State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-4149/1
PJK:wlj:rs

2003 ASSEMBLY BILL 814

February 5, 2004 - Introduced by Representatives LADWIG, WEBER, GOTTLIEB, GIELOW, HONADEL, JENSEN, MONTGOMERY, VUKMIR, ALBERS, BIES, GUNDERSON, HAHN, HINES, HUNDERTMARK, KAUFERT, KREIBICH, M. LEHMAN, LEMAHIEU, MCCORMICK, MUSSER, NISCHKE, PETTIS, STONE, TOWNSEND, VAN ROY, M. WILLIAMS, J. WOOD and GARD, cosponsored by Senator DARLING. Referred to Committee on Insurance.

AN ACT ***to create*** 146.92 and 601.415 (8) of the statutes; **relating to:** self-funded employer groups for providing health care coverage.

Analysis by the Legislative Reference Bureau

This bill authorizes the formation of three employer groups each for the purpose of establishing and administering a health care benefit arrangement for providing, on a self-funded basis, health care benefits to the employees of the employers that participate in each employer group. Two or more employers that are members of the same chamber of commerce may form an employer group and other employers that are members of that same chamber of commerce may elect to participate in the employer group that is formed. An employer that participates must offer to cover all of its employees who have a normal work week of at least 30 hours, and their dependents, and, generally, may not discontinue participation before the employer group terminates.

Each employer group will determine all matters necessary for the operation of its health care benefit arrangement, which may operate for no longer than five years. An employer group may not provide more than $50,000 in benefits to a covered person per year on a self-funded basis and must obtain stop-loss coverage. Each health care benefit arrangement must provide the same benefits for all employers participating in the employer group, but the contributions paid by participating employers for self-funding purposes and for purchasing stop-loss coverage do not have to be the same. Both the employer groups and the health care benefit arrangements are exempt from all requirements under the insurance statutes. The employer groups may not be considered insurers, and the health care benefit

arrangements may not be considered insurance contracts, for any purpose under the statutes.

Each employer group must annually submit to the Commissioner of Insurance (commissioner) and to the appropriate standing committees of the legislature a report that contains information about the employers participating, the covered employees and dependents, the benefits offered, and the claims paid. The Legislative Audit Bureau is required to conduct a performance audit of each employer group and its health care benefit arrangement and to prepare a report on each for distribution to the appropriate standing committees of the legislature.

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 146.92 of the statutes is created to read:

146.92 Self–funded employer groups. (1) DEFINITIONS. In this section:

(a) "Eligible employee" means an employee who works on a permanent basis and has a normal work week of 30 or more hours. The term includes a sole proprietor, a business owner, including the owner of a farm business, a partner of a partnership, and a member of a limited liability company if the sole proprietor, business owner, partner, or member is included as an employee under the health care benefit arrangement under this section, but the term does not include an employee who works on a temporary or substitute basis.

(b) "Eligible employers" means employers that are members of the same chamber of commerce.

(2) FORMATION, ELIGIBILITY, AND QUALIFICATION. (a) No later than January 1, 2006, 2 or more eligible employers may form an employer group to establish and administer an employee health care benefit arrangement for the joint provision of health care benefits on a self–funded basis to their eligible employees, the eligible

employees of other eligible employers that elect to participate in the employer group, and the dependents of those eligible employees.

(b) 1. The eligible employers forming the employer group shall specify a date by which other eligible employers must elect to participate in the employer group or be foreclosed from participating. All eligible employers that elect to participate by the date specified and that meet any requirements established under sub. (5) (d) shall be allowed to participate in the employer group.

2. Notwithstanding subd. 1., an employer that is a new business starting up after the date specified in subd. 1., that becomes a member of the same chamber of commerce after that date, that elects to participate by a later date that the employer group establishes for the new business to make the election, and that meets any requirements established under sub. (5) (d) shall be allowed to participate in the employer group.

(c) No more than 3 employer groups may be formed under par. (a), and no more than one employer group may be composed of employers that are members of any one chamber of commerce. The first 3 employer groups that provide evidence to the commissioner of insurance that they have formed and are in compliance with the requirements under this section shall qualify to participate in the project under this section. The commissioner of insurance shall provide notice in the Wisconsin administrative register when 3 employer groups have qualified under this paragraph. The notice shall list the groups and the dates on which each provided the necessary evidence of compliance.

(d) 1. Except as provided in subd. 2., an employer group may operate and provide benefits under its employee health care benefit arrangement established under this section for no longer than 5 years.

2. After the employer group has ceased operating its employee health care benefit arrangement, it shall continue to be responsible for paying eligible claims that were incurred during the time in which the employee health care benefit arrangement was operating.

(3) EMPLOYER REQUIREMENTS. (a) An employer that participates in an employer group under this section shall be required to offer health care benefits under the employee health care benefit arrangement to all of the employer's eligible employees and all of the eligible employees' dependents, as defined by the employer group under sub. (5) (b), and may not offer any other health care benefits to its eligible employees or their dependents.

(b) An employer that elects to participate in an employer group under this section shall be required to participate until the employer group terminates. To ensure participation, an employer group may require all employers that elect to participate to pay, at the commencement of participation, an amount that will be forfeited to the employer group if the employer discontinues its participation before the employer group terminates. In addition, any employer that discontinues participation before the employer group terminates shall be responsible for the employer's proportionate share of the cost of any eligible claims payable by the employer group that were incurred before the employer discontinued participation.

(4) COVERAGE. (a) Each employer group shall pay no more than $50,000 in benefits on a self–funded basis in a calendar year for each person covered under its employee health care benefit arrangement. Each employer group shall obtain excess or stop–loss coverage through an insurer authorized to do business in this state in an amount that is sufficient to pay eligible claims that exceed the amount that the employer group will pay on a self–funded basis per person in a calendar year.

(b) An employer group shall provide the same, uniform health care benefits for each employer that participates in that employer group.

(5) ADMINISTRATION. (a) Each employer group shall determine all matters necessary for the administration and operation of its employee health care benefit arrangement.

(b) Each employer group shall define who is a dependent for purposes of coverage under its employee health care benefit arrangement.

(c) Each employer group shall determine the amounts that eligible employers participating in the employer group must contribute for self–funding the employee health care benefit arrangement, for paying administrative expenses, and for purchasing excess or stop–loss coverage. The contribution amounts may vary from employer to employer based on criteria developed by the employer group.

(d) An employer group may specify minimum participation requirements that an eligible employer must satisfy for participation in the employer group.

(e) Notwithstanding sub. (3) (b), an employer group may specify circumstances under which a participating employer may discontinue participation in the employer group before the termination of the employer group without forfeiting all or a portion of the amount paid by the employer under sub. (3) (b).

(6) REPORTS. (a) Annually, each employer group shall prepare and submit to the commissioner of insurance and to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3) a report, which shall be due 2 months after the anniversary of the date on which the employer group began operation, that includes all of the following information for the reporting period:

1. The number of employers participating in the employer group.

2. The number of employees that each participating employer has.

3. The number of employees and dependents covered under the employer group's health care benefit arrangement and the age and sex of each covered employee and dependent.

4. A brief description of the benefits that are provided under the health care benefit arrangement.

5. The total contributions paid by participating employers, the contribution amount used for self–funding the health care benefit arrangement, the contribution amount used for paying administrative expenses, and the contribution amount used for purchasing excess or stop–loss coverage.

6. The criteria upon which the employer contribution amounts were based.

7. The amount that has been paid out in benefits under the employee health care benefit arrangement on a self–funded basis and under the excess or stop–loss coverage.

8. The type of health care coverage, if any, provided by each participating employer during the 2–year period before the employer's participation in the employer group and the cost of that health care coverage, including both employer and employee costs.

9. The number of employers that discontinued participation in the previous year, if any, the reason for each discontinued participation, and the penalty imposed on each.

(b) The legislative audit bureau shall conduct a performance evaluation audit of each employer group formed under this section and of its employee health care benefit arrangement. The bureau shall be allowed access to all records of each employer group that may be relevant for this purpose but may not use or maintain

any personally identifying information contained in the records. Within 6 months after an employer group submits its 2nd annual report under par. (a), the bureau shall submit copies of its audit report for that employer group to the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3).

(7) EXEMPTION FROM INSURANCE REGULATION. Notwithstanding 29 USC 1144 (b) (6) (A), chs. 600 to 645 and any rules promulgated under chs. 600 to 645 do not apply to an employer group, or to an employee health care benefit arrangement, under this section. An employer group shall not be considered an insurer, and an employee health care benefit arrangement shall not be considered an insurance contract, for any purpose under the statutes.

SECTION 2. 601.415 (8) of the statutes is created to read:

601.415 **(8)** EMPLOYER GROUP QUALIFICATION. Notwithstanding s. 146.92 (7), the commissioner shall perform the duties required under s. 146.92 (2) (c) related to the qualification of employer groups for the project under s. 146.92.

(END)