

SENATE MEMORIAL 20

44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 200

INTRODUCED BY

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A MEMORIAL

REQUESTING THE CONGRESS OF THE UNITED STATES TO AMEND THE
EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 TO GRANT
AUTHORITY TO ALL INDIVIDUAL STATES TO MONITOR AND REGULATE
SELF-FUNDED EMPLOYER-BASED HEALTH PLANS IN ORDER TO PROVIDE
GREATER CONSUMER PROTECTION AND EFFECT HEALTH CARE REFORM.

WHEREAS, in 1945, the United States congress established
a framework whereby responsibility for regulating insurance
and the insurance industry was left largely to the states;
and

WHEREAS, the United States congress passed the Employee
Retirement Income Security Act of 1974 (ERISA), which altered
state control by creating a federal framework for regulating
employer-based pension and welfare benefit programs,
including health plans; and

WHEREAS, the provisions of the Employee Retirement
Income Security Act of 1974 preempt states from directly

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1 regulating most employer-based health plans, which are not
2 deemed to be "insurance" for the purposes of federal laws;
3 and

4 WHEREAS, over the past twenty-four years, state
5 governments have gradually come to realize that the Employee
6 Retirement Income Security Act of 1974 is an impediment to
7 ensuring adequate consumer protections for all individuals
8 with employer-based health care coverage and to enacting
9 administrative simplification and cost-reduction reforms that
10 could improve the efficiency and equity of their health care
11 markets; and

12 WHEREAS, available data suggest that self-funding of
13 employer-based health plans is increasing at a significant
14 rate, both among large and small businesses; and

15 WHEREAS, between 1989 and 1993, the United States
16 general accounting office estimated that the number of self-
17 funded plan enrollees increased by about six million
18 individuals; and

19 WHEREAS, approximately forty to fifty percent of
20 employer-based health plans are presently self-funded by
21 employers who retain most or all of the financial risk for
22 their respective health plans; and

23 WHEREAS, as self-funding of health plans has grown,
24 states have lost regulatory oversight over this growing
25 portion of the health market; and

WHEREAS, given the improbability of federal reforms to
achieve universal health coverage in the near future, many

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1 state legislatures are seeking an active role in expanding
2 the number of individuals covered by an insurance plan and in
3 controlling health care costs and regulating abuses; and

4 WHEREAS, the preemption provisions of the Employee
5 Retirement Income Security Act of 1974 are an obstacle to the
6 states' adopting a wide range of health care reform
7 strategies; and

8 WHEREAS, employers are increasingly adopting funding
9 methods that blur the distinction between self-funded and
10 fully insured health plans, including more extensive use of
11 stop-loss coverage and risk-sharing arrangements with managed
12 care organizations; and

13 WHEREAS, these innovative funding methods have so
14 blurred the distinction between self-funded and fully insured
15 health plans that many experts argue that there is no real
16 distinction at all; and

17 WHEREAS, the states' inability to protect consumers
18 enrolled in self-funded health plans from employers or plans
19 that fail to provide the consumers' anticipated level of
20 health care is gradually eroding the public's confidence in
21 government, even as self-funded health plans are afforded an
22 unfair advantage over traditional health insurance providers
23 due to a lack of state or federal accountability, regulation
24 or remedy for the individual members of ERISA plans
25 confronting benefit denials; and

WHEREAS, courts have narrowly interpreted ERISA's remedy
provisions and broadly interpreted ERISA's preemption

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1 provisions, thereby creating a substantial economic incentive
2 for plan administration to deny medically necessary benefits
3 legitimately covered under ERISA plans; and

4 WHEREAS, the time has now come for states to
5 aggressively seek changes in the Employee Retirement Income
6 Security Act of 1974 to give them more flexibility in
7 regulating health plans at the state level, to increase
8 access to health care and to lower health costs;

9 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE
10 STATE OF NEW MEXICO that the United States congress be
11 requested to amend the Employee Retirement Income Security
12 Act of 1974 to grant authority to all individual states to
13 monitor and regulate self-funded employer-based health plans
14 in the interest of providing greater consumer protection and
15 effecting significant health care reforms at the state level
16 through New Mexico's superintendent of insurance and attorney
17 general; and

18 BE IT FURTHER RESOLVED that the authority granted to all
19 individual states to monitor and regulate self-funded
20 employer-based health plans allow recovery of benefits due
21 plan participants, recovery from the fiduciary compensatory
22 damages caused by the fiduciary's failure to pay benefits due
23 under the plan and enforcement of the plan participants'
24 rights under the terms of the plan or authorize timely
25 assurance for payment and clarification of the plan
participants' rights to future benefits under the terms of
the plan; and

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1 BE IT FURTHER RESOLVED that the United States department
2 of labor be requested to refer complaints to New Mexico's
3 superintendent of insurance and attorney general for
4 regulation and timely enforcement; and

5 BE IT FURTHER RESOLVED that the United State congress be
6 requested to regulate ERISA plans in direct accordance with
7 the plan benefit language; and

8 BE IT FURTHER RESOLVED that corporations with employees
9 in New Mexico be requested to have their health plans
10 regulated by New Mexico's superintendent of insurance and
11 attorney general in cooperation with the labor department;
12 and

13 BE IT FURTHER RESOLVED that New Mexico employers be
14 immune from protection with an ERISA claim and shall have the
15 right to remain self-funded without risk of liability through
16 ERISA plans; and

17 BE IT FURTHER RESOLVED that each state legislative body
18 of the United States be requested to enact this memorial or
19 one similar to it as a show of solidarity in petitioning the
20 federal government for greater state authority in regulating
21 self-funded employer-based health plans;

22 BE IT FURTHER RESOLVED that copies of this memorial be
23 transmitted to the president of the United States, the
24 secretary of the United States department of labor, the
25 speaker and clerk of the United States house of
representatives, the president pro tempore and the secretary
of the United States senate, each member of the New Mexico

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1 legislature, New Mexico's superintendent of insurance and
2 attorney general and the presiding officer of each house and
3 senate in every state's legislative body in the United
4 States.