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Reporting Requirements for Licensees Seeking to do Business With Certain Unauthorized Multiple Employer Welfare Arrangements

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Reporting Requirements for Licensees Seeking to do Business With Certain Unauthorized Multiple Employer Welfare Arrangements

Sec. 38a-272-1. Authority

Sections 38a-272-1 to 38a-272-10, inclusive, are adopted pursuant to the authority of Section 38a-8 of the General Statutes as necessary to implement Sections 38a-271 to 38a-278, inclusive, 38a-703, and 38a-815 of the General Statutes.
(Effective September 25, 1992)

Sec. 38a-272-2. Purpose

The Insurance Department has become aware that certain health benefit arrangements have been transacting unauthorized insurance in this state with the assistance and through the professional services of persons licensed by the Department. In many cases these arrangements claim that state insurance laws and regulations applicable to the entity are preempted by the federal Employee Retirement Income Security Act of 1974 (''ERISA''), 29 U.S.C. § 1001, *et seq.* Licensees apparently have believed that they can provide professional services to such arrangements under a claimed ERISA preemption. Often, such arrangements are singularly referred to as a multiple employer welfare arrangement (''MEWA'').

However, recent advisory opinions from the U.S. Department of Labor have made it clear that the ERISA preemption claims of many of these arrangements are false and that state insurance laws and regulations, including state laws related to the transaction of unauthorized insurance, are fully applicable to many arrangements that have claimed ERISA preemption.

The purpose of this regulation is to require licensed agents, brokers, and insurers to submit information to the Insurance Department prior to assisting in any way the transaction of insurance by certain types of multiple employer arrangements identified in this regulation. These reports will help the Department identify unauthorized insurance arrangements so that they can protect themselves from potential liability for assisting in the transaction of unauthorized insurance.
(Effective September 25, 1992)

Sec. 38a-272-3. Definitions

As used in Sections 38a-272-3 to 38a-272-10 inclusive:

(a) ''Arrangement'' means a fund, trust, plan, program or other mechanism by which a person provides, or attempts to provide, health care benefits to individuals.

(b) ''Collectively bargained arrangement'' means an arrangement which provides or represents that it is providing health care benefits or coverage under or pursuant to one or more collective bargaining agreements. ''Collectively bargained arrangement'' does not include an arrangement that is fully insured by a licensed insurer.

(c) ''Commissioner'' means the insurance commissioner of this state.

(d) ''Employee leasing arrangement'' means labor leasing, staff leasing, employee leasing, contract labor, extended employee staffing or supply, or other arrangements, under contract or otherwise, whereby one business or entity leases or obtains all or a significant number of its workers from another business or entity.

(e) ''Employee welfare benefit plan'' means any plan, fund or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical

or hospital care benefits, or benefits in the event of sickness, accident disability, death or unemployment.

(f) "Fully insured by a licensed insurer" means that, for all of the health care benefits or coverage provided or offered by or through an arrangement:

(1) A licensed insurer is directly obligated by contract to provide all of the coverage to or under the arrangement;

(2) The licensed insurer assumes all of the risk for payment of all covered services or benefits; and

(3) The liability of the licensed insurer for payment of the covered services or benefits runs directly to the individual employee, member or dependent receiving the health care services.

(g) "Licensed insurer" means an insurer, as defined in Section 38a-271 of the General Statutes, having a certificate of authority from the Commissioner to transact insurance in this state.

(h) "Producer" means insurance producer as defined in subdivision (1) of Section 38a-702 of the Connecticut General Statutes.

(i) "Reportable MEWA" means a person that provides health care benefits or coverage to the employees of two or more employers. "Reportable MEWA" does not include:

(1) A licensed insurer;

(2) An arrangement which is fully insured by a licensed insurer;

(3) A collectively bargained arrangement;

(4) An employee welfare benefit plan established or maintained by a rural electric cooperative or a rural telephone cooperative; or

(5) An employee leasing arrangement.

(j) "Rural electric cooperative" means:

(1) Any organization which is exempt from tax under Section 501 (a) of Title 26 of the United States Code and which is engaged primarily in providing electric service on a mutual or cooperative basis; or

(2) Any organization described in Paragraph (4) or (6) of Section 501 (a) of Title 26 of the United States Code which is exempt from tax under Section 501 (a) of Title 26 and at least eighty percent (80%) of the members of which are organizations described in Paragraph (1) of this subsection.

(k) "Rural telephone cooperative" means an organization described in Paragraph (4) or (6) of Section 501 (c) of Title 26 of the United States Code which is exempt from tax under Section 501 (a) of Title 26 and at least eighty (80%) percent of the members of which are organizations engaged primarily in providing telephone service to rural areas of the United States on a mutual, cooperative or other basis.

(Effective September 25, 1992; amended March 28, 1996)

Sec. 38a-272-4. Producers prohibited from assisting reportable MEWAs prior to filing

(a) No producer may solicit, advertise, or market in this state health benefits or coverage from, or accept an application for, or place coverage for a person who resides in this state with, a reportable MEWA unless the producer first files the information required under Section 38a-272-9.

(b) No producer may solicit another producer to enter into an arrangement to solicit, advertise or market services, health benefits or coverage of a reportable MEWA unless the producer first files the information required under Section 38a-272-9.

(Effective September 25, 1992; amended March 28, 1996)

Sec. 38a-272-5. Producers prohibited from assisting employee leasing arrangements prior to filing

(a) No producer may solicit, advertise or market in this state the services, health benefits or coverage of an employee leasing arrangement or a person or arrangement which represents itself as an employee leasing arrangement unless the producer first files the information required under Section 38a-272-9.

(b) No producer may solicit another producer to enter into an arrangement to solicit, advertise or market the services, health benefits or coverage of an employee leasing arrangement unless the producer first files the information required under Section 38a-272-9.

(Effective September 25, 1992; amended March 28, 1996)

Sec. 38a-272-6. Producers prohibited from assisting collectively bargained arrangements prior to filing

(a) No producer may solicit, advertise, or market in this state health benefits or coverage from, or accept an application for, or place coverage for a person who resides in this state with, a collectively bargained arrangement unless the producer first files the information required under Section 38a-272-9.

(b) No producer may solicit another producer to enter into an arrangement to solicit, advertise or market health benefits or coverage of a collectively bargained arrangement unless the producer first files the information required under Section 38a-272-9.

(Effective September 25, 1992; amended March 28, 1996)

Sec. 38a-272-7. Licensed insurers prohibited from assisting reportable MEWAs prior to filing

(a) No licensed insurer may solicit or effect coverage of, underwrite for, collect charges or premiums for, adjust or settle claims of a resident of this state for, or enter into any agreement to perform any of those functions for a reportable MEWA that provides coverage to residents of this state unless the insurer first files the information required under Section 38a-272-9.

(b) A licensed insurer which issues or has issued any insurance coverage to a reportable MEWA that covers residents of this state, including, but not limited to, a specific aggregate stop-loss coverage, shall file the information required under Section 38a-272-9 within thirty (30) days after the coverage is issued or within thirty (30) days after the date the reportable MEWA first provides coverage to a resident of this state, whichever is later.

(Effective September 25, 1992)

Sec. 38a-272-8. Lack of knowledge not a defense

(a) Lack of knowledge or intent to deceive with respect to the organization or status of insurance coverage of a reportable MEWA, employee leasing firm or collectively bargained arrangement is not a defense to a violation of this regulation.

(b) A filing under this regulation is solely for the purpose of providing information to the commissioner. This regulation and any filing made thereunder do not authorize or license a reportable MEWA, employee leasing firm, collectively bargained arrangement or any other arrangement to engage in business in this state if otherwise prohibited by law.

(Effective September 25, 1992)

Sec. 38a-272-9. Information required to be filed and kept current

(a) A producer or insurer required to file under Sections 38a-272-4 through 38a-272-7 shall file all of the following information on a form prescribed by the Commissioner:

(1) A copy of the organizational documents of the reportable MEWA, employee leasing firm or collectively bargained arrangement, including the articles of incorporation and bylaws, partnership agreement or trust instrument;

(2) A copy of each insurance or reinsurance contract which purports to insure or guarantee all or any portion of benefits or coverage offered by the reportable MEWA, employee leasing firm or collectively bargained arrangement to any person who resides in this state;

(3) Copies of the benefit plan description and other materials intended to be distributed to potential purchasers; and

(4) The names and addresses of any person performing or expected to perform the functions of a third party administrator for the reportable MEWA, employee leasing firm or collectively bargained arrangement.

(b) A filing under this section is ineffective and is not in compliance with this regulation if it is incomplete or inaccurate in any material respect.

(c) A person who has made a filing under this regulation shall amend such filing within thirty (30) days of the date the person becomes aware, or exercising due diligence should have become aware, of any material change to the information required to be filed. The amended filing shall accurately reflect the material changes to the information originally filed.

(d) (1) A reportable MEWA, employee leasing arrangement, or collectively bargained arrangement may voluntarily file with the Commissioner the information specified in Subsection (a) of this section on a form prescribed by the Commissioner, providing the filing is not incomplete or inaccurate in any material respect and is accompanied by a statement signed by an officer of such organization stating that the voluntary filing is made with the understanding that the organization will amend the filing within thirty (30) days of the date of any change to the information required to be filed.

(2) When a filing is made pursuant to Paragraph (1) of this subsection the Commissioner may, in his discretion, elect to exempt producers or insurers from the information filing requirements of this section so long as the provisions of Subsections (b) and (c) of this section are complied with.

(Effective September 25, 1992; amended March 28, 1996)

Sec. 38a-272-10. Liability for violation

In addition to the penalties provided in Section 38a-278 of the General Statutes that may be imposed by the Commissioner, in the event that an arrangement that is an unauthorized insurer fails to pay a claim or loss in this state within the provisions of its contract, any person who shall be assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable in accordance with Section 38a-275 of the General Statutes to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.

(Effective September 25, 1992)