STATE OF CONNECTICUT

INSURANCE DEPARTMENT

BULLETIN HC-61
December 14, 2004

TO: All Health Insurers Authorized To Conduct Business In Connecticut

RE: Professional Employer Organizations (PEOs) and Small Group Health Insurance Statutes

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Professional Employer Organizations ("PEOs"), sometimes known as labor leasing, labor contractors, or employer leasing organizations, provide a variety of services for client companies, such as management of human resources, employee benefits, payroll and worker's compensation and assume employer responsibility for paying employment tax, securing and providing benefit plans such as health insurance, retirement savings plans and other critical employee benefits as well as other human resource purposes. Depending on the number of services outsourced to the PEO by the client company, both the PEO and the client company can establish common law employment relationships with worksite employees. If the client company outsources sufficient services to the PEO to consider the relationship as one that is integrated, the PEO can be legally considered to be a co-employer of the client company's employees. The PEO directs and controls worksite employees in matters involving human resource management and compliance with employment laws, and the client company directs and controls worksite employees in manufacturing, production, and delivery of its products and services. If a PEO relationship is terminated, the co-employees will cease to work for the PEO but will continue as employees of the client.

For purposes of Connecticut's small group health insurance statutes, if the number of services being delivered to the client company are not sufficient to satisfy the common law test, then the PEO is not considered to be acting as a co-employer with respect to that client company, and as such, would be viewed by this Insurance Department as merely providing human resources and benefit services. The determination as to the degree of integration to meet the common law test for co-employer status is unique to each relationship and is based on the facts and circumstances of the particular arrangement between the PEO and the employer obtaining services from the PEO.

In reviewing cases that have been brought to the attention of the Department, it appears that some PEOs lack an understanding of the requirements of Connecticut's small group insurance laws such as small group rating, guaranteed issue and renewability and when they apply. In addition, it appears that health insurers authorized to do business in Connecticut have not consistently applied the integration test and are assuming full integration when it may not exist. With respect to health insurance, for those small employers (50 or under eligible employees) where full integration has not been achieved, co-employer status is not accorded and this Department will consider the PEO to be operating as a Multiple Employer Welfare Arrangement ("MEWA") with all attendant small group laws being applicable. Connecticut Insurance Department Bulletin HC-43 would be applicable in this situation and pursuant to the

bulletin directive, this MEWA arrangement could not be self-funded. If full integration has been achieved, co-employer status will be accorded and the group would be considered to be part of the overall single PEO employee group eligible for large case underwriting for health insurance; small group laws would not be applicable.

Effective immediately, the Department will require that each carrier providing a large group health insurance product, or administering a self-funded health insurance plan arrangement, which includes any small group employers of 50 or less eligible employees, for a PEO submit an annual certification to the Insurance Department indicating that with the application for coverage or request for administrative services made to an insurer, the PEO has certified to the insurer that the PEO has achieved, and will continue to maintain throughout the term of the underlying insurance policy or self-insurance administrative services contract, co-employer status with each participant that is enrolled under the policy or contract as determined by applicable state and federal laws, rules and regulations. These PEOs will be considered to be "Certificated PEOs". Those small group PEO participants with whom the PEO does not have a co-employer relationship cannot be a part of the large group policy enrollment or self-funded arrangement. If any said group has 50 or less eligible employees, it will constitute a small group for health insurance purposes and be subject to all Connecticut small group health insurance laws.

The Insurance Department is also requiring that those same carriers who provide large group health insurance products, or administer self-funded health insurance plan arrangements, which includes any small group employers of 50 or less eligible employees, on behalf of any Certificated PEO must furnish a notice, which the insurer may require be at the expense of the Certificated PEO, to each employer participant and its staff of employees that the employer group is part of a large group PEO arrangement for insurance or self-insurance purposes. The notice will also advise that if the group cancels its membership in the PEO insurance/self-insurance program or loses its co-employer status with the PEO, the group will likely face the need to replace its coverage through enrollment in the small group market at significantly higher premium rates. The notice will confirm the fact that the PEO will control all fundamental rights under the policy or contract, including eligibility and termination from the plan arrangement. PEOs which refuse to provide such notice cannot be considered to be a Certificated PEO. Only Certificated PEOs can be issued large group contracts; therefore, a PEO who refuses to provide notice will be considered by this Department to be operating as a MEWA and will be subject to all relevant Connecticut laws and regulations.

The annual PEO certification filed by each carrier must include a statement that the carrier has received certification from the PEO that such notice requirements have been fulfilled. For 2005, carriers must submit this filing to the Department no later than March 31, 2005. Thereafter, annual filings with this Department must be made by carriers on or before January 31 of each year. All mail, including certified and registered mail, should be sent to the Life and Health Division at the following address:

P.O. Box 816
Hartford, CT 06142-0816

Mail sent by private delivery service should be sent directly to our address:

153 Market Street, 7th Floor
Hartford, CT 06103

The form and content of the annual statement to be filed by the carrier, as well as the form and content of the notice to be distributed by the PEOs are attached to this bulletin.

Please be advised that the procedures outlined in this bulletin apply only to health insurance provided by PEOS to employees of their client companies, and not to other lines of insurance, including but not limited to workers compensation and other employer liability insurance.

Please contact the Insurance Department Life & Health Division, 860-297-3862 or ctinsdept.lifehealth@po.state.ct.us with any questions about this bulletin.

Susan F. Cogswell
Insurance Commissioner

STATE OF CONNECTICUT INSURANCE DEPARTMENT
ANNUAL PEO CERTIFICATION

COMPANY NAME:_____

(A SEPARATE FORM MUST BE COMPLETED FOR EACH COMPANY NAME)

COMPANY ADDRESS: _____

NAIC #: _____

List all PEOs for which the company is providing a large group health insurance product. Please indicate those that are fully integrated and whether they have submitted certification with the application for coverage that they have achieved, and will continue to maintain throughout the term of the underlying insurance policy, fully integrated co-employer status with each participant enrolled under the policy as determined by applicable state and federal laws, rules and regulations.

PEO NAME	FULLY INTEGRATED	SUBMITTED CERTIFICATION
_____	[ ]	[ ]
_____	[ ]	[ ]
_____	[ ]	[ ]
_____	[ ]	[ ]
_____	[ ]	[ ]
_____	[ ]	[ ]

List all PEOs for which the company is providing large group self-funded administration. Please indicate those that are fully integrated and whether they have submitted certification with the application for coverage that they have achieved, and will continue to maintain throughout the term of the underlying insurance contract, fully integrated co-employer status with each participant enrolled under the contract as determined by applicable state and federal laws, rules and regulations.

PEO NAME	FULLY INTEGRATED	SUBMITTED CERTIFICATION
_____	[ ]	[ ]
_____	[ ]	[ ]
_____	[ ]	[ ]
_____	[ ]	[ ]
_____	[ ]	[ ]
_____	[ ]	[ ]

I, _____, _____of _____,
(Printed Name) (Title) (Company or Organization)

hereby certify that the information above is true and accurate.

_____ DATE SIGNED: _____
OFFICER'S SIGNATURE

IN WITNESS WHEREOF, the undersigned has affixed his/her signature this ____ day of_____, 200__.

_____

Certification must be submitted annually on or before January 31(except for 2005 – filing due March 31, 2005) to:
State of Connecticut Insurance Department
Attn: Life & Health Division
P O Box 816
Hartford, CT 06142-0816

PEO HEALTH INSURANCE NOTICE FORM

IMPORTANT INFORMATION ABOUT YOUR HEALTH INSURANCE

Your employer has contracted with ____(name of PEO)_____ to provide outsourced human resources functions as a Professional Employer Organization ("PEO"). A PEO provides integrated services to manage human resource responsibilities and employer risks for clients. The PEO delivers these services by establishing and maintaining an employer relationship with the employees at the client's worksite and by contractually assuming certain employer rights, responsibilities, and risk including health benefits administration. The PEO relationship involves a contractual allocation and sharing of employer responsibilities between the PEO and the client. This shared employment relationship is called co-employment, and under this relationship, you are considered to be not only an employee of _____(name of small employer client company)_____ but also ___(name of PEO)___.

Because of this co-employment relationship, your health insurance is now provided to you as an employee of _____(name of PEO)_____ rather than _____(name of small employer group)_____. Because your health insurance is provided through a large employer group, defined in Connecticut as 51 or more employees, the small group employer insurance laws and protections no longer apply to your coverage. Specifically, this means the following:

For your small group employer:

Small group health insurance laws in Connecticut require insurance carriers who provide small group health insurance to Connecticut employers to provide that insurance on a guaranteed issue, guaranteed renewability basis with premium rates based on community rating. By establishing a co-employment relationship, the health insurance is no longer issued to a small group and those guaranteed benefits are lost. Should the PEO relationship be terminated, health insurance replacement will likely cost considerably more.

For the small group employee:

All aspects of the health insurance will be controlled by the PEO, including plan design, carrier selection, eligibility, plan termination, and regulatory compliance. Should the relationship between your small group employer and the PEO terminate, there could be issues with respect to continuation of coverage and transition of care, particularly for those confined on the date of termination. The current benefit plan design may not be available in the small employer market.

Please make certain you understand your rights and obligations as an employee receiving health insurance through a co-employment relationship. If you have questions, you should ask _____(name of PEO)_____ and ____(name of small employer)_____ for more information.