

An Act

ENROLLED HOUSE
BILL NO. 2424

By: Moore of the House

and

Stanislawski of the Senate

An Act relating to insurance; amending 36 O.S. 2011, Sections 634, 635, as amended by Section 6, Chapter 275, O.S.L. 2014, 637, 639 and 640 (36 O.S. Supp. 2018, Section 635), 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.

SUBJECT: Insurance

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.

B. This act shall not apply to:

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

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

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

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

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

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

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

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

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

1. a. ~~nonprofit,~~

~~b. (1) established by a trade association, industry association or professional association of employers or professionals that has a constitution or bylaws and that has been organized and maintained in good faith for a continuous period of five (5) years for purposes other than that of obtaining or providing insurance, or~~

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

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

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

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

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

(1) be owners, shareholders, partners, officers, directors, or employees of one or more employers in the MEWA. With the Commissioner's approval, a person who is not such an owner, shareholder, 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 sound, and evidence of the investment shall be filed with the Commissioner; or
- 2. a. operated pursuant to a trust agreement for a trust which has its situs in this state, is operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the MEWA, is responsible for all operations of the MEWA, and which has as one of its trustees a financial institution which is independent of the entity which established the MEWA. Except as provided in this paragraph, the board of trustees must have owners, shareholders, partners, officers, directors or employees of one or more employers in the MEWA. With the Commissioner's approval, a person who is not such an owner, shareholder, partner, officer, director or employee may serve as a trustee if that person possesses the expertise required for such service. A trustee shall not be an owner, shareholder, partner, officer,

director or employee of the administrator or service company of the MEWA,

- b. operated and administered in a manner that causes all assets of the MEWA to be held in trust until paid either:
 - (1) for the benefit of individuals who receive medical, dental or similar benefits from the MEWA, or
 - (2) for the expenses of the MEWA, such as the fees of the trustee, licensed agents, administrator, service company, and all expenses of complying with the provisions of this act,
- c. offered only to employers for the benefit of their employees,
- d. operated in accordance with sound actuarial principles, and
- e. 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 Insurance Commissioner; provided, the funds shall be taken into account in determining whether the MEWA is actuarially sound, and evidence of the investment shall be filed with the Commissioner.

B. 1. The MEWA shall issue to each covered employee a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The policy, contract, certificate, summary plan description, or other evidence of the benefits, coverages provided, premium rates to be charged and any contracts between the MEWA and any administrator or service company, including any changes to those documents, must be filed with the Oklahoma Insurance Department. The evidence of benefits and coverages provided shall contain, in boldface type on the face page of the policy and the certificate, the following statement: "THE BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A TRUST

FUND ESTABLISHED BY A GROUP OF EMPLOYERS (name of MEWA). THE TRUST FUND IS NOT SUBJECT TO ANY INSURANCE GUARANTY ASSOCIATION. OTHER RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR FROM THE (name of MEWA). EXCESS INSURANCE IS PROVIDED BY A LICENSED INSURANCE COMPANY TO COVER CERTAIN CLAIMS WHICH EXCEED CERTAIN AMOUNTS. THIS IS THE ONLY SOURCE OF FUNDING FOR THESE BENEFITS AND COVERAGES."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. the rates are neither inadequate, nor excessive, nor unfairly discriminatory,
- b. the rates are appropriate for the classes of risks for which that have been computed, and
- c. an adequate description of the rating methodology has been filed with the Commissioner and such methodology follows consistent and equitable actuarial principles.

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

5. Any administrator retained by the MEWA must be a licensed third-party administrator. The MEWA must provide proof of a fidelity bond which shall protect against acts of fraud or dishonesty in servicing the MEWA, covering each person responsible for servicing the MEWA, in an amount equal to the greater of ten percent (10%) of the contributions received by the MEWA or ten percent (10%) of the benefits paid, during the preceding calendar year, with a minimum amount requirement of Twenty Thousand Dollars (\$20,000.00) and a maximum amount requirement of Five Hundred Thousand Dollars (\$500,000.00);

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

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

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

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

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

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

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

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

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

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

3. The recommended amount of cash reserves the MEWA should maintain, which shall not be less than the greater of twenty percent (20%) of the total contributions in the preceding plan year or twenty percent (20%) of the total estimated contributions for the current plan year. The cash reserves shall be calculated with proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling

expenses, unearned ~~premium~~ premiums, a trend factor, and a margin for error. Cash reserves required by this section shall be maintained in 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;

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

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

E. Any MEWA that fails to file a report as required by this section is subject to Section 311 of this title; and, after notice

and opportunity for hearing, the Commissioner may suspend the MEWA's authority to enroll new insureds or to do business in this state while the failure continues.

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

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

1. Is insolvent;

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

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

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

5. Is no longer actuarially sound; or

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

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

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

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

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

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

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

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

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

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

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

Passed the House of Representatives the 16th day of May, 2019.

Presiding Officer of the House
of Representatives

Passed the Senate the 23rd day of April, 2019.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____