

A bill for an act  
relating to health; modifying health care provisions; changing health plan  
premium rate restrictions; establishing the Minnesota Health Insurance  
Exchange; requiring certain employers to offer Section 125 Plans; amending  
Minnesota Statutes 2006, sections 62A.65, subdivision 3; 62E.141; 62L.12,  
subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 62A.

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

Section 1. Minnesota Statutes 2006, section 62A.65, subdivision 3, is amended to read:

Subd. 3. **Premium rate restrictions.** No individual health plan may be offered,  
sold, issued, or renewed to a Minnesota resident unless the premium rate charged is  
determined in accordance with the following requirements:

(a) Premium rates must be no more than 25 percent above and no more than 25  
percent below the index rate charged to individuals for the same or similar coverage,  
adjusted pro rata for rating periods of less than one year. The premium variations  
permitted by this paragraph must be based only upon health status, claims experience,  
and occupation. For purposes of this paragraph, health status includes refraining from  
tobacco use or other actuarially valid lifestyle factors associated with good health,  
provided that the lifestyle factor and its effect upon premium rates have been determined  
by the commissioner to be actuarially valid and have been approved by the commissioner.  
Variations permitted under this paragraph must not be based upon age or applied  
differently at different ages. This paragraph does not prohibit use of a constant percentage  
adjustment for factors permitted to be used under this paragraph.

(b) Premium rates may vary based upon the ages of covered persons only as  
provided in this paragraph. In addition to the variation permitted under paragraph (a),  
each health carrier may use an additional premium variation based upon age for adults

aged 19 and above of up to plus or minus 50 percent of the index rate. Premium rates for children under the age of 19 may not vary based on age, regardless of whether the child is covered as a dependent or as a primary insured.

(c) A health carrier may request approval by the commissioner to establish separate geographic regions determined by the health carrier and to establish separate index rates for each such region. The commissioner shall grant approval if the following conditions are met:

(1) the geographic regions must be applied uniformly by the health carrier;

(2) each geographic region must be composed of no fewer than seven counties that create a contiguous region; and

(3) the health carrier provides actuarial justification acceptable to the commissioner for the proposed geographic variations in index rates, establishing that the variations are based upon differences in the cost to the health carrier of providing coverage.

(d) Health carriers may use rate cells and must file with the commissioner the rate cells they use. Rate cells must be based upon the number of adults or children covered under the policy and may reflect the availability of Medicare coverage. The rates for different rate cells must not in any way reflect generalized differences in expected costs between principal insureds and their spouses.

(e) In developing its index rates and premiums for a health plan, a health carrier shall take into account only the following factors:

(1) actuarially valid differences in rating factors permitted under paragraphs (a) and (b); and

(2) actuarially valid geographic variations if approved by the commissioner as provided in paragraph (c).

(f) All premium variations must be justified in initial rate filings and upon request of the commissioner in rate revision filings. All rate variations are subject to approval by the commissioner.

(g) The loss ratio must comply with the section 62A.021 requirements for individual health plans.

(h) The rates must not be approved, unless the commissioner has determined that the rates are reasonable. In determining reasonableness, the commissioner shall consider the growth rates applied under section 62J.04, subdivision 1, paragraph (b), to the calendar year or years that the proposed premium rate would be in effect, actuarially valid changes in risks associated with the enrollee populations, and actuarially valid changes as a result of statutory changes in Laws 1992, chapter 549.

(i) An insurer may, as part of a minimum lifetime loss ratio guarantee filing under section 62A.02, subdivision 3a, include a rating practices guarantee as provided in this paragraph. The rating practices guarantee must be in writing and must guarantee that the policy form will be offered, sold, issued, and renewed only with premium rates and premium rating practices that comply with subdivisions 2, 3, 4, and 5. The rating practices guarantee must be accompanied by an actuarial memorandum that demonstrates that the premium rates and premium rating system used in connection with the policy form will satisfy the guarantee. The guarantee must guarantee refunds of any excess premiums to policyholders charged premiums that exceed those permitted under subdivision 2, 3, 4, or 5. An insurer that complies with this paragraph in connection with a policy form is exempt from the requirement of prior approval by the commissioner under paragraphs (c), (f), and (h).

**Sec. 2. [62A.67] MINNESOTA HEALTH INSURANCE EXCHANGE.**

Subdivision 1. Title; citation. This section may be cited as the "Minnesota Health Insurance Exchange."

Subd. 2. Creation; tax exemption. The Minnesota Health Insurance Exchange is created for the limited purpose of providing individuals with greater access, choice, portability, and affordability of health insurance products. The Minnesota Health Insurance Exchange is a not-for-profit corporation under chapter 317A and section 501(c) of the Internal Revenue Code.

Subd. 3. Definitions. The following terms have the meanings given them unless otherwise provided in text.

(a) "Board" means the board of directors of the Minnesota Health Insurance Exchange under subdivision 13.

(b) "Commissioner" means:

(1) the commissioner of commerce for health insurers subject to the jurisdiction of the Department of Commerce;

(2) the commissioner of health for health insurers subject to the jurisdiction of the Department of Health; or

(3) either commissioner's designated representative.

(c) "Exchange" means the Minnesota Health Insurance Exchange.

(d) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

(e) "Individual market health plans," unless otherwise specified, means individual market health plans defined in section 62A.011 and MinnesotaCare II products as defined in chapter 256L.

(f) "Section 125 Plan" means a Premium Only Plan under section 125 of the Internal Revenue Code.

Subd. 4. **Insurer and health plan participation.** All health plans as defined in section 62A.011, subdivision 3, issued or renewed in the individual market shall participate in the exchange. No health plans in the individual market may be issued or renewed outside of the exchange. Group health plans as defined in section 62A.10 shall not be offered through the exchange. Health plans offered through the Minnesota Comprehensive Health Association as defined in section 62E.10 are offered through the exchange to eligible enrollees as determined by the Minnesota Comprehensive Health Association. Health plans offered through MinnesotaCare and MinnesotaCare II under chapter 256L are offered through the exchange to eligible enrollees as determined by the commissioner of human services.

Subd. 5. **Approval of health plans.** No health plan may be offered through the exchange unless the commissioner has first certified that:

(1) the insurer seeking to offer the health plan is licensed to issue health insurance in the state; and

(2) the health plan meets the requirements of this section, and the health plan and the insurer are in compliance with all other applicable health insurance laws.

Subd. 6. **Individual market health plans.** Individual market health plans offered through the exchange continue to be regulated by the commissioner as specified in chapters 62A, 62C, 62D, 62E, 62Q, and 72A, and must include the following provisions that apply to all health plans issued or renewed through the exchange:

(1) premiums for children under the age of 19 shall not vary by age in the exchange; and

(2) premiums for children under the age of 19 must be excluded from rating factors under section 62A.65, subdivision 3, paragraph (b).

Subd. 7. **MinnesotaCare II health plans.** Health plans approved for MinnesotaCare II under section 256L.075 shall be offered by participating insurers to exchange participants not enrolled in MinnesotaCare II.

Subd. 8. **Individual participation and eligibility.** Individuals are eligible to purchase health plans directly through the exchange or through an employer Section 125 Plan under section 62A.68. Nothing in this section requires guaranteed issue of individual market health plans offered through the exchange. Individuals are eligible to purchase individual market health plans through the exchange by meeting one or more of the following qualifications:

5.1           (1) the individual is a Minnesota resident, meaning the individual is physically  
5.2 residing on a permanent basis in a place that is the person's principal residence and from  
5.3 which the person is absent only for temporary purposes;

5.4           (2) the individual is a student attending an institution outside of Minnesota and  
5.5 maintains Minnesota residency;

5.6           (3) the individual is not a Minnesota resident but is employed by an employer  
5.7 physically located within the state and the individual's employer does not offer a group  
5.8 health insurance plan as defined in section 62A.10, but does offer a Section 125 Plan  
5.9 through the exchange under section 62A.68;

5.10          (4) the individual is not a Minnesota resident but is self-employed and the  
5.11 individual's principal place of business is in the state; or

5.12          (5) the individual is a dependent as defined in section 62L.02, of another individual  
5.13 who is eligible to participate in the exchange.

5.14          Subd. 9. **Continuation of coverage.** Enrollment in a health plan may be canceled  
5.15 for nonpayment of premiums, fraud, or changes in eligibility for MinnesotaCare under  
5.16 chapter 256L. Enrollment in an individual market health plan may not be canceled or  
5.17 renewed because of any change in employer or employment status, marital status, health  
5.18 status, age, residence, or any other change that does not affect eligibility as defined  
5.19 in this section.

5.20          Subd. 10. **Responsibilities of the exchange.** The exchange shall serve as the sole  
5.21 entity for enrollment and collection and transfer of premium payments for health plans  
5.22 offered through the exchange. The exchange shall be responsible for the following  
5.23 functions:

5.24          (1) publicize the exchange, including but not limited to its functions, eligibility  
5.25 rules, and enrollment procedures;

5.26          (2) provide assistance to employers to set up an employer Section 125 Plan under  
5.27 section 62A.68;

5.28          (3) create a system to allow individuals to compare and enroll in health plans offered  
5.29 through the exchange;

5.30          (4) create a system to collect and transmit to the applicable plans all premium  
5.31 payments or contributions made by or on behalf of individuals, including developing  
5.32 mechanisms to receive and process automatic payroll deductions for individuals enrolled  
5.33 in employer Section 125 Plans;

5.34          (5) refer individuals interested in MinnesotaCare or MinnesotaCare II under chapter  
5.35 256L to the Department of Human Services to determine eligibility;

(6) establish a mechanism with the Department of Human Services to transfer premiums and subsidies for MinnesotaCare and MinnesotaCare II to qualify for federal matching payments;

(7) administer bonus accounts as defined in chapter 256L to reimburse MinnesotaCare II enrollees for qualified medical expenses under section 213(d) of the Internal Revenue Code;

(8) collect and assess information for eligibility for bonus accounts and premium incentives under chapter 256L;

(9) upon request, issue certificates of previous coverage according to the provisions of HIPAA and as referenced in section 62Q.181 to all such individuals who cease to be covered by a participating health plan through the exchange;

(10) establish procedures to account for all funds received and disbursed by the exchange for individual participants of the exchange; and

(11) make available to the public, at the end of each calendar year, a report of an independent audit of the exchange's accounts.

Subd. 11. **Powers of the exchange.** The exchange shall have the power to:

(1) contract with insurance producers licensed in accident and health insurance under chapter 60K and vendors to perform one or more of the functions specified in subdivision 10;

(2) contract with employers to act as the plan administrator for participating employer Section 125 Plans and to undertake the obligations required by federal law of a plan administrator;

(3) establish and assess fees on health plan premiums of health plans purchased through the exchange to fund the cost of administering the exchange;

(4) seek and directly receive grant funding from government agencies or private philanthropic organizations to defray the costs of operating the exchange;

(5) establish and administer rules and procedures governing the operations of the exchange;

(6) establish one or more service centers within Minnesota;

(7) sue or be sued or otherwise take any necessary or proper legal action;

(8) establish bank accounts and borrow money; and

(9) enter into agreements with the commissioners of commerce, health, human services, revenue, employment and economic development, and other state agencies as necessary for the exchange to implement the provisions of this section.

Subd. 12. **Dispute resolution.** The exchange shall establish procedures for resolving disputes with respect to the eligibility of an individual to participate in the

exchange. The exchange does not have the authority or responsibility to intervene in or resolve disputes between an individual and a health plan or health insurer. The exchange shall refer complaints from individuals participating in the exchange to the commissioner to be resolved according to sections 62Q.68 to 62Q.73.

Subd. 13. **Governance.** The exchange shall be governed by a board of directors with 11 members. The board shall convene on or before July 1, 2007, after the initial board members have been selected. The initial board membership consists of the following:

(1) the commissioner of commerce;

(2) the commissioner of human services;

(3) the commissioner of health;

(4) four members appointed by a joint committee of the Minnesota senate and the Minnesota house of representatives to serve three-year terms; and

(5) four members appointed by the governor to serve three-year terms.

Subd. 14. **Subsequent board membership.** Ongoing membership of the exchange consists of the following effective July 1, 2010:

(1) the commissioner of commerce;

(2) the commissioner of human services;

(3) the commissioner of health;

(4) four members appointed by the governor with the approval of a joint committee of the senate and house of representatives to serve two- or three-year terms. Appointed members may serve more than one term; and

(5) four members elected by the membership of the exchange of which two are elected to serve a two-year term and two are elected to serve a three-year term. Elected members may serve more than one term.

Subd. 15. **Operations of the board.** Officers of the board of directors are elected by members of the board and serve one-year terms. Six members of the board constitutes a quorum, and the affirmative vote of six members of the board is necessary and sufficient for any action taken by the board. Board members serve without pay, but are reimbursed for actual expenses incurred in the performance of their duties.

Subd. 16. **Operations of the exchange.** The board of directors shall appoint an exchange director who shall:

(1) be a full-time employee of the exchange;

(2) administer all of the activities and contracts of the exchange; and

(3) hire and supervise the staff of the exchange.

8.1        Subd. 17. **Insurance producers.** When a producer licensed in accident and health  
8.2 insurance under chapter 60K enrolls an eligible individual in the exchange, the health plan  
8.3 chosen by an individual may pay the producer a commission.

8.4        Subd. 18. **Implementation.** Health plan coverage through the exchange begins on  
8.5 January 1, 2009. The exchange must be operational to assist employers and individuals  
8.6 by September 1, 2008, and be prepared for enrollment by December 1, 2008. Enrollees  
8.7 of individual market health plans, MinnesotaCare, and the Minnesota Comprehensive  
8.8 Health Association as of December 2, 2008, are automatically enrolled in the exchange  
8.9 on January 1, 2009, in the same health plan and at the same premium that they were  
8.10 enrolled as of December 2, 2008, subject to the provisions of this section. As of January 1,  
8.11 2009, all enrollees of individual market health plans, MinnesotaCare, and the Minnesota  
8.12 Comprehensive Health Association shall make premium payments to the exchange.

8.13       Subd. 19. **Study of insurer issue requirements.** In consultation with  
8.14 the commissioners of commerce and health, the exchange shall study and make  
8.15 recommendations on rating requirements and risk adjustment mechanisms that could  
8.16 be implemented to facilitate increased enrollment in the exchange by employers and  
8.17 employees through employer Section 125 Plans. The exchange shall report study findings  
8.18 and recommendations to the chairs of house and senate committees having jurisdiction  
8.19 over commerce and health by January 15, 2011.

8.20       **Sec. 3. [62A.68] SECTION 125 PLANS.**

8.21       Subdivision 1. **Definitions.** The following terms have the meanings given unless  
8.22 otherwise provided in text:

8.23       (a) "Current employee" means an employee currently on an employer's payroll other  
8.24 than a retiree or disabled former employee.

8.25       (b) "Employer" means a person, firm, corporation, partnership, association, business  
8.26 trust, or other entity employing one or more persons, including a political subdivision of  
8.27 the state, filing payroll tax information on such employed person or persons.

8.28       (c) "Section 125 Plan" means a Premium Only Plan under section 125 of the Internal  
8.29 Revenue Code.

8.30       (d) "Exchange" means the Minnesota Health Insurance Exchange under section  
8.31 62A.67.

8.32       (e) "Exchange director" means the appointed director under section 62A.67,  
8.33 subdivision 16.

8.34       Subd. 2. **Section 125 Plan requirement.** Effective January 1, 2009, all employers  
8.35 with 11 or more current employees shall offer a Section 125 Plan through the exchange



to allow their employees to pay for health insurance premiums with pretax dollars. The following employers are exempt from the Section 125 Plan requirement:

(1) employers that offer a group health insurance plan as defined in 62A.10;

(2) employers that offer group health insurance through a self-insured plan as defined in section 62E.02; and

(3) employers with fewer than 11 current employees, except that employers under this clause may voluntarily offer a Section 125 Plan.

**Subd. 3. Tracking compliance.** By July 1, 2008, the exchange, in consultation with the commissioners of commerce, health, employment and economic development, and revenue shall establish a method for tracking employer compliance with the Section 125 Plan requirement.

**Subd. 4. Employer requirements.** Employers that are required to offer or choose to offer a Section 125 Plan through the exchange shall enter into an annual binding agreement with the exchange, which includes the terms in paragraphs (a) to (h).

(a) The employer shall designate the exchange director to be the plan's administrator for the employer's plan and the exchange director agrees to undertake the obligations required of a plan administrator under federal law.

(b) Only the coverage and benefits offered by participating insurers in the exchange constitutes the coverage and benefits of the participating employer plan.

(c) Any individual eligible to participate in the exchange may elect coverage under any participating health plan for which they are eligible, and neither the employer nor the exchange shall limit choice of coverage from among all the participating insurance plans for which the individual is eligible.

(d) The employer shall deduct premium amounts on a pretax basis in an amount not to exceed an employee's wages and make payments to the exchange as directed by employees for health plans employees enroll in through the exchange.

(e) The employer shall not offer individuals eligible to participate in the exchange any separate or competing group health plan under section 62A.10.

(f) The employer reserves the right to determine the terms and amounts of the employer's contribution to the plan, if any.

(g) The employer shall make available to the exchange any of the employer's documents, records, or information, including copies of the employer's federal and state tax and wage reports that are necessary for the exchange to verify:

(1) that the employer is in compliance with the terms of its agreement with the exchange governing the participating employer plan;

(2) that the participating employer plan is in compliance with applicable state and federal laws, including those relating to nondiscrimination in coverage; and

(3) the eligibility of those individuals enrolled in the participating employer plan.

(h) The exchange shall not provide the participating employer plan with any additional or different services or benefits not otherwise provided or offered to all other participating employer plans.

Subd. 5. **Section 125 eligible health plans.** Individuals eligible to enroll in health plans through an employer Section 125 Plan through the exchange may enroll in any health plan offered through the exchange for which the individual is eligible including individual market health plans, MinnesotaCare and MinnesotaCare II, and the Minnesota Comprehensive Health Association.

Sec. 4. Minnesota Statutes 2006, section 62E.141, is amended to read:

**62E.141 INCLUSION IN EMPLOYER-SPONSORED PLAN.**

No employee of an employer that offers a group health plan, under which the employee is eligible for coverage, is eligible to enroll, or continue to be enrolled, in the comprehensive health association, except for enrollment or continued enrollment necessary to cover conditions that are subject to an unexpired preexisting condition limitation, preexisting condition exclusion, or exclusionary rider under the employer's health plan. This section does not apply to persons enrolled in the Comprehensive Health Association as of June 30, 1993. With respect to persons eligible to enroll in the health plan of an employer that has more than 29 current employees, as defined in section 62L.02, this section does not apply to persons enrolled in the Comprehensive Health Association as of December 31, 1994.

Sec. 5. Minnesota Statutes 2006, section 62L.12, subdivision 2, is amended to read:

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.

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

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

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

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

11.13 (h) Nothing in this chapter restricts the offer, sale, issuance, or renewal of coverage  
11.14 issued as a supplement to Medicare under sections 62A.3099 to 62A.44, or policies or  
11.15 contracts that supplement Medicare issued by health maintenance organizations, or those  
11.16 contracts governed by sections 1833, 1851 to 1859, 1860D, or 1876 of the federal Social  
11.17 Security Act, United States Code, title 42, section 1395 et seq., as amended.

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

11.20 (j) A health carrier may offer, issue, sell, or renew an individual health plan to  
11.21 persons eligible for an employer group health plan, if the individual health plan is a high  
11.22 deductible health plan for use in connection with an existing health savings account, in  
11.23 compliance with the Internal Revenue Code, section 223. In that situation, the same or  
11.24 a different health carrier may offer, issue, sell, or renew a group health plan to cover  
11.25 the other eligible employees in the group.

11.26 (k) A health carrier may offer, sell, issue, or renew an individual health plan to one  
11.27 or more employees of a small employer if the individual health plan is marketed directly to  
11.28 all employees of the small employer and the small employer does not contribute directly  
11.29 or indirectly to the premiums or facilitate the administration of the individual health plan.  
11.30 The requirement to market an individual health plan to all employees does not require the  
11.31 health carrier to offer or issue an individual health plan to any employee. For purposes  
11.32 of this paragraph, an employer is not contributing to the premiums or facilitating the  
11.33 administration of the individual health plan if the employer does not contribute to the  
11.34 premium and merely collects the premiums from an employee's wages or salary through  
11.35 payroll deductions and submits payment for the premiums of one or more employees in a  
11.36 lump sum to the health carrier. Except for coverage under section 62A.65, subdivision 5,

12.1 paragraph (b), or 62E.16, at the request of an employee, the health carrier may bill the  
12.2 employer for the premiums payable by the employee, provided that the employer is not  
12.3 liable for payment except from payroll deductions for that purpose. If an employer is  
12.4 submitting payments under this paragraph, the health carrier shall provide a cancellation  
12.5 notice directly to the primary insured at least ten days prior to termination of coverage for  
12.6 nonpayment of premium. Individual coverage under this paragraph may be offered only  
12.7 if the small employer has not provided coverage under section 62L.03 to the employees  
12.8 within the past 12 months.

12.9 The employer must provide a written and signed statement to the health carrier that  
12.10 the employer is not contributing directly or indirectly to the employee's premiums. The  
12.11 health carrier may rely on the employer's statement and is not required to guarantee-issue  
12.12 individual health plans to the employer's other current or future employees.

12.13 (l) Nothing in this chapter restricts the offer, sale, issuance, or renewal of individual  
12.14 health plans through the Minnesota Health Insurance Exchange under section 62A.67  
12.15 or 62A.68.