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

L. "Producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

M. "Professional employer organization" means an arrangement, under contract or otherwise, whereby one business or entity represents that it co-employs or leases workers to another business or entity for an on-going and extended, rather than a temporary or project-specific, relationship

Some states have a separate regulatory structure that authorizes some pr sm.7 ( MCI65 0 a)-5 17 ( )]TJ rsomM0 (ific)-dw 0.304 0sogurr
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[(b) Licensed or otherwise authorized under the laws of this state to offer a self-funded health benefit plan.]

Some states have a separate regulatory structure that authorizes some professional employer organizations to self-fund health benefit plans. Those states should take care to include the optional bracketed language in this definition to reflect that statutory structure. The exception under Paragraph P (2) (b) is not intended to be adopted by states whose laws "register" or otherwise "authorize" employee leasing arrangements or professional employer organizations unless those laws also include specific authority to self-fund a health benefit plan. Also, many states have laws that, under limited circumstances, permit a non-admitte


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

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

Some states have a separate regulatory structure that authorizes some professional employer organizations to self-fund health benefit plans. Those states should take care to omit the optional bracketed language.

(3)

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A. Soliciting Producer

(1) A producer, prior to engaging in or assisting any person to engage in offering a health benefit plan to an employer or person located in this state, shall carry out appropriate due diligence to establish that the health benefit plan is not unauthorized health insurance, including those measures reasonably appropriate to establish:

(a) For any insurance coverage that is represented as issued relating to the health benefit plan:

(i) The insurer issued the policy;

(ii) The coverage is as represented;

(iii) The insurer is an admitted insurer in this state; and

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

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

(c) For any health benefit plan that is represented as established or maintained by an employee leasing arrangement or professional employer organization, the


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Prevention of Illegal Multiple Employer Welfare Arrangements (Mewas)
and

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

(a) The information provided by the licensee or other person to the MEWA contact, to the extent material to the MEWA contact's advice, is accurate and complete; and

(b)


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B. The supervisory procedures shall include:

(1) Training;

(2) Internal controls;

(3) Periodic audits;

(4) Supervisory review; and

(5) Monitoring and enforcement of contractual provisions established under Section 4 C and E.

C. The extent of the supervisory procedures and controls a producer is required to maintain under this section may appropriately reflect the size and complexity of the producer's operations and the scope and nature of the producer's insurance activities.

The NAIC encourages the national trade associations for health insurers, preferred provider organizations, third party administrators and insurance agents to develop compliance guidance, training and manuals to assist their members to implement

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A. Except as provided in Subsection B, a person that violates this regulation is subject to [insert reference to general license and penalty provisions under the state insurance code, including the provisions equivalent to the remedy and penalty section of the NAIC Nonadmitted Insurance Model Act].

The regulation should include a cross reference to penalty provisions equivalent to those in Section 7 of the NAIC Nonadmitted Insurance Model Act, as well as the remedial provision under Section 4D of that Act.

B. A person who violates Section 3 of this regulation is subject to a penalty of a [forfeiture of up to $1000] for each violation.

A state insurance department should insert an appropriate penalty under the sanctions provided under its laws. Generally, a less severe penalty is appropriate compared to those for other violations under this regulation.

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Chronological Summary of Actions (all references are to the Proceedings of the NAIC)

2006 Proc. 2nd Quarter 40, 62-75 (adopted).


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Section 1. Statement of Purpose
Section 2. Definitions
Section 3. Licensee Reporting Requirement
Section 4. Responsibility to Exercise Due Diligence
Section 5. Supervisory Procedures and Controls
Section 6. Licensing Education Requirements
Section 7. Penalties and Liability

Appendix A Reporting Form – Unauthorized MEWA or Health Coverage Program

The purpose of this regulation is to prevent the operation of illegal health insurers, including illegal multiple employer welfare arrangements (MEWAs), in this state. This regulation states the law on this topic and establishes specific standards for persons and licensees who become aware of, or are asked to assist such an operation. This regulation is designed to require those pergt6 (r)-23the9protect the public from entities offering fraudulent or otherwise ill

: A state department adopting this regulation may wish to cite its statutory authority for adopting it. This regulation may be enacted under the authority of the NAIC Model Unauthorized Insurers Act. State statutes that are the equivalent to the following NAIC Model Acts may also provide authority to adopt some or all of the provisions of this regulation include:

A. Section 19 of the NAIC Producer Licensing Model Act;

B. Section 12 of the NAIC Unfair Trade Practices Act;

C. Section 8 of the NAIC Unfair Claims Settlement Practices Act;

D. Section 4B of the NAIC Third Party Administrator Statute;

E. Section 3 of the NAIC Model Law on Examinations;

F. NAIC Nonadmitted Insurance Model Act; or

: States that have a specific statutory licensing category "multiple employer welfare arrangements" (MEWAs) may wish to include the licensee within this definition. In addition, states that separately license health maintenance organizations or nonprofit hospital or medical service corporations should include these licensed entities within this definition.

B. "Arrangement" means a fund, trust, plan, program or other mechanism by which a person provides, or attempts to provide, health care benefits.

C.


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J. “Non-admitted insurer” means an insurer not licensed ton (o)-2 (f)-6.7 ( an)2.3 ( in)2.2 (s)-1.3 (u)2.3 ( an)2.ce

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(a) Fully insured by an admitted insurer; or

[(b) Licensed or otherwise authorized under the laws of this state to offer a self-funded health benefihri27 (e)-6 (f)-3Ad7 (e)-6 (f)-3A313 72nb sehn


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

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

Some states have a separate regulatory structure that authorizes some professional employer organizations to self-fund health benefit plans. Those states should take care to omit the optional bracketed language.

(3) The licensee knows that the plan is represented to be a self-funded plan established or maintained pursuant to a collective bargaining agreement and that the plan is offered widely to multiple employers, or generally to individuals, or both, through agents who are compensated on a commission or similar basis.

Paragraph C is not intended to be a comprehensive list of possible illegal schemes. It includes only a few of the most common illegal arrangements.

D. (1) A report filed under this section is confidential and privileged from disclosure in response to a subpoena or otherwise under [insert statutory cite for authority to keep these reports confidential and privileged] and shall not be subject to discovery or admissible in evidence in any private action. Nothing in this regulation shall limit the commissioner's authority to use a report filed pursuant to this regulation in the furtherance of any legal or regulatory action that the commissioner, in the commissioner's sole discretion, determines to be necessary to further the purposes of this regulation.

(2) Nothing in this regulation shall prevent or be construed as preventing the commissioner from disclosing the contents of a report filed under this section to the insurance department of any other state or agency of the federal government at any time, or any other regulatory or law enforcement agency provided the agency or office receiving the report or matters relating thereto agrees to hold it confidential and in a manner consistent with this regulation. For reports filed under this section, [insert state law equivalent to Section 8 of the NAIC Insurance Fraud Prevention Act] applies.

E. A report filed under this Section is confidential and privileged from disclosure in response to a subpoena or otherwise under [insert statutory cite for authority to keep these reports confidential and privileged] except to the extent the commissioner determines disclosure is appropriate to accomplish a regulatory purpose.

F. [There is immunity from civil liability under Section [insert state law equivalent to Section 7 A of the NAIC Insurance Fraud Prevention Act].]

The NAIC recommends that states give serious consideration to seeking statutory authority to retain MEWA contact reports as confidential and to seeking statutory immunity from civil liability related to filing a MEWA contact report, absent a showing of actual malice, prior to adopting this regulation. Many states may already have such provisions enacted as part of the NAIC Insurance Fraud Prevention Act or similar legislation. Those states should include the optional bracketed language. Those states should take care to clarify that their insurance fraud prevention acts do not, or are amended so as to not, prevent the sharing of the reports within the department. States are also encouraged to use the model MEWA contact form the NAIC ERISA Working Group plans to develop.

G. A licensee complies with this section if the licensee files the required report within thirty (30) days or a period reasonable under the circumstances, whichever is later.

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A. Soliciting Producer

(1) A producer, prior to engaging in or assisting any person to engage in offering a health benefit plan to an employer or person located in this state, shall carry out appropriate due diligence to establish that the health benefit plan is not unauthorized health insurance, including those measures reasonably appropriate to establish:

(a) For any insurance coverage that is represented as issued relating to the health benefit plan:

(i) The insurer issued the policy;

(ii) The coverage is as represented;

(iii) The insurer is an admitted insurer in this state; and

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

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

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

Some states have a separate regulatory structure that authorizes some professional employer organizations to self-fund health benefit plans. Those states should take care to modify this section to reflect that statutory structure. This does not include state laws that "register" or otherwise "authorize" employee leasing arrangements or professional employer organizations absent specific authority to self-fund a health benefit plan. However Subparagraph (c) should be revised if and to the extent state law authorizes an employee leasing arrangement to self-fund a health benefit plan.

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

Some states have a separate regulatory structure that recognizes a fully insured health plan of an employee leasing arrangement or professional employer organization as a single employer plan for certain regulatory purposes. Such a state should review Subparagraph (d) to ensure it conforms to such a provision.

B. Stop loss policy producer

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


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(a) For any health benefit plan that is represented as established or maintained

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Some states have a separate regulatory structure that authorizes some professional employer organizations to self-fund health benefit plans. Those states should take care to modify this section to reflect that statutory structure. This does not include state laws that "register" or otherwise "authorize" employee leasing arrangements or professional employer organizations absent specific authority to self-fund a health benefit plan. However Subparagraph (c) should be revised if and to the extent state law authorizes an employee leasing arrangement to self-fund a health benefit plan.

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

D. Insurer

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


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

(a) The information provided by the licensee or other person to the MEWA contact, to the ext ate5 (p)5.3 (er)35.3 (e Tw [(th)5.3 0 Tw 1.004 T( I)-x(f)13.6 6 Tm(F (E)11.r)35..1 (e


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B. The supervisory procedures shall include:

(1) Training;

(2) Internal controls;

(3) Periodic audits;

(4) Supervisory review; and

(5) Monitoring and enforcement of contractual provisions established under Section 4 C and E.

C. The extent of the supervisory procedures and controls a producer is required to maintain under this section may appropriately reflect the size and complexity of the producer's operations and the scope and nature of the producer's insurance activities.

The NAIC encourages the national trade associations for health insurers, preferred provider organizations, third party administrators and insurance agents to develop compliance guidance, training and manuals to assist their members to implement supervisory procedures and controls. The NAIC ERISA Working Group is prepared to review the results of such an effort. State insurance departments are expected to give recognition to supervisory procedures and controls implemented by insurers, preferred provider organizations, third party administrators and insurance agents in accordance with guidance for effective programs developed by these trade organization. Companies also may seek review of their programs by their state insurance department.

A. A producer shall not be licensed in this state to sell health insurance unless the producer, prior to licensing, receives not less than one hour of education in:

(1) Identification of unauthorized health insurance; and

(2) The producer's responsibilities under this regulation.

Subsection A would apply only to those states that have pre-licensing education requirements. The one-hour of education is intended to be included in, and not in addition to, the total pre-licensing requirement.

B. An insurer providing health insurased (et)-2.9 (h)1(o)-9.6c .7 (i)-3.3ioo o

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A. Except as provided in Subsection B, a person that violates this regulation is subject to [insert reference to general license and penalty provisions under the state insurance code, including the provisions equivalent to the remedy and penalty section of the NAIC Nonadmitted Insurance Model Act].

The regulation should include a cross reference to penalty provisions equivalent to those in Section 7 of the NAIC Nonadmitted Insurance Model Act, as well as the remedial provision under Section 4D of that Act.

B. A person who violates Section 3 of this regulation is subject to a penalty of a [forfeiture of up to $1000] for each violation.

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product. Please include the date when you first became aware of this product and the date of your last interaction with the persons involved with this product.

7. What information led you to conclude that you reasonably should know the product is unauthorized health insurance. Please check any of the descriptions listed below that apply and include as much detailed information as you can in the explanation section. Please attach any external documentation that you have regarding the plan or product that is the subject of this report (i.e., webpage printouts, marketing materials, application forms, insurance policies, and enrollee materials).

A. The plan was represented as being insured, but misrepresented one or more of the following (check all that apply):

The insurer that issued the policy
The coverage that was represented
The status of the insurer as an admitted insurer in this state
That the policy has been filed with, and approved by, th (e)-6 3.3 (t)aD4.1 (h)-0.8 (a)-0.8 (r)-0.0 Tw 3.2


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NAIC Model Laws, Regulations,

*Chronological Summary of Actions (All references are to the Proceedings of the NAIC).*

*2006 Proc. 2nd Quarter 40, 62-75 (original model adopted).*
*2007 Proc. 2nd Quarter Vol. I 129, 133, 211-215 (guideline amendments adopted).*


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