

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

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

care markets; and

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

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

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

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

WHEREAS, given the improbability of federal reforms to achieve universal health coverage in the near future, many state legislatures are seeking an active role in expanding the number of individuals covered by an insurance plan and in controlling health care costs and regulating abuses; and

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

WHEREAS, employers are increasingly adopting funding methods that blur the distinction between self-funded and fully insured health plans, including more extensive use of stop-loss coverage and risk-sharing arrangements with

managed care organizations; and

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

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

WHEREAS, courts have narrowly interpreted ERISA's remedy provisions and broadly interpreted ERISA's preemption provisions, thereby creating a substantial economic incentive for plan administration to deny medically necessary benefits legitimately covered under ERISA plans; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NEW MEXICO that the United States congress be requested 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 the interest of providing greater consumer protection and effecting significant health care reforms at the state level through New Mexico's superintendent of insurance and attorney general; and

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

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

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

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

