
BULLETIN

Number 03-B-2

**TO: All Licensed Insurance Companies providing Stop Loss Insurance
All Licensed and Registered Third Party Administrators**

DATE: September 11, 2003

SUBJECT: Regulatory Alert Regarding Unlicensed Health Insurance Plans

You are asked to immediately review your internal controls and business practices to ensure that your company does not become an unwitting supporter of unlicensed (illegal) health insurance plans. Your company's urgent effort to strengthen its internal controls in this area is warranted by your company's commitment to good business practices. Unlicensed (illegal) health plans have left millions in unpaid claims. Moreover, your company's failure to establish or strengthen appropriate internal controls may lead to substantial liability. A violation of the Uniform Unauthorized Insurers Act is a Class 3 felony. Furthermore, your company may be liable for all unpaid claims under G.S. §58-33-95.

The department asks you to establish or strengthen internal controls designed to ensure that:

Unlicensed MEWAs

Your company does not issue or purchase a stop loss policy or undertake to administer unlicensed "self-funded" health plans that cover the employees of two or more employers unless all covered employers are under common ownership or the plan is licensed in this State as a multiple-employer welfare arrangement pursuant to G.S. §58-49-35. These plans are insurers under the laws of this State and are transacting the business of insurance without a license. They commonly, and wrongly, claim to be exempt from state insurance law under the Federal Employee Retirement Income Security Act of 1974 ("ERISA"). Since these entities meet the definition of "multiple employer welfare arrangement" ("MEWA") under ERISA they remain subject to state insurance law.

**Professional Employee Organizations ("PEOs")
Unlicensed Health Plans**

Your company does not issue or purchase a stop loss policy or undertake to administer an unlicensed "self-funded" health plan for an employee leasing or professional employee organization, unless such is truly a single employer plan. These firms commonly refer to their client's employees as "co-employed" or as "leased" employees of the PEO. This characterization is harmful and legally insufficient to constitute the PEO a "single employer." Under ERISA an individual is an employee only if the employer actually controls and directs the individual's work. Such a "self-funded" plan may be an unlicensed insurer under the laws of this State.

**Out of State Trusts / Stop Loss “Reinsurance”
For Unlicensed Health Plans**

Your company does not issue or purchase unapproved stop loss coverage for employers located in this State through an out of state trust, and does not undertake to administer an unlicensed “self-funded” health plan for employers located in this state unless all stop loss coverage has been approved by this State. Operators of these arrangements purport they are exempt from this State’s insurance laws because they solicit employers in this State to apply for stop loss coverage through a trust established in an out of state bank. Often these schemes falsely characterize the stop loss policy as “reinsurance.” They may also represent that all claims will be paid under the “self-funded” plan in return for a fixed contribution.

An insurer or producer that solicits the sale of stop loss coverage in this State is subject to this State’s laws. Stop loss coverage is direct insurance, not “reinsurance,” and there may be substantial gaps in the coverage. Most important, only licensed insurers and producers may solicit the sale of stop loss policies in this State. A licensed insurer may offer only a filed and approved policy form.

The Department asks that you take immediate steps to ensure that your company does not provide unwitting support to these illegal operations. You can find a discussion of ERISA provisions governing this topic on the U.S. Department of Labor website at: <http://www.dol.gov/ebsa/Publications/mewas.html>. You may contact Mr. Terry Dorman at 919-715-0310, extension 321 to discuss any questions you may have regarding unlicensed (illegal) health insurance plans. You may contact Mr. Ted Hamby at 919-715-0189 to discuss any questions you may have regarding MEWA licensure. Your company is encouraged to work with the above mentioned Department contacts to resolve any questions about a particular operation. The Department also asks you to establish policies that direct your company’s staff and agents to promptly report any operation described in this bulletin to the Department’s Consumer Services Division at 800-546-5664.

The insurance departments of other states will provide the same assistance, and may be contacted through the MEWA contact list on the NAIC’s website at: http://www.naic.org/state_contacts/docs/mewa_plan_contacts_public_list.pdf.