

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1721

S.P. 654

In Senate, April 29, 1991

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator THERIAULT of Aroostook  
Cosponsored by Representative GARLAND of Bangor and Representative PLOURDE of  
Biddeford.

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STATE OF MAINE

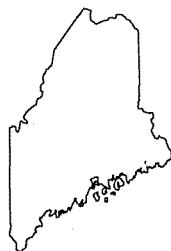
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act Concerning Small Business Employer Health Coverage Reforms.**

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-G, sub-§21-A is enacted to read:

<u>21-A.</u>	<u>Maine Small</u>	<u>Expenses</u>	<u>24-A MRSA</u>
<u>Insurance</u>	<u>Business Em-</u>	<u>Only</u>	<u>§6507</u>
	<u>Employer</u>		
	<u>Reinsurance</u>		
	<u>Program</u>		

Sec. 2. 24-A MRSA c. 77 is enacted to read:

#### CHAPTER 77

#### SMALL BUSINESS EMPLOYER HEALTH INSURANCE

##### §6501. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Base premium rate. "Base premium rate" means a health benefits plan covering one or more employees of a small business employer, the lowest premium rate charged by the small business employer carrier for the same or similar coverage that is equivalent in value under a health benefit plan covering any small business employer with similar case characteristics.

2. Basic health care plan. "Basic health care plan" means a health care plan for small business employers that is lower in cost than a small business employer health care plan, approved by the superintendent in accordance with section 6507.

3. Board. "Board" means the Board of Directors of the Maine Small Business Employer Health Reinsurance Program.

4. Carrier. "Carrier" means any insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefits plans in this State. For the purposes of this chapter, any carriers that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier except that any insurance company, health service corporation, hospital service corporation or medical service corporation that is an affiliate of a health maintenance organization located in the State or any health maintenance organization located in this State that is affiliated with an insurance company, health service corporation, hospital service corporation, or medical service corporation must treat the health maintenance organization as a separate carrier.

5. Case characteristics. "Case characteristics" means demographic or other objective characteristics of a small business employer, as determined by a small business employer carrier that are considered by that carrier in the determination of premium rates. Claim experience, health status or duration of coverage are not case characteristics for the purposes of this chapter.

6. Dependent. "Dependent" means the spouse or child of a an eligible employee, subject to applicable terms of the health care plan covering that employee.

7. Eligible employee. "Eligible employee" means an employee who works on a full-time basis, with a normal work week of 30 or more hours. "Eligible employee" includes a sole proprietor, a partner of a partnership or an independent contractor, if the sole proprietor, partner or independent contractor is included as an employee under a health care plan of a small business employer but does not include employees who work on a part-time, temporary or substitute basis.

8. Financially impaired. "Financially impaired" means a member that after the effective date of this chapter, is not insolvent and is considered by the superintendent to be potentially unable to fulfill the member's contractual obligations or has been placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

9. Health benefits plan. "Health benefits plan" means any hospital and medical expense incurred policy, health, hospital or medical service corporation plan contract, health maintenance organization subscriber contract or plans provided by a MEWA offered by an employer subject to section 6502. "Health benefits plan" does not include the following types of insurance:

A. Accident;

B. Credit;

C. Disability;

D. Long-term care;

E. Medicare supplement;

F. Specified disease;

G. Dental;

H. Coverage issued as a supplement to liability insurance;

I. Workers' compensation;

2        J. Automobile medical payment; or

4        K. Insurance under which benefits are payable with or  
6        without regard to fault and that is required statutorily to  
8        be contained in any liability insurance policy or equivalent  
10       self-insurance.

12       10. Late enrollee. "Late enrollee" means an eligible  
14       employee or dependent who requests enrollment in a health  
16       benefits plan of a small business employer following the initial  
18       minimum 30-day enrollment period provided under the terms of the  
20       health benefits plan, except that, an eligible employee or  
22       dependent is not considered a late enrollee if:

24       A. The employee:

26       (1) Was covered under another employer health benefits  
28       plan at the time they were eligible to enroll;

30       (2) Stated, at the time of the initial enrollment,  
32       that coverage under another employer health benefits  
34       plan was the reason for declining enrollment;

36       (3) Lost coverage under another employer health  
38       benefits plan as a result of termination of employment,  
40       the termination of the other plan's coverage, death of  
42       a spouse or divorce; and

44       (4) Requests enrollment within 30 days after  
46       termination of coverage provided under another employer  
48       health benefits plan;

50       B. A court has ordered coverage be provided for a spouse or  
52       minor child under a covered employee's health benefits plan  
54       and request for enrollment is made within 30 days after  
56       issuance of that court order.

58       11. Member. "Member" means any carrier or MEWA offering  
60       health benefits plans in this State on or after the effective  
62       date of this chapter.

64       12. MEWA. "MEWA" means any multiple employer welfare  
66       arrangement as defined in the federal Employee Retirement Income  
68       Security Act of 1974, Section 3 (ERISA), as amended, except for  
70       any such arrangement that is fully insured within the meaning of  
72       Section 516(b)(6) of that Act, as amended.

74       13. Midpoint premium rate. "Midpoint premium rate" means  
76       for small business employers with similar case characteristics,  
78       as determined by the applicable small business employer carrier

for a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

**14. Plan of operation.** "Plan of operation" means the plan of operation of the program, including articles, bylaws and operating rules, adopted by the board pursuant to section 6507.

**15. Preexisting conditions provision.** "Preexisting conditions provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, for a condition that, during a specified period immediately preceding the effective date of coverage, manifested itself in a manner that would cause an ordinarily prudent person to seek medical advice, diagnosis, care or treatment, or for which medical advice, diagnosis, care or treatment was recommended or received for that condition or for a pregnancy existing on the effective date of coverage.

**16. Program.** "Program" means the Maine Small Business Employer Health Reinsurance Program as established in section 6507.

**17. Section 6505 carrier.** "Section 6505 carrier" means a small business employer carrier electing to comply with the requirements in section 6505.

**18. Section 6506 carrier.** "Section 6506 carrier" means a small business employer carrier electing to comply with the requirements in section 6506.

**19. Small business employer.** "Small business employer" means any person, firm, corporation, partnership or association engaged actively in a business that, during at least 50% of its working days in the preceding calendar year quarter employed not more than 25 eligible employees, the majority of whom are employed within the State. In determining the number of eligible employees, companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state taxation are considered one employer.

**20. Small business employer carrier.** "Small business employer carrier" means any carrier or MEWA that offers health benefits plans covering eligible employees of one or more small business employers.

**21. Small business employer health care plan.** "Small business employer health care plan" means a health care plan for small business employers, approved by the superintendent in accordance with section 6507.

**§6502. Health benefits plan affected**

2        Any individual or group health benefits plan is subject to  
4        this chapter, if it provides health care benefits covering one or  
6        more employees of a small business employer and if either one of  
      the following conditions are met:

8        1. Premium payments by small business employer. Any  
10       portion of the premium or benefits is paid by a small business  
      employer or any covered employee is reimbursed, whether through  
      wage adjustments or otherwise, by that employer; or

12       2. Health benefits plan. The health benefits plan is  
14       treated, by the employer or any of the covered employees as part  
16       of a plan or program for the purposes of the federal Internal  
      Revenue Code, Section 162 or 106.

18       The provisions of chapters 33, 35 and 56 that are applicable  
20       to rate and form filings do not apply to individual health  
      insurance policies or contracts subject to this chapter.

22       Except as expressly provided for in this chapter, laws  
24       requiring the coverage of a health care service or benefits and  
26       the reimbursement, utilization or consideration of a specific  
      category of licensed health care practitioners do not apply to  
      any health benefits plan offered or delivered to a small business  
      employer.

28       **§6503. Health benefits plans**

30       1. Choice of plan. Within 90 days after the  
32       superintendent's approval of the basic health care plans and  
34       small business employer health care plans pursuant to section  
36       6507, every small business employer carrier, as a condition of  
38       transacting business in this State with small business employers,  
40       must offer to small business employers at least 2 health benefits  
42       plans. One plan offered by each small business employer carrier  
      must be a basic health care plan and one plan must be a small  
      business employer health care plan. Every small business  
      employer that elects to be covered under either of these plans  
      and agrees to make the required premium payments and satisfies  
      the other provisions of the elected plan must be issued that plan  
      by the small business employer carrier.

44       2. Preexisting conditions provisions. Preexisting  
46       conditions provisions in health benefits plans, covering small  
      business employers, are subject to the following.

48       A. A preexisting conditions provision may not exclude  
50       coverage for a period beyond 12 months following the  
52       employee's effective date of coverage and may only relate to  
      conditions that are manifested in such a manner that would  
      cause an ordinarily prudent person to seek medical advice,

2 diagnosis, care or treatment or for which medical advice,  
4 diagnosis, care or treatment was recommended or received  
6 during the 6 months immediately preceding the effective date  
8 of coverage or a pregnancy existing on the effective date of  
10 coverage.

12 B. In determining whether a preexisting conditions  
14 provision applies to an eligible employee or dependent, all  
16 health benefits plans must credit the time the person was  
18 covered under a previous employer's health benefits plan if  
20 the previous coverage was continuous to a date not more than  
22 30 days prior to the effective date of the new coverage,  
24 exclusive of any applicable waiting period under that plan.

26 3. Renewal. A health benefits plan must be renewable to  
28 all eligible employees or dependents, except:

30 A. For nonpayment of the required premiums by the  
32 policyholder, contract holder or employer;

34 B. For fraud or misrepresentation of the policyholder,  
36 contract holder or employer or, coverage of individual  
38 insureds, the enrollees or their representatives;

40 C. When the number or percentage of employees covered under  
42 the health benefits plan is less than the number of  
44 employees required by participation requirements under the  
46 health benefits plan; or

48 D. When the small business employer carrier ceases doing  
50 business in the small business employer market, subject to  
52 compliance with subsection 4.

4. Cessation of business. Small business employer carriers  
doing business in the small business employer market that wish to  
cease doing business in that market must comply with the  
following.

A. Notice of the decision to cease doing business in the  
small business employer market must be provided to the  
bureau and to the policyholder, contract holder or employer.

B. Health benefits plans that are not renewed pursuant to  
subsection 3, paragraph D may not be canceled until 6 months  
after the receipt by the bureau of the notice required in  
paragraph A.

C. Small business employer carriers that cease to write new  
business in the small business employer market continue to  
be governed by this chapter with respect to business  
conducted under this chapter.



2 D. Small business employer carriers that cease to write new  
4 business in the small business employer market are  
6 prohibited from writing new business in the small business  
8 employer market for a period of 5 years from the date of  
10 notice to the superintendent.

12 E. When a health maintenance organization ceases to do  
14 business in the small business employer market in one  
16 service area of the State, that health maintenance  
18 organization is prohibited from doing business in the small  
20 business employer market in that service area for a period  
22 of 5 years.

24 5. Coverage for late enrollees. In providing coverage to  
26 late enrollees, small business employer carriers are allowed to  
28 exclude a late enrollee for 18 months or provide coverage subject  
30 to a 18-month preexisting conditions exclusion.

32 6. Exclusion or limitation of coverage. A health benefits  
34 plan that is issued to a small business employer may not limit or  
36 exclude coverage by type of illness, medical condition or  
38 accident, except for preexisting conditions or diseases as  
40 permitted under subsection 2, paragraph A.

42 7. Specific minimum participation requirements. If a small  
44 business employer carrier requires a specific minimum  
46 participation of eligible employees in determining whether to  
48 accept a small business employer group, the same participation  
50 requirement must be applied uniformly among all small business  
employer groups with the same number of eligible employees  
applying for coverage or receiving coverage from the small  
business employer carrier. A small business employer carrier may  
vary application of minimum participation requirements only by  
the size of the small business employer group.

8. Premium rates. The following provisions apply to the  
premium rates of health benefits plans offered by small business  
employer carriers.

A. The premium rates charged or offered for a rating period  
for the same or similar coverage that is equivalent in value  
for a health benefits plan covering another small business  
employer with similar case characteristics, as determined by  
the small business employer carrier, may not vary from the  
applicable midpoint premium rate by greater or less than 25%  
of the midpoint premium rate with respect to:

(1) All health benefits plans issued on or after the  
effective date of this chapter; and

2           (2) Health benefits plans issued prior to the  
4           effective date of this chapter, within 5 years from the  
6           effective date of this chapter.

8           B. Subject to the provisions of paragraph C, an increase in  
10          premium rates for a new rating period, adjusted on a pro  
12          rata basis for rating periods greater or less than one year,  
14          may not exceed the sum of:

16           (1) Any percentage change in the base premium rate  
18           measured from the first day of the prior rating period  
20           to the first day of the new rating period plus 15%,  
22           adjusted on a pro rata basis for rating periods greater  
24           or less than one year, of the base premium rate for the  
26           new rating period; and

28           (2) Any adjustment due to a change in coverage of the  
30           small business employer or to a change in case  
32           characteristics as determined by the small business  
34           employer carrier.

36          C. With respect to health benefits plans issued prior to  
38          the effective date of this chapter, in any case where, with  
40          respect to any small business employer carrier, the premium  
42          rates charged or offered for the same or similar coverage  
44          that is equivalent in value under a health benefits plan  
46          covering any small business employer with similar case  
48          characteristics, as determined by the small business  
50          employer carrier, varies from the applicable midpoint  
52          premium rate by greater or less than 25% of the midpoint  
54          premium rate, an increase in premium rate for a new rating  
56          period, adjusted on a pro rata basis for rating periods  
58          greater or less than one year, may not exceed the sum of:

60           (1) Any percentage change in the base premium rate  
62           measured from the first day of the prior rating period  
64           to the first day of the new rating period; and

66           (2) Any adjustment due to change in coverage of the  
68           small business employer or due to change in case  
70           characteristics, as determined by the small business  
72           employer carrier.

74          D. When a small business employer carrier utilizes industry  
76          as a case characteristic in establishing premium rates, the  
78          rate factor associated with any industry classification may  
80          not vary from the arithmetic average of the rate factors  
82          associated with all industry classifications by greater or  
84          less than 15% of that average.

86          E. Any adjustment in rates charged by a small business  
88          employer carrier electing to be a section 6506 carrier

caused by reinsurance is subject to the rating limitations set forth in this section.

**9. Offering for sale; disclosure.** In connection with the offering for sale of any health benefits plan to a small business employer, each small business employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of:

A. Premium rates for a specified small business employer that are established or adjusted in part based upon the actual or expected variation in claims costs or in health conditions of the employees and dependents of the small business employer;

B. Provisions concerning the small business employer carrier's right to change premium rates and the factors other than claim experience, health status or duration of coverage that affect changes in premium rates; and

C. Provisions relating to renewal of policies and contracts.

**10. Information; documentation; filings.** Each small business employer carrier shall:

A. Maintain at its principal place of business a complete and detailed description of rating practices and renewal underwriting practices, including information and documentation that demonstrates that its rating methods and practices are based upon commonly accepted actuarial assumptions and sound actuarial principles;

B. File in March of each year with the superintendent an actuarial opinion certifying that the small business employer carrier is in compliance with this chapter and that the rating methods of the small business employer carrier are actuarially sound. A copy of this certification must be retained by the small business employer carrier at its principal place of business; and

C. Make the information and documentation described in paragraph A available to the superintendent upon request. Except in cases of violations of this chapter, the information is considered proprietary and trade secret information and is not subject to disclosure by the superintendent to persons outside of the bureau except as agreed to by the small business employer carrier or as ordered by a court of competent jurisdiction.

**11. Exceptions to requirement of offering coverage; health maintenance organization.** Notwithstanding subsection 1, a health maintenance organization operating as either a section 6505

2 carrier or section 6506 carrier is not required to offer coverage  
3 to or accept applications from:

4 A. A small business employer, if the small business  
5 employer is not physically located in the health maintenance  
6 organization's approved service areas;

8 B. An employee, if the employee does not work or reside  
9 within the health maintenance organization's approved  
10 service areas; or

12 C. Employers or employees located within an area where the  
13 health maintenance organization reasonably anticipates, and  
14 demonstrates to the satisfaction of the superintendent, it  
15 will not have the capacity in its network of providers to  
16 deliver adequately service to the members of those groups  
17 because of its obligations to existing group contract  
18 holders and enrollee.

20 A health maintenance organization that refuses to offer coverage  
21 pursuant to this subsection may not offer coverage in the  
22 applicable area to new cases of employer groups with more than 25  
23 eligible employees or small business employer groups until 180  
24 days following each refusal or the date on which the organization  
25 notifies the superintendent that it has regained capacity to  
26 deliver services to small business employer groups whichever is  
27 later.

28 12. Exception to requirement of offering coverage; small  
29 business employer carriers. Notwithstanding subsection 1, a  
30 small business employer carrier is not required to offer coverage  
31 or accept applications if the superintendent finds that the  
32 acceptance of an application or applications places the small  
33 business employer carrier in a financially impaired condition. A  
34 small business employer carrier that has not offered coverage or  
35 accepted applications pursuant to this subsection may not offer  
36 coverage or accept applications until 180 days following a  
37 determination by the superintendent that the small business  
38 employer carrier is financially impaired or a determination by  
39 the superintendent that the small business employer carrier is no  
40 longer in a financially impaired condition whichever is later.

42 13. Application. This chapter applies as follows.  
43

44 A. Subsection 2, paragraph A; subsections 3 and 4; and  
45 subsections 6 to 10 apply to health benefits plans  
46 delivered, issued for delivery, renewed or continued on or  
47 after the effective date of this chapter. The provisions of  
48 subsection 1; subsection 2, paragraph B; subsection 5; and  
49 subsections 11 and 12 apply to all health benefits plans  
50 delivered, issued for delivery, renewed or continued in this  
51 State on or after the date the program established in  
52

2 section 6507 becomes operational as designated by the  
3 superintendent. For purposes of this subsection, the date a  
4 health benefits plan is continued is the anniversary date of  
5 issue.

6 B. Except as otherwise specifically provided, provisions of  
7 this chapter that apply to a small business employer  
8 continue to apply until the plan anniversary following the  
9 date the employer no longer meets the requirements defined  
10 in section 6501, subsection 19.

12 **§6504. Election of type of carrier**

14 1. Election required. Each small business employer carrier  
15 shall elect to become either a section 6505 carrier or a section  
16 6506 carrier and comply with the restrictions set forth in their  
17 respective sections. The election is for a period of 5 years,  
18 except that the initial election must be made within 30 days of  
19 the effective date of this chapter and must be made for a 2-year  
20 period. The superintendent may permit a small business employer  
21 to modify its election during the 5-year period for good cause.

22 2. Elect to change type of carrier. A small business  
23 employer carrier that, pursuant to subsection 1, elects to change  
24 its designation as a section 6505 carrier or a section 6506  
25 carrier is subject to the following.

28 A. A small business employer carrier that elects to cease  
29 participating as a section 6505 carrier and elects to become  
30 a section 6506 carrier is permitted to reinsure small  
31 business employer health benefits plans under section 6507.

34 B. A small business employer carrier that elects to cease  
35 participating as a section 6506 carrier and elects to become  
36 a section 6505 carrier is prohibited from reinsuring or  
37 continuing to reinsure any small business employer health  
38 benefits plans pursuant to sections 6506 and 6507  
39 immediately upon becoming a section 6505 carrier. That  
40 small business employer carrier shall pay a prorated  
41 assessment based upon business issued as a section 6506  
42 carrier for any portion of the year that the business was  
43 reinsured.

44 3. Elections Evaluation Committee. The board shall  
45 establish the Elections Evaluation Committee.

48 A. The committee shall ensure that health benefits plans  
49 are provided to small business employers without regard to  
50 the health status of employees and dependents of those small  
51 business employers, regardless of whether the small business  
52 employer carriers elect to become section 6505 carriers or  
53 section 6506 carriers.

2        B. The board shall appoint the members of the Elections  
4        Evaluation Committee. The members of that committee must be  
6        approved by the superintendent, who shall ensure that  
      section 6505 carriers and section 6506 carriers are fairly  
      represented.

8        C. In carrying out its responsibilities, the committee may  
10       require small business employer carriers to file reports or  
12       provide other information to the committee that it feels may  
14       be necessary, including, but not limited to, reports  
16       concerning the number of small business employer plans or  
18       arrangements issued or covered during designated periods in  
      total and categorized by number of employees, and the case  
      characteristics and claim experience of the small business  
      employers issued or covered under plans or arrangements.  
      The committee may request that the superintendent establish  
      an audit team to test whether small business employer  
      carriers are complying with this chapter.

20       D. The committee shall assess annually whether health  
22       benefits plans are being provided to small business  
24       employees in accordance with paragraph A. On or before June  
26       30th of each year, the committee shall make findings and  
28       recommendations for action, if any, with respect to each  
30       prior calendar year in which elections under subsection 1  
32       are in effect. The findings and recommendations for action  
34       by the Elections Evaluation Committee, together with any  
36       recommendations of the board, must be filed by the board  
      with the superintendent within 30 days of receipt of the  
      findings and recommendations from the committee. The  
      findings and recommendations for actions are subject to  
      approval by the superintendent, who may, upon request of any  
      affected section 6505 carrier or section 6506 carrier, call  
      a hearing regarding those actions.

38       E. Any section 6505 carrier that violates this chapter  
40       immediately ceases being a section 6505 carrier and becomes  
42       a section 6506 carrier and is required to make a retroactive  
      assessment pursuant to section 6507. Any section 6506  
      carrier that violates this chapter must be assessed a  
      penalty determined by the superintendent.

44       **§6505. Section 6505 carriers**

46       1. Election; notification. Any small business employer  
48       carrier that elects to become a section 6505 carrier must notify  
50       the superintendent and the board. The election is subject to  
      approval by the superintendent, following a public hearing.

52       2. Considerations for approval. In determining whether to  
      approve a request for election to become a section 6505 carrier,

the superintendent shall consider: the market share of the small business employer carrier seeking approval; the surplus of the small business employer carrier; the history of the small business employer carrier concerning open enrollment and related issues; the commitment of the small business employer carrier to market to all small business employers in the State or service areas, as applicable; and the small business employer carrier's ability to assume completely the risk of accepting all small business employer groups that apply for coverage pursuant to section 6503.

**§6506. Section 6506 carriers**

Small business employer carriers electing to become section 6506 carriers must comply with the requirements set forth in section 6503 and are permitted to reinsure health benefits plans sold to small business employers in the manner set forth in section 6507.

**§6507. Maine Small Business Employer Health Reinsurance Program**

**1. Establishment; membership of program.** The Maine Small Business Employer Health Reinsurance Program is established as a nonprofit entity. All carriers issuing health benefits plans in this State and MEWAs providing health benefits plans in this State on and after the effective date of this chapter are members of the program.

**2. Composition of board.** The board of directors of the program must be selected by the members of the program, subject to approval by the superintendent. The board must consist of at least 9 representatives who serve staggered terms as designated in the program's plan of operation. To the extent possible, at least 2/3 of the members of the board must be small business employer carriers. At least one member of the board must be a representative from each of the following entities, if there are such entities in the State willing to serve on the board:

**A. A carrier whose principal health insurance business is in the small business employer market;**

**B. A carrier whose principal health insurance business is in the large employer market;**

**C. A health hospital or medical service corporation;**

**D. A health maintenance organization;**

**E. A section 6505 carrier; and**

**F. A section 6506 carrier.**

One carrier or MEWA, including its affiliated companies, may not hold a majority of the seats on the board. The superintendent is an ex officio member of the board. In approving the selection of the board, the superintendent shall ensure that all members of the program are represented fairly.

**3. Plan of operation.** To ensure the fair, equitable and reasonable administration of the program, the board shall adopt a plan of operation. The plan of operation must establish procedures for:

A. Handling and accounting of assets and money of the program and annual fiscal reporting to the superintendent;

B. Establishing terms of office and filling vacancies on the board, subject to the approval of the superintendent;

C. Selecting from the members an administering carrier to operate the program and setting forth the powers and duties of that carrier;

D. Reinsuring risks in accordance with this chapter;

E. Collecting assessments from all members to provide for claims reinsured by the program and for administrative expenses incurred or estimated to be incurred during the period the assessment is made;

F. Imposing interest penalties for late payment of assessments; and

G. Any additional matters at the discretion of the board.

**4. Approval of plan; amendment; revisions.** The plan of operation and revisions of and amendments to the plan take effect upon the approval, in writing, by the superintendent; except that if the superintendent does not issue a written disapproval of the plan within 90 days of the superintendent's receipt of the plan, the plan is deemed approved.

**5. Powers of the program.** The program has the general powers and authority granted under the laws of the State to insurance companies and health maintenance organizations licensed to transact business, except it does not have the power to issue health benefits plans directly to either groups or employees. The program has the specific authority to:

A. Enter into contracts as are necessary and proper to carry out the purposes of this chapter, including the authority, with the approval of the superintendent, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or



2 other organizations for the performance of administrative  
3 functions;

4 B. Sue or be sued, including taking any legal actions  
5 necessary and proper for recovery of any assessments for, on  
6 behalf of or against the program or any board members;

8 C. Take any legal action necessary to avoid the payment of  
9 improper claims against the program;

10 D. Define the array of health coverage products for which  
11 reinsurance is provided and issue reinsurance policies in  
12 accordance with the requirements of this chapter;

14 E. Establish rules, conditions and procedures pertaining to  
15 the reinsurance by the program of the risks of the members;

18 F. Establish appropriate rates, rate schedules, rate  
19 adjustments, rate classifications and any other actuarial  
20 functions appropriate;

22 G. Assess members in accordance with subsection 10 and to  
23 make advance interim assessments as are appropriated and  
24 necessary for organizational and interim operating  
25 expenses. Any interim assessments must be credited as  
26 offsets against any regular assessments due following the  
27 close of the fiscal year;

28 H. Appoint from among members appropriate legal, actuarial  
29 and other committees necessary to provide technical  
30 assistance in the operation of the program, policy, contract  
31 design and any other function; and

34 I. Borrow money to effect the purposes of the program. Any  
35 notes or other evidence of indebtedness of the program not  
36 in default are legal investments for carriers and may be  
37 carried as admitted assets.

38 6. Forms and levels of coverage. The forms and levels of  
39 coverage are established and certified as follows.

42 A. Subject to approval by the superintendent, the board  
43 shall establish the forms and levels of coverage made  
44 available by small business employer carriers in accordance  
45 with section 6503, subsection 1. The board shall establish  
46 benefit levels, cost sharing, exclusions and limitations for  
47 the basic health care plans and the small business employer  
48 health care plans. The forms and levels of coverage must  
49 define which components of a health benefits plan of a small  
50 business employer may be reinsured. One basic health care  
51 plan and one small business employer health care plan must  
52 contain benefit and cost-sharing levels that are

2 consistent with the basic method of operation and the health  
4 benefits plans of health maintenance organizations,  
6 including any restrictions imposed by federal laws. Plans  
8 may include but are not limited to cost containment features  
10 such as:

12 (1) Utilization review of health care services,  
14 including review of medical necessity of hospital and  
16 physician services;

18 (2) Case management benefit alternatives;

20 (3) Selective contracting with hospitals, physicians  
22 and other health care providers;

24 (4) Reasonable benefit differentials applicable to  
26 participating and nonparticipating providers; and

28 (5) Other managed health care provisions.

30 7. Approval of plans. The board shall submit the plans to  
32 the superintendent for approval.

34 A. Any plans submitted to the superintendent by the board  
36 are deemed approved by the superintendent if not expressly  
38 disapproved within 90 days of receipt by the superintendent.

40 B. After the superintendent's approval of basic health care  
42 plans and small business employer health care plans, a small  
44 business employer carrier may certify to the superintendent  
46 in the form and manner prescribed by the superintendent that  
48 the basic health care plans and the small business employer  
50 health care plans filed by the small business employer  
carrier are in substantial compliance with the provisions in  
the corresponding approved board plans. Upon receipt by the  
superintendent of the certification, the small business  
employer carrier may use the certified plans until after  
notice and hearing their continued use is disapproved.

8. Reinsurance by section 6506 carrier. A member that  
elects to be a section 6506 carrier may reinsure with the program  
coverage of an eligible employee of a small business employer, or  
any dependent of that employee, subject to the following.

A. With respect to a basic health care plan or a small  
business employer health care plan, the program must  
reinsure the level of coverage provided. Under other plans,  
the program must reinsure the level of coverage provided, up  
to but not exceeding the level of coverage provided in a  
small business employer health care plan.

2 B. With respect to eligible employees who are employed by  
4 the small business employer as of the date the employer's  
6 coverage by the member commences and who are not late  
8 enrollees to the plan and the dependent's of those eligible  
10 employees, coverage may be reinsured:

12 (1) Within 60 days of issuance of the employer's  
14 coverage; or

16 (2) Commencing one year following the effective date  
18 of this chapter, after the employer's coverage has been  
20 in effect for a period of 3 consecutive years or  
22 thereafter, on any 3rd-year anniversary of issuance of  
24 the employer's coverage.

26 C. With respect to eligible employees who are hired  
28 subsequent to the commencement of the employer's coverage by  
30 the member and who are not late enrollees to the plan, and  
32 the dependents of those eligible employees, coverage may be  
34 reinsured:

36 (1) Within 60 days of issuance of their coverage under  
38 the plan; or

40 (2) Commencing one year following the effective date  
42 of this chapter, after the employer's coverage has been  
44 in effect for a period of 3 consecutive years or  
46 thereafter on any 3rd-year anniversary of issuance of  
48 the employer's coverage.

50 D. With respect to eligible employees and their dependents,  
when a small business employer carrier reinsures the entire  
employer group, coverage may be reinsured:

(1) Within 60 days of the issuance of the group's  
coverage; or

(2) When a new entrant to an employer group is  
reinsured under paragraph C, on the first year  
anniversary of the small business employer's plan after  
the new entrant became reinsured; or

(3) Commencing one year following the effective date  
of this chapter, after the employer's coverage has been  
in effect for a period of 3 consecutive years or  
thereafter on any 3rd-year anniversary of the issuance  
of the employer's coverage.

E. A member may not reinsure the health coverage of all the  
eligible employees, and their dependents, of any small  
business employer unless that coverage is included in a

2       basic health care plan or a small business employer health  
3       care plan.

4       9. Premium rates for reinsurance; generally. Except as  
5       provided in subsection 10 premium rates charged by the program  
6       for coverage reinsured by the program is established as follows.

8       A. The premium rate is 1.5 times the rate established by  
9       the program for the classification or group with similar  
10       case characteristics and coverage for eligible employees,  
11       and their dependents, whose coverage is reinsured with the  
12       program.

14       B. The premium rate is 5 times the rate established by the  
15       program for that classification or group with similar case  
16       characteristics and coverage for eligible employees and  
17       their dependents.

18       10. Premium rates for reinsurance to certain health  
19       maintenance organizations. Premium rates charged for reinsurance  
20       by the program to a health maintenance organization, that is  
21       approved as a federally qualified health maintenance organization  
22       pursuant to 42 United States Code, Section 300e, et seq. and is  
23       subject to requirements that limit the amount of risk that may be  
24       ceded to the program, are reduced to reflect that portion of the  
25       risk that may be ceded to the program.

28       11. Annual accounting. Following the close of each fiscal  
29       year, the administering carrier shall determine the net premiums,  
30       the program expenses of administration and the incurred losses,  
31       if any, for the year, taking into account investment income and  
32       other appropriate gains and losses. Health benefits plan  
33       premiums and benefits paid by a member that are less than an  
34       amount determined by the board to justify the cost of collection  
35       may not be considered for purposes of determining assessments.  
36       For purposes of this section "net premiums" means health benefits  
37       plan premiums, less administrative expense allowances. Health  
38       benefits plan premiums earned by MEWAs are established by adding  
39       paid health losses and administrative expenses of the MEWA.

40       12. Assessments. Any net loss for the year determined in  
41       accordance with subsection 11 must be recovered by assessments  
42       apportioned among all members.

44       A. Assessments must first be apportioned by the board  
45       among all section 6506 carrier members in proportion to  
46       their respective shares of the total health benefits plan  
47       premiums earned in this State from health benefits plans  
48       covering small business employers during the calendar year  
49       coinciding with or ending during the fiscal year of the  
50       program or on any other equitable basis reflecting coverage

of small business employers as may be provided in the plan of operation.

B. If the net loss is not recovered before assessments totaling 4% of the premiums from health benefits plans covering small business employers have been collected from section 6506 carriers, additional assessments must be apportioned by the board among all members in proportion to 1% of their respective shares of the total health benefits plan premiums earned in this State from all health benefits plans during the calendar year. The board has authority to impose additional assessments in proportion to respective shares of the total health benefits plan premiums earned in this State for any remaining losses.

C. If assessments exceed actual losses and administrative expenses of the program, the excess must be held at interest and used by the board to offset future losses or to reduce program premiums. As used in this paragraph, "future losses" include reserves for incurred but not reported claims.

D. Each member's proportion of the assessment must be determined annually by the board based on annual statements and other reports considered necessary by the board and filed by the member. MEWAs are reported to the board as claims payments made and administrative expenses incurred in this State or on an annual basis are reported on a form prescribed by the superintendent.

E. A member may seek a deferment from the superintendent from any assessment, in whole or in part, issued by the board. The superintendent may defer, in whole or in part, the assessment of a member if, in the opinion of the superintendent, the payment of the assessment endangers the ability of the member to fulfill its contractual obligations. If an assessment or a portion of an assessment against a member is deferred the amount by which the assessment is deferred may be assessed against the other members in a manner consistent with basis for assessment set forth in this section. The member receiving the deferment remains liable to the program for the amount deferred and is prohibited from reinsuring any individuals or groups in the program if it fails to pay assessments.

**13. Liability.** Participation in the program as members, establishment of rates, forms or procedures and any other joint or collective action required by this chapter may not be the basis for any legal action, criminal or civil liability or penalty against the program or any of its members either jointly or separately.

2        14. Exempt from taxation. The Maine Small Business  
4        Employer Health Reinsurance Program is exempt from any and all  
6        taxes.

8        **Sec. 2. Initial organizational meeting of the board.** Within 60 days  
10       after the effective date of this Act, the Superintendent of  
12       Insurance shall give notice to all members of the time and place  
14       of the initial organizational meeting of the Maine Small Business  
16       Employer Health Reinsurance Program. The initial organizational  
18       meeting must take place within 120 days of the effective date of  
20       this Act.

22       **Sec. 3. Membership of initial board.** At the initial  
24       organizational meeting, the members, if possible, shall select  
26       the initial Board of Directors of the Maine Small Business  
28       Employer Health Reinsurance Program. If the initial board is not  
30       selected at the organizational meeting, the superintendent shall  
32       appoint the initial board of directors no more than 15 days after  
34       the organizational meeting.

36       **Sec. 4. Submission of plan of operation.** No later than 180 days  
38       after the appointment of the initial board of directors, the  
40       board shall submit to the superintendent a plan of operation in  
42       accordance with the Maine Revised Statutes, Title 24-A, section  
44       6507. If, after notice and hearing, the superintendent  
46       determines that the plan will ensure the fair, reasonable and  
48       equitable administration of the program, and provides for the  
50       sharing of program gains or losses on an equitable and  
      proportional basis in accordance with the Maine Revised Statutes,  
      Title 24-A section 6507.

**Sec. 5. Temporary plan of operation.** If the board fails to  
      submit an acceptable plan of operation within 180 days after its  
      appointment, the superintendent, after notice and hearing, shall  
      adopt a temporary plan of operation. The superintendent shall  
      rescind the temporary plan when the superintendent approves a  
      plan of operation submitted by the board.

#### 40        **STATEMENT OF FACT**

42       This bill establishes the Maine Small Business Employer  
44       Health Reinsurance Program. This program is a means of pooling  
46       the resources of various insurance carriers in order to meet the  
48       requirements of health insurance continuity legislation, which  
50       became law in 1989. It spreads the risk of loss in the case of  
      small business employer health policies in order to ensure a  
      strong competitive marketplace for health insurance. It allows  
      certain carriers to "opt out" when they can comply with the law  
      and absorb the risk.