

MEWAs

Multiple Employer Welfare Arrangements

And

How They Impact Insurance Agents

ERISA

Federal law that regulates health insurance both fully insured and self funded

- ERISA Preemption
 - Single employer self funded plans
 - Collective bargaining plans
 - Rural electric or telephone cooperatives
 - Church plans
- No ERISA preemption
 - Any plan whether single employer or multiple employer that is established by public employer(s)
 - MEWAs
 - Fully Insured plans

What is a MEWA

- In general, it is a plan that provides health insurance to more than one employer
 - ERISA exception for employers under common ownership

In the fully insured market this will be a masterpolicy issued by an insurer to one of the following:

- An association made up of employers
- A trust formed by employers or an association of employers
- A labor union or a trust formed by a labor union

SB47

2007 Legislative Session

- What is transacting business in this state?
 - Making or proposing to make an “insurance” contract
 - Making or proposing to make as a guarantor or surety any contract of guaranty or suretyship
 - Taking or receiving of an application for “insurance”
 - Receiving of any commission, premium, membership fees, assessments, dues or other consideration for “insurance”
 - Issuance or delivery of “insurance” contracts in this state
 - Solicitation, negotiation, procurement or effectuation of “insurance” or renewals thereof
 - The dissemination of information on coverage or rates or forwarding apps or policies for delivery, inspection of risks, fixing of rates, adjustment of claims or transaction of matters subsequent to contract relative to exposures risks or property in this state
 - Transaction of any kind of insurance business
 - Offering of insurance or an agreement or contract which purports to alter, amend or void coverage of an insurance contract

Transaction of Insurance includes the following:

- Issuing a stop loss policy to an employer or to a trust or trustee
- Agreeing to loan or advance funds to pay claims incurred under an employer's self funded plan if a multiple employer plan
- Engaging in a risk distribution arrangement providing for compensation for loss through the provision of services

Unauthorized Health Insurance

- Unauthorized Health Insurance means health insurance offered by a nonadmitted insurer
 - Exception for out of state employer covering employees located in this state if no solicitation or issuance of policy takes place in this state
- Unauthorized Health Insurance does not include:
 - A multiple employer arrangement established pursuant to a collective bargaining agreement
 - An employee welfare plan established by a rural electric or telephone cooperative
 - Multiple employer plans where there is common ownership meeting federal standard
 - Coverage under a church plan as defined by federal regulations

When is notification required?

- When a licensee knows a product is, or is about to be, offered to the public and the licensee reasonably should know that the product is unauthorized health insurance then
 - Licensee meets the requirements by checking DOI website of admitted health insurers
 - If shown as authorized no action necessary
 - If not listed as authorized then notification is required

Licensee considered to know if licensee knows that a person is recruiting agents or seeking an administrator for a plan offered to the public

When is licensee considered to reasonably know?

- Licensee knows product is self funded and being offered to multiple employers or generally to individuals
- Licensee knows that professional employer organization (PEO) is self funded and being offered to multiple employers
- Licensee knows that plan is self funded and represented to be collective bargaining agreement but being offered widely to multiple employers

Agent able to offer additional evidence as to why did not reasonably know

Notifications confidential

- Agent notifications to the division are confidential and privileged from response to subpoena or otherwise and not subject to discovery or admissible as evidence
- Director may use notification in any administrative proceeding
- Director may share report information with other state commissioners, law enforcement and federal agencies

Civil Liability

- No civil liability and no cause of action arises from a person furnishing information pursuant to this law if the information is received from or sent to
 1. Division or its employees or representatives
 2. Federal state or local law enforcement or their employees or representatives
 3. A person involved in the detection and prevention of insurance fraud
 4. The NAIC, its employees or representatives

Due Diligence Required

- Due diligence required by the following
 1. Agents/producers
 2. TPAs
 3. Stop loss insurer
 4. PPO
- Due diligence required to determine that a plan is not unauthorized health insurance
 - Agent's primary duty is to find out who the insurer is and check our website to make sure it is a licensed health insurer and then report if necessary

Stop Loss insurance

- Covers excess losses under an employer plan usually based upon specific and aggregate attachment points – also often referred to as partially self funded (misnomer)
- Only admitted insurers authorized to issue stop loss in South Dakota and the forms must be filed for approval

Stop Loss Disclosures

- Stop loss insurers must disclose the following in writing prior to the issuance of a contract:
 - The employer is not covered for claims below the attachment point
 - A description of the attachment point including any specific or aggregate attachment points
 - There is no other coverage of employer's other retention

Defense for Actions Taken

- Licensees have a defense for action taken based upon written advice of a MEWA contact
 - Good reason to communicate reports in writing to MEWA contact rather than rely on phone
- Division's list of admitted carriers on MEWA website is deemed to be true and a defense for any licensee that depends upon it

Mitigation of Penalties

- If a licensee violates this Act penalties are mitigated i.e. reduced or eliminated if all of the following are met:
 1. The licensee has maintained supervisory procedures in compliance with this Act (see slide 16)
 2. Violation occurred in spite of procedures and controls
 3. Licensee promptly reported to MEWA contact once had actual knowledge of unauthorized insurance
 4. Licensee took prompt corrective action

Supervision Procedures and Controls

Required of agents, TPAs, insurers, and PPOs

- Must establish and maintain documented supervision procedures and controls that are reasonably designed to comply with Act*. Includes the following:
 1. Training
 2. Internal Controls
 3. Periodic Audits
 4. Supervisory Review
 5. Monitory and enforcement of contractual provisions (TPAs and PPOs)

*Extent of controls may vary based upon size and complexity of licensee's operations

Additional Supervisory Controls/Procedures

- Insurers must require its appointed agents to complete at least 1 hour of CE every 4 years covering:
 - Identification of unauthorized insurance
 - Agents' responsibilities under this Act
- TPA, PPO and insurer must include in application for licensure brief summary of its controls/procedures and the application may be denied if the controls or procedures are inadequate
- PPO registration may be suspended or revoked for failure to comply with the Act

When is a MEWA Illegal?

■ Red Flags

- No health insurer
- Claims of ERISA exemption
- Claims handled by an administrator
- Use stop loss coverage
- Agent is advised that an appointment and/or licensure is not needed

Division MEWA Website

- Find out if the health insurer is licensed in South Dakota
- MEWA contact: Jeff Smith
 - Jeff.Smith@state.sd.us
- Link to SB47:
<http://legis.state.sd.us/sessions/2007/bills/SB47enr.pdf>
- Division MEWA Website address:
http://www.state.sd.us/drr2/reg/insurance/producer/multiple_employer_welfare_arrangements.html