CHAPTER 62H

JOINT SELF-INSURANCE EMPLOYEE HEALTH PLAN

62H.01 JOINT SELF-INSURANCE EMPLOYEE HEALTH PLAN.

Any two or more employers, excluding the state and its political subdivisions as described in section 471.617, subdivision 1, who are authorized to transact business in Minnesota may jointly self-insure employee health, dental, short-term disability benefits, or other benefits permitted under the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001 et seq. Joint plans must have a minimum of 100 covered employees and meet all conditions and terms of sections 62H.01 to 62H.08. Joint plans covering employers not resident in Minnesota must meet the requirements of sections 62H.01 to 62H.08 as if the portion of the plan covering Minnesota resident employees was treated as a separate plan. A plan may cover employees resident in other states only if the plan complies with the applicable laws of that state.

A multiple employer welfare arrangement as defined in United States Code, title 29, section 1002(40)(a), is subject to this chapter to the extent authorized by the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001 et seq.

History: *1983 c 241 s 1; 1987 c 337 s 74; 1992 c 549 art 3 s 18; 1992 c 564 art 1 s 43; 1994 c 485 s 36*

62H.02 REQUIRED PROVISIONS.

A joint self-insurance plan must include aggregate excess stop-loss coverage and individual excess stop-loss coverage provided by an insurance company licensed by the state of Minnesota. Aggregate excess stop-loss coverage must include provisions to cover incurred, unpaid claim liability in the event of plan termination. In addition, the plan of self-insurance must have participating employers fund an amount at least equal to the point at which the excess or stop-loss insurer has contracted to assume 100 percent of additional liability. A joint self-insurance plan must submit its proposed excess or stop-loss insurance contract to the commissioner of commerce at least 30 days prior to the proposed plan's effective date and at least 30 days subsequent to any renewal date. The commissioner shall review the contract to determine if they meet the standards established by sections 62H.01 to 62H.08 and respond within a 30-day period. Any excess or stop-loss insurance plan must contain a provision that the excess or stop-loss insurer will give the plan and the commissioner of commerce a minimum of 180 days notice of termination or nonrenewal. If the plan fails to secure replacement coverage within 60 days after receipt of the notice of cancellation or nonrenewal, the commissioner shall issue an order providing for the orderly termination of the plan.

History: *1983 c 241 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1987 c 337 s 75*

62H.03 MARKETING, RISK MANAGEMENT, OR ADMINISTRATIVE SERVICES.

No joint self-insurance plan may offer marketing, risk management, or administrative services unless these services are provided by vendors duly licensed by the commissioner to provide these services. No vendor of these services may be a trustee of any joint self-insurance plan for which they provide marketing, risk management, or administrative services.

History: *1983 c 241 s 3*

62H.04 COMPLIANCE WITH OTHER LAWS.

A joint self-insurance plan is subject to the requirements of chapters 62A, and 62E, and sections 72A.17 to 72A.32 unless otherwise specifically exempt. A joint self-insurance plan must not offer less than a number two qualified plan or its actuarial equivalent.

History: *1983 c 241 s 4; 1987 c 337 s 76*

62H.05 MANAGEMENT OF FUNDS.

Funds collected from the participating employers under joint self-insurance plans must be held in trust subject to the following requirements:

(a) A board of trustees elected by participating employers shall serve as fund managers on behalf of participants. Trustees must be plan participants. No participating employer may be represented by more than one trustee. A minimum of three and a maximum of seven trustees may be elected. Trustees shall receive no remuneration, but they may be reimbursed for actual and reasonable expenses incurred in connection with duties as trustees.,

(b) Trustees shall be bonded in an amount not less than $100,000 or no more than $500,000 from a licensed bonding company.

(c) Investment of plan funds is subject to the same restrictions as are applicable to political subdivisions pursuant to section 475.66. All investments must be managed by a bank or other investment organization licensed to operate in Minnesota.

(d) Trustees, on behalf of the fund, shall file annual reports with the commissioner of commerce within 30 days immediately following the end of each calendar year. The reports must summarize the financial condition of the fund, itemize collection from participating employers, and detail all fund expenditures.

History: *1983 c 241 s 5; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92*

62H.06 REGULATION OF PLANS BY COMMISSIONER.

The commissioner of commerce shall promulgate rules, including emergency rules, to insure the solvency and operation of all self-insured plans subject to this chapter. The commissioner may examine the joint self-insurance plans pursuant to sections 60A.03 and 60A.031.

History: *1983 c 241 s 6; 1983 c 289 s 114 subd 1; 1984 c 640 s 32; 1984 c 655 art 1 s 92; 1985 c 248 s 26*

62H.07 REVENUE FEE.

A joint self-insurance plan shall pay a two percent revenue fee. This revenue must be computed based on two percent of the paid claims level for the most recently completed calendar year. This revenue must be deposited in the general fund.

History: *1983 c 241 s 7*

62H.08 EXEMPTION.

A homogenous joint employer plan providing group health benefits, which was in existence prior to March 1, 1983, and which is associated with, or organized or sponsored by, an association exempt from taxation under United States Code, title 26, sec-

tion 501(c)(6), and controlled by a board of trustees a majority of whom are members of the association, is exempt from the requirements of sections 62H.01 to 62H.08 and 471.617, subdivisions 1 to 3, and the insurance laws of this state.

History: *1983 c 241 s 8*

MULTIPLE EMPLOYER WELFARE ARRANGEMENTS (MEWAs)

62H.10 DEFINITIONS.

Subdivision 1. **Scope.** For purposes of sections 62H.10 to 62H.17, the terms in this section have the meanings given them.

Subd. 2. **Agent.** "Agent" means an agent as defined under section 60A.02, subdivision 7.

Subd. 3. **Arrangement.** "Arrangement" means a fund, trust, plan, program, or other mechanism by which a person provides, or attempts to provide, health care benefits to individuals.

Subd. 4. **Broker.** "Broker" means an agent engaged in brokerage business pursuant to section 60K.08.

Subd. 5. **Collectively bargained arrangement.** "Collectively bargained arrangement" means an arrangement which provides or represents that it is providing health care benefits or coverage under or pursuant to one or more collective bargaining agreements.

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

Subd. 7. **Employee leasing arrangement.** "Employee leasing arrangement" means a labor leasing, staff leasing, employee leasing, contract labor, extended employee staffing or supply, or other arrangement, under contract or otherwise, whereby one business or entity leases or obtains all or a significant number of its workers from another business or entity.

Subd. 8. **Employee welfare benefit plan.** "Employee welfare benefit plan" means a plan, fund, or program established or maintained by an employer or by an employee organization, or by both, to the extent that the plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment.

Subd. 9. **Fully insured by a licensed insurer.** "Fully insured by a licensed insurer" means that, for all of the health care benefits or coverage provided or offered by or through an arrangement:

(1) a licensed insurer is directly obligated by contract to provide all of the coverage to or under the arrangement;

(2) the licensed insurer assumes all of the risk for payment of all covered services or benefits; and

(3) the liability of the licensed insurer for payment of the covered services or benefits is directly to the individual employee, member, or dependent receiving the health care services.

Subd. 10. **Licensed insurer.** "Licensed insurer" means an insurer having a certificate of authority to transact insurance in this state.

Subd. 11. **Reportable MEWA.** "Reportable MEWA" means a person that provides health care benefits or coverage to the employees of two or more employers. Reportable MEWA does not include:

(1) a licensed insurer;

(2) an arrangement which is fully insured by a licensed insurer;

(3) a collectively bargained arrangement;

(4) an employee welfare benefit plan established or maintained by a rural electric cooperative or a rural telephone cooperative;

(5) an employee leasing arrangement; or

(6) a joint self-insurance employee health plan, which includes but is not limited to multiple employee welfare arrangements and multiple employer welfare arrangements (MEWAs), having a certificate of authority to transact insurance in this state pursuant to chapter 62H.

Subd. 12. **Rural electric cooperative.** "Rural electric cooperative" means:

(1) an organization that is exempt from tax under United States Code, title 26, section 501(a), and which is engaged primarily in providing electric service on a mutual or cooperative basis; or

(2) an organization described in United States Code, title 26, section 501(c), paragraph (4) or (6), which is exempt from tax under United States Code, title 26, section 501(a), and at least 80 percent of the members of which are organizations described in clause (1).

Subd. 13. **Rural telephone cooperative.** "Rural telephone cooperative" means an organization described in United States Code, title 26, section 501(c), paragraph (4) or (6), which is exempt from tax under United States Code, title 26, section 501(a), and at least 80 percent of the members of which are organizations engaged primarily in providing telephone service to rural areas of the United States on a mutual, cooperative, or other basis.

Subd. 14. **Third party administrator.** "Third party administrator" means a vendor of risk management services or an entity administering a self-insurance or insurance plan under section 60A.23.

History: *1994 c 485 s 37*

62H.11 AGENTS AND BROKERS PROHIBITED FROM ASSISTING REPORTABLE MEWAS PRIOR TO FILING.

(a) No agent or broker may solicit, advertise, or market in this state health benefits or coverage from, or accept an application for, or place coverage for a person who resides in this state with, a reportable MEWA unless the agent or broker first files with the commissioner the information required under section 62H.16.

(b) No agent or broker may solicit another agent or broker to enter into an arrangement to solicit, advertise, or market services, health benefits, or coverage of a reportable MEWA unless the agent or broker first files with the commissioner the information required under section 62H.16.

History: *1994 c 485 s 38*

62H.12 AGENTS AND BROKERS PROHIBITED FROM ASSISTING EMPLOYEE LEASING ARRANGEMENTS PRIOR TO FILING.

(a) No agent or broker may solicit, advertise, or market in this state the services, health benefits, or coverage of an employee leasing arrangement or a person or arrangement which represents itself as an employee leasing arrangement unless the agent or broker first files with the commissioner the information required under section 62H.16.

(b) No agent or broker may solicit another agent or broker to enter into an arrangement to solicit, advertise, or market the services, health benefits, or coverage of an employee leasing arrangement unless the agent or broker first files with the commissioner the information required under section 62H.16.

History: *1994 c 485 s 39*

62H.13 AGENTS AND BROKERS PROHIBITED FROM ASSISTING COLLECTIVELY BARGAINED ARRANGEMENTS PRIOR TO FILING.

(a) No agent or broker may solicit, advertise, or market in this state health benefits or coverage from, or accept an application for, or place coverage for a person who

resides in this state with, a collectively bargained arrangement or an arrangement that represents itself as a collectively bargained arrangement unless the agent or broker first files with the commissioner the information required under section 62H.16.

(b) No agent or broker may solicit another agent or broker to enter into an arrangement to solicit, advertise, or market the health benefits or coverage of a collectively bargained arrangement unless the agent or broker first files with the commissioner the information required under section 62H.16.

History: *1994 c 485 s 40*

62H.14 THIRD PARTY ADMINISTRATORS AND LICENSED INSURERS PROHIBITED FROM ASSISTING REPORTABLE MEWAS PRIOR TO FILING.

(a) No third party administrator may solicit or effect coverage of, underwrite for, collect charges or premium for, or adjust or settle claims of a resident of this state for, or enter into any agreement to perform any of those functions for, a reportable MEWA that provides coverage to residents of this state unless the third party administrator first files with the commissioner the information required under section 62H.16.

(b) No licensed insurer may solicit or effect coverage of, underwrite for, collect charges or premiums for, adjust or settle claims of a resident of this state for, or enter into any agreement to perform any of those functions for a reportable MEWA that provides coverage to residents of this state unless the insurer first files with the commissioner the information required under section 62H.16.

(c) A licensed insurer that issues or has issued any insurance coverage to a reportable MEWA that covers residents of this state, including, but not limited to, specific or aggregate stop-loss coverage, shall file with the commissioner the information required under section 62H.16 within 30 days after the coverage is issued or within 30 days after the date the reportable MEWA first provides coverage to a resident of this state, whichever is later.

History: *1994 c 485 s 41*

62H.15 LACK OF KNOWLEDGE NOT A DEFENSE.

(a) Lack of knowledge or intent to deceive with respect to the organization or status of insurance coverage of a reportable MEWA, employee leasing firm, or collectively bargained arrangement is not a defense to a violation of sections 62H.10 to 62H.17.

(b) A filing under sections 62H.10 to 62H.17 is solely for the purpose of providing information to the commissioner. Sections 62H.10 to 62H.17 and a filing under those sections do not authorize or license a reportable MEWA, employee leasing firm, collectively bargained arrangement, or any other arrangement to engage in business in this state if otherwise prohibited by law.

History: *1994 c 485 s 42*

62H.16 INFORMATION REQUIRED TO BE FILED AND KEPT CURRENT.

(a) An agent, broker, third party administrator, or insurer required to file under sections 62H.10 to 62H.17 shall file with the commissioner all of the following information on a form prescribed by the commissioner:

(1) a copy of the organizational documents of the reportable MEWA, employee leasing firm, or collectively bargained arrangement, including the articles of incorporation and bylaws, partnership agreement, or trust instrument;

(2) a copy of each insurance or reinsurance contract that purports to insure or guarantee all or any portion of benefits or coverage offered by the reportable MEWA, employee leasing firm, or collectively bargained arrangement to a person who resides in this state;

(3) copies of the benefit plan description and other materials intended to be distributed to potential purchasers; and

(4) the names and addresses of all persons performing or expected to perform the

functions of a third party administrator for the reportable MEWA, employee leasing firm, or collectively bargained arrangement.

(b) A filing under sections 62H.10 to 62H.17 is ineffective and is not in compliance with those sections if it is incomplete or inaccurate in a material respect.

(c) A person who has made a filing under sections 62H.10 to 62H.17 shall amend the filing within 30 days of the date the person becomes aware, or exercising due diligence should have become aware, of any material change to the information required to be filed. The amended filing must accurately reflect the material change to the information originally filed.

History: *1994 c 485 s 43*

62H.17 LIABILITY FOR VIOLATION.

If an arrangement that is an unauthorized insurer fails to pay a claim or loss in this state within the provisions of its contract, a person who violates sections 62H.10 to 62H.17 with respect to the arrangement is liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of the insurance contract.

History: *1994 c 485 s 44*