
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 848 Session of
2011

INTRODUCED BY BARBIN, DeLUCA, FABRIZIO, PASHINSKI, V. BROWN,
CALTAGIRONE, GOODMAN, HALUSKA, JOSEPHS, KORTZ, KULA, MATZIE
AND READSHAW, FEBRUARY 28, 2011

REFERRED TO COMMITTEE ON INSURANCE, FEBRUARY 28, 2011

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 definitions).

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

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

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

29 Section 3. Licensee reporting requirement.

30 (a) General rule.--A licensee shall file a written report

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

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

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

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

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

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

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

27 (3) The licensee knows that the plan is represented to
28 be a self-funded plan established or maintained pursuant to a
29 collective bargaining agreement and that the plan is offered
30 widely to multiple employers, or generally to individuals, or

1 both, through agents who are compensated on a commission or
2 similar basis.

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

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

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

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

25 (f) Compliance.--A licensee complies with this section if
26 the licensee files the required report within 30 days or a
27 period reasonable under the circumstances, whichever is later.
28 Section 4. Responsibility to exercise due diligence.

29 (a) Soliciting producer.--

30 (1) A producer, prior to engaging in or assisting any

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

8 (i) the insurer issued the policy;

9 (ii) the coverage is as represented;

10 (iii) the insurer is an admitted insurer in this
11 Commonwealth; and

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

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

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

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

28 (b) Stop loss policy producer.--

29 (1) A producer, prior to submitting an application for a
30 stop loss policy to an insurer for a health benefit plan

1 offered to employees, employee dependents, or a person
2 located in this Commonwealth, shall carry out appropriate due
3 diligence to establish that the health benefit plan is not
4 unauthorized health insurance, including measures reasonably
5 appropriate to establish:

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

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

15 (iii) For any health benefit plan that is
16 represented as established by a single employer, that the
17 health benefit plan is covering solely employees, and
18 dependents of employees, of the employer and the employer
19 controls and directs the work of the employee.

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

28 (1) Through initial inquiry, contract provisions and
29 measures to monitor and enforce compliance with the contract
30 provisions, that for any insurance coverage that is

1 represented as issued relating to the health benefit plan.

2 (i) the insurer issued the policy;

3 (ii) the coverage is as represented;

4 (iii) the insurer is an admitted insurer in this
5 Commonwealth; and

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

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

13 (3) For any health benefit plan that is represented as
14 established or maintained by an employee leasing arrangement
15 or professional employer organization, the health benefit
16 plan is fully insured.

17 (4) For any health benefit plan that is represented as
18 established by a single employer, that the health benefit
19 plan is covering solely employees and their dependents, and
20 the employer controls and directs the work of the employee.

21 (d) Insurer.--

22 (1) An insurer, prior to issuing a stop loss policy for
23 a health benefit plan covering employees, employee
24 dependents, or individuals located in this Commonwealth,
25 shall carry out appropriate due diligence to establish that
26 the health benefit plan is not unauthorized health insurance,
27 including those measures reasonably appropriate to establish:

28 (i) For any health benefit plan that is represented
29 as established or maintained pursuant to a collective
30 bargaining agreement, the health benefit plan is

1 established or maintained under or pursuant to a
2 collective bargaining agreement under the criteria
3 provided under 29 CFR 2510.3-40.

4 (ii) The health benefit plan is not offered by an
5 employee leasing arrangement or professional employer
6 organization to client employers.

7 (iii) For any health benefit plan that is
8 represented as established by a single employer, the
9 health benefit plan is covering solely employees, and
10 dependents of employees, of the employer and the employer
11 controls and directs the work of the employee.

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

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

24 (ii) Issuing a stop loss policy to a trust or
25 trustee, whether the trust or trustee is located in this
26 Commonwealth or otherwise, when an employer located in
27 this Commonwealth is directly or indirectly the
28 beneficiary of the trust.

29 (3) An insurer shall not engage in the transacting of
30 insurance in this Commonwealth by issuing a stop loss policy

1 unless, prior to issuing a contract for the stop loss policy,
2 the insurer discloses clearly and conspicuously to the
3 employer, in writing:

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

6 (ii) a description of the attachment point,
7 including the specific and aggregate attachment points;
8 and

9 (iii) the insurer provides no other coverage of the
10 employer's retention.

11 (e) Preferred provider organization.--

12 (1) A preferred provider organization, prior to entering
13 into any contract with a person offering or providing a
14 health benefit plan in this Commonwealth, shall carry out
15 appropriate due diligence to establish that the health
16 benefit plan is not unauthorized health insurance, including
17 those measures reasonably appropriate to establish:

18 (i) Through initial inquiry, contract provisions and
19 measures to monitor and enforce compliance with the
20 contract provisions, that for any insurance coverage that
21 is represented as issued relating to the health benefit
22 plan:

23 (A) the insurer issued the policy;

24 (B) the coverage is as represented;

25 (C) the insurer is an admitted insurer in this
26 Commonwealth; and

27 (D) the policy has been filed with and approved
28 by the department or is exempt from filing
29 requirements.

30 (2) For any health benefit plan that is represented as

1 established or maintained pursuant to a collective bargaining
2 agreement, the health benefit plan is established or
3 maintained under or pursuant to a collective bargaining
4 agreement under the criteria provided under 29 CFR 2510.3-40;

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

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

14 (f) Defense.--

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

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

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

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

1 listed admitted insurer.

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

6 (i) It maintained supervisory procedures and
7 controls that complied with section 5.

8 (ii) The violation occurred despite the maintenance
9 of those procedures and controls.

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

14 (iv) It took prompt corrective action.

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

20 Section 5. Supervisory procedures and controls.

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

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

27 (1) Training.

28 (2) Internal controls.

29 (3) Periodic audits.

30 (4) Supervisory review.

1 (5) Monitoring and enforcement of contractual provisions
2 established under section 4(c) and (e).

3 (c) Requirements.--The extent of the supervisory procedures
4 and controls a producer is required to maintain under this
5 section may appropriately reflect the size and complexity of the
6 producer's operations and the scope and nature of the producer's
7 insurance activities.

8 Section 6. Licensing education requirements.

9 (a) General rule.--A producer shall not be licensed in this
10 Commonwealth to sell health insurance unless the producer, prior
11 to licensing, receives not less than one hour of education in:

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

14 (b) Continuing education.--An insurer providing health
15 insurance in this Commonwealth shall require its listed
16 producers to obtain not less than one hour of continuing
17 education every four years covering:

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

21 (c) Procedures and controls.--A third party administrator,
22 preferred provider organization or insurer shall include in its
23 application for a license a brief summary of its procedures and
24 controls required under section 5. A license may be denied if
25 the applicant fails to demonstrate that the applicant maintains
26 the required procedures and controls.

27 Section 7. Penalties and liability.

28 (a) Violation.--A person that violates this act is subject
29 to the act of July 22, 1974 (P.L.589, No.205), known as the
30 Unfair Insurance Practices Act.

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

3 Section 8. Rules and regulations.

4 The department may promulgate all necessary regulations to
5 implement this act.

6 Section 9. Effective date.

7 This act shall take effect in 60 days.