GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-552
SENATE BILL 1029

AN ACT TO AMEND THE NORTH CAROLINA PROFESSIONAL EMPLOYER ORGANIZATION ACT CONCERNING BONDING PROVISIONS AND MAINTENANCE OF EMPLOYEE BENEFITS, AND TO CLARIFY THE APPLICATION OF TAX CREDITS AND OTHER INCENTIVES TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-89A-50(a) reads as rewritten:

"(a) An applicant for licensure shall file with the Commissioner a surety bond for the benefit of the Commissioner as follows:

(1) If the applicant was initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in the amount of one hundred thousand dollars ($100,000).

(2) If the applicant was not initially licensed prior to October 1, 2008, the bond, or other items as provided for in subsection (f) of this section, shall be in an amount equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars ($500,000), or such greater amount as the Commissioner may require."

SECTION 2. G.S. 58-89A-105 reads as rewritten:

"**§ 58-89A-105. Employee benefit plans; required disclosure; other reports.**

(a) A licensee may sponsor and maintain employee benefit plans for the benefit of assigned employees. Any health insurance plan sponsored and maintained by a licensee shall only be fully insured by one of the following:

(1) A licensed insurance company that is authorized to write accident and health insurance, as defined in G.S. 58-7-15(3).

(2) A service corporation organized and licensed under Article 65 of this Chapter.

(3) A health maintenance organization organized and licensed under Article 67 of this Chapter.

(a1) A client company may sponsor and maintain employee benefit plans for the benefit of assigned employees.

(b), (c) Repealed by Session Laws 2008-124, s. 7.4, effective October 1, 2008.

(d) For the purposes of this section, a health insurance plan is fully insured only if all of the benefits provided under the plan are covered by an approved policy issued by one or more of the entities specified in subsection (a) of this section. A health insurance plan is not fully insured if the plan is any form of stop-loss insurance or any other form of reinsurance.

(e) Existing licensees shall comply with subsection (a) of this section by October 1, 2009. ~~Before~~ If on October 1, 2009, ~~if~~ an existing licensee sponsors and maintains any health insurance plan that is not fully insured by one or more of the entities specified in subsection (a) of this section, the licensee ~~shall do all of the following:~~

~~(1) Use a third-party administrator licensed or registered under Article 56 of this Chapter.~~

~~(2) Hold all plan assets, including participant contributions, in a trust account.~~

~~(3) Provide sound reserves for the plan as determined by generally accepted actuarial standards.~~

may continue to sponsor and maintain the health insurance plan if it complies with G.S. 58-89A-106."

SECTION 3. Article 89A of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"**§ 58-89A-106. Health insurance plan requirements.**

(a) In order for a licensee to sponsor and maintain a health benefit plan that is not fully insured by one or more of the entities specified in subsection (a) of G.S. 58-89A-109 on and after October 1, 2009, as authorized by subsection (e) of that section, the licensee shall meet all of the requirements listed in this subsection. A health benefit plan developed under this section is not required to provide coverage that meets the requirements of other provisions of this Chapter that mandate either coverage or the offer of coverage by the type or level of health care services or health care provider. The licensee shall:

(1) Use a third-party administrator licensed or registered under Article 56 of this Chapter.

(2) Hold all health insurance plan assets, including participant contributions, in a separate trust account for use only with the health benefit plan.

(3) Provide sound reserves for the health benefit plan that are determined on an annual basis by an actuary who is a member in good standing of the American Academy of Actuaries. The Commissioner may establish, by rule, a process for approving plan reserves.

(4) Maintain the health benefit plan for only employees of the licensee or employees of the client company and neither offer nor advertise the health insurance benefit plan to the public generally.

(5) Issue to each covered employee a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The evidence of benefits and coverages provided shall contain, in boldface print in a conspicuous location, the following statement: "THE BENEFITS UNDER THIS PLAN MAY NOT BE EQUAL TO THE MANDATED BENEFITS REQUIRED OF FULLY INSURED PLANS. THE BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A SELF-FUNDED HEALTH BENEFIT PLAN ESTABLISHED BY [name of PEO]. EXCESS INSURANCE IS PROVIDED BY AN AUTHORIZED INSURANCE COMPANY TO COVER HIGH AMOUNT MEDICAL CLAIMS. THE HEALTH BENEFIT PLAN IS NOT PROTECTED BY ANY INSURANCE GUARANTY ASSOCIATION. OTHER RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR FROM THE [name of PEO]." Any statement required by this subsection is not required on identification cards issued to covered employees or other insureds.

(6) File all contracts with third-party administrators with the Commissioner and report any changes to those contracts to the Commissioner before their implementation.

(7) Obtain and maintain stop-loss insurance from an insurer authorized to write insurance in this State and that meets the following requirements:

a. If individual stop-loss insurance, it is actuarially appropriate for the size of the group, surplus, and the expected losses, as determined by a qualified actuary and approved by the Commissioner.

b. If aggregate stop-loss insurance, it is actuarially appropriate for the size of the group, surplus, and the expected losses as determined by a qualified actuary and approved by the Commissioner. If the licensee is unable to obtain aggregate stop-loss insurance that is actuarially appropriate, the licensee shall maintain at least a thirty percent (30%) lag reserve above expected losses, as determined by a qualified actuary.

c. If prescribed by the Commissioner, by rule, it satisfies net retention levels in accordance with a PEO's surplus and expected claims.

(8) File with the Commissioner for information the summary plan description and the evidence of the benefits and coverages provided under the health benefit plan that is issued to the person covered by the health benefit plan.

(9) Establish and maintain a written plan of operation for the health benefit plan.
(10) File with the Commissioner the plan of operation for the health benefit plan and any updates to the plan of operation within 30 days of implementation.
(11) Upon request of the Commissioner, provide information that summarizes paid and incurred expenses and contributions or premiums received and any additional evidence that the PEO's health benefit plan is actuarially sound.

(b) Notwithstanding Chapter 132 of the General Statutes, all documents filed by a licensee under this section are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department against a person regulated by the Department, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence. The Commissioner, however, may use the contracts filed under this subsection in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

"**§ 58-89A-107. Examinations of self-funded health benefit plans.**

(a) The Commissioner may conduct an examination of a licensee's self-funded employee benefit plan as often as the Commissioner considers appropriate.

(b) An examination under this Article shall be conducted in accordance with the Examination Law of this Chapter, G.S. 58-2-131 through G.S. 58-2-133.

(c) In lieu of an examination of any foreign or alien licensee's self-funded employee benefit plan, the Commissioner may, in the Commissioner's discretion, accept an examination report on the licensee's self-funded employee benefit plan prepared by the appropriate regulator for the licensee's state of domicile.

(d) When making an examination under this section, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

(e) The amount paid by a PEO for an examination of its health benefit plan under this section shall not exceed sixty thousand dollars ($60,000), unless the PEO and the Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received under this section in the Insurance Regulatory Fund established under G.S. 58-6-25. Funds received under this section shall be used by the Department for offsetting the actual expenses incurred by the Department for examinations under this section."

SECTION 4. G.S. 58-89A-31 reads as rewritten:

"**§ 58-89A-31. Tax credits and other incentives.**

For purposes of determination of tax credits and other economic incentives provided by the State or a political subdivision and based on employment, covered employees are considered employees solely of the client. A client shall be entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of covered employees of the client. Each professional employer organization must provide, upon request by a client, employment information that is required by any agency or department of the State or a political subdivision responsible for administration of any tax credit or economic incentive and that is necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive. For purposes of this section, the term "political subdivision" has the same meaning as in G.S. 162A-65(a)(8)."

SECTION 5. The Department of Insurance shall report to the 2010 General Assembly on the implementation, administration, and enforcement of this act. In its report, the Department shall recommend any statutory changes required to regulate professional employer organizations and enforce the provisions of this act.

SECTION 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 10:37 a.m. this 28th day of August, 2009