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Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2424

Introduced by

Senators Lee, B. Stenehjem

Representatives Price, Svedjan

A BILL for an Act to amend and reenact subsections 8, 9, and 11 of section 26.1-36.3-07 of the North Dakota Century Code, relating to the small employer health reinsurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 8, 9, and 11 of section 26.1-36.3-07 of the North Dakota Century Code are amended and reenacted as follows:

8. A small employer carrier may reinsure with the program as provided for in this subsection:
   a. With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.
   b. A small employer carrier may reinsure an entire employer group within sixty days after the group's coverage begins under a health benefit plan.
   c. A small employer carrier may reinsure an eligible employee or dependent within sixty days after coverage begins with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within sixty days after the coverage begins.
   d. (1) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent as set by the board. The board shall establish retention levels of reinsuring carriers for reinsurance under this chapter and section 26.1-36-37.2 ~~at an amount of not less than fifty thousand dollars nor greater than one hundred thousand dollars~~. A reinsuring carrier's liability under this

paragraph may not exceed the maximum limit established by the board in a calendar year for a reinsured individual.

(2) The board annually shall adjust the initial level of claims and the maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

e. A reinsuring carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

f. A reinsuring carrier or small employer carrier shall apply all managed care and claims handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

9. a. The board, as part of the plan of operation, shall establish a method for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The method must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The method must provide for the development of base reinsurance premium rates which must be multiplied by the factors set forth in subdivision b to determine the premium rates for the program. The board shall establish the base reinsurance premium rates, subject to the approval of the commissioner, and shall set the rates at levels which reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention levels required under this chapter and section 26.1-36-37.2.

b. ~~Premiums for the program are:~~

~~(1) An entire small employer group may be reinsured for a rate that is not greater than one and one-half times the base reinsurance premium rate for the group established under this section.~~

~~(2) An eligible employee or dependent may be reinsured for a rate that is not greater than five times the base reinsurance premium rate for the individual established under this section.~~

~~c.~~ The board shall review the method established under subdivision a, periodically, including the system of classification and any rating factors, to assure that it reasonably reflects the claims experience of the program. The board may propose changes to the method. The changes are subject to the approval of the commissioner.

~~d.~~ c. The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

11. a. Prior to March first of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

b. Any net loss for the year must be recouped by assessments of small employer carriers.

(1) The board shall establish, as part of the plan of operation, a formula by which to make assessments against small employer carriers. ~~The assessment formula must be based on:~~

~~(a) Each small employer carrier's share of the total number of small group enrollees covered in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by small employer carriers; and~~

~~(b) Each small employer carrier's share of the total number of small group enrollees covered in the preceding calendar year from newly issued health benefit plans delivered or issued for delivery~~

~~during the calendar year to small employers in this state by small employer carriers.~~

(2) ~~The formula established under this subdivision may not result in any small employer carrier having an assessment share that is less than fifty percent nor more than one hundred fifty percent of the proportion of the small employer carrier's total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by small employer carriers to the total premiums earned in the preceding calendar year from health benefit plans delivered or issued for delivery to small employers in this state by all small employer carriers.~~

~~(3)~~ With the approval of the commissioner, the board may change the assessment formula established under this subdivision as appropriate. The board may provide for the shares of the assessment base attributable to total number of small employer group enrollees and to the previous year's total to vary during a transition period.

~~(4)~~ <u>(3)</u> Subject to the approval of the commissioner, the board shall make an adjustment to the assessment formula for small employer carriers that are approved health maintenance organizations which are federally qualified under 42 U.S.C. 300, et seq., to the extent, if any, that restrictions are placed on them that are not imposed on other small employer carriers.

c. (1) Before ~~March~~ <u>May</u> first of each year, the board shall determine and file with the commissioner an estimate of the assessments needed to fund the losses incurred by the program in the previous calendar year.

(2) If the board determines the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed five percent of total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery to small employers in this state by small employer carriers, the board shall evaluate the operation of the program and report its findings, including any

recommendations for changes to the plan of operation, to the commissioner within ninety days following the end of the calendar year in which the losses were incurred. The evaluation must include an estimate of future assessments and consideration of the administrative costs of the program, the appropriateness of the premiums charged, the level of insurer retention under the program and the costs of coverage for small employers. If the board fails to file a report with the commissioner within ninety days following the end of the applicable calendar year, the commissioner may evaluate the operations of the program and implement amendments to the plan of operation the commissioner determines necessary to reduce future losses and assessments.

d. If assessments exceed net losses of the program, the excess must be held at interest and used by the board to offset future losses or to reduce program premiums. As used in this subdivision, "future losses" includes reserves for incurred but not reported claims.

e. The board shall determine each small employer carrier's proportion of the assessment annually based on ~~annual statements and other reports determined necessary by the board and filed by the small employer carriers with the board~~ the small employer data report form to be filed with the department on March fifteenth of each year.

f. The plan of operation must provide for the imposition of an interest penalty for late payment of assessments.

g. A small employer carrier may seek from the commissioner a deferment from all or part of an assessment imposed by the board. The commissioner may defer all or part of the assessment of a small employer carrier if the commissioner determines that payment of the assessment would place the small employer carrier in a financially impaired condition. If all or part of an assessment against a small employer carrier is deferred, the amount deferred must be assessed against the other participating carriers in a manner consistent with the basis for assessment set forth in this subsection. The small employer carrier receiving the deferment remains liable to the program for the amount deferred and may not reinsure any individuals or groups with the program until it pays the assessments.