

CHAPTER 352

AN ACT concerning self-funded multiple employer welfare arrangements.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.17B:27C-1 Short title.

1. This act shall be known and may be cited as the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act."

C.17B:27C-2 Purposes of act.

2. The purposes of this act are to:
- a. provide for the registration of self-funded or partially self-funded multiple employer welfare arrangements;
 - b. regulate self-funded or partially self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;
 - c. provide reporting requirements for self-funded or partially self-funded multiple employer welfare arrangements; and
 - d. provide for sanctions against self-funded or partially self-funded multiple employer welfare arrangements that do not comply with the provisions of this act.

C.17B:27C-3 Definitions relative to self-funded multiple employer welfare arrangements.

3. For purposes of this act:

"Association" means a group of 100 or more persons organized and maintained in good faith for purposes other than that of obtaining insurance, in active existence for more than one year, having a constitution and bylaws that provide that: the association holds regular meetings not less than annually to further the purposes of the members; except for credit unions, the association collects dues or solicits contributions from members; and the members have voting privileges and representation on the governing board and committees.

"Commissioner" means the Commissioner of Banking and Insurance.

"Employee welfare benefit plan" has the meaning set forth in subsection (1) of 29 U.S.C. s.1002.

"Multiple employer welfare arrangement" has the meaning set forth in subsection (40) of 29 U.S.C. s.1002.

"Self-funded multiple employer welfare arrangement" means a self-funded or partially self-funded multiple employer welfare arrangement that provides for health benefits plans that has two or more employers who each have two or more employees and that has one or more of the employer members either domiciled in this State or its principal headquarters or principal administrative office located in this State.

"Small employer" means the same as defined in section 1 of P.L.1992, c.162 (C.17B:27A-17).

C.17B:27C-4 Annual registration fee.

4. A self-funded multiple employer welfare arrangement shall register annually with the commissioner and pay a registration fee established by the commissioner which shall not exceed \$1,000.

C.17B:27C-5 Deposit, maintenance of cash, securities.

5. a. A self-funded multiple employer welfare arrangement shall deposit and continuously maintain with a financial institution licensed in this State, cash or securities as defined in N.J.S. 17B:18-37, having an admitted asset value of not less than \$200,000. The deposit shall be held for the benefit and protection of all covered members of the self-funded multiple employer welfare arrangement. The self-funded multiple employer welfare arrangement shall further maintain a cash reserve for loss in an amount established by a qualified actuary as being adequate to provide for all incurred losses including unpaid claims.

b. A self-funded multiple employer welfare arrangement shall maintain aggregate stop-loss coverage, with a retention level of 125 percent of expected claims per year, including provisions to cover incurred, unpaid claims liability in the event of the termination or liquidation of the self-funded multiple employer welfare arrangement, and specific stop-loss coverage, with a retention level determined annually by a qualified actuary based on sound actuarial principles. Any stop-

loss contract maintained pursuant to this subsection shall contain a provision that the stop-loss insurer shall give the self-funded multiple employer welfare arrangement and the commissioner a minimum of 180 days' notice of cancellation or nonrenewal. If the self-funded multiple employer welfare arrangement fails to secure replacement coverage within 90 days after receipt of the notice of cancellation or nonrenewal, the trustees of the self-funded multiple employer welfare arrangement shall provide for the orderly liquidation of the self-funded multiple employer welfare arrangement.

C.17B:27C-6 Required filings.

6. Each self-funded multiple employer welfare arrangement shall file all of the following with the commissioner:

a. No later than May 15th of each calendar year or four months and 15 days after the end of each fiscal year of the self-funded multiple employer welfare arrangement, financial statements audited by a certified public accountant and on forms prescribed by the commissioner, an actuarial opinion rendered by a qualified actuary, a report of its Risk-Based Capital (RBC) as of the end of the immediately preceding calendar year, in a form and containing such information as is required by the instructions adopted by the National Association of Insurance Commissioners for health insurers, as amended from time to time and proof of the deposit required in accordance with section 5 of this act. The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any additional standards that the commissioner may prescribe by regulation. For purposes of this section and section 5 of this act, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations of the commissioner.

b. Within 60 days after the end of each fiscal quarter, unaudited financial statements on forms prescribed by the commissioner, affirmed by an appropriate officer or agent of the self-funded multiple employer welfare arrangement.

c. Within 60 days after the end of each fiscal quarter, a report on forms prescribed by the commissioner certifying that the self-funded multiple employer welfare arrangement maintains cash or liquid assets in a claim reserve account sufficient to meet the requirements of section 5 of this act.

C.17B:27C-7 Liability of members.

7. a. The liability of each member for the obligations of the self-funded multiple employer welfare arrangement shall be individual, several and proportionate, but not joint, except as provided in this section.

b. Each member shall have a contingent assessment liability pursuant to subsection c. of this section. Each benefit plan issued by a self-funded multiple employer welfare arrangement shall contain a statement of the contingent liability. Both the application for benefits and the benefit plan shall contain in contrasting color, not less than 10-point type, the following statement: "This is a fully assessable benefit plan. In the event that the self-funded multiple employer welfare arrangement is unable to pay its obligations, members shall be required to contribute on a pro rata earned premium basis the funds necessary to meet any unfilled obligations."

c. All self-funded multiple employer welfare arrangements shall provide that members are assessed in accordance with the provisions of this section. Each self-funded multiple employer welfare arrangement may assess all members if its prior fiscal year statement of operations reflected a loss. Each self-funded multiple employer welfare arrangement shall assess all members if the arrangement's fund balance or reserve at the end of any accounting period is less than the amount required by law. The minimum assessment shall be the amount necessary to comply with the requirements of sections 5 and 9 of this act. Each member's assessment shall be computed by applying the earned premium for each employer's benefit plan during the prior fiscal year as a percent of the amount of the total of all employers' earned premium for the same year. Each member's assessment shall be that member's percent times the total assessment levied. In the event a member fails to pay an assessment, the other members shall be liable on a proportionate basis for an additional assessment. The self-funded multiple employer welfare arrangement, acting on behalf of all members who paid the additional assessment, shall take

appropriate legal action to recover the assessment from any member who fails to pay an assessment.

d. In the event of a rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement, the court, pursuant to section 11 of this act, may assess the members in the amounts needed to pay all incurred but unpaid claims and all projected claims, together with the costs and expenses of collecting the assessments, a reasonable loading factor for uncollected assessments and the costs and expenses of the rehabilitation, liquidation, conservation or dissolution.

e. The following notice shall be provided to employers and employees who obtain coverage from a self-funded multiple employer welfare arrangement:

NOTICE

THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS NOT AN INSURANCE COMPANY AND DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

THE HEALTH CARE BENEFITS THAT YOU HAVE PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENT.

FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK QUESTIONS OF YOUR TRUST ADMINISTRATOR AT _____(this blank should include the "800" consumer service telephone number).

C.17B:27C-8 Inapplicability of insurance laws.

8. a. Except as provided by this act, the insurance laws of this State do not apply to the operation of self-funded multiple employer welfare arrangements. A self-funded multiple employer welfare arrangement is not an insurance company or insurer under the laws of this State.

b. Any self-funded multiple employer welfare arrangement shall offer all products that it is actively marketing to any employer, and accept any employer and any employee of that employer who applies for any of those products; provided, however that a self-funded multiple employer welfare arrangement may limit participation to members of the association.

c. Assessments payable by small employer members, except for dental plans, shall be established in accordance with the rating requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations promulgated thereunder; provided, however, that for the first year after the effective date of this act, a self-funded multiple employer welfare arrangement providing benefits in this State prior to the effective date of this act shall: (1) not charge a small employer member an assessment greater than 300 percent of the assessment charged to the lowest rated small employer member of the self-funded multiple employer welfare arrangement; (2) for the second year after the effective date of this act, not charge a small employer member an assessment greater than 250 percent of the assessment charged to the lowest rated small employer member of the self-funded multiple employer welfare arrangement; and (3) for each year thereafter, comply with the rating requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations promulgated thereunder.

d. The health benefits to be provided by the self-funded multiple employer welfare arrangement shall at all times be equal to or greater than benefits required to be provided in the lowest benefit level standard plan promulgated by the New Jersey Small Employer Health Benefits Program pursuant to P.L.1992, c.162 (C.17B:27A-17 et seq.).

C.17B:27C-9 Examination of loss reserves.

9. a. The commissioner may, upon reasonable notice, conduct an examination of the loss reserves of a self-funded multiple employer welfare arrangement as often as the commissioner

in his discretion may deem necessary. The expenses of the examination shall be paid by the self-funded multiple employer welfare arrangement so examined. The commissioner shall also annually review the RBC report of the self-funded multiple employer welfare arrangement.

b. If the commissioner finds that the reserves are inadequate, he shall notify the self-funded multiple employer welfare arrangement of the inadequacy. Capital and surplus shall be automatically considered inadequate if they do not meet or exceed the following: (1) for the calendar year ending December 31, 2002, 80 percent of the regulatory action level RBC determined in accordance with the RBC instructions; (2) for the calendar year ending December 31, 2003, 90 percent of the regulatory action level RBC determined in accordance with the RBC instructions; (3) for the calendar year ending December 31, 2004, 95 percent of the regulatory action level RBC determined in accordance with the RBC instructions; and (4) for the calendar years ending on or after December 31, 2005, the regulatory action level RBC determined in accordance with the RBC instructions. Within 30 days the self-funded multiple employer welfare arrangement shall file and implement a plan to correct the inadequacy. The inadequacy shall be corrected within 90 days of the implementation of the plan to correct the inadequacy.

C.17B:27C-10 Revocation, suspension of certificate of registration; violations, penalties.

10. a. The commissioner may revoke or suspend the certificate of registration of any self-funded multiple employer welfare arrangement that fails to correct any inadequacy pursuant to section 9 of this act or violates any provision of this act.

b. Any person who violates any provision of this act or the rules and regulations issued pursuant thereto shall be liable to a penalty of not more than \$1,000 for a first offense and not more than \$5,000 for each subsequent offense.

C.17B:27C-11 Rehabilitation, liquidation, conservation, dissolution.

11. Any rehabilitation, liquidation, conservation or dissolution of a self-funded multiple employer welfare arrangement shall be conducted under the supervision of the State Superior Court in the county in which the self-funded multiple employer welfare arrangement has its principal office.

C.17B:27C-12 Rules, regulations.

12. The commissioner, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may adopt rules and regulations necessary to effectuate the purposes of this act.

13. This act shall take effect on the 90th following enactment.

Approved January 6, 2002.