

## 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.

**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] 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 8A(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 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 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 8A(1) of this Act.
- 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.

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;
- 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;
- (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;
- 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:
- (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.

- 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.

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

*1995 Proc. 2nd Quarter 2, 36, 555, 589, 629-638 (adopted).  
1996 Proc. 2nd Quarter 10, 30, 732, 768, 781-783 (amended).*