State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1046

02/09/2017 Authored by Loonan; Johnson, S., and Hoppe
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

A bill for an act

relating to insurance; regulating the Minnesota Joint Underwriting Association; authorizing the association to provide liquor liability and certain medical malpractice coverage; amending Minnesota Statutes 2016, sections 62I.02; 62I.03; 62I.05; 62I.06; 62I.07; 62I.08; 62I.13; 62I.14; 62I.15; 62I.16; 62I.17; 62I.19; 62I.21; repealing Minnesota Statutes 2016, sections 62F.01, subdivision 1; 62F.02; 62F.03; 62F.04, subdivisions 1, 2, 2a, 3; 62F.05; 62F.06; 62F.07; 62F.08; 62F.09; 62F.10; 62F.11; 62F.12; 62F.13; 62F.14; Minnesota Rules, part 2791.0100.

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

Section 1. Minnesota Statutes 2016, section 62I.02, is amended to read:

62I.02 MINNESOTA JOINT UNDERWRITING ASSOCIATION.

Subdivision 1. **Creation.** The Minnesota Joint Underwriting Association is created to provide insurance coverage to any person or entity unable to obtain insurance through ordinary methods if the insurance is required by statute, ordinance, or otherwise required by law, or is necessary to earn a livelihood or conduct a business and serves a public purpose~~,~~ ~~including, but not limited to, liquor liability~~. Prudent business practice or mere desire to have insurance coverage is not a sufficient standard for the association to offer insurance coverage to a person or entity. For purposes of this subdivision, directors' and officers' liability insurance is considered to be a business necessity and not merely a prudent business practice. The association shall be specifically authorized to provide insurance coverage to day care providers, foster parents, foster homes, developmental achievement centers, group homes, ~~and~~ rehabilitation facilities for mentally, emotionally, or physically disabled persons, and for liquor liability. In addition, the association shall provide medical malpractice insurance coverage to a licensed health care provider unable to obtain this insurance through ordinary methods who practices or provides professional services within Minnesota and

obtains at least 60 percent of gross revenues from patients who are residents of Minnesota. ~~Because the activities of certain persons or entities present a risk that is so great, the association shall not offer insurance coverage to any person or entity the board of directors of the association determines is outside the intended scope and purpose of the association because of the gravity of the risk of offering insurance coverage.~~ The association shall not offer environmental pollution liability, product liability insurance, and completed operations insurance. The association shall not offer coverage for activities that are conducted substantially outside the state of Minnesota unless the insurance is required by statute, ordinance, or otherwise required by Minnesota law. Every insurer ~~authorized~~ licensed to write property and casualty insurance and personal injury liability insurance in this state shall be a member of the association as a condition to obtaining and retaining a license to write insurance in this state.

Subd. 2. **Board of directors.** The association shall have a board of directors composed of ~~11~~ 15 persons chosen as follows: ~~five~~ seven persons elected by members of the association ~~at a meeting called by the commissioner~~, one of whom must be a representative of medical malpractice insurers, and one of whom must be a representative of personal injury liability insurers; ~~three~~ four public members, as defined in section 214.02, appointed by the commissioner; and ~~three~~ four members, appointed by the commissioner representing groups to whom coverage has been extended by the association, one of whom must be a health care provider. If at any time no coverage is currently extended by the association, then either additional public members may be appointed to fill these four positions or, at the option of the commissioner, representatives from groups who had previously been covered by the association may serve as directors. The terms of the members shall be four years. Terms may be staggered so that no more than six members are appointed or elected every two years. Members may serve until their successors are appointed or elected. ~~If at any time no coverage is currently extended by the association, then either additional public members may be appointed to fill these three positions or, at the option of the commissioner, representatives from groups who had previously been covered by the association may serve as directors. In the event that the commissioner assigns the responsibility for administering chapter 62F to the Minnesota Joint Underwriting Association, the board of directors must be increased by four additional members. The commissioner shall appoint two of the additional members, one of whom must be a licensed health care provider, and one of whom must be a public member. Association members shall elect the other two members, one of whom must be a representative of medical malpractice insurers, and one of whom must be a representative of personal injury liability insurers.~~

Subd. 3. **Reauthorization.** The authorization to issue insurance to day care providers, foster parents, foster homes, developmental activity centers, group homes, and rehabilitation facilities for mentally, emotionally, or physically disabled persons is valid for a period of two years from the date it was made. The ~~commissioner may reauthorize the~~ issuance of insurance for these groups and other classes of business is reauthorized for additional two-year periods unless withdrawn pursuant to sections 62I.21 and 62I.22. ~~This subdivision is not a limitation on the number of times the commissioner may reauthorize the issuance of insurance.~~

Subd. 4. **Liquor liability.** Policies and contracts of coverage issued under this section for the purposes of providing liquor liability insurance must contain the usual and customary provisions of liability insurance policies, and must contain at least the minimum coverage required by section 340A.409, subdivision 1, or the local governing unit.

Subd. 5. **Accounts.** (a) For the purposes of administration and assessment, and except as otherwise authorized under paragraph (b), the association shall be divided into ~~two~~ three separate accounts:

(1) the property and casualty insurance account; ~~and~~

(2) the personal injury liability insurance account-liquor~~.~~; and

(3) the personal injury liability insurance account-medical malpractice.

~~(b) If the association is authorized by the commissioner to issue medical malpractice insurance, the association shall establish a third account for purposes of administration and assessment. This account must be identified as the personal injury liability insurance account-medical malpractice.~~

~~Subd. 6. **Medical malpractice.** If the association is authorized by the commissioner to issue medical malpractice insurance, it shall administer the medical malpractice insurance program according to chapter 62F.~~

Sec. 2. Minnesota Statutes 2016, section 62I.03, is amended to read:

62I.03 DEFINITION.

Subdivision 1. **Scope.** As used in sections 62I.01 to 62I.22 the following terms have the meanings given them in this section.

Subd. 2. **Association.** "Association" means the Minnesota Joint Underwriting Association and incorporates the duties and responsibilities of the Medical Malpractice Joint Underwriting Association previously authorized by chapter 62F.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 4. **Direct written premiums.** "Direct written premiums" means that amount from the Statutory Annual Statement filed annually with the National Association of Insurance Commissioners (NAIC), at column (1) of the Exhibit of Premium and Losses (statutory page 14 data) for this state. Direct written premiums are further identified by kind of insurance as follows:

(1) **General** at column ~~(2)~~ (1), lines 5, 8, 9, ~~17~~ 17.1, 17.2, 21.2, 22, 23, 24, ~~25,~~ 26, and 27~~, page 14, of the annual statement filed annually with the Department of Commerce pursuant to section 60A.13~~.

(2) **Liquor Liability** at column (1), lines 5.2, 17.1, and 17.2.

(3) **Medical Malpractice** at column (1), lines 5.2, 11, 17.1, 17.2, 19.1, and 19.3.

Subd. 5. **Deficit.** "Deficit" means, for a particular policy year, that amount by which total paid and outstanding losses and loss adjustment expenses and operating expenses exceed premium revenue~~, including retrospective premium revenue~~.

Subd. 5a. **Market assistance coordinator.** "Market assistance coordinator" means an employee of the association, or a person under contract with the association, who assists a person or entity applying to the association for coverage to obtain coverage in the private market.

~~Subd. 6. **Net direct premiums.** For purposes of liquor liability insurance, "net direct premiums" means gross direct premiums written on personal injury liability insurance, including the liability component of multiple peril package policies as computed by the commissioner, less return premiums for the unused or unabsorbed portions of premium deposits.~~

Subd. 6a. **Member.** "Member" means an insurer licensed to write either or both of the following in this state: (1) property and casualty insurance; (2) personal injury liability insurance.

Subd. 7. **Personal injury liability insurance.** "Personal injury liability insurance" means insurance described in section 60A.06, subdivision 1, clause (13).

Subd. 8. **Licensed health care provider professional services.** "Licensed health care provider professional services" means services performed by an individual licensed health care provider that are undertaken with the objective of providing prevention care, rehabilitative care, treatment of specific diseases, injuries, or conditions, or care rendered with the intent of stabilizing the patient's condition and preventing further deterioration or

injury. Professional services do not include services provided by licensed health care providers who rely solely on spiritual or divine intervention as the only means of care or treatment.

Sec. 3. Minnesota Statutes 2016, section 62I.05, is amended to read:

62I.05 PLAN OF OPERATION.

~~Within 45 days after the appointment of the directors of the association, the directors shall submit to the commissioner for review, a proposed plan of operation, consistent with the provisions of this chapter.~~

The association shall have a plan of operation ~~shall provide~~ that provides for economic, fair, and nondiscriminatory administration and for the prompt, efficient provision of insurance coverage of the types provided by section ~~62I.01~~ 62I.02. It shall provide for an expedited review and determination by the board of any application for a type of coverage that has not been previously excluded or authorized~~. It may contain~~, and other provisions necessary for the operation ~~of the association, including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities,~~ and management of the association~~, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cessation of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association~~.

The plan of operation is subject to approval by the commissioner. If the commissioner disapproves all or any part of the proposed plan of operation, the directors shall within 15 days submit for review an appropriate revised plan of operation. If a revised plan is not submitted within 15 days the commissioner shall promulgate a plan of operation. The plan of operation approved or promulgated by the commissioner is effective and operational upon the order of the commissioner.

Amendments to the plan of operation may be made by the directors of the association subject to approval by the commissioner.

Sec. 4. Minnesota Statutes 2016, section 62I.06, is amended to read:

62I.06 POLICY FORMS; PREMIUM RATE.

Subdivision 1. **Requirement.** The policies and contracts of coverage issued pursuant to this chapter shall contain the usual and customary provisions of similar insurance policies

issued by private insurance companies. If a standard form is used in the private marketplace for any type of coverage that is to be extended by the association, then the association shall use that form. If there are varying types of forms used in the marketplace the association may choose to use a standard policy form issued by a service organization or other entity who commonly prepares standardized types of forms. If the board determines that neither of these alternatives is appropriate, then it shall adopt a policy form based upon the terms and conditions of the policies used for this type of coverage that are the most commonly used in the private market. As far as practical the board shall attempt to adopt forms that are consistent with the practice in the private market. No policy forms shall be used by the association unless it has been filed with the commissioner, and the commissioner may disapprove the form within 30 days if the commissioner determines that it is misleading, it violates public policy, or for any reason that the commissioner would be empowered to reject a similar form filed by a private company.

Subd. 2. **Cancellation.** If the insured fails to pay a stabilization reserve fund charge the association may cancel the policy by mailing or delivering to the insured at the insured's address shown on the policy at least ten days' written notice stating the date that the cancellation is effective.

Subd. 3. **~~Rates~~ Rating plan.** The ~~rates,~~ rating plan, ~~rating rules,~~ rating classification, and territories applicable to insurance written by the association and related statistics are subject to chapter 70A. Rates shall be on an actuarially sound basis~~, giving consideration to the group retrospective rating plan~~. The commissioner shall take all appropriate steps to make available, upon request of the association, loss and expense experience of insurers previously writing or currently writing insurance of any type the association offers or intends to offer.

~~Subd. 4. **Approval.** All policies issued by the association are subject to the group retrospective rating plan approved by the commissioner under which the final premium for the insureds of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingency and servicing. If the board of directors feels it is appropriate and in the interest of fairness and equity, the insureds of the association may be broken down into more than one group. The rating plan may provide for varying rates within the rating plan for such groups as their relative burden to the group as a whole would merit. Policyholders shall be given full credit for all investment income, net of expenses and reasonable management fee on policyholder supplied funds. The standard premium, before retrospective adjustment, for each policy issued by the association shall be established for portions of the policy period coinciding~~

~~with the association's fiscal year on the basis of the association rates, rating plans, rating rules, rating classifications and territories then in effect. The maximum premium for all policyholders of the association as a group shall be limited as provided in sections 62I.01 to 62I.22.~~

Subd. 5. **Examinations.** The commissioner ~~shall~~ may examine the business of the association as often as is appropriate to insure that the ~~group retrospective rating plan~~ association is operating in a manner consistent with this chapter or other Minnesota laws. If it is found that the operation is deficient or inconsistent with this chapter or other Minnesota laws the commissioner may order the association to take corrective action.

Subd. 6. **Deficit assessments.** The association shall certify to the commissioner the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted and ~~payment of the maximum final premium for all policyholders of the association~~ any required deficit assessment. Within 60 days after the certification, the commissioner shall authorize the association to recover the members' respective shares of the deficit assessment by assessing all members an amount sufficient to fully fund the obligations of the association. The assessment of each member shall be determined in the manner provided in section 62I.07. An assessment made pursuant to this section shall be deductible by the member from premium taxes due the state as provided in section 297I.20, subdivision 2.

Subd. 7. **Amendments to rating plan.** In addition to the usual manner of amending the rating plan set forth in this section and section ~~62I.05~~ 62I.06, the following procedure may also be used:

(1) Any person may, by written petition served upon the commissioner of commerce request that a hearing be held to amend the rating plan, or any part of the rating plan.

(2) The commissioner shall forward a copy of the petition to the chief administrative law judge within three business days of its receipt. The chief administrative law judge shall, within three business days of receipt of the copy of the petition or a request for hearing by the commissioner, set a hearing date, assign an administrative law judge to hear the matter, and notify the commissioner of the hearing date and the administrative law judge assigned to hear the matter. The hearing date must be set not less than 60 days nor more than 90 days from the date of receipt of the petition by the commissioner or the date of the commissioner's request for hearing if the commissioner is the person requesting a hearing.

(3) The commissioner shall publish a notice of the hearing in the State Register at least 30 days before the hearing date. The notice should be similar to that used for rulemaking

under the Administrative Procedure Act. Approval of the notice by the administrative law judge is not required.

(4) The hearing and all matters which occur after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

(5) The commissioner shall render a decision within ten business days of the receipt of the administrative law judge's report.

(6) If all parties to the proceeding agree, any of the previous requirements may be waived or modified.

(7) A petition for a hearing to amend the rating plan or any part of the rating plan received by the commissioner within 180 days of the date of the commissioner's decision in a prior proceeding to amend the rating plan is invalid and requires no action provided the petition involves the same rates as the previous hearing. If the petition involves matters in addition to those dealt with in the previous hearing, then the additional matters shall be treated as a separate petition for hearing and a hearing may be held on those matters.

Sec. 5. Minnesota Statutes 2016, section 62I.07, is amended to read:

62I.07 MEMBERSHIP ASSESSMENTS.

Subdivision 1. ~~**General**~~ **Assessment.** Each member of the association ~~that is authorized to write property and casualty insurance in the state~~ shall participate in its losses and expenses in the proportion that the direct written premiums of the member on the kinds of insurance in that account bears to the total aggregate direct written premiums written in this state by all members on the kinds of insurance in that account. The members' participation in the association shall be determined annually on the direct written premiums written during the preceding calendar year as reported on the Statutory Annual Statements ~~and other reports~~ as filed by the member with the ~~commissioner~~ NAIC. ~~Direct written premiums mean that amount at page 15, column (2), lines 5.2, 8, 9, 17, 21.2, 22, 23, 24, 25, 26, and 27 of the annual statement filed annually with the Department of Commerce under section 60A.13.~~

~~Subd. 2.~~ ~~**Personal injury liability insurance assessment; liquor liability.** A member of the association shall participate in its writings, expenses, servicing allowance, management fees, and losses in the proportion that the net direct premiums of the member, excluding~~

~~that portion of premiums attributable to the operation of the association, written during the preceding calendar year on the kinds of insurance in that account bears to the aggregate net direct premiums written in this state by all members on the kinds of insurance in that account. The member's participation in the association shall be determined annually on the basis of net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the member with the commissioner. Net direct premiums mean gross direct premiums written on personal injury liability insurance, including the liability component of multiple peril package policies as computed by the commissioner, less return premiums for the unused or unabsorbed portions of premium deposits. The net direct premiums are calculated using lines 5.2 CMP, and 17-other liability from page 14, column (2) of the annual statement filed annually with the Department of Commerce pursuant to section 60A.13.~~

~~Subd. 3.~~ **~~Personal injury liability insurance assessment; medical malpractice.~~** ~~If an assessment is needed for medical malpractice, the assessment is made using the following lines from page 14, column (2) of the annual statement filed annually with the Department of Commerce pursuant to section 60A.13 using the following lines: 5.2 commercial multiperil liability, 11 medical malpractice, 17-other liability, 19.1 PIP-private passenger, 19.3 PIP-commercial.~~

Sec. 6. Minnesota Statutes 2016, section 62I.08, is amended to read:

62I.08 APPLICATION PROCEDURE.

A person or entity that has been denied coverage or is unable to find an insurer willing to write coverage is eligible to make an application to the association. ~~The application shall be on a form approved by the board of directors.~~ To show eligibility to participate in the association the applicant shall certify that the applicant has been unable to find ~~anyone to offer~~ the coverage sought by the applicant. No further proof shall be required of the applicant, except that the application form ~~approved by the board of directors~~ may require the date and the name of the insurance company denying coverage and may require a copy of a written offer if the rate qualifies the applicant to apply under section 62I.13, subdivision 2.

Sec. 7. Minnesota Statutes 2016, section 62I.13, is amended to read:

62I.13 ACTION BY THE MINNESOTA JOINT UNDERWRITING ASSOCIATION UPON THE APPLICATION.

Subdivision 1. **Generally.** To be eligible to participate in the association, an applicant must apply for coverage ~~through the market assistance coordinator,~~ as required by this section and section 62I.08.

Subd. 2. **Minimum of qualifications.** Anyone who is unable to obtain insurance in the private market and who so certifies to the association ~~in the application~~ is eligible to ~~make written application~~ apply to the association for coverage. The application may require information as provided in section 62I.08. Payment of the applicable premium or required portion of it must be paid prior to coverage by the association. An offer of coverage at a rate in excess of the rate that would be charged by the association for similar coverage and risk shall be deemed to be a refusal of coverage for purposes of eligibility for participation in the association. It shall not be deemed to be a written notice of refusal if the rate for coverage offered is less than ten percent in excess of the joint underwriting association rates for similar coverage and risk or 20 percent in excess of the Joint Underwriting Association rates for liquor liability coverages. However, the offered rate must be the rate generally charged by the insurer for similar coverage and risk.

Subd. 3. **Disqualifying factors.** For good cause, coverage may be denied or terminated by the association. Good cause may exist if the applicant or insured: (1) has an outstanding debt due or owing to the association at the time of application or renewal arising from a prior policy; (2) refuses to permit completion of an audit requested by the commissioner or ~~administrator~~ the association; (3) submits misleading or erroneous information to the commissioner or ~~administrator~~ the association; (4) disregards safety standards, laws, rules or ordinance pertaining to the risk being insured; (5) fails to supply information requested by the commissioner or ~~administrator~~ the association; and (6) fails to comply with the terms of the policies or contracts for coverage issued by the association.

Subd. 5. **Notice.** An application for coverage ~~under~~ by the association must be granted or denied within ten days after receipt ~~by the administrator~~ of a properly completed application and any supplemental information requested ~~by the administrator~~. Anyone covered by the association must be given at least 30 days' notice of nonrenewal or cancellation of coverage.

~~Subd. 6. **Authority to decline coverage.** Notwithstanding any order of the commissioner or inconsistent provisions of this chapter, the board of directors may decline to offer coverage to any class of business or a member of a class of business upon a reasonable underwriting basis.~~

Sec. 8. Minnesota Statutes 2016, section 62I.14, is amended to read:

62I.14 ASSESSMENTS.

In the event the commissioner ~~deems it necessary to make~~ orders an assessment, an assessed insurer must pay the assessment within 30 days of receipt of notice of the assessment. The commissioner may suspend or revoke an insurer's certificate of authority and impose a civil penalty in an amount not to exceed $10,000 for an insurer's failure to pay the assessment within the 30-day period.

Sec. 9. Minnesota Statutes 2016, section 62I.15, is amended to read:

62I.15 EXTENSION OF COVERAGE.

If the association determines that the applicant meets the underwriting standards of the association as described in the plan of operation and ~~there is no unpaid, uncontested premium due from the application for prior insurance, including failure to make written objections to premium charges within 30 days after billing, or if there is no other allowable reason as set forth in this chapter for denial of coverage~~ section 62I.13, the association upon receipt of the premium or portion of it as described in the plan of operation shall issue a policy of insurance to the applicant.

Sec. 10. Minnesota Statutes 2016, section 62I.16, is amended to read:

62I.16 STABILIZATION RESERVE FUND.

Subdivision 1. **Creation.** There is created a stabilization reserve fund. Each policyholder shall pay to the association a stabilization reserve fund charge of 33 percent of each premium payment due for insurance through the association. This charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

Subd. 2. **Payment.** The association shall promptly pay into the stabilization reserve fund all fund charges it collects from its policyholders ~~and any retrospective premium refunds payable under the group retrospective rating plan~~.

Subd. 3. **Supervision.** All money paid into the fund shall be separately accounted for by the board of directors. The money held in the fund may be invested. All investment income shall be credited to the fund. All expenses of the administration of the fund shall be charged against the fund. ~~The money held in the fund shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders and any retrospective premium refunds payable to policyholders under the group retrospective~~

~~rating plan. Payment of retrospective premium charges shall be made upon certification of the amount due. If all money accruing to the fund is exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall terminate and shall be conclusively presumed to have been discharged.~~ Any stabilization reserve fund charges from a particular policy year ~~not used to pay retrospective premiums~~ must be returned to policyholders after all claims and expense obligations from that particular policy year are satisfied.

Subd. 4. **Exemption.** The board of directors may, upon their own motion or upon application of any applicant or insured, exempt any group from the payment of the stabilization reserve charge. The exemption shall be granted only to those groups who are unable to obtain insurance coverage in the private market as a result of the private market's refusal to write coverage for that group rather than because of loss experiences or risks posed by the applicant or insured as an individual. It shall be presumed that a group is qualified for this exemption if more than 20 percent of the members of that group are unable to obtain the insurance coverage that they seek. The board of directors shall also consider granting exemption if any members of the same group are unable to obtain coverage in the private market even though no claims have been made against them or payments made on their behalf by any insurer within the last three years.

Subd. 5. **Surcharge.** In addition to determining the basic rate for coverages to be offered ~~by the Joint Underwriting Association~~, the association shall also develop a surcharge plan or similar method for adjusting the rate to be charged to those persons who have had claims made against them. The surcharge plan shall take into effect the risk posed to the association by the applicant or the insured. The surcharge plan shall be sufficient to provide for the sound financial operation of the plan based upon commonly agreed-upon actuarial principles.

Sec. 11. Minnesota Statutes 2016, section 62I.17, is amended to read:

62I.17 IMMUNITY FROM LIABILITY.

No cause of action of any nature shall arise against the association, the members of its board of directors, its employees or authorized agents, the commissioner or the commissioner's authorized representatives, or any other person or organization, for any ~~statements~~ action or omission made in good faith by them ~~during any proceedings or~~ concerning any matters within the scope of this chapter or any related proceedings. The association, board members, employees, and authorized agents shall also be entitled to indemnification provided in section 317A.521 as if the association were a corporation within

the meaning of that section. At its discretion, the association may obtain insurance coverage for matters addressed by this section.

Sec. 12. Minnesota Statutes 2016, section 62I.19, is amended to read:

62I.19 ANNUAL STATEMENTS.

~~On March 1 of each year~~ Annually, the association shall file with the commissioner a report of its transactions, financial conditions, and operations during the preceding year. The report shall be ~~on~~ in a ~~form~~ format approved by the commissioner. The commissioner may at any time require the association to furnish additional information to assist in evaluating the scope, operation, and experience of the association.

Sec. 13. Minnesota Statutes 2016, section 62I.21, is amended to read:

62I.21 ACTIVATION OF JOINT UNDERWRITING ASSOCIATION.

Upon submission of an application for placement of general liability insurance coverage under section 62I.13 in a class of business for which the Joint Underwriting Association is not then activated, where the applicant has been refused coverage within the meaning of section 62I.13, subdivision 2, the ~~commissioner~~ association may by notice in the State Register activate the Joint Underwriting Association on Minnesota risks for the class of business. The association is activated for a period of 180 days from publication of the notice. At the same time the notice is published, the commissioner shall prepare a written petition requesting that a hearing be held to determine whether activation of the Joint Underwriting Association is necessary beyond the 180-day period. The hearing must be held in accordance with section 62I.22. The commissioner by order shall deactivate the Joint Underwriting Association at any time the commissioner finds that the Joint Underwriting Association is not necessary.

Sec. 14. **REPEALER.**

Subdivision 1. **Medical malpractice insurance; JUA created and regulated.** Minnesota Statutes 2016, sections 62F.01, subdivision 1; 62F.02; 62F.03; 62F.04, subdivisions 1, 2, 2a, and 3; 62F.05; 62F.06; 62F.07; 62F.08; 62F.09; 62F.10; 62F.11; 62F.12; 62F.13; and 62F.14, are repealed.

Subd. 2. **Authorization to issue medical malpractice insurance.** Minnesota Rules, part 2791.0100, is repealed.

62F.01 CITATION.

Subdivision 1. **Name of act.** Sections 62F.01 to 62F.14 may be cited as the "Joint Underwriting Association Act."

62F.02 JOINT UNDERWRITING ASSOCIATION.

Subdivision 1. **Creation.** There is created a Joint Underwriting Association to provide medical malpractice insurance coverage to any licensed health care provider unable to obtain this insurance through ordinary methods, who practices or provides professional services within the state of Minnesota and obtains at least 60 percent of gross revenues from patients who are residents of the state of Minnesota. Every insurer authorized to write and writing personal injury liability insurance in this state shall be a member of the association as a condition to obtaining and retaining a license to write insurance in this state.

Subd. 2. **Directors.** The association shall have a board of directors composed of 11 persons chosen for a term of four years as follows: five persons elected by members of the association at a meeting called by the commissioner; three members who are health care providers appointed by the commissioner prior to the election by the association; and three public members, as defined in section 214.02, appointed by the governor prior to the election by the association. If the commissioner determines that it is no longer cost-effective or efficient to operate a separate board of directors to administer the Medical Malpractice Joint Underwriting Association, the commissioner shall deactivate the board and assign all of the board's authority and responsibilities under this chapter to the Minnesota Joint Underwriting Association Board of Directors established under section 62I.02.

Subd. 3. **Merger.** Effective January 1, 2008, the association is merged into the joint underwriting association under chapter 62I.

62F.03 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 62F.01 to 62F.14, the following words shall have the meanings given.

Subd. 2. **Association.** "Association" means the Joint Underwriting Association.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 4. **Medical malpractice insurance.** "Medical malpractice insurance" means insurance against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed health care provider.

Subd. 5. **Member.** "Member" means every insurer authorized to write and writing personal injury liability insurance in this state.

Subd. 6. **Net direct premiums.** "Net direct premiums" means gross direct premiums written on personal injury liability insurance, including the liability component of multiple peril package policies as computed by the commissioner, less return premiums for the unused or unabsorbed portions of premium deposits. Net direct premiums do not include policyholder dividends.

Subd. 7. **Personal injury liability insurance.** "Personal injury liability insurance" means insurance described in section 60A.06, subdivision 1, clause (13).

Subd. 8. **Professional services.** "Professional services" means services performed by a licensed health care provider which are undertaken with the objective of: providing prevention care, rehabilitative care, treatment of specific diseases, injuries, or conditions, or care rendered with the intent of stabilizing the patient's condition and to prevent further deterioration or injury. Professional services does not include services provided by licensed health care providers who rely solely on spiritual or divine intervention as the only means of care or treatment.

62F.04 AUTHORIZATION TO ISSUE INSURANCE.

Subdivision 1. **Commissioner's determination.** If the commissioner determines after a hearing that medical malpractice insurance cannot be made available for either physicians, hospitals or other specific types of health care providers in the voluntary market, the commissioner shall authorize the association to issue medical malpractice insurance on a primary basis for physicians, hospitals or other health care providers. If the commissioner determines after a hearing that insurance issued by the association can be made available in the voluntary market, the commissioner shall revoke the association's authorization to issue that insurance which can be made available.

Subd. 2. **Association's duty.** If the association is authorized by the commissioner to issue insurance, it shall:

(a) issue or cause to be issued insurance policies to applicants, including incidental coverages, subject to limits as specified in the plan of operation but not to exceed $1,000,000 for each claimant under one policy and $3,000,000 for all claimants under one policy in any one year;

(b) underwrite the insurance and adjust and pay losses with respect thereto, or appoint service companies to perform those functions;

(c) assume reinsurance from its members; and

(d) cede reinsurance.

Subd. 2a. **Higher limits for long-term care providers.** In addition to the policies described in subdivision 2, the association may issue policies to long-term care providers who are members of an activated class with limits not to exceed $2,000,000 for each claimant under one policy and $4,000,000 for all claimants under one policy in any one year, provided that the association finds that the applicant needs the higher limits in order to conduct its business. Prudent business practice or mere desire to have higher limits is not a sufficient standard for the association to issue such policies.

Subd. 3. **Avoidance of grave risk.** Because the activities of certain persons or entities present a risk that is so great, the association shall not offer insurance coverage to any person or entity the board of directors of the association determines is outside the intended scope and purpose of the association because of the gravity of the risk of offering insurance coverage.

62F.05 PLAN OF OPERATION.

Subdivision 1. **Submission; provisions.** Within 45 days following April 14, 1976, the directors of the association shall submit to the commissioner for review, a proposed plan of operation, consistent with the provisions of sections 62F.01 to 62F.14.

The plan of operation shall provide for economic, fair and nondiscriminatory administration and for prompt and efficient providing of medical malpractice insurance. It may contain other provisions, including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.

Subd. 2. **Approval.** The plan of operation shall be subject to approval by the commissioner after consultation with the members of the association, representatives of the public and other affected individuals and organizations. If the commissioner disapproves all or any part of the proposed plan of operation, the directors shall within 15 days submit for review an appropriate revised plan of operation or part thereof. If a revised plan is not submitted within 15 days, the commissioner shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the commissioner shall become effective and operational upon order of the commissioner.

Subd. 3. **Amendments.** Amendments to the plan of operation may be made by the commissioner or by the directors of the association, subject to the approval of the commissioner.

62F.06 POLICY FORMS AND RATES.

Subdivision 1. **Policy regulation; filing.** A policy issued by the association may not extend beyond a period of one year from the date on which the authorization under section 62F.04 ends. The policy shall be issued subject to the group retrospective rating plan and the stabilization reserve fund authorized by section 62F.09. The policy shall be written to apply to claims first made against the insured and reported to the association during the policy period. No policy form shall be used by the association unless it has been filed with the commissioner, and the commissioner may disapprove the form within 30 days if the commissioner determines it is misleading or violates public policy.

Subd. 2. **Cancellation; insured failure to pay stabilization reserve fund.** If an insured fails to pay a stabilization reserve fund charge the association may cancel a policy by mailing or delivering to the insured at the address shown on the policy at least ten days' written notice stating the date the cancellation is effective.

Subd. 3. **Rate regulation.** The rates, rating plans, rating rules, rating classifications and territories applicable to the insurance written by the association and statistics relating thereto shall be subject to chapter 70A. Rates shall be on an actuarially sound basis, giving consideration to the

group retrospective rating plan and the stabilization reserve fund. The commissioner shall take all appropriate steps to make available to the association the loss and expense experience of insurers previously writing medical malpractice insurance in this state.

Subd. 4. **Retrospective rating plan.** All policies issued by the association are subject to a nonprofit group retrospective rating plan approved by the commissioner under which the final premium for the insureds of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee, on policyholder supplied funds. The standard premium, before retrospective adjustment, for each policy issued by the association shall be established for portions of the policy period coinciding with the association's fiscal year on the basis of the association's rates, rating plans, rating rules, rating classifications and territories then in effect. The maximum premium for all policyholders of the association, as a group, shall be limited as provided in sections 62F.01 to 62F.14.

Subd. 5. **Commissioner's power to examine.** The commissioner shall examine the business of the association as often as the commissioner deems appropriate to insure that the group retrospective rating plan is operating in a manner consistent with sections 62F.01 to 62F.14. If the commissioner finds that the operation is deficient or inconsistent with sections 62F.01 to 62F.14, the commissioner may order the association to take corrective action.

Subd. 6. **Deficit recovery procedures.** The association shall certify to the commissioner the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within 60 days after such certification, the commissioner shall authorize the association to recover the members' respective shares of the deficit by one of the following procedures:

(a) applying a surcharge determined by the association at a rate not to exceed two percent of the annual premiums on future policies affording those kinds of insurance which form the basis for their participation in the association; or

(b) deducting the members' share of the deficit from past or future premium taxes due the state.

If the commissioner fails to authorize a procedure in 60 days, the association may recover its deficit pursuant to clause (b). The association shall submit an amended certification and shall adjust the recovery procedure as its incurred losses become finalized.

Subd. 7. **Temporary member contributions.** If sufficient funds are not available for the sound financial operation of the association, pending recovery as provided in subdivision 6, all members shall, on a temporary basis contribute to the association in the manner provided in section 62F.07. The contribution shall be reimbursed to the members by the recovery procedure authorized in subdivision 6.

62F.07 PARTICIPATION.

A member of the association shall participate in its writings, expenses, servicing allowance, management fees and losses in the proportion that the net direct premiums of the member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members. The member's participation in the association shall be determined annually on the basis of net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the member with the commissioner.

62F.08 PROCEDURES.

Subdivision 1. **Application.** Beginning on the effective date of the plan of operation, a licensed health care provider may apply to the association for medical malpractice insurance. An application may be made by an authorized agent of the health care provider.

Subd. 2. **Policy issuance.** If the association determines that the applicant meets the underwriting standards of the association as described in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, including failure to make written objection to premium charges within 30 days after billing, the association, upon receipt of the premium or portion thereof as is prescribed in the plan of operation, shall issue a policy of medical malpractice insurance.

62F.09 STABILIZATION RESERVE FUND.

Subdivision 1. **Creation.** There is created a stabilization reserve fund administered by the association or its designee.

Subd. 2. **Policyholder charge.** Each policyholder shall pay to the association a stabilization reserve fund charge of 33 percent of each premium payment due for insurance through the association. This charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

Subd. 3. **Association payments.** The association shall promptly pay into the stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan.

Subd. 4. **Handling of fund assets.** All money paid into the fund shall be held in trust by a corporate trustee selected by the directors. The corporate trustee may invest the money held in trust, subject to the approval of the association. All gains or losses from the investment of stabilization reserve fund money shall be credited to the fund. All expenses of administration of the fund shall be charged against the fund. Stabilization reserve fund money shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan. Payment of retrospective premium charges shall be made upon certification by the association of the amount due. If all moneys accruing to the fund are exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall terminate and shall be conclusively presumed to have been discharged. Any money remaining in the fund after all retrospective premium charges have been paid shall be returned to policyholders under procedures authorized by the association.

62F.10 INVESTIGATION.

The commissioner shall investigate the association at least annually. The investigation shall be conducted and a report filed in the manner prescribed in section 60A.031. The expenses of the examination shall be paid by the association in the manner prescribed by section 60A.03, subdivision 5.

62F.11 PRIVILEGED COMMUNICATIONS.

No cause of action of any nature shall arise against the association, the commissioner or the commissioner's authorized representatives or any other person or organization, for any statements made in good faith by them during any proceedings or concerning any matters within the scope of sections 62F.01 to 62F.14.

62F.12 APPEALS; JUDICIAL REVIEW.

Any applicant to the association, any person insured pursuant to sections 62F.01 to 62F.14, or their representatives, or any affected insurer, may appeal to the commissioner within 30 days after any ruling, action or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters.

62F.13 PUBLIC OFFICERS OR EMPLOYEES.

No director of the stabilization reserve fund who is otherwise a public officer or employee shall forfeit that person's office or employment or lose the rights and privileges pertaining thereto, by reason of membership on the board of directors of the stabilization reserve fund.

62F.14 ANNUAL STATEMENTS.

On March 1 of each year the association shall file with the commissioner, a report of its transactions, financial condition, and operations during the preceding year. The report shall be in a form approved by the commissioner. The commissioner may at any time require the association to furnish additional information to assist in evaluating the scope, operation and experience of the association.

2791.0100 AUTHORIZATION TO ISSUE MEDICAL MALPRACTICE INSURANCE.

Pursuant to Minnesota Statutes, section 62F.04, the Joint Underwriting Association is hereby authorized to issue medical malpractice insurance on a primary basis to physicians, hospitals, and other health care providers who are unable to obtain medical malpractice insurance coverage in the voluntary market. Those classes of physicians, hospitals, and other health care providers who are unable to obtain medical malpractice insurance and whom the Joint Underwriting Association is authorized to issue medical malpractice insurance are:

A. physicians;

B. certified nurse midwives;

C. licensed psychologists and licensed consulting psychologists;

D. licensed chemical dependency treatment organizations and licensed halfway houses;

E. hospitals;

F. nursing homes;

G. perfusionists; and

H. registered nurses.