



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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Honolulu, Hawaii 96813

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DISABILITY COMPENSATION  
DIVISION

June 21, 2004

TO: Gary Hamada, Administrator  
Disability Compensation Division

FROM: Nelson B. Befitel, Director *Nelson B. Befitel*

SUBJECT: Prepaid Health Care Act - Guidelines to Determine Whether an Applicant Meets the "Self-Insurer" Requirements of HAR § 12-12-24.

## I. Background

### A. Self-Insurer Requirements

An employer ("Company") may meet its requirement under the Prepaid Health Care law by providing mandated health care benefits to its employees as a "self-insurer" health care contractor. Before a company can be self-insured, the Department of Labor and Industrial Relations' (DLIR) Director must first determine that the Company is (i) "solvent; and (ii) "able to defray or reimburse" the Company employees' health care costs. *See Hawaii Administrative Rule ("HAR") § 12-12-24 ("Solvency and Ability to Pay Rule"); See also Haw. Rev. Stat. § 393-7.*

Currently, there are no uniform written guidelines in determining whether a Company meets the standards of the Solvency and Ability to Pay Rule. The lack of guidelines often leads to arbitrary, inconsistent, and/or unpredictable decisions. Recently, companies have expressed their frustration over the unpredictability of our decisions, the reasons given to them for denying their application, and the length of time we took in arriving at our decisions.

### B. Reasons for Establishing Guidelines

Written guidelines will likely lead to consistent and predictable decisions, while removing the perception of arbitrariness. Such guidelines will also improve our efficiency in reviewing and determining whether an application to be self-insured should be approved.

## II. The Guidelines

In coordination with the Insurance Commissioner J.P. Schmidt, we have developed the

following guidelines. You will continue to have my delegation of authority to determine whether a Company meets the requirements of the Solvency and Ability to Pay Rule. However, you should now use the following guidelines in making such a determination.

#### **A. Solvency**

A Company should be deemed solvent if it received an "unqualified audit opinion" on the Company's financial statement within the last year by an independent certified public accountant.

#### **B. The Ability to Pay (i.e., Defray Company Employees' Medical Costs)**

In determining whether a Company is able to defray its employees' medical costs, we should consider five factors: (i) the number of employees; (ii) the amount of Company equity or available surplus reserves; (iii) the amount of funds that will be deposited on a monthly basis in the account that will be used to reimburse medical expenses ("Minimum Monthly Funding"); (iv) the amount of available cash on hand; and (v) whether the Company has obtained excess of loss (stop-loss) reinsurance protection.

##### **1. Company with Less than 250 Employees**

A Company with less than 250 employees should be deemed "able" of defraying its employees' medical expenses if it:

- Has a surplus reserve of at least \$90,000;
- Will make a Minimum Monthly Funding of \$150 per member (i.e., each person on the Company's health care plan);
- Has at least \$135,000 cash on hand; and
- Obtains and maintains excess of loss reinsurance protection for at least the first three (3) years. The coverage must include a specific deductible not to exceed \$100 per member multiplied by the number of members covered by the Company's health plan (e.g., \$100 x 1000 members = \$100,000 specific deductible).

##### **2. Company with 250 to 1,499 Employees**

A Company with 250 to 1,499 employees should be deemed "able" of defraying its employees' medical expenses if it:

- Has a surplus reserve of at least \$150 per member;
- Will make a Minimum Monthly Funding of \$150 per member;
- Has cash on hand that amounts to at least \$225 per member; and
- Obtains and maintains excess of loss reinsurance protection for at least the first three (3) years. The coverage must include a specific deductible not to exceed \$100 per member multiplied by the number of members covered by the Company's health plan.

### **3. Company with 1500 or More Employees**

A Company with 1500 or more employees should be deemed "able" of defraying its employees' medical expenses if it:

- Has a surplus reserve of at least \$150 per member;
- Will make a Minimum Monthly Funding of \$150 per member; and
- Has cash on hand that amounts to at least \$225 per member.

The fact that a Company of 1500 or more employees does not have excess of loss reinsurance should not disqualify the Company from being self-insured.

### **III. Conclusion**

These guidelines should serve as a starting point in determining whether a Company meets the requirement of HAR § 12-12-24. However, an applicant's unique or extraordinary circumstances may warrant us to look at other factors in determining whether an applicant is qualified to be self-insured. If you are inclined to deny an application because of other factors not listed in the above guidelines, please discuss your recommendation with me before providing the applicant final notice. Each Company should be monitored on an annual basis to ensure that it continues to meet the Solvency and Ability to Pay Rule.

We believe these guidelines assure that the purpose of the Solvency and Ability to Pay Rule will be met, (*i.e.*, the Company will be able to cover any and all health care costs incurred by the Company's health care plan members) while providing Hawaii's businesses the opportunity to meet the mandates of the Prepaid Health Care Act on a self-insured basis. Should you have any questions or wish to discuss further, please contact me.