

## Executive Summary

The following is a summary of terms commonly used in legislative discussions of health insurance. Terms defined here include COBRA, ERISA, multiple employer welfare arrangement or multiple employer trusts, the Affordable Care Act, reinsurance, self-insured health plan, and stop-loss insurance.

## Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)

COBRA contains provisions giving certain former employees, retirees, spouses, former spouses, and dependent children the right to temporary continuation of health coverage at group rates for a certain period of time after the employee leaves employment. This coverage, however, is only available when coverage is lost due to certain specific events, such as termination for reasons other than gross misconduct or a reduction in the number of hours worked. Group health coverage for COBRA participants is usually more expensive than health coverage for active employees, since usually the employer pays a part of the premium for active employees while COBRA participants generally pay the entire premium themselves.<sup>1</sup>

## Employee Retirement Income Security Act of 1974 (ERISA)

ERISA is a federal law and regulatory system that sets minimum standards for both pension plans and self-insured health plans in private industry to provide protection for individuals in these plans.<sup>2</sup> ERISA is the legal system that prescribes the requirements relating to fiduciary responsibilities, administration, enforcement, continuation of coverage, and certain health care provisions.<sup>3</sup> ERISA preempts state laws that relate to any employee benefit plan, including self-insured health plans, subject to ERISA. However, ERISA preserves the right of states to regulate the business of insurance. This has been interpreted to mean that state insurance laws, including benefit mandates, do not apply to self-insured health plans, because ERISA as a federal law, preempts them.<sup>4</sup> ERISA-covered self-insured plans are regulated by the Employee

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<sup>1</sup> U.S. Department of Labor, <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/cobra-continuation-health-coverage-compliance>.

<sup>2</sup> U.S. Department of Labor, <https://www.dol.gov/general/topic/health-plans/erisa>.

<sup>3</sup> U.S. Department of Labor, MEWAs under ERISA, pg. 11, <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/mewa-under-erisa-a-guide-to-federal-and-state-regulation.pdf>.

<sup>4</sup> Congressional Research Service, <http://www.ncsl.org/documents/health/SelfInsuredPlans.pdf>.

Benefits Security Administration, a section of the U.S. Department of Labor,<sup>5</sup> while fully insured health plans are regulated in Minnesota by the Commissioner of Commerce.<sup>6</sup>

As of 2017, approximately 38 percent of Minnesota's population is covered by a self-insured health plan, and approximately 20 percent is covered by a fully-insured health plan. The remainder of the population is covered by public health plans or is uninsured.<sup>7</sup>

## **Multiple Employer Welfare Arrangements (MEWA)**

A MEWA is an arrangement where a group of two or more employers or employee associations form a relationship to provide benefits for employees, including self-insured or fully insured health coverage. Pursuant to the MEWA Act of 1983, which amended ERISA, MEWAs are not provided a general preemption to state law. MEWAs are currently defined under federal law and covered by some provisions of ERISA; however, Minnesota Statutes, chapter 62H, applies as well.<sup>8</sup>

## **Patient Protection and Affordable Care Act (ACA)**

The ACA is a federal law and regulatory system that was enacted March 23, 2010. The ACA made changes, among other things, to the structure of individual, small group, and large group insurance products, and federal oversight of state insurance offerings and marketplaces. The ACA also made changes to both ERISA and its requirements relating to self-insurance, and the Internal Revenue Code. The ACA and its enacting regulations have been amended by federal law and changed by revisions to regulations and executive orders through the current date.<sup>9</sup>

## **Reinsurance**

Under the ACA, a reinsurance program for health insurers existed from 2014 to 2016. It provided payments to health insurers that enrolled higher-cost individuals. In 2016, if a person had more than \$90,000 in claims (the attachment point), his or her health insurer received 50 percent of the claims filed for the person (the coinsurance rate), up to a total of \$250,000 (the reinsurance cap).<sup>10</sup>

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<sup>5</sup> U.S. Department of Labor, Employee Benefits Security Administration, <https://www.dol.gov/agencies/ebsa>.

<sup>6</sup> Minn. Stat. § 60A.03, subd. 2. <https://www.revisor.mn.gov/statutes/?id=60A.03>.

<sup>7</sup> Minnesota Department of Health: Health Economics Program, Minnesota Health Care Markets Chartbook, Section 2, <https://www.health.state.mn.us/data/economics/chartbook/docs/section2.pdf>

<sup>8</sup> Minn. Stat., ch. 62H. <https://www.revisor.mn.gov/statutes/?id=62H>.

<sup>9</sup> Kaiser Family Foundation. Note that the most recent update of this summary was as of April 11, 2013, so it does not incorporate many changes to the law and regulations. <http://kff.org/health-reform/fact-sheet/summary-of-the-affordable-care-act/>.

<sup>10</sup> Kaiser Family Foundation, <http://kff.org/health-reform/issue-brief/explaining-health-care-reform-risk-adjustment-reinsurance-and-risk-corridors/>.

Some states, including Minnesota, have set up their own reinsurance programs as well. Oregon operated the Oregon Transitional Reinsurance Pool from 2014 to 2016, which supplemented the federal reinsurance program to provide a greater level of coverage to health insurers with high-cost enrollees.<sup>11</sup> Alaska created a high-risk reinsurance program for individuals with certain health conditions, effective January 1, 2017.<sup>12</sup>

Minnesota created a reinsurance program in 2017, which is operated by MCHA. For 2020, the attachment point is set at \$50,000, the coinsurance rate is 80 percent, and the reinsurance cap is \$250,000. Minnesota's reinsurance program must return any unused funds in its account by June 30, 2021.

## Self-insured Health Plan

A self-insured group health plan (or a "self-funded" plan, as it is also called) is one in which the employer assumes the financial risk for providing health care benefits to its employees. These plans are governed by ERISA, not state law. In practical terms, self-insured employers pay for each out-of-pocket claim as they are incurred instead of paying a fixed premium to an insurance carrier, which is known as a fully insured plan. Typically, a self-insured employer will set up a special trust fund to earmark money (corporate and employee contributions) to pay incurred claims.<sup>13</sup> As of 2017, 38 percent of the population of Minnesota had self-insured health coverage, and 20 percent were fully insured (fully insured includes, among others, individual and small group health plans on and off-MNSure).<sup>14</sup>

## Stop-Loss Insurance

Stop-loss insurance (also known as excess insurance) is a product that provides protection for employers that self-insure their employees' health coverage by serving as a reimbursement mechanism for catastrophic claims exceeding a pre-determined amount.<sup>15</sup> Minnesota Statutes, sections 60A.235 and 60A.236, govern the terms of stop-loss insurance sold in Minnesota.<sup>16</sup>



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<sup>11</sup> Oregon Legislature, <https://www.oregon.gov/oha/OPHP/OMIP/Documents/Transitional%20Reinsurance%20Pool%20FAQ.pdf>.

<sup>12</sup> Laws of Alaska, <http://www.akleg.gov/basis/Bill/Text/29?Hsid=HB0374D>.

<sup>13</sup> Self-Insured Institute of America, Inc., <http://www.siiia.org/i4a/pages/Index.cfm?pageID=4546>.

<sup>14</sup> Minnesota Department of Health, Minnesota Health Care Markets Chartbook, <https://www.health.state.mn.us/data/economics/chartbook/docs/section2.pdf>

<sup>15</sup> Self-Insured Institute of America, Inc., <http://www.siiia.org/i4a/pages/Index.cfm?pageID=4549>.

<sup>16</sup> Minn. Stat. §§ 60A.235 and 60A.236, <https://www.revisor.mn.gov/statutes/?id=60A>.