CHAPTER 62H

EMPLOYER HEALTH COVERAGE ARRANGEMENTS

JOINT SELF-INSURANCE

62H.01 AUTHORITY TO JOINTLY SELF-INSURE.

Any two or more employers, excluding the state and its political subdivisions as described in section 471.617, subdivision 1, who are authorized to transact business in Minnesota may jointly self-insure employee health, dental, short-term disability benefits, or other benefits permitted under the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001 et seq. If an employer chooses to jointly self-insure in accordance with this chapter, the employer must participate in the joint plan for at least three consecutive years. If an employer terminates participation in the joint plan before the conclusion of this three-year period, a financial penalty may be assessed under the joint plan, not to exceed the amount contributed by the employer to the plan's reserves as determined under Minnesota Rules, part 2765.1200. Joint plans must have a minimum of 1,000 covered enrollees and meet all conditions and terms of sections 62H.01 to 62H.08. Joint plans covering employers not resident in Minnesota must meet the requirements of sections 62H.01 to 62H.08 as if the portion of the plan covering Minnesota resident employees was treated as a separate plan.

A multiple employer welfare arrangement as defined in United States Code, title 29, section 1002(40)(a), is subject to this chapter to the extent authorized by the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001 et seq. The commissioner of commerce may, on behalf of the state, enter into an agreement with the United States Secretary of Labor for delegation to the state of some or all of the secretary's enforcement authority with respect to multiple employer welfare arrangements, as described in United States Code, title 29, section 1136(c).

History: *1983 c 241 s 1; 1987 c 337 s 74; 1992 c 549 art 3 s 18; 1992 c 564 art 1 s 43; 1994 c 485 s 36; 1997 c 175 art 4 s 1; 2002 c 330 s 17; 2004 c 288 art 6 s 4*

62H.02 REQUIRED PROVISIONS.

(a) A joint self-insurance plan must include aggregate excess stop-loss coverage and individual excess stop-loss coverage provided by an insurance company licensed by the state of Minnesota.

(b) Aggregate excess stop-loss coverage must include provisions to cover incurred, unpaid claim liability in the event of plan termination.

(c) The plan of self-insurance must have participating employers fund an amount at least equal to the point at which the excess or stop-loss insurer has contracted to assume 100 percent of additional liability.

(d) A joint self-insurance plan must submit its proposed excess or stop-loss insurance contract to the commissioner of commerce at least 30 days prior to the proposed plan's effective date and at least 30 days subsequent to any renewal date. The commissioner shall review the contract to determine if they meet the standards established by sections 62H.01 to 62H.08 and respond within a 30-day period.

(e) Any excess or stop-loss insurance plan must contain a provision that the excess or stop-loss insurer will give the plan and the commissioner of commerce a minimum of 180 days' notice of termination or nonrenewal. If the plan fails to secure replacement coverage within 60 days after receipt of the notice of cancellation or nonrenewal, the commissioner shall issue an order providing for the orderly termination of the plan.

(f) The commissioner may waive the requirements of this section and of any rule relating to the requirements of this section, if the commissioner determines that a joint self-insurance plan has established alternative arrangements that fully fund the plan's liability or incurred but unpaid claims. The commissioner may not waive the requirement that a joint self-insurance plan have excess stop-loss coverage.

History: *1983 c 241 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1987 c 337 s 75; 2004 c 288 art 6 s 5; 2007 c 147 art 12 s 3*

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

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

History: *1983 c 241 s 3*

62H.04 COMPLIANCE WITH OTHER LAWS.

(a) A joint self-insurance plan is subject to the requirements of chapters 62A, 62E, 62L, and 62Q, and sections 72A.17 to 72A.32 unless otherwise specifically exempt. A joint self-insurance plan must pay assessments made by the Minnesota Comprehensive Health Association, as required under section 62E.11.

(b) A joint self-insurance plan is exempt from providing the mandated health benefits described in chapters 62A, 62E, 62L, and 62Q if it otherwise provides the benefits required under the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001, et seq., for all employers and not just for the employers with 50 or more employees who are covered by that federal law.

(c) A joint self-insurance plan is exempt from section 62L.03, subdivision 1, if the plan offers an annual open enrollment period of no less than 15 days during which all employers that qualify for membership may enter the plan without preexisting condition limitations or exclusions except those permitted under chapter 62L.

(d) A joint self-insurance plan is exempt from sections 62A.146, 62A.16, 62A.17, 62A.20, 62A.21, and 62A.65, subdivision 5, paragraph (b), if the joint self-insurance plan complies with the continuation requirements under the Employee Retirement Income Security Act of 1974, United States Code, title 29,

sections 1001, et seq., for all employers and not just for the employers with 20 or more employees who are covered by that federal law.

(e) A joint self-insurance plan must provide to all employers the maternity coverage required by federal law for employers with 15 or more employees.

(f) A joint self-insurance plan must comply with all the provisions and requirements of the Affordable Care Act as defined under section 62A.011, subdivision 1a, to the extent that they apply to such plans.

History: *1983 c 241 s 4; 1987 c 337 s 76; 1995 c 234 art 7 s 10; 2002 c 330 s 18; 2004 c 288 art 6 s 6; 2013 c 84 art 1 s 43*

62H.05 MANAGEMENT OF FUNDS.

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

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

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

(c) Investment of plan funds is subject to the same restrictions as are applicable to political subdivisions pursuant to section 118A.04. All investments must be managed by a bank or other investment organization licensed to operate in Minnesota.

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

History: *1983 c 241 s 5; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1996 c 399 art 2 s 12*

62H.06 REGULATION OF PLANS BY COMMISSIONER.

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

History: *1983 c 241 s 6; 1983 c 289 s 114 subd 1; 1984 c 640 s 32; 1984 c 655 art 1 s 92; 1985 c 248 s 26; 1995 c 233 art 2 s 56*

62H.07 [Repealed, 2004 c 288 art 6 s 31]

62H.08 EXEMPTION.

A homogenous joint employer plan providing group health benefits, which was in existence prior to March 1, 1983, and which is associated with, or organized or sponsored by, an association exempt from taxation under United States Code, title 26, section 501(c)(6), and controlled by a board of trustees a majority of whom are members of the association, is exempt from the requirements of sections 62H.01 to 62H.08

and 471.617, subdivisions 1 to 3, and the insurance laws of this state, except that the association must comply with the provisions of chapter 62L with respect to any members that are small employers.

History: *1983 c 241 s 8; 1995 c 234 art 7 s 11*

MULTIPLE EMPLOYER WELFARE ARRANGEMENTS (MEWAs)

62H.10 DEFINITIONS.

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

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

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

Subd. 4. **Broker.** "Broker" means an agent engaged in brokerage business pursuant to section 60K.49.

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

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

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

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

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

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

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

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

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

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

(1) a licensed insurer;

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

(3) a collectively bargained arrangement;

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

(5) an employee leasing arrangement; or

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

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

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

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

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

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

History: *1994 c 485 s 37; 2000 c 483 s 15; 2001 c 117 art 2 s 10*

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

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

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

History: *1994 c 485 s 38*

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

(a) No agent or broker may solicit, advertise, or market in this state the services, health benefits, or coverage of an employee leasing arrangement or a person or arrangement which represents itself as an

employee leasing arrangement unless the agent or broker first files with the commissioner the information required under section 62H.16.

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

History: *1994 c 485 s 39*

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

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

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

History: *1994 c 485 s 40*

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

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

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

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

History: *1994 c 485 s 41*

62H.15 LACK OF KNOWLEDGE NOT A DEFENSE.

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

(b) A filing under sections 62H.10 to 62H.17 is solely for the purpose of providing information to the commissioner. Sections 62H.10 to 62H.17 and a filing under those sections do not authorize or license a

reportable MEWA, employee leasing firm, collectively bargained arrangement, or any other arrangement to engage in business in this state if otherwise prohibited by law.

History: *1994 c 485 s 42*

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

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

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

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

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

(4) the names and addresses of all persons performing or expected to perform the functions of a third-party administrator for the reportable MEWA, employee leasing firm, or collectively bargained arrangement.

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

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

History: *1994 c 485 s 43*

62H.17 LIABILITY FOR VIOLATION.

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

History: *1994 c 485 s 44*

62H.18 AGRICULTURAL COOPERATIVE HEALTH PLAN.

Subdivision 1. **Definitions.** (a) The definitions in this subdivision apply to this section.

(b) "Agricultural cooperative" means a cooperative organized under chapter 308A or 308B that meets the requirements of subdivision 2.

(c) "Broker" means an insurance agent engaged in brokerage business according to section 60K.49.

(d) "Employee Retirement Income Security Act" means the Employee Retirement Income Security Act of 1974, United States Code, title 29, sections 1001, et seq.

(e) "Enrollee" means a natural person covered by a joint self-insurance plan operating under this section.

(f) "Insurance agent" has the meaning given to insurance agent in section 60A.02, subdivision 7.

(g) "Joint self-insurance plan" or "plan" means a plan or any other arrangement established for the benefit of two or more entities authorized to transact business in the state, in order to jointly self-insure through a single employee welfare benefit plan funded through a trust, to provide health, dental, or other benefits as permitted under the Employee Retirement Income Security Act.

(h) "Service plan administrator" means a vendor of risk management services licensed under section 60A.23.

(i) "Trust" means a trust established to accept and hold assets of the joint self-insurance plan in trust and use and disperse funds in accordance with the terms of the written trust document and joint self-insurance plan for the sole purposes of providing benefits and defraying reasonable administrative costs of providing the benefits.

Subd. 2. **Exemption.** A joint self-insurance plan, its service plan administrator, stop loss carrier, and any broker assisting the agricultural cooperative are exempt from sections 62H.01 to 62H.17, and are governed by the requirements of this section, if the joint self-insurance plan is administrated through a trust established by an agricultural cooperative that:

(1) has members who (i) actively work in production agriculture in Minnesota and file either Form 1065 or Schedule F with the member's income tax return; or (ii) provide direct services to production agriculture in Minnesota;

(2) specifies criteria for membership in the agricultural cooperative in their articles of organization or bylaws, however criteria cannot be based on health status factors of the individuals to be covered through the joint self-insurance plan; and

(3) grants at least 51 percent of the aggregate voting power on matters for which all members may vote to members who satisfy clause (1) and any additional criteria in the agricultural cooperative's articles of organization and bylaws.

Subd. 3. **Plan requirements.** A joint self-insurance plan operating under this section must:

(1) offer health coverage to members of the agricultural cooperative that establishes the plan and their dependents, to employees of members of the agricultural cooperative that establishes the plan and their dependents, or to employees of the agricultural cooperative that establishes the plan and their dependents. Health coverage may be offered only to those individuals who meet certain criteria described in the joint self-insurance plan governing documents, however the criteria cannot be based on health status factors of the individuals to be covered through the joint self-insurance plan;

(2) include stop-loss coverage with an individual attachment point not lower than $20,000 and an aggregate attachment point not lower than 110 percent of expected claims, issued by an insurance company licensed in Minnesota;

(3) establish a reserve fund, certified by an actuary to be sufficient to cover unpaid claim liability for incurred but not reported liabilities in the event of plan termination. Certification from the actuary must include all maximum funding requirements for plan fixed cost requirements and current claims liability requirements, and must include a calculation of the reserve levels needed to fund all incurred but not reported liabilities in the event of member or plan termination. These reserve funds must be held in a trust;

(4) be governed by a board elected by agricultural cooperative members that participate in the plan;

(5) contract for services with a service plan administrator; and

(6) satisfy the requirements of the Employee Retirement Income Security Act that apply to employee welfare benefit plans.

Subd. 4. **Submission of documents to commissioner of commerce.** A joint self-insurance plan operating under this section must submit to the commissioner of commerce copies of all filings and reports that are submitted to the United States Department of Labor according to the Employee Retirement Income Security Act. Members participating in the joint self-insurance plan may designate an agricultural cooperative that establishes the plan as the entity responsible for satisfying the reporting requirements of the Employee Retirement Income Security Act and for providing copies of these filings and reports to the commissioner of commerce.

Subd. 5. **Participation; termination of participation.** If a member chooses to participate in a joint self-insurance plan under this section, the member must participate in the plan for at least three consecutive years. If a member terminates participation in the plan before the end of the three-year period, a financial penalty may be assessed under the plan, not to exceed the amount contributed by the member to the plan reserves.

Subd. 6. **Single risk pool.** The enrollees of a joint self-insurance plan operating under this section shall be members of a single risk pool. The plan shall provide benefits as a single, self-insured plan with the size of the plan based on the total enrollees in the risk pool.

Subd. 7. **Promotion, marketing, sale of coverage.** (a) Coverage in a joint self-insurance plan operating under this section may be promoted, marketed, and sold by insurance agents and brokers to members of the agricultural cooperative sponsoring the plan and their dependents, employees of members of the agricultural cooperative sponsoring the plan and their dependents, and employees of the agricultural cooperative sponsoring the plan and their dependents.

(b) Coverage in a joint self-insurance plan operating under this section may be promoted and marketed by a cooperative organized under chapter 308A or 308B to persons who may be eligible to participate in the joint self-insurance plan.

Subd. 8. **Taxation.** Joint self-insurance plans are exempt from the taxation imposed under section 297I.05, subdivision 12.

Subd. 9. **Compliance with other laws.** A joint self-insurance plan operating under this section:

(1) is exempt from providing the mandated health benefits in chapters 62A and 62Q, if the plan otherwise provides the benefits required under the Employee Retirement Income Security Act;

(2) is exempt from the continuation requirements in sections 62A.146, 62A.16, 62A.17, 62A.20, and 62A.21, if the plan complies with the continuation requirements under the Employee Retirement Income Security Act; and

(3) must comply with all requirements of the Affordable Care Act, as defined in section 62A.011, subdivision 1a, to the extent that they apply to such plans.

History: *2017 c 2 art 2 s 10*