CHAPTER 81

MULTIPLE-EMPLOYER WELFARE ARRANGEMENTS

§6601. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1993, c. 688, §1 (NEW).]

1. Declaration of trust. "Declaration of trust" means a joint statement of those participating employers composing a multiple-employer welfare arrangement in which the purposes, plan of administration, rights and duties of the participants and the manner of funding obligations arising under the arrangement are established.
[PL 1993, c. 688, §1 (NEW).]

2. Fund balance. "Fund balance" means the total assets in excess of total liabilities, except that assets pledged to secure debts not reflected on the books of the multiple-employer welfare arrangement are not included in the fund balance. "Fund balance" includes other contributed capital, retained earnings and subordinated debt.
[PL 1993, c. 688, §1 (NEW).]

3. Funded trust. "Funded trust" means that legal entity created to receive, hold and administer contributions of employers participating in the arrangement that is composed of assets acceptable to the superintendent equal to or in excess of loss reserves and all other liabilities of the arrangement. A trust is not fully funded if any part of the corpus consists of a surety bond.
[PL 1993, c. 688, §1 (NEW).]

4. Insolvent or impaired condition. A multiple-employer welfare arrangement is "insolvent" or in an "impaired condition" when the fund balance is in a deficit position.
[PL 1993, c. 688, §1 (NEW).]

5. Multiple-employer welfare arrangement. "Multiple-employer welfare arrangement" or "arrangement" means an employer welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers or to their beneficiaries. For the purposes of this chapter only, an employer welfare benefit plan or any other arrangement that, after April 30, 1996, is established or maintained for the purpose of offering or providing health benefits to employees leased to client companies by an employee leasing company required to be registered under Title 32, chapter 125 must be treated as a multiple-employer welfare arrangement within the meaning of this chapter. "Multiple-employer welfare arrangement" does not include a plan or arrangement established or maintained before January 1, 1993 by the State, a political subdivision of the State or an association composed of political subdivisions of the State primarily to cover its employees, former employees or their dependents, nor does it include a plan or arrangement established or maintained under or pursuant to one or more agreements deemed collective bargaining agreements under the federal Employee Retirement Income Security Act of 1974, Section 3(40)(A)(i), as amended. For purposes of this chapter, 2 or more trades or businesses, whether or not incorporated, are deemed a single employer if those trades or businesses are under common ownership or within the same control group as defined under the federal Employee Retirement Income Security Act of 1974, Section 3(40)(B). For the purposes of this chapter only, each of an employee leasing company's client companies, as defined in Title 32, section 14051, is considered a separate employer as long as it is not deemed a single employer under this subsection.
[PL 1995, c. 618, §5 (AMD).]

6. Participation agreement. "Participation agreement" means the document pursuant to which an employer undertakes and agrees to fulfill the obligation of employers imposed by the declaration of trust.
[PL 1993, c. 688, §1 (NEW).]

7. Qualified financial institution. "Qualified financial institution" means an institution that is organized, or in the case of a United States branch or agency office of a foreign banking organization is licensed under the laws of the United States or any state, and has been granted authority to operate with fiduciary powers and is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.
[PL 1993, c. 688, §1 (NEW).]

8. Third-party administrator. "Third-party administrator" or "administrator" means an administrator licensed pursuant to chapter 18.
[PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW). PL 1995, c. 618, §5 (AMD).

§6602. Scope

1. Multiple-employer welfare arrangement; approval required. A person may not commence operations after January 1, 1995 of a multiple-employer welfare arrangement unless that arrangement is approved by the superintendent. A person may not operate after January 1, 1995 a multiple-employer welfare arrangement in existence before January 1, 1995 unless that arrangement has been submitted for approval in compliance with this chapter.
[PL 1993, c. 688, §1 (NEW).]

2. Insurer authorized to transact health insurance. This chapter does not apply to a multiple-employer welfare arrangement that offers or provides benefits that are fully insured by an insurer authorized to transact health insurance in the State.
[PL 1993, c. 688, §1 (NEW).]

3. Application. Section 6608 does not apply to a multiple-employer welfare arrangement that:

A. Meets the general eligibility requirements of section 6603, subsection 1; [PL 1993, c. 688, §1 (NEW).]

B. Is administered primarily from a principal place of business located within the State; and [PL 1993, c. 688, §1 (NEW).]

C. Has provided employee health benefits for a continuous period since on or before January 1, 1984. [PL 1993, c. 688, §1 (NEW).]
[PL 1993, c. 688, §1 (NEW).]

4. Application for approval; filing required. If a multiple-employer welfare arrangement does not satisfy the requirements of subsection 3, the arrangement shall file with the superintendent within 60 days of the effective date of this subsection a complete application for authorization under section 6604.
[PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW).

§6603. General eligibility

This section governs all multiple-employer welfare arrangements except for those offered by a registered employee leasing company complying with the requirements of section 6603-A. [PL 1995, c. 618, §6 (NEW).]

1. Requirements for approval. To meet the requirements for approval and to maintain a multiple-employer welfare arrangement, an arrangement:

A. Must be nonprofit; [PL 1993, c. 688, §1 (NEW).]

B. Must be established by a trade association; industry association; association with employer members representing multiple trades, industries or professions; political subdivision of the State; religious organization; or professional association of employers or professionals that has a constitution or bylaws and that has been organized and maintained in good faith for a continuous period of one year for purposes other than that of obtaining or providing insurance; [PL 2019, c. 96, §2 (AMD).]

C. Must be operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the arrangement and that is responsible for all operations of the arrangement. The trustees selected must be owners, partners, officers, directors or employees of one or more employers in the arrangement. A trustee may not be an owner, officer or employee of the administrator or service company of the arrangement. The trustees have the authority to approve applications of association members for participation in the arrangement and to contract with a licensed administrator or service company to administer the day-to-day affairs of the arrangement; [PL 2003, c. 374, §1 (AMD).]

D. May not be offered, advertised or available to employers or other members of the public generally; [PL 2019, c. 96, §2 (AMD).]

E. Must be operated in accordance with sound actuarial principles; [PL 1993, c. 688, §1 (NEW).]

F. Must comply with the requirements of chapter 36, governing continuity of health insurance coverage; [PL 1993, c. 688, §1 (NEW).]

F-1. Must comply with the requirements of section 2809-A, subsection 11, concerning continued coverage in the event of an employee's being temporarily laid off or losing employment because of an injury or disease that the employee claims to be compensable under workers' compensation; [PL 2005, c. 121, Pt. A, §1 (NEW).]

G. May not deny coverage to any otherwise eligible employer, employee or dependent on the basis of health status or claims experience; and [PL 1993, c. 688, §1 (NEW).]

H. May issue only health care benefit plans that comply with the requirements of section 2808-B with regard to rating practices, coverage for late enrollees and guaranteed renewal. An arrangement may not provide health care benefits that do not meet or exceed the requirements for mandated benefits applicable to comparable insured plans. [PL 2001, c. 410, Pt. A, §9 (AMD).]

[PL 2019, c. 96, §2 (AMD).]

1-A. Eligibility based on geographic association.

[PL 2019, c. 96, §3 (RP).]

2. Evidence of benefits; issuance to covered employee. The arrangement shall issue to each covered employee a contract, certificate, summary plan description or other evidence of the benefits and coverages provided. This evidence of the benefits and coverages provided must contain in boldface print in a conspicuous location the following statement: "The benefits and coverages described herein are provided through a trust fund established and funded by a group of employers." Arrangements in existence before October 1, 1993 that have previously issued benefit descriptions to employees may meet the disclosure requirements under this chapter by issuing to each employee additional written material necessary to meet the requirements of this subsection.

[PL 1993, c. 688, §1 (NEW).]

3. Maintenance of specific excess insurance. Each arrangement shall maintain specific excess insurance with a retention level determined in accordance with sound actuarial principles and approved by the superintendent. The superintendent may also require the arrangement to purchase aggregate excess insurance.
[PL 1993, c. 688, §1 (NEW).]

4. Maintenance of appropriate loss reserves. Each arrangement shall establish and maintain appropriate loss and loss expense reserves determined in accordance with sound actuarial principles and shall fund obligations by depositing assets that will yield in a time frame matching maturing liabilities of the arrangement sufficient funds to discharge claims and other expense payments.
[PL 1993, c. 688, §1 (NEW).]

5. Funds held in trust. All funds of a multiple-employer welfare arrangement must be held in trust in this State in the name of the arrangement in a qualified financial institution by state or federally chartered financial institutions until such time as they are disbursed.
[PL 2003, c. 374, §2 (AMD).]

6. Replacement of trustee. The superintendent may not grant or continue approval until the arrangement replaces any trustee found by the superintendent:

A. To be incompetent, untrustworthy or financially irresponsible; [PL 1993, c. 688, §1 (NEW).]

B. To be guilty of or to have pled guilty or no contest in any state or country to a criminal offense for which incarceration for one year or more may be imposed or for which incarceration of one year or more could be imposed had the offense occurred in this State, or that involves moral turpitude, dishonesty, false statement or misappropriation or conversion of property or funds; [PL 1993, c. 688, §1 (NEW).]

C. To have had any type of insurance license revoked in this State or any other state; or [PL 1993, c. 688, §1 (NEW).]

D. To have improperly manipulated assets, accounts or specific excess insurance or to have otherwise acted in bad faith. [PL 1993, c. 688, §1 (NEW).]

[PL 1993, c. 688, §1 (NEW).]

7. Contracts available for inspection. To qualify for and retain approval to transact business, an arrangement must make all contracts with administrators or service companies available for inspection by the bureau initially and thereafter upon reasonable notice.
[PL 1993, c. 688, §1 (NEW).]

8. Suspension or revocation of approval. Failure to maintain compliance with applicable eligibility or filing requirements established by this section is grounds for suspension or revocation of authority of an arrangement. However, with respect to deficiencies other than an impairment, the arrangement has 60 days after notification by the superintendent to take action necessary to correct the deficiency.
[PL 1993, c. 688, §1 (NEW).]

9. Access to health care services.
[PL 2011, c. 90, Pt. F, §8 (RP).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW). PL 1995, c. 618, §6 (AMD). PL 1999, c. 256, §R1 (AMD). PL 2001, c. 410, §A9 (AMD). PL 2001, c. 570, §1 (AMD). PL 2001, c. 570, §2 (AMD). PL 2003, c. 374, §§1,2 (AMD). PL 2005, c. 121, §A1 (AMD). PL 2007, c. 278, §1 (AMD). PL 2011, c. 90, Pt. F, §8 (AMD). PL 2019, c. 96, §§2, 3 (AMD).

§6603-A. Employee leasing companies

An employee leasing company that provides health benefits on other than a fully insured basis for employees leased to client companies shall comply with the requirements of this section. [PL 1995, c. 618, §7 (NEW).]

1. Requirements for approval. The arrangement must meet the requirements of this subsection to obtain approval to establish a multiple-employer welfare arrangement or to maintain operations of a multiple-employer welfare arrangement.

A. The employee leasing company must be registered in this State in accordance with Title 32, chapter 125. [PL 1995, c. 618, §7 (NEW).]

B. Within 4 months of the end of each fiscal year or within such extension of time as the superintendent for good cause may grant, the arrangement shall file with the superintendent an annual financial report certified by an independent certified public accountant. The report must include a letter of qualification from the accountant that meets the requirements of section 6611, subsection 1-A. The report must provide the name and address of the insurer providing excess insurance and it must also include an analysis of the adequacy of reserves and contributions or premiums charged based on a review of past and projected claims and expenses. [PL 1995, c. 618, §7 (NEW).]

C. Within 45 days of the end of each fiscal quarter, the arrangement shall file with the superintendent a letter from an independent certified public accountant attesting to the following:

(1) That the employees have been paid in a timely fashion;

(2) That all payroll taxes and income taxes withheld have been paid to the appropriate state or federal agency in a timely fashion;

(3) With respect to any health care benefits provided on other than a fully insured basis, that specific excess insurance is maintained with a retention level adequate for the plan; and

(4) With respect to any health care benefits provided on other than a fully insured basis, that appropriate loss and loss expense reserves are maintained that are adequate for the plan. [PL 1995, c. 618, §7 (NEW).]

D. Any necessary excess insurance must be purchased from an insurer licensed to transact health or casualty insurance in the State. [PL 1995, c. 618, §7 (NEW).]

E. The arrangement shall issue to each covered employee a contract, certificate, summary plan description or other evidence of the benefits and coverages provided. This evidence of the benefits and coverages provided must contain in boldface print in a conspicuous location the following statement: "The benefits and coverages described herein are provided by [name of employee leasing company] on a self-insured basis, not through a contract with a commercial insurance carrier." If the benefit plan or arrangement was in existence before April 30, 1996 and had previously issued benefit descriptions to the covered employees, the arrangement shall issue to each employee the additional written material necessary to meet the requirements of this paragraph. [PL 1995, c. 618, §7 (NEW).]

F. The arrangement must pay the filing fee specified in section 601 at the time of the application for approval. [PL 1995, c. 618, §7 (NEW).]

[PL 1995, c. 618, §7 (NEW).]

2. Application for approval. To obtain approval, an arrangement must submit a letter of application to the Superintendent that includes or has attached the material required by subsection 1. If any information is not available at the time of application, the arrangement shall specify in the letter when that information will be provided. The superintendent, in the superintendent's discretion, may grant approval of an arrangement conditioned upon the timely receipt of the required information if the

superintendent determines that the arrangement is funded at a level consistent with the purposes of this chapter.
[PL 1995, c. 618, §7 (NEW).]

3. Other provisions. An arrangement approved pursuant to the requirements of this section is also subject to the requirements of sections 6606, 6607, 6610, 6614 and 6616.
[PL 1995, c. 618, §7 (NEW).]

4. Grounds for denial, suspension or revocation of arrangement. The superintendent, in the superintendent's discretion, may deny, suspend or revoke the authorization granted pursuant to this section if the superintendent finds that the arrangement has failed to meet the requirements of this section, has refused to produce the required financial information or has refused to correct a deficiency determined pursuant to section 6606. When failure to maintain compliance with the requirements of this section is the grounds for suspension or revocation of authority of an arrangement, the arrangement has 60 days after notification by the superintendent to take action necessary to correct the deficiency.
[PL 1995, c. 618, §7 (NEW).]

SECTION HISTORY

PL 1995, c. 618, §7 (NEW).

§6604. Filing requirements

The sponsoring association shall file with the superintendent an application for authorization of the arrangement upon a form to be furnished by the superintendent. The application must include or have attached the following: [PL 1993, c. 688, §1 (NEW).]

1. Constitution or bylaws. A copy of the constitution or bylaws of the association;
[PL 1993, c. 688, §1 (NEW).]

2. Identification of trustees. The names and addresses of the trustees of the arrangement;
[PL 1993, c. 688, §1 (NEW).]

3. Document governing operation. A copy of the declaration of trust, trust agreement and any other documents that govern the operation of the arrangement;
[PL 1993, c. 688, §1 (NEW).]

4. Evidence of benefits provided. A copy of the employer participation agreement and the certificate, summary plan description or other evidence of the benefits and coverage provided to covered employees;
[PL 1993, c. 688, §1 (NEW).]

5. Proof of deposit or surety bond. Proof of deposit or a copy of the surety bond required pursuant to section 6607;
[PL 1993, c. 688, §1 (NEW).]

6. Excess insurance agreement. A copy of the arrangement's excess insurance agreement;
[PL 1993, c. 688, §1 (NEW).]

7. Evidence of sound actuarial principles. Evidence satisfactory to the superintendent showing that the arrangement will be operated in accordance with sound actuarial principles. The superintendent may not approve the arrangement unless the superintendent determines that the plan is designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles;
[PL 1995, c. 618, §8 (AMD).]

8. Additional information. Additional information that the superintendent may reasonably require; and
[PL 1995, c. 618, §8 (AMD).]

9. Filing fee. The filing fee specified in section 601.
[PL 1995, c. 618, §8 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW). PL 1995, c. 618, §§8,9 (AMD).

§6605. Fund balance

Each multiple-employer welfare arrangement shall maintain a positive fund balance. [PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW).

§6606. Deficiency in reserves, assets or reinsurance

1. Examination of finances. The superintendent may conduct, upon reasonable notice, an examination to determine the financial condition of an arrangement. For arrangements subject to the requirements of section 6603-A, the examination must be limited to the work of the certified public accountant conducting the annual audit or submitting the quarterly filings required by that section. For all other arrangements, examiners duly qualified by the superintendent may examine the loss reserves, assets, liabilities, excess insurance and working capital of a multiple-employer welfare arrangement. If the superintendent finds that the reserves, excess insurance or assets may be inadequate, or that the arrangement does not have working capital in an amount establishing the financial strength and liquidity of the arrangement to pay claims promptly and showing evidence of the financial ability of the arrangement to meet its obligations to covered employees, the superintendent shall notify the arrangement of the inadequacy. Upon notification, the arrangement shall file within 30 days with the superintendent its written plan specifying remedial action to be taken and the time for implementation of that plan.
[PL 1995, c. 618, §10 (AMD).]

2. Correction of deficiency. If the superintendent determines, after reviewing the information filed, that a hazardous financial condition exists, the arrangement shall implement within 30 days its plan to correct any deficiencies and shall file with the superintendent proof of remedial action taken within 60 days. If the superintendent is satisfied that the plan submitted to improve the inadequate condition of the arrangement is sufficient, the superintendent shall notify the arrangement. The arrangement shall report monthly to the superintendent until any deficiencies and their causes have been corrected.
[PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW). PL 1995, c. 618, §10 (AMD).

§6607. Trust deposit or surety bond

If the superintendent determines that a multiple-employer welfare arrangement has failed to establish or maintain the actuarially indicated level of funding as required, the superintendent may require the arrangement to file a security deposit or a surety bond in accordance with this section. [PL 1995, c. 618, §11 (AMD).]

1. Deposit. If required, deposit funds, which may consist of cash, securities or any combination of cash and securities acceptable to the superintendent, must be filed with the superintendent for deposit with the Treasurer of State in an amount equal to the greater of either 25% of the immediately preceding 12 months' health care claims expenditures or 15% of the expected gross annual contributions for the current year. In no case may the amount of the deposit be less than $50,000 or more than $1,000,000 except that the superintendent, after due notice to all interested parties and opportunity for hearing, and

after consideration of the records, may prescribe an amount in excess of $1,000,000. All income from deposits belongs to the depositing arrangement and must be paid to it when received. An arrangement that has made a security deposit, subject to approval of the superintendent, may withdraw that deposit or any part of that deposit after making a substitute deposit of cash, securities or any combination of cash and securities of equal amount and value. A judgment creditor or other claimant of a multiple-employer welfare arrangement may not levy upon any of the assets or securities held in this State as a deposit under this section.
[PL 1993, c. 688, §1 (NEW).]

2. Surety bond in lieu of deposit. In lieu of the deposit required under subsection 1, an arrangement may file with the superintendent a surety bond in like amount. The bond must be one issued by an authorized surety insurer, must be for the same purpose as the deposit in lieu of which it is filed and must be in a form prescribed by the superintendent. A bond may not be canceled or subject to cancellation unless at least 60 days' advance notice of cancellation in writing is filed with the superintendent and the chair of the trustees.
[PL 1993, c. 688, §1 (NEW).]

3. Insolvency termination. In the event of a termination of an arrangement due to insolvency, a determination of impairment or the failure of the arrangement to pay any final judgment rendered against it in this State within 30 days after the judgment becomes final, the deposit held by the superintendent pursuant to subsection 1 or the bond held by the superintendent pursuant to subsection 2 must be applied to the extent of the insolvency or to the extent of any default in payment of benefit claims. Any deposit funds remaining in excess of the amount needed to make the arrangement solvent must be distributed in accordance with section 6610.
[PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW). PL 1995, c. 618, §11 (AMD).

§6608. Forms

1. Approval of forms by superintendent required. A participation agreement or contract form, application form, certificate, rider, endorsement, summary plan description or other evidence of coverage may not be issued by an arrangement unless the form and all changes to the form have been filed with the superintendent by or on behalf of the arrangement that proposes to use the form and have been approved by the superintendent.
[PL 1993, c. 688, §1 (NEW).]

2. Grounds for disapproval of forms by superintendent. The superintendent may disapprove a form filed under this section or withdraw previous approval of a form only if the form:

A. Violates or does not comply with this chapter; [PL 1993, c. 688, §1 (NEW).]

B. Contains or incorporates by reference inconsistent, ambiguous or misleading clauses or exceptions and conditions that deceptively affect the risk proposed to be assumed in the general coverage of the contract; [PL 1993, c. 688, §1 (NEW).]

C. Has any title, heading or other indication of its provisions that is misleading; [PL 1993, c. 688, §1 (NEW).]

D. Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible; or [PL 1993, c. 688, §1 (NEW).]

E. Contains provisions that are unfair, inequitable or encourage misrepresentation. [PL 1993, c. 688, §1 (NEW).]
[PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW).

§6609. Liability of participants

1. Liability of each employer participant. The liability of each employer participant for the obligations of the multiple-employer welfare arrangement is joint and several.
[PL 1993, c. 688, §1 (NEW).]

2. Contingent assessment liability. Each employer participant has a contingent assessment liability pursuant to section 6610 for payment of actual losses and expenses incurred while the participation agreement was in force.
[PL 1993, c. 688, §1 (NEW).]

3. Statement of contingent liability. Each participation agreement or contract issued by the arrangement must contain a statement of the contingent liability of employer participants. Both the application for participation and the participation agreement must contain, in contrasting color and not less than 10-point type, the following statement: "This is a fully assessable contract. In the event the arrangement is unable to pay its obligations, participating employers will be required to contribute through an equitable assessment the money necessary to meet any unfulfilled obligations."
[PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW).

§6610. Termination

If an arrangement is terminated for any reason, the trust may not be dissolved until all outstanding claims, debts and obligations of the arrangement are paid. The arrangement may retain sufficient funds to provide coverage for an additional period as the trustees of the arrangement consider prudent. In addition, the trustees may purchase additional insurance they consider necessary for protection against potential future claims. Any funds remaining in the arrangement after satisfaction of all obligations must be paid to participating employers or covered employees in an equitable manner meeting with the approval of the superintendent, including, without ruling out other alternatives, equally on a per capita basis to each participating employer or employee who is covered under the arrangement as of the effective date of termination. Written notice of the termination of the arrangement must be provided to each covered employee, the Department of Labor, Bureau of Labor Standards and the superintendent at least 10 days before the effective date of the termination. [PL 1995, c. 618, §12 (AMD).]

If an arrangement provided by a registered employee leasing company is terminated for any reason, written notice of the termination of the arrangement must be provided by the employee leasing company to each covered employee, the client companies involved, the Department of Labor, Bureau of Labor Standards and the superintendent at least 10 days before the effective date of the termination. [PL 1995, c. 618, §12 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW). PL 1995, c. 618, §12 (AMD).

§6611. Annual report; actuarial report

1. Filing required. Annually within 4 months of the end of the fiscal year or within such extension of time as the superintendent for good cause may grant, every arrangement shall file a report with the superintendent, verified by the oath of the chair of the board of trustees. The report must summarize the business activities of the trust for the immediately preceding year and must contain a financial statement of the arrangement, including its balance sheet and a statement of operations for the preceding year certified by an independent certified public accountant. The report must also include an analysis of the adequacy of reserves and contributions or premiums charged based on a review of past and projected claims and expenses.

[PL 1993, c. 688, §1 (NEW).]

1-A. Accountant's letter or qualification. The annual financial statement of the arrangement must include a letter of qualification from the certifying accountant stating:

A. That the accountant is independent with respect to the arrangement and conforms to the standards of the accountant's profession as contained in the code of professional ethics and pronouncements of the American Institute of Certified Public Accountants and the rules of professional conduct of the appropriate state Board of Accountancy or similar code; [PL 1995, c. 618, §13 (NEW).]

B. The background and experience in general and the experience in audits or arrangements of the staff assigned to the engagement and whether each is an independent certified public accountant. This requirement may not be construed as prohibiting the accountant from utilizing staff as the accountant considers appropriate where that is consistent with the standards prescribed by generally accepted auditing standards; [PL 1995, c. 618, §13 (NEW).]

C. That the accountant understands the annual audited financial report and the accountant's opinion will be filed in compliance with this requirement and that the accountant knows the superintendent will be relying on this information in the monitoring and regulation of the financial position of the arrangement; [PL 1995, c. 618, §13 (NEW).]

D. That the accountant consents and agrees to make available for review by the superintendent or the superintendent's designee or appointed agent, the accountant's workpapers relating to the arrangement. For purposes of this paragraph, workpapers are the records kept by the accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to the accountant's examination of the financial statements of the arrangement. Workpapers may include audit planning documents, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of arrangement documents and schedules or commentaries prepared or obtained by the accounts in the course of the accountant's examination; and [PL 1995, c. 618, §13 (NEW).]

E. A representation that the accountant is properly licensed by an appropriate state licensing authority and that the accountant is a member in good standing in the American Institute of Certified Public Accountants. [PL 1995, c. 618, §13 (NEW).]

[PL 1995, c. 618, §13 (NEW).]

2. Actuarial report. At least once every 2 years each arrangement must have a report prepared by an actuary who is an associate or fellow of the Society of Actuaries and the American Academy of Actuaries as to the actuarial soundness of the arrangement. After an arrangement has filed 2 actuarial reports pursuant to this subsection, an arrangement may request that the superintendent grant a waiver of the filing requirement to the arrangement. If required, the report must be filed with the superintendent. The report must consist of at least the following:

A. An assessment of the adequacy of contribution rates in meeting the level of benefits provided and changes, if any, needed in the contribution rates to achieve or preserve a level of funding adequate to enable payment of the benefit amounts provided under the arrangement, which must include a valuation of present assets, valued in accordance with insurance accounting precepts, and prospective assets and liabilities of the plan and the extent of unfunded accrued liabilities; [PL 1993, c. 688, §1 (NEW).]

B. A plan and schedule to amortize any unfunded liabilities and a description of actions taken to reduce unfunded liabilities; [PL 1993, c. 688, §1 (NEW).]

C. A description and explanation of actuarial assumptions; [PL 1993, c. 688, §1 (NEW).]

D. A comparative review illustrating the level of funds available to the arrangement from rates, investment income and other sources realized over the period covered by the report indicating the assumptions used; [PL 1993, c. 688, §1 (NEW).]

E. A certification by the actuary that the report is complete and accurate and that in the actuary's opinion the techniques and assumptions used are reasonable, make good and sufficient provision to meet the obligations of the arrangement and meet the requirements and intent of this chapter; and [PL 1993, c. 688, §1 (NEW).]

F. Other factors or statements as may be reasonably required by the superintendent in order to determine the actuarial soundness of the plan. [PL 1993, c. 688, §1 (NEW).]

[PL 2001, c. 570, §3 (AMD).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW). PL 1995, c. 618, §13 (AMD). PL 2001, c. 570, §3 (AMD).

§6612. Place of business; records maintenance

Each arrangement must have and maintain its principal place of business in the State and must make available to the superintendent complete records of its assets, transactions and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of business transacted. [PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW).

§6613. Grounds for denial, suspension or revocation of arrangement

1. Mandatory denial, suspension or revocation. Subject to other provisions of this chapter, the superintendent shall deny, suspend or revoke an arrangement's authorization if the superintendent finds that the arrangement:

A. Is impaired within the meaning of section 6601, subsection 3; [PL 1993, c. 688, §1 (NEW).]

B. Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers has refused to give information with respect to its affairs or to perform any other legal obligation as to such examination when required by the superintendent; [PL 1993, c. 688, §1 (NEW).]

C. Has failed to pay a judgment rendered against it in the State within 30 days after the judgment becomes final; or [PL 1993, c. 688, §1 (NEW).]

D. No longer meets the requirements for the authority originally granted. [PL 1993, c. 688, §1 (NEW).]

[PL 1993, c. 688, §1 (NEW).]

2. Discretionary denial, suspension or revocation. The superintendent, in the superintendent's discretion, may deny, suspend or revoke the authorization of an arrangement if the superintendent finds that the arrangement:

A. Has violated this chapter or a lawful order or rule of the superintendent; [PL 1993, c. 688, §1 (NEW).]

B. Has refused to be examined or to produce its accounts, records and files for examination, or if any of its officers have refused to give information with respect to its affairs or to perform any other legal obligation as to such examination when required by the superintendent; or [PL 1993, c. 688, §1 (NEW).]

C. Has failed to correct any deficiency determined pursuant to section 6610. [PL 1993, c. 688, §1 (NEW).]

[PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW).

§6614. Violations

In addition to any other penalties provided for by this Title and subject to this chapter: [PL 1993, c. 688, §1 (NEW).]

1. Civil penalty. An arrangement that fails to obtain and maintain a valid approval from the superintendent while operating or maintaining a multiple-employer welfare arrangement is subject to a civil penalty of not less than $5,000 or more than $50,000 for each violation; and
[PL 1993, c. 688, §1 (NEW).]

2. Cease and desist order. The superintendent may issue a cease and desist order if the superintendent finds a person operating or maintaining a multiple-employer welfare arrangement without a currently effective certificate of approval.
[PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW).

§6615. Delinquency proceedings

The rehabilitation, liquidation, conservation or dissolution of a multiple-employer welfare arrangement must be conducted under the supervision of the superintendent, who has all power with regard to the rehabilitation, liquidation, conservation or dissolution of a multiple-employer welfare arrangement granted to the superintendent under the laws governing the rehabilitation, liquidation, conservation or dissolution of insurers. [PL 1993, c. 688, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW).

§6616. Regulatory authority

The superintendent may adopt, pursuant to Title 5, chapter 375, subchapter II, rules that the superintendent determines reasonable and necessary to carry out properly the functions and responsibilities assigned under the laws of this State. Rules adopted to implement the provisions of this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [PL 1995, c. 618, §14 (AMD).]

SECTION HISTORY

PL 1993, c. 688, §1 (NEW). PL 1995, c. 618, §14 (AMD).

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