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S.F. No. 720

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02/06/2017	529	Introduction and first reading Referred to Commerce and Consumer Protection Finance and Policy
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A bill for an act

relating to commerce; authorizing the Minnesota premium security plan as a state-based reinsurance program administered by the Minnesota Comprehensive Health Association; modifying certain provider taxes; imposing a reinsurance tax; appropriating money; amending Minnesota Statutes 2016, section 62E.10, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 62E.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2016, section 62E.10, subdivision 2, is amended to read:

Subd. 2. **Board of directors; organization.** The board of directors of the association shall be made up of ~~eleven~~ 13 members as follows: six directors selected by contributing members, subject to approval by the commissioner, one of which must be a health actuary; two directors selected by the commissioner of human services, one of whom must represent hospitals and one of whom must represent health care providers; five public directors selected by the commissioner, at least two of whom must be plan enrollees, two of whom are covered under an individual plan subject to assessment under section 62E.11 or group plan offered by an employer subject to assessment under section 62E.11, and one of whom must be a licensed insurance agent. At least two of the public directors must reside outside of the seven-county metropolitan area. In determining voting rights at members' meetings, each member shall be entitled to vote in person or proxy. The vote shall be a weighted vote based upon the member's cost of self-insurance, accident and health insurance premium, subscriber contract charges, health maintenance contract payment, or community integrated service network payment derived from or on behalf of Minnesota residents in the previous calendar year, as determined by the commissioner. In approving directors of the board, the commissioner shall consider, among other things, whether all types of members are fairly represented. Directors selected by contributing members may be reimbursed from the money

of the association for expenses incurred by them as directors, but shall not otherwise be compensated by the association for their services. The costs of conducting meetings of the association and its board of directors shall be borne by members of the association.

Sec. 2. **[62E.21] DEFINITIONS.**

Subdivision 1. **Application.** For the purposes of sections 62E.21 to 62E.25, the terms and phrases defined in this section have the meanings given them.

Subd. 2. **Affordable Care Act.** "Affordable Care Act" means the Affordable Care Act as defined in section 62A.011, subdivision 1a.

Subd. 3. **Attachment point.** "Attachment point" means the threshold dollar amount for claims costs incurred by an eligible health carrier for an enrolled individual's covered benefits in a plan year, after which threshold the claims costs for such benefits are eligible for Minnesota premium security plan payments.

Subd. 4. **Board.** "Board" means the board of directors of the Minnesota Comprehensive Health Association established under section 62E.10.

Subd. 5. **Coinsurance rate.** "Coinsurance rate" means the rate, established by the board of the Minnesota Comprehensive Health Association, at which the association will reimburse the eligible health carrier for claims costs incurred for an enrolled individual's covered benefits in a plan year after the attachment point and before the reinsurance cap.

Subd. 6. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 7. **Eligible health carrier.** "Eligible health carrier" means:

(1) an insurance company licensed under chapter 60A to offer, sell, or issue a policy of accident and sickness insurance as defined in section 62A.01;

(2) a nonprofit health service plan corporation operating under chapter 62C; or

(3) a health maintenance organization operating under chapter 62D

offering health plans in the individual market and incurring claims costs for an individual enrollee's covered benefits in the applicable plan year that exceed the attachment point under the Minnesota premium security plan.

Subd. 8. **Individual market.** "Individual market" has the meaning given in section 62A.011, subdivision 5.

Subd. 9. **Minnesota Comprehensive Health Association or association.** "Minnesota Comprehensive Health Association" or "association" has the meaning given in section 62E.02, subdivision 14.

Subd. 10. **Minnesota premium security plan.** The "Minnesota premium security plan" means the state-based reinsurance program authorized under section 62E.23.

Subd. 11. **Plan year.** "Plan year" means a calendar year for which an eligible health carrier provides coverage under a health plan in the individual market.

Subd. 12. **Reinsurance cap.** "Reinsurance cap" means the threshold dollar amount for claims costs incurred by an eligible health carrier for an enrolled individual's covered benefits, after which threshold the claims costs for such benefits are no longer eligible for Minnesota premium security plan payments, established by the board of the Minnesota Comprehensive Health Association.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. **[62E.22] DUTIES OF COMMISSIONER.**

In the implementation and operation of the Minnesota premium security plan, established under section 62E.23, the commissioner shall require eligible health carriers to calculate the premium amount the eligible health carrier would have charged for the applicable plan year had the Minnesota premium security plan not been established and to submit this information as part of the rate filing.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. **[62E.23] MINNESOTA PREMIUM SECURITY PLAN.**

Subdivision 1. **The Minnesota premium security plan as state-based reinsurance.** The association is Minnesota's reinsurance entity to administer the state-based reinsurance program referred to as the Minnesota premium security plan. The Minnesota premium security plan shall be designed to protect consumers by mitigating the impact of high-risk individuals on rates in the individual market.

Subd. 2. **Minnesota premium security plan parameters.** (a) The board shall propose to the commissioner the Minnesota premium security plan payment parameters for the next plan year by January 15 of the calendar year prior to the applicable plan year. In developing the proposed payment parameters, the board shall consider the anticipated impact on premiums. The commissioner shall approve or reject the payment parameters no later than 14 calendar days following the board proposal. In developing the proposed payment

parameters for plan year 2019 and after, the board may develop methods to account for variations in costs within the Minnesota premium security plan.

(b) For plan year 2018, the Minnesota premium security plan parameters, including the attachment point, reinsurance cap, and coinsurance rate, shall be established within the parameters of the appropriated funds as follows:

(1) the attachment point is set at $45,000;

(2) the reinsurance cap is set at $250,000; and

(3) the coinsurance rate is set at 80 percent.

(c) The board must apply the Minnesota premium security plan's parameters established under paragraph (a) or (b), as applicable, when calculating reinsurance payments.

Subd. 3. **Payments under Minnesota premium security plan.** (a) Each Minnesota premium security plan payment must be calculated with respect to an eligible health carrier's incurred claims costs for an individual enrollee's covered benefits in the applicable plan year. If such claims costs do not exceed the attachment point, payment will be zero dollars. If such claims costs exceed the attachment point, payment will be calculated as the product of the coinsurance rate multiplied by the lesser of:

(1) such claims costs minus the attachment point; or

(2) the reinsurance cap minus the attachment point.

(b) The board must ensure that the payments made to eligible health carriers must not exceed the eligible health carrier's total paid amount for any eligible claim. For purposes of this paragraph, "total paid amount of an eligible claim" means the amount paid by the eligible health carrier based upon the allowed amount less any deductible, coinsurance, or co-payment, as of the time the data is submitted or made accessible under subdivision 4, paragraph (b), clause (1).

Subd. 4. **Requests for Minnesota premium security plan payments.** (a) An eligible health carrier may make a request for payment when the eligible health carrier's claims costs for an enrollee meet the criteria for payment under subdivision 3 and the requirements of this subdivision.

(b)(1) To be eligible for Minnesota premium security plan payments, an eligible health carrier must provide to the association access to the data within the dedicated data environment established by the eligible health carrier under the federal Risk Adjustment Program. Eligible health carriers must submit an attestation to the board asserting compliance

with the dedicated data environments, data requirements, establishment and usage of masked enrollee identification numbers, and data submission deadlines; and

(2) an eligible health carrier must provide the required access under clause (1) for the applicable plan year by April 30 of the year following the end of the applicable plan year.

(c) An eligible health carrier must make requests for payment according to the requirements established by the board.

(d) An eligible health carrier must maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the requests for Minnesota premium security plan payments made pursuant to this section for a period of at least ten years and must make those documents and records available upon request from the state or its designee for purposes of verification, investigation, audit, or other review of Minnesota premium security plan payment requests.

(e) The association or its designee may audit an eligible health carrier to assess the health carrier's compliance with the requirements of this section. The eligible health carrier must ensure that its contractors, subcontractors, or agents cooperate with any audit under this section. If an audit results in a proposed finding of material weakness or significant deficiency with respect to compliance with any requirement under this section, the eligible health carrier may provide a response to the draft audit report within 30 calendar days. Within 30 calendar days of the issuance of the final audit report, the eligible health carrier must complete the following:

(1) provide a written corrective action plan to the association for approval if the final audit results in a finding of material weakness or significant deficiency with respect to compliance with any requirement under this section;

(2) implement the approved plan; and

(3) provide to the association written documentation of the corrective actions once taken.

Subd. 5. **Notification of Minnesota premium security plan payments.** (a) For each applicable plan year, the association must notify eligible health carriers annually of Minnesota premium security plan payments, if applicable, to be made for the applicable plan year no later than June 30 of the year following the applicable plan year.

(b) An eligible health carrier may follow the appeals procedure under section 62E.10, subdivision 2a.

(c) For each applicable plan year, the board must provide to each eligible health carrier the calculation of total Minnesota premium security plan payment requests on a quarterly basis during the applicable plan year.

Subd. 6. **Disbursement of Minnesota premium security plan payments.** (a) The association must:

(1) collect or access data required to determine Minnesota premium security plan payments from an eligible health carrier according to the data requirements under subdivision 5; and

(2) make Minnesota premium security plan payments to the eligible health carrier after receiving a valid claim for payment from that eligible health carrier by August 15 of the year following the applicable plan year.

(b) If funding under section 62E.25 is not sufficient to fund the premium security plan at the payment parameters, the board must, in consultation with the commissioner and the commissioner of management and budget, adopt revised payment parameters within the available funding.

Subd. 7. **Data.** Government data of the association under this section are private data on individuals or nonpublic data as defined in section 13.02, subdivision 9 or 12.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. **[62E.24] ACCOUNTING, REPORTING, AND AUDITING.**

Subdivision 1. **Accounting requirements.** For each plan year, the board must ensure that it keeps an accounting of:

(1) all claims for Minnesota premium security plan payments received from eligible health carriers;

(2) all Minnesota premium security plan payments made to eligible health carriers; and

(3) all administrative expenses incurred for the Minnesota premium security plan.

Subd. 2. **Summary report.** The board must submit to the commissioner and make public a report on the Minnesota premium security plan operations for each plan year by November 1 following the applicable year or 60 calendar days following the last disbursement of Minnesota premium security plan payments for the applicable plan year.

Subd. 3. **Audits.** The Minnesota premium security plan is subject to audit by the legislative auditor. The board must ensure that its contractors, subcontractors, or agents cooperate with the audit.

Subd. 4. **External audit.** The board must engage an independent certified public accountant firm licensed under chapter 326A to perform a financial audit and a programmatic audit analyzing performance to determine whether the program is effectively accomplishing its goals for each plan year of the Minnesota premium security plan in accordance with generally accepted auditing standards. The board must:

(1) provide to the commissioner the results of the audit, in the manner and time frame to be specified by the commissioner;

(2) identify to the commissioner any material weakness or significant deficiency identified in the audit, and address in writing to the commissioner how the board intends to correct any identified material weakness or significant deficiency; and

(3) make public the results of the audit, including any material weakness or significant deficiency and how the board intends to correct the material weakness or significant deficiency.

Subd. 5. **Action on audit findings.** If an audit results in a finding of material weakness or significant deficiency with respect to compliance with any requirement under this section, the commissioner of commerce must ensure the board:

(1) within 60 calendar days of the issuance of the final audit report, provides a written corrective action plan to the commissioner for approval;

(2) implements the approved plan; and

(3) provides to the commissioner written documentation of the corrective actions once taken.

Sec. 6. **[62E.25] FUNDING OF MINNESOTA PREMIUM SECURITY PLAN.**

(a) The reinsurance fund account is created in the special revenue fund of the state treasury. Funds in the account are appropriated to the commissioner of commerce for grants to the Minnesota Comprehensive Health Association for the Minnesota premium security plan.

(b) The association shall pay claims for the Minnesota premium security plan using the following sources, in the following order:

(1) any federal funds available;

(2) excess funds of the association; and

(3) any state funds available.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 7. **STATE INNOVATION WAIVER.**

Subdivision 1. **Authority to submit a waiver application.** (a) The commissioner of commerce shall apply to the United States Secretary of Health and Human Services under United States Code, title 42, section 18052, for a waiver of applicable provisions of the Affordable Care Act with respect to health insurance coverage in the state for a plan year beginning on or after January 1, 2018, for the sole purpose of implementing the Minnesota premium security plan in a manner that maximizes federal funding for Minnesota.

(b) The waiver application submitted under paragraph (a) must request that:

(1) the state receive federal funding in an amount equal to the amount the federal government will not have to pay in advance premium tax credits under United States Code, title 29, section 36B, to Minnesota residents due to reinsurance payments made by the Minnesota Comprehensive Health Association;

(2) the state receive federal funding in an amount equal to the amount the federal government has not paid and continues not to pay in advance premium tax credits under United States Code, title 29, section 36B, to Minnesota residents who are eligible for advance premium tax credits under United States Code, title 29, section 36B, but have chosen not to receive the credits; and

(3) federal funding for MinnesotaCare, as Minnesota's basic health program, continues to be based on the market premium and cost-sharing levels before the impact of reinsurance under the Minnesota premium security plan established under Minnesota Statutes, section 62E.23.

(c) The commissioner shall implement a state plan for meeting the waiver requirements in a manner consistent with state and federal law, and as approved by the United States Secretary of Health and Human Services. Any federal funds received by the state due to the waiver application shall be deposited in the reinsurance fund account created under Minnesota Statutes, section 62E.25.

Subd. 2. **Consultation.** In developing the waiver application, the commissioner shall consult with the Department of Human Services and MNsure.

Subd. 3. **Application deadline.** The commissioner shall submit the waiver application to the appropriate federal agency on or before July 5, 2017. The commissioner shall follow all application instructions. The commissioner shall complete the draft waiver application for public review and comment by June 1, 2017.

Subd. 4. **Appropriation.** $155,000 in fiscal year 2018 is appropriated from the general fund to the commissioner of commerce to prepare and submit a state innovation waiver.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. **TRANSFER.**

The commissioner of management and budget shall transfer $180,000,000 in fiscal year 2018 and $180,000,000 in fiscal year 2019 from the health care access fund to the reinsurance fund account in the special revenue fund. This is a onetime transfer.