

HOUSE BILL NO. 12
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES B.DAVIS, Ulmer

Introduced: 1/11/93

**Referred: Health, Education & Social Services, Labor & Commerce, Judiciary,
Finance**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to health insurance for small employers; and providing for an
2 effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * Section 1. PURPOSE. (a) The purpose of this Act is to

5 (1) promote the availability of health insurance coverage to small employers
6 regardless of their health status or claims experience;

7 (2) prevent abusive rating practices;

8 (3) require disclosure of rating practices to purchasers;

9 (4) establish rules regarding renewability of coverage;

10 (5) establish limitations on the use of preexisting condition exclusions;

11 (6) provide for development of "basic" and "standard" health benefit plans to
12 be offered to all small employers;

13 (7) provide for establishment of a reinsurance program; and

14 (8) improve the overall fairness and efficiency of the small group health

1 insurance market.

2 (b) It is not the purpose of this Act to shift the cost of providing health insurance to
3 small employers, to other insured persons, or to the state.

4 * Sec. 2. AS 21.36 is amended by adding a new section to read:

5 Sec. 21.36.025. UNFAIR MARKETING PRACTICES PROHIBITED. A
6 person may not violate the applicable provisions of AS 21.56.180.

7 * Sec. 3. AS 21.36.090(d) is amended to read:

8 (d) Except to the extent necessary to comply with AS 21.42.365 and
9 AS 21.56, a person may not practice or permit unfair discrimination against a person
10 who provides a service covered under a group disability policy that extends coverage
11 on an expense incurred basis, or under a group service or indemnity type contract
12 issued by a nonprofit corporation, if the service is within the scope of the provider's
13 occupational license. In this subsection, "provider" means a state licensed physician,
14 dentist, osteopath, optometrist, chiropractor, nurse midwife, advanced nurse
15 practitioner, naturopath, physical therapist, occupational therapist, psychologist,
16 psychological associate, or licensed clinical social worker.

17 * Sec. 4. AS 21.36.090(d) is repealed and reenacted to read:

18 (d) Except to the extent necessary to comply with AS 21.42.365, a person may
19 not practice or permit unfair discrimination against a person who provides a service
20 covered under a group disability policy that extends coverage on an expense incurred
21 basis, or under a group service or indemnity type contract issued by a nonprofit
22 corporation, if the service is within the scope of the provider's occupational license.
23 In this subsection, "provider" means a state licensed physician, dentist, osteopath,
24 optometrist, chiropractor, nurse midwife, advanced nurse practitioner, naturopath,
25 physical therapist, occupational therapist, psychologist, psychological associate, or
26 licensed clinical social worker.

27 * Sec. 5. AS 21 is amended by adding a new chapter to read:

28 CHAPTER 56. SMALL EMPLOYER HEALTH INSURANCE.

29 ARTICLE 1. SMALL EMPLOYER HEALTH REINSURANCE ASSOCIATION.

30 Sec. 21.56.010. CREATION; MEMBERSHIP. A nonprofit incorporated legal
31 entity to be known as the Small Employer Health Reinsurance Association is

1 established. Membership consists of all insurers licensed to transact health insurance
2 in the state that offer a health benefit plan. All members shall maintain membership
3 in the association as a condition of doing health insurance business, or being able to
4 offer subscriber contracts, in the state.

5 Sec. 21.56.020. BOARD OF DIRECTORS; ORGANIZATION. (a) The board
6 of directors of the association consists of nine individuals selected by participating
7 members, subject to approval by the director. The director shall endeavor to appoint
8 at least six board members who are also small employer insurers. If the director is
9 unable to appoint six board members who are also small employer insurers, the
10 director may fill the remaining seats with any insurer. In selecting members of the
11 board, the director shall consider, among other things, whether all types of
12 participating members are fairly represented.

13 (b) To the extent possible, one board member shall represent a health
14 maintenance organization, one board member shall represent a hospital or medical
15 service corporation, one board members' principal health insurance business shall be
16 in the small employer market, and one board member's principal health insurance
17 business shall be in the large employer market. Members of the board may be
18 reimbursed from the association for expenses incurred by them as members, but may
19 not otherwise be compensated by the association for their services. The costs of
20 conducting meetings of the association and its board of directors shall be borne by the
21 association.

22 (c) A member of the board serves for a term of three years and may be
23 reappointed to an unlimited number of terms. The term of a board member shall
24 continue until a successor is appointed. A vacancy on the board shall be filled by
25 participating members, subject to approval by the director. A board member may be
26 removed by the director for cause.

27 Sec. 21.56.030. GENERAL POWERS. The association may

- 28 (1) exercise the powers granted to insurers under the laws of the state,
29 except that the association may not issue insurance;
30 (2) sue or be sued;
31 (3) enter into contracts with insurers, similar associations in other

1 states, or with other persons for the performance of administrative functions;

2 (4) establish administrative and accounting procedures for the operation
3 of the association;

4 (5) take legal action as necessary to avoid the payment of improper
5 claims against the association;

6 (6) define the array of health coverage products for which reinsurance
7 will be provided and issue reinsurance policies;

8 (7) establish rules, conditions, and procedures pertaining to the
9 reinsurance of members' risks by the association;

10 (8) establish actuarial functions appropriate to the operation of the
11 association;

12 (9) assess members under the provisions of this chapter and make
13 advance interim assessments as may be reasonable and necessary for organizational
14 and interim operating expenses; interim assessments shall be credited as offsets against
15 regular assessments due following the close of the calendar year;

16 (10) appoint appropriate legal, actuarial, and other committees as are
17 necessary to provide technical assistance in the operation of the association, design of
18 a policy or contract, or to assist in other functions of the association;

19 (11) borrow money to accomplish the purposes of the association; notes
20 or other evidence of indebtedness of the association that are not in default are
21 investments for insurers and may be carried as admitted assets.

22 Sec. 21.56.040. PLAN OF OPERATION. (a) The association shall submit
23 to the director a plan of operation and amendments necessary or suitable to assure the
24 fair, reasonable, and equitable administration of the association. The director may,
25 after notice and hearing, approve the plan of operation if the director determines it to
26 be suitable to assure the fair, reasonable and equitable administration of the program
27 on a proportionate basis under the provisions of this section and it does not shift
28 program costs to other insured persons or the state. The plan of operation and
29 amendments become effective upon approval in writing by the director.

30 (b) All members of the association shall comply with the plan of operation.

31 (c) The plan of operation must establish procedures for

1 (1) handling and accounting of program assets and money of the
2 association and for an annual fiscal report to the director;

3 (2) reinsuring risks under the provisions of this section;

4 (3) collecting assessments from all members to provide for claims
5 reinsured by the association and for administrative expenses incurred or estimated to
6 be incurred by the association;

7 (4) selection of an administering insurer and establish the administering
8 insurer's powers and duties; and

9 (5) provisions necessary or proper for the execution of the powers and
10 duties of the association.

11 Sec. 21.56.050. HEALTH CARE REINSURANCE. (a) A member may
12 reinsure coverage of an eligible employee of a small employer or a dependent of an
13 eligible employee of a small employer with the association only under the following
14 provisions:

15 (1) regarding a small employer basic or standard health benefit plan,
16 the association shall reinsure the level of coverage provided;

17 (2) regarding a plan other than a small employer health benefit plan,
18 the association shall reinsure the level of coverage provided up to, but not exceeding,
19 the level of coverage provided in a small employer basic or standard health benefit
20 plan;

21 (3) a small employer insurer may reinsure an entire employer group
22 within 60 days of the commencement of the group's coverage under a health benefit
23 plan;

24 (4) a small employer insurer may reinsure an eligible employee or
25 dependent within a period of 60 days following the commencement of the coverage
26 with the small employer; a newly eligible employee or dependent of a reinsured small
27 employer may be reinsured within 60 days of the commencement of coverage;

28 (5) the association may not reimburse a reinsuring insurer regarding the
29 claims of a reinsured employee or dependent until the insurer has paid an initial level
30 of claims for the employee or dependent of \$5,000 in a calendar year for benefits
31 covered by the association;

1 (6) a small employer insurer may terminate reinsurance for one or more
2 of the reinsured employees or dependents of a small employer on any plan anniversary.

3 (b) Premium rates charged for coverage reinsured by the association shall be
4 established as required under (e) of this section and adjusted as follows:

5 (1) for whole group small employer reinsurance coverage, 1.5
6 multiplied by the base premium rate established by the association for eligible
7 employees, and dependents of eligible employees, of a small employer all of whose
8 coverage is reinsured with the association;

9 (2) for eligible employee or dependent reinsurance coverage, 5.0
10 multiplied by the base premium rate established by the association.

11 (c) If a health benefit plan coverage for a small employer is entirely or
12 partially reinsured with the association, the premium charged to the small employer for
13 a rating period for the coverage issued under this section shall meet the premium rate
14 requirements established under AS 21.56.120.

15 (d) On or before March 1 of each year, the board shall determine and report
16 to the director the association's net loss for the previous calendar year, including
17 administrative expenses and incurred losses for the year, taking into account
18 investment income and other appropriate gains and losses. A net loss for the year
19 shall be recovered by assessments collected from reinsuring insurers. The board shall
20 establish, as part of the plan of operation, a formula by which to make assessments
21 against reinsuring insurers. The assessment formula must be based on each reinsuring
22 insurer's share of the total premiums earned in the preceding calendar year from health
23 benefit plans delivered or issued for delivery to small employers in this state by
24 reinsuring carriers and each reinsuring insurer's share of the premiums earned in the
25 preceding calendar year from newly issued health benefit plans delivered or issued for
26 delivery during the calendar year to small employers in this state by reinsuring
27 insurers. In determining an assessment, if any, that is collected from a member, the
28 following provisions apply:

29 (1) the formula established under this subsection may not result in a
30 reinsuring insurer having an assessment share that is less than 50 percent or more than
31 150 percent of an amount that is based on the proportion of the reinsuring insurer's

1 total premiums earned in the preceding calendar year from health benefit plans
2 delivered or issued for delivery to small employers in this state by reinsuring insurers
3 to total premiums earned in the preceding calendar year from health benefit plans
4 delivered or issued for delivery to small employers in this state by all reinsuring
5 carriers;

6 (2) the board may, with approval of the director, change the assessment
7 formula established under this section from time to time as appropriate; the board may
8 provide for the shares of the assessment base attributable to premiums from all health
9 benefit plans and to premiums from newly issued health benefit plans to vary during
10 a transition period;

11 (3) subject to the approval of the director, the board shall make an
12 adjustment to the assessment formula for reinsuring carriers that are approved health
13 maintenance organizations that are federally qualified under 42 U.S.C. 300, to the
14 extent, if any, that restrictions are imposed on those organizations that are not imposed
15 on other small employer carriers;

16 (4) premiums and benefits paid by a reinsuring insurer that are less than
17 an amount determined by the board to justify the cost of collection may not be
18 considered for purposes of determining assessments;

19 (5) annually before March 1, the board shall determine and file with
20 the director an estimate of the assessments needed to fund losses incurred by the
21 association in the previous calendar year;

22 (6) if the board determines that the assessments needed to fund the
23 losses incurred by the association in the previous calendar year will exceed five
24 percent of total premiums earned in the previous year from health benefit plans
25 delivered or issued for delivery to small employers in this state by reinsuring insurers,
26 the board shall evaluate the operation of the program and report its findings, including
27 any recommendations for changes to the plan of operation, to the director within 90
28 days following the end of the calendar year in which the losses were incurred; the
29 evaluation must include an estimate of future assessments, the administrative costs of
30 the program, the appropriateness of the premiums charged, and the level of insurer
31 retention under the program and the costs of coverage for small employers; if the

1 board fails to file a report with the director within 90 days following the end of the
2 applicable calendar year, the director may evaluate the operations of the program and
3 implement amendments to the plan of operation the director determines necessary to
4 reduce future losses and assessments;

5 (7) if assessments exceed net losses of the association, the excess shall
6 be held in an interest bearing account and used by the board to offset future losses or
7 to reduce association premiums; in this paragraph, "future losses" include a reserve for
8 incurred but not reported claims;

9 (8) the board shall annually determine a member's proportion of
10 participation in the association based on annual statements and other reports
11 determined necessary by the board and filed by the member with the board; an insurer
12 shall report to the board a claim payment made and administrative expense incurred
13 in this state on a semi-annual basis on a form prescribed by the director;

14 (9) the plan of operation must include a provision for the imposition
15 of an interest penalty for late payment of assessments;

16 (10) a member may request a deferment from the director, in whole or
17 in part, from an assessment issued by the board; the director may defer, in whole or
18 in part, the assessment of a member if, in the opinion of the director payment of the
19 assessment would endanger the ability of the member to fulfill the member's
20 contractual obligations;

21 (11) in the event an assessment against a member is deferred in whole
22 or in part, the amount by which the assessment is deferred may be assessed against the
23 other members in a manner consistent with the basis for assessments set out in this
24 subsection; the member receiving a deferment shall remain liable to the association for
25 the amount deferred; the director may attach conditions to a deferment; a member
26 receiving a deferment may not reinsure an individual or group as provided under this
27 section until the assessment is paid.

28 (e) The board, as part of the plan of operation, shall establish a methodology
29 for determining premium rates to be charged by the program for reinsuring small
30 employers and individuals under this section. The methodology must include a system
31 for classification of small employers that reflects the types of case characteristics

1 commonly used by small employer insurers in the state. The methodology must
2 provide for the development of base reinsurance premium rates that shall be multiplied
3 by the factors set out in (b) of this section to determine the premium rates for the
4 association. The base reinsurance premium rates shall be established by the board,
5 subject to the approval of the director, and shall be set at levels that reasonably
6 approximate gross premiums charged to small employers by small employer insurers
7 for health benefit plans with benefits similar to the standard health benefit plan. The
8 board shall review the methodology established under this subsection to ensure that the
9 methodology reasonably reflects the claims experience of the program. Changes to the
10 methodology may be proposed by the board, and are subject to approval by the
11 director.

12 Sec. 21.56.060. HEALTH BENEFIT PLAN COMMITTEE. (a) The health
13 benefit plan committee is established in the association. The committee is composed
14 of seven members selected by the director as follows:

- 15 (1) three members who are representatives of participating insurers;
- 16 (2) one member who represents small employers;
- 17 (3) one member who represents employees of small employers; and
- 18 (4) one member who represents health care providers; and
- 19 (5) one member who represents agents or brokers.

20 (b) The committee shall recommend benefit levels, cost sharing levels,
21 exclusions and limitations for the basic and standard health benefit plan offered under
22 AS 21.56.140. The committee shall also design a basic health benefit plan and a
23 standard health benefit plan that contain benefit and cost sharing levels that are
24 consistent with the basic method of operation and the benefit plans of health
25 maintenance organizations, including restrictions imposed by federal law. The plans
26 recommended by the committee may include the following cost containment features:

- 27 (1) utilization review of health care services, including review of the
28 medical necessity of hospital and physician services;
- 29 (2) case management;
- 30 (3) selective contracting with hospitals, physicians, and other health
31 care providers;

1 (4) reasonable benefit differentials applicable to providers that
2 participate or do not participate in arrangements using restricted network provisions;
3 and

4 (5) other managed care provisions.

5 Sec. 21.56.070. **REQUIRED REPORT.** The board shall study and report at
6 least once every two years to the director and to the legislature on the effectiveness
7 of this chapter. The report must analyze the effectiveness of the chapter in promoting
8 rate stability, product availability, and coverage affordability. The report may contain
9 recommendations for actions to improve the overall effectiveness, efficiency, and
10 fairness of the small group health insurance marketplace. The report must address
11 whether insurers, agents, brokers, managing general agents, and third-party
12 administrators are fairly and actively marketing or issuing health benefit plans to small
13 employers in fulfillment of the purposes of the chapter. The report may contain
14 recommendations for market conduct or other regulatory standards or action.

15 Sec. 21.56.080. **ADMINISTRATIVE PROCEDURE ACT.** The association is
16 exempt from AS 44.62 (Administrative Procedure Act).

17 Sec. 21.56.090. **TAX EXEMPTION.** The association is exempt from the
18 payment of fees and taxes levied by the state or any of its political subdivisions except
19 taxes levied on real or personal property.

20 Sec. 21.56.100. **LIMITATION OF LIABILITY.** A member of the association
21 is not liable for civil damages resulting from an act or omission of the member on
22 behalf of the association unless the member acts with gross negligence or intentional
23 misconduct.

24 **ARTICLE 2. SMALL EMPLOYER HEALTH INSURANCE PLANS.**

25 Sec. 21.56.110. **APPLICABILITY.** (a) An individual or group health benefit
26 plan is subject to the provisions of this chapter if the plan provides health care benefits
27 covering employees of a small employer and if one of the following conditions are
28 met:

29 (1) any portion of the premium or benefits is paid by a small employer;

30
31 (2) a covered individual or dependent is reimbursed, through wage

1 adjustments or otherwise, by or on behalf of a small employer for all or a portion of
2 the premium; or

3 (3) the health benefit plan is treated by the employer or any of the
4 eligible employees or dependents as part of a plan or program for the purposes of 26
5 U.S.C. 106 or 26 U.S.C. 162 (Internal Revenue Code).

6 (b) Except as provided in this chapter, other provisions of law requiring the
7 coverage or the offer of coverage of a health care service or benefit and other
8 provisions of law requiring the reimbursement, utilization, or consideration of a
9 specific category of a licensed or certified health care practitioner do not apply to a
10 health benefit plan offered or delivered to a small employer.

11 (c) Except as provided in this subsection, for purposes of this chapter insurers
12 that are affiliated companies or that are eligible to file a consolidated tax return shall
13 be treated as one insurer and a restriction or limitation imposed under this chapter shall
14 apply as if all health benefit plans delivered or issued for delivery to a small employer
15 in this state by an affiliated insurer were issued by one insurer. An affiliated insurer
16 that is a health maintenance organization having a certificate of authority under
17 AS 21.86 may be considered to be a separate insurer for the purposes of this chapter.

18 Sec. 21.56.120. PREMIUM RATE RESTRICTIONS DISCLOSURES;
19 REPORTS; CONFIDENTIALITY. (a) A premium rate for a health benefit plan
20 subject to this chapter is subject to the following provisions:

21 (1) the premium rate charged or offered during a rating period to small
22 employers with similar case characteristics as determined by the insurer for the same
23 or similar coverage may not vary from the applicable index rate by more than 35
24 percent of the applicable index rate;

25 (2) regarding a health benefit plan issued before July 1, 1993, if
26 premium rates charged or offered for the same or similar coverage under a health
27 benefit plan covering a small employer with similar case characteristics as determined
28 by the insurer exceeds the applicable index rate by more than 35 percent, an increase
29 in premium rates for a new rating period may not exceed the sum of

30 (A) a percentage change in the base premium rate measured
31 from the first day of the prior rating period to the first day of the new rating

1 period; plus
2 (B) adjustments due to changes in case characteristics or plan
3 design of the small employer, as determined by the insurer;
4 (3) the percentage increase in the premium rate charged to a small
5 employer for a new rating period may not exceed the sum of the following:
6 (A) the percentage change in the new business premium rate
7 measured from the first day of the prior rating period to the first day of the
8 new rating period; in the case of a health benefit plan into which the small
9 employer insurer is no longer enrolling new small employers, the small
10 employer insurer shall use the percentage change in the base premium rate,
11 provided that the change does not exceed, on a percentage basis, the change in
12 the new business premium rate for the most similar health benefit plan into
13 which the small employer insurer is actively enrolling new small employers;
14 (B) any adjustment, not to exceed 15 percent annually and
15 adjusted pro rata for rating periods of less than one year, due to the claim
16 experience, health status, or duration of coverage of the employees or
17 dependents of the small employer as determined from the small employer
18 insurer's rate manual; and
19 (C) any adjustment due to change in coverage or change in the
20 case characteristics of the small employer, as determined from the small
21 employer insurer's rate manual;
22 (4) adjustments in rates for claim experience, health status, and duration
23 of coverage may not be charged to individual employees or dependents; any
24 adjustment must be applied uniformly to the rates charged for all employees and
25 dependents of the small employer;
26 (5) a premium rate for a health benefit plan shall comply with the
27 requirements of this section notwithstanding an assessment paid or payable by small
28 employer insurers under AS 21.56.050(d);
29 (6) a small employer insurer may utilize industry as a case
30 characteristic in establishing premium rates, provided that the rate factor associated
31 with an industry classification may not vary by more than 15 percent from the

1 arithmetic average of the highest and lowest rate factors associated with all industry
2 classifications;

3 (7) a small employer insurer shall

4 (A) apply rating factors, including case characteristics,
5 consistently with respect to all small employers; rating factors must produce
6 premiums for identical groups that differ only by amounts attributable to plan
7 design and do not reflect differences due to the nature of the groups assumed
8 to select particular health benefit plans; and

9 (B) treat all health benefit plans issued or renewed in the same
10 calendar month as having the same rating period;

11 (8) for the purposes of this subsection, a health benefit plan that utilizes
12 a restricted provider network may not be considered similar coverage to a health
13 benefit plan that does not utilize a restricted provider network;

14 (9) a small employer insurer may not use case characteristics, other
15 than age, gender, industry, geographic area, family composition, and group size without
16 prior approval of the director.

17 (b) In connection with the offering for sale of a health benefit plan to a small
18 employer, a small employer insurer shall make a reasonable disclosure, as part of its
19 solicitation and sales materials, of the following:

20 (1) the extent that premium rates for a specified small employer are
21 established or adjusted based upon the actual or expected variation in claims costs or
22 actual or expected variation in health status of the employees of the small employer
23 and their dependents; and

24 (2) the provisions of the health benefit plan

25 (A) concerning the small employer insurer's right to change
26 premium rates and factors, other than claim experience, that affect changes in
27 premium rates;

28 (B) relating to renewability of policies and contracts; and

29 (C) relating to any preexisting condition provision.

30 (c) A small employer insurer shall

31 (1) maintain at its principal place of business a complete and detailed

1 description of its rating practices and renewal underwriting practices, including
2 information and documentation that demonstrate that its rating methods and practices
3 are based upon commonly accepted actuarial assumptions and are in accordance with
4 sound actuarial principles;

5 (2) file with the director annually, on or before March 15, an actuarial
6 certification certifying that the insurer is in compliance with this chapter and that the
7 rating methods of the small employer insurer are actuarially sound; the certification
8 shall be in a form and manner, and must contain information, as specified by the
9 director; a copy of the certification shall be retained by the small employer insurer at
10 its principal place of business;

11 (3) make the information and documentation described in (1) of this
12 subsection available to the director upon request; the information is confidential and
13 not subject to disclosure, except

14 (A) as agreed to by the small employer insurer;

15 (B) as ordered by a court of competent jurisdiction; or

16 (C) the director may use the information or other discovered
17 information in a judicial or administrative proceeding.

18 (d) The director may adopt regulations to implement the provisions of this
19 section and to ensure that rating practices used by small employer insurers are
20 consistent with the purposes of this act, including ensuring that differences in rates
21 charged for health benefit plans by small employer insurers are reasonable and reflect
22 objective differences in plan design, not including differences due to the nature of the
23 groups assumed to select particular health benefit plans.

24 Sec. 21.56.130. RENEWABILITY OF COVERAGE. (a) A health benefit
25 plan subject to this chapter shall be renewable with respect to all eligible employees
26 and dependents at the option of the small employer, except for

27 (1) nonpayment of the required premiums;

28 (2) fraud or misrepresentation of the small employer or, with respect
29 to coverage of individual insureds, the insureds or their representatives;

30 (3) noncompliance with the minimum participation or employer
31 contribution requirements;

1 (4) repeated misuse of a provider network provision; or
2 (5) a small employer insurer who elects to nonrenew all of its health
3 benefit plans delivered or issued for delivery to small employers in this state; an
4 insurer who elects to nonrenew as described in this paragraph shall

5 (A) provide advance notice of the decision to the director and
6 to the director or commissioner of insurance in each state in which the insurer
7 is licensed; and

8 (B) provide notice of the decision not to renew coverage to all
9 affected small employers and to the insurance regulatory office in each state
10 in which an affected covered individual is known to reside at least 180 days
11 before the nonrenewal of the health benefit plan by the insurer; notice to the
12 director under this subparagraph shall be provided at least three working days
13 before the notice to the affected small employers;

14 (6) a health benefit plan for which the director finds that the
15 continuation of the coverage would

16 (A) not be in the best interests of the policyholders or certificate
17 holders; or

18 (B) impair the insurer's ability to meet its contractual
19 obligations.

20 (b) A small employer insurer that elects not to renew a health benefit plan
21 under (a)(5) of this section may not write new business in the small employer market
22 in this state for a period of five years from the date of notice to the director.

23 (c) If a small employer insurer is doing business in only one established
24 geographic service area of the state, the provisions in this section apply only to the
25 insurer's operations in that established service area.

26 Sec. 21.56.140. REQUIRED OFFER OF COVERAGE. (a) Except as
27 provided under AS 21.56.160, a small employer insurer shall, as a condition of
28 transacting business in this state with small employers, offer to small employers at
29 least two health benefit plans. One health benefit plan offered by a small employer
30 insurer shall be a basic health benefit plan and one plan shall be a standard health
31 benefit plan. A small employer insurer shall issue a basic health benefit plan or a

1 standard health benefit plan to an eligible small employer that applies for either plan,
2 agrees to make the required premium payments, and agrees to satisfy the other
3 reasonable provisions of the health benefit plan not inconsistent with this chapter.

4 (b) A small employer insurer shall file with the director, under AS 21.42, the
5 basic health benefit plans and the standard health benefit plans to be used by the
6 insurer.

7 (c) The director at any time may, after providing notice and an opportunity for
8 a hearing to a small employer insurer as provided under AS 21.06.180 - 21.06.210,
9 disapprove the continued use by the small employer insurer of a basic or standard
10 health benefit plan if the plan does not meet the requirements of this chapter.

11 Sec. 21.56.150. REQUIRED HEALTH BENEFIT PROVISIONS. A health
12 benefit plan covering a small employer must include the following provisions:

13 (1) a health benefit plan may not deny, exclude, or limit benefits for
14 a covered individual for losses incurred more than 12 months following the effective
15 date of the individual's coverage due to a preexisting condition; a health benefit plan
16 may not define a preexisting condition more restrictively than

17 (A) a condition that would have caused an ordinarily prudent
18 person to seek medical advice, diagnosis, care, or treatment during the six
19 months immediately preceding the effective date of coverage;

20 (B) a condition for which medical advice, diagnosis, care, or
21 treatment was recommended or received during the six months immediately
22 preceding the effective date of coverage; or

23 (C) a pregnancy existing on the effective date of coverage;

24 (2) a health benefit plan must waive any time period applicable to a
25 preexisting condition exclusion or limitation period with respect to particular services
26 for the period of time an individual was previously covered by qualifying previous
27 coverage that provided benefits with respect to the services, provided that the
28 qualifying previous coverage was continuous to a date not more than 30 days before
29 the effective date of the new coverage; this paragraph does not preclude application
30 of a waiting period applicable to all new enrollees under the health benefit plan;

31 (3) a health benefit plan may exclude coverage for late enrollees for the

1 greater of 18 months or for an 18-month preexisting condition exclusion, provided that
2 if both a period of exclusion from coverage and a preexisting condition exclusion are
3 applicable to a late enrollee, the combined period may not exceed 18 months from the
4 date the individual enrolls for coverage under the health benefit plan;

5 (4) requirements used by a small employer insurer in determining
6 whether to provide coverage to a small employer shall be applied uniformly among all
7 small employers with the same number of eligible employees applying for coverage
8 or receiving coverage from the small employer insurer, except that a small employer
9 insurer may vary application of minimum participation requirements and minimum
10 employer contribution requirements by the size of the small employer group;

11 (5) a small employer insurer may not increase a requirement for
12 minimum employee participation or a requirement for minimum employer contribution
13 applicable to a small employer at any time after the small employer has been accepted
14 for coverage, except as allowed under (4) of this section;

15 (6) if a small employer insurer offers coverage to a small employer, the
16 small employer insurer shall offer coverage to all of the eligible employees of a small
17 employer and their dependents; a small employer insurer may not offer coverage to
18 only certain individuals in a small employer group or to only part of the group, except
19 in the case of late enrollees as provided in (3) of this section;

20 (7) a health benefit plan may not, by a rider or amendment applicable
21 to a specific individual, restrict or exclude coverage by type of illness, treatment,
22 medical condition, or accident, except for preexisting conditions as allowed under this
23 section.

24 Sec. 21.56.160. EXEMPTION FROM REQUIRED OFFER OF COVERAGE.

25 (a) A small employer insurer is not required to offer coverage or accept applications
26 under AS 21.56.140(a)

27 (1) if the small employer is not physically located in the insurer's
28 established geographic service area;

29 (2) if the employee does not work or reside within the insurer's
30 established geographic service area;

31 (3) within an established geographic service area where the small

1 employer insurer reasonably anticipates, and demonstrates to the satisfaction of the
2 director, that it will not have the capacity to deliver service adequately to the members
3 of the groups because of its obligations to existing group policyholders and enrollees;
4 or

5 (4) if the certificate of authority or bylaws of the insurer do not permit
6 the insurer to issue coverage on a marketwide basis; an insurer described in this
7 subparagraph shall comply with AS 21.56.140 regarding small employers that meet the
8 requirements of the insurer's certificate of authority or bylaws; this subparagraph does
9 not apply to insurers who limit coverage based on health status or health risk.

10 (b) A small employer insurer that cannot offer coverage under (a)(3) of this
11 section may not offer coverage in the applicable area to new cases of employer groups
12 with more than 25 eligible employees or to small employer groups until the later of
13 180 days following each refusal or the date on which the insurer notifies the director
14 that it has regained capacity to deliver services to small employer groups.

15 (c) A small employer insurer may not be required to provide coverage to small
16 employers for any period of time for which the director determines that requiring the
17 acceptance of small employers would place the small employer insurer in a financially
18 impaired condition.

19 Sec. 21.56.170. CONDITIONS FOR CEASING TO DO BUSINESS. A small
20 employer insurer or a welfare arrangement may cease doing business in the small
21 employer market if the insurer or welfare arrangement provides notice of the decision
22 to cease doing business in the small employer market to the division, the board, the
23 policyholder or contract holder, and the employer, and coverage under a health benefit
24 plan subject to this chapter is continued for one year after the date of the notice
25 required under this section. A small employer insurer or a welfare arrangement that
26 ceases doing business in the small employer marketplace may not reenter the small
27 employer marketplace for a period of five years from the date of the notice required
28 under this section.

29 Sec. 21.56.180. FAIR MARKETING STANDARDS. (a) A small employer
30 insurer shall actively market health benefit plan coverage, including the basic and
31 standard health benefit plans, to eligible small employers in the state. If a small

1 employer insurer denies coverage to a small employer on the basis of the health status
2 or claims experience of the small employer or its employees or dependents, the small
3 employer insurer shall offer the small employer the opportunity to purchase a basic
4 health benefit plan and a standard health benefit plan.

5 (b) Except as provided in this subsection, a small employer insurer may not,
6 directly or indirectly, encourage or direct small employers to refrain from filing an
7 application for coverage with the small employer insurer because of the health status,
8 claims experience, industry, occupation, or geographic location of the small employer,
9 or encourage or direct small employers to seek coverage from another insurer because
10 of the health status, claims experience, industry, occupation, or geographic location of
11 the small employer. This subsection does not apply to information provided by a
12 small employer insurer to a small employer regarding the established geographic
13 service area or a restricted network provision of a small employer insurer.

14 (c) Except as provided in this subsection, a small employer insurer may not,
15 directly or indirectly, enter into a contract, agreement, or arrangement with an agent,
16 broker, managing general agent, or third-party administrator that provides for or results
17 in the compensation paid to an agent or broker for the sale of a health benefit plan to
18 be varied because of the health status, claims experience, industry, occupation, or
19 geographic location of the small employer. This subsection does not apply to a
20 compensation arrangement that provides compensation to an agent, broker, managing
21 general agent, or third-party administrator on the basis of a percentage of premium,
22 provided that the percentage does not vary because of the health status, claims
23 experience, industry, occupation, or geographic area of the small employer.

24 (d) A small employer insurer

25 (1) shall provide reasonable compensation, as provided under the plan
26 of operation of the program, to an agent, broker, managing general agent, or third-party
27 administrator, if any, for the sale of a basic or standard health benefit plan;

28 (2) or agent, broker, managing general agent, or third-party
29 administrator may not induce or otherwise encourage a small employer to separate or
30 otherwise exclude an employee from health coverage or benefits provided in
31 connection with the employee's employment;

1 (3) may only deny an application for coverage from a small employer
2 in writing and if the reasons for the denial are stated.

3 (e) The director may by regulation establish additional standards to provide for
4 the fair marketing and broad availability of health benefit plans to small employers in
5 this state.

6 (f) A violation of this section by a person is an unfair trade practice for
7 purposes of AS 21.36.

8 (g) If a small employer insurer enters into a contract, agreement, or other
9 arrangement with a third-party administrator to provide administrative, marketing, or
10 other services related to the offering of health benefit plans to small employers in this
11 state, the third-party administrator is subject to this section as if it were a small
12 employer insurer.

13 Sec. 21.56.250. DEFINITIONS. In this chapter,

14 (1) "actuarial certification" means a written statement by a member of
15 the American Academy of Actuaries or another individual acceptable to the director
16 indicating that based on the person's examination, including a review of the
17 appropriate records, actuarial assumptions, and methods used by the insurer in
18 establishing premium rates for applicable health insurance plans that a small employer
19 insurer is in compliance with the provisions of AS 21.56.120;

20 (2) "affiliate" or "affiliated" means a person who directly or indirectly,
21 through one or more intermediaries, controls or is controlled by or is under common
22 control with, a specified person;

23 (3) "association" means the Small Employer Health Reinsurance
24 Association created in AS 21.56.010;

25 (4) "base premium rate" means the lowest premium rate charged or that
26 could have been charged under the rating system by the small employer insurer to
27 small employers with similar case characteristics for health benefit plans with the same
28 or similar coverage;

29 (5) "basic health benefit plan" means a lower cost plan offered under
30 AS 21.56.140;

31 (6) "board" means the board of directors of the association;

1 (7) "case characteristics" means demographic or other objective
2 characteristics of a small employer that are considered by the small employer insurer
3 in the determination of premium rates for the small employer, provided that claim
4 experience, health status, and duration of coverage may not be case characteristics for
5 the purposes of this chapter;

6 (8) "committee" means the health benefit plan committee established
7 in AS 21.56.060;

8 (9) "dependent" means the spouse or an unmarried child of an eligible
9 employee who is not yet 19 years of age; an unmarried child who is a full-time
10 student, who is not yet 23 years of age, and who is financially dependent upon the
11 parent; and an unmarried child of any age who is medically certified as disabled and
12 dependent upon the parent, subject to applicable terms of the health benefit plan
13 covering the employee;

14 (10) "eligible employee" means an employee who works on a full-time
15 basis, with a normal work week of 30 or more hours, and includes a sole proprietor,
16 a partner of a partnership or an independent contractor, provided the sole proprietor,
17 partner, or contractor is included as an employee under a health benefit plan of a small
18 employer, but does not include an employee who works on a part-time, temporary, or
19 substitute basis;

20 (11) "established geographic service area" means a geographic area
21 within which the insurer is authorized to provide coverage under the insurer's
22 certificate of authority as approved by the director;

23 (12) "health benefit plan" means a hospital or medical expense policy,
24 health, hospital, or medical service corporation contract, a plan provided by an insurer
25 or welfare arrangement, and a health maintenance organization contract offered by an
26 employer, but does not include a policy covering only accident, credit, dental,
27 disability income, long-term care, hospital indemnity, fixed indemnity, Medicare
28 supplement, specified disease, vision care, coverage issued as a supplement to liability
29 insurance, worker's compensation insurance, automobile medical payment insurance;

30 (13) "index rate" means for small employers with similar case
31 characteristics and plan designs as determined by the insurer for a rating period, the

1 arithmetic average of the applicable base premium rate and the corresponding highest
2 premium rate;

3 (14) "insurer" has the meaning given in AS 21.90.900 and includes a
4 welfare arrangement, a fraternal benefit society, a health maintenance organization, a
5 hospital service corporation, and a medical service corporation;

6 (15) "late enrollee" means an eligible employee or dependent who
7 requests enrollment in a small employer's health benefit plan following the initial
8 enrollment period for which the employee or dependent was eligible to enroll under
9 the terms of the health benefit plan except that an eligible employee or dependent may
10 not be considered a late enrollee if

11 (A) the individual

12 (i) was covered under qualifying previous coverage at
13 the time of the initial enrollment;

14 (ii) has lost coverage under qualifying previous coverage
15 as a result of the termination of employment or eligibility, the
16 involuntary termination of the qualifying previous coverage, death of a
17 spouse, or divorce or dissolution of marriage; and

18 (iii) requests enrollment within 30 days after the
19 termination of the qualifying previous coverage; or

20 (B) the individual is employed by an employer who offers
21 multiple health benefit plans and the individual elects a different health benefit
22 plan during an open enrollment period; or

23 (C) a court has ordered coverage to be provided for a spouse
24 or minor child under a covered employee's plan and request for enrollment is
25 made within 30 days after issuance of the court order;

26 (16) "member" means all insurers issuing health benefit plans, welfare
27 arrangements and, to the extent permitted under 29 U.S.C. 1001 - 1459 (Employee
28 Retirement Income Security Act), other benefit arrangements providing health benefit
29 plans in this state;

30 (17) "new business premium rate" means the lowest premium rate
31 charged or offered, or that could have been charged or offered, by the small employer

1 insurer to small employers with similar case characteristics for newly issued health
2 benefit plans with the same or similar coverage;

3 (18) "plan of operation" means the plan of operation of the association
4 adopted by the board under AS 21.56.040;

5 (19) "qualifying previous coverage" and "qualifying existing coverage"
6 mean benefits or coverage provided under

7 (A) Medicare or Medicaid;

8 (B) an employer-based health insurance or health benefit
9 arrangement that provides benefits similar to or exceeding benefits provided
10 under the basic health benefit plan; or

11 (C) an individual health insurance policy, including coverage
12 issued under AS 21.84, AS 21.86, or AS 21.87 that provides benefits similar
13 to or exceeding the benefits provided under the basic health benefit plan,
14 provided that the policy has been in effect for a period of at least one year;

15 (20) "rating period" means the calendar period for which premium rates
16 established by a small employer insurer are assumed to be in effect;

17 (21) "reinsuring insurer" means a small employer insurer participating
18 in the reinsurance association under AS 21.56.010;

19 (22) "restricted network provision" means a provision of a health
20 benefit plan that conditions the payment of benefits, in whole or in part, on the use of
21 health care providers that have entered into a contractual arrangement with the insurer
22 under AS 21.86 to provide health care services to covered individuals;

23 (23) "small employer" means a person, firm, corporation, partnership,
24 or association actively engaged in business whose total employed work force consisted
25 of, on at least 50 percent of its working days during the preceding 12 months, at least
26 two but not more than 25 eligible employees, the majority of whom are employed
27 within the state; in determining the number of eligible employees, companies that are
28 affiliated companies or that are eligible to file a combined tax return for purposes of
29 federal taxation, are considered one employer; except as otherwise specifically
30 provided, provisions of this chapter that apply to a small employer that has a health
31 benefit plan continue to apply until the plan anniversary following the date the

1 employer no longer meets the requirements of this definition;

2 (24) "small employer insurer" means an insurer that offers a health
3 benefit plan covering eligible employees of one or more small employers;

4 (25) "standard health benefit plan" means a health benefit plan
5 developed under AS 21.56.140;

6 (26) "welfare arrangement" means a multiple employer welfare
7 arrangement as defined in 29 U.S.C. 1003, but does not include a multiple employer
8 welfare arrangement that is fully insured as provided in 26 U.S.C. 1060.

9 * Sec. 6. AS 21.86.260(a) is amended to read:

10 (a) Except as provided in AS 21.56 and in this chapter, this title does not
11 apply to a health maintenance organization that obtains a certificate of authority under
12 this chapter. This subsection does not apply to an insurer licensed under AS 21.09 or
13 a hospital or medical service corporation licensed under AS 21.87 except with respect
14 to its health maintenance organization activities authorized by and regulated under this
15 chapter.

16 * Sec. 7. AS 21.86.260(a) is repealed and reenacted to read:

17 (a) Except as provided in this chapter, this title does not apply to a health
18 maintenance organization that obtains a certificate of authority under this chapter. This
19 subsection does not apply to an insurer licensed under AS 21.09 or a hospital or
20 medical service corporation licensed under AS 21.87 except with respect to its health
21 maintenance organization activities authorized by and regulated under this chapter.

22 * Sec. 8. AS 21.87.340 is amended to read:

23 Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the
24 provisions contained or referred to previously in this chapter, the following chapters
25 and provisions of this title also apply with respect to service corporations to the extent
26 applicable and not in conflict with the express provisions of this chapter and the
27 reasonable implications of the express provisions, and for the purposes of the
28 application the corporations shall be considered to be mutual "insurers":

29 (1) AS 21.03

30 (2) AS 21.06

31 (3) AS 21.09, except AS 21.09.090

- 1 (4) AS 21.18.010
- 2 (5) AS 21.18.030
- 3 (6) AS 21.18.040
- 4 (7) AS 21.18.120
- 5 (8) AS 21.21.321
- 6 (9) AS 21.36
- 7 (10) AS 21.42.345 - 21.42.365, 21.42.375, 21.42.380, and 21.42.385
- 8 (11) AS 21.51.120
- 9 (12) AS 21.53
- 10 (13) AS 21.54.020
- 11 (14) AS 21.56
- 12 ~~(15)~~ AS 21.69.400
- 13 ~~(16)~~ [(15)] AS 21.69.520
- 14 ~~(17)~~ [(16)] AS 21.69.600, 21.69.620, and 21.69.630
- 15 ~~(18)~~ [(17)] AS 21.78
- 16 ~~(19)~~ [(18)] AS 21.89.040
- 17 ~~(20)~~ [(19)] AS 21.89.060
- 18 ~~(21)~~ [(20)] AS 21.90.

19 * Sec. 9. AS 21.87.340 is repealed and reenacted to read:

20 Sec. 21.87.340. OTHER PROVISIONS APPLICABLE. In addition to the
21 provisions contained or referred to previously in this chapter, the following chapters
22 and provisions of this title also apply with respect to service corporations to the extent
23 applicable and not in conflict with the express provisions of this chapter and the
24 reasonable implications of the express provisions, and for the purposes of the
25 application the corporations shall be considered to be mutual "insurers":

- 26 (1) AS 21.03
- 27 (2) AS 21.06
- 28 (3) AS 21.09, except AS 21.09.090
- 29 (4) AS 21.18.010
- 30 (5) AS 21.18.030
- 31 (6) AS 21.18.040

- 1 (7) AS 21.18.120
- 2 (8) AS 21.21.321
- 3 (9) AS 21.36
- 4 (10) AS 21.42.345 - 21.42.365, 21.42.375, 21.42.380, and 21.42.385
- 5 (11) AS 21.51.120
- 6 (12) AS 21.53
- 7 (13) AS 21.54.020
- 8 (14) AS 21.69.400
- 9 (15) AS 21.69.520
- 10 (16) AS 21.69.600, 21.69.620, and 21.69.630
- 11 (17) AS 21.78
- 12 (18) AS 21.89.040
- 13 (19) AS 21.89.060
- 14 (20) AS 21.90.

15 * **Sec. 10. PREMIUM RATE RESTRICTION.** Regarding a health benefit plan subject to
16 AS 21.56.110, enacted in sec. 5 of this Act, that is delivered or issued for delivery before
17 July 1, 1993, a premium rate for a rating period may exceed the ranges set out in
18 AS 21.56.120(a)(1) and (2), enacted in sec. 5 of this Act, through June 30, 1996; on or after
19 July 1, 1996, the premium rate may not exceed the ranges set out in AS 21.56.120(a)(1) and
20 (2). However, through June 30, 1996, the percentage increase in the premium rate charged
21 to a small employer for a new rating period may not exceed the sum of

22 (1) the percentage change in the new business premium rate measured from
23 the first day of the prior rating period to the first day of the new rating period; in the case of
24 a health benefit plan into which the small employer insurer is no longer enrolling new small
25 employers, the small employer insurer shall use the percentage change in the base premium
26 rate, provided that the change does not exceed, on a percentage basis, the change in the new
27 business premium rate for the most similar health benefit plan into which the small employer
28 insurer is actively enrolling new small employers; and

29 (2) any adjustment due to change in coverage or change in the case
30 characteristics of the small employer, as determined from the insurer's rate manual.

31 * **Sec. 11. TRANSITION.** (a) Within 180 days after the board is appointed under

1 AS 21.56.020, enacted in sec. 5 of this Act, the board of directors of the Small Employer
2 Health Reinsurance Association shall submit a small employer health benefit plan to the
3 director of the division of insurance for approval. If the association fails to submit a suitable
4 plan of operation, the director may, after notice and hearing, adopt reasonable regulations
5 necessary or advisable to effectuate the provisions of this chapter. These regulations continue
6 in force until modified by the director or superseded by a plan submitted by the association
7 and approved by the director.

8 (b) Notwithstanding AS 21.56.140(a), enacted in sec. 5 of this Act, a small employer
9 insurer is not required to offer a small employer a basic or standard health benefit plan until
10 180 days after the director of the division of insurance has approved a basic and a standard
11 small employer health benefit plan under AS 21.56.140, except that, if the Small Employer
12 Health Reinsurance Association has not adopted a plan of operation, a small employer insurer
13 is not required to offer a basic or standard health benefit plan until the date a plan of operation
14 is adopted as provided under AS 21.56.040.

15 (c) By September 1, 1993, a small employer insurer shall file with the director the
16 insurer's net insurance premium earned from health benefit plans delivered or issued for
17 delivery to small employers in this state in the previous calendar year.

18 (d) The Health Benefit Plan Committee, enacted in sec. 5 of this Act, shall submit the
19 required health benefit plans within 180 days after the members of the committee are
20 appointed.

21 (e) Notwithstanding AS 21.56.070, enacted in sec. 5 of this Act, the board of directors
22 of the Small Employer Health Reinsurance Association shall provide the report required under
23 AS 21.56.070 to the director of the division of insurance annually until December 31, 1998.

24 * Sec. 12. AS 21.36.025 and AS 21.56 are repealed.

25 * Sec. 13. Sections 4, 7, 9, and 12 of this Act take effect July 1, 1997.

26 * Sec. 14. Except as provided in sec. 13 of this Act, this Act takes effect July 1, 1993.