

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2424

By: Moore of the House

and

Stanislowski of the Senate

COMMITTEE SUBSTITUTE

An Act relating to insurance; amending 36 O.S. 2011, Sections 634, 635, as amended by Section 6, Chapter 275, O.S.L. 2014 (36 O.S. Supp. 2018, Section 635), 637, 639 and 640, which relate to Multiple Employer Welfare Arrangements; modifying requirements for issuance and maintenance of a license; removing exception to applicability of act; modifying certain exception; modifying waiver authority for application for license; providing additional authority to file reports; modifying requirements for persons filing certain financial documents; modifying requirements included in corrective action plans; authorizing Insurance Commissioner to implement corrective action in certain circumstances; updating statutory references; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2011, Section 634, is amended to read as follows:

Section 634. A. It is unlawful to operate, maintain or establish a MEWA unless the MEWA has a valid license issued by the Insurance Commissioner. Any MEWA operating in this state without a valid license is an unauthorized insurer.

1 B. This act shall not apply to:

2 1. A MEWA that offers or provides benefits that are fully
3 insured by an authorized insurer;

4 2. A MEWA that is exempt from state insurance regulation in
5 accordance with the Employee Retirement Income Security Act of 1974
6 (ERISA) (Public Law ~~43-406~~ 93-406);

7 3. Any plan that has no more than two employer members which
8 share substantial common support other than income generated by
9 their respective similar business classification;

10 4. A plan that has no more than two employer members, which
11 together have a combined net worth of more than Five Million Dollars
12 (\$5,000,000.00) and each of such member employers participated in
13 the continuous sponsorship and maintenance of such MEWA for the
14 benefit of their employees for a period of more than ten (10) years
15 next preceding the effective date of this act; or

16 5. ~~A MEWA which has been in existence and has provided health~~
17 ~~insurance for at least five (5) years prior to January 1, 1993, and~~
18 ~~which was established by a trade, industry or professional~~
19 ~~association of employers that has a constitution or by laws, that~~
20 ~~has been organized and maintained in good faith for at least thirty~~
21 ~~(30) continuous years prior to January 1, 1993, and its members are~~
22 ~~persons, firms or corporations qualified to print legal notices~~
23 ~~pursuant to Section 106 of Title 25 of the Oklahoma Statutes; or~~
24

1 ~~6.~~ A nonprofit professional trade association pursuant to
2 Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section
3 501(c)(3), which has maintained either a self-funded plan or a fully
4 insured plan of coverage for the payment of expenses to or for
5 members of the association for a period of ten (10) or more
6 consecutive years and, if self-funded, which coverage is provided to
7 at least five hundred covered participants ~~to establish and maintain~~
8 ~~a self-funded plan.~~

9 C. Any entity which claims to be exempt from state regulation
10 pursuant to subsection B of this section shall provide to the
11 Commissioner strict proof establishing such exemption.

12 SECTION 2. AMENDATORY 36 O.S. 2011, Section 635, as
13 amended by Section 6, Chapter 275, O.S.L. 2014 (36 O.S. Supp. 2018,
14 Section 635), is amended to read as follows:

15 Section 635. A. To meet the requirements for issuance of a
16 license and to maintain a MEWA, a MEWA ~~either~~ must be nonprofit and
17 either:

18 1. a. ~~nonprofit,~~

19 ~~b. (1)~~ established by a trade association, industry
20 association or professional association of
21 employers or professionals that has a
22 constitution or bylaws and that has been
23 organized and maintained in good faith for a
24 continuous period of five (5) years for purposes

1 other than that of obtaining or providing
2 insurance, or

3 ~~(2) requires membership in an association described~~
4 ~~in division (1) of this subparagraph in order to~~
5 ~~obtain the insurance offered by the MEWA~~

6 b. established by an association that has a current M-1
7 form filed with and accepted by the United States
8 Department of Labor showing Oklahoma as the state of
9 operation and:

10 (1) is formed in accordance with the applicable
11 provisions of 29 CFR 2510, or

12 (2) was previously established or is newly formed in
13 accordance with federal regulatory guidance
14 effective prior to August 20, 2018, or

15 c. operated pursuant to a trust agreement by a board of
16 trustees that has complete fiscal control over the
17 MEWA and that is responsible for all operations of the
18 MEWA. Except as provided in this paragraph, the
19 trustees must:

20 (1) be owners, shareholders, partners, officers,
21 directors, or employees of one or more employers
22 in the MEWA. With the Commissioner's approval, a
23 person who is not such an owner, shareholder,
24 partner, officer, director, or employee may serve

as a trustee if that person possesses the expertise required for such service. A trustee may not be an owner, shareholder, partner, officer or employee of the administrator or service company of the MEWA,

(2) have the authority to approve applications of association members for participation in the MEWA, and

(3) have the authority to contract with an authorized administrator or service company to administer the operations of the MEWA,

d. neither offered nor advertised to the public generally,

e. operated in accordance with sound actuarial principles, and

f. offered only after Two Hundred Thousand Dollars (\$200,000.00) of cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the Commissioner may authorize by rule is titled in such a manner that it may not be traded, sold or otherwise expended without the consent of the Commissioner; provided, the funds shall be taken into account in determining whether the MEWA is actuarially

1 sound, and evidence of the investment shall be filed
2 with the Commissioner; or

3 2. a. operated pursuant to a trust agreement for a trust
4 which has its situs in this state, is operated
5 pursuant to a trust agreement by a board of trustees
6 that has complete fiscal control over the MEWA, is
7 responsible for all operations of the MEWA, and which
8 has as one of its trustees a financial institution
9 which is independent of the entity which established
10 the MEWA. Except as provided in this paragraph, the
11 board of trustees must have owners, shareholders,
12 partners, officers, directors or employees of one or
13 more employers in the MEWA. With the Commissioner's
14 approval, a person who is not such an owner,
15 shareholder, partner, officer, director or employee
16 may serve as a trustee if that person possesses the
17 expertise required for such service. A trustee shall
18 not be an owner, shareholder, partner, officer,
19 director or employee of the administrator or service
20 company of the MEWA,

21 b. operated and administered in a manner that causes all
22 assets of the MEWA to be held in trust until paid
23 either:
24

- 1 (1) for the benefit of individuals who receive
2 medical, dental or similar benefits from the
3 MEWA, or
4 (2) for the expenses of the MEWA, such as the fees of
5 the trustee, licensed agents, administrator,
6 service company, and all expenses of complying
7 with the provisions of this act,

8 c. offered only to employers for the benefit of their
9 employees,

10 d. operated in accordance with sound actuarial
11 principles, and

12 e. offered only after Two Hundred Thousand Dollars
13 (\$200,000.00) of cash or federally guaranteed
14 obligations of less than five-year maturity that have
15 a fixed or recoverable principal amount or such other
16 investments as the Commissioner may authorize by rule
17 is titled in such a manner that it may not be traded,
18 sold or otherwise expended without the consent of the
19 Insurance Commissioner; provided, the funds shall be
20 taken into account in determining whether the MEWA is
21 actuarially sound, and evidence of the investment
22 shall be filed with the Commissioner.

23 B. 1. The MEWA shall issue to each covered employee a policy,
24 contract, certificate, summary plan description, or other evidence

1 of the benefits and coverages provided. The policy, contract,
2 certificate, summary plan description, or other evidence of the
3 benefits, coverages provided, premium rates to be charged and any
4 contracts between the MEWA and any administrator or service company,
5 including any changes to those documents, must be filed with the
6 Oklahoma Insurance Department. The evidence of benefits and
7 coverages provided shall contain, in boldface type on the face page
8 of the policy and the certificate, the following statement: "THE
9 BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A TRUST
10 FUND ESTABLISHED BY A GROUP OF EMPLOYERS (name of MEWA). THE TRUST
11 FUND IS NOT SUBJECT TO ANY INSURANCE GUARANTY ASSOCIATION. OTHER
12 RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR
13 FROM THE (name of MEWA). EXCESS INSURANCE IS PROVIDED BY A LICENSED
14 INSURANCE COMPANY TO COVER CERTAIN CLAIMS WHICH EXCEED CERTAIN
15 AMOUNTS. THIS IS THE ONLY SOURCE OF FUNDING FOR THESE BENEFITS AND
16 COVERAGES."

17 2. If applicable, the same documents shall contain in boldface
18 type on the face page of the policy and the certificate: "THE
19 BENEFITS AND COVERAGE DESCRIBED HEREIN ARE FUNDED BY CONTRIBUTIONS
20 FROM EMPLOYERS, EMPLOYEES, AND OTHER INDIVIDUALS ELIGIBLE FOR
21 COVERAGE."

22 3. Any statement required by this subsection is not required on
23 identification cards issued to covered employees or other insureds.
24

1 C. The Commissioner shall not grant or continue a license to
2 any MEWA if the Commissioner reasonably deems that:

3 1. Any trust, manager or administrator is incompetent,
4 untrustworthy, or so lacking in insurance expertise as to make the
5 operations of the MEWA hazardous to the potential and existing
6 insureds;

7 2. Any trustee, manager or administrator has been found guilty
8 of or has pled guilty or no contest to a felony, a crime involving
9 moral turpitude, or a crime punishable by imprisonment of one (1)
10 year or more under the law of any state or country, whether or not a
11 judgment or conviction has been entered; or

12 3. Any trustee, manager or administrator has had any type of
13 insurance license justifiably revoked in this or any other state.

14 D. To qualify for and retain a license, a MEWA shall file all
15 contracts with administrators or service companies with the
16 Commissioner, and report any changes in such contracts to the
17 Commissioner in advance of their implementation. The Commissioner
18 shall have the authority to cause any contract with an administrator
19 or service company to be renegotiated if the Commissioner reasonably
20 determines that the charges under any such contract are excessively
21 high in light of the services being delivered under the contract.

22 E. An initial filing fee of One Thousand Dollars (\$1,000.00) is
23 required for licensure. Each subsequent year the MEWA is in
24

1 operation, an annual fee of Two Hundred Fifty Dollars (\$250.00)
2 shall be required.

3 F. Failure to maintain compliance with the eligibility
4 requirements established by this section is a ground for denial,
5 suspension or revocation of the license of a MEWA.

6 SECTION 3. AMENDATORY 36 O.S. 2011, Section 637, is
7 amended to read as follows:

8 Section 637. Each MEWA shall file with the Insurance
9 Commissioner an application for a license on a form prescribed by
10 the Commissioner and signed under oath by officers of the
11 association or the administrator of the MEWA. The application shall
12 include or have attached the following:

13 1. A copy of any articles of incorporation, constitution and
14 bylaws of any association;

15 2. A list of the names, addresses and official capacities with
16 the MEWA of the individuals who will be responsible for the
17 management and conduct of the affairs of the MEWA, including all
18 trustees, officers and directors. Such individuals shall fully
19 disclose the extent and nature of any contracts or arrangements
20 between them and the MEWA, including possible conflicts of interest;

21 3. A copy of the articles of incorporation, bylaws or trust
22 agreement that governs the operation of the MEWA;

23 4. A copy of the policy, contract, certificate, summary plan
24 description or other evidence of the benefits and coverages provided

1 to covered employees, including a table of the rates charged or
2 proposed to be charged for each form of such contract. A qualified
3 actuary shall certify that:

4 a. the rates are neither inadequate, nor excessive, nor
5 unfairly discriminatory,

6 b. the rates are appropriate for the classes of risks for
7 which that have been computed, and

8 c. an adequate description of the rating methodology has
9 been filed with the Commissioner and such methodology
10 follows consistent and equitable actuarial principles.

11 For purposes of this section and Section 639 of this title, a
12 "qualified actuary" is an actuary who is a Fellow of the Society of
13 Actuaries (FSA), a member of the American Academy of Actuaries, or
14 an Enrolled Actuary under the Employee Retirement Income Security
15 Act of 1974 ~~+~~, 29 U.S.C., Section 1001 et seq.~~+~~, and has experience
16 in establishing rates for a self-insured trust and health services
17 being provided;

18 5. Any administrator retained by the MEWA must be a licensed
19 third-party administrator. The MEWA must provide proof of a
20 fidelity bond which shall protect against acts of fraud or
21 dishonesty in servicing the MEWA, covering each person responsible
22 for servicing the MEWA, in an amount equal to the greater of ten
23 percent (10%) of the contributions received by the MEWA or ten
24 percent (10%) of the benefits paid, during the preceding calendar

1 year, with a minimum amount requirement of Twenty Thousand Dollars
2 (\$20,000.00) and a maximum amount requirement of Five Hundred
3 Thousand Dollars (\$500,000.00);

4 6. A copy of the MEWA's stop-loss agreement. The stop-loss
5 insurance agreement must be issued by an insurer authorized to do
6 business in this state and must provide both specific and aggregate
7 coverage with an aggregate retention of no more than one hundred
8 twenty-five percent (125%) of the expected claims for the next plan
9 year and a specific retention amount as annually indicated in the
10 actuarial opinion. ~~The Insurance Commissioner shall have the~~
11 ~~authority to waive the requirements for aggregate stop-loss coverage~~
12 ~~if deemed appropriate;~~

13 7. In the initial application, a feasibility study, made by a
14 qualified actuary with an opinion acceptable to the Commissioner,
15 that addresses market potential, market penetration, market
16 competition, operating expenses, gross revenues, net income, total
17 assets and liabilities, cash flow and other items as the
18 Commissioner requires. The study shall be for the greater of three
19 (3) years or until the MEWA has been projected to be profitable for
20 twelve (12) consecutive months. The study must show that the MEWA
21 would not, at any month end of the projection period, have less ~~that~~
22 than ninety percent (90%) of the reserves as required by a qualified
23 actuary;

1 8. A copy of an audited financial statement of the MEWA
2 prepared by ~~a~~ an independent licensed certified public accountant;

3 9. A copy of every contract between the MEWA and any
4 administrator or service company; and

5 10. Such additional information as the Commissioner may
6 reasonably require.

7 SECTION 4. AMENDATORY 36 O.S. 2011, Section 639, is
8 amended to read as follows:

9 Section 639. A. Every MEWA shall, within ninety (90) days
10 after the end of each fiscal year of the MEWA, or within any such
11 extension of time that the Insurance Commissioner for good cause
12 grants, file a report with the Commissioner, on forms acceptable to
13 the Commissioner and verified by the oath of a member of the board
14 of trustees or chief executive officer of any governing association
15 and by ~~an~~ the administrator of the MEWA, showing its financial
16 condition on the last day of the preceding fiscal year. The report
17 shall contain an audited financial statement of the MEWA prepared in
18 accordance with generally accepted accounting principles, including
19 its balance sheet and a statement of the operations for the
20 preceding fiscal year certified by an independent accounting firm or
21 independent individual holding a permit to practice certified public
22 accounting in this state. The report shall also include an analysis
23 of the adequacy of reserves and contributions or premiums charged,
24 based on a review of past and projected claims and expenses.

1 B. In conjunction with the annual report required in subsection
2 A of this section, the MEWA shall submit an actuarial certification
3 prepared by a qualified independent actuary that indicates:

4 1. The MEWA is actuarially sound, with the certification
5 considering the rates, benefits, and expenses of, and any other
6 funds available for the payment of obligations of the MEWA;

7 2. The rates being charged and to be charged for contracts are
8 actuarially adequate to the end of the period for which rates have
9 been guaranteed;

10 3. The recommended amount of cash reserves the MEWA should
11 maintain, which shall not be less than the greater of twenty percent
12 (20%) of the total contributions in the preceding plan year or
13 twenty percent (20%) of the total estimated contributions for the
14 current plan year. The cash reserves shall be calculated with
15 proper actuarial regard for known claims, paid and outstanding, a
16 history of incurred but not reported claims, claims handling
17 expenses, unearned ~~premium~~ premiums, a trend factor, and a margin
18 for error. Cash reserves required by this section shall be
19 maintained in cash or federally guaranteed obligations of less than
20 five-year maturity that have a fixed or recoverable principal amount
21 or such other investments as the Commissioner may authorize by rule;

22 4. Whether amounts reserved to cover the cost of health care
23 benefits are:
24

- a. calculated in accordance with the loss reserving standards that would be applicable to a private insurance company writing the same coverage,
- b. computed in accordance with accepted loss reserving standards, including a reserve for Incurred But Not Reported Claims (IBNR), and
- c. fairly stated in accordance with sound loss reserving standards;

5. The recommended level of specific and aggregate stop-loss insurance that the MEWA should maintain and whether the MEWA is funding at the aggregate retention plus all other costs of the MEWA; and

6. Such other information relating to the performance of the MEWA that is reasonably required by the Commissioner.

C. The MEWA shall send an annual report to all of the employers, describing the financial condition of the MEWA as of the end of the last fiscal year. The report must be sent at the same time as the filing of the annual statement of the MEWA.

D. The Commissioner may require a MEWA to file quarterly, within forty-five (45) days after the end of each of the remaining fiscal quarters, a financial statement on a form prescribed by the Commissioner, verified by the oath of a member of the board of trustees and an administrator of the MEWA, showing its financial condition on the last day of the preceding quarter and the statement

1 of a qualified actuary setting forth the actuary's opinion relating
2 to the level of cash reserves in accordance with paragraphs 3 and 4
3 of subsection B of this section.

4 E. Any MEWA that fails to file a report as required by this
5 section is subject to Section 311 of this title; and, after notice
6 and opportunity for hearing, the Commissioner may suspend the MEWA's
7 authority to enroll new insureds or to do business in this state
8 while the failure continues.

9 SECTION 5. AMENDATORY 36 O.S. 2011, Section 640, is
10 amended to read as follows:

11 Section 640. A. The Insurance Commissioner shall deny, suspend
12 or revoke a MEWA's license if, after notice and opportunity for a
13 hearing, the Commissioner finds that the MEWA:

14 1. Is insolvent;

15 2. Is using such methods and practices in the conduct of its
16 business as to render its further transaction of business in this
17 state hazardous or injurious to its participating employees, covered
18 employees and dependents, or to the public;

19 3. Has failed to pay any final judgment rendered against it in
20 a court of competent jurisdiction within sixty (60) days after the
21 judgment became final;

22 4. Is or has been in violation of any material provisions of
23 this act;

24 5. Is no longer actuarially sound; or

1 6. Is charging rates that are excessive, inadequate or unfairly
2 discriminatory.

3 B. The Commissioner may deny, suspend or revoke the license of
4 any MEWA if, after notice and opportunity for a hearing, the
5 Commissioner determines that the MEWA:

6 1. Has violated any lawful order or rule of the Commissioner or
7 any applicable provisions of this act;

8 2. Has refused to produce its accounts, records or files for
9 examination under Sections ~~308~~ 309.1 through ~~310~~ 310A.3 of ~~Title 36~~
10 ~~of the Oklahoma Statutes this title~~ or through any of its officers
11 has refused to give information with respect to its affairs or to
12 perform any other legal obligation as to an examination;

13 3. Utilized persons to solicit enrollments through an
14 unlicensed agent; or

15 4. Has violated any provision of the Unfair ~~Claim~~ Claims
16 Settlement Practices Act, Section ~~1221~~ 1250.1 et seq. of ~~Title 36~~ of
17 ~~the Oklahoma Statutes this title~~.

18 C. Whenever the financial condition of the MEWA is such that,
19 if not modified or corrected, its continued operation would result
20 in impairment or insolvency, in addition to any provisions in this
21 act, the Commissioner may order the MEWA to file with the
22 Commissioner and implement a corrective action plan designed to ~~de~~
23 ~~one or more of the following:~~

1 ~~1. Reduce the total amount of present potential liability for~~
2 ~~benefits by reinsurance or other means;~~
3 ~~2. Reduce the volume of new business being accepted;~~
4 ~~3. Reduce the expenses of the MEWA by specified methods; or~~
5 ~~4. Suspend or limit the writing of new business for a period of~~
6 ~~time~~ correct such impairment or insolvency.

7 If the MEWA fails to submit a plan within the time specified by the
8 Commissioner or submits a plan that is insufficient ~~to correct the~~
9 ~~MEWA's financial condition~~, the Commissioner may order the MEWA to
10 implement ~~one or more of the~~ corrective actions ~~listed in this~~
11 ~~subsection~~ as necessary to correct the MEWA's financial condition.

12 D. The Commissioner shall, in ~~the~~ any order suspending the
13 authority of a MEWA to enroll new insureds, specify the period
14 during which the suspension is to be in effect and the conditions,
15 if any, that must be met prior to reinstatement of its authority to
16 enroll new insureds. The order of suspension is subject to
17 rescission or modification by further order of the Commissioner
18 before the expiration of the suspension period. Reinstatement shall
19 not be made unless requested in writing by the MEWA; however, the
20 Commissioner shall not grant reinstatement if it is found that the
21 circumstances for which suspension occurred still exist.

22 SECTION 6. This act shall become effective November 1, 2019.
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