CHAPTER 62L

SMALL EMPLOYER INSURANCE REFORM

62L.02 DEFINITIONS.

[For text of subds 1 to 10, see M.S.1994]

Subd. 11. **Dependent.** "Dependent" means an eligible employee's spouse, unmarried child who is under the age of 19 years, unmarried child under the age of 25 years who is a full–time student as defined in section 62A.301, dependent child of any age who is handicapped and who meets the eligibility criteria in section 62A.14, subdivision 2, or any other person whom state or federal law requires to be treated as a dependent for purposes of health plans. For the purpose of this definition, a child includes a child for whom the employee or the employee's spouse has been appointed legal guardian.

[For text of subds 11a to 15, see M.S.1994]

Subd. 16. **Health carrier.** "Health carrier" means 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; a health service plan corporation licensed under chapter 62C; a health maintenance organization licensed under chapter 62D; a community integrated service network and an integrated service network operating under chapter 62N; a fraternal benefit society operating under chapter 64B; a joint self–insurance employee health plan operating under chapter 62H; a multiple employer welfare arrangement, as defined in United States Code, title 29, section 1002(40), as amended. Any use of this definition in another chapter by reference does not include a community integrated service network or integrated service network, unless otherwise specified. For the purpose of this chapter, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one health carrier, except that any insurance company or health service plan corporation that is an affiliate of a health maintenance organization located in Minnesota, or any health maintenance organization located in Minnesota that is an affiliate of an insurance company or health service plan corporation, or any health maintenance organization that is an affiliate of another health maintenance organization in Minnesota, may treat the health maintenance organization as a separate health carrier.

[For text of subds 17 to 23, see M.S.1994]

Subd. 24. **Qualifying coverage.** "Qualifying coverage" means health benefits or health coverage provided under:

(1) a health plan, as defined in this section;

(2) Medicare;

(3) medical assistance under chapter 256B;

(4) general assistance medical care under chapter 256D;

(5) MCHA;

(6) a self–insured health plan;

(7) the MinnesotaCare program established under section 256.9352, when the plan includes inpatient hospital services as provided in section 256.9353;

(8) a plan provided under section 43A.316, 43A.317, or 471.617;

(9) the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS);

(10) coverage provided by a health care network cooperative under chapter 62R or by a health provider cooperative under section 62R.17; or

(11) a plan similar to any of the above plans provided in this state or in another state as determined by the commissioner.

[For text of subd 25, see M.S.1994]

Subd. 26. **Small employer.** (a) "Small employer" means a person, firm, corporation, partnership, association, or other entity actively engaged in business, including a political subdivision of the state, that, on at least 50 percent of its working days during the preceding 12 months, employed no fewer than two nor more than 29, or after June 30, 1995, more than 49, current employees, the majority of whom were employed in this state. If an employer has only two eligible employees and one is the spouse, child, sibling, parent, or grandparent of the other, the employer must be a Minnesota domiciled employer and have paid social security or self–employment tax on behalf of both eligible employees. If an employer has only one eligible employee who has not waived coverage, the sale of a health plan to or for that eligible employee is not a sale to a small employer and is not subject to this chapter and may be treated as the sale of an individual health plan. A small employer plan may be offered through a domiciled association to self–employed individuals and small employers who are members of the association, even if the self–employed individual or small employer has fewer than two current employees. Entities that are eligible to file a combined tax return for purposes of state tax laws are considered a single employer for purposes of determining the number of current employees. Small employer status must be determined on an annual basis as of the renewal date of the health benefit plan. The provisions of this chapter continue to apply to an employer who no longer meets the requirements of this definition until the annual renewal date of the employer's health benefit plan.

(b) Where an association, as defined in section 62L.045, comprised of employers contracts with a health carrier to provide coverage to its members who are small employers, the association and health benefit plans it provides to small employers, are subject to section 62L.045, with respect to small employers in the association, even though the association also provides coverage to its members that do not qualify as small employers.

(c) If an employer has employees covered under a trust specified in a collective bargaining agreement under the federal Labor–Management Relations Act of 1947, United States Code, title 29, section 141, et seq., as amended, or employees whose health coverage is determined by a collective bargaining agreement and, as a result of the collective bargaining agreement, is purchased separately from the health plan provided to other employees, those employees are excluded in determining whether the employer qualifies as a small employer. Those employees are considered to be a separate small employer if they constitute a group that would qualify as a small employer in the absence of the employees who are not subject to the collective bargaining agreement.

[For text of subds 27 and 28, see M.S.1994]

History: *1995 c 234 art 7 s 12–15; 1995 c 258 s 44*

62L.03 AVAILABILITY OF COVERAGE.

[For text of subds 1 and 2, see M.S.1994]

Subd. 3. **Minimum participation and contribution.** (a) A small employer that has at least 75 percent of its eligible employees who have not waived coverage participating in a health benefit plan and that contributes at least 50 percent toward the cost of coverage of each eligible employee must be guaranteed coverage on a guaranteed issue basis from any health carrier participating in the small employer market. The participation level of eligible employees must be determined at the initial offering of coverage and at the renewal date of coverage. A health carrier must not increase the participation requirements applicable to a small employer at any time after the small employer has been accepted for coverage. For the purposes of this subdivision, waiver of coverage includes only waivers due to: (1) coverage under another group health plan; (2) coverage under Medicare Parts A and B; (3) coverage under MCHA permitted under section 62E.141; or (4) coverage under medical assistance under chapter 256B or general assistance medical care under chapter 256D.

(b) If a small employer does not satisfy the contribution or participation requirements under this subdivision, a health carrier may voluntarily issue or renew individual health plans, or a health benefit plan which must fully comply with this chapter. A health carrier that

provides a health benefit plan to a small employer that does not meet the contribution or participation requirements of this subdivision must maintain this information in its files for audit by the commissioner. A health carrier may not offer an individual health plan, purchased through an arrangement between the employer and the health carrier, to any employee unless the health carrier also offers the individual health plan, on a guaranteed issue basis, to all other employees of the same employer.

(c) Nothing in this section obligates a health carrier to issue coverage to a small employer that currently offers coverage through a health benefit plan from another health carrier, unless the new coverage will replace the existing coverage and not serve as one of two or more health benefit plans offered by the employer.

Subd. 4. **Underwriting restrictions.** Health carriers may apply underwriting restrictions to coverage for health benefit plans for small employers, including any preexisting condition limitations, only as expressly permitted under this chapter. For purposes of this section, "underwriting restrictions" means any refusal of the health carrier to issue or renew coverage, any premium rate higher than the lowest rate charged by the health carrier for the same coverage, any preexisting condition limitation, preexisting condition exclusion, or any exclusionary rider. Health carriers may collect information relating to the case characteristics and demographic composition of small employers, as well as health status and health history information about employees, and dependents of employees, of small employers. Except as otherwise authorized for late entrants, preexisting conditions may be excluded by a health carrier for a period not to exceed 12 months from the effective date of coverage of an eligible employee or dependent, but exclusionary riders must not be used. When calculating a preexisting condition limitation, a health carrier shall credit the time period an eligible employee or dependent was previously covered by qualifying coverage, provided that the individual maintains continuous coverage. Late entrants may be subject to a preexisting condition limitation not to exceed 18 months from the effective date of coverage of the late entrant, but must not be subject to any exclusionary rider or preexisting condition exclusion. The credit must be given for all qualifying coverage with respect to all preexisting conditions, regardless of whether the conditions were preexisting with respect to any previous qualifying coverage. Section 60A.082, relating to replacement of group coverage, and the rules adopted under that section apply to this chapter, and this chapter's requirements are in addition to the requirements of that section and the rules adopted under it. A health carrier shall, at the time of first issuance or renewal of a health benefit plan on or after July 1, 1993, credit against any preexisting condition limitation or exclusion permitted under this section, the time period prior to July 1, 1993, during which an eligible employee or dependent was covered by qualifying coverage, if the person has maintained continuous coverage.

Subd. 5. **Cancellations and failures to renew.** (a) No health carrier shall cancel, decline to issue, or fail to renew a health benefit plan as a result of the claim experience or health status of the persons covered or to be covered by the health benefit plan.

(b) A health carrier may cancel or fail to renew a health benefit plan:

(1) for nonpayment of the required premium;

(2) for fraud or misrepresentation by the small employer, or, with respect to coverage of an individual eligible employee or dependent, fraud or misrepresentation by the eligible employee or dependent, with respect to eligibility for coverage or any other material fact;

(3) if the employer fails to comply with the minimum contribution percentage required under subdivision 3; or

(4) for any other reasons or grounds expressly permitted by the respective licensing laws and regulations governing a health carrier, including, but not limited to, service area restrictions imposed on health maintenance organizations under section 62D.03, subdivision 4, paragraph (m), to the extent that these grounds are not expressly inconsistent with this chapter.

(c) A health carrier may fail to renew a health benefit plan:

(1) if eligible employee participation during the preceding calendar year declines to less than 75 percent, subject to the waiver of coverage provision in subdivision 3;

(2) if the health carrier ceases to do business in the small employer market under section 62L.09; or

(3) if a failure to renew is based upon the health carrier's decision to discontinue the health benefit plan form previously issued to the small employer, but only if the health carrier permits each small employer covered under the prior form to switch to its choice of any other health benefit plan offered by the health carrier, without any underwriting restrictions that would not have been permitted for renewal purposes.

(d) A health carrier need not renew a health benefit plan, and shall not renew a small employer plan, if an employer ceases to qualify as a small employer as defined in section 62L.02. If a health benefit plan, other than a small employer plan, provides terms of renewal that do not exclude an employer that is no longer a small employer, the health benefit plan may be renewed according to its own terms. If a health carrier issues or renews a health plan to an employer that is no longer a small employer, without interruption of coverage, the health plan is subject to section 60A.082. Between July 1, 1994, and June 30, 1995, a health benefit plan in force during this time may be renewed, if the number of employees exceeds two, but does not exceed 49 employees.

[For text of subd 6, see M.S.1994]

History: *1995 c 234 art 7 s 16–18; 1995 c 258 s 45*

62L.045 ASSOCIATIONS.

Subdivision 1. **Definitions.** For purposes of this section, the following terms have the meanings given:

(a) "Association" means:

(1) an association as defined in section 60A.02;

(2) a group or organization of political subdivisions;

(3) an educational cooperative service unit created under section 123.58; or

(4) a joint self–insurance pool authorized under section 471.617, subdivision 2.

(b) "Qualified association" means an association, as defined in this subdivision, that:

(1) is registered with the commissioner of commerce;

(2) provides health plan coverage through a health carrier that participates in the small employer market in this state, other than through associations;

(3) has and adheres to membership and participation criteria and health plan eligibility criteria that are not designed to disproportionately include or attract small employers that are likely to have low costs of health coverage or to disproportionately exclude or repel small employers that are likely to have high costs of health coverage; and

(4) permits any small employer that meets its membership, participation, and eligibility criteria to become a member and to obtain health plan coverage through the association.

Subd. 2. **Qualified associations.** (a) A qualified association, as defined in this section, and health benefit plans offered by it, to it, or through it, to a small employer in this state must comply with the requirements of this chapter regarding guaranteed issue, guaranteed renewal, preexisting condition limitations, credit against preexisting condition limitations for continuous coverage, treatment of MCHA enrollees, and the definition of dependent, and with section 62A.65, subdivision 5, paragraph (b). They must also comply with all other requirements of this chapter not specifically exempted in paragraph (b) or (c).

(b) A qualified association and a health carrier offering, selling, issuing, or renewing a health benefit plan to, or to cover, a small employer in this state through the qualified association, may, but are not, in connection with that health benefit plan, required to:

(1) offer the two small employer plans described in section 62L.05; and

(2) offer to small employers that are not members of the association, health benefit plans offered to, by, or through the qualified association.

(c) A qualified association, and a health carrier offering, selling, issuing, and renewing a health benefit plan to, or to cover, a small employer in this state must comply with section 62L.08, except that a separate index rate may be applied by a health carrier to each qualified association, provided that:

(1) the premium rate applied to participating small employer members of the qualified association is no more than 25 percent above and no more than 25 percent below the index

rate applied to the qualified association, irrespective of when members applied for health coverage; and

(2) the index rate applied by a health carrier to a qualified association is no more than 20 percent above and no more than 20 percent below the index rate applied by the health carrier to any other qualified association or to any small employer. In comparing index rates for purposes of this clause, the 20 percent shall be calculated as a percent of the larger index rate.

Subd. 3. **Other associations.** Associations as defined in this section that are not qualified associations; health benefit plans offered, sold, issued, or renewed through them; and the health carriers doing so, must fully comply with this chapter with respect to small employers that are members of the association.

Subd. 4. **Principles; association coverage.** (a) This subdivision applies to associations as defined in this section, whether qualified associations or not, and is intended to clarify subdivisions 1 to 3.

(b) This section applies only to associations that provide coverage to small employers.

(c) The requirements of guaranteed issue and guaranteed renewal apply to coverage issued to cover small employers and persons covered through them, within the context of an arrangement between an association and a health carrier. A health carrier is not required under this chapter to comply with guaranteed issue and guaranteed renewal with respect to its relationship with the association itself. An arrangement between the health carrier and the association, once entered into, must comply with guaranteed issue and guaranteed renewal with respect to members of the association that are small employers and persons covered through them.

(d) When an arrangement between a health carrier and an association has validly terminated, the health carrier has no continuing obligation to small employers and persons covered through them, except as otherwise provided in:

(1) section 62A.65, subdivision 5, paragraph (b);

(2) any other continuation or conversion rights applicable under state or federal law; and

(3) section 60A.082, relating to group replacement coverage, and rules adopted under that section.

(e) When an association's arrangement with a health carrier has terminated and the association has entered into a new arrangement with that health carrier or a different health carrier, the new arrangement is subject to section 60A.082 and rules adopted under it, with respect to members of the association that are small employers and persons covered through them.

(f) An association that offers its members more than one health plan may have uniform rules restricting movement between the health plans, if the rules do not discriminate against small employers.

(g) This chapter does not require or prohibit separation of an association's members into one group consisting only of small employers and another group or other groups consisting of all other members. The association must comply with this section with respect to the small employer group.

(h) For purposes of this section, "member" of an association includes an employer participant in the association.

(i) For purposes of this section, coverage issued to, or to cover, a small employer includes a certificate of coverage issued directly to the employer's employees and dependents, rather than to the small employer.

Subd. 5. **Registration.** The commissioner may require all associations that are subject to this section to register with the commissioner prior to an initial purchase of coverage under this section.

History: *1995 c 234 art 7 s 19*

62L.08 RESTRICTIONS RELATING TO PREMIUM RATES.

[For text of subds 1 to 7, see M.S.1994]

Subd. 7a. [Repealed, 1995 c 234 art 7 s 28]

[For text of subds 8 to 11, see M.S.1994]

NOTE: Subdivision 7a was also amended by Laws 1995, First Special Session chapter 3, article 13, section 2, to read as follows:

"Subd. 7a. **Partial exemption; political subdivisions.** (a) Health coverage provided by a political subdivision of the state to its employees, officers, retirees, and their dependents, by participation in group purchasing of health plan coverage by or through an association of political subdivisions or by or through a service cooperative created under section 123.582 or by participating in a joint self-insurance pool authorized under section 471.617, subdivision 2, is subject to this subdivision. Coverage that is subject to this subdivision may have separate index rates and separate premium rates, based upon data specific to the association, educational cooperative service unit, or pool, so long as the rates, including the rating bands, otherwise comply with this chapter. The association, educational cooperative service unit, or pool is not required to offer the small employer plans described in section 62L.05 and is not required to comply with this chapter for employers that are not small employers or that are not eligible for coverage through the association, educational cooperative service unit, or pool. A health carrier that offers a health plan only under this subdivision need not offer that health plan to other small employers on a guaranteed issue basis.

(b) An association, educational cooperative service unit, or pool described in paragraph (a) may elect to be treated under paragraph (a) by filing a notice of the election with the commissioner of commerce no later than January 1, 1995. The election remains in effect for three years and applies to all health coverage provided to members of the group. It may be renewed for subsequent three-year periods. An entity eligible for treatment under paragraph (a) that forms after January 1, 1995, must make the election prior to provision of coverage, and the election remains in effect until January 1, 1998, or if filed after that date, until the next regular renewal date."

62L.09 CESSATION OF SMALL EMPLOYER BUSINESS.

Subdivision 1. **Notice to commissioner.** A health carrier electing to cease doing business in the small employer market shall notify the commissioner 180 days prior to the effective date of the cessation. The health carrier shall simultaneously provide a copy of the notice to each small employer covered by a health benefit plan issued by the health carrier. For purposes of this section, "cease doing business" means to discontinue issuing new health benefit plans to small employers and to refuse to renew all of the health carrier's existing health benefit plans issued to small employers, the terms of which permit refusal to renew under the circumstances specified in this subdivision. This section does not permit cancellation of a health benefit plan, unless permitted under its terms.

Upon making the notification, the health carrier shall not offer or issue new business in the small employer market. The health carrier shall renew its current small employer business due for renewal within 120 days after the date of the notification but shall not renew any small employer business more than 120 days after the date of the notification. The renewal period for business renewed during that 120-day period shall end on the effective date of the cessation.

A health carrier that elects to cease doing business in the small employer market shall continue to be governed by this chapter with respect to any continuing small employer business conducted by the health carrier.

[For text of subds 3 and 4, see M.S.1994]

History: *1995 c 234 art 7 s 20*

62L.12 PROHIBITED PRACTICES.

[For text of subd 1, see M.S.1994]

Subd. 2. **Exceptions.** (a) A health carrier may sell, issue, or renew individual conversion policies to eligible employees otherwise eligible for conversion coverage under section 62D.104 as a result of leaving a health maintenance organization's service area.

(b) A health carrier may sell, issue, or renew individual conversion policies to eligible employees otherwise eligible for conversion coverage as a result of the expiration of any continuation of group coverage required under sections 62A.146, 62A.17, 62A.21, 62C.142, 62D.101, and 62D.105.

(c) A health carrier may sell, issue, or renew conversion policies under section 62E.16 to eligible employees.

(d) A health carrier may sell, issue, or renew individual continuation policies to eligible employees as required.

(e) A health carrier may sell, issue, or renew individual health plans if the coverage is appropriate due to an unexpired preexisting condition limitation or exclusion applicable to the person under the employer's group health plan or due to the person's need for health care services not covered under the employer's group health plan.

(f) A health carrier may sell, issue, or renew an individual health plan, if the individual has elected to buy the individual health plan not as part of a general plan to substitute individual health plans for a group health plan nor as a result of any violation of subdivision 3 or 4.

(g) Nothing in this subdivision relieves a health carrier of any obligation to provide continuation or conversion coverage otherwise required under federal or state law.

(h) Nothing in this chapter restricts the offer, sale, issuance, or renewal of coverage issued as a supplement to Medicare under sections 62A.31 to 62A.44, or policies or contracts that supplement Medicare issued by health maintenance organizations, or those contracts governed by section 1833 or 1876 of the federal Social Security Act, United States Code, title 42, section 1395 et. seq., as amended.

(i) Nothing in this chapter restricts the offer, sale, issuance, or renewal of individual health plans necessary to comply with a court order.

[For text of subds 3 to 5, see M.S.1994]

History: *1995 c 234 art 7 s 21*

62L.17 PARTICIPATION IN THE REINSURANCE ASSOCIATION.

[For text of subds 1 and 2, see M.S.1994]

Subd. 2a. **Participation of new small employer health carriers.** A health carrier that enters the small employer market subsequent to February 1993, may elect to not participate in the reinsurance association by filing an application within 60 days of entry into the small employer market or May 26, 1995, whichever is later. The commissioner shall make a determination and notify the health carrier no later than 60 days after receipt of the application. In determining whether to approve the application, the commissioner shall consider the standards defined in subdivision 2, except that the commissioner may also consider whether the health carrier has a guaranteeing organization as defined in section 62D.043, subdivision 1, or as permitted under chapter 62N.

[For text of subds 3 to 7, see M.S.1994]

History: *1995 c 234 art 7 s 22*

62L.18 CEDING OF RISK.

[For text of subd 1, see M.S.1994]

Subd. 2. **Eligibility for reinsurance.** (a) A health carrier may not reinsure existing small employer business through the association. A health carrier may reinsure an employee or dependent who previously had coverage from MCHA who is now eligible for coverage through the small employer group at the time of enrollment as defined in section 62L.03, subdivision 6. A health carrier may not reinsure individuals who have existing individual health care coverage with that health carrier upon replacement of the individual coverage with group coverage as provided in section 62L.04, subdivision 1.

(b) A health carrier may cede to the association the risk of any newly eligible employees or continue to reinsure small employer business for employers who, at the time of renewal of coverage by the same health carrier prior to July 1, 1995, have more than 29 current employees but fewer than 49 current employees. This paragraph is effective retroactively for coverage renewed on or after July 1, 1994.

[For text of subds 3 and 4, see M.S.1994]

History: *1995 c 234 art 7 s 23*