

1 **SENATE FLOOR VERSION**

2 April 8, 2019

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL NO. 2424

By: Moore of the House

and

Stanislawski of the Senate

6  
7  
8  
9 COMMITTEE SUBSTITUTE

10 An Act relating to insurance; amending 36 O.S. 2011,  
11 Sections 634, 635, as amended by Section 6, Chapter  
12 275, O.S.L. 2014 (36 O.S. Supp. 2018, Section 635),  
13 637, 639 and 640, which relate to Multiple Employer  
14 Welfare Arrangements; modifying requirements for  
15 issuance and maintenance of a license; removing  
16 exception to applicability of act; modifying certain  
17 exception; modifying waiver authority for application  
18 for license; providing additional authority to file  
19 reports; modifying requirements for persons filing  
20 certain financial documents; modifying requirements  
21 included in corrective action plans; authorizing  
22 Insurance Commissioner to implement corrective action  
23 in certain circumstances; updating statutory  
24 references; and providing an effective date.

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

1 Insurance Commissioner. Any MEWA operating in this state without a  
2 valid license is an unauthorized insurer.

3 B. This act shall not apply to:

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

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

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

12 4. A plan that has no more than two employer members, which  
13 together have a combined net worth of more than Five Million Dollars  
14 (\$5,000,000.00) and each of such member employers participated in  
15 the continuous sponsorship and maintenance of such MEWA for the  
16 benefit of their employees for a period of more than ten (10) years  
17 next preceding the effective date of this act; or

18 5. ~~A MEWA which has been in existence and has provided health~~  
19 ~~insurance for at least five (5) years prior to January 1, 1993, and~~  
20 ~~which was established by a trade, industry or professional~~  
21 ~~association of employers that has a constitution or by laws, that~~  
22 ~~has been organized and maintained in good faith for at least thirty~~  
23 ~~(30) continuous years prior to January 1, 1993, and its members are~~

24

1 ~~persons, firms or corporations qualified to print legal notices~~  
2 ~~pursuant to Section 106 of Title 25 of the Oklahoma Statutes; or~~

3 ~~6.~~ A nonprofit professional trade association pursuant to  
4 Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section  
5 501(c)(3), which has maintained either a self-funded plan or a fully  
6 insured plan of coverage for the payment of expenses to or for  
7 members of the association for a period of ten (10) or more  
8 consecutive years and, if self-funded, which coverage is provided to  
9 at least five hundred covered participants ~~to establish and maintain~~  
10 ~~a self-funded plan.~~

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

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

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

- 20 1. a. ~~nonprofit,~~  
21 b. ~~(1)~~ established by a trade association, industry  
22 association or professional association of  
23 employers or professionals that has a  
24 constitution or bylaws and that has been

1 organized and maintained in good faith for a  
2 continuous period of five (5) years for purposes  
3 other than that of obtaining or providing  
4 insurance, or

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

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

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

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

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

22 (1) be owners, shareholders, partners, officers,  
23 directors, or employees of one or more employers  
24 in the MEWA. With the Commissioner's approval, a

1 person who is not such an owner, shareholder,  
2 partner, officer, director, or employee may serve  
3 as a trustee if that person possesses the  
4 expertise required for such service. A trustee  
5 may not be an owner, shareholder, partner,  
6 officer or employee of the administrator or  
7 service company of the MEWA,

8 (2) have the authority to approve applications of  
9 association members for participation in the  
10 MEWA, and

11 (3) have the authority to contract with an authorized  
12 administrator or service company to administer  
13 the operations of the MEWA,

14 d. neither offered nor advertised to the public  
15 generally,

16 e. operated in accordance with sound actuarial  
17 principles, and

18 f. offered only after Two Hundred Thousand Dollars  
19 (\$200,000.00) of cash or federally guaranteed  
20 obligations of less than five-year maturity that have  
21 a fixed or recoverable principal amount or such other  
22 investments as the Commissioner may authorize by rule  
23 is titled in such a manner that it may not be traded,  
24 sold or otherwise expended without the consent of the

1 Commissioner; provided, the funds shall be taken into  
2 account in determining whether the MEWA is actuarially  
3 sound, and evidence of the investment shall be filed  
4 with the Commissioner; or

- 5 2. a. operated pursuant to a trust agreement for a trust  
6 which has its situs in this state, is operated  
7 pursuant to a trust agreement by a board of trustees  
8 that has complete fiscal control over the MEWA, is  
9 responsible for all operations of the MEWA, and which  
10 has as one of its trustees a financial institution  
11 which is independent of the entity which established  
12 the MEWA. Except as provided in this paragraph, the  
13 board of trustees must have owners, shareholders,  
14 partners, officers, directors or employees of one or  
15 more employers in the MEWA. With the Commissioner's  
16 approval, a person who is not such an owner,  
17 shareholder, partner, officer, director or employee  
18 may serve as a trustee if that person possesses the  
19 expertise required for such service. A trustee shall  
20 not be an owner, shareholder, partner, officer,  
21 director or employee of the administrator or service  
22 company of the MEWA,  
23  
24

1           b.   operated and administered in a manner that causes all  
2           assets of the MEWA to be held in trust until paid  
3           either:

4           (1)   for the benefit of individuals who receive  
5           medical, dental or similar benefits from the  
6           MEWA, or

7           (2)   for the expenses of the MEWA, such as the fees of  
8           the trustee, licensed agents, administrator,  
9           service company, and all expenses of complying  
10          with the provisions of this act,

11          c.   offered only to employers for the benefit of their  
12          employees,

13          d.   operated in accordance with sound actuarial  
14          principles, and

15          e.   offered only after Two Hundred Thousand Dollars  
16          (\$200,000.00) of cash or federally guaranteed  
17          obligations of less than five-year maturity that have  
18          a fixed or recoverable principal amount or such other  
19          investments as the Commissioner may authorize by rule  
20          is titled in such a manner that it may not be traded,  
21          sold or otherwise expended without the consent of the  
22          Insurance Commissioner; provided, the funds shall be  
23          taken into account in determining whether the MEWA is

24

1           actuarially sound, and evidence of the investment  
2           shall be filed with the Commissioner.

3           B. 1. The MEWA shall issue to each covered employee a policy,  
4 contract, certificate, summary plan description, or other evidence  
5 of the benefits and coverages provided. The policy, contract,  
6 certificate, summary plan description, or other evidence of the  
7 benefits, coverages provided, premium rates to be charged and any  
8 contracts between the MEWA and any administrator or service company,  
9 including any changes to those documents, must be filed with the  
10 Oklahoma Insurance Department. The evidence of benefits and  
11 coverages provided shall contain, in boldface type on the face page  
12 of the policy and the certificate, the following statement: "THE  
13 BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A TRUST  
14 FUND ESTABLISHED BY A GROUP OF EMPLOYERS (name of MEWA). THE TRUST  
15 FUND IS NOT SUBJECT TO ANY INSURANCE GUARANTY ASSOCIATION. OTHER  
16 RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR  
17 FROM THE (name of MEWA). EXCESS INSURANCE IS PROVIDED BY A LICENSED  
18 INSURANCE COMPANY TO COVER CERTAIN CLAIMS WHICH EXCEED CERTAIN  
19 AMOUNTS. THIS IS THE ONLY SOURCE OF FUNDING FOR THESE BENEFITS AND  
20 COVERAGES."

21           2. If applicable, the same documents shall contain in boldface  
22 type on the face page of the policy and the certificate: "THE  
23 BENEFITS AND COVERAGE DESCRIBED HEREIN ARE FUNDED BY CONTRIBUTIONS  
24



1 FROM EMPLOYERS, EMPLOYEES, AND OTHER INDIVIDUALS ELIGIBLE FOR  
2 COVERAGE."

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

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

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

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

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

18 D. To qualify for and retain a license, a MEWA shall file all  
19 contracts with administrators or service companies with the  
20 Commissioner, and report any changes in such contracts to the  
21 Commissioner in advance of their implementation. The Commissioner  
22 shall have the authority to cause any contract with an administrator  
23 or service company to be renegotiated if the Commissioner reasonably  
24

1 determines that the charges under any such contract are excessively  
2 high in light of the services being delivered under the contract.

3 E. An initial filing fee of One Thousand Dollars (\$1,000.00) is  
4 required for licensure. Each subsequent year the MEWA is in  
5 operation, an annual fee of Two Hundred Fifty Dollars (\$250.00)  
6 shall be required.

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

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

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

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

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

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

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

8           a. the rates are neither inadequate, nor excessive, nor  
9           unfairly discriminatory,

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

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

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

22          5. Any administrator retained by the MEWA must be a licensed  
23 third-party administrator. The MEWA must provide proof of a  
24 fidelity bond which shall protect against acts of fraud or

1 dishonesty in servicing the MEWA, covering each person responsible  
2 for servicing the MEWA, in an amount equal to the greater of ten  
3 percent (10%) of the contributions received by the MEWA or ten  
4 percent (10%) of the benefits paid, during the preceding calendar  
5 year, with a minimum amount requirement of Twenty Thousand Dollars  
6 (\$20,000.00) and a maximum amount requirement of Five Hundred  
7 Thousand Dollars (\$500,000.00);

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

17       7. In the initial application, a feasibility study, made by a  
18 qualified actuary with an opinion acceptable to the Commissioner,  
19 that addresses market potential, market penetration, market  
20 competition, operating expenses, gross revenues, net income, total  
21 assets and liabilities, cash flow and other items as the  
22 Commissioner requires. The study shall be for the greater of three  
23 (3) years or until the MEWA has been projected to be profitable for  
24 twelve (12) consecutive months. The study must show that the MEWA

1 would not, at any month end of the projection period, have less ~~that~~  
2 than ninety percent (90%) of the reserves as required by a qualified  
3 actuary;

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

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

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

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

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

1 accounting in this state. The report shall also include an analysis  
2 of the adequacy of reserves and contributions or premiums charged,  
3 based on a review of past and projected claims and expenses.

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

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

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

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

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;

24



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 ~~de~~  
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

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

2 COMMITTEE REPORT BY: COMMITTEE ON RETIREMENT AND INSURANCE  
3 April 8, 2019 - DO PASS AS AMENDED  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24