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## **PROFESSIONAL LIABILITY**

### **ANNOUNCEMENT FOR FILERS** **ON THE NEW SELF-CERTIFICATION NAIC PILOT** **PROGRAM**

Thank you for joining the Department in working with the new Self-Certification filing process coordinated by the National Association of Insurance Commissioners. The NAIC Pilot Program is established for the use of filing forms in reviewing the forms that are filed on an aggregate basis to see how they conform with the respective state statutes and rules. Minnesota is not only putting the form filing requirements for two lines of coverage, Crop Hail and Professional Liability insurance on the web site, but also as a courtesy to the filers who choose to use speed to market since Minnesota is a file in use state for rates, we have provided, in addition, the capability to file forms, rates and rules in both of these lines by utilizing this procedure. Utilization of the Self-Certification process is a choice the company can make in order to authorize going to market pursuant to this process immediately. We would like to thank you in advance for your cooperation as we embark upon this pilot process.

1. Send only the two page “Company Sworn Statement of Compliance” with the filing.
2. Link to Filing Instructions:

[http://www.state.mn.us/mn/externalDocs/P\\_and\\_C\\_Transmittal\\_Package\\_052203034352\\_pctransmittalpackage.pdf](http://www.state.mn.us/mn/externalDocs/P_and_C_Transmittal_Package_052203034352_pctransmittalpackage.pdf)

PLEASE DIRECT INQUIRIES ABOUT THIS FILING PROCESS TO:  
Tom Baker (651) 297-2853

Market Assurance: 1.800.657.3602      Licensing: 1.800.657.3978  
Energy Information: 1.800.657.3710      Unclaimed Property: 1.800.925.5668  
[www.commerce.state.mn.us](http://www.commerce.state.mn.us)      An Equal Opportunity Employer

**This form must be completed to participate in the program.**  
**Thank you.**

**SELF CERTIFICATION PILOT PROGRAM  
COMPANY SWORN STATEMENT OF COMPLIANCE  
PROFESSIONAL LIABILITY FILING(S) ONLY**

**Date:** \_\_\_\_\_

**Company (Group) Name:** \_\_\_\_\_

**Company (Group) NAIC No.:** \_\_\_\_\_

**Filing ID No.:** \_\_\_\_\_

This statement is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

The undersigned acknowledges the following:

1. I am an officer of \_\_\_\_\_ and I am duly authorized to bind the company as set forth in this sworn statement.
2. The company intends to participate in the Self-Certification Pilot Program, and understands that this program allows the company to use policy forms filed pursuant to this program without going through the formal review process of Minn. Stat. §70A.06.
3. In order to receive an expedited acknowledgment of filing pursuant to the Self-Certification Program, I have been authorized by the company and hereby attest under oath that the attached professional liability filing(s) is/are in full compliance with all applicable Minnesota Statutes and Minnesota Rules.
4. If at any time after this filing, it is determined that the forms filed pursuant to this filing fail to include provisions required by Minnesota law, the company agrees that those provisions will be imputed to the forms filed, and the forms will be construed with respect to the insured and third parties as though the filing(s) and related form(s) were fully in compliance with Minnesota law.
5. If at any time after this filing it is determined that the forms filed pursuant to this filing contain provisions prohibited by Minnesota law, the company agrees that the prohibited provisions will be considered void and will not be enforceable against insureds or third parties.
6. The company acknowledges that the Department of Commerce may perform a standard review of the policy forms at a later date and may require corrections to

be made to bring the filing into compliance with Minnesota Statutes and Minnesota Rules if defects are discovered.

Filing Analyst's Name: \_\_\_\_\_

Filing Analyst's Signature: \_\_\_\_\_

Responsible Officer's Title: \_\_\_\_\_

Responsible Officer's Name: \_\_\_\_\_

Responsible Officer's Signature: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date)

by \_\_\_\_\_  
(name(s) of person(s))

as \_\_\_\_\_  
(type of authority, e.g., officer, trustee, etc.)

of \_\_\_\_\_  
(name of party on behalf of whom the instrument was executed).

(stamp)

\_\_\_\_\_  
(Signature of notary)

\_\_\_\_\_  
Title

My commission expires: \_\_\_\_\_

## **PROFESSIONAL LIABILITY**

### **Outline of Review Criteria Checklist**

#### **SELF-CERTIFICATION PROCESS**

#### **I. AUTOMATIC TERMINATION:** M.S. 60A.351, M.S. 60A.36

Minimum Notice Requirements

    Cancellation: M.S. 60A.36

    Conditional Renewal: M.S. 60A.351

    Nonrenewal: M.S. 60A.37

Suspension of Coverage Prohibited: Department Procedure

    Restrictions Permitted

        Protective Devices Impairment: Automatic Sprinkler System

        Insured Knowledge

        Failure to Maintain

        Commercial Boiler and Machinery Coverages

#### **II. CANCELLATION:** M.S. 60A.36

Minimum Notice Requirement: M.S. 60A.36, subd. 3

    Binders

    Agreements to Bind

    Policies in Effect Less than 90 Days

    Nonpayment of Premium

        Notice Required: M.S. 60A.36, subd. 2

        Effect of Payment Prior to the Cancellation Effective Date: M.S.  
        60A.36, subd. 2

Notice Required for Policies in Effect After 89 Days: M.S. 60A.36, subd. 2

Reasons Required for Policies in Effect After 89 Days: M.S. 60A.36, subd. 1 and  
2

Loss of Reinsurance: M.S. 60A.36, subd. 1, (6)

Failure to Pay Dues: M.S. 60A.36, subd. 1, (8)

Notices

    Company Name: M.S. 60A.08, subd. 2

    Cancellation Effective Date: M.S. 60A.36, subd. 2

    Reasons: M.S. 60A.36, subd. 2

    Notice for Effect of Nonpayment by Cancellation Effective Date: M.S.  
    60A.36, subd. 2

Proof of Mailing: M.S. 60A.38, subd. 4

**III. COMPANY NAME:** M.S. 60A.08, subd. 2

Conspicuously Displayed  
All signs, advertising, policies, circulars, and other documents and publications

**IV. CONDITIONAL RENEWAL:** M.S. 60A.351

Notice Requirements  
Less Favorable Terms/Rates/Rating Plan  
Insured Election to Cancel  
Continuance of Premium at Prior Rate

**V. DEFENSE WITHIN LIMITS:** M.S. 60A.08, subd. 13

\$100,000 Minimum Threshold  
Defense within Sublimits

**VI. DISPUTE RESOLUTION PROCEEDINGS:** M.S. 60A.08, subd. 4

Choice of Law

**VII. FRAUD:** M.S. 60A.36, subd. 5

Rescission or Voidance  
    Material  
        Misrepresentation  
        Omission  
        Fraud  
    Knowledge  
Cancellation: M.S. 60A.36, subd. 1, clause (2)

**VIII. GUIDE "A" Rates:** Minnesota Department of Commerce Bulletin 91-9

Drawer Filing

**IX. INSPECTION AND AUDIT:** M.S. 60A.08, subd. 8

Premium Audit  
One Year Time Limit

**X. MAILING:** M.S. 60A.38, subd. 4

Proof of Mailing  
Cancellation  
Nonrenewal

**XI. MANUSCRIPT ENDORSEMENT:**

Minnesota Department of Commerce Bulletin 91-9

Drawer Filing  
All Pertinent Statutes Apply  
More Than One Insured

**XII. NONRENEWAL:** M.S. 60A.37

Notice Requirement  
Exceptions  
    Insured Elsewhere  
    Accepted Replacement Coverage  
    Requested or Agreed to Nonrenewal  
Policy Continuation  
Proof of Mailing: M.S. 60A.38, subd. 4

**XIII. NOTIFICATION OF CLAIM:** M.S. 60K.49, subd. 1, and M.S. 72A.201

Oral and Written Notice  
Insurer, Insurance Agent and Broker Notice  
Declarations  
Notice Provisions

**XIV. OPTIONAL EXTENDED REPORTING PERIOD:**

Optional Extended Reporting Periods

On claims made policies that are utilized in the State of Minnesota, we suggest that the company make provisions for the unrestricted availability of an Optional Extended Reporting Period of at least one year in duration following termination of the policy period (except when termination is based on non-payment of premium).

Unlimited Durations for Physicians and Surgeons

The industry and the Department have often viewed the Optional Extended Reporting Periods for physicians to provide an extended reporting period of unlimited duration and many companies have made this available whenever physicians' and surgeons' medical malpractice claims made policies are terminated for reasons other than non-payment of premium.

Minimum 30 Days Offer After Termination  
Endorsement and Rating Plan  
"Fully Earned" Premium  
No Charge Extended Reporting Periods  
    Automatic/Basic  
    Disability  
    Retirement  
    Death  
Actuarial Justification

**XV. POLICY TERM:** M.S. 60A.08, subd. 3

New Policy Requirement  
Declarations or Renewal Certificates

**XVI. PREJUDGMENT INTEREST:** M.S. 72A.201, subd. 12

Payment in Addition to the Limit  
Settlement Offers

**XVII. PUNITIVE DAMAGES:** The decision in U.S. Fire Insurance Co. v. Goodyear Tire and Rubber Co., 920 F. 2d 487 (8th Cir. 1990), and M.S. 60A.06, subd. 4

General Exclusion Required  
Exceptions Allowed  
    Vicarious Liability  
    Other Jurisdictions

**XVIII. "REFER TO COMPANY" RATES:** M.S. 70A.06, subd. 1

Rates and Rating Factors Must Be Filed  
Presumption of Excessiveness

**XIX. REFUND OF UNEARNED PREMIUM:**

Pro rata Refund of Premium Required  
Exceptions

**XX. SCHEDULE RATING PLAN:** M.S. §70A

Maximum Debit  
Actuarial Justification

**XXI. SIGNATURES:** M.S. 60A.08, subd. 5

Authorized Officers of the Insurer  
    Secretary or an Assistant Secretary  
    President or Vice-President  
    Two Directors  
Facsimile Signatures

**XXII. SUBROGATION:** M.S. 60A.41

Insurer Restrictions  
    Insured  
    Other Persons Insured  
Intentional Acts Exception

SAMPLE LETTER THAT WILL BE FORWARDED TO THE COMPANIES

**SELF CERTIFICATION PILOT PROGRAM ACKNOWLEDGMENT**

Date  
Company Name  
Address

RE: **Our Record No.:**  
**Date Received:**  
**Date of Filing:**  
**Form, Rate or Rule No.:**

**SAMPLE**

Dear \_\_\_\_\_:

The Minnesota Department of Commerce is participating in the National Association of Insurance Commissioners' new (Self Certification Pilot Program). Your filing is one of the filings that has been submitted in conjunction with that new Speed to Market Program. The Department hereby acknowledges receipt of your filing and the Company Sworn Statement of Compliance Professional Liability.

Insurers should note that when submitting this filing, they certify that it complied with the applicable Minnesota Statutes and Rules. The Department will be reviewing the files closed under this new Speed to Market procedure to verify that the document(s) submitted do in fact comply with all applicable Statutes and Rules.

Thank you for participating in our new Speed to Market Program.

Sincerely,

Name  
Commerce Analyst  
(651) Phone Number

**PLEASE USE THE UNIFORM TRANSMITTAL FORMAT AS SHOWN  
ON THE NAIC WEBSITE**

[http://www.naic.org/rates\\_forms/trans\\_docs.htm](http://www.naic.org/rates_forms/trans_docs.htm)

# **FREQUENT ISSUES AND EXAMPLES FOR PROFESSIONAL LIABILITY FILERS**

## **PROFESSIONAL LIABILITY**

### **I. AUTOMATIC TERMINATION:** M.S. 60A.36, and M.S. 60A.37

**Policy language that automatically terminates coverage without compliance with statutory notice and reasons must be deleted.**

SAMPLE PARAGRAPH:

*must be amended to delete the automatic termination language. A minimum 10 day notice of termination must be given for cancellations made during the first 89 days of the policy period or for nonpayment of premium. After the policy has been in effect for 90 days, the company must provide a minimum 60 day notice of nonrenewal and cancellation for reasons other than nonpayment of premium.*

### **II. CANCELLATION:** M.S. 60A.36

**In order to cancel policies mid-term it is necessary to provide a minimum of 10 days notice for nonpayment of premium and for any other reason within the first 89 days that the policy is in effect. With respect to policies in effect for 90 or more days it is necessary to provide the insured with a minimum of 60 days notice and cancellation is only available for the reasons allowed by statute.**

SAMPLE PARAGRAPH:

*must be amended to comply with M.S. 60A.36. This statute lists the only reasons for cancellation that may be used. It also requires that 60 days notice be given prior to the effective date of cancellation, provided that the contract has been in effect for 90 days or more and is not being canceled for nonpayment of premium.*

### **III. CLAIMS MADE DISCLOSURES:**

**The Department requests that any claims made policies issued in Minnesota should conspicuously disclose the unique nature of the "Claims Made" insurance product to the insured.**

## **DEPARTMENT RECOMMENDED DISCLOSURE**

### **Suggested disclosure language for claims made policies:**

#### **SAMPLE PARAGRAPH:**

*We recommend the following disclosure language be prominently displayed in boldface type across the top of the first page of every claims-made policy:*

***"...THIS POLICY PROVIDES COVERAGE ON A CLAIMS-MADE BASIS.***

*This means that only claims actually made DURING the policy period are covered unless coverage for an extended reporting period is purchased. If an extended reporting period is NOT made available to you, you risk having gaps in coverage when switching from one company to another. Moreover, even if such a reporting period is made available to you, you may still be personally liable for claims reported after the period expires.*

*Claims-made policies do NOT provide coverage for wrongful acts committed before a fixed retroactive date.*

*Rates for claims-made policies are discounted in the early years of a policy, but increase steadily over time..."*

## **SOME ADDITIONAL SUGGESTIONS**

**Add "Claims Made" disclosure language to all claims-made policies. At a minimum the disclosure language must be: (1) prominently displayed; (2) in bold face; and (3) placed across the top of the first page of the policy, declarations page or application.**

#### **SAMPLE PARAGRAPH:**

*Please amend your policy to prominently display "CLAIMS MADE" disclosure language in boldface type across the top of the first page substantially similar to the following: **"This is a CLAIMS MADE Policy" or "CLAIMS MADE"**.*

## **INDEPENDENT COMPANY DISCLOSURES**

**Companies may not adopt independent claims made disclosure language that violates statutory or regulatory requirements. For example, it is not permissible to use claims made disclosure language that limits claims first made and reported "in writing to the insurer" or reported "during the policy period" since this language would be in violation of statutory and regulatory requirements. In these instances, the Department may request revisions to delete any requirement that claims be made in writing and to add language that includes claims reported to the insurance agent or broker and during the optional extended reporting period, if exercised by the insured.**

SAMPLE PARAGRAPH:

*Please amend your independent Claims Made Disclosure Notice to provide language substantially similar to the following:*

*"...This is a Claims Made Policy. Coverage is Limited to Liability for Claims First Made Against You and Reported ~~in Writing~~ To Us or the Insurance Agent or Broker During the Policy Period, or any optional extended reporting period, if exercised by the Insured. ...";*

*in order to allow oral and written notice of claim to the insurer and the agent and to provide notice of the availability of an optional extended reported period whenever a claims made policy is canceled or nonrenewed for reasons other than nonpayment of premium. M.S. 60K.49, subd. 1; M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1), and Department Procedure is the legal basis of this requirement.*

**IV. COMPANY NAME:** M.S. 60A.08, subd. 2

**Companies must conspicuously display the company name that they intend to conduct business with in Minnesota on all policy forms and other publications.**

SAMPLE PARAGRAPH:

*must be amended to comply with M.S. 60A.08, subd. 2, which requires every company, domestic or foreign, to conspicuously display the company name pursuant to which it will conduct its business, display all signs and advertisements, and issue all policies, circulars, and other documents and publications in this state.*

**V. CONDITIONAL RENEWAL:** M.S. 60A.351

**In order to initiate new terms, new rates and/or a rating plan less favorable to the policyholder the company must provide at least 60 days notice prior to the renewal date or anniversary date of the policy.**

SAMPLE PARAGRAPH:

*must be amended to conform with M.S. 60A.351 which requires an insurance company licensed to do business in Minnesota to provide at least 60 days notice prior to the renewal date or anniversary date of the policy in order to initiate new terms, new rates and/or rating plan less favorable to the policyholder. If the insurer has not so notified the policyholder, the policyholder may elect to cancel the renewal policy within the 60 day period after receipt of the notice. Earned premium for the period of coverage, if any, shall be calculated pro rata upon the prior rate.*

**VI. DEFENSE WITHIN LIMITS:** M.S. 60A.08, subd. 13

**Delete all aggregate limits that are not at least \$100,000 if the costs of legal defense are within the limits.**

**SAMPLE PARAGRAPH:**

*Please confirm that in all instances the coverage conforms to M.S. 60A.08, subd. 13. This statute prohibits any insurer from issuing or renewing a policy of liability insurance in Minnesota that reduces the limits of liability stated in the policy by the costs of legal defense unless there is a minimum aggregate limit of liability of at least \$100,000.*

**DEFENSE WITHIN SUBLIMITS:** M.S. 60A.08, subd. 13

**Endorsement coverages creating sublimits including the costs of defense must have a minimum aggregate of at least \$100,000 or apply the sublimits on an occurrence basis.**

**SAMPLE PARAGRAPH:**

*Your endorsement coverage provides for defense costs within the limit of liability. This is in violation of M.S. 60A.08, subd. 13, which requires that legal defense costs in a professional liability policy must be outside the limits of liability if the annual aggregate limit of liability is not at least \$100,000. Accordingly, your endorsement coverage must be revised before I may approve it. There are several ways to address this revision as follows:*

- a) Amend the endorsement so that defense costs are outside the limit of liability; or,*
- b) Apply the limit of liability of the endorsement on an unlimited, per occurrence basis instead of an aggregate amount; or,*
- c) Set the minimum limit of liability for the endorsement at a level of at least \$100,000 annual aggregate.*

**VII. DISPUTE RESOLUTION PROCEEDINGS:** M.S. 60A.08, subd. 4

**Any dispute resolution proceedings will take place in Minnesota.**

**CHOICE OF LAW**

**Replace choice of law conditions that reference other states or jurisdictions other than Minnesota for purposes of dispute resolution proceedings.**

**SAMPLE PARAGRAPH:**

*must be amended to remove the references to any jurisdiction outside the state of Minnesota and replace it with the state of Minnesota. This is required by M.S.60A.08, subd. 4.*

**RELEVANT DISPUTE RESOLUTION PROCEEDINGS**

**Add language that any dispute resolution proceedings will take place in Minnesota.**

**SAMPLE PARAGRAPH:**

*must be amended to comply with M.S. 60A.08, subd. 4, which stipulates that all insurance contracts are deemed to be made in Minnesota.*

**VIII. FRAUD:** M.S. 60A.36, subd. 5

**Fraud, material misrepresentation and material omission with the knowledge of the insured is the only basis for voiding an insurance contract in Minnesota.**

**RECISSION OR VOIDANCE**

**Recission or voidance for fraud, misrepresentation or omission is only permissible if the misrepresentation or fraud is material to the acceptance of the risk and if the insured has knowledge of the fraud, material misrepresentation or material omission.**

**SAMPLE PARAGRAPH:**

must be amended to comply with M.S.60A.36, subd. 5. Our staff attorney has suggested the following replacement language:

*“...This insurance is void in any case of fraud, material misrepresentation or material omission made by you or with your knowledge in obtaining this insurance or pursuing a claim under the policy...”*

**CANCELLATION:** M.S. 60A.36, subd. 1, clause (2)

**Companies have the right to cancel the policy prospectively for misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or in pursuing a claim under the policy.**

**SAMPLE PARAGRAPH:**

Your forms must be amended to meet the strict statutory standards for recission or voidance of coverage based on "materiality" to the acceptance of the risk and "knowledge" of the insured. As indicated in the statute, M.S. 60A.36, subd. 5, does not limit your right to cancel the policy prospectively for "misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or in pursuing a claim under the policy".

**IX. "FULLY EARNED" PREMIUM:**

**In the event the policy provides for a "fully earned" premium, inquiry should be made regarding the rationale and specific implementation.**

**SAMPLE PARAGRAPH:**

*Please explain the rationale and specific implementation of your provision for a "fully earned" premium. Department Procedure provides for pro rata refund of any unearned premium, whenever the company initiates termination.*

**An exception is allowed for a "fully earned" premium included in a professional liability policy or an optional extended reporting period endorsement if the form specifically provides that the company may not cancel.**

SAMPLE PARAGRAPH:

*If you wish to retain your "fully earned" premium please add language specifically providing that the applicable policy or endorsement is not cancelable.*

**X. GUIDE "A" Rates:** Minnesota Department of Commerce Bulletin 91-9

**Verify that companies submitting guide "A" rates for a individual insured will make a drawer filing and file the rate with the Department if it is used for more than one insured on a generalized basis.**

SAMPLE PARAGRAPH:

*Please confirm in writing your agreement to perform the following:*

- a) *Make a drawer filing whenever a guide "a" rate is utilized, and;*
- b) *Make a filing with the Department should the company begin to use guide "a" rates for more than one insured on a generalized basis.*

*Minnesota Department of Commerce Bulletin 91-9, is the basis of this requirement.*

**XI. INSPECTION AND AUDIT:** M.S. 60A.08, subd. 8

**Add replacement language to limit the time that the insurer can inspect and audit the insured's books to one year following the termination of the policy period.**

SAMPLE PARAGRAPH:

*must be clarified to comply with M.S. 60A.08, subd. 8. This statute only permits the insurer to examine and audit the insured's books and records for up to one year after the end of the policy period.*

**XII. MAILING:** M.S. 60A.38, subd. 4

**Add language providing that proof of mailing of any notice is sufficient proof of notice.**

SAMPLE PARAGRAPH:

*Please add language substantially similar to the following to your Cancellation and Nonrenewal Conditions:*

*"...Unless otherwise specifically required, proof of mailing of any notice shall be sufficient proof of notice..."*

*M.S. 60A.38, subd. 4, is the legal basis of this requirement.*

**XIII. MANUSCRIPT ENDORSEMENT:** Minnesota Department of Commerce Bulletin 91-9

**Verify that the company will make a drawer filing whenever a manuscript form is used, that all pertinent statutes are applied and that the form will be filed with the Department when used for more than one insured.**

**SAMPLE PARAGRAPH:**

*Please confirm in writing your agreement to perform the following in respect to the Manuscript Endorsement:*

- (a) *Make a drawer filing whenever a manuscript form is utilized;*
- (b) *Apply all pertinent statutes when drafting a manuscript form, and*
- (c) *Make a filing with the Department if you begin to use a manuscript form for more than a single insured.*

*Minnesota Department of Commerce Bulletin 91-9 is the basis of this requirement.*

**XIV. MINIMUM PREMIUM:**

**The Department suggests a pro rata refund of unearned premium in the event of any company initiated cancellation. Exceptions to this requirement include minimum written premium, insured initiated cancellations, and voidance.**

**SAMPLE PARAGRAPH:**

*may be amended to the extent that the minimum premium includes unearned premium. If these rules relate to minimum written premium, use language substantially similar to the following: "Minimum Written Premium".*

**XV. NONRENEWAL:** M.S. 60A.37

**If a company elects to non-renew coverage it must provide 60 days notice prior to the policy expiration date unless the policyholder insureds elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal.**

**SAMPLE PARAGRAPH:**

*must be amended to comply with M.S. 60A.37. This statute requires that the insurer provide at least sixty (60) days notice of intention not to renew before the agreed policy expiration date unless the policyholder has insured elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal. If statutory notice is not provided as prescribed, the policy will continue in force until sixty (60) days after a notice of intent to not renew is received by the policyholder.*

**XVI. NOTIFICATION OF CLAIM:** M.S. 60K.49, subd. 1, and M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1).

**The insured may provide notification of claim by any reasonable means including oral or written notice to the insurer, or the insurance agent or broker.**

*The question has arisen from the industry regarding whether Minnesota Statutes should be interpreted to include a requirement that any notice of claim be submitted in writing. However, it is the opinion of the Department's staff attorney that M.S. 72A.201, subd. 4, clause 6, specifically refers to written notice of loss or proof of loss, rather than notification of claims. This legal distinction is particularly important, since each term is defined differently under M.S. 72A.201, subd. 3, clauses (11), and (12), respectively, as follows:*

*(11) **Notification of Claim** is defined as any communication to an insurer by a claimant or an insured which reasonably apprises the insurer of a claim brought under a policy or contract issued by the insurer.*

*(12) **Proof of Loss** means the necessary documentation required from the insured to establish entitlement to payment under a policy.*

*The Department interprets M.S. 72A.201, subd. 4, as establishing the parameters of what constitutes an unfair settlement practice in claim filing and handling. For example, M.S. 72A.201, subd. 4, clause (1), provides that it is an unfair settlement practice if an insurer fails to acknowledge receipt of the notification of claim within 10 business days.*

*Please also note that M.S. 72A.201, subd. 4, clause (1), does NOT include the provision "...unless otherwise provided by law or in the policy...". In addition, since **Notification of Claim** is defined in Minnesota Statutes as "...any communication...which reasonably apprises the insurer of a claim...", our staff attorney has come to the conclusion that the legislature intended that the insurer accept either oral or written notification of claim.*

*It has also been a longstanding Department position that **Proof of Loss** requirements are regulated under M.S. 72A.201, subd. 4, clause (6). This clause does include the language "...unless otherwise provided by law or in the policy..." Therefore, the Department will interpret the statute to allow a company to include language in its policy requiring that an insured give written proof of loss. However, it is the opinion of our staff attorney that if the policy is silent as to whether written proof of loss is required, the company must accept oral proof of loss.*

**ORAL AND WRITTEN NOTICE OF CLAIM:** M.S. 60K.49, subd. 1, and M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1)

**Delete references to written notice of claim or add language authorizing oral notice in addition to written notice.**

SAMPLE PARAGRAPH:

*must be amended in pertinent part to provide language substantially similar to the following:*

*"...~~written~~ notice..."; or;*

*"...oral or written notice...";*

*in order to allow oral and written notice of claim to the insurer, insurance agent or broker. Adding language substantially similar to the following:*

*"...The insurance agent or broker is authorized to receive written or oral notice of Claim, and any notice given to the insurance agent or broker is considered notice to the Company..."*

*M.S. 60K.49, subd. 1, and M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1), is the legal basis of this requirement.*

**INSURER, INSURANCE AGENT AND BROKER NOTICE:** M.S. 60K.49, subd. 1, and M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1)

**Add language authorizing notice of claim to the insurance agent and broker in addition to the insurer.**

SAMPLE PARAGRAPH:

*must be amended in pertinent part to provide language substantially similar to the following:*

*"...The Insured shall give written or oral notice to the Insurer or the agent or broker...";*

*M.S. 60K.49, subd. 1, and M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1), is the legal basis of this requirement.*

**DECLARATIONS:** M.S. 60K.49, subd. 1, and M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1)

Add language to the Declarations or Notices section of the policy authorizing both oral (e.g. by phone) and written notice of claim at the insurer's address or to the insurance agent or broker.

SAMPLE PARAGRAPH:

must be amended in pertinent part to provide language substantially similar to the following:

*"...Notices to Insurer:*

*ABC Company  
XYZ Road  
Anywhere City, State, Zip*

*Phone:* \_\_\_\_\_

*Notices to Agent or Broker:*

*The insurance agent or broker is authorized to receive written or oral notice of Claim, and any notice given to the insurance agent or broker is considered notice to the Company.."*

M.S. 60K.49, subd. 1, and M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1), is the legal basis of this requirement.

**NOTICE PROVISIONS:** M.S. 60K.49, subd. 1, and M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1)

**Delete references to written notice of claim in Claims Made Disclosure Notices or add language authorizing oral notice of claim.**

SAMPLE PARAGRAPH:

*must be amended in pertinent part to provide language substantially similar to the following:*

*"...~~written~~ notice..."; or;*

*"...oral or written notice...";*

*in order to allow oral and written notice of claim.*

M.S. 60K.49, subd. 1, and M.S. 72A.201, subd. 3, clause (11); and M.S. 72A.201, subd. 4, clause (1), is the legal basis of this requirement.

## **XVII. OPTIONAL EXTENDED REPORTING PERIOD:**

**We suggest that all claims-made policies make provision for the unrestricted availability of an optional extended reporting period of at least one year in duration following termination of the policy period. Exceptions could be (1) when termination is based on non-payment of premium or (2) when the insured has failed to reimburse the company for any deductible amount(s) owed.**

SAMPLE PARAGRAPH

*Please remove all of the restrictions [except for nonpayment of premium or non-reimbursement of deductible amount(s) owed] on availability of the optional extension period when the Company cancels or refuses to renew the policy. It is the policy of this department that an extension period of one year must be made available whenever a claims-made policy is canceled or non-renewed, except when such termination is based on nonpayment of premium or when the insured has failed to reimburse the company for any deductible amount(s) owed.*

## **UNLIMITED DURATION FOR PHYSICIANS AND SURGEONS**

**We suggest an optional extended reporting period of unlimited duration be made available whenever a physicians and surgeons medical malpractice claims-made policy is terminated for reasons other than nonpayment of premium.**

### **SAMPLE PARAGRAPH**

*It is the policy of this department that an optional extended reporting period of unlimited duration must be made available whenever a physicians and surgeons medical malpractice claims-made policy is canceled or non-renewed, except when such termination is based on nonpayment of premium. Please provide verification of compliance with this unlimited "tail" requirement.*

## **MINIMUM 30 DAYS OFFER AFTER TERMINATION**

**We suggest the insurer provide at least 30 days after termination of a claims-made policy to request an optional extended reporting period.**

### **SAMPLE PARAGRAPH**

*Please include a provision giving the insured at least 30 days from the date the policy terminates to request an optional extended reporting period. Department Procedure is the legal basis of this requirement.*

## **RETROACTIVE DATE**

**All claims-made policies must make provision for the policy retroactive date.**

### **SAMPLE PARAGRAPH**

*Please amend at least one of the following to provide for the establishment of the policy retroactive date: (a) the declarations page, (b) the policy, (c) the amendatory endorsement, including "prior acts exclusion" endorsements, (d) optional extended reporting endorsement, or (e) any combination of the above.*

## **ENDORSEMENT AND RATING PLAN**

**Companies making an initial filing of a claims-made insurance policy may submit copies of their optional extended reporting period endorsement and rating plan when available.**

### **SAMPLE PARAGRAPH**

*Please submit a copy of your optional extension period endorsement and rating plan. It is the policy of this department that an extension period of one year must be made available whenever a claims-made policy is canceled or non-renewed, except when such termination is based on nonpayment of premium.*

## **"FULLY EARNED" PREMIUM**

If an extended reporting period endorsement is not cancelable the premium for the optional extended reporting period can be "fully earned".

### SAMPLE PARAGRAPH

*Please add language substantially similar to the following to the provision requiring a "fully earned" premium:*

*"...The optional extended reporting period is not cancelable..."*

*Alternatively, you may delete the "fully earned" premium or add replacement language that requires pro rata refund of unearned premium in the event of any company initiated cancellation.*

## **NO CHARGE EXTENDED REPORTING PERIODS**

Extended reporting periods that are provided automatically upon termination of the policy for no charge, or for reasons of disability, retirement or death, are acceptable even if they have restrictions, to the extent that it is a free benefit to the insured and to the extent that an unrestricted optional extended reporting period is available for purchase.

**AUTOMATIC/BASIC:** An automatic or basic optional extended reporting period is often offered at no charge for a brief period of time such as 30 or 60 days following termination of the claims-made policy in order to enable the insured to report claims first made after the retroactive date and prior to termination of the policy period. Since this is a free benefit to the insured it can be approved with restrictions to the extent that there are no restrictions on the availability of the purchased optional extended reporting period and the purchased optional extended reporting period does not begin after the restrictive no charge automatic or basic extended reporting period.

**DISABILITY:** An optional extended reporting period is often provided at no charge in the event the insured becomes disabled during the policy period. Restrictions are allowed to the extent that there is no cost to the insureds.

**RETIREMENT:** An optional extended reporting period is often provided at no charge in the event that there is no cost to the insured.

**DEATH:** An optional extended reporting period is often provided at no charge in the event the insured dies during the policy period. Restrictions are allowed to the extent that there is no cost to the insured or the insured's personal representative.

*SAMPLE PARAGRAPH*

*Please remove either the charge for the restricted optional extended reporting period in the event of disability, retirement or death or the associated restrictions on its availability. It is not permissible to charge for a restricted optional extended reporting period. Examples of restrictions that must be removed if the additional coverage is not a free benefit to the insured include conditioning the availability of the optional extended reporting period on maintaining a certain professional license, securing alternative insurance or failing to comply with policy conditions other than payment of premium.*

**ACTUARIAL JUSTIFICATION** - M.S. 70A.06, subd. 1

**Companies must file their pricing structure for any purchased optional extended reporting periods prior to use in Minnesota.**

*SAMPLE PARAGRAPH*

*In order to facilitate review, please submit any charges for the optional extended reporting periods offered pursuant to the above-referenced filing which must be accompanied by supporting data and explanatory data as set out in M.S. 70A.06, subd. 1.*

**UNLIMITED DURATION FOR PHYSICIANS AND SURGEONS**

**We suggest an optional extended reporting period of unlimited duration be made available whenever a physicians and surgeons medical malpractice claims-made policy is terminated for reasons other than nonpayment of premium.**

**MINIMUM 30 DAYS OFFER AFTER TERMINATION**

**We suggest the insurer provide at least 30 days after termination of a claims-made policy to request an optional extended reporting period.**

**ENDORSEMENT AND RATING PLAN**

**Companies making an initial filing of a claims-made insurance policy may submit copies of their optional extended reporting period endorsement and rating plan when available.**

**"FULLY EARNED" PREMIUM:**

**If an extended reporting period endorsement is not cancelable the premium for the optional extended reporting period can be "fully earned".**

**NO CHARGE EXTENDED REPORTING PERIODS:**

**Extended reporting periods that are provided automatically upon termination of the policy for no charge, or for reasons of disability, retirement or death, are acceptable even if they have restrictions, to the extent that it is a free benefit to the insured and to the extent that an unrestricted optional extended reporting period is available for purchase.**

**ACTUARIAL JUSTIFICATION – M.S. §70A.06, subd. 1**

**Submit any charges for the optional extended reporting period shall be accompanied by supporting data and explanatory data as set out in M.S. §70A.06, subd. 1.**

**XVIII. POLICY TERM – M.S. §60A.08, subd. 3**

**A new policy must be reissued at least once every 5 years.**

SAMPLE PARAGRAPH:

*must be amended to provide that a new policy will be reissued at least once every five years. Re-issued Declarations pages or issuance of Renewal Certificates do not suffice in this regard. M.S. 60A.08, subd. 3, is the legal basis of this requirement.*

**XIX. PREJUDGMENT INTEREST: M.S. 72A.201, subd. 12**

**Prejudgment interest must be paid in addition to the limit of liability.**

SAMPLE PARAGRAPH

*must be amended to add language guaranteeing coverage for prejudgment interest, in addition to the limit of liability, as is required by M.S. 72A.201, Subd. 12. This statute requires that if a judgment is entered against an insured, the principal amount of which is within the applicable policy limits, the insurer is responsible for their insured's share of the costs, disbursements, and prejudgment interest included in the judgment even if the total amount of the judgment is in excess of the applicable policy limits.*

**PAYMENT IN ADDITION TO THE LIMIT**

**Add language guaranteeing coverage for prejudgment interest, in addition to the limit of liability.**

SAMPLE PARAGRAPH

*must be amended to provide for payment of prejudgment interest in addition to the limit of liability in conformity with M.S. 72A.201, subd. 12. Language substantially similar to the following would be acceptable for this purpose:*

*“...If a judgment is entered against you, the principal amount of which is within the applicable policy limits, we will be responsible for your share of the costs, disbursements, and prejudgment interest included in the judgment even if the total amount of the judgment is in excess of the applicable policy limits...”*

## **SETTLEMENT OFFERS**

**Delete restrictions on payment of prejudgment interest in addition to the limit of liability after an offer to settle.**

*must be amended to delete the following language:*

*"...If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer";*

*in order to provide for payment of prejudgment interest in addition to the limits of liability as required by M.S. 72A.201, subd. 12. You may not limit the amount of prejudgment interest the company will pay to only the amount that accrues prior to the date of a settlement offer to pay the available limit of coverage. There is no such limitation included in the applicable statute.*

**XX. PUNITIVE DAMAGES:** The decision in U.S. Fire Insurance Co. v. Goodyear Tire and Rubber Co., 920 F. 2d 487 (8th Cir. 1990), and M.S. 60A.06, subd. 4

**Previously approved language provides a general exclusion for punitive damages consistent with case law precedent and carves out exceptions for vicarious liability consistent with Minnesota statutes and for policies construed by courts or arbitration panels in other jurisdictions consistent with commissioner correspondence**

SAMPLE PARAGRAPH:

*related to coverage for punitive damages, must be amended to conform to the decision in U.S. Fire Insurance Co. v. Goodyear Tire and Rubber Co., 920 F. 2d 487 (8th Cir. 1990), and M.S. 60A.06, subd. 4. Sample language previously approved by our staff attorney includes the following:*

*"...Loss does not include...punitive or exemplary damages; provided that (i) to the extent that this Policy is construed by a court of competent jurisdiction, or an arbitration panel, pursuant to Minnesota law, this provision...does not exclude vicarious liability for punitive or exemplary damages...incurred by the Insureds...; or (ii) to the extent that this Policy is construed by a court of competent jurisdiction, or an arbitration panel, under the laws of any jurisdiction other than Minnesota, this provision...does not exclude punitive or exemplary damages incurred by the Insureds if...such damages are insurable under the laws of that jurisdiction..."*

**XXI. "REFER TO COMPANY" RATES:** M.S. 70A.06, subd. 1

**Supporting rate data must be filed within 30 days after requested or the rate will no longer be effective and is presumed excessive.**

SAMPLE PARAGRAPH:

*provide for rates on a "Refer to Company" basis. Please provide copies of your non-published rates or rating factors related to the premium calculation in these instances. The Department's interpretation of M.S. 70A.06, subd. 1, is the legal basis for this requirement.*

**XXII. REFUND OF UNEARNED PREMIUM:**

**We suggest unearned premium must be refunded pro rata in the event of any company-initiated cancellation.**

**XXIII. SCHEDULE RATING PLAN:**

**Maximum debits require actuarial justification.**

SAMPLE PARAGRAPH:

*Please state the maximum debit allowed pursuant to your scheduled rating plan and provide actuarial justification.*

**XIV. SIGNATURES:** M.S. 60A.08, subd. 5

**All insurance policies must be signed by two designated officers or directors.**

SAMPLE PARAGRAPH:

*must be amended to comply with M.S. 60A.08, subd. 5, which requires all insurance policies to be signed by the secretary or an assistant secretary, and by the president or vice-president, or in their absence, by two directors of the insurer. The signatures may be facsimile signatures.*

**XXV. SUBROGATION:** M.S. 60A.41

**Add language restricting the company from subrogating against its insured or another person insured for the same loss.**

SAMPLE PARAGRAPH:

*must be amended to comply with M.S. 60A.41. This statute prohibits an insurance company from proceeding against its insured in a subrogation action where the loss is caused by the non-intentional acts of the insured.*

*The company also may not subrogate itself to the rights of the insured to proceed against another person if that other person is insured for the same loss by the same company. This only applies if the loss was caused by a non-intentional act.*

**XXVI. CANCELLATION NOTICE FOR NONPAYMENT OF PREMIUM:**

M.S. 60A.36, subd. 2

**No cancellation for nonpayment can be effective if payment of the amount due is made before the effective date of cancellation stated in the notice.**

**SAMPLE PARAGRAPH:**

*must be amended to conform with M.S. 60A.36, subd. 2, which requires cancellation notices to state not only the reason for cancellation, but also the effect of nonpayment by the due date. No cancellation for nonpayment can be effective if payment of the amount due is made before the effective date of cancellation stated in the notice. (See: 2003745)*

**XXVII. ENTITY AND EXCESS COVERAGES:** Bulletin 95-2

**Excess professional liability coverages and professional liability coverage for entities are not required to be filed and should be withdrawn.**

**SAMPLE PARAGRAPH:**

*Please be advised that only primary professional liability coverages intended for scheduled individuals are required to be filed with this Department pursuant to **Minnesota Department of Commerce Bulletin 95-2**. The Entity and/or Excess coverage submitted with the above-referenced filing is not subject to review and must be withdrawn. However, you must make a drawer filing in compliance with Minnesota statutory and regulatory requirements and make this information available within 30 days of the Department's request.*

**XXVIII. MISCELLANEOUS**

**Declarations Pages/Policy Jackets**

**New Program Requirements**

Please submit copies of the Declarations Page and Policy Jacket that will be issued to Minnesota insureds with the above-referenced new program filing in order to comply with M.S. 70A.06, subd. 2. This statute requires approval of all policy forms prior to entering the Minnesota marketplace.

**Policy Form Revisions**

Please be advised that contrary to the assertion in your filing memorandum all revisions to your Declarations Page and Policy Jacket, including changes in officers signatures, must be submitted for approval prior to issuance to Minnesota insureds. M.S. 70A.06, subd. 2, and M.S. 60A.08, subd. 5, is the legal basis of this requirement.

**Effective/Expiration Time**

Please amend your Declarations Pages to provide for a policy period effective time and expiration time or submit written verification that this information is found elsewhere in the policy. M.S. 70A.06, subd. 2, is the legal basis of this requirement.

### **Suits Against Company**

must be amended to conform with the Minnesota Department of Commerce Rules related to Insurance Policies and Practices, (Chapter 2700.0300) which prohibits the acceptance for filing of any policy, rider or endorsement form that contains a provision limiting the time within which legal proceedings may be instituted against the insurer by the insured to a period less than two years.

### **Form Numbers/Edition Dates**

For clarity in referencing future revisions, please provide form numbers and edition dates or add your revised proposed effective date.

### **Payment of Loss (5 business days)**

must be amended to comply with M.S. 72A.201, Subd. 5(5). This statute requires payment of claims within five business days from the date of receipt of the agreement by the insurer or from the date of the performance by the claimant of any condition set by such agreement whichever is later.

### **Mutual Policy Condition (Mutual Companies only)**

must be amended to include a mutual policy (contingent liability) condition. Please do one of the following:

- a. Add such condition to the policy;
- b. Add such condition to the policy jacket; or
- c. Develop and file a separate endorsement which adds such condition to the policy.

The condition may be worded along the following lines:

"The maximum contingent liability of the policyholder under this policy shall be a sum equal to \_\_\_\_\_ annual premium (or premiums)."

For annual policies, the contingent liability may not be:

- a. Less than a sum equal to and in addition to one annual premium; or
- b. More than a sum equal to five times the amount of such annual premium.

For policies written for less than one year, the contingent liability may not exceed the amount of premium for which the policy is written.

M.S. 66A.12 is the legal basis of this requirement.

Note: Companies complying with M.S. 66A.16, Subd. 3, may issue policies without contingent liability. However, the fact that there is no contingent liability must be plainly and legibly stated in the policy.

Sample Disclosure:

*"...MUTUALS - MEMBERSHIP AND VOTING NOTICE: As a policyholder, you are a Member of the XYZ Insurance Company and are entitled to attend and vote, either in person or by proxy, at the Annual Meetings of Members held at the Home Office on the third Thursday of April, in each year at 10 o'clock A.M., or at any adjournments thereof.*

*MUTUALS - PARTICIPATION CLAUSE WITHOUT CONTINGENT LIABILITY: No Contingent Liability: This policy is nonassessable. The policyholder is a member of the Company and shall participate, to the extent and upon the conditions fixed and determined by the Board of Directors in accordance with the provisions of law, in the distribution of dividends so fixed and determined..."*

### **Suspension of Coverage**

With respect to the endorsement of policy provision that automatically suspends coverage under certain conditions, such as when a protective device is impaired, please do one of the following:

- 1) Withdraw the endorsement or policy condition; or,
- 2) Replace the endorsement or policy condition with wording similar to the following ISO wording:

*"...We shall not pay for loss or damage caused by a peril insured against if, prior to the loss, you:*

- a) knew of any suspension or impairment in any protective device listed in the policy and failed to notify us of that fact; or*
- b) Failed to maintain any protective device listed in the policy, and over which you had control, in complete working order.*

*If part of an automatic sprinkler system is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours..."*

Department Procedure is the basis of this requirement.

## **Guaranty Association Notice**

The submitted **NOTICE CONCERNING POLICYHOLDER RIGHTS IN AN INSOLVENCY UNDER THE MINNESOTA INSURANCE GUARANTY ASSOCIATION LAW**, is NOT in compliance with the provisions of M.S. 60C.21, subd. 1 to subd. 2. Please amend your notice to provide as follows:

*"...NOTICE CONCERNING POLICYHOLDER RIGHTS IN AN  
INSOLVENCY UNDER THE MINNESOTA INSURANCE  
GUARANTY ASSOCIATION LAW"*

*The financial strength of your insurer is one of the most important things for you to consider when determining from whom to purchase a property or liability insurance policy. It is your best assurance that you will receive the protection for which you purchased the policy. If your insurer becomes insolvent, you may have protection from the Minnesota Insurance Guaranty Association as described below but to the extent that your policy is not protected by the Minnesota Insurance Guaranty Association or if it exceeds the guaranty association's limits, you will only have the assets, if any, of the insolvent insurer to satisfy your claim.*

*Residents of Minnesota who purchase property and casualty or liability insurance from insurance companies licensed to do business in Minnesota are protected. SUBJECT TO LIMITS AND EXCLUSIONS, in the event the insurer becomes insolvent. This protection is provided by the Minnesota Insurance Guaranty Association.*

*Minnesota Insurance Guaranty Association  
4640 West 77th Street  
Edina, Minnesota 55435  
(952) 831-1908*

*The maximum amount that the Minnesota Insurance Guaranty Association will pay in regard to a claim under all policies issued by the same insurer is limited to \$300,000. This limit does not apply to workers' compensation insurance. Protection by the guaranty association is subject to other substantial limitations and exclusions. If your claim exceeds the guaranty association's limits, you may still recover a part or all of that amount from the proceeds from the liquidation of the insolvent insurer, if any exist. Funds to pay claims may not be immediately available. The guaranty association assesses insurers licensed to sell property and casualty or liability insurance in Minnesota after the insolvency occurs. Claims are paid from the assessment.*

*THE PROTECTION PROVIDED BY THE GUARANTY ASSOCIATION IS NOT A SUBSTITUTE FOR USING CARE IN SELECTING INSURANCE COMPANIES THAT ARE WELL MANAGED AND FINANCIALLY STABLE. IN SELECTING AN INSURANCE COMPANY OR POLICY, YOU SHOULD NOT RELY ON PROTECTION BY THE GUARANTY ASSOCIATION.*

*THIS NOTICE IS REQUIRED BY MINNESOTA STATE LAW TO ADVISE POLICYHOLDERS OF PROPERTY AND CASUALTY INSURANCE POLICIES OF THEIR RIGHTS IN THE EVENT THEIR INSURANCE CARRIER BECOMES INSOLVENT. THIS NOTICE IN NO WAY IMPLIES THAT THE COMPANY CURRENTLY HAS ANY TYPE OF FINANCIAL PROBLEMS. ALL PROPERTY AND CASUALTY INSURANCE POLICIES ARE REQUIRED TO PROVIDE THIS NOTICE..."*

Please be advised that additional language may be added to the notice if approved by the commissioner prior to its use in the form. Please be further advised that the Guaranty Association must be provided to an insured no later than the time application or within 72 hours, if an application is not taken in person. Although the Guaranty Association Notice must comply with Minnesota statutory provisions, it no longer needs to be filed.

### **Acceptance or denial of claims**

must be amended to provide that the company will either accept or deny a claim within 60 days after receipt of an acceptable proof of loss. It is not permissible to include a condition providing for a time window greater than 60 days. M.S. 72A.201, subd. 4, clause (11), is the legal basis of this requirement.

### **Definition of pronouns**

Please amend your form to define pronouns such as "we", "our", "us", "you", and "your". These terms do not need to be highlighted as long as this is explained in the definition section of the policy. Department Procedure is the basis of this requirement.

### **Applications**

#### **Entire Contract**

Please submit copies of your application since this form has been incorporated and expressly made a part of your policy. M.S. 70A.06, subd. 2, and M.S. 60A.08, is the legal basis of this requirement.

### **Promotional Materials/Advertising**

must be amended to delete the advertising material. Promotional or advertising cannot be included in any form that comprises an insurance policy. Such information may be made available in a form separate from the policy, which does not need to be filed. Department Procedure is the basis of this requirement.

### **Foreign Language Policies**

Since your professional liability policy is written in a language other than English, you must also submit an accompanying English translation of all foreign language forms included in the filing. In addition, the English translation must be certified in writing by a qualified translator as an accurate rendering of the terms of the foreign language forms. M.S. 72C.03, and Minnesota Rules 2700.0200, is the legal basis of this requirement.

### **Claims Forms**

Please be advised that claims forms are not required to be filed with the Department. However, claims forms are required to include the following wording:

*"...A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime..."*

Please amend your claims forms accordingly. M.S. 70A.06, subd. 2, and M.S. 60A.955, is the legal basis of this requirement.

### **Accidental Death and Dismemberment Benefits Exclusions**

Please be advised that the Department has determined that the following exclusions are contrary to sound public policy and the reasonable expectations of policyholders and therefore, must be deleted from your submitted forms:

- 1) Assault;
- 2) Involuntary ingestion or inhalation of poison, drugs, narcotics, gas or fumes, or other harmful substances;
- 3) Intoxication or influence of alcohol, unless a person is operating a motor vehicle and is determined to have had a blood alcohol level exceeding the legal limit set forth in state law;
- 4) Unintentionally self-inflicted injury; and,
- 5) Accidental or hostile gun-shot wounds.

However, the Department would accept the following types of exclusions, which represent irreducible and unavoidable perils, such as: suicide, war, active duty in the armed forces, private air travel, disease, and voluntary self-injury by any means. Department Procedure is the basis of this requirement.

## **Termination Notices**

### **New Programs**

In order to complete our records, please submit copies of the termination notices that will be issued to Minnesota insureds pursuant to the above-referenced new program filing. M.S. 70A.06, subd. 2, is the legal basis of this requirement.

### **Basic Requirements**

must be amended to include: (1) a title which clearly advises the insured of the importance of the notice; (2) the company name; (3) an issue date; (4) a date certain for termination of coverage; (5) a provision that if the termination is for nonpayment of premium no termination will be effective if payment is made prior to the termination effective date; (6) and a form number and edition date to assist the Department in tracking future revisions. M.S. 60A.36; M.S. 60A.37; M.S. 60A.351; and M.S. 60A.08, subd. 2, is the legal basis of this requirement.

### **Manuals: Waiver of Return/Additional Premium Amounts**

must be amended to provide for the same amounts waivable for both return and additional premium. Waiver rules that waive a larger amount of return premium than additional premium are not allowed. Also, waiver rules must provide that waived return premium be returned if specifically requested by the insured. Department Procedure is the legal basis of this requirement.

### **25% Review Cap On Annual Rate Increases**

Overall premium increases of greater than 25% per annum must be referred to the Department actuary for a decision on whether to hold a hearing. Multiple, smaller overall increases totaling more than 25% in a year's time should also be referred. If a company fails to indicate what its earlier rate revisions have been that information can be requested. M.S. 70A.06, subd. 1a, is the legal basis of this requirement.

### **Actuarial Review**

Please be advised that the above-referenced filing has been referred to our state actuary for actuarial review. You will be advised of the results of that review as soon as it is received. Until then your filing will be held in suspense.

### **Actuarial Support**

In order to complete our records, please answer the following rate-related questions:

- (a) Please submit the following in regard to your last two rate adjustments (increase or decrease):

- (1) Date of adjustment
  - (2) Overall percentage affect of adjustment on direct written premium
- (b) How did you arrive at your proposed rates?
  - (c) Are you aware of other companies offering similar kinds of coverage?
  - (d) If so, please identify these companies as well as how their rates compare with those you are proposing.
  - (e) What do you expect to be the overall percentage affect of this change on your direct written premium?

PLEASE INCLUDE THIS INFORMATION IN FUTURE RATE FILINGS.

### **Policy Fees**

Reasonable policy fees, which are used to defray the costs associated with underwriting new business, are permitted on new business only. Policy fees greater than \$30 should be referred to the Department Actuary for an opinion as to the reasonableness of the fee. M.S. 65B.162 is the legal basis of this requirement.

### **Installment Billing Plans/Fees**

The Department does NOT require companies to file installment billing plans/fees as these are NOT considered to be "rates" within the meaning of the statute and if submitted may be acknowledged on an "informational basis" only. M.S. 70A.06, subd. 1, is the legal basis of this requirement.

### **Rate decreases over 25%**

If a company proposes a rate decrease of over 25%, contact the supervisor of the Financial Examinations unit with the following information: (1) company name; (2) NAIC#; (3) line of insurance; and (4) the percentage of decrease to determine whether the company is experiencing solvency problems and whether review by the Department Actuary is required. Department Procedure is the basis of this requirement.

### **Oral Binders**

must be amended to conform with M.S. 60K.46, subd. 7, which requires an insurance agent to deliver to an insured a written memorandum or binder within three business days from the time the oral agreement to bind coverage or alter existing coverage is entered.

### **Lines Exempted from Filing with Department**

Please be advised that pursuant to the provisions of the **Minnesota Department of Commerce Bulletin 95-2**, excess or entity professional liability coverages are NOT subject to review and are hereby withdrawn. Please be further aware that Minnesota Rules 2700.2460 to 2700.2480 only exempt such commercial coverages from the filing requirements of M.S. 70A.06, but not statutory and regulatory requirements. In addition, these coverages must be part of a drawer filing and made available to our Enforcement Division with 30 days notice.

### **Risk Purchasing Groups**

A Risk Purchasing Group (RPG) is a group that (1) has as one of its purposes the purchase of liability insurance on a group basis; (2) purchases the insurance only for its group members and only to cover their similar liability exposure; (3) is composed of members whose activities are similar with respect to the liability to which members are exposed; and (4) is domiciled in a state.

An RPG must be registered with the Department prior to initiating review of the submitted filing. M.S. 60E.02, subd. 11; and M.S. 60E.08, is the legal basis of this requirements.

#### **SAMPLE PARAGRAPH:**

The Minnesota Department of Commerce has no records on file for the XYZ Risk Purchasing Group. Please provide proof of registration. M.S. 60E.02, subd. 11; and M.S. 60E.08 is the legal basis of this requirement.

### **Intentional Acts; Insane Acts Exception**

Please be advised that Department Procedure does not allow "insane acts exclusions" for the following reasons. By definition, an insane individual is unable to form intent and as a result, the courts may not allow application of such an exclusion. It has been determined to have adverse affects on the property casualty industry as a whole; and it violates sound public policy. Please withdraw your form or amend it accordingly.

### **HIV (AIDS)**

Unless you submit supporting actuarial data in justification of your rationale for specifically highlighting AIDS among all other life threatening or communicable diseases your exclusion specific to AIDS must be deleted. Department Procedure is the basis of this requirement.

### **Fiduciary (Pension Plan Managers) Liability Policies - Subrogation Clauses**

With regard to professional liability insurance for the managers of pension plans, federal law pre-empts Minnesota Statute and does NOT permit state laws to restrict a company's rights of recovery (subrogation) UNLESS the insurance policy is purchased with non-plan assets.

The following wording has been approved by the Department:

*"...Where the premium for this insurance has been paid without the direct or indirect use of plan assets, our rights under this condition shall not apply against:*

- 1. An insured for a loss resulting from his or her non-intentional acts; or,*
- 2. Any person insured under another policy issued by us for the same loss resulting from his or her non-intentional acts..."*

29 U.S.C. 1110 (a) - (b) ("ERISA"), and M.S. 60A.41, is the legal basis of this requirement.

### **Directors & Officers liability - Application Requirement**

Application forms, including "renewal applications" must be attached to and made part of a policy. Application forms should be included with the filing of new programs. M.S. 60A.08, subd. 11; and M.S. 70A.06, subd. 2, is the legal basis of this requirement.