board to pay:
 - (1) Participating carriers under their contracts;
 - (2) Third parties for their services provided under contract;
 - (3) Employer billing adjustments;
 - (4) Agent and broker fees;
 - (5) Funds owed the state for its administrative costs; and
 - (6) All other expenditures duly authorized by the board.

Drafting Note: This section should be changed if a state chooses to establish the purchasing alliance as a state-chartered nonprofit organization. Under those circumstances, the purchasing alliance fund should be set up in a bank trust fund subject to audit by the appropriate state agency.

Section 11. Purchasing Alliance Evaluation

The 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 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 12. Rulemaking Authority

The board may promulgate regulations consistent with the powers and duties set forth in this Act as necessary to implement and administer the purchasing alliance. Any rules and regulations issued pursuant to this Act may be adopted as emergency regulations in accordance with [insert reference to applicable state law] and with the Administrative Procedures Act.

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.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1995 Proc. 2nd Quarter 2, 36, 555, 589, 620-629, 639 (adopted).

1996 Proc. 2nd Quarter 10, 30, 732, 678, 779-781 (amended).