

STATE OF ALASKA

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

IN THE MATTER OF)
)
 MAKINA HEALTH AND BENVEO)
)
 Respondents)
)
 _____)

Case No. D 19-02

CEASE AND DESIST ORDER
AND NOTICE OF RIGHT TO HEARING; AS 21.06.080

JURISDICTION AND PARTIES

1. The Alaska Division of Insurance, (hereafter “Division”), brings this matter against MAKINA HEALTH and BENVEO, before the Insurance Director of the State of Alaska, (hereafter “Director”).
2. MAKINA HEALTH (hereafter “Respondent Makina”) is a Purchasing Cooperative registered with the State of Texas on November 29, 2018 under License Number 13765856. Respondent Makina has a registration with the Texas Secretary of State with Texas SOS File Number of 0803147402 with an Effective SOS Registration Date of October 19, 2018.
3. BENVEO (hereafter “Respondent Benveo”) is a domestic limited liability company registered with the Oklahoma Secretary of State on May 31, 2012 under Filing Number 3512360748. The Legal Name is displayed as Professional Benefit Administrators West, LLC.
4. Respondent Makina submitted an application with the Alaska Division of Corporations, Business, and Professional Licensing (hereafter “CBPL”) to obtain a Corporation Certificate of Authority on February 19, 2019 and was issued a Certificate on the same day allowing “Makina Health to transact business in this state under the name of Makina Health”.
5. Although the US Department of Labor has not yet determined Respondent Makina to be a Multiple Employer Welfare Arrangement (MEWA) as of this date, the Division believes Respondent to be a MEWA based on Alaska law. Respondent Makina has not registered as a MEWA with the Division, as required by Alaska Statute AS 21.85.010.

FINDINGS & AUTHORITY

6. AS 21.06.080 and AS 21.36.910 authorize the Director to issue a Cease and Desist Order to a person who has acted in a capacity for which a license, registration, permit, or Certificate of Authority from the Director was required but not possessed.
7. AS 21.06.080 and AS 21.36.910 do not require the Director to hold a hearing prior to issuing a Cease and Desist Order.
8. AS 21.85.500(5) states that a “multiple employer welfare arrangement” as used within Title 21 has the same meaning as that contained in 29 USC 1002.
9. AS 21.85.010(a) provides as follows: “A person may not establish or maintain a self-funded multiple employer welfare arrangement except as authorized by a subsisting certificate of authority issued to the arrangement by the Director.”
10. In their February 28, 2019 letter, Respondent Makina stated they “are just brokers for Medova TPA & Sedera Health”.
11. AS 21.27.010(a) provides as follows: “Except as provided otherwise in this chapter, a person may not act as or represent to be an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus lines broker, or independent adjuster in this state or relative to a subject resident, located, or to be performed in this state unless licensed under this chapter. A person may not act as or represent to be a managing general agent, reinsurance intermediary broker, or reinsurance intermediary manager representing an insurer domiciled in this state regarding a risk located outside this state unless licensed by this state.”
12. Respondent Makina has never held any license, Certificate of Authority, or permit, issued by the Director, to act in any capacity regarding the transaction of insurance in Alaska.
13. From at least February 2019, Respondents have improperly solicited, marketed, sold, and/or issued what they have represented to be benefit plans as a MEWA to employers and agents in Alaska.
 - a. Respondent Makina solicited and sold the following: health insurance coverage to employers through a community-based membership program.
 - b. Using the name Makina Health Cooperative, Respondents have been and continue to solicit health benefit plans to employers under the business name of “Makina Health Cooperative”.
14. In Respondent Makina’s letter to the Division, Respondent Makina referred the Division to Section 1322 of the Affordable Care Act when questioned as to why they are not licensed under AS 21.97.900(28).

- a. Section 1322(c)(1)(B) states that the activities of a qualified nonprofit health insurance issuer must substantially consist of issuing qualified health plans in the individual and small group markets in each state in which it is licensed.
 - b. Section 1322(c)(5) also requires qualified nonprofit health insurance issuers must comply with the state laws where the issuer offers a qualified health plan – including licensing and filing of rates and forms.
15. Respondent Makina states that there are two layers of coverage:
 - a. Minimum Essential Coverage (MEC) plan – offering access to Wellness, Preventive Care and some urgent care. Premium is handled by a Third Party Administrator (TPA) called Benveo.
 - b. Health Cooperative covers all approved major services after a Deductible along with a Maximum Out-of-Pocket. Health Cooperative funds stay under the Master Health Cooperative claims account minus administrative fees, operational cost, commissions owed and vendor payouts.
16. Respondent Benveo is not registered in the state of Alaska as a TPA though TPAs are required to be registered pursuant to AS 21.27.630.
17. In the application referenced in Paragraph 3, Respondent Makina used a North America Industry Classification System (NAICS) Code of “813212 – Voluntary Health Organizations”. NAICS states this United States industry comprises establishments primarily engaged in raising funds for health related research, such as disease (e.g., heart, cancer, diabetes) prevention, health education, and patient services. This description does not match Respondent Makina’s stated purpose of “operating a health group cooperative”.
18. In communications with the US Department of Labor, an aggregated claims account is a key component as to whether an arrangement is a MEWA. Based on Respondent Makina’s responses to the Division’s data request letters, these arrangements are self-funded. Combining this information with the Makina Health Cooperative Group Certificate of Coverage, all available evidence demonstrates this health benefit plan is a self-funded MEWA.
19. Respondent Makina has never been registered or authorized by the Director to act as a MEWA in Alaska, and during relevant periods herein.
20. The facts stated in paragraphs 6-19 show Respondent Makina is acting in a capacity for which a license, registration, or certificate of authority from the Director is required but not possessed.
21. As a result of Respondents acting as a MEWA without authorization, as of March 2019, 73 employees on 9 employer policies issued by or on behalf of Respondents have unauthorized insurance coverage.

ORDER TO CEASE AND DESIST

22. NOW THEREFORE, RESPONDENTS ARE HEREBY ORDERED to immediately CEASE AND DESIST from operating any MEWA directly or indirectly or acting as an insurance producer, insurer, third party administrator or any other capacity in the state of Alaska for which they do not hold a valid license, permit, registration, or Certificate of Authority to do so, including but not limited to:

- a. Operating as a MEWA, advertising, or participating in advertising, by newspaper, telephone book or listing, mail, handout, business card, or by any other written or printed presentation, or by telephone, radio, television, Internet, public outcry or proclamation, or in any other manner or means whatsoever, whether personally or through others, that implies that they are licensed, permitted, or authorized, or are engaged in the business of soliciting, negotiating, executing, delivering, or furnishing insurance in the State of Alaska on behalf of any Respondent operating as, for, or on behalf of any associated MEWA.
- b. Receiving any money, commission, fee, rebate, payment, remuneration, or any other valuable consideration whatsoever, directly or indirectly, in connection with any MEWA transactions.

NOTICE OF FINE

PLEASE TAKE NOTICE that the Director may, pursuant to AS 21.97.020, impose a civil penalty of not more than twenty-five thousand dollars (\$25,000) and pursuant to AS 21.27.440 the Director may impose a civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation and denial, nonrenewal, suspension, or revocation of a license. AS 21.33.065(a) imposes a civil penalty of not more than \$50,000 when a person other than an insured who represents or aids a nonadmitted insurer in violation of AS 21.33.037.

NOTICE OF RIGHT TO HEARING

Respondents may contest this Order pursuant to AS 21.06.170-220. You have 10 days after the Order is delivered to file a written demand for a hearing.

Your written request for a hearing must be directed to:

Lori Wing-Heier
Director
Alaska Division of Insurance
550 W 7th Ave, Ste 1560
Anchorage AK 99501-3567

DATED this 26th day of March, 2019.



Lori Wing-Heier
Director