

WHEREAS, As these phenomena continue, state governments are losing their ability to manage their health care markets; and

WHEREAS, Many state legislatures, such as the Maryland General Assembly, have taken significant actions to increase access to care, to control costs, and to regulate against abuses by health plans; and

WHEREAS, ERISA preemption is a significant obstacle to the states adopting a wide range of health care reform and consumer protection strategies; and

WHEREAS, The states' inability to protect consumers enrolled in self-funded health plans that fail to provide the consumers' anticipated level of health care is gradually eroding the public's confidence in the American health care system because self-funded plans are afforded an unfair advantage over traditional health insurance plans due to a lack of adequate state or federal accountability, regulation, or remedy for the ERISA plan members who are denied coverage; and

WHEREAS, Over the past 24 years, state governments have gradually realized that ERISA is an impediment to ensuring adequate consumer protection 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, ERISA plan participants, their dependents, and their treating physicians believe that they have been denied coverage for medically necessary procedures because ERISA's remedy provisions have been narrowly interpreted and ERISA's preemption provisions have been broadly interpreted, thereby creating substantial economic incentives, with few disincentives for plan administrators to deny medically necessary benefits legitimately covered under ERISA plans; and

WHEREAS, The time has now come for the states to aggressively seek changes in ERISA to give them more flexibility in regulating health plans at the state level, to increase access to health care, and to lower health care costs; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That this General Assembly hereby requests the U. S. Congress to amend the Employment Retirement Income Security Act of 1974 (ERISA) to authorize each state to monitor and to regulate self-funded employer-based health plans in the interests of providing greater consumer protection and effecting significant health care reforms at the state level through the offices of the various insurance commissioners and states' attorneys general. Additionally, the United States Department of Labor should cooperatively refer complaints to the offices of the various insurance commissioners and states' attorneys general; and be it further

RESOLVED, That § 502(a)(1)(B) of ERISA, which currently reads: "(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;"; be amended to read: "(B) to recover benefits due to him under the terms of his plan, to recover from the fiduciary compensatory damages caused by the fiduciary's failure to pay benefits due under the terms of the plan, to enforce his rights under the