

## SALE OF UNAUTHORIZED HEALTH INSURANCE

The marketing and administration of self-funded Multiple Employer Welfare Arrangements (MEWAs) has been confusing to group sponsors and insureds and has been the subject of numerous regulatory disputes since the inception of the Employee Retirement Income Security Act (ERISA).

Although bona fide fully self-funded employer plans and Taft-Hartley Labor Union Trusts are not under state regulation, all other plans, particularly MEWAs, fall under state jurisdiction.

The Department of Insurance is aware that several unlicensed entities are marketing themselves as MEWAs, and claiming exemption from state regulation under ERISA. However, MEWAs are subject to Nevada law and the jurisdiction of the Nevada Insurance Department unless the MEWA can demonstrate that it is subject to the jurisdiction of the federal government.

As noted in section 5 of NRS 685B.030, any agent or broker may be held personally liable for any claim or loss not paid by an unauthorized insurer. Therefore, agents and brokers must be certain the entity for which they plan to sell insurance coverage is licensed. Further, they must check with the insurer to verify the particular product is approved.

The department is also aware that numerous promoters of MEWAs still attempt to circumvent both federal and state statutes by claiming that qualification as a tax exempt organization under section 501(c) of the Internal Revenue Code is tantamount to federal jurisdiction. Others simply create a MEWA and claim it qualifies under the ERISA preemption without a contention or basis for doing so.

The burden of proof for operation in the state is placed on the insurer. Failure to provide such evidence provides grounds for disciplinary action, and the unauthorized insurer will be ordered to immediately cease and desist operation.

Anyone aware of an entity operating as an unauthorized insurer must alert the Nevada Department of Insurance immediately so appropriate action can be taken.

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