

Superseded 5/10/2016

31A-40-208 Benefit plan.

- (1) A client and a professional employer organization licensed under this chapter shall each be considered an employer for purposes of sponsoring a retirement or welfare benefit plan for a covered employee.
- (2) A fully insured welfare benefit plan offered to a covered employee of a single professional employer organization licensed under this chapter:
 - (a) is to be treated as a single employer welfare benefit plan for purposes of this title and rules made under this title;
 - (b) may not be considered an employer welfare fund or plan, as described in Section 31A-13-101; and
 - (c) the single professional employer organization that sponsors the fully insured welfare plan is exempt from the registration requirements under this title for:
 - (i) an insurance provider; or
 - (ii) an employer welfare fund or plan.
- (3) For purposes of Chapter 30, Individual, Small Employer, and Group Health Insurance Act:
 - (a) a professional employer organization licensed under this chapter is considered the employer of a covered employee; and
 - (b) all covered employees of one or more clients participating in a health benefit plan sponsored by a single professional employer organization licensed under this chapter are considered employees of that professional employer organization.
- (4) A professional employer organization licensed under this chapter may offer to a covered employee a health benefit plan that is not fully insured by an authorized insurer, only if:
 - (a) the professional employer organization has operated as a professional employer organization for at least one year before the day on which the professional employer organization offers the health benefit plan; and
 - (b) the health benefit plan:
 - (i) is administered by a third-party administrator licensed to do business in this state;
 - (ii) holds all assets of the health benefit plan, including participant contributions, in a trust account;
 - (iii) has and maintains reserves that are sound for the health benefit plan as determined by an actuary who:
 - (A) uses generally accepted actuarial standards of practice; and
 - (B) is an independent qualified actuary, including not being an employee or covered employee of the professional employer organization;
 - (iv) provides written notice to a covered employee participating in the health benefit plan that the health benefit plan is self-insured or is not fully insured;
 - (v) consents to an audit:
 - (A) on a random basis; or
 - (B) upon a finding of a reasonable need by the commissioner; and
 - (vi) provides for continuation of coverage in compliance with Section 31A-22-722.
- (5) The cost of an audit described in Subsection (4)(b)(v) shall be paid by the sponsoring professional employer organization.
- (6) A plan of a professional employer organization described in Subsection (4) that is not fully insured:
 - (a) is subject to the requirements of this section; and
 - (b) is not subject to another licensure or approval requirement of this title.