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any gynecological care beyond the annual examination, the carrier may require the patient or the examining physician, certified nurse practitioner or certified nurse midwife to secure from the patient's primary care physician a referral to the participating physician, certified nurse practitioner or certified nurse midwife from whom such care may be obtained.

2. Application. This section applies to all policies and contracts executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 1997. For purposes of this section, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

This section does not prohibit a carrier from requiring a physician, certified nurse practitioner or certified nurse midwife participating in the plan to inform a woman's primary care physician prior to each treatment pursuant to this section.

Sec. 5. 24-A MRSA §§4240 and 4241 are enacted to read:

§4240. Coverage for Pap tests

All health maintenance organization plan contracts must provide coverage for screening Pap tests recommended by a physician.

§4241. Gynecological and obstetrical services

1. Coverage in managed care plans. With respect to managed care plans that require enrollees to select primary care physicians, a health maintenance organization that issues group policies and contracts must meet the following requirements.

A. The health maintenance organization must permit a physician who specializes in obstetrics and gynecology to serve as a primary care physician if the physician qualifies under the organization's credentialling policy.

B. All group plan contracts must provide coverage for an annual gynecological examination, including routine pelvic and clinical breast examinations, performed by a physician, certified nurse practitioner or certified nurse midwife participating in the plan, without requiring the prior approval of the primary care physician.

C. If the examination specified in paragraph B reveals a gynecological condition for which another visit to the physician participating in the plan is medically required and appropriate, or for any gynecological care beyond the annual examination, the carrier may require the patient or the examining physician, certified nurse practitioner or certified nurse midwife to secure from the patient's primary care physician a referral to the participating physician, certified nurse practitioner or certified nurse midwife from whom such care may be obtained.

2. Application. This section applies to all policies and contracts executed, delivered, issued for delivery, continued or renewed in this State on or after January 1, 1997. For purposes of this section, all contracts are deemed to be renewed no later than the next yearly anniversary of the contract date.

This section does not prohibit a carrier from requiring a physician, certified nurse practitioner or certified nurse midwife participating in the plan to inform a woman's primary care physician prior to each treatment pursuant to this section.

Sec. 6. Effective date. This Act takes effect January 1, 1997.

Effective January 1, 1997.

CHAPTER 618

S.P. 689 - L.D. 1761

An Act to Amend the Laws Regarding Employee Leasing Companies

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the recent collapse of an employee leasing company caused financial harm to many former employees and former client companies due to unfunded health care benefit plans; and

Whereas, employee leasing companies play an important role in the economic development of this State; and

Whereas, immediate steps are necessary to ensure that employee leasing companies do not offer self-insured health benefits without proper funding; and

Whereas, having state officials work together to monitor the development and regulation of the employee leasing industry will benefit employers, employees and the leasing industry directly; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preserva-

tion of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA §601, sub-§24 is enacted to read:

24. Multiple-employer welfare arrangements. Applications for authorization $500.

Sec. 2. 24-A MRSA §2612-A, sub-§2-A is enacted to read:

2-A. Notwithstanding subsections 1 and 2, an employee leasing company registered pursuant to Title 32, chapter 125 qualifies as an eligible group for purposes of the purchase of group life insurance as provided in this section.

Sec. 3. 24-A MRSA §2808, sub-§2-A is enacted to read:

2-A. Notwithstanding subsections 1 and 2, an employee leasing company registered pursuant to Title 32, chapter 125 qualifies as an eligible group for purposes of the purchase of group life insurance as provided in this section.

Sec. 4. 24-A MRSA §2884, as enacted by PL 1983, c. 801, §11, is amended to read:

§2884. Legal services insurance authorized to be sold on a group basis

~~Any~~ An insurance company authorized to write legal services insurance in this State, which for the purposes of this chapter only ~~shall be deemed to be~~ is considered a form of health insurance, ~~shall have~~ has the power to issue group legal services insurance policies or may, by providing for the mental and emotional welfare of individuals and members of ~~his~~ an individual's family by defraying the costs of legal services, include legal services insurance in and as a part of a group health insurance policy. Group legal services insurance is that form of voluntary legal services insurance covering employees or members, with or without their eligible dependents, written under a master policy issued to any governmental corporation, unit, agency or department or to any employer ~~or,~~ association of employers or employee leasing company registered pursuant to Title 32, chapter 125, including the trustee or trustees of a fund established by that employer ~~or,~~ association of employers or registered employee leasing company, a labor union or other employee organization, including the trustees of a fund established by that labor union or employee organization. The terms "employee" and "employees" ~~shall~~ have the same meaning as are given to those terms for the purposes of writing group life insurance in this State. Legal services insurance ~~shall~~ may only ~~be permitted to~~ be issued in this State on a group policy basis.

Sec. 5. 24-A MRSA §6601, sub-§5, as enacted by PL 1993, c. 688, §1, is amended to read:

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.

Sec. 6. 24-A MRSA §6603, as enacted by PL 1993, c. 688, §1, is amended by enacting a new first paragraph to read:

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.

Sec. 7. 24-A MRSA §6603-A is enacted to read:

§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.

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.

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.

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.

D. Any necessary excess insurance must be purchased from an insurer licensed to transact health or casualty insurance in the State.

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.

F. The arrangement must pay the filing fee specified in section 601 at the time of the application for approval.

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.

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.

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.

Sec. 8. 24-A MRSA §6604, sub-§§7 and 8, as enacted by PL 1993, c. 688, §1, are amended to read:

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 superin-

tendent determines that the plan is designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles; ~~and~~

8. Additional information. Additional information that the superintendent may reasonably require~~.~~ ; and

Sec. 9. 24-A MRSA §6604, sub-§9 is enacted to read:

9. Filing fee. The filing fee specified in section 601.

Sec. 10. 24-A MRSA §6606, sub-§1, as enacted by PL 1993, c. 688, §1, is amended to read:

1. Examination of finances. The superintendent may conduct, upon reasonable notice, an examination to determine the financial condition of an arrangement. ~~Examiners~~ 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.

Sec. 11. 24-A MRSA §6607, first ¶, as enacted by PL 1993, c. 688, §1, is amended to read:

If the superintendent determines that a multiple-employer welfare arrangement has failed to establish or maintain the actuarially indicated level of funding ~~in the trust account~~ as required, the superintendent may require the arrangement to file a security deposit or a surety bond in accordance with this section.

Sec. 12. 24-A MRSA §6610, as enacted by PL 1993, c. 688, §1, is amended to read:

§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 ~~such~~ an additional period as the trustees of the arrangement consider prudent. In addition, the trustees may purchase ~~such~~ additional insurance ~~as~~ 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.

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.

Sec. 13. 24-A MRSA §6611, sub-§1-A is enacted to read:

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;

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;

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;

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

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.

Sec. 14. 24-A MRSA §6616, as enacted by PL 1993, c. 688, §1, is amended to read:

§6616. Regulatory authority

The superintendent may adopt, pursuant to Title 5, chapter 375, subchapter II, ~~such~~ rules ~~as~~ 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.

Sec. 15. 26 MRSA §1401, sub-§§3 and 4, as enacted by PL 1971, c. 620, §12, are amended to read:

3. Purchase. Coordinate the purchase and use of all the department equipment; ~~and~~

4. Review. Review the function and operation of the department to insure that overlapping functions and operations are brought to the attention of the Governor and Legislature~~.~~;

Sec. 16. 26 MRSA §1401, sub-§5, as enacted by PL 1983, c. 469, §2, is amended to read:

5. Data collection. ~~The Commissioner of Labor shall conduct~~ Conduct a survey of manufacturing and nonmanufacturing industries throughout the State once every 2 years to determine hourly occupational wage rates by sex~~.~~; and

Sec. 17. 26 MRSA §1401, sub-§6 is enacted to read:

6. Monitor employee leasing industry. Coordinate the efforts of the State to ensure that the employee leasing industry is developing in a manner that provides the greatest benefit to Maine employers while minimizing the financial risk to those employers and to the leased employees. The commissioner shall meet at least annually with representatives of the Bureau of Insurance, the Bureau of Taxation, the Department of Economic and Community Development, the Workers' Compensation Board, the Bureau of Labor Standards within the Department of Labor. This group shall develop written material for employers and new businesses that are considering using an employee leasing firm. The material must provide guidance for employers on what questions to ask to minimize their own financial risk and that of their employees. The material must also include instructions on how to obtain public information on employee leasing companies, such as information required for registration purposes. The commissioner shall meet with the state officials listed in this subsection on at least an annual basis to review the status of the employee leasing industry and update the written materials as needed.

Sec. 18. 32 MRSA §14051, sub-§1-A is enacted to read:

1-A. Commissioner. "Commissioner" means the Commissioner of Labor.

Sec. 19. 32 MRSA §14052, as enacted by PL 1991, c. 468, §4, is amended to read:

§14052. Registration required

An employee leasing company may not engage in business from offices in this State or enter into any contractual relationship with a client company for the purpose of providing employees for business conducted by the client company in this State unless the employee leasing company is registered under this chapter. An employee leasing company or person may not use the name or title "staff leasing company," "employee leasing company," "registered staff leasing company," or "staff leasing services company" or otherwise represent that it is registered under this chapter unless the entity or person is registered under this chapter.

Sec. 20. 32 MRSA §14053, as enacted by PL 1991, c. 468, §4, is amended to read:

§14053. Registration process

1. Statement. Except as otherwise provided in this section, each employee leasing company required to be registered under section 14052 shall provide the

~~superintendent~~ commissioner with information required by the ~~superintendent~~ commissioner on forms that the ~~superintendent~~ commissioner specifies. At a minimum, employee leasing companies shall provide the following information:

A. The name or names under which the registrant conducts business;

B. The address of the principal place of business of the employee leasing company and the address of each office it maintains in this State;

C. The employee leasing company's taxpayer or employer identification number;

D. A list by jurisdiction of each name under which the employee leasing company has operated in the preceding 5 years, including any alternative names, names of predecessors and, if known, successor business entities;

E. A list of all persons or entities that own a 5% or greater interest in the employee leasing company at the time of application and a list of persons who formerly owned a 5% or greater interest in the employee leasing company~~,~~ or its predecessors in the preceding 5 years; and

F. A list of the cancellations or nonrenewals of workers' compensation insurance issued to the employee leasing company or its predecessors in the preceding 5 years. The list must include the policy or certificate numbers, names of insurers or other providers of coverage, dates of cancellation and reasons for cancellation. If coverage has not been canceled or has been renewed, the registration must include a sworn affidavit signed by the chief executive officer of the employee leasing company attesting to that fact.

2. Renewal. Prior to January 31st of each year or any other time fixed by the ~~superintendent~~ commissioner, each registrant shall renew its registration by notifying the ~~superintendent~~ commissioner of any changes in the information previously provided pursuant to this section.

3. List. The ~~superintendent~~ commissioner shall maintain a list of employee leasing companies registered under this chapter.

4. Forms. The ~~superintendent~~ commissioner may prescribe forms necessary to promote the efficient administration of this section.

~~**5. Existing companies.** Any employee leasing company doing business in this State prior to the effective date of this section shall register with the superintendent within 30 days of the effective date of this section.~~

Sec. 21. 32 MRSA §14055, sub-§1, ¶A, as enacted by PL 1991, c. 468, §4, is repealed and the following enacted in its place:

A. A registered employee leasing company qualifies as an "other group" within the meaning of Title 24-A, sections 2612-A and 2808 for purposes of procurement of group life and health insurance with respect to employees leased to a client company. A registered employee leasing company qualifies as an eligible group within the meaning of Title 24-A, section 2884 for purchase of group legal services insurance. Any employee welfare plan or benefit, other than workers' compensation insurance, provided to employees leased to a client company on less than a fully insured basis may be provided only subject to and in accordance with Title 24-A, chapter 81.

Sec. 22. 32 MRSA §14055, sub-§5, as enacted by PL 1991, c. 468, §4, is amended to read:

5. Disclosure. The employee leasing company shall disclose to client companies services to be rendered, including costs, and the respective rights and obligations of the parties prior to entering into or receiving a leasing arrangement. This disclosure must include a statement that the client company may take complaints to the ~~Bureau of Insurance~~ Department of Labor.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 8, 1996.

CHAPTER 619

S.P. 635 - L.D. 1643

An Act to Clarify Certain Provisions Relating to Workers' Compensation Self-insurance

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Legislature adopted the Workers' Compensation Residual Market Deficit Resolution and Recovery Act on June 23, 1995; and

Whereas, the definition of "successor self-insured employer" and the applicable surcharge of a successor entity are unclear; and

Whereas, the Legislature wishes to clarify its intent regarding a successor self-insured employer; and