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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE NO. 417

February 2, 2009

Authored by Atkins, Smith, Mullery, Davnie, Clark and others

The bill was read for the first time and referred to the Committee on Commerce and Labor

February 19, 2009

Committee Recommendation and Adoption of Report:

To Pass as Amended and re-referred to the Committee on Civil Justice

February 26, 2009

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

April 16, 2009

Calendar For The Day, Amended

Read Third Time as Amended

Passed by the House as Amended and transmitted to the Senate to include Floor Amendments

1.1 A bill for an act
1.2 relating to commerce; prohibiting certain claims processing practices by
1.3 third-party administrators of health coverage plans; regulating health claims
1.4 clearinghouses; providing recovery of damages and attorney fees for breach of
1.5 an insurance policy; permitting a deceased professional's surviving spouse to
1.6 retain ownership of a professional firm that was solely owned by the decedent
1.7 for up to one year after the death; amending Minnesota Statutes 2008, sections
1.8 60A.23, subdivision 8; 319B.02, by adding a subdivision; 319B.07, subdivision
1.9 1; 319B.08; 319B.09, subdivision 1; 471.982, subdivision 3; proposing coding
1.10 for new law in Minnesota Statutes, chapters 60A; 62Q.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 Section 1. [60A.0811] BREACH OF INSURANCE POLICY; RECOVERY OF
1.13 DAMAGES AND ATTORNEY FEES.

1.14 Subdivision 1. Definitions. For purposes of this section:

1.15 (1) "insurance policy" means a commercial or professional insurance policy or
1.16 contract other than:

1.17 (i) a workers' compensation insurance policy or contract;

1.18 (ii) a health insurance policy or contract issued, executed, renewed, maintained, or
1.19 delivered in this state by a health carrier as defined in section 62A.011, subdivision 2;

1.20 (iii) a life insurance or disability insurance policy or contract; or

1.21 (iv) a policy or contract issued by a township mutual fire insurance company or
1.22 farmers mutual fire insurance company operating under chapter 65A or 67A;

1.23 (2) "insured" means any named insured, additional insured, or insured under an
1.24 insurance policy; and

1.25 (3) "insurer" means an insurer:

1.26 (i) incorporated or organized in this state; or

2.1 (ii) admitted, authorized, or licensed to do business or doing business in this state but
2.2 not incorporated or organized in this state. Insurer does not include the joint underwriting
2.3 association operating under chapter 62F or 62I; or a township mutual fire insurance
2.4 company or farmers mutual fire insurance company operating under chapter 65A or 67A.

2.5 Subd. 2. **Damages.** (a) In addition to breach of insurance contract damages, attorney
2.6 fees, costs, or other remedies allowable under law or an insurance policy, an insured
2.7 who prevails in any claim against an insurer based on the insurer's breach, repudiation
2.8 or denial of, failure to fulfill, or delay in fulfilling, a duty to provide services or make
2.9 payments is entitled to recover:

2.10 (1) 12 percent per annum interest on monetary amounts due under the insurance
2.11 policy, calculated from the date the request for payment of those benefits was made to
2.12 the insurer; and

2.13 (2) costs and disbursements plus reasonable attorney fees as provided under this
2.14 section.

2.15 (b) Punitive damages or damages for nonmonetary losses are not recoverable
2.16 under this section.

2.17 Subd. 3. **Effect of arbitration under section 65B.525.** If an insurer agrees to
2.18 liability for personal injury protection, uninsured, or underinsured benefits under a policy
2.19 of private passenger vehicle insurance under chapter 65B and only the amount of benefits
2.20 is disputed, the insured is not entitled to recover attorney fees under this section if the
2.21 insurer agrees to submit the dispute to binding arbitration or if binding arbitration is
2.22 required under section 65B.525.

2.23 Subd. 4. **Factors to consider in awarding attorney fees.** An award of attorney
2.24 fees and costs under this section may include consideration of the following factors: the
2.25 amount of time reasonably expended before and during the court action or arbitration
2.26 proceeding; reasonable hourly rates; the outcome obtained; and the nature and complexity
2.27 of the matter.

2.28 Subd. 5. **Insurance producers; liability limited.** Except as otherwise provided
2.29 by law, a licensed insurance producer is not liable for damages and attorney fees under
2.30 this section for a breach of insurance policy by the insurer that appointed the producer
2.31 to transact on its behalf, except to the extent the producer has caused or contributed to
2.32 the breach.

2.33 Subd. 6. **Application.** This section applies to a court action or arbitration
2.34 proceeding, including an action seeking declaratory judgment.

2.35 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to a
2.36 cause of action existing on or arising on or after that date.

3.1 Sec. 2. Minnesota Statutes 2008, section 60A.23, subdivision 8, is amended to read:

3.2 Subd. 8. **Self-insurance or insurance plan administrators who are vendors**
3.3 **of risk management services.** (1) **Scope.** This subdivision applies to any vendor of
3.4 risk management services and to any entity which administers, for compensation, a
3.5 self-insurance or insurance plan. This subdivision does not apply (a) to an insurance
3.6 company authorized to transact insurance in this state, as defined by section 60A.06,
3.7 subdivision 1, clauses (4) and (5); (b) to a service plan corporation, as defined by section
3.8 62C.02, subdivision 6; (c) to a health maintenance organization, as defined by section
3.9 62D.02, subdivision 4; (d) to an employer directly operating a self-insurance plan for
3.10 its employees' benefits; (e) to an entity which administers a program of health benefits
3.11 established pursuant to a collective bargaining agreement between an employer, or group
3.12 or association of employers, and a union or unions; or (f) to an entity which administers a
3.13 self-insurance or insurance plan if a licensed Minnesota insurer is providing insurance
3.14 to the plan and if the licensed insurer has appointed the entity administering the plan as
3.15 one of its licensed agents within this state.

3.16 (2) **Definitions.** For purposes of this subdivision the following terms have the
3.17 meanings given them.

3.18 (a) "Administering a self-insurance or insurance plan" means (i) processing,
3.19 reviewing or paying claims, (ii) establishing or operating funds and accounts, or (iii)
3.20 otherwise providing necessary administrative services in connection with the operation of
3.21 a self-insurance or insurance plan.

3.22 (b) "Employer" means an employer, as defined by section 62E.02, subdivision 2.

3.23 (c) "Entity" means any association, corporation, partnership, sole proprietorship,
3.24 trust, or other business entity engaged in or transacting business in this state.

3.25 (d) "Self-insurance or insurance plan" means a plan providing life, medical or
3.26 hospital care, accident, sickness or disability insurance for the benefit of employees or
3.27 members of an association, or a plan providing liability coverage for any other risk or
3.28 hazard, which is or is not directly insured or provided by a licensed insurer, service plan
3.29 corporation, or health maintenance organization.

3.30 (e) "Vendor of risk management services" means an entity providing for
3.31 compensation actuarial, financial management, accounting, legal or other services for the
3.32 purpose of designing and establishing a self-insurance or insurance plan for an employer.

3.33 (3) **License.** No vendor of risk management services or entity administering a
3.34 self-insurance or insurance plan may transact this business in this state unless it is licensed
3.35 to do so by the commissioner. An applicant for a license shall state in writing the type of
3.36 activities it seeks authorization to engage in and the type of services it seeks authorization

4.1 to provide. The license may be granted only when the commissioner is satisfied that the
4.2 entity possesses the necessary organization, background, expertise, and financial integrity
4.3 to supply the services sought to be offered. The commissioner may issue a license subject
4.4 to restrictions or limitations upon the authorization, including the type of services which
4.5 may be supplied or the activities which may be engaged in. The license fee is \$1,500
4.6 for the initial application and \$1,500 for each three-year renewal. All licenses are for
4.7 a period of three years.

4.8 **(4) Regulatory restrictions; powers of the commissioner.** To assure that
4.9 self-insurance or insurance plans are financially solvent, are administered in a fair and
4.10 equitable fashion, and are processing claims and paying benefits in a prompt, fair,
4.11 and honest manner, vendors of risk management services and entities administering
4.12 insurance or self-insurance plans are subject to the supervision and examination by the
4.13 commissioner. Vendors of risk management services, entities administering insurance or
4.14 self-insurance plans, and insurance or self-insurance plans established or operated by
4.15 them are subject to the trade practice requirements of sections 72A.19 to 72A.30. In lieu
4.16 of an unlimited guarantee from a parent corporation for a vendor of risk management
4.17 services or an entity administering insurance or self-insurance plans, the commissioner
4.18 may accept a surety bond in a form satisfactory to the commissioner in an amount equal to
4.19 120 percent of the total amount of claims handled by the applicant in the prior year. If at
4.20 any time the total amount of claims handled during a year exceeds the amount upon which
4.21 the bond was calculated, the administrator shall immediately notify the commissioner.
4.22 The commissioner may require that the bond be increased accordingly.

4.23 No contract entered into after July 1, 2001, between a licensed vendor of risk
4.24 management services and a group authorized to self-insure for workers' compensation
4.25 liabilities under section 79A.03, subdivision 6, may take effect until it has been filed
4.26 with the commissioner, and either (1) the commissioner has approved it or (2) 60 days
4.27 have elapsed and the commissioner has not disapproved it as misleading or violative of
4.28 public policy.

4.29 **(5) Rulemaking authority.** To carry out the purposes of this subdivision, the
4.30 commissioner may adopt rules pursuant to sections 14.001 to 14.69. These rules may:

4.31 (a) establish reporting requirements for administrators of insurance or self-insurance
4.32 plans;

4.33 (b) establish standards and guidelines to assure the adequacy of financing, reinsuring,
4.34 and administration of insurance or self-insurance plans;

4.35 (c) establish bonding requirements or other provisions assuring the financial integrity
4.36 of entities administering insurance or self-insurance plans; or

5.1 (d) establish other reasonable requirements to further the purposes of this
5.2 subdivision.

5.3 (6) Claims processing practices. No entity administering a self-insurance or
5.4 insurance plan shall:

5.5 (a) require a patient to pay for care provided by an in-network provider an amount
5.6 that exceeds the fee negotiated between the entity and that provider for the covered service
5.7 provided;

5.8 (b) attempt to recoup from the provider a payment owed to the provider by the
5.9 patient for deductibles, co-pays, coinsurance, or other enrollee cost-sharing required under
5.10 the plan, unless the administrator has confirmed with the provider that the patient has
5.11 paid the cost-sharing amounts in full; or

5.12 (c) limit the time period for a provider to submit a claim, which may not be less
5.13 than 90 days through contract except when otherwise required by state or federal law or
5.14 regulation, unless the health care provider knew or was informed of the correct name and
5.15 address of the responsible health plan company or third-party administrator. For purposes
5.16 of this paragraph, presentation of the health coverage identification card by the patient is
5.17 deemed sufficient notification of the correct information.

5.18 **EFFECTIVE DATE.** Paragraph 6, clause (c) is effective August 1, 2009, and
5.19 applies to patient care provided on or after that date. Paragraph 6, clauses (a) and (b), are
5.20 effective the day following final enactment.

5.21 **Sec. 3. [62Q.7375] HEALTH CARE CLEARINGHOUSES.**

5.22 Subdivision 1. **Definition.** For the purposes of this section, "health care
5.23 clearinghouse" or "clearinghouse" means a public or private entity, including a billing
5.24 service, repricing company, community health management information system or
5.25 community health information system, and "value-added" networks and switches, that
5.26 does either of the following functions:

5.27 (1) processes or facilitates the processing of health information received from
5.28 another entity in a nonstandard format or containing nonstandard data content into
5.29 standard data elements or a standard transaction; or

5.30 (2) receives a standard transaction from another entity and processes or facilitates
5.31 the processing of health information into nonstandard format or nonstandard data content
5.32 for the receiving entity.

5.33 Subd. 2. **Claims submission deadlines and careful handling.** (a) A health plan or
5.34 third-party administrator must not have or enforce a deadline for submission of claims

6.1 that is shorter than the period provided in section 60A.23, subdivision 8, paragraph (6),
6.2 clause (c).

6.3 (b) A claim submitted to a health plan or third-party administrator through a health
6.4 care clearinghouse or clearinghouse within the time permitted under paragraph (a) must be
6.5 treated as timely by the health plan or third-party administrator. This paragraph does not
6.6 apply if the provider submitted the claim to a clearinghouse that does not have the ability
6.7 or authority to transmit the claim to the relevant health plan company.

6.8 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to claims
6.9 transmitted to a clearinghouse on or after that date.

6.10 Sec. 4. Minnesota Statutes 2008, section 319B.02, is amended by adding a subdivision
6.11 to read:

6.12 Subd. 21a. **Surviving spouse.** "Surviving spouse" means a surviving spouse of a
6.13 deceased professional as an individual, as the personal representative of the estate of the
6.14 decedent, as the trustee of an inter vivos or testamentary trust created by the decedent, or
6.15 as the sole heir or beneficiary of an estate or trust of which the personal representative or
6.16 trustee is a bank or other institution that has trust powers.

6.17 **EFFECTIVE DATE.** This section is effective the day following final enactment
6.18 and applies to surviving spouses of professionals who die on or after that date.

6.19 Sec. 5. Minnesota Statutes 2008, section 319B.07, subdivision 1, is amended to read:

6.20 Subdivision 1. **Ownership of interests restricted.** Ownership interests in a
6.21 professional firm may not be owned or held, either directly or indirectly, except by any of
6.22 the following:

6.23 (1) professionals who, with respect to at least one category of the pertinent
6.24 professional services, are licensed and not disqualified;

6.25 (2) general partnerships, other than limited liability partnerships, authorized to
6.26 furnish at least one category of the professional firm's pertinent professional services;

6.27 (3) other professional firms authorized to furnish at least one category of the
6.28 professional firm's pertinent professional services;

6.29 (4) a voting trust established with respect to some or all of the ownership interests
6.30 in the professional firm, if (i) the professional firm's generally applicable governing law
6.31 permits the establishment of voting trusts, and (ii) all the voting trustees and all the holders
6.32 of beneficial interests in the trust are professionals licensed to furnish at least one category
6.33 of the pertinent professional services; ~~and~~

7.1 (5) an employee stock ownership plan as defined in section 4975(e)(7) of the
7.2 Internal Revenue Code of 1986, as amended, if (i) all the voting trustees of the plan are
7.3 professionals licensed to furnish at least one category of the pertinent professional services,
7.4 and (ii) the ownership interests are not directly issued to anyone other than professionals
7.5 licensed to furnish at least one category of the pertinent professional services; and

7.6 (6) sole ownership by a surviving spouse of a deceased professional who was the
7.7 sole owner of the professional firm at the time of the professional's death, but only during
7.8 the period of time ending one year after the death of the professional.

7.9 **EFFECTIVE DATE.** This section is effective the day following final enactment
7.10 and applies to surviving spouses of professionals who die on or after that date.

7.11 Sec. 6. Minnesota Statutes 2008, section 319B.08, is amended to read:

7.12 **319B.08 EFFECT OF DEATH OR DISQUALIFICATION OF OWNER.**

7.13 Subdivision 1. **Acquisition of interests or automatic loss of professional**
7.14 **firm status.** (a) If an owner dies or becomes disqualified to practice all the pertinent
7.15 professional services, then either:

7.16 (1) within 90 days after the death or the beginning of the disqualification, all of
7.17 that owner's ownership interest must be acquired by the professional firm, by persons
7.18 permitted by section 319B.07 to own the ownership interest, or by some combination; or

7.19 (2) at the end of the 90-day period, the firm's election under section 319B.03,
7.20 subdivision 2, or 319B.04, subdivision 2, is automatically rescinded, the firm loses
7.21 its status as a professional firm, and the authority created by that election and status
7.22 terminates.

7.23 An acquisition satisfies clause (1) if all right and title to the deceased or disqualified
7.24 owner's interest are acquired before the end of the 90-day period, even if some or all of
7.25 the consideration is paid after the end of the 90-day period. However, payment cannot be
7.26 secured in any way that violates sections 319B.01 to 319B.12.

7.27 (b) If automatic rescission does occur under paragraph (a), the firm must immediately
7.28 and accordingly update its organizational document, certificate of authority, or statement
7.29 of foreign qualification. Even without that updating, however, the rescission, loss of
7.30 status, and termination of authority provided by paragraph (a) occur automatically at the
7.31 end of the 90-day period.

7.32 Subd. 2. **Terms of acquisition.** (a) If:

7.33 (1) an owner dies or becomes disqualified to practice all the pertinent professional
7.34 services;

8.1 (2) the professional firm has in effect a mechanism, valid according to the
8.2 professional firm's generally applicable governing law, to effect a purchase of the deceased
8.3 or disqualified owner's ownership interest so as to satisfy subdivision 1, paragraph (a),
8.4 clause (1); and

8.5 (3) the professional firm does not agree with the disqualified owner or the
8.6 representative of the deceased owner to set aside the mechanism,
8.7 then that mechanism applies.

8.8 (b) If:

8.9 (1) an owner dies or becomes disqualified to practice all the pertinent professional
8.10 services;

8.11 (2) the professional firm has in effect no mechanism as described in paragraph (a), or
8.12 has agreed as mentioned in paragraph (a), clause (3), to set aside that mechanism; and

8.13 (3) consistent with its generally applicable governing law, the professional firm
8.14 agrees with the disqualified owner or the representative of the deceased owner, before
8.15 the end of the 90-day period, to an arrangement to effect a purchase of the deceased
8.16 or disqualified owner's ownership interest so as to satisfy subdivision 1, paragraph (a),
8.17 clause (1),

8.18 then that arrangement applies.

8.19 (c) If:

8.20 (1) an owner of a Minnesota professional firm dies or becomes disqualified to
8.21 practice all the pertinent professional services;

8.22 (2) the Minnesota professional firm does not have in effect a mechanism as described
8.23 in paragraph (a);

8.24 (3) the Minnesota professional firm does not make an arrangement as described in
8.25 paragraph (b); and

8.26 (4) no provision or tenet of the Minnesota professional firm's generally applicable
8.27 governing law and no provision of any document or agreement authorized by the
8.28 Minnesota professional firm's generally applicable governing law expressly precludes an
8.29 acquisition under this paragraph,

8.30 then the firm may acquire the deceased or disqualified owner's ownership interest as
8.31 stated in this paragraph. To act under this paragraph, the Minnesota professional firm
8.32 must within 90 days after the death or beginning of the disqualification tender to the
8.33 representative of the deceased owner's estate or to the disqualified owner the fair value
8.34 of the owner's ownership interest, as determined by the Minnesota professional firm's
8.35 governance authority. That price must be at least the book value, as determined in

9.1 accordance with the Minnesota professional firm's regular method of accounting, as of the
9.2 end of the month immediately preceding the death or loss of license. The tender must be
9.3 unconditional and may not attempt to have the recipient waive any rights provided in this
9.4 section. If the Minnesota professional firm tenders a price under this paragraph within
9.5 the 90-day period, the deceased or disqualified owner's ownership interest immediately
9.6 transfers to the Minnesota professional firm regardless of any dispute as to the fairness
9.7 of the price. A disqualified owner or representative of the deceased owner's estate who
9.8 disputes the fairness of the tendered price may take the tendered price and bring suit
9.9 in district court seeking additional payment. The suit must be commenced within one
9.10 year after the payment is tendered. A Minnesota professional firm may agree with a
9.11 disqualified owner or the representative of a deceased owner's estate to delay all or part
9.12 of the payment due under this paragraph, but all right and title to the owner's ownership
9.13 interests must be acquired before the end of the 90-day period and payment may not be
9.14 secured in any way that violates sections 319B.01 to 319B.12.

9.15 **Subd. 3. Expiration of firm-issued option on death or disqualification of holder.**
9.16 If the holder of an option issued under section 319B.07, subdivision 3, paragraph (a),
9.17 clause (1), dies or becomes disqualified, the option automatically expires.

9.18 **Subd. 4. One-year period for surviving spouse of sole owner.** For purposes
9.19 of this section, each mention of "90 days," "90-day period," or similar term shall be
9.20 interpreted as one year after the death of a professional who was the sole owner of the
9.21 professional firm if the surviving spouse of the deceased professional owns and controls
9.22 the firm after the death.

9.23 **EFFECTIVE DATE.** This section is effective the day following final enactment
9.24 and applies to surviving spouses of professionals who die on or after that date.

9.25 Sec. 7. Minnesota Statutes 2008, section 319B.09, subdivision 1, is amended to read:

9.26 Subdivision 1. **Governance authority.** (a) Except as stated in paragraph (b), a
9.27 professional firm's governance authority must rest with:

9.28 (1) one or more professionals, each of whom is licensed to furnish at least one
9.29 category of the pertinent professional services; or

9.30 (2) a surviving spouse of a deceased professional who was the sole owner of the
9.31 professional firm, while the surviving spouse owns and controls the firm, but only during
9.32 the period of time ending one year after the death of the professional.

9.33 (b) In a Minnesota professional firm organized under chapter 317A and in a foreign
9.34 professional firm organized under the nonprofit corporation statute of another state, at least

10.1 one individual possessing governance authority must be a professional licensed to furnish
10.2 at least one category of the pertinent professional services.

10.3 (c) Individuals who possess governance authority within a professional firm may
10.4 delegate administrative and operational matters to others. No decision entailing the
10.5 exercise of professional judgment may be delegated or assigned to anyone who is not a
10.6 professional licensed to practice the professional services involved in the decision.

10.7 (d) An individual whose license to practice any pertinent professional services is
10.8 revoked or suspended may not, during the time the revocation or suspension is in effect,
10.9 possess or exercise governance authority, hold a position with governance authority,
10.10 or take part in any decision or other action constituting an exercise of governance
10.11 authority. Nothing in this chapter prevents a board from further terminating, restricting,
10.12 limiting, qualifying, or imposing conditions on an individual's governance role as board
10.13 disciplinary action.

10.14 (e) A professional firm owned and controlled by a surviving spouse must comply
10.15 with all requirements of this chapter, except those clearly inapplicable to a firm owned
10.16 and governed by a surviving spouse who is not a professional of the same type as the
10.17 surviving spouse's decedent.

10.18 **EFFECTIVE DATE.** This section is effective the day following final enactment
10.19 and applies to surviving spouses of professionals who die on or after that date.

10.20 Sec. 8. Minnesota Statutes 2008, section 471.982, subdivision 3, is amended to read:

10.21 Subd. 3. **Exemptions.** Self-insurance pools established and open for enrollment
10.22 on a statewide basis by the Minnesota League of Cities Insurance Trust, the Minnesota
10.23 School Boards Association Insurance Trust, the Minnesota Association of Townships
10.24 Insurance and Bond Trust, or the Minnesota Association of Counties Insurance Trust
10.25 and the political subdivisions that belong to them are exempt from the requirements of
10.26 this section and ~~section~~ sections 65B.48, subdivision 3, and 60A.0811. In addition, the
10.27 Minnesota Association of Townships Insurance and Bond Trust and the townships that
10.28 belong to it are exempt from the requirement to hold the certificate of surety authorization
10.29 issued by the commissioner of commerce as provided in section 574.15.