

SUMMARY

ARKANSAS INSURANCE DEPARTMENT PROPOSED RULE 119
MULTIPLE-EMPLOYER WELFARE BENEFIT PLANS

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To: Arkansas Legislative Council & Arkansas Bureau of Legislative Research

From: Booth Rand, Managing Attorney, Arkansas Insurance Department 

CC: Allen Kerr, Arkansas Insurance Commissioner; Steve Porch, General Counsel, Arkansas Department of Commerce; Russ Galbraith, Deputy Insurance Commissioner; Suzanne Tipton, General Counsel; Ryan James, Public and Legislative Affairs Director

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LEGISLATIVE AUTHORITY FOR RULE

The proposed Rule implements Ark. Code Ann. § 23-92-101(c)(3) which requires the Insurance Commissioner (“Commissioner”) to issue a rule licensing self-funded multiple employer benefit plans (“MEWAs”). Recent amendments this spring were made to this statute under Act 919 of 2019 by Representative McCollum expanding employer participation in MEWAs. This statute however actually authorized rulemaking by AID before the 2019 amendments, and the Commissioner still retains this authority today following the recent changes. The rulemaking authority is broad. See Section One of the proposed Rule. I have attached copies of the statute and Act 919 of 2019. There currently exists no rule by the Arkansas Insurance Department (“AID”) setting out the formation, operations or licensing requirements for self-funded MEWAs.

BACKGROUND AND PURPOSE OF RULE

A brief background is necessary to explain what a MEWA is and why there have been requests from health insurance brokers and employer associations to us to implement their licensing. A MEWA is simply a group health insurance plan formed by separate employers which are not under common ownership or control. A MEWA is formed by employers to combine multiple businesses together into one health plan allowing the employers to defray or spread out health care costs among a larger pool of total employees and separate businesses making contributions or premiums.

A MEWA may be fully-insured, meaning that a licensed insurer pays the health claims and benefits of the MEWA in exchange for a negotiated premium amount. A MEWA may, on the other hand be self-funded, meaning that the health claims and benefits are paid from the assets of the MEWA itself. For fully-insured MEWAs, because AID already regulates the solvency and market conduct actions of the insurer responsible for payment of the claims, there is a less of a need for regulation for these types. Regardless of how a MEWA decides to assume risk for its health benefits, in terms of composition, a MEWA may be a collection of employers, not commonly owned, or a MEWA may be sponsored through a bona fide association of member employers. A self-funded MEWA is not subject to the State’s Guaranty Fund laws which functions to pay claims for consumers and medical providers in the event of an insolvency; however, the insurer in a fully-insured MEWA, is subject to the Guaranty Fund laws in the event of an insolvency of that insurer.

MEWAs are regulated by the Federal Department of Labor (“DOL”) and the states of domicile of the MEWA. After 1986, DOL deferred to state insurance regulators to establish their financial solvency requirements, as well as benefit requirements, as long as such benefit requirements are equal to or better than what ERISA requires (Employee Retirement Income Act of 1974, as amended). Currently, in Arkansas, AID requires fully-insured MEWAs to simply register with us under several forms. See Section Twenty (20) of the proposed Rule. For self-funded MEWAs, in the absence of a rule setting its licensing requirements, self-funded MEWAs are required to obtain from AID a certificate of authority imposing the same start up and capital requirements of a state-wide operating health insurer or HMO---a requirement entirely cost prohibitive to employers or employer associations. This proposed rule now provides a new licensing pathway for self-funded MEWAs.

The proposed rule sets out the requirements of forming a self-funded MEWA in Arkansas, and these requirements are largely centered on applying financial and risk protection measures to insure that the MEWA operates on a solvent basis and is able to pay contracted benefits for its members and medical providers on a timely basis.

KEY PROVISIONS IN THE RULE

- For greater business implementation and access, a minimum of only two employers is needed to form a MEWA---in compliance with Act 919 of 2019. The Commissioner may modify the proposed numerical minimums of total employees and minimum premium contribution amounts;
- For financial protection, requires a MEWA to maintain cash reserves of 20% of projected contributions (premium);
- For financial protection, requires a MEWA to submit an independent actuarial opinion certifying that contributions are reasonable and cash reserves, assets and liabilities are actuarially adequate to cover claims;
- For financial protection, requires a MEWA to maintain stop loss coverage with an Arkansas licensed insurer at 125% of aggregate and specific claims;
- For financial protection, mandates financial reporting requirements of the MEWA to AID for review including annual statements after each fiscal year end;
- For financial protection, requires a fidelity bond upon owners and directors to protect against malfeasance;
- For consumer protection, restricts MEWAs from discriminating on employees due to health factors;
- For consumer and medical provider protection, requires the MEWA to cover State required medical coverage mandates in the same manner as any fully-insured large, group health plan;
- For consumer protection, provides adequate notice requirements to employees or beneficiaries of the plan of its benefits and beneficiary rights, including caution that is not subject to the guaranty fund law.