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**Financial Institutions &  
Insurance Committee**

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**HB 1582**

**Brief Description:** Forming market assistance plans and joint underwriting associations.

**Sponsors:** Representatives Schual-Berke, Rockefeller and Sullivan; by request of Insurance Commissioner.

**Brief Summary of Bill**

- Creates a comprehensive regulatory scheme governing the creation and operation of market assistance plans and joint underwriting associations.
- Authorizes the Insurance Commissioner to form a joint underwriting association to provide commercial liability insurance to businesses and service providers.
- Authorizes the Insurance Commissioner to implement a market assistance plan to remedy a lack of availability of casualty insurance.
- Repeals chapter 48.88 RCW in its entirety.

**Hearing Date:** 2/12/03.

**Staff:** Thamas Osborn (786-7129).

**Background:**

Market assistance plan: A market assistance plan (MAP) is a regulatory tool that allows the Insurance Commissioner (Commissioner) to intervene in a difficult insurance market so as to ensure the continuing availability of a particular line of casualty insurance. The purpose of a MAP is to assist persons in finding insurance coverage from private carriers, although a MAP does not control the rates at which insurance will be offered. Under current law, the Commissioner has discretionary authority to implement a MAP in the event that the supply of a line of insurance becomes inadequate to meet demand. When such difficult market conditions exist, the Commissioner is authorized to create a voluntary association of 25 insurers willing to insure risks within a specific class of insurance. In the event that 25 insurers will not voluntarily participate, the Commissioner may require that insurers take part as a condition of continuing to do business in this state.

In 2002, the Commissioner implemented a MAP in order to deal with the contraction in the medical malpractice liability insurance market that resulted when several major insurers withdrew from the market altogether. This market contraction has made it difficult for many physicians to find affordable insurance. Under the MAP, if a physician is having difficulty finding coverage, he or she may apply to a committee of insurance agents in order to obtain quotes for medical malpractice coverage from participating insurers.

Joint underwriting association: A joint underwriting association (JUA) is another regulatory tool available to the Commissioner in the event that an insurance market undergoes a contraction so severe that affordable coverage all but disappears. Under current law, the Commissioner must seek authorization from the state legislature before creating a JUA. Once the JUA is authorized, the Commissioner has the authority to establish a nonprofit, joint underwriting association that directly provides insurance coverage to a specified class of prospective insureds. The association is comprised of specified insurers who can be compelled to participate as a condition of continuing to do business in this state. Participating insurers are subject to monetary assessments by the Commissioner in order to fund the operations of the JUA. The Commissioner does not directly control the premium rates established by the JUA members, though such rates are subject to the same rate setting requirements applicable in the standard market.

There are currently two legislatively authorized JUAs in the state of Washington; one pertains to liability insurance for midwives and the other pertains to liability insurance for day care service providers which, though authorized, was never activated by the Commissioner. Approximately 39 states have enacted legislation authorizing the formation of various types of JUAs.

## **Summary of Bill:**

### **I. Market Assistance Plan**

Revision of current law: The bill deletes most of the current legal provisions regarding MAPs and replaces them with a more detailed regulatory scheme governing their creation and administration.

Formation of a MAP: The Commissioner *may* request casualty insurers to form a MAP provided the following market conditions are present:

- persons are having difficulty finding a specific type of insurance coverage because of an inadequate supply; or
- a competitive market does not exist, as evidenced by extraordinarily restrictive underwriting practices or a marked lack of availability.

Insurer participation: The Commissioner cannot compel an insurer to participate in a MAP and a MAP cannot be implemented unless a sufficient number of insurers agree to participate. However, an insurer who declines to participate must provide the Commissioner with a written explanation as to why.

Fees and compensation: An applicant for insurance through a MAP may be charged a reasonable processing fee. Licensed agents and brokers may receive reasonable commissions for insurance obtained through a MAP.

## **II. Joint Underwriting Association**

Overview: The bill creates comprehensive regulations governing the creation and administration of a JUA that serves businesses and service providers within the *commercial liability insurance market*. The central feature of the bill is that “ subject to certain conditions “ it authorizes the Commissioner to implement a JUA without seeking prior approval from legislature.

Authority of Commissioner: The Commissioner’s authority to form a JUA for a particular type of commercial liability insurance is subject to the following conditions:

- the insurance must either be unavailable on the voluntary market or a *competitive market* does not exist;
- the insurance must be of a type that is required by law, or which is necessary to either earn a livelihood or conduct business;
- the Commissioner must first attempt to address the problems in the market through the formation of a MAP or issue findings as to why a MAP will not provide an adequate solution;
- interested parties must be provided with notice and an opportunity to for a hearing before the JUA is formed; and
- the Commissioner must make specific factual findings justifying the formation of the JUA.

Composition of the association: Once formed, the JUA must include all general casualty insurers and risk retention groups that are authorized to do business in this state. Membership in the JUA is required in order for an insurer to continue to conduct business in Washington.

Applicant eligibility: Any person or entity that has been unable to purchase the type of commercial liability insurance that the Commissioner has identified as being unavailable is eligible to apply for coverage. However, the JUA may decline to insure persons or entities that present an *extraordinary risk*, as defined by statute.

Risk management program: The JUA must establish a risk management program for its insureds that includes the following features:

- standards for claims investigation and reporting; and
- a loss control program that includes monitoring, education, and procedures for identifying risk factors.

JUA funding / member assessments: The primary source of funding for a JUA are the premiums paid by its insureds. However, when necessary, the association may levy an assessment on its members in order to pay financial obligations. The failure of an insurer to pay an authorized assessment may result in the Commissioner imposing a variety of sanctions.

Duration and dissolution: As a general rule, the JUA must be dissolved after three years, unless the Commissioner initiates proceedings to reauthorize the association. A JUA may be dissolved at an earlier date if the Commissioner determines that adequate commercial liability insurance is available in the voluntary market.

Rule-making authority: The Commissioner is given broad rule-making authority in order to implement and administer regulations pertinent to JUAs.

Repealed chapter: Chapter 48.88 RCW, authorizing the creation of a JUA for providers of day care services, is repealed in its entirety.

**Appropriation**: None.

**Fiscal Note**: Requested on February 3, 2003.

**Effective Date**: The bill takes effect ninety days after adjournment of session in which bill is passed.