



DIVISION OF INSURANCE

Frank H. Murkowski, Governor

BULLETIN B 05-12

TO: MULTIPLE EMPLOYER WELFARE ARRANGEMENTS, THIRD-PARTY ADMINISTRATORS, AND LICENSEES TRANSACTING HEALTH INSURANCE IN ALASKA AND OTHER INTERESTED PARTIES

RE: REGULATION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

This bulletin replaces Bulletin B 03-01, dated January 31, 2003, which is now revoked and no longer in effect. This bulletin outlines the regulation of Multiple Employer Welfare Arrangements (MEWAs) in Alaska, and is informational in nature. It does not supersede Alaska law. In order to assure full compliance with Alaska law regarding MEWAs, carefully review all applicable Alaska law including AS 21.09, AS 21.27, AS 21.33, AS 21.36, and AS 21.85.

WHAT IS A MULTIPLE EMPLOYER WELFARE ARRANGEMENT (MEWA)?

A multiple employer welfare arrangement is defined under federal law (29 U.S.C. 1002(40)) as an arrangement that is established or maintained for the purpose of offering or providing an employee welfare benefit plan to the employees of two or more employers (including one or more self-employed individuals) or to the beneficiaries of those employees.

A MEWA does not include an arrangement that is established or maintained

- pursuant to a collective bargaining agreement;
- by a rural electric cooperative; or
- a rural telephone cooperative association.

A MEWA may be formed by many different entities including associations of employers in a related trade, profession, or industry; associations of employers in unrelated trades, professions, or industries; employee leasing organizations; or professional employer organizations.

IS A MEWA SUBJECT TO STATE REGULATION?

The Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1144(b)(6)(A)) clearly allows a state to apply and enforce its insurance laws with respect to a MEWA. If a MEWA solicits or provides health benefits to one or more employer domiciled in Alaska the MEWA is subject to Alaska insurance laws, regardless of whether the MEWA is regulated under ERISA or whether the MEWA is domiciled in Alaska.

Exceptions

Under AS 21.03.021(b), a person that offers or provides coverage for medical care is not subject to Alaska insurance laws, if the person files with the director a certificate, license, or other document issued by an agency of this state or a federal governmental agency that permits or

qualifies the person to provide coverage for medical care. "Person" includes a natural person, corporation, company, partnership, firm, association, organization, business trust, society, as well as other entities transacting the business of insurance or regulated under AS 21.

Any plan or arrangement claiming exemption from AS 21 must provide a copy to the division of the applicable license, certificate, or other document issued by another state agency or the federal government that demonstrates that the plan or arrangement is specifically permitted or qualified by a state agency or federal government to provide coverage for medical care. This includes any plan or arrangement claiming exemption from AS 21 that is required to file Form M-1 with the U.S. Department of Labor.

However, a plan is automatically exempt if the plan is

1. maintained or established by a **single** employer;
2. not a governmental plan as defined under 29 U.S.C. 1002(32); **and**
3. self-funded, i.e. not **all** benefits provided by the employer are guaranteed under an insurance contract.

In this case, the plan is not required to provide to the division a certificate or other document issued by another state agency or the federal government in order to be exempt from AS 21 under AS 21.03.021.

WHAT STATE INSURANCE LAWS APPLY TO A MEWA?

A Fully-insured MEWA

A MEWA is fully-insured if all benefits provided by the MEWA are guaranteed under insurance contracts with licensed insurance companies. A fully-insured MEWA is primarily regulated through the regulation of the licensed insurance companies that issue the insurance contracts.

A fully-insured MEWA established by two or more employers in the same or related industry

- Under AS 21.54.060(3), a licensed insurance company may issue a group health insurance policy to the trustees of a fund established by two or more employers in the same or related industry. This means that a MEWA that establishes a trust and provides group health benefits to employers in the same or related industry through an insurance policy issued to the trust is not required to obtain a certificate of authority.
- AS 21.54.060(5) allows an insurance company to issue a group health insurance policy to a substantially similar group, if approved by the director. The director has determined that a substantially similar group includes a MEWA that does not establish a trust, but rather sets up a separate non-trust account in order to purchase group health benefits for employers in the same or related industry. This means that a licensed insurance company may issue a group health insurance policy to such a MEWA and the MEWA is not required to obtain a certificate of authority.

A MEWA established by two or more employers not all of which are in the same or related industry

Effective July 1, 2004, an insurance company is allowed to issue a group health insurance policy to an association of employers and self-employed individuals as defined in AS 21.54.060(7). Under AS 21.54.060(7), employers or self-employed individuals may form an association for the purpose of obtaining health insurance, and the members of the association are not required to be in the same or related industry. Note that such an association may **not** self-fund the health insurance benefits without first obtaining a certificate of authority as described below.

A Self-funded MEWA

A self-funded MEWA is any MEWA that is not fully-insured as described above. A self-funded MEWA pays a portion or all of the health care benefits directly from its own assets and not exclusively through insurance policies. A MEWA is self-funded even if the MEWA purchases stop loss insurance coverage for a portion of the health care benefits it offers or provides.

Each self-funded MEWA operating in Alaska must obtain a certificate of authority under the appropriate statute:

- 1) a self-funded MEWA under AS 21.85;
- 2) an insurance company under AS 21.09;
- 3) a reciprocal insurer under AS 21.75;
- 4) a health maintenance organization under AS 21.86;
- 5) a hospital or medical service corporation under AS 21.87.

The appropriate licensing statute will be determined by the structure and operation of the MEWA.

AS 21.85

A self-funded MEWA is qualified for a certificate of authority under AS 21.85 if the MEWA meets the provisions of AS 21.85.030 and complies with all of AS 21.85. Among the provisions of AS 21.85.030, the MEWA must be structured, so that

- the MEWA provides health benefits to only employers that are members of a bona fide association or group of two or more businesses in the same or closely related trade, profession, or industry;
- the participating employees or employers have direct control over the MEWA;
- the MEWA is a nonprofit organization;
- the MEWA provides only medical care benefits, except the MEWA can provide life insurance through a licensed insurance company in compliance with AS 21;
- the MEWA has adequate facilities and competent personnel to service the health benefit plan or has contracted with a licensed third-party administrator to service the health benefit plan;
- the MEWA provides medical benefits to not fewer than two employers and not fewer than 75 employees;
- the MEWA does not solicit participation from the general public; and
- the MEWA maintains stop loss insurance coverage covering 100 percent of claims in excess of an attachment point recommended by a qualified actuary.

AS 21.09, AS 21.75, AS 21.86, AS 21.87

If the structure of the self-funded MEWA does not comply with the qualifications under AS 21.85, the self-funded MEWA must be licensed under another chapter of the Alaska insurance code (AS 21). Please note that a self-funded MEWA that provides benefits to employers **not** all of which are in the same or closely-related trade, profession, or industry **may not** obtain a certificate of authority as a self-funded MEWA under AS 21.85.

AS 21.27

An entity that performs the functions of a third-party administrator for a self-funded MEWA must obtain registration as a third-party administrator unless the entity qualifies for and obtains an exemption from registration. A producer (agent or broker) who acts on the behalf of a MEWA must be appropriately licensed by the division.

AS 21

Of course, all licensees, whether a fully-insured MEWA, self-funded MEWA, third-party administrator, or producer must comply with all applicable provisions of our insurance code.

HOW DOES A MEWA, THIRD-PARTY ADMINISTRATOR, OR PRODUCER APPLY FOR THE APPLICABLE CERTIFICATE OF AUTHORITY, REGISTRATION, OR LICENSE?

A MEWA or Insurance Company

To obtain a certificate of authority as a self-funded MEWA, an insurance company, a reciprocal insurer, a health maintenance organization, or a hospital or medical service corporation, the entity must file the appropriate application with the division. Information regarding the various certificate of authority applications is available by going to the division's website at www.commerce.state.ak.us/insurance/companylicensing.htm.

A Third-Party Administrator

To obtain registration as a third-party administrator (TPA), the entity must file a TPA registration application with the division. TPA applications are available by going to the division's web site at www.commerce.state.ak.us/insurance/ and clicking on the "Producer Licensing" menu selection. The applications for TPA registration may also be obtained by contacting the division at (907) 465-2515 or faxing a request for an application to (907) 465-2816. If the entity believes it qualifies for an exemption from TPA registration, it must file with the division Form 08-243, also available at the above website.

A Producer

To become licensed as a producer, a producer licensing application must be filed with the division. Producer licensing applications are available by going to the division's web site at www.commerce.state.ak.us/insurance/ and clicking on the "Producer Licensing" menu selection. These applications are also available by requesting them from the division at (907) 465-2515 or by fax to (907) 465-2816.

CONSEQUENCES FOR FAILURE OF A SELF-FUNDED MEWA TO OBTAIN A CERTIFICATE OF AUTHORITY.

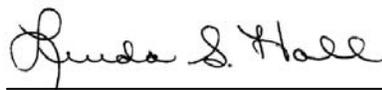
A self-funded MEWA that fails to obtain the required certificate of authority may be subject to criminal prosecution and monetary penalties under AS 21.33, AS 21.36, or AS 21.90.

CONSEQUENCES TO A PRODUCER WHO REPRESENTS A MEWA THAT IS NOT PROPERLY LICENSED.

Under Alaska law, a person may not directly or indirectly act as an agent for, or otherwise represent, assist, or aid on behalf of another, a MEWA that is not properly licensed.

AS 21.27.410, AS 21.33.037, AS 21.36.360. Each producer (agent or broker) is responsible for determining whether a MEWA is properly licensed with the division. A producer who violates these requirements and in any way represents an improperly licensed MEWA may be subject to suspension or revocation of the producer's license, criminal prosecution, and monetary penalties under AS 21.27, AS 21.33, AS 21.36, or AS 21.90.

Dated this 22nd day of December, 2005 at Anchorage, Alaska.



Linda S. Hall
Director