

1 ENGROSSED HOUSE
2 BILL NO. 2424

By: Moore of the House

3 and

4 Stanislawski of the Senate
5

6 An Act relating to insurance; amending 36 O.S. 2011,
7 Sections 633, 634, 637, 639 and 640, which relate to
8 Multiple Employer Welfare Arrangements; providing for
9 supremacy; removing exception; modifying waiver
10 authority for application for license; providing
11 additional authority to file reports; modifying
12 requirements included in corrective action plans; and
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 36 O.S. 2011, Section 633, is
16 amended to read as follows:

17 Section 633. A. As used in this act, the term "Multiple
18 Employer Welfare Arrangement" or "MEWA" means that term as defined
19 in Section 3 of the Employee Retirement Income Security Act of 1974,
20 29 U.S.C., Section 1002(40)(A), as amended, that meets either or
21 both of the following criteria:

22 1. One or more of the employer members of the MEWA is either
23 domiciled in this state or has its principal place of business or
24 principal administrative office in this state; and/or

1 2. The MEWA solicits an employer that is domiciled in this
2 state or that has its principal place of business or principal
3 administrative office in this state.

4 B. Each insurer licensed to do business in this state,
5 including any corporation organized under the provisions of Article
6 26 of ~~Title 36 of the Oklahoma Statutes~~ this title, that administers
7 a MEWA shall provide the Insurance Commissioner with such
8 information regarding the insurer's administrative services contract
9 or contracts with such MEWA or MEWAs that the Commissioner may
10 reasonably require.

11 C. A MEWA shall be administered only by a licensed insurer or a
12 licensed third-party administrator.

13 D. Any conflict between Article 6A of this title and applicable
14 federal law shall be resolved in favor of the federal standard and
15 the act shall be construed, consistent therewith.

16 SECTION 2. AMENDATORY 36 O.S. 2011, Section 634, is
17 amended to read as follows:

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

22 B. This act shall not apply to:

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

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

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

7 4. A plan that has no more than two employer members, which
8 together have a combined net worth of more than Five Million Dollars
9 (\$5,000,000.00) and each of such member employers participated in
10 the continuous sponsorship and maintenance of such MEWA for the
11 benefit of their employees for a period of more than ten (10) years
12 next preceding the effective date of this act; or

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

21 ~~6.~~ A nonprofit professional trade association pursuant to
22 Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section
23 501(c)(3), which has maintained either a self-funded plan or a fully
24 insured plan of coverage for the payment of expenses to or for

1 members of the association for a period of ten (10) or more
2 consecutive years and, if self-funded, which coverage is provided to
3 at least five hundred covered participants ~~to establish and maintain~~
4 ~~a self-funded plan.~~

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

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

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

15 1. A copy of any articles of incorporation, constitution and
16 bylaws of any association;

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

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

1 4. A copy of the policy, contract, certificate, summary plan
2 description or other evidence of the benefits and coverages provided
3 to covered employees, including a table of the rates charged or
4 proposed to be charged for each form of such contract. A qualified
5 actuary shall certify that:

6 a. the rates are neither inadequate, nor excessive, nor
7 unfairly discriminatory,

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

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

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

20 5. Any administrator retained by the MEWA must be a licensed
21 third-party administrator. The MEWA must provide proof of a
22 fidelity bond which shall protect against acts of fraud or
23 dishonesty in servicing the MEWA, covering each person responsible
24 for servicing the MEWA, in an amount equal to the greater of ten

1 percent (10%) of the contributions received by the MEWA or ten
2 percent (10%) of the benefits paid, during the preceding calendar
3 year, with a minimum amount requirement of Twenty Thousand Dollars
4 (\$20,000.00) and a maximum amount requirement of Five Hundred
5 Thousand Dollars (\$500,000.00);

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

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

1 than ninety percent (90%) of the reserves as required by a qualified
2 actuary;

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

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

7 10. Such additional information as the Commissioner may
8 reasonably require.

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

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

1 of the adequacy of reserves and contributions or premiums charged,
2 based on a review of past and projected claims and expenses.

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

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

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

12 3. The recommended amount of cash reserves the MEWA should
13 maintain, which shall not be less than the greater of twenty percent
14 (20%) of the total contributions in the preceding plan year or
15 twenty percent (20%) of the total estimated contributions for the
16 current plan year. The cash reserves shall be calculated with
17 proper actuarial regard for known claims, paid and outstanding, a
18 history of incurred but not reported claims, claims handling
19 expenses, unearned ~~premium~~ premiums, a trend factor, and a margin
20 for error. Cash reserves required by this section shall be
21 maintained in cash or federally guaranteed obligations of less than
22 five-year maturity that have a fixed or recoverable principal amount
23 or such other investments as the Commissioner may authorize by rule;
24

1 4. Whether amounts reserved to cover the cost of health care
2 benefits are:

3 a. calculated in accordance with the loss reserving
4 standards that would be applicable to a private
5 insurance company writing the same coverage,

6 b. computed in accordance with accepted loss reserving
7 standards, including a reserve for Incurred But Not
8 Reported Claims (IBNR), and

9 c. fairly stated in accordance with sound loss reserving
10 standards;

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

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

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

21 D. The Commissioner may require a MEWA to file quarterly,
22 within forty-five (45) days after the end of each of the remaining
23 fiscal quarters, a financial statement on a form prescribed by the
24 Commissioner, verified by the oath of a member of the board of

1 trustees and an administrator of the MEWA, showing its financial
2 condition on the last day of the preceding quarter and the statement
3 of a qualified actuary setting forth the actuary's opinion relating
4 to the level of cash reserves in accordance with paragraphs 3 and 4
5 of subsection B of this section.

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

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

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

16 1. Is insolvent;

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

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

1 4. Is or has been in violation of any material provisions of
2 this act;

3 5. Is no longer actuarially sound; or

4 6. Is charging rates that are excessive, inadequate or unfairly
5 discriminatory.

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

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

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

16 3. Utilized persons to solicit enrollments through an
17 unlicensed agent; or

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

21 C. Whenever the financial condition of the MEWA is such that,
22 if not modified or corrected, its continued operation would result
23 in impairment or insolvency, in addition to any provisions in this
24 act, the Commissioner may order the MEWA to file with the

1 Commissioner and implement a corrective action plan designed to ~~do~~
2 ~~one or more of the following:~~

3 1. ~~Reduce the total amount of present potential liability for~~
4 ~~benefits by reinsurance or other means;~~

5 2. ~~Reduce the volume of new business being accepted;~~

6 3. ~~Reduce the expenses of the MEWA by specified methods; or~~

7 4. ~~Suspend or limit the writing of new business for a period of~~
8 time correct such impairment or insolvency.

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

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

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

1 Passed the House of Representatives the 12th day of March, 2019.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2019.

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8 Presiding Officer of the Senate