

GETAC Air/EMS Committee Insurance Work Group

February 12, 2007

From: Larry Palazzolo and Alicia Wiren

To: Work Group Members

Subject: Insurance Work Group (IWG)

1. Existing wording within subchapters 157.12/13 requires the use of insuring entities *licensed to do business in Texas*. Exemptions for *self-insuring* entities (under Title 25) have been granted by DSHS but there are no definitive criteria in Title 25 governing any plan of self-insurance.

2. TAC Title 28, Part I, Chapter 5, Subchapter C, Rule 5.2004 / Texas Medical Liability Insurance Underwriting Association (JUA). Detailed language describing acceptable insuring mechanisms for medical liability and general liability can be found within this rule. Most applicable are the requirements for self-funded entities (which includes 'Captives')—the only type of entity allowed to be used by Texas health care providers/practitioners that is not required to be formed pursuant to the articles of the Texas Insurance Code.

The guidelines for JUA acceptance of a self-funded or Captive plan can be found in 5.2004(A)(5)(E)(vii)(I)-(IV) and are as follows:

(I) the plan's liabilities must be fully funded and the plan must be solvent. The plan must have a minimum net worth equal to the lesser of \$1 million or that amount of net worth that results in a capitalization ratio of 5.0%. As used in this subclause, "net worth" shall be calculated by determining the excess, if any, of the plan's total assets over the plan's total liabilities. As used in this subclause, "capitalization ratio" means the ratio of the plan's net worth (as the numerator) to the plan's total assets (as the denominator). Notwithstanding the preceding, the net worth requirements contained in this subclause do not apply to a plan that lawfully has taxing authority over a segment of the Texas public provided that the taxing authority may be utilized to meet the plan's liabilities and other obligations; and

(II) the plan must annually obtain an actuarial analysis which reflects that its operations are viable from a qualified actuary who is a member in good standing of the American Academy of Actuaries. Notwithstanding the preceding, an actuarial opinion filed with the Texas Department of Insurance pursuant to Texas Insurance Code Article 802.002 may be accepted for purposes of this subsection; and

(III) financial statements of the plan must annually be audited by an independent certified public accountant who is a member in good standing of the American Institute

of Certified Public Accountants (AICPA). The audits must utilize generally accepted auditing standards and must result in a report which attests to whether the financial statements comply with generally accepted accounting principals adopted by the AICPA. Notwithstanding the preceding, an audit report filed with the Texas Department of Insurance pursuant to Texas Insurance Code Article 1.15A may be accepted for purposes of this subsection; and

(IV) the plan must have competent and trustworthy management who is generally knowledgeable of insurance matters. In no event shall a plan be eligible if a plan officer or member of the plan's board of directors or similar governing body has been convicted of a felony involving moral turpitude or breach of fiduciary duty.

The above rule was reviewed and incorporated into TAC Chapter 28 (Insurance) in about 1996. It is common sense guidance 'already on the books' and provides definitive criteria for any entity considering self-insuring.

3. Accordingly, we recommend that all future requests for exemptions to the insurance requirements of Chapter 157 be evaluated in accordance with the aforementioned rule.

4. In order to exercise the greatest care possible while evaluating such requests—and to make use of professional insurance-specific expertise--***we recommend that DSHS seek assistance from the Dept of Insurance when considering all such future requests.*** DSHS, after receiving a recommendation from the Dept of Insurance, will have final authority as to the granting or disapproval of requested exemptions.

5. Rule 157.5 is titled “Rule Exemption Requests” but the topic of the rule seems to address individual training and qualification specifically. ***We recommend taking advantage of the broad scope indicated by the title and modifying the rule to also address insurance exemption requests.***

A new subparagraph (d) can be added to provide definitive guidance on how to go about requesting and obtaining a waiver. ***We recommend additional wording as follows:***

(d) EMS providers may, for the purpose of self-insuring only, request an exemption to the insurance requirements of rules of this title by:

(1) following the procedures outlined in paragraph (a), sub-paragraphs (1) and (2) of this rule;

(2) developing a plan of self-insurance that meets the JUA criteria found in TAC Title 28, Part I, Chapter 5, Subchapter C, Rule 5.2004, Paragraphs (A)(5)(E)(vii)(I)-(IV).

(3) funding the plan for self-insurance in such a way that in no case shall the net worth of the plan be less than the minimum required coverage amounts for Bodily Injury, Property Damage and Professional Liability stipulated in 157.12 and 157.13.

(3) providing evidence with the request for a waiver that the plan for self-insurance meets or exceeds the aforementioned criteria.

6. Placing the exemption language within 157.5 eliminates having to make any changes to 157.12/13 in this regard. Providers either follow the rule language or seek an exemption. If they seek the exemption, they must demonstrate to DSHS that they can meet the self-insuring plan criteria. DSHS can evaluate the request on its own or seek assistance from the Dept of Insurance. In either case, DSHS has the final authority for approval of the request.

7. Tying the funding requirements to the language in 157.12 and 157.13 allows the minimum funding level to automatically adjust as may be necessary for any changes that could be required as a result of incorporating CAAMS requirements.

Sincerely,

Larry Palazzolo
512.297.5107
lpalazzolo@falconinsurance.com

Alicia Wiren
281.636.9202
phiflightmedic@yahoo.com