



**ARKANSAS INSURANCE DEPARTMENT
LEGAL DIVISION**

1200 West Third Street
Little Rock, AR 72201-1904
501-371-2820
FAX 501-371-2629

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BULLETIN NO. 4-2001

TO: ALL LICENSED ACCIDENT AND HEALTH INSURANCE COMPANIES AND ALL LICENSED HEALTH MAINTENANCE ORGANIZATIONS AND ALL LICENSED HOSPITAL OR MEDICAL SERVICE CORPORATIONS

ALL REGISTERED SELF-INSURED ACCIDENT & HEALTH PLANS, ALL REGISTERED METS, AND ALL REGISTERED MEWAS, ALL REGISTERED THIRD PARTY ADMINISTRATORS ("TPAs"), ALL LICENSED EMPLOYEE LEASING FIRMS

THE UNITED STATES DEPARTMENT OF LABOR, ALL AGENT TRADE ASSOCIATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, INSURER TRADE ASSOCIATIONS, AND OTHER INTERESTED PARTIES

FROM: THE ARKANSAS INSURANCE DEPARTMENT

RE: SALE OF UNAUTHORIZED ACCIDENT AND HEALTH (DISABILITY) INSURANCE PRODUCTS IN THE STATE OF ARKANSAS

The Arkansas Insurance Department is concerned with the sale of unauthorized accident and health (disability) insurance products. During the past several years, Arkansas employers have secured group health coverage from self-funded or partially self-funded multiple employer welfare arrangements ("MEWAs"), multiple-employer trusts, or other plans, which claim to be exempt from state regulation under federal law. We understand from our own investigations and various sources that some promoters may style a program of health benefits as "collectively-bargained" plans, or "employee leasing" plans. Hundreds of Arkansans who thought they had legitimate insurance have been left with unpaid claims when these unauthorized plans turned out to be either fraudulently operated, under-funded, or both. Since there is no Arkansas insurance guaranty fund coverage for unauthorized insurers, the State of Arkansas is looking to the plan administrators, agents, or producers for payment of premium refunds and unpaid claims.

You should be advised that, on many occasions, unauthorized insurers inaccurately represent their programs as employee welfare benefit plans or other benefit plans subject only to federal laws, such as The Employee Retirement Income Security Act ("ERISA"). ERISA does not completely preempt state law regarding MEWAs. We can enforce state insurance laws against MEWAs operating in Arkansas to the extent provided by ERISA. 29 U.S.C. § 1144. Also, any such plans falsely claiming to be regulated solely by ERISA are fully subject to state regulation.

The determination as to whether these particular programs may be regulated by a state will be made on a case-by-case basis. For more information regarding the status of ERISA plans and other types of self-funded plans, the AID recommends that you call the Dallas Regional Office of the U.S. Department of Labor at 214-767-6831, the Washington D.C. Office of Enforcement at 202-219-8840 or other regional office near you to obtain the helpful publication of the DOL entitled, "Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act: A Guide to Federal and State Regulation".

To determine whether any individual, agency or producer is licensed, you may call the Arkansas Department of Insurance at 1-501-371-2750 or at 1-800-282-9134; or verify licensure at the Department web site through the Internet at www.state.ar.us/insurance

To verify if an insurer, HMO, or hospital/medical service corporation is licensed, contact the Consumer Services Division at the numbers listed below.

At this time, the Department is not aware of any legally operating MEWA or ERISA plan exempt from state regulation that is not a single employer or collectively bargained. Solicitation or sale of unauthorized health plans exposes producers and licensees to Arkansas license suspensions or revocations, as well as possible personal liability for unpaid claims in the form of restitution for actual losses of affected persons. The Arkansas Insurance Department strongly encourages all producers to check with the Department before offering products such as those described in this Bulletin. If you have any information regarding the operations of any such unauthorized plans, you should contact the Arkansas Department of Insurance, Legal Division, at (501) 371-2820, or at the web site listed above.

By this Bulletin, the Arkansas Department of Insurance asks all licensed companies to distribute this Bulletin to all their agents, brokers, producers, and all supervisors of producers.

Mike Pickens
Insurance Commissioner
State of Arkansas