
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1850 Session of
2013

INTRODUCED BY BARBIN, ROZZI, KOTIK, CALTAGIRONE, COHEN,
SABATINA, DeLUCA AND GOODMAN, NOVEMBER 21, 2013

REFERRED TO COMMITTEE ON INSURANCE, NOVEMBER 21, 2013

AN ACT

1 Preventing illegal multiple employer welfare arrangements;
2 prohibiting other illegal health insurers; establishing
3 duties of the Insurance Department; and imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known as and may be cited as the Prevention
8 of Illegal Multiple Employer Welfare Arrangements and Other
9 Illegal Health Insurers Act.

10 Section 2. Definitions.

11 "Admitted insurer." An insurer licensed to do insurance
12 business in this Commonwealth.

13 "Arrangement." A fund, trust, plan, program or other
14 mechanism by which a person provides, or attempts to provide,
15 health care benefits.

16 "Department." The Insurance Department of the Commonwealth.

17 "Employee leasing arrangement." A labor leasing, staff
18 leasing, employee leasing, professional employer organization,

1 contract labor, extended employee staffing or supply, or other
2 arrangement, under contract or otherwise, whereby one business
3 or entity represents that it leases or provides workers to
4 another business or entity.

5 "Employee welfare benefit plan" or "health benefit plan." A
6 plan, fund or program which was or is established or maintained
7 by an employer or by an employee organization, or by both, to
8 the extent that the plan, fund or program was established or is
9 maintained for the purpose of providing for its participants or
10 their beneficiaries, through the purchase of insurance or
11 otherwise, medical, surgical or hospital care or benefits, or
12 benefits in the event of sickness, accident, disability, death
13 or unemployment.

14 "Fully insured." For the health care benefits or coverage
15 provided or offered by or through a health benefit plan or
16 arrangement:

17 (1) an admitted insurer is directly obligated by
18 contract to each participant to provide all of the coverage
19 under the plan or arrangement; and

20 (2) the liability and responsibility of the admitted
21 insurer to provide covered services or for payment of
22 benefits is not contingent, and is directly to the individual
23 employee, member or dependent.

24 "Insurer." A company or health insurance entity licensed in
25 this Commonwealth to issue any individual or group health,
26 sickness or accident policy or subscriber contract or
27 certificate or plan that provides medical or health care
28 coverage by a health care facility or licensed health care
29 provider that is offered or governed under or any of the
30 following:

1 (1) The act of December 29, 1972 (P.L.1701, No.364),
2 known as the Health Maintenance Organization Act.

3 (2) The act of May 18, 1976 (P.L.123, No.54), known as
4 the Individual Accident and Sickness Insurance Minimum
5 Standards Act.

6 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan
7 corporations) or 63 (relating to professional health services
8 plan corporations).

9 (4) Article XXIV of the act of May 17, 1921 (P.L.682,
10 No.284), known as The Insurance Company Law of 1921.

11 "Licensee." A person that is, or that is required to be,
12 licensed or registered under the laws of this Commonwealth as a
13 producer, third party administrator, insurer, employee leasing
14 arrangement or preferred provider organization.

15 "MEWA." Multiple Employer Welfare Arrangements.

16 "MEWA contact." The individual or position designated by the
17 Insurance Department to be the MEWA contact as identified on the
18 Insurance Department's publicly accessible Internet website.

19 "Nonadmitted insurer." An insurer not licensed to do
20 insurance business in this Commonwealth.

21 "Preferred provider organization." An entity that engages in
22 the business of offering a network of health care providers,
23 whether or not on a risk basis, to employers, insurers or any
24 other person who provides a health benefit plan.

25 "Producer." A person required to be licensed under the laws
26 of this Commonwealth to sell, solicit or negotiate insurance.

27 "Professional employer organization." An arrangement, under
28 contract or otherwise, whereby one business or entity represents
29 that it co-employs or leases workers to another business or
30 entity for an ongoing and extended, rather than a temporary or

1 project-specific, relationship.

2 "Third party administrator" or "administrator." The term
3 shall have the meaning provided under the act of May 17, 1921
4 (P.L.789, No.285), known as The Insurance Department Act of
5 1921.

6 "Transacting of insurance." The term includes:

7 (1) issuing a stop loss policy covering an employer
8 located in this Commonwealth. Stop loss policy coverage of an
9 employer for claims incurred under the employer's self-funded
10 health benefit plan is insurance, not reinsurance, regardless
11 of whether the contract is described by the insurer as
12 reinsurance;

13 (2) issuing a stop loss policy to a trust or trustee,
14 whether the trust or trustee is located in this Commonwealth
15 or otherwise, with an employer located in this Commonwealth
16 directly or indirectly the beneficiary of the trust;

17 (3) agreeing to loan or advance funds to pay claims
18 incurred under an employer's self-funded health benefit plan
19 if the availability of funds to advance is significantly
20 dependent on payment of contributions and the claims
21 experience of two or more employers who have entered into
22 similar loan or advance agreements; or

23 (4) engaging in a risk distribution arrangement
24 providing for compensation of loss through the provision of
25 services, including an arrangement established through
26 marketing or representations to consumers, without
27 specification in a contract.

28 "Unauthorized health insurance."

29 (a) The term includes:

30 (1) health insurance offered by a nonadmitted insurer

1 except to the extent the laws of this Commonwealth allow the
2 coverage to be offered by an nonadmitted insurer licensed in
3 another state through an employer or group located out of
4 State; and

5 (2) health care benefits or coverage offered by a
6 professional employer organization or an employee leasing
7 arrangement that is not fully insured by an admitted insurer.

8 (b) The term does not include:

9 (1) Health care benefits or coverage under an employee
10 welfare benefit plan of the employees of two or more
11 employers, including one or more self-employed individuals,
12 that is established or maintained under or pursuant to a
13 collective bargaining agreement under the criteria provided
14 under 29 CFR 2510.3-40 (relating to plans established or
15 maintained under or pursuant to collective bargaining
16 agreements under section 3(40)(A) of ERISA).

17 (2) Health care benefits or coverage under an employee
18 welfare benefit plan established or maintained by a rural
19 electric cooperative or a rural telephone cooperative as
20 defined under the Employee Retirement Income Security Act of
21 1974 (Public Law 93-406, 29 U.S.C. § 1002(40)(B)).

22 (3) Health care benefits or coverage under an employee
23 welfare benefit plan of the employees of two or more
24 employers but only if the employers are within the same
25 control group so the plan is deemed to be a single employer
26 plan under the Employee Retirement Income Security Act of
27 1974.

28 (4) Health care benefits or coverage under a church plan
29 as defined under the Employee Retirement Income Security Act
30 of 1974.

1 Section 3. Licensee reporting requirement.

2 (a) General rule.--A licensee shall file a written report
3 with the department MEWA contact when a licensee knows a product
4 is, or is about to be, offered to the public in this
5 Commonwealth, and the licensee, based on the information known
6 to the licensee, reasonably should know the product is
7 unauthorized health insurance. Knowledge of a producer regarding
8 an unrelated unauthorized health insurance arrangement is not
9 imputed to licensed insurers represented by that producer.

10 (b) Notice provisions.--Circumstances where a licensee knows
11 that a product is, or is about to be, offered to the public in
12 this Commonwealth, including when the licensee knows that any
13 person is:

14 (1) recruiting producers to solicit or offer, or is
15 soliciting or offering, a health benefit plan generally to
16 the public in this Commonwealth; or

17 (2) seeking an administrator for, or is administering a
18 health benefit plan that is intended to be offered generally
19 to the public in this Commonwealth.

20 (c) Reasonable notice.--Circumstances where a licensee
21 reasonably should know that a product is unauthorized health
22 insurance include, but are not limited to, the following:

23 (1) The licensee knows that the product is represented
24 to be a self-funded plan and that it is offered widely to the
25 multiple employers or generally to individuals.

26 (2) The licensee knows that the product is a
27 professional employer organization self-funded plan and that
28 it is offered widely to multiple client employers.

29 (3) The licensee knows that the plan is represented to
30 be a self-funded plan established or maintained pursuant to a

1 collective bargaining agreement and that the plan is offered
2 widely to multiple employers, or generally to individuals, or
3 both, through agents who are compensated on a commission or
4 similar basis.

5 (d) Disclosure.--The following shall apply:

6 (1) A report filed under this section is confidential
7 and privileged from disclosure in response to a subpoena or
8 otherwise under the act of February 14, 2008 (P.L.6, No.3),
9 known as the Right-to-Know Law, and shall not be subject to
10 discovery or admissible in evidence in any private action.
11 Nothing in this act shall limit the commissioner's authority
12 to use a report filed under this act in the furtherance of
13 any legal or regulatory action that the commissioner, in the
14 commissioner's sole discretion, determines to be necessary to
15 further the purposes of this act.

16 (2) Nothing in this act shall prevent or be construed as
17 preventing the commissioner from disclosing the contents of a
18 report filed under this section to the insurance department
19 of any other state or agency of the Federal Government at any
20 time, or any other regulatory or law enforcement agency
21 provided the agency or office receiving the report or matters
22 relating thereto agrees to hold it confidential and in a
23 manner consistent with this regulation.

24 (e) Immunity.--There is immunity from civil liability under
25 section 349.1 of the act of May 17, 1921 (P.L.682, No.284),
26 known as The Insurance Company Law of 1921.

27 (f) Compliance.--A licensee complies with this section if
28 the licensee files the required report within 30 days or a
29 period reasonable under the circumstances, whichever is later.

30 Section 4. Responsibility to exercise due diligence.

1 (a) Soliciting producer.--

2 (1) A producer, prior to engaging in or assisting any
3 person to engage in offering a health benefit plan to an
4 employer or person located in this Commonwealth, shall carry
5 out appropriate due diligence to establish that the health
6 benefit plan is not unauthorized health insurance, including
7 those measures reasonably appropriate to establish for any
8 insurance coverage that is represented as issued relating to
9 the health benefit plan:

10 (i) the insurer issued the policy;

11 (ii) the coverage is as represented;

12 (iii) the insurer is an admitted insurer in this
13 Commonwealth; and

14 (iv) the policy has been filed with, and approved
15 by, the department or is exempt from filing requirements.

16 (2) For any health benefit plan that is represented as
17 established or maintained pursuant to a collective bargaining
18 agreement, the health benefit plan is established or
19 maintained under or pursuant to a collective bargaining
20 agreement under the criteria provided under 29 CFR 2510.3-40
21 (relating to plans established or maintained under or
22 pursuant to collective bargaining agreements under section
23 3(40) (A) of ERISA).

24 (3) For any health benefit plan that is represented as
25 established or maintained by an employee leasing arrangement
26 or professional employer organization, the health benefit
27 plan is fully insured.

28 (4) For any health benefit plan that is represented as
29 established by a single employer, the health benefit plan is
30 covering solely employees and their dependents, and the

1 employer controls and directs the work of the employee.

2 (b) Stop loss policy producer.--

3 (1) A producer, prior to submitting an application for a
4 stop loss policy to an insurer for a health benefit plan
5 offered to employees, employee dependents or a person located
6 in this Commonwealth, shall carry out appropriate due
7 diligence to establish that the health benefit plan is not
8 unauthorized health insurance, including measures reasonably
9 appropriate to establish:

10 (i) For any health benefit plan that is represented
11 as established or maintained pursuant to a collective
12 bargaining agreement, the health benefit plan is
13 established or maintained under or pursuant to a
14 collective bargaining agreement under the criteria
15 provided under 29 CFR 2510.3-40.

16 (ii) The health benefit plan that is not offered by
17 an employee leasing arrangement or professional employer
18 organization to client employers.

19 (iii) For any health benefit plan that is
20 represented as established by a single employer, that the
21 health benefit plan is covering solely employees, and
22 dependents of employees, of the employer and the employer
23 controls and directs the work of the employee.

24 (c) Third party administrator.--A third party administrator,
25 prior to entering into any administrative contract for a health
26 benefit plan, and prior to assisting any person with
27 administration of a health benefit plan, covering employees of
28 an employer or a person located in this Commonwealth, shall
29 carry out appropriate due diligence to establish that the health
30 benefit plan is not unauthorized health insurance, including

1 those measures reasonably appropriate to establish:

2 (1) Through initial inquiry, contract provisions and
3 measures to monitor and enforce compliance with the contract
4 provisions, that for any insurance coverage that is
5 represented as issued relating to the health benefit plan:

6 (i) the insurer issued the policy;

7 (ii) the coverage is as represented;

8 (iii) the insurer is an admitted insurer in this
9 Commonwealth; and

10 (iv) the policy has been filed with, and approved
11 by, the department or is exempt from filing requirements.

12 (2) For any health benefit plan that is represented as
13 established or maintained pursuant to a collective bargaining
14 agreement, the health benefit plan is established or
15 maintained under or pursuant to a collective bargaining
16 agreement under the criteria provided under 29 CFR 2510.3-40.

17 (3) For any health benefit plan that is represented as
18 established or maintained by an employee leasing arrangement
19 or professional employer organization, the health benefit
20 plan is fully insured.

21 (4) For any health benefit plan that is represented as
22 established by a single employer, that the health benefit
23 plan is covering solely employees and their dependents, and
24 the employer controls and directs the work of the employee.

25 (d) Insurer.--

26 (1) An insurer, prior to issuing a stop loss policy for
27 a health benefit plan covering employees, employee dependents
28 or individuals located in this Commonwealth, shall carry out
29 appropriate due diligence to establish that the health
30 benefit plan is not unauthorized health insurance, including

1 those measures reasonably appropriate to establish:

2 (i) For any health benefit plan that is represented
3 as established or maintained pursuant to a collective
4 bargaining agreement, the health benefit plan is
5 established or maintained under or pursuant to a
6 collective bargaining agreement under the criteria
7 provided under 29 CFR 2510.3-40.

8 (ii) The health benefit plan is not offered by an
9 employee leasing arrangement or professional employer
10 organization to client employers.

11 (iii) For any health benefit plan that is
12 represented as established by a single employer, the
13 health benefit plan is covering solely employees, and
14 dependents of employees, of the employer and the employer
15 controls and directs the work of the employee.

16 (2) An insurer shall not engage in the transacting of
17 insurance by issuing a stop loss policy unless the insurer is
18 an admitted insurer in this Commonwealth and the stop loss
19 policy form has been filed and approved by the department, or
20 the form is exempt from filing. The transacting of insurance
21 includes, but is not limited to:

22 (i) Issuing a stop loss policy covering an employer
23 located in this Commonwealth. Coverage of an employer for
24 claims incurred under the employer's self-funded health
25 benefit plan with a stop loss policy is insurance, not
26 reinsurance, regardless of whether the contract is
27 described by the insurer as reinsurance.

28 (ii) Issuing a stop loss policy to a trust or
29 trustee, whether the trust or trustee is located in this
30 Commonwealth or otherwise, when an employer located in

1 this Commonwealth is directly or indirectly the
2 beneficiary of the trust.

3 (3) An insurer shall not engage in the transacting of
4 insurance in this Commonwealth by issuing a stop loss policy
5 unless, prior to issuing a contract for the stop loss policy,
6 the insurer discloses clearly and conspicuously to the
7 employer, in writing:

8 (i) the employer is not covered for claims below the
9 stop loss attachment point;

10 (ii) a description of the attachment point,
11 including the specific and aggregate attachment points;
12 and

13 (iii) the insurer provides no other coverage of the
14 employer's retention.

15 (e) Preferred provider organization.--

16 (1) A preferred provider organization, prior to entering
17 into any contract with a person offering or providing a
18 health benefit plan in this Commonwealth, shall carry out
19 appropriate due diligence to establish that the health
20 benefit plan is not unauthorized health insurance, including
21 those measures reasonably appropriate to establish, through
22 initial inquiry, contract provisions and measures to monitor
23 and enforce compliance with the contract provisions, that for
24 any insurance coverage that is represented as issued relating
25 to the health benefit plan:

26 (i) the insurer issued the policy;

27 (ii) the coverage is as represented;

28 (iii) the insurer is an admitted insurer in this
29 Commonwealth; and

30 (iv) the policy has been filed with and approved by

1 the department or is exempt from filing requirements.

2 (2) For any health benefit plan that is represented as
3 established or maintained pursuant to a collective bargaining
4 agreement, the health benefit plan is established or
5 maintained under or pursuant to a collective bargaining
6 agreement under the criteria provided under 29 CFR 2510.3-40.

7 (3) For any health benefit plan that is represented as
8 established or maintained by an employee leasing arrangement
9 or professional employer organization, the health benefit
10 plan is fully insured.

11 (4) For any health benefit plan that is represented as
12 established by a single employer, the health benefit plan is
13 covering solely employees and dependents of employees, of the
14 employer and the employer controls and directs the work of
15 the employee.

16 (f) Defense.--

17 (1) A licensee or other person who acts according to the
18 written advice of the MEWA contact has a defense to any
19 violation of this section if:

20 (i) the information provided by the licensee or
21 other person to the MEWA contact, to the extent material
22 to the MEWA contact's advice, is accurate and complete;
23 and

24 (ii) the information is provided by the licensee or
25 other person to the MEWA contact in writing.

26 (2) For purposes of this act, the department's published
27 list of admitted insurers on its publicly accessible Internet
28 website is deemed to be accurate. A licensee or other person
29 has a defense to any allegation that a listed insurer is not
30 an admitted insurer. Nothing in this subsection relieves a

1 licensee or other person from conducting due diligence to
2 determine whether an entity is in fact the same entity as a
3 listed admitted insurer.

4 (3) A violation of this section is mitigated, and the
5 department shall reduce or eliminate any sanction otherwise
6 applicable, if a licensee or other person demonstrates all of
7 the following:

8 (i) It maintained supervisory procedures and
9 controls that complied with section 5.

10 (ii) The violation occurred despite the maintenance
11 of those procedures and controls.

12 (iii) It promptly reported the health benefit plan
13 to the MEWA contact once the licensee or other person had
14 actual knowledge that it was unauthorized health
15 insurance.

16 (iv) It took prompt corrective action.

17 (g) Due diligence.--Nothing in this section requires a
18 producer, third party administrator, insurer or preferred
19 provider organization to conduct due diligence with respect to a
20 health benefit plan that it is not assisting and with respect to
21 which it does not engage in the transacting of insurance.

22 Section 5. Supervisory procedures and controls.

23 (a) General rule.--A producer, third party administrator,
24 insurer, preferred provider organization or an agent of the same
25 shall establish and maintain documented supervision procedures
26 and controls that are reasonably designed to achieve compliance
27 with this regulation.

28 (b) Procedures.--The supervisory procedures shall include:

29 (1) Training.

30 (2) Internal controls.

- 1 (3) Periodic audits.
- 2 (4) Supervisory review.
- 3 (5) Monitoring and enforcement of contractual provisions
- 4 established under section 4(c) and (e).

5 (c) Requirements.--The extent of the supervisory procedures

6 and controls a producer is required to maintain under this

7 section may appropriately reflect the size and complexity of the

8 producer's operations and the scope and nature of the producer's

9 insurance activities.

10 Section 6. Licensing education requirements.

11 (a) General rule.--A producer shall not be licensed in this

12 Commonwealth to sell health insurance unless the producer, prior

13 to licensing, receives not less than one hour of education in:

- 14 (1) identification of unauthorized health insurance; and
- 15 (2) the producer's responsibilities under this act.

16 (b) Continuing education.--An insurer providing health

17 insurance in this Commonwealth shall require its listed

18 producers to obtain not less than one hour of continuing

19 education every four years covering:

- 20 (1) identification of unauthorized health insurance; and
- 21 (2) the producer's responsibilities under this
- 22 regulation.

23 (c) Procedures and controls.--A third party administrator,

24 preferred provider organization or insurer shall include in its

25 application for a license a brief summary of its procedures and

26 controls required under section 5. A license may be denied if

27 the applicant fails to demonstrate that the applicant maintains

28 the required procedures and controls.

29 Section 7. Penalties and liability.

30 (a) Violation.--A person that violates this act is subject

1 to the act of July 22, 1974 (P.L.589, No.205), known as the
2 Unfair Insurance Practices Act.

3 (b) Penalty.--A person who violates section 3 is subject to
4 a penalty of up to \$1,000 for each violation.

5 Section 8. Rules and regulations.

6 The department may promulgate all necessary regulations to
7 implement this act.

8 Section 9. Effective date.

9 This act shall take effect in 60 days.