WEST VIRGINIA CODE: §33-46A-7

§33-46A-7. Workers' compensation.

(a) The responsibility to obtain workers' compensation coverage for covered employees in compliance with all applicable law shall be specifically allocated in the professional employer agreement to either the client-employer or the PEO.

(b) If the responsibility is allocated to the PEO under the agreement:

(1) The agreement shall require that the PEO maintain and provide workers' compensation coverage for the covered employees from a carrier authorized to do business in this state: Provided, That the provisions of section seven, article two, chapter twenty-three of this chapter may not be abrogated by a PEO agreement and the client-employer shall at all times remain ultimately liable under chapter twenty-three of this code to provide workers' compensation coverage for its covered employees;

(2) The insurer shall report:

(A) Payroll and claims data for each client-employer to the commissioner or his or her designated advisory organization in a manner that identifies both the client-employer and PEO; and

(B) Coverage status with respect to each client-employer in accordance with the proof of coverage requirements provided for in statute and rules.

(c) Workers' compensation coverage may be provided:

(1) On a master policy basis, under which a single policy issued to the PEO provides coverage for more than one client-employer, and may also provide coverage to the PEO with respect to its worksite employees: Provided, That on or before July 1, 2008, the commissioner shall promulgate an emergency legislative rule in accordance with the provisions of section fifteen, article three, chapter twenty-nine of this code, and shall also propose an exempt legislative rule for adoption by the industrial council in accordance with the provisions of subdivision (2), subsection (j), section one-a, article one, chapter twenty-three of this code, establishing standards for the reporting of client-employer experience in sufficient detail to enable the assignment of an experience modifier upon termination of the professional employer agreement: Provided, however, That no mandatory workers' compensation coverage may be provided through a PEO arrangement to any client-employers on a master policy basis other than through coverage in the voluntary market, as that term is defined in subsection (u), section two, article two-c, chapter twenty-three of this code.

(2) On a multiple coordinated policy basis, under which a separate policy is issued to or on

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behalf of each client-employer or group of affiliated client-employers with certain payment obligations and policy communications coordinated through the PEO; or

(3) On any other basis approved by the commissioner.

(d) This article does not prohibit grouping together the client-employers of a PEO for the purposes of offering dividend eligibility, applying a discount to the premium charged, applying a retrospective rating option arrangement or the use of any other loss sensitive rating options or large deductible policies as allowed under state law.

(e) The protection of the exclusive remedy provision of section six, article two, chapter twenty-three of this code, shall apply to the PEO, the client-employer, and to all covered employees and other employees of the client-employer irrespective of whether the PEO or the client-employer obtains the workers' compensation coverage.

(f) The commissioner shall propose rules in accordance with the provisions of subsection (c), section five, article two-c, chapter twenty-three of this code, for adoption by the Industrial Council, to effectuate the purposes of this section, including the manner in which notice of default of a master policy must be given to client-employers.

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