

SENATE, No. 76

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator BASSANO

1 **AN ACT** concerning certain small group health insurance plans and
2 supplementing Title 17B of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. The Legislature finds and declares that:

8 a. Small employers have traditionally been at an economic
9 disadvantage with respect to the provision of health insurance for their
10 employees because they lack the ability to self-insure;

11 b. Self-insurance, which permits health benefits plans to be
12 established which are specifically tailored to the needs of the
13 employees, is often less expensive to administer than traditional
14 insurance;

15 c. There are now a number of administrators who can provide plan
16 administration services at considerably reduced cost because their
17 overhead is significantly lower than that of traditional insurance
18 companies;

19 d. Self-insurance, if administered properly, presents the employer
20 with greater opportunities to implement managed care and the closer
21 monitoring of the utilization of benefits than does a traditional
22 insurance program;

23 e. It is worthwhile to present an opportunity to small employers to
24 join together to take advantage of the economy of scale which
25 self-insurance brings to the delivery of health benefits to large groups;
26 and

27 f. It is recognized that small employers do not have the resources
28 to administer these plans as efficiently or skillfully as do large
29 companies, and it is thus desirable, as a matter of public policy, to
30 protect members of small employer groups by providing for a greater
31 degree of structure for their activities than is the case with large
32 employers.

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34 2. For the purposes of this act:

35 "Commissioner" means the Commissioner of Insurance.

1 "Eligible group of small employers" means any group of small
2 employers which: (1) are engaged in the same type of trade or
3 business; (2) are members of a common trade association, professional
4 association, or other association; or (3) are affiliates of a common
5 parent company.

6 "Exchange" means a Small Employers Health Benefits Exchange"
7 as provided for in section 3 of this act.

8 "Health benefits plan" means any hospital or medical expense
9 benefits coverage or dental expense coverage.

10 "Member" means any small employer which is a member of an
11 exchange as provided for in section 3 of this act.

12 "Small employer" means any person firm, corporation, partnership
13 or association actively engaged in business which, on at least 50% of
14 its working days during the preceding calendar year quarter, employed
15 at least two but no more than 49 employees, the majority of whom are
16 employed within the State of New Jersey; except that in the case of a
17 small employer who is a member of an exchange because the employer
18 is a member of a common trade association, the restriction on the
19 number of employees shall not apply. In determining the number of
20 employees, businesses which are affiliated businesses shall be
21 considered one employer, and the size of the small employer shall be
22 determined annually. Except as otherwise specifically provided by the
23 by-laws of an exchange, provisions of this act which apply to a small
24 employer shall continue to apply until the anniversary date of the
25 health benefits plan next following the date the employer no longer
26 meets the definition of a small employer.

27 "Trustee" means a member of the board of trustees of an exchange
28 as provided for in section 4 of this act.

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30 3. Any eligible group of small employers may join together by
31 means of a joint contract under the procedures established by this act
32 for the purpose of providing health benefits plans for their employees
33 and the employees' dependents. The joint contract shall be executed
34 by all members of the exchange, which may be a corporation, and the
35 entity thus created shall be known as a "Small Employers Health
36 Benefits Exchange."

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38 4. The exchange shall be governed by a board of trustees, elected
39 by the members of the exchange, and shall be composed of not less
40 than seven nor more than nine members, as provided in the exchange's
41 by-laws. The trustees shall serve for terms of three years, and shall
42 serve until their successors are elected and qualified. The by-laws
43 shall provide for staggered terms. The trustees shall serve without
44 compensation, except for reimbursement for actual expenses. At the
45 annual meeting of the exchange, the members shall elect from among
46 the trustees a chairman, a treasurer, and a secretary, whose terms of

1 office shall be no longer than one year. No trustee shall be elected for
2 more than three consecutive terms.

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4 5. The trustees shall, within 60 days of their initial election by the
5 members after the effective date of this act, formulate by-laws for the
6 operation of the exchange, which shall be ratified by a two-thirds
7 majority of the members. The by-laws shall include, but not be limited
8 to:

9 a. The establishment of procedures for the organization and
10 administration of the exchange;

11 b. Procedures for the verification of eligibility and the assessment
12 of members for their contributions to the exchange and for the
13 collection of assessments which may be in default; provided that the
14 assessments may vary only by size of group and shall not vary by
15 reason of the health status, age, or occupation of any member or
16 employee thereof;

17 c. At the discretion of the trustees, procedures for the employment
18 of a director of the exchange, whether on a full-time, part-time, or
19 consulting basis;

20 d. Procedures for the appointment of selecting an administrator to
21 pay claims on behalf of the exchange;

22 e. Procedures for the obtaining of other professional services as
23 may be needed from time to time, which may include, but not be
24 limited to, utilization review services, case management services,
25 claims review services, accounting services, actuarial services, and
26 legal services;

27 f. Procedures for obtaining stop-loss coverage, reinsurance, or
28 other services;

29 g. Procedures for the withdrawal of a member from the exchange;

30 h. Procedures for the admission of additional members to the
31 exchange;

32 i. Procedures for the expulsion of a member of the exchange;

33 j. Procedures for the termination and liquidation of the exchange
34 and the payment of its outstanding obligations.

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36 6. Within 30 days after its election, the trustees shall file with the
37 commissioner a certificate which shall list the members of the
38 exchange, the names of the trustees and the chairman, treasurer, and
39 secretary of the trustees, and the address at which communications for
40 the exchange are to be received and service of process is to be made,
41 a copy of the certificate of incorporation of the exchange, if any, and
42 a copy of the joint contract to which members of the exchange are
43 parties.

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45 7. The health benefits to be provided by the plan shall be evidenced
46 by a health benefit plan document which shall be distributed to member

1 employers and shall contain a statement of all health benefits to be
2 made available to the plan beneficiaries. The health benefits may
3 include, but shall not be limited to, any or all of the following: hospital
4 expense coverage, medical expense coverage, major medical coverage,
5 or dental benefits. The health benefits plan document shall contain a
6 statement of the deductibles and copayments applicable to the plan, as
7 well as coverage limitations, exclusions, and criteria for plan eligibility.
8

9 8. The trustees of the exchange shall require a capital deposit from
10 every member upon the member's entry into the exchange, which shall
11 remain on deposit in cash or in investments. The capital deposits and
12 any surplus from operations shall form the exchange's reserve, the
13 amount of which shall be established by the trustees from time to time
14 in consultation with an actuary. If at any time the reserve is less than
15 that required by this section, the members shall be assessed in an
16 amount to make up the deficiency. In the event that there is a
17 deficiency, the trustees shall notify the members of the deficiency. If
18 the members fail to advance the sums necessary to satisfy the
19 deficiency, the trustees may order that the exchange be liquidated in
20 accordance with the exchange's by-laws.

21

22 9. No exchange shall begin providing health benefits to its members
23 pursuant to the provisions of this act until its by-laws are adopted by
24 the trustees and the capital deposits have been paid into the exchange
25 in an amount, form and manner, which is in accordance with the
26 provisions of this act.

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28 10. At least annually, the exchange shall file with the commissioner
29 a financial statement for the preceding calendar year, in a form
30 prescribed by the commissioner, along with a filing fee of \$250.

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32 11. Every exchange providing health benefits under this act on a
33 self-insured basis shall purchase stop-loss coverage or reinsurance,
34 either on an aggregate or individual attachment point basis, or both,
35 from an insurer providing such coverage which is admitted or
36 authorized to do business in this State pursuant to Title 17 of the
37 Revised Statutes or Title 17B of the New Jersey Statutes and which
38 has a financial rating of A- or better, or its equivalent, from a national
39 rating agency, or which is eligible to write surplus lines coverage in
40 this State pursuant to Title 17 of the Revised Statutes.

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42 12. An exchange may contract with an administrator to provide
43 health benefits to its members pursuant to the provisions of this act.
44 A copy of the contract and any amendments thereto shall be filed with
45 the commissioner.

1 13. The exchange may employ any consultant, administrator, or
2 clerical personnel as are provided for in the by-laws, provided that any
3 consultant or administrator so employed shall be qualified by virtue
4 of having at least five years' experience in health benefits management
5 or risk management or equivalent educational or professional training.
6 Any consultant or administrator hired by the exchange may be
7 removed by the trustees or upon the vote of two thirds of the members
8 of the exchange.

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10 14. a. The trustees shall establish procedures in the by-laws for the
11 collection, investment, and disbursement of the moneys in the
12 exchange. The procedures shall be established in a manner which will
13 maximize the benefits to the members with respect to investment
14 income and cash flow. An accounting of the exchange's income and
15 claims paid shall be sent monthly to all exchange members.

16 b. No later than 60 days before the anniversary of the health
17 benefits plan, the trustees, in consultation with an actuary, shall
18 determine each member's assessment for the ensuing calendar year and
19 shall notify each member thereof. Assessments may be paid on an
20 annual, semi-annual, quarterly, bi-monthly, or monthly basis, as
21 provided in the by-laws.

22

23 15. The exchange shall hold an annual meeting, at a time and place
24 to be established by the board. The meetings shall be held within the
25 first quarter of each calendar year, and all members shall be notified of
26 the meeting at least 60 days in advance. Prior to the annual meeting
27 nominations shall be made from the membership for vacancies on the
28 board. Voting may be done by proxy, as provided in the by-laws.
29 Additional meetings may be held at any time, upon at least 15 days'
30 notice to the members of the exchange. Notice of the annual meeting
31 and any additional meetings shall be sent to the commissioner.

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33 16. Amendments to the by-laws may be proposed by
34 recommendation of the board or by petition of 60% of the members.
35 Amendments shall be ratified by at least a two-thirds vote of the
36 membership and filed with the commissioner.

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38 17. The trustees may, from time to time, recommend modifications
39 or additions to the health benefits plan provided by the exchange.
40 These modifications shall become effective upon ratification by
41 two-thirds of the members of the exchange, and shall be filed with the
42 commissioner upon their ratification.

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44 18. The trustees of the exchange shall cause an annual audit to be
45 made of the exchange's financial condition, which shall be transmitted

1 to all members of the exchange. The trustees shall also cause a claims
2 audit to be made at least biennially.

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4 19. The members of the exchange may be assessed, from time to
5 time, for reasonable expenses for the administration of the exchange,
6 as provided by the by-laws of the exchange.

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8 20. Any exchange established pursuant to the provisions of this act
9 is not an insurance company, health service corporation, hospital
10 service corporation, medical service corporation, dental service
11 corporation or health maintenance organization under the laws of this
12 State, and the authorized activities of the exchange do not constitute
13 the transaction of insurance nor doing an insurance business.

14

15 21. Every member of the exchange, as a condition of membership,
16 shall provide equal access to the benefits provided for herein by all of
17 the member's full-time employees who work a normal work week of
18 25 or more hours.

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20 22. a. A health benefits plan provided by an exchange pursuant to
21 this act shall not include any preexisting condition provision, except
22 that, a preexisting condition provision may apply to a late enrollee or
23 to any small employer group of two to five persons if the provision
24 excludes coverage for a period of no more than 180 days following the
25 effective date of coverage of the enrollee, and relates only to
26 conditions manifesting themselves during the six months immediately
27 preceding the effective date of coverage of the enrollee in such a
28 manner as would cause an ordinarily prudent person to seek medical
29 advice, diagnosis, care or treatment or for which medical advice,
30 diagnosis, care, or treatment was recommended or received during the
31 six months immediately preceding the effective date of coverage, or as
32 to a pregnancy existing on the effective date of coverage; except that,
33 if 10 or more late enrollees request enrollment during any 30-day
34 enrollment period, then no preexisting condition provision shall apply
35 to any such enrollee.

36 b. In determining whether a preexisting condition provision applies
37 to an eligible employee or dependent, the health benefits plan shall
38 credit the time that person was covered under any previous health
39 benefits plan if the previous coverage was continuous to a date not
40 more than 90 days prior to the effective date of the new coverage,
41 exclusive of any applicable waiting period under the plan.

42 c. For the purposes of this section, "late enrollee" is defined
43 pursuant to section 1 of P.L.1992, c.162 (C.17B:27A-17).

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45 23. All of the materials required to be filed with the commissioner
46 pursuant to this act shall be available for public inspection.

1 24. This act shall apply to an exchange established after the
2 effective date of this act and, in the case of an existing exchange or
3 self-insured trust, this act shall apply upon the first anniversary date
4 for renewal of the contract or agreement after the effective date of this
5 act.

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7 25. The commissioner shall promulgate rules and regulations
8 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
9 (C.52:14B-1 et seq.) as are necessary to effectuate the purposes of this
10 act.

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12 26. This act shall take effect immediately.

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STATEMENT

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17 This bill would permit certain small employers to combine for the
18 purpose of self-insuring for health benefits. The small employers
19 would join together by means of a joint contract and create an entity
20 to be known as a "Small Employers Health Benefits Exchange."

21 Small employers have been at a disadvantage because they do not
22 have the financial or technical resources to assume the risk of
23 self-insurance. This bill is similar to the idea of a risk retention group
24 or a reciprocal insurer as it is normally applied in property-casualty
25 insurance. This bill provides a statutory framework for small
26 employers who wish to combine to insure for health benefits. The
27 employers would have to have some type of relationship with each
28 other, whether being in a similar business or trade, in a trade
29 association or other professional association, or under common
30 control of a parent company.

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35 Permits certain small groups to combine for purpose of self-insuring
36 or purchasing traditional insurance for health benefits.