

CHAPTER 619

RISK SHARING PLANS

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619.04 Mandatory health care liability risk sharing plans

619.01 Mandatory risk sharing plans. (1)
MANDATORY PLANS. (a) *Establishment of plans.* If the commissioner finds after a hearing that in any part of this state automobile insurance, property insurance, health care liability insurance, municipal liability insurance or worker's compensation insurance is not readily available in the voluntary market, and that the public interest requires such availability, the commissioner may by rule either promulgate plans to provide such insurance coverages for any risks in this state which are equitably entitled to but otherwise unable to obtain such coverage, or may call upon the insurance industry to prepare plans for the commissioner's approval.

(b) *Purposes and contents of risk sharing plans.* The plan promulgated or prepared under par. (a) shall:

1. Give consideration to the need for adequate and readily accessible coverage, to alternative methods of improving the market affected, to the preferences of the insurers and agents, to the inherent limitations of the insurance mechanism, to the need for reasonable underwriting standards, and to the requirement of reasonable loss prevention measures;

2. Establish procedures that will create minimum interference with the voluntary market;

3. Spread the burden imposed by the facility equitably and efficiently within the industry; and

4. Establish procedures for applicants and participants to have grievances reviewed by an impartial body.

(c) *Persons required to participate.* 1. Each plan, except a health care liability insurance plan, shall require participation by all insurers doing any business in this state of the types covered by the specific plan and all agents licensed to represent such insurers in this state for the specified types of business, except that the commissioner may exclude classes of persons for administrative convenience or because it is not equitable or practicable to require them to participate in the plan.

2. Each health care liability insurance plan shall require participation by all insurers insuring persons in this state against liability resulting from personal injuries. Any deficit in a health care liability insurance plan in any year shall be recouped by rate increases for such plan applicable prospectively. Any surplus over the loss reserves in such a plan in any year shall be distributed by rate decreases for such plan applicable prospectively.

3. No county, town, village or city shall be required to participate in any municipal liability risk-sharing plan promulgated or approved by the commissioner under this section or be assessed for the cost of any such plan in which it is not participating.

(d) *Voluntary participation.* The plan may provide for optional participation by insurers not required to participate under par. (c).

(e) *Classifications and rates.* Each plan shall provide for the method of classifying risks and making and filing rates applicable thereto.

(2) BASIS OF PARTICIPATION. The plan shall specify the basis of participation of insurers and agents and the conditions under which risks must be accepted.

(3) DUTY TO PROVIDE SERVICE. Every participating insurer and agent shall provide to any person seeking coverages of kinds available in the plans the services prescribed in the plans, including full information on the requirements and procedures for obtaining coverage under the plans whenever the business is not placed in the voluntary market.

(4) COMMISSIONS. The plan shall specify what commission rates shall be paid for business placed in the plans.

(5) PROVISION OF MARKETING FACILITIES. If the commissioner finds that the lack of cooperating insurers or agents in an area makes the functioning of the plan difficult, he may order that the plan set up branch service offices or take other appropriate steps to ensure that service is available.

(6) TRANSITION. The existing assigned risk plan set up under former s. 204.51 (2) [Stats. 1967] and the existing rejected risk plan set up

under former s. 205.15 [Stats. 1967] shall continue unless changed in accordance with this chapter.

(7) HEALTH CARE LIABILITY POLICY LIMITS.

(a) Primary coverage plans. Health care liability insurance plans established under this paragraph shall provide minimum coverage to insureds in the amount of not less than \$100,000 for each occurrence and \$300,000 for all occurrences in any one policy year for the protection of persons who are legally entitled to recover damages from the insured for errors, omissions or neglect in the performance of the insured's professional services. If an insured has excess limits liability coverage or such coverage is available to the insured, the coverage provided under such plans shall be equal to the minimum level of such excess limits coverage. If the insured does not have excess limits liability coverage and such coverage is not available to the insured, the commissioner may establish minimum levels of coverage higher than the minimum limits specified in this paragraph for such plans.

(b) *Supplemental liability coverage plans.* Health care liability insurance plans of the kind authorized under par. (a) may be established by the commissioner under this paragraph to provide coverage to supplement primary coverage provided by insurers authorized under ch. 611 or 618. Such plans may be in an amount no greater than \$100,000 for each occurrence and \$300,000 for all occurrences in any one policy year, but the total combined primary and supplemental coverage may not exceed the limits established by s. 655.23 (5).

(8) HEALTH CARE LIABILITY POLICY PROVISIONS. Health care liability insurance plans established under this chapter may include liability coverages normally incidental to health care liability insurance if such coverage is not readily available in the voluntary market.

History: 1975 c. 2, 79; 1975 c. 147 s. 54; 1975 c. 199; 1977 c. 131, 172.

619.02 State contribution for federally re-insured losses. (1) ASSESSMENT OF INSURERS. The commissioner is authorized to assess each insurance company authorized to do business in this state an aggregate amount sufficient to provide a fund to reimburse the U.S. secretary of housing and urban development in the manner set forth in sec. 1223 (a) (1) of the national housing act as amended by sec. 1103 of the urban property protection and reinsurance act of 1968, P.L. 90-448, 82 Stat. 476. The assessment shall be on those lines reinsured during the current year in this state by the U.S. secretary of housing and urban development pursuant to

such act. The assessment shall be in the proportion that the premiums earned during the preceding calendar year by each such company in this state bear to the aggregate premiums earned on those lines in this state by all insurers. The fund may be provided in whole or in part from appropriations by the legislature.

(2) RECOUPMENT. Rates used by an insurer shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments made under this section.

619.03 Voluntary risk sharing plans. Insurers doing business within this state are authorized to prepare voluntary plans providing any specified kind, line or class of insurance coverage or subdivision or combination thereof for all or any part of this state in which such insurance is not readily available in the voluntary market and in which the public interest requires the availability of such coverage. Such plans shall be submitted to the commissioner and if approved by him may be put into operation.

619.04 Mandatory health care liability risk sharing plans. (1) The commissioner shall promulgate rules establishing a plan of health care liability coverage for all medical or osteopathic physicians licensed under ch. 448 and nurse anesthetists licensed under ch. 441 who practice in this state; for operating cooperative sickness care plans organized under ss. 185.981 to 185.985 which directly provide services in their own facilities with salaried employees; and for all hospitals as defined by s. 50.33 (1) (a) and (c), but excluding those facilities exempted by s. 50.39 (3), which operate in this state.

(3) The plan shall operate subject to the supervision and approval of a board of governors consisting of representatives of 5 of the insurers participating in the plan, who shall serve at the direction of the commissioner, an attorney to be named by the state bar association, a physician to be named by the Wisconsin medical society, a hospital representative to be named by the Wisconsin hospital association, the commissioner or a designated representative employed by the office of the commissioner and 2 public members who are not attorneys or physicians and who are not professionally affiliated with any hospital or insurance company, appointed by the governor for staggered 3-year terms. The commissioner or the commissioner's representative shall be the chairman of the board of governors. Board members shall be compensated at the rate of \$50 per diem plus actual and necessary travel expenses.

(5) The plan shall offer professional health care liability coverage in a standard policy form for all hospitals, medical or osteopathic physicians and nurse anesthetists operating or practicing in this state. The plan shall include, but not be limited to, the following:

(a) Rules for the classification of risks and rates which reflect past and prospective loss and expense experience in different areas of practice.

(b) A rating plan which reasonably recognizes the prior loss experience of insureds in the state.

(c) Provisions as to rates for insureds who are semiretired or part-time professionals.

(d) Optional coverage, available upon request to any insured, for any liability based on a

treatment, omission or operation which occurs during the term of the policy and which is brought within the time the applicable statute of limitations continues that liability.

(9) Neither the state nor the board of governors shall be liable for any obligation of the plan or of the patients compensation fund under s. 655.27. The board of governors and members of any committee or subcommittee thereof shall be immune from civil prosecution for good faith actions taken within the scope of their duties under this section and s. 655.27.

(10) The commissioner may promulgate rules to effect coverage under s. 619.01 of the plan established under this section.

History: 1975 c. 37, 79, 199; 1977 c. 131; 1977 c. 203 s. 106.