

CHAPTER 56
WORKERS' COMPENSATION GROUP SELF-INSURANCE
[Prior to 10/22/86, Insurance Department[510]]

191—56.1(87,505) General provisions.

56.1(1) Associations which are issued a certificate of approval by the commissioner shall not be deemed to be insurance companies and shall not be subject to the provisions of the insurance laws and regulations contained in Title XX of the Iowa Code except as otherwise provided in this chapter or by statute. Associations are not subject to the premium tax under Iowa Code section 432.1.

56.1(2) The purpose of this chapter is to provide reasonable conditions and restrictions for the approval of self-insurance for workers' compensation liability for associations of employers that have formed an insurance association under Iowa Code section 87.4.

56.1(3) The authority to promulgate these rules is found in Iowa Code section 505.8.

56.1(4) Certificates of relief from insurance shall not exempt a mutual association from Iowa Code chapters 85, 85A, 85B, 86 and 87.

191—56.2(87,505) Definitions.

56.2(1) "*Commissioner*" shall mean the commissioner of the insurance division of Iowa, appointed by the governor pursuant to Iowa Code section 505.2.

56.2(2) "*Division*" shall mean the insurance division of Iowa.

56.2(3) "*Employer*" shall be defined as set forth in Iowa Code section 85.61.

56.2(4) "*Workers' compensation self-insurance association*" or "*association*" means a not-for-profit unincorporated association consisting of five or more employers who are members of the same bona fide business or professional association which has been in existence for not less than five years, and who enter into agreements to pool their liabilities for workers' compensation benefits and employer's liability in this state pursuant to Iowa Code section 87.4.

56.2(5) "*Administrator*" means an individual, partnership or corporation engaged by a workers' compensation self-insurance association's board of trustees to carry out the policies established by the association's board of trustees and to provide day-to-day management of the association.

56.2(6) "*Insolvent*" or "*insolvency*" means the inability of a workers' compensation self-insurance association to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

56.2(7) "*Net premium*" means premium derived from standard premium adjusted by any advance premium discounts.

56.2(8) "*Service company*" means a person or entity which provides services not provided by the administrator, including but not limited to, (a) claims adjustment, (b) safety engineering, (c) compilation of statistics and the preparation of premium, loss and tax reports, (d) preparation of other required self-insurance reports, (e) development of members' assessments and fees, and (f) administration of a claim fund.

56.2(9) "*Standard premium*" means the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts.

56.2(10) "*Workers' compensation,*" when used as a modifier of "benefits," "liabilities," or "obligations" means both workers' compensation and employer's liability.

191—56.3(87,505) Requirements for self-insurance.

56.3(1) A proposed workers' compensation self-insurance association shall file with the commissioner its application for a certificate of approval accompanied by a nonrefundable filing fee in the amount of \$100. The application shall include the association's name, location of its principal office, date of organization, name and address of each member, and such other information as the commissioner may reasonably require, together with the following:

- a. Proof of compliance with the provisions of subrule 56.3(2).
- b. A copy of the articles of association, if any.
- c. A copy of agreements with the administrator and with any service company.
- d. A copy of the bylaws of the proposed association.
- e. A copy of the agreement between the association and each member securing the payment of workers' compensation benefits.
- f. Designation of the initial board of trustees and administrator.
- g. The address in this state where the books and records of the association will be maintained at all times.
- h. A pro forma financial statement on a form acceptable to the commissioner showing the financial ability of the association to pay the workers' compensation obligations of its members.
- i. Proof of payment to the association by each member of not less than a 25 percent deposit of that member's first year estimated annual net premium on a date prescribed by the commissioner. Such payment shall be considered the deposit premium payment of each member required by subrule 56.17(1), paragraph "a" if the proposed association is granted a certificate of approval.

56.3(2) To obtain and to maintain its certificate of approval, a workers' compensation self-insurance association shall comply with the following requirements:

- a. A combined net worth of all members of an association of private employers of at least \$1 million.
- b. Maintain excess insurance of not less than \$3 million per occurrence. Associations containing members with a high risk of multiple injury from a single accident may be required to maintain higher limits. The retention shall be the retention generally available to associations with similar exposures and annual premiums.
- c. Maintain annual aggregate excess insurance with limits above the aggregate retention of not less than \$2 million, with an aggregate retention no greater than the estimated earned normal premium collected in the policy year less all estimated expenses during the year including excess insurance premiums.
- d. Provide a security deposit in an amount not less than the association's per occurrence excess insurance retention. The security deposit shall either be in the form of a surety bond on a form prescribed by the commissioner or a financial security endorsement issued by a company authorized under subrule 56.5(1). The commissioner may require a larger security deposit to secure any potential liability of the association not otherwise funded by premium collections or excess insurance.
- e. An estimated annual standard premium of at least \$250,000 during an association's first year of operation.
- f. An indemnity agreement jointly and severally binding the association with private employers and each member thereof to meet the workers' compensation obligations of each member, in a form prescribed by the commission. In an association with public employers, several liability shall not be required.
- g. A fidelity bond in the amount of \$250,000 for the administrator.
- h. A fidelity bond in the amount of \$250,000 for the service company. The commissioner may also require the service company providing claim services to furnish a performance bond in a form and amount acceptable to the commissioner.
- i. Each association shall have within its own organization ample facilities and competent personnel to service its own program with respect to claims, administration loss prevention, loss control, safety engineering and rehabilitation services for injured employees or members' employees or shall contract with a service company to provide these services.

56.3(3) An association shall notify the commissioner of any change in the information required to be filed under subrule 56.3(1), or in the manner of its compliance with subrule 56.3(2), no later than 30 days after such change.

56.3(4) The commissioner shall evaluate the information provided by the application required to be filed under subrule 56.3(1) to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits will be available on a timely basis.

56.3(5) After an initial review, the commissioner may require additional relevant information and additional security.

56.3(6) Within a reasonable time, the commissioner shall issue to the association a certificate of approval upon finding that the applicant association has met all requirements or the commissioner shall issue an order refusing such certificate setting forth reasons for such refusal upon finding that the applicant association does not meet all requirements.

56.3(7) Each workers' compensation self-insurance association shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against it in this state. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this state any obligation or liability of the association for workers' compensation benefits.

191—56.4 Rescinded, effective 4/27/88.

191—56.5(87,505) Excess insurance. No contract or policy of per occurrence or aggregate excess insurance shall be recognized in considering the ability of an applicant to fulfill its financial obligations under the workers' compensation Act, unless such contract or policy complies with the following:

56.5(1) Is issued by a company:

- a. Licensed to transact casualty insurance business in this state; or
- b. Listed in the most recent NAIC publication "Financial Review of Alien Insurers" (commonly known as the white list); or
- c. Listed on the most recent List of Acceptable Non-Admitted Insurers prepared by this department.

56.5(2) Has a term of not less than one year.

56.5(3) No cancellation, termination or alteration of coverage whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of such cancellation, termination, or alteration has been filed with the commissioner unless an earlier date is approved by the commissioner.

191—56.6(87,505) Rates and reporting of rates.

56.6(1) Every workers' compensation self-insurance association shall adhere to the uniform classification system, uniform experience rating plan, and manual rules filed with the commissioner by an advisory organization designated by the commissioner.

56.6(2) Premium contributions to the association shall be determined by applying the manual rates and rules to the appropriate classification of each member which shall be adjusted by each member's experience credit or debit. Subject to approval by the commissioner, premium contributions may also be reduced by an advance premium discount reflecting the association's expense levels and loss experience.

56.6(3) Notwithstanding subrule 56.6(2), an association may apply to the commissioner for permission to make its own rates. Such rates shall be based on at least five years of the association's experience.

56.6(4) Each association shall have its members audited at least annually by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll and rates. For small accounts, members may be audited by use of a mailed questionnaire. A report of the audit shall be filed with the commissioner in a form acceptable to the commissioner.

The audit shall be at the expense of the association.

56.6(5) The rates approved by the commissioner for approved associations prior to the effective date of these rules may remain in effect should the association so choose.

191—56.7(87,505) Special provisions.

56.7(1) If the association fails to pay workers' compensation benefits when due, the commissioner may appoint a party to receive funds from excess insurance or the surety bond, or both, to be disbursed to individual claimants.

56.7(2) The association shall notify the industrial commissioner of all fatalities within ten days of death.

56.7(3) Statutory benefits, and any fees or assessments by the industrial commissioner of Iowa are to be paid by the association for its members.

56.7(4) Loss reserves reported to the commissioner shall not be discounted with respect to investment income. Loss reserves shall only be discounted for remarriage or mortality, or both. If the loss reserves of an association are found to be unreasonably low, the commissioner can require the reserves to be certified annually by an actuary who is a reserve specialist approved by the commissioner.

56.7(5) Assessment provisions.

a. In the event of a deficit in any fiscal year, the deficit shall be immediately made up from any of the following:

- (1) Unencumbered surplus from any fiscal year other than the current year;
- (2) Moneys not allocated to pay claims;
- (3) Retained investment earnings;
- (4) Assessment of the membership if ordered;
- (5) By such alternative method as the commissioner may order or approve.

b. Liability for assessments will be joint and several. Except public employers will only be jointly liable.

56.7(6) All advertising and solicitation materials must be filed with the commissioner prior to their use.

191—56.8(87,505) Certificate of approval; termination.

56.8(1) The certificate of approval issued by the commissioner to a workers' compensation self-insurance association authorizes the association to provide workers' compensation benefits. The certificate of approval remains in effect until terminated at the request of the association or revoked by the commissioner.

56.8(2) The commissioner shall not grant the request of any association to terminate its certificate of approval unless the association has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. Such obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith. Subject to the approval of the commissioner, an association may merge with another association engaged in the same or similar type of business only if the resulting association assumes in full all obligations of the merging associations. The commissioner shall hold a hearing on the merger if any party, including a member of either association, so requests.

191—56.9(87,505) Examinations. The commissioner shall examine the affairs, transactions, accounts, records and assets of each association as often as the commissioner deems advisable. The expense of such examinations shall be assessed against the association in the same manner that insurers are assessed for examinations.

191—56.10(87,505) Board of trustees—membership, powers, duties, and prohibitions. Each association shall be operated by a board of trustees which shall consist of not less than five persons whom the board of directors of the parent association may appoint or members of an association may elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors of members of the association. The association's administrator, service company, or any owner, officer, employee of, or any other person affiliated with, such administrator or service company shall not serve on the board of trustees of the association. All trustees shall be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each association shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the association, including all of the following:

56.10(1) The board of trustees shall:

a. Maintain responsibility for all moneys collected or disbursed from the association and segregate all moneys into a claims fund account and an administrative fund account. At least 70 percent of the net premium shall be placed into a designated depository for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions. This shall be called the claims fund account. The remaining net premium shall be placed into a designated depository for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account. The commissioner may approve an administrative fund account of more than 30 percent and a claims fund account of less than 70 percent only if the association shows to the commissioner's satisfaction that more than 30 percent is needed for an effective safety and loss control program, or the association's aggregate excess insurance attaches at less than 70 percent.

b. Maintain minutes of its meetings and make such minutes available to the commissioner.

c. Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the association, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.

d. Retain an independent certified public accountant to prepare the statement of financial condition required by subsection 56.13(2), paragraph "a."

56.10(2) The board of trustees shall not:

a. Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the commissioner.

b. Borrow any moneys from the association or in the name of the association except in the ordinary course of business, without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner.

191—56.11(87,505) Association membership; termination; liability.

56.11(1) An employer joining a workers' compensation self-insurance association after the association has been issued a certificate of approval shall (1) submit an application for membership to the board of trustees or its administrator and (2) enter into the indemnity agreement required by subrule 56.3(2), paragraph "f." Membership takes effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.

56.11(2) Individual members of an association shall be subject to cancellation by the association pursuant to the bylaws of the association. In addition, individual members may elect to terminate their participation in the association. The association shall maintain coverage of each canceled or terminated member for 30 days after notice is given to association members. The association shall also promptly notify the commissioner and the industrial commissioner of the termination or cancellation of a member unless the association is notified sooner by the workers' compensation agency that the canceled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another association.

56.11(3) The association shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is canceled by an association remains jointly and severally liable, for a public member, jointly liable only, for workers' compensation obligations of the association and its members which were incurred during the canceled or terminated member's period of membership.

56.11(4) An association member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the association or the member of required workers' compensation benefits.

56.11(5) The insolvency or bankruptcy of a member does not relieve the association or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

191—56.12(87,505) Requirements of sales agents.

56.12(1) Each person who performs any sales or promotional function for the association, deals with the rates or claims, or makes representations about the available coverage is a “person” within the meaning of Iowa Code chapter 507B and must be of good character and competence.

56.12(2) A licensed insurance agent qualifies under subrule 56.12(1).

56.12(3) The trustees must annually file for approval a list of the names, addresses, and backgrounds of all persons to which subrule 56.12(1) applies. In the case of licensed insurance agents, the name and social security number is sufficient.

191—56.13(87,505) Requirements for continued approval.

56.13(1) A certificate of relief from insurance is continuously valid, subject to the annual filing requirements of 56.13(2), and the annual processing fee of \$100. However, the certificate may be revoked under the provisions of rule 56.19(87,505).

56.13(2) By March 1 of each year, each mutual association must submit:

a. A statement of financial condition audited by an independent certified public accountant on or before the last day of the second month following the end of the calendar year. The financial statement shall be on a form prescribed by the commissioner and shall include, but not be limited to, actuarially appropriate reserves for (1) known claims and expenses associated therewith, (2) claims incurred but not reported and expenses associated therewith, (3) unearned premiums, and (4) bad debts, which reserves shall be shown as liabilities. An actuarial opinion regarding reserves for items (1) and (2) above shall be included in the audited financial statement. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

The commissioner may prescribe a uniform accounting system for all associations to ensure the accurate and complete reporting of associations’ financial information.

Any premium or assessment amount that is not paid within three months of the due date shall be assumed uncollectible for financial statement purposes and in considering the amount of assessments and dividends.

The association shall keep all records and worksheets used to complete the financial statement for at least five years, unless the division permits a shorter time;

b. Proof of excess insurance;

c. Any additional relevant information required by the commissioner;

d. The required renewal fee.

56.13(3) The division reserves the right to require quarterly financial reporting if warranted by the loss experience.

191—56.14(87,505) Misrepresentation prohibited. No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of a member of an association.

191—56.15(87,505) Investments. Funds not needed for current obligations may be invested by the board of trustees in accordance with Iowa Code section 636.23, subsections 1 to 12.

191—56.16(87,505) Refunds.

56.16(1) Any moneys for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than 11 months after the end of the fund year.

56.16(2) Each member shall be given a written description of the refund plan at the time of application for membership. A refund plan for moneys in excess of the amount necessary to fund all obligations for a fund year or disbursement of claims fund moneys may be instituted by the association. Such plan must be filed and approved with the commissioner. Payment of a refund based on a member’s participation in a previous fund year payable in the following year shall not be contingent on continued membership in the association after that fund year.

56.16(3) A request to the division for authorization to disburse surplus claims moneys shall be made in writing at least 30 days prior to the desired distribution date. The request shall include a current financial statement for the association, a statement by the association that the desired disbursal will not impair the financial condition of the association, a current quarterly status report and a report establishing the adequacy of the reserves in the fiscal year for which the disbursal is requested. The date of payment shall be agreed to by the trustees and the commissioner, but in no event shall such distribution take place less than 11 months after the end of the fiscal year.

56.16(4) If the loss reserves of an association are found to be unreasonably low, the commissioner shall require the reserves to be certified annually by a reserve specialist approved by the commissioner.

191—56.17(87,505) Premium payment; reserves.

56.17(1) Each association shall establish to the satisfaction of the commissioner a premium payment plan which shall include:

a. A deposit premium payment by each member of at least 25 percent of that member's annual premium before the start of the association's fund year. A credit may be available for past unused deposits; and

b. Payment of each member's annual premium in monthly, quarterly or other regular payments.

56.17(2) Each association shall establish and maintain actuarially appropriate loss reserves which shall include reserves for (1) known claims and expenses associated therewith and (2) claims incurred but not reported and expenses associated therewith.

56.17(3) Each association shall establish and maintain bad debt reserves based on the historical experience of the association or other associations.

191—56.18(87,505) Deficits and insolvencies.

56.18(1) If the assets of an association are at any time insufficient to enable the association to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this Act, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.

56.18(2) In the event of a deficiency in any fund year, such deficiency shall be made up immediately, by one or more of the methods described in subrule 56.18(1). The commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.

56.18(3) If the association fails to assess its members or to otherwise make up such deficit within 30 days, the commissioner shall order it to do so.

56.18(4) If the association fails to make the required assessment of its members within 30 days after the commissioner orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which such assessment is made, or within such longer period of time as may be specified by the commissioner, the association shall be deemed to be insolvent.

56.18(5) The commissioner shall proceed against an insolvent association in the same manner as the commissioner would proceed against an insolvent domestic insurer in this state as prescribed in Iowa Code sections 515.85 to 515.87 regarding liquidation, conservation, etc. The commissioner shall have the same powers and limitations in such proceedings as are provided under those sections, except as otherwise provided in this chapter.

56.18(6) In the event of the liquidation of an association, the commissioner shall levy an assessment upon its members for such an amount as the commissioner determines to be necessary to discharge all liabilities of the association, including the reasonable cost of liquidation.

191—56.19(87,505) Grounds for nonrenewal or revocation of a certificate of relief from insurance. The following constitute grounds for nonrenewal or revocation of a certificate of relief from insurance:

56.19(1) Failure to comply with any provisions of these rules or of Iowa Code chapter 85, 85A, 85B, 86 or 87;

56.19(2) Failure to comply with any lawful order of the commissioner;

- 56.19(3)** Failure to promptly pay lawful compensation claims;
- 56.19(4)** Committing an unfair or deceptive act or practice;
- 56.19(5)** Deterioration of financial condition adversely affecting the certificate holder's ability to pay expected losses;
- 56.19(6)** The application or any necessary forms that have been filed with the division contain fraudulent information or omissions;
- 56.19(7)** The association or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the association or its administrator in its fiduciary capacities;
- 56.19(8)** Failure to remit the proper amount of premium tax in a timely manner, as required by Iowa Code section 432.1.

191—56.20(87,505) Hearing and appeal. Prior to denying a renewal application or revoking a certificate issued under this chapter, a certificate holder shall be given a hearing and a right to appeal as provided in rule 3.1(17A,502,505) et seq.

191—56.21(87,505) Existing approved self-insurers.

56.21(1) All mutual associations which were given a certificate of relief from insurance or some other approval to group self-insure from the commissioner prior to the effective date of these rules shall bring themselves into full compliance with these rules within 90 days after their effective date or by the filing time set out for renewals, whichever comes later.

56.21(2) An existing association may petition the commissioner for a waiver of a rule or rules. The commissioner may grant such waiver upon showing to the commissioner's satisfaction that the association is solvent and has the ability to pay workers' compensation benefits as required by law.

191—56.22(87,505) Severability clause. If any provision of this chapter, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this chapter.

These rules are intended to implement Iowa Code sections 87.4, 87.11, 87.20, 432.1, 505.8 and 509A.14.

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