

P.L. 2015, CHAPTER 172, *approved December 9, 2015*
Assembly, No. 3421 (*Third Reprint*)

1 AN ACT concerning certain multiple employer welfare
2 arrangements and amending P.L.2001, c.352.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 ²1. Section 3 of P.L.2001, c.352 (C.17B:27C-3) is amended to
8 read as follows:

9 3. For purposes of this act:

10 "Association" means a group of 100 or more persons organized
11 and maintained in good faith for purposes other than that of
12 obtaining insurance, in active existence for more than one year,
13 having a constitution and bylaws that provide that: the association
14 holds regular meetings not less than annually to further the purposes
15 of the members; except for credit unions, the association collects
16 dues or solicits contributions from members; and the members have
17 voting privileges and representation on the governing board and
18 committees.

19 "Commissioner" means the Commissioner of Banking and
20 Insurance.

21 "Employee welfare benefit plan" has the meaning set forth in
22 subsection (1) of 29 U.S.C. s.1002.

23 "Large employer" means a member employer with more than
24 ³**[100]** ⁵⁰³ eligible employees, as defined by section 1 of P.L.1992,
25 c.162 (C.17B:27A-17).

26 "Multiple employer welfare arrangement" has the meaning set
27 forth in subsection (40) of 29 U.S.C. s.1002.

28 "Self-funded multiple employer welfare arrangement" means a
29 self-funded or partially self-funded multiple employer welfare
30 arrangement that provides for health benefits plans that has two or
31 more employers who each have two or more employees and that has
32 one or more of the employer members either domiciled in this State
33 or its principal headquarters or principal administrative office
34 located in this State.

35 "Small employer" means the same as defined in section 1 of
36 P.L.1992, c.162 (C.17B:27A-17) ³**[, and on or after the effective**
37 **date of P.L. , c. (pending before the Legislature as this bill), the**
38 **term "small employer" shall mean member employers with not**

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹**Assembly AAP committee amendments adopted June 23, 2014.**

²**Senate floor amendments adopted March 16, 2015.**

³**Assembly amendments adopted in accordance with Governor's recommendations November 9, 2015.**

1 more than 100 eligible employees, as defined by section 1 of
2 P.L.1992, c.162 (C.17B:27A-17)]³ .²

3 (cf: P.L.2001, c.352, s.3)

4

5 ²[1.] 2.² Section 5 of P.L.2001, c.352 (C.17B:27C-5) is
6 amended

7 to read as follows:

8 5. a. A self-funded multiple employer welfare arrangement
9 shall deposit ¹[, or obtain on its behalf a deposit from an
10 appropriate capital funding source,]¹ and continuously maintain
11 with a financial institution licensed in this State, cash or securities
12 as defined in N.J.S. 17B:18-37, having an admitted asset value of
13 not less than ~~[\$200,000]~~ ¹[\$300,000] \$200,000¹. The deposit
14 shall be held for the benefit and protection of all covered members
15 of the self-funded multiple employer welfare arrangement¹[,
16 provided, however, that any permitted underwriting gains may be
17 shared with any entity acting as a source of deposit funds to the
18 extent otherwise consistent with P.L.2001, c.352 (C.17B:27C-1 et
19 seq.)]¹. The self-funded multiple employer welfare arrangement
20 shall further maintain a cash reserve for loss in an amount
21 established by a qualified actuary as being adequate to provide for
22 all incurred losses including unpaid claims.

23 b. ²[¹A self-funded multiple employer welfare arrangement
24 may obtain on its behalf the deposit of cash or securities required by
25 subsection a. of this section from an appropriate capital funding
26 source. Permitted underwriting gains may be shared with an entity
27 acting as a source of deposit funds to the extent otherwise
28 consistent with P.L.2001, c.352 (C.17B:27C-1 et seq.). A
29 distribution of underwriting gains shall not take place unless the
30 self-funded multiple employer welfare arrangement has first
31 demonstrated two consecutive years of positive operating results,
32 and thereafter a distribution of underwriting gains shall only include
33 the underwriting gains of the immediately preceding year. A
34 distribution of underwriting gains shall not take place if the self-
35 funded multiple employer welfare arrangement incurred an
36 operating loss in the immediately preceding year.

37 c.¹² A self-funded multiple employer welfare arrangement shall
38 maintain aggregate stop-loss coverage, with a retention level of 125
39 percent of expected claims per year, including provisions to cover
40 incurred, unpaid claims liability in the event of the termination or
41 liquidation of the self-funded multiple employer welfare
42 arrangement, and specific stop-loss coverage, with a retention level
43 determined annually by a qualified actuary based on sound actuarial
44 principles. Any stop-loss contract maintained pursuant to this
45 subsection shall contain a provision that the stop-loss insurer shall
46 give the self-funded multiple employer welfare arrangement and the

1 commissioner a minimum of 180 days' notice of cancellation or
2 nonrenewal. If the self-funded multiple employer welfare
3 arrangement fails to secure replacement coverage within 90 days
4 after receipt of the notice of cancellation or nonrenewal, the trustees
5 of the self-funded multiple employer welfare arrangement shall
6 provide for the orderly liquidation of the self-funded multiple
7 employer welfare arrangement.

8 (cf: P.L.2001, c.352, s.5)

9

10 ²[2.] 3.² Section 6 of P.L.2001, c.352 (C.17B:27C-6) is
11 amended to read as follows:

12 6. Each self-funded multiple employer welfare arrangement
13 shall file all of the following with the commissioner:

14 a. No later than May 15th of each calendar year or four months
15 and 15 days after the end of each fiscal year of the self-funded
16 multiple employer welfare arrangement, financial statements
17 audited by a certified public accountant and on forms prescribed by
18 the commissioner, an actuarial opinion rendered by a qualified
19 actuary, a report of its Risk-Based Capital (RBC) as of the end of
20 the immediately preceding calendar year, in a form and containing
21 such information as is required by the instructions adopted by the
22 National Association of Insurance Commissioners for health
23 insurers, as amended from time to time and proof of the deposit
24 required in accordance with section 5 of this act. The opinion shall
25 be based on standards adopted from time to time by the Actuarial
26 Standards Board and on any additional standards that the
27 commissioner may prescribe by regulation. For purposes of this
28 section and section 5 of this act, "qualified actuary" means a
29 member in good standing of the American Academy of Actuaries
30 who meets the requirements set forth in regulations of the
31 commissioner.

32 b. Within 60 days after the end of each fiscal quarter, unaudited
33 financial statements on forms prescribed by the commissioner,
34 affirmed by an appropriate officer or agent of the self-funded
35 multiple employer welfare arrangement.

36 c. Within 60 days after the end of each fiscal quarter, a report
37 on forms prescribed by the commissioner certifying that the self-
38 funded multiple employer welfare arrangement maintains cash or
39 liquid assets in a claim reserve account sufficient to meet the
40 requirements of section 5 of this act.

41 d. The information required to be filed pursuant to subsections
42 a., b., and c. of this section shall be ¹[separately]¹ certified by ¹[a
43 board of trustees] an officer¹ of the self-funded multiple employer
44 welfare arrangement. ¹[The board of trustees shall consist of one
45 designee selected by each member employer, in addition to at least
46 one independent trustee chosen by majority vote of the members.
47 The board of trustees shall meet at least quarterly.]¹

1 e. ²A majority of the board of trustees of a self-funded multiple
2 employer welfare arrangement shall represent participating
3 employer members, and at least one trustee shall be a non-
4 participating independent trustee chosen by a majority vote of the
5 trustees.

6 f.² The self-funded multiple employer welfare arrangement
7 shall ²[¹, during its first five years,¹]² establish and maintain a
8 website upon which all of the filings required pursuant to this
9 section and information concerning its governance and financial
10 performance shall be publicly available for a period of at least five
11 years ¹after the reporting period¹. ²This website shall also, at all
12 times, indicate the status of the deposit required to be continuously
13 maintained with a financial institution licensed in this State,
14 pursuant to subsection a. of section 5 of P.L.2001,
15 c.352 (C.17B:27C-5) and the name of that institution.²

16 (cf: P.L.2001, c.352, s.6)

17

18 ²[3.]⁴² Section 7 of P.L.2001, c.352 (C.17B:27C-7) is
19 amended to read as follows:

20 7. a. The liability of each member for the obligations of the
21 self-funded multiple employer welfare arrangement shall be
22 individual, several and proportionate, but not joint, except as
23 provided in this section.

24 b. Each member shall have a contingent assessment liability
25 pursuant to subsection c. of this section. Each benefit plan issued
26 by a self-funded multiple employer welfare arrangement shall
27 contain a statement of the contingent liability. Both the application
28 for benefits and the benefit plan shall contain in contrasting color,
29 not less than 10-point type, the following statement: "This is a fully
30 assessable benefit plan. In the event that the self-funded multiple
31 employer welfare arrangement is unable to pay its obligations,
32 members shall be required to contribute on a pro rata earned
33 premium basis the funds necessary to meet any unfilled
34 obligations."

35 c. All self-funded multiple employer welfare arrangements
36 shall provide that members are assessed in accordance with the
37 provisions of this section. Each self-funded multiple employer
38 welfare arrangement may assess all members **[if its prior fiscal year**
39 **statement of operations reflected a loss]** ²[to the extent deemed
40 necessary by sound actuarial standards and as certified by an
41 appropriate actuarial opinion] if its prior fiscal year statement of
42 operations reflected a loss². Each self-funded multiple employer
43 welfare arrangement shall assess all members if the arrangement's
44 fund balance or reserve at the end of any accounting period is less
45 than the amount required by law. The minimum assessment shall
46 be the amount necessary to comply with the requirements of

1 sections 5 and 9 of this act. Each member's assessment shall be
 2 computed by applying the earned premium for each employer's
 3 benefit plan during the prior fiscal year as a percent of the amount
 4 of the total of all employers' earned premium for the same year.
 5 Each member's assessment shall be that ~~members's~~ member's
 6 percent times the total assessment levied. ~~Assessments shall be~~
 7 ~~paid by each member within~~² ~~45~~¹ ~~60~~¹ days of being levied.²
 8 In the event a member fails to pay an assessment, the ~~self-funded~~
 9 ~~multiple employer welfare arrangement shall have the option to~~
 10 ~~terminate the member's participation in the plan within 30 days~~
 11 ~~after the expiration of the period covered by any earned premiums~~
 12 ~~actually paid to date, subject to adequate reserves being set aside~~
 13 ~~for the due payment of any terminal liabilities or incurred but not~~²
 14 ~~yet revealed~~¹ ~~reported~~¹ claims for that member's plan
 15 participants, as certified by an appropriate actuarial opinion.
 16 Alternatively, the² other members shall ~~be liable~~² ~~, if in~~
 17 ~~accordance with the plan design, assume liability~~ be liable² on a
 18 proportionate basis for an additional assessment~~. The~~² ~~, in~~
 19 ~~which case, the~~ . The² self-funded multiple employer welfare
 20 arrangement, acting on behalf of all members who paid the
 21 additional assessment, shall take appropriate legal action to recover
 22 the assessment from any member who fails to pay an assessment.

23 d. ~~In~~² ~~The members shall deposit reserves, as certified by a~~
 24 ~~qualified actuarial opinion, sufficient to provide for the payment,~~
 25 ~~in~~² ~~In~~² the event of a rehabilitation, liquidation, conservation or
 26 dissolution of a self-funded multiple employer welfare arrangement,
 27 ~~the court, pursuant to section 11 of this act, may assess the~~
 28 ~~members in~~² ~~of~~² ~~the court, pursuant to section 11 of this act, may~~
 29 ~~assess the members in~~² the amounts needed to pay all incurred but
 30 unpaid claims and all ~~projected claims,~~² ~~terminal liabilities as of~~
 31 ~~the date of that event. If any such member has not complied with~~
 32 ~~the foregoing, the court, pursuant to section 11 of P.L.2001,~~
 33 ~~c.352 (C.17B:27C-11), may assess that member for those amounts,~~
 34 ~~projected claims,~~² together with the costs and expenses of collecting
 35 the assessments, a reasonable loading factor for uncollected
 36 assessments and the costs and expenses of the rehabilitation,
 37 liquidation, conservation or dissolution.

38 e. The following notice shall be provided to employers and
 39 employees who obtain coverage from a self-funded multiple
 40 employer welfare arrangement:

41

42

NOTICE

43 THE SELF-FUNDED MULTIPLE EMPLOYER WELFARE
 44 ARRANGEMENT IS NOT AN INSURANCE COMPANY ¹~~AND~~
 45 DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE

1 FUNDS CREATED BY NEW JERSEY LAW. THESE FUNDS
 2 WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS
 3 IF A SELF-FUNDED MULTIPLE EMPLOYER WELFARE
 4 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE
 5 TO MAKE PAYMENTS AS PROMISED¹ ²AND DOES NOT
 6 PARTICIPATE IN ANY OF THE GUARANTEE FUNDS
 7 CREATED BY NEW JERSEY LAW. THESE FUNDS WILL NOT
 8 PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF A SELF-
 9 FUNDED MULTIPLE EMPLOYER WELFARE
 10 ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE
 11 TO MAKE PAYMENTS AS PROMISED².

12 THE HEALTH CARE BENEFITS THAT YOU HAVE
 13 PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING
 14 ISSUED BY A SELF-FUNDED MULTIPLE EMPLOYER
 15 WELFARE ARRANGEMENT. ²THE SELF-FUNDED
 16 MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS
 17 REQUIRED TO MAINTAIN SUFFICIENT RESERVES TO PAY
 18 FOR ALL INCURRED LOSSES INCLUDING UNPAID CLAIMS.

19 IT IS IMPORTANT THAT YOU CHECK WITH YOUR
 20 EMPLOYER TO DETERMINE WHICH, IF ANY, STATE
 21 MANDATED HEALTH CARE BENEFITS MAY BE COVERED
 22 BY YOUR ARRANGEMENT.²

23 FOR ADDITIONAL INFORMATION ABOUT THE
 24 MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU
 25 SHOULD ASK QUESTIONS OF YOUR TRUST
 26 ADMINISTRATOR AT _____(this blank should
 27 include the "800" consumer service telephone number).
 28 (cf: P.L.2001, c.352, s.7)

29

30 ²[4.] 5.² Section 8 of P.L.2001, c.352 (C.17B:27C-8) is
 31 amended to read as follows:

32 8. a. Except as provided by this act, the insurance laws of this
 33 State do not apply to the operation of self-funded multiple employer
 34 welfare arrangements. A self-funded multiple employer welfare
 35 arrangement is not an insurance company or insurer under the laws
 36 of this State.

37 b. Any self-funded multiple employer welfare arrangement
 38 shall offer all products that it is actively marketing to any employer,
 39 and accept any employer and any employee of that employer who
 40 applies for any of those products; provided, however that a self-
 41 funded multiple employer welfare arrangement may limit
 42 participation to members of the association.

43 c. Assessments payable by small employer members, except
 44 for dental plans, shall be established in accordance with the rating
 45 requirements of section 9 of P.L.1992, c.162 (C.17B:27A-25) and
 46 regulations promulgated thereunder ²]; provided, however,]² [that
 47 for the first year after the effective date of this act, a self-funded

1 multiple employer welfare arrangement providing benefits in this
2 State prior to the effective date of this act shall: (1) not charge a
3 small employer member an assessment greater than 300 percent of
4 the assessment charged to the lowest rated small employer member
5 of the self-funded multiple employer welfare arrangement; (2) for
6 the second year after the effective date of this act, not charge a
7 small employer member an assessment greater than 250 percent of
8 the assessment charged to the lowest rated small employer member
9 of the self-funded multiple employer welfare arrangement; and (3)
10 for each year thereafter, comply with the rating requirements of
11 section 9 of P.L.1992, c.162 (C.17B:27A-25) and regulations
12 promulgated thereunder] ²[a self-funded multiple employer welfare
13 arrangement may employ an assessment methodology that results in
14 assessments for the highest rated small employer member which are
15 greater than 200 percent of the assessments produced for the lowest
16 rated small employer member for each plan and option]².

17 d. **[The]** If the member is a small employer, the health benefits
18 to be provided by the self-funded multiple employer welfare
19 arrangement shall at all times be ²[¹actuarially¹]² equal to or
20 greater than benefits required to be provided in the lowest benefit
21 level standard plan promulgated by the New Jersey Small Employer
22 Health Benefits Program pursuant to P.L.1992, c.162 (C.17B:27A-
23 17 et seq.).

24 e. ²A large employer participating in a multiple employer
25 welfare arrangement shall not be required to adhere to the plan or
26 design elements, or any required coverage offerings applicable to
27 small employers, including but not limited to deductibles, co-pays,
28 and co-insurance amounts. After the effective date of P.L. _____,
29 c. (now pending before the Legislature as this bill), large
30 employer members of a multiple employer welfare arrangement
31 shall continue to offer all health benefits mandated by State law and
32 in effect on October 1, 2014. Any new or additional health benefits
33 mandated by State law required to be offered after October 1, 2014
34 shall not be required to be offered by large employers participating
35 in a multiple employer welfare arrangement. Except as provided in
36 P.L. 2001, c. 352 (C. 17B:27C-1 et seq.) as amended by P.L. _____,
37 c. (now pending before the Legislature as this bill), multiple
38 employer welfare arrangements with large employers shall be
39 otherwise subject to the requirements of State and federal law.

40 f. ² ¹**[If]** Notwithstanding any other provision to the contrary, if¹
41 the member is ²**[not]**² a ²**[small]** large² employer, the rate manual
42 used to calculate program rates may include appropriate
43 classification factors such as claims experience and utilization, age,
44 gender ², tobacco use,² and geography, and such specific
45 underwriting adjustments as may be certified in accordance with
46 subsection d. of section 6 of P.L.2001, c.352 (C.17B:27C-6).

1 ²[f.] g.² The self-funded multiple employer welfare
2 arrangement may provide to its members a health and wellness
3 program consistent with the United States Department of Labor's
4 requirements ²[, which shall be filed with the commissioner on an
5 annual basis]² .

6 ²[g.] h.² The self-funded multiple employer welfare
7 arrangement may provide to its members an internet-based system
8 for the administration, billing and claims processing of its benefits.
9 (cf: P.L.2001, c.352, s.8)

10
11 ²[5.] 6.² This act shall take effect on ²[the]² ¹[first] ²[60th]¹
12 day]² ¹[of the sixth month]¹ ²[next following enactment] January
13 1, 2016, except that the Department of Banking and Insurance may
14 take such appropriate anticipatory administrative action, including
15 the promulgation of any regulations, necessary to ensure the
16 implementation of this act on its effective date ².

17

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21 Revises the "Self-Funded Multiple Employer Welfare
22 Arrangement Regulation Act."