

MAINE STATE LEGISLATURE

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R.S.

2 Date: 4-15-08

(Filing No. S-641)

3 Reproduced and distributed under the direction of the Secretary of the Senate.

4 STATE OF MAINE
5 SENATE
6 123RD LEGISLATURE
7 FIRST SPECIAL SESSION

8 SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "B" to H.P.
9 1608, L.D. 2247, Bill, "An Act To Continue Maine's Leadership in Covering the
10 Uninsured"

11 Amend the amendment by striking out everything after the title and before the
12 summary and inserting the following:

13 Amend the bill by striking out everything after the enacting clause and before the
14 summary and inserting the following:

15 PART A

16 Sec. A-1. 24-A MRSA §2736-C, sub-§1, ¶B, as enacted by PL 1993, c. 477, Pt.
17 C, §1 and as affected by Pt. F, §1, is repealed.

18 Sec. A-2. 24-A MRSA §2736-C, sub-§2, ¶A, as amended by PL 1993, c. 547,
19 §3, is further amended to read:

20 A. A carrier issuing an individual health plan after December 1, 1993 must file the
21 carrier's ~~community-rate~~ rates and any formulas and factors used to adjust ~~that rate~~
22 those rates with the superintendent prior to issuance of any individual health plan.

23 Sec. A-3. 24-A MRSA §2736-C, sub-§2, ¶B, as enacted by PL 1993, c. 477, Pt.
24 C, §1 and as affected by Pt. F, §1, is repealed.

25 Sec. A-4. 24-A MRSA §2736-C, sub-§2, ¶B-1 is enacted to read:

26 B-1. A carrier may not vary the premium rate due to the claims experience or policy
27 duration of the individual. A carrier may vary the premium rate based on health
28 status, age, gender and tobacco use. A change in the premium rate is not permitted on
29 the basis of changes in health status after the policy is issued. Renewal of an
30 individual health plan is guaranteed pursuant to section 2850-B.

31 Sec. A-5. 24-A MRSA §2736-C, sub-§2, ¶D, as amended by PL 2001, c. 410,
32 Pt. A, §2 and as affected by §10, is repealed.

33 Sec. A-6. 24-A MRSA §2736-C, sub-§2, ¶G is enacted to read:

SENATE AMENDMENT

1 G. A carrier that offered individual health plans prior to April 1, 2009 may close its
2 individual book of business sold prior to April 1, 2009 and may establish a separate
3 community rate for individuals applying for coverage under an individual health plan
4 after April 1, 2009.

5 **Sec. A-7. 24-A MRSA §2736-C, sub-§3, ¶A**, as corrected by RR 2001, c. 1,
6 §30, is repealed.

7 **Sec. A-8. 24-A MRSA §2736-C, sub-§3, ¶C**, as enacted by PL 1993, c. 477, Pt.
8 C, §1 and as affected by Pt. F, §1, is repealed.

9 **Sec. A-9. 24-A MRSA §2736-C, sub-§3, ¶D**, as enacted by PL 1999, c. 256, Pt.
10 D, §1, is amended to read:

11 D. ~~Notwithstanding paragraph A, carriers~~ Carriers offering supplemental coverage
12 for the Civilian Health and Medical Program for the Uniformed Services,
13 CHAMPUS, are not required to issue this coverage if the applicant for insurance does
14 not have CHAMPUS coverage.

15 **Sec. A-10. 24-A MRSA §2736-C, sub-§6, ¶A**, as amended by PL 1995, c. 332,
16 Pt. K, §1, is further amended to read:

17 A. Each carrier must actively market individual health plan coverage, ~~including any~~
18 ~~standardized plans defined pursuant to subsection 8~~, to individuals in this State.

19 **Sec. A-11. 24-A MRSA §2736-C, sub-§8**, as amended by PL 1999, c. 256, Pt.
20 D, §2, is further amended to read:

21 **8. Authority of the superintendent.** The superintendent may by rule define one or
22 more standardized individual health plans that ~~must~~ may be offered by ~~all~~ carriers
23 offering individual health plans in the State, other than carriers offering only CHAMPUS
24 supplemental coverage.

25 **Sec. A-12. 24-A MRSA §2736-C, sub-§9**, as enacted by PL 1995, c. 570, §7, is
26 amended to read:

27 **9. Exemption for certain associations.** The superintendent may exempt a group
28 health insurance policy or group nonprofit hospital or medical service corporation
29 contract issued to an association group, organized pursuant to section 2805-A, from the
30 requirements of ~~subsection 3, paragraph A; subsection 6, paragraph A; and subsection 8~~
31 if:

32 A. Issuance and renewal of coverage under the policy or contract is guaranteed to all
33 members of the association who are residents of this State and to their dependents;

34 B. Rates for the association comply with the premium rate requirements of
35 subsection 2 or are established on a nationwide basis and substantially comply with
36 the purposes of this section, except that exempted associations may be rated
37 separately from the carrier's other individual health plans, if any;

38 C. The group's anticipated loss ratio, as defined in subsection 5, is at least 75%;

39 D. The association's membership criteria do not include age, health status, medical
40 utilization history or any other factor with a similar purpose or effect;

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "B" to H.P. 1608, L.D. 2247

- 1 E. The association's group health plan is not marketed to the general public;
- 2 F. The association does not allow insurance agents or brokers to market association
3 memberships, accept applications for memberships or enroll members, except when
4 the association is an association of insurance agents or brokers organized under
5 section 2805-A;
- 6 G. Insurance is provided as an incidental benefit of association membership and the
7 primary purposes of the association do not include group buying or mass marketing
8 of insurance or other goods and services; and
- 9 H. Granting an exemption to the association does not conflict with the purposes of
10 this section.

11 **Sec. A-13. 24-A MRSA §2848, sub-§1-B, ¶A**, as amended by PL 1999, c. 256,
12 Pt. L, §2, is further amended to read:

13 A. "Federally creditable coverage" means health benefits or coverage provided under
14 any of the following:

15 (1) An employee welfare benefit plan as defined in Section 3(1) of the federal
16 Employee Retirement Income Security Act of 1974, 29 United States Code,
17 Section 1001, or a plan that would be an employee welfare benefit plan but for
18 the "governmental plan" or "nonelecting church plan" exceptions, if the plan
19 provides medical care as defined in subsection 2-A, and includes items and
20 services paid for as medical care directly or through insurance, reimbursement or
21 otherwise;

22 (2) Benefits consisting of medical care provided directly, through insurance or
23 reimbursement and including items and services paid for as medical care under a
24 policy, contract or certificate offered by a carrier;

25 (3) Part A or Part B of Title XVIII of the Social Security Act, Medicare;

26 (4) Title XIX of the Social Security Act, Medicaid, other than coverage
27 consisting solely of benefits under Section 1928 of the Social Security Act or a
28 state children's health insurance program under Title XXI of the Social Security
29 Act;

30 (5) The Civilian Health and Medical Program for the Uniformed Services,
31 CHAMPUS, 10 United States Code, Chapter 55;

32 (6) A medical care program of the federal Indian Health Care Improvement Act,
33 25 United States Code, Section 1601 or of a tribal organization;

34 (7) A state health benefits risk pool;

35 (8) A health plan offered under the federal Employees Health Benefits
36 Amendments Act, 5 United States Code, Chapter 89;

37 (9) A public health plan as defined in federal regulations authorized by the
38 federal Public Health Service Act, Section 2701(c)(1)(I), as amended by Public
39 Law 104-191; or

1 (10) A health benefit plan under Section 5(e) of the Peace Corps Act, 22 United
2 States Code, Section 2504(e); or

3 (11) Insurance coverage offered by the Comprehensive Chronic Care Pool
4 Association pursuant to chapter 54.

5 **Sec. A-14. 24-A MRSA §2849-B, sub-§2, ¶A**, as amended by PL 2007, c. 199,
6 Pt. D, §4, is further amended to read:

7 A. That person was covered under ~~an individual~~, a group or blanket contract or
8 policy issued by a nonprofit hospital or medical service organization, insurer, or
9 health maintenance organization or was covered under an uninsured employee benefit
10 plan that provides payment for health services received by employees and their
11 dependents or a governmental program, including, but not limited to, those listed in
12 section 2848, subsection 1-B, paragraph A, subparagraphs (3) to ~~(10)~~ (11). For
13 purposes of this section, the individual, group or blanket policy under which the
14 person is seeking coverage is the "succeeding policy." The group, or blanket or
15 ~~individual~~ contract or policy, uninsured employee benefit plan or governmental
16 program that previously covered the person is the "prior contract or policy"; and

17 **Sec. A-15. 24-A MRSA c. 54** is enacted to read:

18 **CHAPTER 54**

19 **COMPREHENSIVE CHRONIC CARE POOL ASSOCIATION**

20 **§3901. Short title**

21 This chapter may be known and cited as "the Comprehensive Chronic Care Pool
22 Association Act."

23 **§3902. Definitions**

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

26 **1. Association.** "Association" means the Comprehensive Chronic Care Pool
27 Association established in section 3903.

28 **2. Board.** "Board" means the board of directors of the association.

29 **3. Covered person.** "Covered person" means an individual resident of this State
30 who:

31 **A.** Is eligible to receive benefits from an insurer;

32 **B.** Is eligible for benefits under the federal Health Insurance Portability and
33 Accountability Act of 1996; or

34 **C.** Has been certified as eligible for federal trade adjustment assistance or for
35 pension benefit guarantee corporation assistance, as provided by the federal Trade
36 Adjustment Assistance Reform Act of 2002.

1 For the purposes of this chapter, "covered person" does not include a dependent of a
2 covered person.

3 **4. Dependent.** "Dependent" means a resident spouse, a resident unmarried child
4 under 19 years of age, a child who is a student under 23 years of age and who is
5 financially dependent upon the parent or a child of any age who is disabled and
6 dependent upon the parent.

7 **5. Health maintenance organization.** "Health maintenance organization" means an
8 organization authorized under chapter 56 to operate a health maintenance organization in
9 this State.

10 **6. Insurer.** "Insurer" means an entity that is authorized to write medical insurance
11 or that provides medical insurance in this State. For the purposes of this chapter, "insurer"
12 includes an insurance company, a nonprofit hospital and medical service organization, a
13 fraternal benefit society, a health maintenance organization, a self-insurance arrangement
14 that provides health care benefits in this State to the extent allowed under the federal
15 Employee Retirement Income Security Act of 1974, a 3rd-party administrator, a multiple-
16 employer welfare arrangement, another entity providing medical insurance or health
17 benefits subject to state insurance regulation and a reinsurer that reinsures health
18 insurance in this State.

19 **7. Medical insurance.** "Medical insurance" means a hospital and medical expense-
20 incurred policy, nonprofit hospital and medical service plan, health maintenance
21 organization subscriber contract or other health care plan or arrangement that pays for or
22 furnishes medical or health care services whether by insurance or otherwise, whether sold
23 as an individual or group policy. "Medical insurance" does not include accidental injury,
24 specified disease, hospital indemnity, dental, vision, disability income, Medicare
25 supplement, long-term care or other limited benefit health insurance or credit insurance;
26 coverage issued as a supplement to liability insurance; insurance arising out of workers'
27 compensation or similar law; automobile medical payment insurance; or insurance under
28 which benefits are payable with or without regard to fault and that is statutorily required
29 to be contained in any liability insurance policy or equivalent self-insurance.

30 **8. Medicare.** "Medicare" means coverage under both Parts A and B of Title XVIII
31 of the federal Social Security Act, 42 United States Code, Section 1395 et seq., as
32 amended.

33 **9. Plan.** "Plan" means the health insurance plan adopted by the board pursuant to
34 this chapter.

35 **10. Producer.** "Producer" means a person who is licensed to sell health insurance in
36 this State.

37 **11. Resident.** "Resident" means an individual who:

38 A. Is legally located in the United States and has been legally domiciled in this State
39 for a period to be established by the board, not to exceed one year, subject to the
40 approval of the superintendent;

41 B. Is legally domiciled in this State on the date of application to the plan and is
42 eligible for enrollment in the chronic care pool under this chapter as a result of the
43 federal Health Insurance Portability and Accountability Act of 1996; or

1 C. Is legally domiciled in this State on the date of application to the plan and has
2 been certified as eligible for federal trade adjustment assistance or for pension benefit
3 guarantee corporation assistance, as provided by the federal Trade Adjustment
4 Assistance Reform Act of 2002.

5 12. Reinsurer. "Reinsurer" means an insurer from whom a person providing health
6 insurance for a resident procures insurance for itself with the insurer with respect to all or
7 part of the medical insurance risk of the person. "Reinsurer" includes an insurer that
8 provides employee benefits excess insurance.

9 13. Third-party administrator. "Third-party administrator" means any entity that
10 is paying or processing medical insurance claims for any resident.

11 **§3903. Comprehensive Chronic Care Pool Association**

12 1. Chronic care pool established. The Comprehensive Chronic Care Pool
13 Association is established as a nonprofit legal entity. As a condition of doing business,
14 an insurer that has sold medical insurance within the previous 12 months or is actively
15 marketing a medical insurance policy in this State must participate in the association.

16 2. Board of directors. The association is governed by a board of directors in
17 accordance with the following.

18 A. The board consists of 11 members appointed as follows:

19 (1) Six members appointed by the superintendent: 2 members chosen from the
20 general public and who are not associated with the medical profession, a hospital
21 or an insurer; 2 members who represent medical providers; one member who
22 represents a statewide organization that represents small businesses and that
23 receives a majority of its funding from small businesses located in this State; and
24 one member who represents producers. A board member appointed by the
25 superintendent may be removed at any time without cause; and

26 (2) Five members appointed by the member insurers, at least 2 of whom are
27 domestic insurers and at least one of whom is a 3rd-party administrator.

28 B. Members of the board serve for 3-year terms, except that of those members
29 initially appointed by the superintendent, 2 members serve for a term of one year, 2
30 members for a term of 2 years and 2 members for a term of 3 years and of those
31 members initially appointed by the member insurers, one member serves for a term of
32 one year, one member serves for a term of 2 years and 2 members serve for a term of
33 3 years. The appointing authority shall designate the period of service of each initial
34 appointee at the time of appointment.

35 C. The board shall elect one of its members as chair.

36 D. Board members may be reimbursed from funds of the association for actual and
37 necessary expenses incurred by them as members but may not otherwise be
38 compensated for their services.

39 3. Plan of operation. The board shall adopt a plan of operation in accordance with
40 the requirements of this chapter and submit its articles, bylaws and operating rules to the
41 superintendent for approval. If the board fails to adopt the plan of operation and suitable

1 articles and bylaws within 90 days after the appointment of the board, the superintendent
2 shall adopt rules to effectuate the requirements of this chapter and those rules remain in
3 effect until superseded by a plan of operation and articles and bylaws submitted by the
4 board and approved by the superintendent. Rules adopted by the superintendent pursuant
5 to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
6 2-A.

7 4. Immunity. A board member is not liable and is immune from suit at law or
8 equity for any conduct performed in good faith that is within the scope of the board's
9 jurisdiction.

10 **§3904. Liability and indemnification**

11 1. Liability. The board and its employees may not be held liable for any obligations
12 of the association. A cause of action may not arise against the association; the board, its
13 agents or its employees; a member insurer or its agents, employees or producers; or the
14 superintendent for any action or omission in the performance of powers and duties
15 pursuant to this chapter.

16 2. Indemnification. The board may provide in its bylaws or rules for
17 indemnification of, and legal representation for, its members and employees.

18 **§3905. Duties and powers of association**

19 **1. Duties. The association shall:**

20 A. Establish administrative and accounting procedures for the operation of the
21 association;

22 B. Establish procedures under which applicants and participants in the plan may
23 have grievances reviewed by an impartial body and reported to the board;

24 C. Select a plan administrator in accordance with section 3906;

25 D. Collect the assessments provided in section 3907. The level of payments must be
26 established by the board. Assessments must be collected pursuant to the plan of
27 operation approved by the board and adopted pursuant to section 3903, subsection 3.
28 In addition to the collection of such assessments, the association shall collect an
29 organizational assessment or assessments from all insurers as necessary to provide for
30 expenses that have been incurred or are estimated to be incurred prior to receipt of the
31 first calendar year assessments. Organizational assessments must be equal in amount
32 for all insurers but may not exceed \$500 per insurer for all such assessments.
33 Assessments are due and payable within 30 days of receipt of the assessment notice
34 by the insurer;

35 E. Require that all policy forms issued by the association conform to standard forms
36 developed by the association. The forms must be approved by the superintendent and
37 must comply with this Title; and

38 F. Develop and implement a program to publicize the existence of the plan, the
39 eligibility requirements for the plan and the procedures for enrollment in the plan and
40 to maintain public awareness of the plan.

41 **2. Powers. The association may:**

- 1 A. Exercise powers granted to insurers under the laws of this State;
- 2 B. Enter into contracts as necessary or proper to carry out the provisions and
3 purposes of this chapter and may, with the approval of the superintendent, enter into
4 contracts with similar organizations of other states for the joint performance of
5 common administrative functions or with persons or other organizations for the
6 performance of administrative functions;
- 7 C. Sue or be sued, and may take legal actions necessary or proper to recover or
8 collect assessments due the association;
- 9 D. Take legal actions necessary to avoid the payment of improper claims against the
10 association or the coverage provided by or through the association, to recover any
11 amounts erroneously or improperly paid by the association, to recover amounts paid
12 by the association as a result of mistake of fact or law or to recover other amounts
13 due the association;
- 14 E. Establish, and modify from time to time as appropriate, rates, rate schedules, rate
15 adjustments, expense allowances, producers' referral fees, claim reserve formulas and
16 any other actuarial function appropriate to the operation of the association in
17 accordance with section 3909;
- 18 F. Issue policies of insurance in accordance with the requirements of this chapter;
- 19 G. Appoint appropriate legal, actuarial and other committees as necessary to provide
20 technical assistance in the operation of the plan, policy and other contract design and
21 any other function within the authority of the association;
- 22 H. Borrow money to effect the purposes of the association. Notes or other evidence
23 of indebtedness of the association not in default must be legal investments for
24 insurers and may be carried as admitted assets;
- 25 I. Establish rules, conditions and procedures for reinsuring risks of member insurers
26 desiring to issue in their own names plan coverage to individuals otherwise eligible
27 for plan coverage;
- 28 J. Prepare and distribute application forms and enrollment instruction forms to
29 producers and to the general public;
- 30 K. Provide for reinsurance of risks incurred by the association. The provision of
31 reinsurance may not subject the association to any of the capital or surplus
32 requirements, if any, otherwise applicable to reinsurers;
- 33 L. Issue additional types of health insurance policies to provide optional coverage,
34 including Medicare supplement health insurance;
- 35 M. Provide for and employ cost-containment measures and requirements, including,
36 but not limited to, preadmission screening, 2nd surgical opinion, concurrent
37 utilization review and individual case management for the purpose of making the
38 benefit plan more cost-effective;
- 39 N. Design, use, contract or otherwise arrange for the delivery of cost-effective health
40 care services, including establishing or contracting with preferred provider

1 organizations, health maintenance organizations and other limited network provider
2 arrangements;

3 O. Apply for funds or grants from public or private sources, including federal grants
4 provided to qualified high-risk pools; and

5 P. Develop a plan to subsidize low-income individuals.

6 **3. Additional duties and powers.** The superintendent may, by rule, establish
7 additional powers and duties of the board and may adopt such rules as are necessary and
8 proper to implement this chapter. Rules adopted pursuant to this subsection are routine
9 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

10 **4. Review for solvency.** The superintendent shall review the association at least
11 every 3 years to determine its solvency. If the superintendent determines that the funds of
12 the association are insufficient to support enrollment of additional persons, the
13 superintendent may order the association to increase its assessments or increase its
14 premium rates. If the superintendent determines that the funds of the association are
15 insufficient to support the enrollment of additional persons and that the cap of
16 assessments in section 3908 is too low to support the enrollment of additional persons,
17 the superintendent may order the association to charge assessments in excess of the cap
18 for a period not to exceed 12 months.

19 **5. Annual report.** The association shall report annually to the joint standing
20 committee of the Legislature having jurisdiction over health insurance matters by March
21 15th. The report must include information on the benefits and rate structure of coverage
22 offered by the association, the financial solvency of the association and the administrative
23 expenses of the plan.

24 **6. Audit.** The association must be audited at least every 3 years. A copy of the audit
25 must be provided to the superintendent and to the joint standing committee of the
26 Legislature having jurisdiction over health insurance matters.

27 **§3906. Selection of plan administrator**

28 **1. Selection of plan administrator.** The board shall select an insurer or 3rd-party
29 administrator, through a competitive bidding process, to administer the plan. The board
30 shall evaluate bids submitted under this subsection based on criteria established by the
31 board, including:

32 A. The insurer's proven ability to handle large group accident and health insurance;

33 B. The efficiency of the insurer's claims-paying procedures; and

34 C. An estimate of total charges for administering the plan.

35 **2. Contract with plan administrator.** The plan administrator selected pursuant to
36 subsection 1 serves for a period of 3 years pursuant to a contract with the association. At
37 least one year prior to the expiration of that 3-year period of service, the board shall invite
38 all insurers, including the current plan administrator, to submit bids to serve as the plan
39 administrator for the succeeding 3-year period. The board shall select the plan
40 administrator for the succeeding period at least 6 months prior to the ending of the 3-year
41 period.

1 3. Duties of plan administrator. The plan administrator selected pursuant to
2 subsection 1 shall:

3 A. Perform all eligibility and administrative claims-payment functions relating to the
4 plan;

5 B. Pay a producer's referral fee as established by the board to each producer that
6 refers an applicant to the plan, if the applicant's application is accepted. The selling
7 or marketing of the plan is not limited to the plan administrator or its producers. The
8 plan administrator shall pay the referral fees from funds received as premiums for the
9 plan;

10 C. Establish a premium billing procedure for collection of premiums from insured
11 persons. Billings must be made periodically as determined by the board;

12 D. Perform all necessary functions to ensure timely payment of benefits to covered
13 persons under the plan, including:

14 (1) Making available information relating to the proper manner of submitting a
15 claim for benefits under the plan and distributing forms upon which submissions
16 must be made;

17 (2) Evaluating the eligibility of each claim for payment under the plan; and

18 (3) Notifying each claimant within 45 days after receiving a properly completed
19 and executed proof of loss whether the claim is accepted, rejected or subject to
20 compromise. The board shall establish reasonable reimbursement amounts for
21 any services covered under the benefit plans;

22 E. Submit regular reports to the board regarding the operation of the plan. The
23 frequency, content and form of the reports must be as determined by the board;

24 F. Following the close of each calendar year, determine net premiums, reinsurance
25 premiums less administrative expense allowance, the expense of administration
26 pertaining to the reinsurance operations of the association and the incurred losses of
27 the year, and report this information to the superintendent; and

28 G. Pay claims expenses from the premium payments received from or on behalf of
29 covered persons under the plan. If the payments by the plan administrator for claims
30 expenses exceed the portion of premiums allocated by the board for payment of
31 claims expenses, the board shall provide the plan administrator with additional funds
32 for payment of claims expenses.

33 4. Payment to plan administrator. The plan administrator selected pursuant to
34 subsection 1 must be paid, as provided in the contract of the association, for its direct and
35 indirect expenses incurred in the performance of its services. As used in this subsection,
36 "direct and indirect expenses" includes that portion of the audited administrative costs,
37 printing expenses, claims administration expenses, management expenses, building
38 overhead expenses and other actual operating and administrative expenses of the plan
39 administrator that are approved by the board as allocable to the administration of the plan
40 and included in the bid specifications.

1 **§3907. Assessments against insurers**

2 **1. Assessments.** For the purpose of providing the funds necessary to carry out the
3 powers and duties of the association, the board shall assess member insurers at such a
4 time and for such amounts as the board finds necessary. Assessments are due not less
5 than 30 days after written notice to the member insurers and accrue interest at 12% per
6 annum on and after the due date.

7 **2. Maximum assessment.** Each insurer must be assessed by the board an amount
8 not to exceed \$2 per covered person insured or reinsured by each insurer per month for
9 medical insurance. An insurer may not be assessed on policies or contracts insuring
10 federal or state employees.

11 **3. Determination of assessment.** The board shall make reasonable efforts to ensure
12 that each covered person is counted only once with respect to an assessment. For that
13 purpose, the board shall require each insurer that obtains excess or stop loss insurance to
14 include in its count of covered persons all individuals whose coverage is insured, in
15 whole or in part, through excess or stop loss coverage. The board shall allow a reinsurer
16 to exclude from its number of covered persons those who have been counted by the
17 primary insurer or by the primary reinsurer or primary excess or stop loss insurer for the
18 purpose of determining its assessment under this subsection. The board may verify each
19 insurer's assessment based on annual statements and other reports determined to be
20 necessary by the board. The board may use any reasonable method of estimating the
21 number of covered persons of an insurer if the specific number is unknown.

22 **4. Excess funds.** If assessments and other receipts by the association, board or plan
23 administrator exceed the actual losses and administrative expenses of the plan, the board
24 shall hold the excess as interest and may use those excess funds to offset future losses or
25 to reduce plan premiums. As used in this subsection, "future losses" includes reserves for
26 claims incurred but not reported.

27 **5. Failure to pay assessment.** The superintendent may suspend or revoke, after
28 notice and hearing, the certificate of authority to transact insurance in this State of any
29 member insurer that fails to pay an assessment. As an alternative, the superintendent may
30 levy a penalty on any member insurer that fails to pay an assessment when due. In
31 addition, the superintendent may use any power granted to the superintendent by this
32 Title to collect any unpaid assessment.

33 **§3908. Availability to coverage**

34 The association shall offer a choice of 2 or more coverage options through the plan as
35 set out in section 3909, subsections 1 and 2. The plan becomes effective October 1, 2008.
36 Policies offered through the association must be available for sale April 1, 2009. The
37 association shall directly insure the coverage provided by the plan, and the policies must
38 be issued through the plan administrator.

39 **§3909. Requirements for coverage**

40 **1. Coverage offered.** The plan must offer in an annually renewable policy the
41 coverage specified in this section for each eligible person. If a covered person is also
42 eligible for Medicare coverage, the plan may not pay or reimburse any person for

1 expenses paid by Medicare. A person whose health insurance coverage is involuntarily
2 terminated for any reason other than nonpayment of premium may apply for coverage
3 under the plan. If such coverage is applied for within 90 days after the involuntary
4 termination and if premiums are paid for the entire period of coverage, the effective date
5 of the coverage is the date of termination of the previous coverage.

6 **2. Major medical expense coverage.** The plan must offer major medical expense
7 coverage to every covered person who is not eligible for Medicare. The board shall
8 establish the coverage to be issued by the plan, its schedule of benefits and exclusions and
9 other limitations, which the board may amend from time to time subject to the approval
10 of the superintendent. In establishing the plan coverage, the board shall take into
11 consideration the levels of health insurance provided in the State and medical economic
12 factors as determined appropriate.

13 **3. Rates.** Rates for coverage issued by the association must meet the requirements
14 of this subsection.

15 A. Rates may not be unreasonable in relation to the benefits provided, the risk
16 experience and the reasonable expenses of providing the coverage.

17 B. Rate schedules must comply with section 2736-C and are subject to approval by
18 the superintendent.

19 C. Subject to approval by the superintendent, standard risk rates for coverage issued
20 by the association must be established by the association using reasonable actuarial
21 techniques and must reflect anticipated experiences and expenses of such coverage
22 for standard risks. The premium for the standard risk rates must range from a
23 minimum of 125% to a maximum of 150% of the weighted average of rates charged
24 by those insurers and health maintenance organizations with individuals enrolled in
25 similar medical insurance plans.

26 **4. Compliance with state law.** Products offered by the association must comply
27 with all relevant requirements of this Title applicable to individual health insurance,
28 including requirements for mandated coverage for specific health care services and
29 specific diseases and for certain providers of health care services.

30 **5. Other sources primary.** The association must be payer of last resort of benefits
31 whenever any other benefit or source of 3rd-party payment is available. The coverage
32 provided by the association must be considered excess coverage, and benefits otherwise
33 payable under association coverage must be reduced by all amounts paid or payable
34 through any other health insurance and by all hospital and medical expense benefits paid
35 or payable under any short-term, accident, dental-only, vision-only, fixed indemnity,
36 limited benefit or credit insurance; coverage issued as a supplement to liability insurance;
37 workers' compensation coverage; automobile medical payment; or liability insurance,
38 whether or not provided on the basis of fault, and by any hospital or medical benefits paid
39 or payable by any insurer or insurance arrangement or any hospital or medical benefits
40 paid or payable under or provided pursuant to any state or federal law or program.

41 **6. Recovery of claims paid.** An amount paid or payable by Medicare or any other
42 governmental program or any other insurance, or self-insurance maintained in lieu of
43 otherwise statutorily required insurance, may not be made or recognized as a claim under
44 such a policy or be recognized as or towards satisfaction of an applicable deductible or

1 out-of-pocket maximum or to reduce the limits of benefits available under the plan. The
2 association has a cause of action against a covered person for the recovery of the amount
3 of any benefits paid to the covered person that should not have been claimed or
4 recognized as claims because of the provisions of this subsection or because the benefits
5 are otherwise not covered. Benefits due from the association may be reduced or refused
6 as a setoff against any amount recoverable under this subsection.

7 **§3910. Eligibility for coverage**

8 **1. Eligibility; application for coverage.** A resident is eligible for coverage under
9 the plan if the resident provides evidence of rejection, a requirement of restrictive riders,
10 a rate increase or a preexisting conditions limitation on a qualified plan, the effect of
11 which is to substantially reduce coverage from that received by a person considered a
12 standard risk by at least one member insurer within 6 months of the date of the certificate,
13 or if the resident meets other eligibility requirements adopted by rule by the
14 superintendent that are not inconsistent with this chapter and that evidence that a person
15 is unable to obtain coverage substantially similar to that which may be obtained by a
16 person who is considered a standard risk. Rules adopted pursuant to this subsection are
17 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

18 **2. Change of domicile.** The board shall develop standards for eligibility for
19 coverage by the association for a natural person who changes domicile to this State and
20 who at the time domicile is established in this State is insured by an organization similar
21 to the association. The eligible maximum lifetime benefits for that covered person may
22 not exceed the lifetime benefits available through the association less any benefits
23 received from a similar organization in the former domiciliary state.

24 **3. Eligibility without applicaton.** The board shall develop a list of medical or
25 health conditions for which a person is eligible for plan coverage without applying for
26 health insurance under subsection 1. A person who can demonstrate the existence or
27 history of any medical or health conditions on the list developed by the board may not be
28 required to provide the evidence specified in subsection 1. The board may amend the list
29 from time to time as appropriate.

30 **4. Exclusions from eligibility.** A person is not eligible for coverage under the plan
31 if:

32 A. The person has or obtains health insurance coverage substantially similar to or
33 more comprehensive than a plan policy or would be eligible to have coverage if the
34 person elected to obtain it, except that:

35 (1) A covered person may maintain other coverage for the period of time the
36 person is satisfying a preexisting condition waiting period under a plan policy;
37 and

38 (2) A covered person may maintain plan coverage for the period of time the
39 person is satisfying a preexisting condition waiting period under another health
40 insurance policy intended to replace the plan policy;

41 B. The person is determined eligible for health care benefits under the MaineCare
42 program pursuant to Title 22;

1 C. The person previously terminated plan coverage, unless 12 months have elapsed
2 since the person's last termination;

3 D. The person has met the lifetime maximum benefit amount under the plan of
4 \$3,000,000;

5 E. The person is an inmate or resident of a public institution; or

6 F. The person's premiums are paid for or reimbursed under any government-
7 sponsored program or by any government agency or health care provider, except as
8 an otherwise qualifying full-time employee, or dependent thereof, of a government
9 agency or health care provider.

10 **5. Termination of coverage.** The coverage of any person ceases:

11 A. On the date a person is no longer a resident;

12 B. Upon the death of the covered person;

13 C. On the date state law requires cancellation of the policy; or

14 D. At the option of the association, 30 days after the association makes any inquiry
15 concerning the person's eligibility or place of residence to which the person does not
16 reply.

17 The coverage of any person who ceases to meet the eligibility requirements of this section
18 may be terminated immediately.

19 **6. Unfair trade practice.** It constitutes an unfair trade practice for any insurer,
20 producer, employer or 3rd-party administrator to refer an individual employee or a
21 dependent of an individual employee to the association, or to arrange for an individual
22 employee or a dependent of an individual employee to apply to the plan, for the purpose
23 of separating such an employee or dependent from a group health benefits plan provided
24 in connection with the employee's employment.

25 **§3911. Actions against association or member insurers based upon joint or**
26 **collective actions**

27 Participation in the association, the establishment of rates, forms or procedures or any
28 other joint or collective action required by this chapter may not be the basis of any legal
29 action or criminal or civil liability or penalty against the association or a member insurer.

30 **§3912. Reimbursement of member insurer**

31 **1. Reimbursement.** A member insurer may seek reimbursement from the
32 association and the association shall reimburse the member insurer to the extent claims
33 made by a covered person after April 1, 2009 exceed premiums paid on a calendar-year
34 basis by the covered person to the member insurer for a covered person who meets the
35 following criteria:

36 A. The member insurer sold an individual health plan to the covered person between
37 December 1, 1993 and April 1, 2009 and the policy that was sold has been
38 continuously renewed by the covered person and the carrier has closed its book of
39 business for individual health plans sold between December 1, 1993 and April 1,
40 2009; and

1 B. The member insurer is able to determine through the use of individual health
2 statements, claims history or any reasonable means that at the time the person applied
3 for insurance coverage with the member insurer, the covered person was diagnosed
4 with one of the following medical conditions: acquired immune deficiency syndrome,
5 angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary
6 occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease,
7 Huntington's chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory
8 aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, heart
9 disease causing open heart surgery, Parkinson's disease, polycystic kidney, psychotic
10 disorders, quadriplegia, stroke, syringomyelia or Wilson's disease.

11 2. Rules. The superintendent may adopt rules to facilitate payment to a carrier
12 pursuant to this section. Rules adopted pursuant to this subsection are routine technical
13 rules as defined in Title 5, chapter 375, subchapter 2-A.

14 3. Repeal. This section is repealed April 1, 2013.

15 **Sec. A-16. Application for federal grant.** Within 30 days of the effective date
16 of this Act, the Superintendent of Insurance shall submit an application to the federal
17 Department of Health and Human Services, Health Resources and Services
18 Administration for a federal seed grant to support the creation and initial operation of the
19 Comprehensive Chronic Care Pool Association established in the Maine Revised
20 Statutes, Title 24-A, chapter 54.

21 **Sec. A-17. Comprehensive Chronic Care Pool Association subsidy**
22 **program.** The board of directors of the Comprehensive Chronic Care Pool Association
23 shall develop a plan to subsidize low-income individuals as authorized under the Maine
24 Revised Statutes, Title 24-A, section 3905, subsection 2, paragraph P. The board shall
25 submit that plan to the joint standing committee of the Legislature having jurisdiction
26 over insurance and financial services matters no later than February 1, 2009. The joint
27 standing committee may submit legislation to the First Regular Session of the 124th
28 Legislature to implement the plan submitted by the association.

29 **Sec. A-18. Effective date.** That section of this Part that repeals the Maine
30 Revised Statutes, Title 24-A, section 2736-C, subsection 3, paragraph C takes effect
31 January 1, 2009. Those sections of this Part that repeal Title 24-A, section 2736-C,
32 subsection 1, paragraph B; section 2736-C, subsection 2, paragraphs B and D; and section
33 2736-C, subsection 3, paragraph A take effect April 1, 2009. Those sections of this Part
34 that amend section 2736-C, subsection 3, paragraph D and subsection 9 take effect April
35 1, 2009.

36

PART B

37 **Sec. B-1. 24 MRSA §2317-B, sub-§14-A** is enacted to read:

38 14-A. Title 24-A, section 2808-C. Small group health plans, Title 24-A, section
39 2808-C;

40 **Sec. B-2. 24 MRSA §2317-B, sub-§15,** as enacted by PL 1999, c. 256, Pt. M,
41 §10, is repealed.

1 **Sec. B-3. 24 MRSA §2327**, as amended by PL 2003, c. 469, Pt. E, §1, is further
2 amended to read:

3 **§2327. Group rates**

4 A group health care contract may not be issued by a nonprofit hospital or medical
5 service organization in this State until a copy of the group rates to be used in calculating
6 the premium for these contracts has been filed for informational purposes with the
7 superintendent. The filing must include the base rates and a description of any
8 procedures to be used to adjust the base rates to reflect factors including but not limited to
9 age, gender, health status, claims experience, group size and coverage of dependents.
10 Notwithstanding this section, rates for group Medicare supplement, nursing home care or
11 long-term care contracts and for certain group contracts included within the definition of
12 "individual health plan" in Title 24-A, section 2736-C, subsection 1, paragraph C must be
13 filed in accordance with section 2321 and rates for small group health plans as defined by
14 Title 24-A, section ~~2808-B~~ 2808-C must be filed in accordance with that section.

15 **Sec. B-4. 24-A MRSA §2803-A, sub-§4**, as amended by PL 2001, c. 410, Pt. B,
16 §2, is further amended to read:

17 **4. Exception.** An insurer is not required to provide the loss information described in
18 this section for a group that is eligible for small group coverage pursuant to section
19 ~~2808-B~~ 2808-C.

20 **Sec. B-5. 24-A MRSA §2804, sub-§3**, as amended by PL 1999, c. 256, Pt. G, §1,
21 is further amended to read:

22 **3.** Except as provided in section 2736-C, section ~~2808-B~~ 2808-C and chapter 36, an
23 insurer may exclude or limit the coverage on any person as to whom evidence of
24 individual insurability is not satisfactory to the insurer.

25 **Sec. B-6. 24-A MRSA §2805, sub-§3**, as amended by PL 1999, c. 256, Pt. G, §2,
26 is further amended to read:

27 **3.** Except as provided in section 2736-C, section ~~2808-B~~ 2808-C and chapter 36, an
28 insurer may exclude or limit the coverage on any person as to whom evidence of
29 individual insurability is not satisfactory to the insurer.

30 **Sec. B-7. 24-A MRSA §2805-A, sub-§4**, as amended by PL 1999, c. 256, Pt. G,
31 §3, is further amended to read:

32 **4.** Except as provided in section 2736-C, section ~~2808-B~~ 2808-C and chapter 36, an
33 insurer may exclude or limit the coverage on any person as to whom evidence of
34 individual insurability is not satisfactory to the insurer.

35 **Sec. B-8. 24-A MRSA §2806, sub-§3**, as amended by PL 1999, c. 256, Pt. G, §4,
36 is further amended to read:

37 **3.** Except as provided in section 2736-C, section ~~2808-B~~ 2808-C and chapter 36, an
38 insurer may exclude or limit the coverage on any person as to whom evidence of
39 individual insurability is not satisfactory to the insurer.

1 **Sec. B-9. 24-A MRSA §2807-A, sub-§3**, as amended by PL 1999, c. 256, Pt. G,
2 §5, is further amended to read:

3 **3.** Except as provided in section 2736-C, section ~~2808-B~~ 2808-C and chapter 36, an
4 insurer may exclude or limit the coverage on any member as to whom evidence of
5 individual insurability is not satisfactory to the insurer.

6 **Sec. B-10. 24-A MRSA §2808, sub-§4**, as amended by PL 1999, c. 256, Pt. G,
7 §6, is further amended to read:

8 **4.** Except as provided in section 2736-C, section ~~2808-B~~ 2808-C and chapter 36, an
9 insurer may exclude or limit the coverage on any person as to whom evidence of
10 individual insurability is not satisfactory to the insurer.

11 **Sec. B-11. 24-A MRSA §2808-B**, as amended by PL 2005, c. 121, Pt. E, §§1 and
12 2, is repealed.

13 **Sec. B-12. 24-A MRSA §2808-C** is enacted to read:

14 **§2808-C. Small group health plans**

15 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
16 following terms have the following meanings.

17 A. "Actuarial certification" means a written statement by a member of the American
18 Academy of Actuaries or other individual acceptable to the superintendent that a
19 carrier offering small group health plans is in compliance with the provisions of
20 subsection 3 based on the person's examination and review of the carrier's appropriate
21 records and the actuarial assumptions and methods used by the carrier to establish
22 premium rates for its small group health plans.

23 B. "Base premium rate" means, for each class of business as to a rating period, the
24 lowest premium rate charged or that could have been charged under a rating system
25 for that class of business by a small group carrier to small employers with similar
26 case characteristics for health plans with the same or similar coverage.

27 C. "Carrier" means any insurance company, nonprofit hospital and medical service
28 organization or health maintenance organization authorized to issue small group
29 health plans in this State. For the purposes of this section, carriers that are affiliated
30 companies or that are eligible to file consolidated tax returns are treated as one carrier
31 and any restrictions or limitations imposed by this section apply as if all small group
32 health plans delivered or issued for delivery in this State by affiliated carriers were
33 issued by one carrier. For purposes of this section, health maintenance organizations
34 are treated as separate organizations from affiliated insurance companies and
35 nonprofit hospital and medical service organizations.

36 D. "Case characteristics" means demographic or other relevant characteristics of a
37 small employer as determined by a carrier that are considered by the carrier in the
38 determination of the premium rates for the small employer. "Case characteristics"
39 does not include claims experience, health status or duration of coverage.

- 1 E. "Class of business" means all or a distinct grouping of small employers in
2 accordance with this paragraph to whom the carrier provides coverage as
3 demonstrated by the carrier's records.
- 4 (1) A distinct grouping may only be established by the small employer carrier on
5 the basis that the applicable health benefit plans:
- 6 (a) Are marketed and sold through individuals and organizations that are not
7 participating in the marketing or sale of other distinct groupings of small
8 employers for the carrier;
- 9 (b) Have been acquired from another carrier as a distinct grouping of plans;
- 10 (c) Are provided through an association with membership of not less than 50
11 small employers that has been formed for purposes other than obtaining
12 insurance; or
- 13 (d) Are in a class of business that meets the requirements for exception to the
14 restrictions related to premium rates provided in subsection 3.
- 15 (2) A carrier may establish no more than 2 additional groupings under
16 subparagraph (1) on the basis of underwriting criteria that are expected to
17 produce substantial variation in the health care costs.
- 18 (3) The superintendent may approve the establishment of additional distinct
19 groupings upon application to the superintendent and a finding by the
20 superintendent that such action would enhance the efficiency and fairness of the
21 small group health plan market.
- 22 F. "Index rate" means, for each class of business for small employers with similar
23 case characteristics, the arithmetic average of the applicable base premium rate and
24 the corresponding highest premium rate.
- 25 G. "Late enrollee" means an eligible employee or dependent who requests
26 enrollment in a small group health plan following the initial minimum 30-day
27 enrollment period provided under the terms of the plan, except that an eligible
28 employee or dependent is not considered a late enrollee if the eligible employee or
29 dependent meets the requirements of section 2849-B, subsection 3, paragraph A, A-1,
30 B, C-1 or D.
- 31 H. "New business premium rate" means, for each class of business as to a rating
32 period, the premium rate charged or offered by the carrier to small employers with
33 similar case characteristics for newly issued health benefit plans with the same or
34 similar coverage.
- 35 I. "Rating period" means the calendar period for which the premium rates established
36 by a carrier are assumed to be in effect as determined by the carrier.
- 37 J. "Small employer" means any person, firm, corporation, partnership or association
38 actively engaged in business that, on at least 50% of its working days during the
39 preceding year, employed no more than 50 eligible employees and at least 2 eligible
40 employees. In determining the number of eligible employees, companies that are

1 affiliated companies or that are eligible to file a combined tax return for purposes of
2 state taxation must be considered one employer.

3 K. "Small group health plan" means any hospital and medical expense-incurred
4 policy; health, hospital or medical service corporation plan contract; or health
5 maintenance organization subscriber contract covering an eligible group. "Small
6 group health plan" does not include the following types of insurance:

7 (1) Accident;

8 (2) Credit;

9 (3) Disability;

10 (4) Long-term care or nursing home care;

11 (5) Medicare supplement;

12 (6) Specified disease;

13 (7) Dental or vision;

14 (8) Coverage issued as a supplement to liability insurance;

15 (9) Workers' compensation;

16 (10) Automobile medical payment; or

17 (11) Insurance under which benefits are payable with or without regard to fault
18 and that is required statutorily to be contained in any liability insurance policy or
19 equivalent self-insurance.

20 **2. Small group health plans subject to this section.** The following small group
21 health plans are subject to this section.

22 A. Except as provided in paragraph B, this section applies to any small group health
23 plan that provides coverage to one or more employees of a small employer.

24 B. This section does not apply to individual health plans that are subject to section
25 2736-C.

26 **3. Premium rates.** Premium rates for small group health plans are subject to the
27 following provisions.

28 A. The index rate for a rating period for any class of business may not exceed the
29 index rate for any other class of business by more than 20%. This paragraph does not
30 apply to a class of business if any of the following apply:

31 (1) The class of business is one for which the carrier does not reject, and never
32 has rejected, small employers included within the carrier's definition of
33 employers eligible for the class of business or otherwise eligible employees and
34 dependents who enroll on a timely basis, based upon their claims experience or
35 health status;

36 (2) The carrier does not involuntarily transfer, and never has involuntarily
37 transferred, a health benefit plan into or out of the class of business; and

- 1 (3) The class of business is available for purchase.
- 2 B. For a class of business, the premium rate charged during a rating period to small
3 employers with similar case characteristics for the same or similar coverage, or the
4 rates that could be charged to such employers under the rating system for that class of
5 business, may not vary from the index rate by more than 25% of the index rate.
- 6 C. The percentage increase in the premium rate charged to a small employer for a
7 new rating period may not exceed the sum of the following:
- 8 (1) The percentage change in the new business premium rate measured from the
9 first day of the prior rating period to the first day of the new rating period. In the
10 case of a class of business for which the small group carrier is not issuing new
11 policies, the carrier shall use the percentage change in the base premium rate;
- 12 (2) An adjustment, not to exceed 15% annually and adjusted pro rata for rating
13 periods of less than one year, due to the claims experience, health status or
14 duration of coverage or the employees or dependents of the small employer as
15 determined from the carrier's rate manual for the class of business; and
- 16 (3) Any adjustment due to change in coverage or change in the case
17 characteristics of the small employer as determined from the carrier's rate manual
18 for the class of business.
- 19 D. In the case of health benefit plans issued prior to the effective date of this section,
20 a premium rate for a rating period may exceed the ranges described in paragraphs A
21 and B for a period of 5 years following the effective date of this section. In that case,
22 the percentage increase in the premium rate charged to a small employer in such a
23 class of business for a new rating period may not exceed the sum of the following:
- 24 (1) The percentage change in the new business premium rate measured from the
25 first day of the prior rating period to the first day of the new rating period. In the
26 case of a class of business for which the small group carrier is not issuing new
27 policies, the carrier shall use the percentage change in the base premium rate; and
- 28 (2) Any adjustment due to change in coverage or change in the case
29 characteristics of the small employer as determined from the carrier's rate manual
30 for the class of business.
- 31 E. This section is not intended to affect the use by a small group carrier of legitimate
32 rating factors other than claims experience, health status or duration of coverage in
33 the determination of premium rates. A small group carrier shall apply rating factors,
34 including case characteristics, consistently with respect to all small employers in a
35 class of business.
- 36 F. A small group carrier may not transfer a small employer involuntarily into or out
37 of a class of business. A small group carrier may not transfer a small employer into or
38 out of a class of business unless such offer is made to transfer all small employers in
39 the class of business without regard to any changes in case characteristics, claims
40 experience, health status or duration of coverage since the first date of coverage.

1 4. Coverage for late enrollees. In providing coverage to late enrollees, small group
2 health plan carriers are allowed to exclude or limit coverage for a late enrollee subject to
3 the limitations set forth in section 2849-B, subsection 3.

4 5. Guaranteed issuance and guaranteed renewal. Carriers providing small group
5 health plans must meet the following requirements on issuance and renewal.

6 A. Any small group health plan offered to any eligible group or subgroup must be
7 offered to all eligible groups that meet the carrier's minimum participation
8 requirements, which may not exceed 75%, to all eligible employees and their
9 dependents in those groups. In determining compliance with minimum participation
10 requirements, eligible employees and their dependents that have existing health care
11 coverage may not be considered in the calculation. If an employee declines coverage
12 because the employee has other coverage, any dependents of that employee who are
13 not eligible under the employee's other coverage are eligible for coverage under the
14 small group health plan.

15 B. A carrier may deny coverage under a managed care plan, as defined by section
16 4301-A:

17 (1) To employers who have no employees who live, reside or work within the
18 approved service area of the plan; and

19 (2) To employers if the carrier has demonstrated to the superintendent's
20 satisfaction that:

21 (a) The carrier does not have the capacity to deliver services adequately to
22 additional enrollees within all or a designated part of its service area because
23 of its obligations to existing enrollees; and

24 (b) The carrier is applying this provision uniformly to individuals and groups
25 without regard to any health-related factor.

26 A carrier that denies coverage in accordance with this subparagraph may not
27 enroll individuals residing within the service area subject to denial of coverage,
28 or groups or subgroups within that area for a period of 180 days after the date of
29 the first denial of coverage.

30 6. Disclosure of rating practices and renewability provisions. Each small group
31 carrier shall disclose the following in the sales and marketing materials provided to small
32 employers:

33 A. The extent to which premium rates for a specific small employer are established
34 or adjusted due to the claims experience, health status or duration of coverage of the
35 employees and dependents of the small employer;

36 B. The ability of the carrier to change premium rates and rating factors, including
37 case characteristics, that may affect changes in premium rates;

38 C. A description of the class of business in which the small employer is or will be
39 included, including the applicable grouping of plans; and

40 D. The small employer's rights regarding renewal of the small group health plan.

1 **7. Maintenance of records.** A small group carrier shall maintain at its principal
2 place of business a complete and detailed description of its rating practices and renewal
3 underwriting practices, including information and documentation that demonstrate that its
4 rating methods and practices are based upon commonly accepted actuarial assumptions
5 and are in accordance with sound actuarial principles. On or before March 1st annually, a
6 carrier shall file with the superintendent an actuarial certification that the carrier is in
7 compliance with this section and that the rating methods of the carrier are actuarially
8 sound. A copy of the certification must be retained by the carrier at its principal place of
9 business. A carrier shall also make the information and documentation required in this
10 subsection available to the superintendent upon request. The information provided to the
11 superintendent pursuant to this subsection is proprietary and must be kept confidential by
12 the superintendent. The information may not be disclosed except as agreed to by the
13 carrier or as ordered by a court of competent jurisdiction.

14 **8. Discretion of superintendent.** The superintendent may suspend all or any part of
15 subsection 3 as to the premium rates applicable to one or more small employers for one or
16 more rating periods upon a filing by the small group carrier and a finding by the
17 superintendent that either the suspension is reasonable in light of the financial condition
18 of the carrier or that the suspension would enhance the efficiency and fairness of the
19 marketplace for small group health plans.

20 **9. Applicability.** This section applies to all small group health plan policies,
21 contracts and certificates executed, delivered, issued for delivery, continued or renewed
22 in this State on or after January 1, 2010. For purposes of this section, all contracts are
23 deemed to be renewed no later than the next yearly anniversary of the contract date.

24 **Sec. B-13. 24-A MRSA §2850-B, sub-§2, ¶C,** as enacted by PL 1997, c. 445,
25 §30 and as affected by §32, is amended to read:

26 C. "Large group market" means groups not subject to section 2736-C or ~~2808-B~~
27 ~~2808-C~~.

28 **Sec. B-14. 24-A MRSA §2850-B, sub-§2, ¶D,** as enacted by PL 1997, c. 445,
29 §30 and as affected by §32, is amended to read:

30 D. "Small group market" means groups subject to section ~~2808-B~~ ~~2808-C~~.

31 **Sec. B-15. 24-A MRSA §2850-B, sub-§3, ¶G,** as amended by PL 2003, c. 428,
32 Pt. A, §1, is further amended to read:

33 G. When the carrier ceases offering a product and meets the following
34 requirements:

- 35 (1) In the large group market:
- 36 (a) The carrier must provide notice to the policyholder and to the insureds at
37 least 90 days before termination;
- 38 (b) The carrier must offer to each policyholder the option to purchase any
39 other product currently being offered in the large group market; and
- 40 (c) In exercising the option to discontinue the product and in offering the
41 option of coverage under division (b), the carrier must act uniformly without

SENATE AMENDMENT

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "B" to H.P. 1608, L.D. 2247

1 regard to the claims experience of the policyholders or the health status of the
2 insureds or prospective insureds;

3 (2) In the small group market:

4 (a) The carrier shall replace the product with a product that complies with
5 the requirements of this section, including renewability, and with section
6 ~~2808-B~~ 2808-C;

7 (b) The superintendent shall must find that the replacement is in the best
8 interests of the policyholders; and

9 (c) The carrier shall provide notice to the policyholder and to the insureds at
10 least 90 days before replacement; or

11 (3) In the individual market:

12 (a) The carrier shall replace the product with a product that complies with
13 the requirements of this section, including renewability, and with section
14 2736-C;

15 (b) The superintendent shall must find that the replacement is in the best
16 interests of the policyholders; and

17 (c) The carrier shall provide notice to the policyholder and, if a group
18 policy, to the insureds at least 90 days before replacement;

19 **Sec. B-16. 24-A MRSA §2850-B, sub-§4, ¶B**, as amended by PL 2001, c. 258,
20 Pt. E, §11, is further amended to read:

21 B. Carriers that cease to write new small group business continue to be governed by
22 section ~~2808-B~~ 2808-C with respect to small group contracts in force and their
23 renewal or replacement contracts.

24 **Sec. B-17. 24-A MRSA §4202-A, sub-§10, ¶B**, as amended by PL 1993, c. 645,
25 Pt. A, §5, is further amended to read:

26 B. Is compensated, except for reasonable copayments, for basic health care services
27 to enrolled participants solely on a predetermined periodic rate basis, except that the
28 organization is not prohibited from having a provision in a group contract allowing an
29 adjustment of premiums based upon the actual health services utilization of the
30 enrollees covered under the contract, and except that such a contract may not be sold
31 to an eligible group subject to the ~~community~~ rating requirements of section ~~2808-B~~
32 2808-C;

33 **Sec. B-18. 24-A MRSA §4207, sub-§5**, as amended by PL 2003, c. 469, Pt. E,
34 §19, is further amended to read:

35 5. A schedule or an amendment to a schedule of charge for enrollee health coverage
36 for health care services may not be used by any health maintenance organization unless it
37 complies with section 2736, ~~2808-B~~ 2808-C or 2839, whichever is applicable.

38 **Sec. B-19. 24-A MRSA §4210, sub-§1**, as amended by PL 1995, c. 332, Pt. O,
39 §4, is further amended to read:

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "B" to H.P. 1608, L.D. 2247

1 1. After a health maintenance organization has been in operation 24 months, it shall
2 have an annual open enrollment period of at least one month during which it accepts
3 enrollees up to the limits of its capacity, as determined by the health maintenance
4 organization, in the order in which they apply for enrollment. To the extent not
5 inconsistent with the requirements of chapter 36 and sections 2736-C and ~~2808-B~~ 2808-C
6 as qualified by section 4222-B, subsection 3, a health maintenance organization may
7 apply to the superintendent for authorization to impose such underwriting restrictions
8 upon enrollment as are necessary to preserve its financial stability, to prevent excessive
9 adverse selection by prospective enrollees or to avoid unreasonably high or unmarketable
10 charges for enrollee coverage for health care services. The superintendent shall approve
11 or deny the application within 10 days of the receipt of that application from the health
12 maintenance organization.

13 **Sec. B-20. 24-A MRSA §4212, sub-§2, ¶C**, as enacted by PL 1995, c. 332, Pt.
14 O, §6, is amended to read:

15 C. When the provisions of the State's ~~community~~ rating law are applicable, as
16 provided by section 2736-C, subsection 3, paragraph B and ~~section 2808-B,~~
17 ~~subsection 4, paragraph B~~; or

18 **Sec. B-21. 24-A MRSA §4222-B, sub-§3**, as enacted by PL 1995, c. 332, Pt. O,
19 §8, is amended to read:

20 3. The requirements of sections 2736-C and ~~2808-B, community rating law,~~ 2808-C
21 apply to health maintenance organizations, except that a health maintenance organization
22 is not required to offer coverage or accept applications from an eligible group or
23 individual located outside the health maintenance organization's approved service area.

24 **Sec. B-22. 24-A MRSA §6603, sub-§1, ¶H**, as amended by PL 2001, c. 410, Pt.
25 A, §9, is further amended to read:

26 H. May issue only health care benefit plans that comply with the requirements of
27 section ~~2808-B~~ 2808-C with regard to rating practices, coverage for late enrollees and
28 guaranteed renewal. An arrangement may not provide health care benefits that do not
29 meet or exceed the requirements for mandated benefits applicable to comparable
30 insured plans.

31 **Sec. B-23. 24-A MRSA §6910, sub-§4, ¶B**, as amended by PL 2005, c. 400, Pt.
32 C, §8, is further amended to read:

33 B. Dirigo Health shall contract with eligible businesses seeking assistance from
34 Dirigo Health in arranging for health benefits coverage by the Dirigo Health Program
35 for their employees and dependents as set out in this paragraph.

36 (1) Dirigo Health may establish contract and other reporting forms and
37 procedures necessary for the efficient administration of contracts.

38 (2) Dirigo Health shall collect payments from participating employers and plan
39 enrollees to cover the cost of:

40 (a) The Dirigo Health Program for enrolled employees and dependents in
41 contribution amounts determined by the board;

- 1 (b) Dirigo Health's quality assurance, disease prevention, disease
- 2 management and cost-containment programs;
- 3 (c) Dirigo Health's administrative services; and
- 4 (d) Other health promotion costs.

5 (3) Dirigo Health shall establish the minimum required contribution levels, not
 6 to exceed 60%, to be paid by employers toward the aggregate payment in
 7 subparagraph (2) and establish an equivalent minimum amount to be paid by
 8 employers or plan enrollees and their dependents who are enrolled in MaineCare.
 9 The minimum required contribution level to be paid by employers must be
 10 prorated for employees that work less than the number of hours of a full-time
 11 equivalent employee as determined by the employer. Dirigo Health may
 12 establish a separate minimum contribution level to be paid by employers toward
 13 coverage for dependents of the employers' enrolled employees.

14 (4) Dirigo Health shall require participating employers to certify that at least
 15 75% of their employees that work 30 hours or more per week and who do not
 16 have other creditable coverage are enrolled in the Dirigo Health Program and that
 17 the employer group otherwise meets the minimum participation requirements
 18 ~~specified by section 2808-B, subsection 4, paragraph A.~~

19 (5) Dirigo Health shall reduce the payment amounts for plan enrollees eligible
 20 for a subsidy under section 6912 accordingly. Dirigo Health shall return any
 21 payments made by plan enrollees also enrolled in MaineCare to those enrollees.

22 (6) Dirigo Health shall require participating employers to pass on any subsidy in
 23 section 6912 to the plan enrollee qualifying for the subsidy, up to the amount of
 24 payments made by the plan enrollee.

25 (7) Dirigo Health may establish other criteria for participation.

26 (8) Dirigo Health may limit the number of participating employers.

27 **Sec. B-24. Effective date.** This Part takes effect January 1, 2010.

28 **PART C**

29 **Sec. C-1. 24-A MRS §4205, sub-§1, ¶C,** as enacted by PL 1975, c. 503, is
 30 amended to read:

31 C. The furnishing of health care services through providers ~~which~~ that are under
 32 contract with or employed by the health maintenance organization. A health
 33 maintenance organization may offer health plans that exceed the geographic
 34 accessibility guidelines imposed by the superintendent by Bureau of Insurance Rule
 35 Chapter 850 for specialty care and hospital services, except for emergency hospital
 36 and hospital maternity care, if the health maintenance organization offers and actively
 37 markets health plans that otherwise meet the standard geographic accessibility
 38 guidelines contained in Bureau of Insurance Rule Chapter 850;

SENATE AMENDMENT

1 §2736-A. Hearing

2 If at any time the superintendent has reason to believe that a filing does not meet the
3 requirements that rates not be excessive, inadequate, unfairly discriminatory or not in
4 compliance with former section 6913 or that the filing violates any of the provisions of
5 chapter 23, the superintendent shall cause a hearing to be held.

6 Hearings held under this section must conform to the procedural requirements set
7 forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4.

8 **Sec. F-4. 24-A MRSA §2736-C, sub-§2, ¶F**, as enacted by PL 2003, c. 469, Pt.
9 E, §12, is amended to read:

10 F. A carrier that adjusts its rate shall account for the savings offset payment or any
11 recovery in that offset payment in its experience consistent with this section and
12 former section 6913.

13 **Sec. F-5. 24-A MRSA §2736-C, sub-§5**, as amended by PL 2003, c. 469, Pt. E,
14 §13, is further amended to read:

15 **5. Loss ratios.** For all policies and certificates issued on or after the effective date of
16 this section, the superintendent shall disapprove any premium rates filed by any carrier,
17 whether initial or revised, for an individual health policy unless it is anticipated that the
18 aggregate benefits estimated to be paid under all the individual health policies maintained
19 in force by the carrier for the period for which coverage is to be provided will return to
20 policyholders at least 65% of the aggregate premiums collected for those policies, as
21 determined in accordance with accepted actuarial principles and practices and on the
22 basis of incurred claims experience and earned premiums. For the purposes of this
23 calculation, any ~~savings offset~~ payments paid pursuant to former section 6913 must be
24 treated as incurred claims.

25 **Sec. F-6. 24-A MRSA §2839-B, sub-§2**, as enacted by PL 2003, c. 469, Pt. E,
26 §17, is amended to read:

27 **2. Annual filing.** Every carrier offering group health insurance specified in
28 subsection 1 shall annually file with the superintendent on or before April 30th a
29 certification signed by a member in good standing of the American Academy of
30 Actuaries or a successor organization that the carrier's rating methods and practices are in
31 accordance with generally accepted actuarial principles and with the applicable actuarial
32 standards of practice as promulgated by an actuarial standards board. The filing must
33 also certify that the carrier has included in its experience any savings offset payments or
34 recovery of those savings offset payments consistent with former section 6913. The filing
35 also must state the number of policyholders, certificate holders and dependents, as of the
36 close of the preceding calendar year, enrolled in large group health insurance plans
37 offered by the carrier. A filing and supporting information are public records except as
38 provided by Title 1, section 402, subsection 3.

39 **Sec. F-7. 24-A MRSA §6908, sub-§1, ¶A**, as enacted by PL 2003, c. 469, Pt. A,
40 §8, is amended to read:



SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "B" to H.P. 1608, L.D. 2247

1 A. Take any legal actions necessary or proper to recover or collect ~~savings offset~~
 2 payments due Dirigo Health or that are necessary for the proper administration of
 3 Dirigo Health;

4 **PART G**

5 **Sec. G-1. Appropriations and allocations.** The following appropriations and
 6 allocations are made.

7 **DIRIGO HEALTH**
 8 **Dirigo Health Fund 0988**

9 Initiative: Deallocates funds for Dirigo Health costs that were funded by the savings
 10 offset payment.

11	DIRIGO HEALTH FUND	2007-08	2008-09
12	All Other	\$0	(\$32,900,000)
13			
14	DIRIGO HEALTH FUND TOTAL	<hr/>	<hr/>
		\$0	(\$32,900,000)

15	DIRIGO HEALTH		
16	DEPARTMENT TOTALS	2007-08	2008-09
17			
18	DIRIGO HEALTH FUND	\$0	(\$32,900,000)
19			
20	DEPARTMENT TOTAL - ALL FUNDS	<hr/>	<hr/>
		\$0	(\$32,900,000)

21 **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**
 22 **Insurance - Bureau of 0092**
 23 Initiative: Allocates funds on a one-time basis for the costs of contracting with another
 24 entity to prepare a grant application.

25	OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
26	All Other	\$0	\$15,000
27			
28	OTHER SPECIAL REVENUE FUNDS TOTAL	<hr/>	<hr/>
		\$0	\$15,000

SENATE AMENDMENT

1	PROFESSIONAL AND FINANCIAL		
2	REGULATION, DEPARTMENT OF		
3	DEPARTMENT TOTALS	2007-08	2008-09
4			
5	OTHER SPECIAL REVENUE FUNDS	\$0	\$15,000
6			
7	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$15,000
8			
9	SECTION TOTALS	2007-08	2008-09
10	OTHER SPECIAL REVENUE FUNDS	\$0	\$15,000
11	DIRIGO HEALTH FUND	\$0	(\$32,900,000)
12			
13	SECTION TOTAL - ALL FUNDS	\$0	(\$32,885,000)

SUMMARY

- 16 This amendment strikes Committee Amendment "A" and instead does the following.
- 17 1. The amendment repeals the guaranteed issuance and community rating law for
18 individual health plans effective April 1, 2009 and allows carriers to treat their pre-April
19 1, 2009 book of business separately from their post-April 1, 2009 book of business. It
20 makes changes to the continuity of coverage laws to allow underwriting when someone
21 switches carriers in the individual market.
- 22 2. The amendment creates the Comprehensive Chronic Care Pool Association. The
23 purpose of the association is to spread the cost of individuals that require chronic care
24 among all health insurers. The amendment funds the chronic care pool through an
25 assessment on insurers. An individual insured through the chronic care pool may be
26 charged a premium up to 150% of the average premium rates charged by carriers for
27 similar health insurance plans. The amendment requires the State to submit an application
28 to the Federal Government for federal assistance to create a chronic care pool.
- 29 3. The amendment also removes the requirement that carriers offer standardized
30 plans as defined in Bureau of Insurance Rule Chapter 750 in the individual market.
- 31 4. The amendment repeals the community rating law for small group health plans
32 effective January 1, 2010 and enacts in its place provisions governing the rating of small
33 group health plans based on a model act from the National Association of Insurance
34 Commissioners.
- 35 5. The amendment allows a health maintenance organization to offer health plans
36 that do not comply with geographic access standards if the health maintenance

SENATE AMENDMENT

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "B" to H.P. 1608, L.D. 2247

1 organization also offers health plans that comply with those access standards or offers a
2 fee-for-service health plan.

3 6. The amendment repeals the savings offset payment used to fund subsidies for
4 individuals, sole proprietors and employees of small employers enrolled in the Dirigo
5 Health Program with an effective date of July 1, 2008 or the effective date of the Act,
6 whichever occurs later.

7 7. The amendment requires that Dirigo Health submit quarterly reports on
8 information regarding enrollment in the Dirigo Health Program.

9 8. The amendment corrects cross-references to reflect the repeal of the savings offset
10 payment.

11 **FISCAL NOTE REQUIRED**
12 (See attached)

13 **SPONSORED BY:** Russell Snowe Mello
14 (Senator SNOWE-MELLO)
15 **COUNTY:** Androscoggin

SENATE AMENDMENT



123rd MAINE LEGISLATURE

LD 2247

LR 3143(08)

An Act To Continue Maine's Leadership in Covering the Uninsured

Fiscal Note for Senate Amendment "A" to Committee Amendment "B"

Sponsor: Sen. Snowe-Mello of Androscoggin

Fiscal Note Required: Yes

Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
Net Cost (Savings)				
General Fund	\$0	(\$717,701)	(\$1,292,115)	(\$1,424,540)
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$15,000	(\$7,629,618)	(\$16,022,197)
Dirigo Health Fund	\$0	(\$31,166,667)	(\$32,960,000)	(\$31,827,000)
Revenue				
General Fund	\$0	\$717,701	\$1,292,115	\$1,424,540
Other Special Revenue Funds	\$0	\$38,570	(\$7,558,743)	(\$15,944,058)
Dirigo Health Fund	\$0	(\$31,166,667)	(\$32,960,000)	(\$31,827,000)

Fiscal Detail and Notes

The fiscal note reflects the incremental difference between the amendment and Committee Amendment B. The amendment eliminates the assumed corporate tax revenue loss associated with the health maintenance organization assessment which increases General Fund revenue by \$717,701 in fiscal year 2008-09..

The amendment eliminates the health maintenance organization assessment that was to be collected by the Superintendent of Insurance beginning in fiscal year 2009-10 and totaled approximately 7.6 million in fiscal year 2009-10 and \$16 million in fiscal year 2010-11. The amendment also eliminates the allocation of Other Special Revenue Funds that would have been required for the transfer (payment) of the assessment by the Superintendent of Insurance to the Maine Individual High-risk Reinsurance Pool, a nonprofit legal entity.

The amendment would retain elimination of the Saving Offset Payment (SOP), one of the funding sources for the Dirigo Health Program, beginning with the assessment effective July 1, 2008, but would not replace the revenue loss. For the purposes of this fiscal note, the baseline assumption for future year SOPs is the \$32.8 million SOP assessed for the year beginning July 1, 2008.

The amendment creates the Comprehensive Health Insurance Risk Pool Association financed with an assessment on member insurers. Because this assessment would be assessed and collected by the Association, a non-profit legal entity, there is no direct fiscal impact on State programs or accounts.

Provides an allocation of \$15,000 to the Bureau of Insurance on a one-time basis for the costs of contracting with another entity to prepare a grant application.

Dirigo Health Fund Summary	2008-09	Projections 2009-10	Projections 2010-11
Revenue Changes:			
Elimination of the Savings Offset Payment	(\$32,900,000)	(\$32,800,000)	(\$32,800,000)
Revenue Changes	<u>(\$32,900,000)</u>	<u>(\$32,800,000)</u>	<u>(\$32,800,000)</u>
Allocation Changes:			
Elimination of the Savings Offset Payment	(\$32,900,000)	(\$32,800,000)	(\$32,800,000)
Allocation Changes	<u>(\$32,900,000)</u>	<u>(\$32,800,000)</u>	<u>(\$32,800,000)</u>