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**SENATE BILL 209**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Don Kidd**

**AN ACT**

**RELATING TO HEALTH CARE; ENACTING THE SELF-INSURED HEALTH CARE  
ACT; CREATING A FUND; PRESCRIBING PENALTIES; MAKING AN  
APPROPRIATION.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. SHORT TITLE.--This act may be cited as the  
"Self-Insured Health Care Act".**

**Section 2. DEFINITIONS.--As used in the Self-Insured  
Health Care Act:**

**A. "fund" means the "self-insured health care  
fund";**

**B. "group insurance association" means a  
not-for-profit unincorporated association consisting of two or  
more employers who are engaged in the same or similar type of  
business or are members of the same trade or professional**

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1 association that has been in existence for not less than five  
2 years and who enter into agreements to pool their liabilities  
3 for health insurance benefits under a self-insured health care  
4 plan;

5 C. "self-insured health care plan" means a health  
6 care plan established by two or more employers to provide  
7 health insurance to employees or their employees'  
8 beneficiaries; and

9 D. "superintendent" means the superintendent of  
10 insurance.

11 Section 3. PURPOSE. -- The purpose of the Self-Insured  
12 Health Care Act is to provide small employers the ability to  
13 provide affordable quality health insurance to employees by  
14 pooling small employer purchasing power and improving the  
15 state's economy by making affordable health insurance  
16 available to small business employees.

17 Section 4. SELF-INSURED HEALTH CARE PLAN-- QUALIFICATIONS  
18 FOR CERTIFICATION BY SUPERINTENDENT. --

19 A. A self-insured health care plan may be  
20 established by a group insurance association that is formed by  
21 a nonprofit trade association, industry association, political  
22 subdivision of the state, religious organization or  
23 professional association of employers or professionals that  
24 has a constitution or bylaws and that has been organized and  
25 maintained in good faith for a continuous period of five years

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1 for purposes other than that of obtaining or providing  
2 insurance. The plan may not be offered or advertised to the  
3 public generally.

4 B. A board of trustees shall operate the self-  
5 insured health care plan pursuant to a trust agreement. The  
6 trustees shall have complete fiscal control over the plan and  
7 be responsible for all operations of it. The trustees shall  
8 be owners, partners, officers, directors or employees of one  
9 or more employers in the group insurance association. A  
10 trustee may not be an owner, officer or employee of the  
11 administrator or service company of the plan. The trustees  
12 shall have the authority to approve applications of  
13 association members for participation in the plan and to  
14 contract with an authorized administrator or service company  
15 to administer the day-to-day affairs of the plan. The  
16 trustees shall operate the plan in accordance with sound  
17 actuarial principles.

18 Section 5. SUPERINTENDENT-- POWERS AND DUTIES. --

19 A. The superintendent shall:

20 (1) approve an application for a self-insured  
21 health care plan that includes:

22 (a) a copy of the constitution or  
23 bylaws of the association;

24 (b) the names and addresses of the  
25 trustees of the plan;

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1 (c) a copy of the bylaws or trust  
2 agreement that governs the operation of the arrangement;

3 (d) a copy of the policy, contract,  
4 certificate, summary plan description or other evidence of the  
5 benefits and coverages provided to covered employees;

6 (e) a copy of the fidelity bond in an  
7 amount not less than ten percent of the funds handled annually  
8 and issued in the name of the plan covering its trustees,  
9 employees, administrator or other individuals managing or  
10 handling the funds or assets of the arrangement and no less  
11 than one thousand dollars (\$1,000) or more than five hundred  
12 thousand dollars (\$500,000), except as provided pursuant to  
13 the Self-Insured Health Care Act;

14 (f) a copy of the arrangement's excess  
15 insurance agreement; and

16 (g) evidence showing that the  
17 arrangement will be operated in accordance with sound  
18 actuarial principles;

19 (2) suspend or revoke approval of a self-  
20 insured health care plan that has failed to comply with  
21 eligibility or filing requirements pursuant to this section,  
22 unless the trustees of the plan take action to correct the  
23 deficiency within a reasonable time after notification by the  
24 superintendent;

25 (3) deny, suspend or revoke a plan's approval

1 if he finds that the plan has:

2 (a) failed to meet the financial  
3 requirements of the Self-Insured Health Care Act or has  
4 violated any lawful order or rules;

5 (b) refused to be examined or to  
6 produce its accounts, records and files for examination, or  
7 any of its officers has refused to give information with  
8 respect to its affairs or to perform any other legal  
9 obligation as to such examination when required by the  
10 superintendent; or

11 (c) failed to pay any final judgment  
12 rendered against it in this state within sixty days after the  
13 judgment became final; and

14 (4) notify the trustees of a plan if he finds  
15 that sufficient improvements to an inadequate condition of a  
16 plan have been made.

17 B. The superintendent may:

18 (1) after due notice to all interested  
19 parties and opportunity for hearing and consideration of the  
20 record, prescribe a fidelity bond required by this section in  
21 an amount over five hundred thousand dollars (\$500,000);

22 (2) upon reasonable notice, conduct an  
23 examination of the loss reserves, financial condition,  
24 specific excess insurance and working capital of a multiple-  
25 employer self-funded health care arrangement, and if he

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1 preliminarily finds inadequacies or that the self-insured  
2 health care plan does not have combined working capital in an  
3 amount to assure financial strength and liquidity of the plan  
4 to pay claims promptly and meet its obligations to covered  
5 employees, the superintendent shall notify the trustees of the  
6 plan, who shall file a response within thirty days with the  
7 superintendent;

8 (3) suspend or revoke the approval of a plan  
9 if he finds that the arrangement has failed to correct or  
10 reasonably improve an inadequate condition within sixty days  
11 of notification of the inadequacy; and

12 (4) request information from a self-insured  
13 health care plan that summarizes paid and incurred expenses,  
14 contributions or premiums received and evidence that the plan  
15 is actuarially sound.

16 C. The superintendent shall not:

17 (1) approve a plan that does not have  
18 sufficient revenues to pay liabilities, as determined in  
19 accordance with sound actuarial principles; or

20 (2) approve a policy or contract form,  
21 application form, certificate, rider, endorsement, summary  
22 plan description or other evidence of coverage that:

23 (a) fails to comply with the Self-  
24 Insured Health Care Act;

25 (b) contains or incorporates by

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1 reference, where such incorporation is otherwise permissible,  
2 any inconsistent, ambiguous or misleading clauses, or  
3 exceptions and conditions that deceptively affect the risk  
4 purported to be assumed in the general coverage of the  
5 contract;

6 (c) has any title, heading or other  
7 indication of its provisions that is misleading;

8 (d) is printed or otherwise reproduced  
9 in such manner as to render any material provision of the form  
10 substantially illegible; or

11 (e) contains provisions that are unfair  
12 or inequitable, or contrary to the public policy of this state  
13 or that encourage misrepresentation.

14 Section 6. APPROVED SELF-INSURED HEALTH CARE PLAN--  
15 TRUSTEES' DUTIES. --A self-insured health care plan shall meet  
16 the following conditions for approval of the plan:

17 A. issue to each covered employee a policy  
18 contract, certificate, summary plan description or other  
19 evidence of the benefits and coverages provided under the  
20 plan, including in boldfaced print in a conspicuous location  
21 the statement: "The benefits and coverages described herein  
22 are provided through a trust fund established and funded by a  
23 group of employers. ";

24 B. retain the services of a qualified independent  
25 third party administrator for the purpose of claims

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1 administration;

2 C. comply with the Patient Protection Act;

3 D. maintain specific excess insurance with a  
4 retention level determined in accordance with sound actuarial  
5 principles;

6 E. establish and maintain appropriate loss  
7 reserves determined in accordance with sound actuarial  
8 principles;

9 F. remove a trustee found by the superintendent  
10 to:

11 (1) be incompetent;

12 (2) be guilty of, or to have pled guilty or  
13 no contest to a felony or a crime involving moral turpitude;

14 (3) have had any type of insurance license  
15 revoked in this or any other state; or

16 (4) have improperly manipulated assets,  
17 accounts or specific excess insurance or to have otherwise  
18 acted in bad faith;

19 G. make all contracts with administrators or  
20 service companies available for inspection by the  
21 superintendent;

22 H. if notified by the superintendent that an  
23 inadequate condition exists, implement steps within sixty days  
24 to correct the inadequacy, file proof of reasonable  
25 improvement or adequate condition with the superintendent

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1 within six months of the implementation of the improvements  
2 and report quarterly thereafter to the superintendent;

3 I. file for approval by the superintendent the  
4 policy or contract form, application form, certificate, rider,  
5 endorsement, summary plan description or other evidence of  
6 coverage;

7 J. provide to the superintendent complete records  
8 of the plan's assets, transactions and affairs in accordance  
9 with the superintendent's rules; and

10 K. have and maintain its principal place of  
11 business in this state.

12 Section 7. SELF-INSURED HEALTH CARE GUARANTEE FUND  
13 CREATED--INSOLVENCY PROTECTION. --

14 A. The "self-insured health care guarantee fund"  
15 is created. The trustees of a self-insured health care plan  
16 shall deposit into the fund, within thirty days after the  
17 close of the plan's fiscal year, cash, securities or any  
18 combination of these or other measures approved by the  
19 superintendent. The deposit shall be equal in value to  
20 twenty-five percent of the preceding twelve months' health  
21 care claims expenditures, not reinsured, but not to exceed one  
22 hundred thousand dollars (\$100,000) in value. All income from  
23 the deposit shall belong to the depositing plan and shall be  
24 paid to it as it becomes available.

25 B. A plan that has made a securities deposit to

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1 the superintendent for the fund may withdraw that deposit or  
2 any part of the deposit after making a substitute deposit of  
3 cash, securities or any combination of these or other measures  
4 of equal value if the superintendent approves.

5 C. No judgment creditor or other claimant of a  
6 group insurance association shall have the right to levy upon  
7 any of the assets of the self-insured health care guarantee  
8 fund.

9 D. A surety bond in value equivalent to the  
10 deposit required pursuant to this section may be filed with  
11 the superintendent in lieu of the deposit. The bond shall be  
12 one issued by an authorized surety insurer. No bond shall be  
13 canceled or subject to cancellation unless at least sixty  
14 days' advance notice of cancellation in writing is filed with  
15 the superintendent. No bond shall be approved unless it  
16 covers liabilities arising from all policies and contracts  
17 issued and entered into during the time the bond is in effect  
18 and unless the bond provides the same degree of security as  
19 would be provided by a deposit of securities.

20 E. In the event of an insolvency termination, the  
21 deposit held in the self-insured health care guarantee fund,  
22 or the bond held by the superintendent, shall be applied to  
23 the extent of the insolvency or termination of the plan.  
24 Funds remaining that exceed the amount needed to make the  
25 insolvent plan solvent or meet the terminal liability shall be

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1 returned to the trustees for distribution for the exclusive  
2 benefit of plan participants.

3 Section 8. EMPLOYER LIABILITY. --The liability of each  
4 employer for the obligations of the self-insured health care  
5 plan shall be individual, several and proportionate but not  
6 joint. Each employer participant shall have a contingent  
7 assessment liability for payment of actual losses and expenses  
8 incurred while the policy was in force. Each policy issued by  
9 the plan shall contain a statement of the contingent  
10 liability. Both the applications for insurance and policy  
11 shall contain the following statement: "This is a fully  
12 assessable policy. In the event the arrangement is unable to  
13 pay its obligations, participating employers shall be required  
14 to contribute on a pro rata earned premium basis the money  
15 necessary to meet any unfulfilled obligations."

16 Section 9. TERMINATION OF PLAN. --If a self-insured  
17 health care plan is terminated for any reason, it shall pay  
18 all outstanding claims, debts and obligations. The plan may  
19 retain sufficient funds to provide coverage for an additional  
20 period the trustees consider prudent. The trustees may  
21 purchase additional insurance for protection against potential  
22 future claims. Money remaining in the plan after satisfaction  
23 of all obligations upon termination shall be paid to  
24 participating employers or covered employees as of the  
25 termination date in a manner approved by the superintendent.

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1 Any rehabilitation, liquidation, conservation or dissolution  
2 of a multiple-employer self-funded health care arrangement  
3 shall be conducted under the supervision of the  
4 superintendent, who shall have all power with respect thereto  
5 granted to him under the laws governing the rehabilitation,  
6 liquidation, conservation or dissolution of insurers.

7 Section 10. ANNUAL REPORTS AND TRIENNIAL ACTUARIAL  
8 REPORTS. --

9 A. A self-insured health care plan shall file an  
10 annual report with the superintendent within four months of  
11 the end of the fiscal year, unless extended by the  
12 superintendent for good cause. The report shall:

13 (1) be verified by the oath of a member of  
14 the board of trustees or by an administrative executive  
15 appointed by the board, showing its condition on the last day  
16 of the preceding fiscal year;

17 (2) contain a financial statement of the  
18 arrangement, including its balance sheet and a statement of  
19 operations for the preceding year certified by an independent  
20 certified public accountant; and

21 (3) include an analysis of the adequacy of  
22 reserves and contributions or premiums charged, based on a  
23 review of past and projected claims and expenses.

24 B. A self-insured health care plan shall have a  
25 report prepared at least once every three years by an actuary

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1 who is a member of the American academy of actuaries on the  
2 actuarial soundness of the arrangement. The report shall  
3 include:

4 (1) evidence of the adequacy of the  
5 contribution rate in meeting the level of benefits provided  
6 and changes, if any, needed in the contribution rates to  
7 achieve or preserve a level of funding adequate to enable  
8 payment of the benefit amounts provided under the plan;

9 (2) a valuation of present assets based on  
10 statement value and prospective assets and liabilities of the  
11 plan and the extent of any unfunded accrued liabilities;

12 (3) a plan to amortize any unfunded  
13 liabilities and a description of actions taken to reduce  
14 unfunded liabilities;

15 (4) a description and explanation of  
16 actuarial assumptions;

17 (5) a schedule illustrating the amortization  
18 of any unfunded liabilities;

19 (6) a comparative review illustrating the  
20 level of funds available to the arrangement from rates,  
21 investment income and other sources realized over the period  
22 covered by the report, indicating the assumptions used;

23 (7) a statement by the actuary that the  
24 report is complete and accurate and that in his opinion the  
25 techniques and assumptions used are reasonable and meet the

1 requirements and intent of the Self-Insured Health Care Act;  
2 and

3 (8) other factors or statements as may be  
4 reasonably required by the superintendent in order to  
5 determine the actuarial soundness of the plan.

6 Section 11. PENALTIES. --

7 A. It is a violation of the Self-Insured Health  
8 Care Act for a person to operate a multiple-employer self-  
9 funded health care plan without approval from the  
10 superintendent. A violation of the Self-Insured Health Care  
11 Act is punishable by a fine of not less than five thousand  
12 dollars (\$5,000) or more than twenty-five thousand dollars  
13 (\$25,000) for each violation.

14 B. The superintendent may issue a cease and desist  
15 order if he finds a person is operating a multiple-employer  
16 self-funded health care plan without approval.

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