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TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #02-137

DIGEST

Adds 760 IAC 1-68 regarding requirements for a multiple employer welfare arrangement to obtain a certificate of registration, including reinsurance requirements, reserve levels, deposits, financial reporting, fidelity bonds, and operation of a multiple employer welfare arrangement, and to otherwise implement IC 27-1-34. Effective 30 days after filing with the secretary of state.

760 IAC 1-68

SECTION 1. 760 IAC 1-68 IS ADDED TO READ AS FOLLOWS:

Rule 68. Multiple Employer Welfare Arrangements

760 IAC 1-68-1 Definitions
Authority: IC 27-1-34-9
Affected: IC 27-1-34-1

Sec. 1. The following definitions apply throughout this rule:
(1) "Commissioner" means the commissioner of the Indiana department of insurance.
(2) "Creditable coverage" has the meaning set forth in the federal Health Insurance Portability and Accountability Act of 1996 (26 U.S.C. 9801(c)(1)).
(3) "Department" means the Indiana department of insurance.
(4) "Fund balance" means the total assets in excess of total liabilities, except that assets pledged to secure debts not reflected on the books of the multiple employer welfare arrangement are not included in the fund balance. The term includes other contributed capital, retained earnings, and subordinated debt.
(5) "Health benefit plan" means any plan that provides benefits for health care services. The term does not include the following:
(A) Accident-only or disability income insurance or a combination of accident-only and disability income insurance.
(B) Credit only insurance.
(C) Disability insurance.
(D) Coverage for a specified disease or illness.
(E) Medicare supplement policies.
(F) Long term care coverage.
(G) Workers' compensation insurance.
(H) A jointly managed trust authorized under 29 U.S.C. 141 et seq. with a plan of benefits for employees negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees as authorized under 29 U.S.C. 157.
(I) Hospital indemnity or fixed indemnity insurance.
(J) Reinsurance contract issued on a stop-loss, quota-share, or similar basis.
(K) Short term major medical contracts.
(L) Liability insurance.
(6) "Multiple employer welfare arrangement" or "MEWA" has the meaning set forth in IC 27-1-34-1.
(7) "Participant criteria" means any criteria or rules established by an employer to determine the employees

who are eligible for enrollment, including continued enrollment, under the terms of a health benefit plan.

(8) "Participation agreement" means the document pursuant to which an employer undertakes and agrees to fulfill obligations as a member of the MEWA.

(9) "Qualified actuary" means an actuary who is not an employee of the MEWA and is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001, et seq.).

(10) "Qualified financial institution" means an institution that is organized, or in the case of a United States branch or agency office of a foreign banking organization is licensed, under the laws of the United States or any state, and has been granted authority to operate with fiduciary powers and is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(Department of Insurance; 760 IAC 1-68-1)

760 IAC 1-68-2 Certificate of registration

Authority: IC 27-1-34-9
Affected: IC 4-21.5-5; IC 27-1-25; IC 27-1-34

Sec. 2. (a) A MEWA may not engage in business in Indiana without first obtaining a certificate of registration from the department.

(b) To obtain a certificate of registration a MEWA shall submit an application for a certificate of registration. The application shall be on a form prescribed by the department. The application shall be completed and submitted along with the following information:

(1) Copies of all articles, bylaws, agreements, trusts, or other documents describing the rights and obligations of employers, employees, and beneficiaries.

(2) Current financial statements of the MEWA and a projection of the assets, liabilities, income, and expenses of the MEWA for the next twelve (12) months.

(3) Proof of a fidelity bond, which shall protect against acts of fraud or dishonesty in servicing the MEWA, covering each person responsible for servicing the MEWA in an amount equal to:

(A) the greater of ten percent (10%) of the premiums and contributions received by the MEWA; or

(B) ten percent (10%) of the benefits paid;

during the preceding calendar year, with a minimum of ten thousand dollars ($10,000) and a maximum of five hundred thousand dollars ($500,000). No additional bond shall be required of a third party administrator licensed under IC 27-1-25.

(4) A business plan for the MEWA, including the proposed marketing and sales plan and documents.

(5) An opinion from a qualified actuary satisfactory to the commissioner showing that the MEWA will be operated in accordance with sound actuarial principles.

(6) A certification by the applicant that the MEWA is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.) or that the applicant is exempt from the Employee Retirement Income Security Act of 1974 including the basis for the asserted exemption.

(7) Copies of the plan documents and agreements with service providers.

(8) A statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with operation of the MEWA.

(9) Names and addresses of the following:

(A) The association or group of employers sponsoring the MEWA.

(B) The members of the board of trustees or directors, as applicable, of the MEWA.

(C) If not an association, at least two (2) employers.

(10) The application fee required by section 16 of this rule.

(c) The commissioner shall examine the application and documents submitted by the applicant and shall have the power to conduct any investigation the commissioner may deem necessary and to examine under oath any persons interested in or connected with the MEWA. The commissioner may request any additional information

that he or she deems relevant to the application. A certificate of registration will not be issued until the commissioner approves the MEWA's application.

(d) To meet the requirements for approval of an application for a certificate of registration, a MEWA must meet all of the following conditions.

(1) The employers in the MEWA must be members of an association or group of two (2) or more businesses in the same trade or industry, including closely related businesses that provide support, services, or supplies primarily to that trade or industry. If an association, the association must:

(A) be engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan; and

(B) have been in existence for a period of not less than two (2) years prior to engaging in any activities relating to the provision of employee health benefits to its members.

(2) The MEWA must be controlled and sponsored directly by participating employers or participating employees, or both. The MEWA must be operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the arrangement and that is responsible for all operations of the MEWA. The trustees must be owners, partners, officers, directors, or employees of employers in the MEWA. The trustees must be equitably divided through the participating employers, no one (1) employer may be represented by a majority of the board.

(3) The association or MEWA must be a not-for-profit organization.

(4) Coverage under the MEWA must not be offered to persons or groups other than participating employers and, in the event of an association the sponsoring association.

(5) The MEWA must have within its own organization adequate facilities and competent personnel, as determined by the commissioner, to service the employee benefit plan or must have contracted with a third party administrator holding a certificate of registration under IC 27-1-25.

(6) The MEWA must have applications from not less than two (2) employers and plan to provide similar benefits for not less than two hundred (200) participating employees. The annual gross premiums of or contributions to the plan must not be less than:

(A) twenty thousand dollars ($20,000) for a plan that provides only vision benefits;

(B) seventy-five thousand dollars ($75,000) for a plan that provides only dental benefits; and

(C) two hundred thousand dollars ($200,000) for all other plans.

(7) The MEWA must possess a written commitment, binder, or policy for stop-loss insurance issued by an insurer authorized to do business in this state providing:

(A) not less than sixty (60) days' notice to the commissioner of any cancellation or nonrenewal of coverage; and

(B) both specific and aggregate coverage with an aggregate retention of no more than one hundred twenty-five percent (125%) of the amount of expected claims for the next plan year and a specific retention amount annually determined by the actuarial report required by section 8 of this rule.

Both the specific and the aggregate coverage must require all claims to be submitted within ninety (90) days after the claim is incurred and provide a twelve (12) month claims incurred period and a fifteen (15) month paid claims period for each policy year.

(8) The contributions must be set to fund at least one hundred percent (100%) of the aggregate retention plus all other costs of the MEWA.

(9) The MEWA must establish a procedure acceptable to the commissioner for:

(A) handling claims for benefits in the event of dissolution of the MEWA; and

(B) the routine handling of claims.

(10) The MEWA must obtain the required bond.

(11) The MEWA must be operated in accordance with sound actuarial principles.

(12) All funds of the MEWA must be held in trust in the name of the MEWA in a qualified financial institution.

(13) The MEWA's participation application and participation agreement must contain the language required by section 14 of this rule.

(e) A denial of an application shall:

(1) be in writing;

(2) specify the reasons for denial; and

(3) provide notice of the applicant's right to request a hearing.

Any request for a hearing shall be submitted within thirty (30) days of receipt of the department's denial. A final order of the commissioner is a final order subject to judicial review pursuant to IC 4-21.5-5.

(f) A MEWA in existence on January 1, 2003, shall do the following:

(1) File notice with the commissioner by March 1, 2003, of its intent to apply for an initial certificate of registration.

(2) File for its initial certificate of registration by June 1, 2003.

The MEWA may continue to conduct business until the certificate of registration is granted or denied by the commissioner. *(Department of Insurance; 760 IAC 1-68-2)*

760 IAC 1-68-3 Eligibility

Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 3. A MEWA may only provide benefits to active or retired owner, officers, director, or employees of or partners in participating employers, or the dependents of such persons, except as otherwise limited by the Employee Retirement Income Security Act of 1874 (29 U.S.C. 1001 et seq.). *(Department of Insurance; 760 IAC 1-68-3)*

760 IAC 1-68-4 Coverage requirements

Authority: IC 27-1-34-9
Affected: IC 25-22.5; IC 25-29; IC 27-1-34

Sec. 4. (a) A MEWA may refuse to provide coverage to an employer employing fifty (50) or more employees in accordance with the MEWA's underwriting standards and criteria.

(b) A MEWA must provide coverage to any employer that meets the participating employer criteria and who employs two (2) to fifty (50) employees.

(c) Upon issuance of coverage to any employer, each MEWA shall provide coverage to the employees who meet the participation criteria established by the terms of the plan document without regard to an individual's health status related factors. The participation criteria may not be based on health status factors.

(d) The MEWA shall accept or reject the entire group of individuals who meet the participation criteria and who choose coverage. The MEWA may exclude only those individuals who have declined coverage. Denial by a MEWA of an application for coverage from an employer must be in writing and must state the reason or reasons for the denial.

(e) The MEWA shall obtain a written waiver for each employee who meets the participation criteria and who declines coverage under the MEWA. The waiver must ensure that the employee was not induced or pressured into declining coverage because of the employee's or a dependent's health status.

(f) A MEWA may not provide coverage to an employer or the employees of an employer if the MEWA or an agent for the MEWA knows that the employer has induced or pressured an employee who meets the participation criteria or a dependent of the employee to decline coverage because of that individual's health status.

(g) A MEWA may require an employer to meet minimum contribution or participation requirements as a condition of issuance and renewal in accordance with the terms of the MEWA's plan document. Those requirements shall be:

(1) stated in the plan document; and

(2) applied uniformly to each employer offered or issued coverage by the MEWA.

(h) The initial enrollment period for employees meeting the participation criteria must be at least thirty-one (31) days, with a thirty-one (31) day annual open enrollment period. If dependent coverage is offered, the

dependent's open enrollment must also comply with these time periods.

(i) A MEWA may establish a waiting period during which a new employee is not eligible for coverage in accordance with the plan document.

(j) A MEWA's plan document may not, by use of a rider or amendment applicable to a specific individual, limit or exclude coverage by type of illness, treatment, medical condition, or accident, except for preexisting conditions as follows:

(1) A preexisting condition provision in a MEWA may not apply to an expense incurred on or after the expiration of the twelve (12) months following the initial effective date of coverage of the participating employee or dependent. However, this time period may be extended to eighteen (18) months for a late enrollee as defined in the federal Health Insurance Portability and Accountability Act of 1996.

(2) A preexisting condition provision in a MEWA plan document may not apply to coverage for a disease or condition other than a disease or condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six (6) months before the earlier of the:

(A) effective date of coverage; or

(B) first day of the waiting period.

(3) A MEWA shall not treat genetic information as a preexisting condition in the absence of a diagnosis of the condition related to the information.

(4) A MEWA shall not treat a pregnancy as a preexisting condition.

(5) A preexisting condition provision in a MEWA's plan document may not apply to an individual who was continuously covered for a period of twelve (12) months under creditable coverage that was in effect up to a date not more than sixty-three (63) days before the effective date of coverage under the health benefit plan, excluding any waiting period.

(6) In determining whether a preexisting condition provision applies to an individual covered by a MEWA's plan document, the MEWA shall credit the time the individual was covered under previous creditable coverage if the previous coverage was in effect at any time during the twelve (12) months preceding the effective date of coverage under the MEWA. If the previous coverage was issued under a health benefit plan, any waiting period shall also be credited to the preexisting condition provision period.

(7) This section does not preclude application of any waiting period applicable to all new participating employees under the health benefit plan in accordance with the terms of the MEWA's plan document.

(k) A MEWA shall provide that the insurance benefits applicable for the individual or family member shall be payable with respect to a newly born or adopted child of a covered person. The coverage shall consist of coverage of injury or sickness, including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. Coverage shall include, but not be limited to, benefits for inpatient or outpatient expenses arising from medical and dental treatment (including orthodontic and oral surgery treatment) involved in the management of birth defects known as cleft lip and cleft palate. If payment of a specific premium or fee is required to provide coverage for a child, the policy or contract may require that notification of the birth or adoption and payment of the required premium or fee must be furnished to the MEWA within thirty-one (31) days after the date for birth or adoption in order to have continuous coverage beyond the thirty-one (31) day period.

(l) Coverage offered by the MEWA shall comply with the following:

(1) The federal Women's Health and Cancer Rights Act.

(2) The federal Mental Health Parity Act.

(3) The federal Pregnancy Discrimination Act.

(m) The MEWA shall comply with the federal Health Insurance Portability and Accountability Act of 1996.

(n) The MEWA shall provide coverage for the following:

(1) The medically necessary treatment for diabetes, including medically necessary supplies and equipment as ordered in writing by a physician licensed under IC 25-22.5 or a podiatrist licensed under IC 25-29, subject to general provisions of the health benefit plan.

(2) At least one (1) prostate specific antigen test annually for an insured who is at least fifty (50) years of age or is younger than fifty (50) years of age and is at high risk for prostate cancer according to the most recent published guidelines of the American Cancer Society.

(3) Colorectal cancer examinations and laboratory tests for cancer for any nonsymptomatic insured, in accordance with the current American Cancer Society guidelines for a covered individual who is fifty (50) years of age or less than fifty (50) years of age and at high risk for colorectal cancer according to the most recent published guidelines of the American Cancer Society.

(o) The MEWA shall offer coverage for nonexperimental surgical treatment by a health care provider of morbid obesity that has persisted for at least five (5) years and nonsurgical treatment, supervised by a physician, has been unsuccessful for at least eighteen (18) consecutive months. Morbid obesity means any of the following:

(1) A weight of at least two (2) times the ideal weight for frame, age, height, and gender, as specified in the 1983 Metropolitan Life Insurance tables.

(2) A body mass index of at least thirty-five (35) kilograms per meter squared, with comorbidity or coexisting medical conditions, such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes.

(3) A body mass index of at least forty (40) kilograms per meter squared without comorbidity.

For purposes of this section, body mass index is equal to weight in kilograms divided by height in meters squared.

(p) A MEWA may not deny enrollment of a child of a covered individual because the child was born out of wedlock, the child is not claimed as a dependent on the parent's federal income tax return, or the child does not reside with the parent or in the MEWA's service area. Whenever a child of a noncustodial parent is eligible for coverage with or covered by the MEWA the MEWA shall do the following:

(1) Provide any information to the custodial parent that is necessary for the child to obtain benefits through the MEWA.

(2) Permit the custodial parent, or the provider of medical services with the custodial parent's approval, to submit claims for covered services without the approval of the noncustodial parent.

(3) Make payments on insurance claims submitted under subdivision (2) directly to the custodial parent, the provider of the medical services, or the office of Medicaid policy and planning.

(4) When a parent is required by a court or an administrative order to provide health coverage for a child and the parent is eligible for family health coverage with the MEWA, the MEWA must do all of the following:

(A) Permit the parent to enroll under the family coverage a child who is otherwise eligible for the coverage, without regard to any enrollment season restriction.

(B) Enroll a child under the family coverage upon application by the child's custodial parent, the office of Medicaid policy and planning or a Title IV-D agency whenever a noncustodial parent who is enrolled fails to apply for coverage of the child.

(C) The MEWA may not disenroll or eliminate coverage of a child who is otherwise eligible for coverage unless the insurer is provided satisfactory written evidence that the court order or administrative order is no longer in effect or the child is or will be enrolled in comparable health coverage not later than the effective date of the disenrollment.

(q) If the MEWA coordinates benefits, the coordination of benefits provision must comply with the National Association of Insurance Commissioners model regulation on coordination of benefits. *(Department of Insurance; 760 IAC 1-68-4)*

760 IAC 1-68-5 Applications

Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 5. (a) A MEWA, in its application for coverage, may ask questions of a medically specific nature that are necessary to render a fully informed underwriting determination, based upon sound actuarial principles

concerning whether to accept or rate a particular risk, subject to the following conditions:

(1) Questions relating to medical and other factual matters intending to reveal the possible existence of medical conditions are permissible if the applicant has been given an opportunity to provide an explanation for any affirmative answers given in the application. Questions shall:

(A) be related to a finite period of time preceding completion of the application;

(B) be specific and objective; and

(C) provide the applicant the opportunity to give a detailed explanation.

(2) No question in an application shall be directed towards determining or designed to establish the applicant's sexual orientation.

(3) Questions relating to the applicant having human immunodeficiency virus or having been diagnosed as having human immunodeficiency virus are permissible if they are factual, objective, and designed to establish the existence of the condition.

(b) An insurer may require a potential insured to submit to any medical tests, at the insurer's expense, the purpose of which is to determine infection with human immunodeficiency virus, subject to the following conditions:

(1) The test is necessary to render a fully informed underwriting determination based upon sound actuarial principles concerning whether to accept or rate a particular risk.

(2) Whenever an applicant is requested to take a test to determine human immunodeficiency virus infection in connection with an application for insurance, the use of such a test must be revealed to the applicant and his or her written consent obtained. No adverse underwriting decision shall be made on the basis of such a positive test unless an established test protocol has been followed.

(3) The following test protocol is established and must be the basis of an adverse underwriting determination:

(A) Two (2) positive ELISA tests.

(B) One (1) Western Blot test, which is not negative, must be obtained from the same sample from tests conducted by a qualified laboratory.

(4) All results of tests to determine human immunodeficiency virus infection and application responses are confidential and shall not be shared with anyone other than the applicant, the applicant's physician, and the insurer's underwriting department, except as follows:

(A) Test results and application responses may be shared with underwriting departments of affiliates of the insurer and reinsurers, who shall be subject to all provisions of this rule as if they were the insurer to which application was originally made.

(B) Test results may be reported to the Medical Information Bureau, Inc., provided that:

(i) the insurer will not report that tests of an applicant showed the presence of human immunodeficiency virus, but only that unspecified test results were abnormal; and

(ii) reports must use a general code that also covers results of tests for many diseases or conditions that are not related to human immunodeficiency virus or acquired immune deficiency syndrome.

(5) An insurer may make an underwriting or a rating determination based upon questions asked and tests required pursuant to this subsection, subject to the following conditions:

(A) Sexual orientation may not be used in the underwriting process or in the determination of insurability.

(B) Insurance support organizations shall be directed by insurers not to investigate, directly or indirectly, the sexual orientation of an applicant or a beneficiary.

(C) Neither the marital status, the living arrangements, the occupation, the gender, the medical history, the beneficiary designation, nor the zip code or other territorial classification of an applicant may be used to establish, or aid in establishing, the applicant's sexual orientation.

(D) For purposes of rating a group for health, an insurer may impose territorial rates, but only if the rates are based on sound actuarial principles or are related to actual or reasonably anticipated experience.

(E) No adverse underwriting decision shall be made because medical records or a report from an insurance support organization shows that the applicant has demonstrated concern about human immunodeficiency

virus by seeking testing or counseling from health care professionals. This subsection does not apply to an applicant seeking treatment or diagnosis for a specific condition.

(6) In the event a MEWA determines to accept a risk, it must do so without limitations or exclusions solely of the coverage for human immunodeficiency virus, acquired immune deficiency syndrome, or a related condition, as follows:

(A) No maximum dollar amount of coverage, which is limited solely to human immunodeficiency virus, acquired immune deficiency syndrome, or a related condition, shall be included in any policy or certificate.

(B) No exclusion of coverage, which is limited solely to human immunodeficiency virus, acquired immune deficiency syndrome, or a related condition, shall be included in any policy or certificate.

(Department of Insurance; 760 IAC 1-68-5)

760 IAC 1-68-6 Premium rates

Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 6. A MEWA may not charge an adjustment to premium rates for individual employees or dependents for health status related factors or duration of coverage. Any adjustment must be applied uniformly to the rates charged for all participating employees and dependents of participating employees of the employer. *(Department of Insurance; 760 IAC 1-68-6)*

760 IAC 1-68-7 Marketing practices

Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 7. (a) On request, the MEWA shall provide an employer with a summary of the plans for which the employer is eligible. All marketing materials shall include the disclosure required by section 14 of this rule.

(b) The department may require periodic reports by MEWAs and agents regarding health benefit plans issued by MEWAs. *(Department of Insurance; 760 IAC 1-68-7)*

760 IAC 1-68-8 Third party administrator

Authority: IC 27-1-34-9
Affected: IC 27-1-25; IC 27-1-34

Sec. 8. (a) If a MEWA enters into an agreement with a third party administrator to provide administrative, marketing, or other services related to the offering of health benefits plans to employers in this state, the third party administrator must hold a certificate of registration issued under IC 27-1-25.

(b) A trustee may not be an owner, officer, or employee of the administrator. *(Department of Insurance; 760 IAC 1-68-8)*

760 IAC 1-68-9 Filings by multiple employer welfare arrangement

Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 9. (a) Each MEWA shall file the following information on a quarterly basis, and the filing is due forty-five (45) days after the end of the MEWA's fiscal quarter:

(1) Quarterly financial statements, including a balance sheet and income statement prepared in accordance with generally accepted accounting principles signed by an officer of the MEWA.

(2) A list of any employers who have obtained coverage with the MEWA during the previous quarter and the number of their covered employees.

(b) Each MEWA transacting business in this state shall file an annual report with the commissioner within ninety (90) days of the end of the MEWA's fiscal year. The report shall be verified by the oath of the chair of the board of trustees. The report must summarize the business activities of the trust for the immediately preceding year and must contain all of the following items:

(1) Management discussion and analysis.
(2) Financial statements audited by a certified public accountant.
(3) An actuarial opinion prepared and certified by a qualified actuary that states:
(A) The MEWA is being operated in accordance with sound actuarial principles.
(B) A description and explanation of actuarial assumptions and actuarial methods.
(C) The recommended level of specific and aggregate stop-loss insurance the MEWA should maintain.
(4) A statement detailing any modified terms of a plan document along with a certification from the trustees that any changes are in compliance with the minimum requirements of this rule.
(5) If the MEWA has been examined by a regulatory authority, the report shall:
(A) identify the entity that conducted the examination; and
(B) include a copy of the examination report.
(6) The names and addresses of all participating employers, and the total number of covered individuals.

(c) Each filing made with the department shall be accompanied by the filing fee required by section 16 of this rule. *(Department of Insurance; 760 IAC 1-68-9)*

760 IAC 1-68-10 Financial condition
Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 10. Each MEWA shall maintain a minimum fund balance of five hundred thousand dollars ($500,000). *(Department of Insurance; 760 IAC 1-68-10)*

760 IAC 1-68-11 Examination
Authority: IC 27-1-34-9
Affected: IC 27-1-3.1; IC 27-1-34-6

Sec. 11. (a) The commissioner or any person appointed by the commissioner shall have the power to examine the affairs of any MEWA and for such purposes shall have free access to all the books, records, and document that relate to the business of the plan and may examine under oath its trustees or directors, officers, agents, and employees in relation to the affairs, transactions, and conditions of the MEWA. Expenses of the examination shall be paid by the MEWA as provided in IC 27-1-34-6. The examination shall be conducted and in accordance with IC 27-1-3.1 and may cover financial or market conduct issues.

(b) Each MEWA must have and maintain a place of business in Indiana and must make available to the commissioner complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of business transacted. *(Department of Insurance; 760 IAC 1-68-11)*

760 IAC 1-68-12 Forms
Authority: IC 27-1-34-9
Affected: IC 4-21.5; IC 27-1-34

Sec. 12. (a) No participation agreement or contract form, application form, certificate, rider, endorsement, summary plan description, or other evidence of coverage may be issued unless the form, and any subsequent changes to the form, has been filed with the commissioner. The form may not be used for thirty (30) days after the filing unless the commission gives written approval of the form before the expiration of thirty (30) days.

(b) The commissioner may, within thirty (30) days after the filing of a form, disapprove the form if the form:
(1) violates or does not comply with this rule or any applicable statute;
(2) contains or incorporates by reference inconsistent, ambiguous, or misleading clauses or exceptions and conditions that deceptively affect the risk proposed to be assumed in the general coverage of the contract;
(3) has any title heading or other indication of its provision that is misleading;
(4) is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible; or

(5) contains any provision that is unfair, inequitable, or encourages misrepresentation.

(c) A disapproval must:
(1) be in writing; and
(2) identify the reason for the denial and provide an opportunity for a hearing on the matter.

(d) The commissioner may, after notice and a hearing, withdraw approval of a form for the reasons stated in subsection (b).

(e) Any final order of the commissioner under this section is a final order and subject to judicial review under IC 4-21.5.

(f) All filings under this section shall be accompanied by the filing fee required by section 16 of this rule. *(Department of Insurance; 760 IAC 1-68-12)*

760 IAC 1-68-13 Enforcement
Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 13. (a) The commissioner may deny, suspend, or revoke a certificate of registration if, after notice and a hearing, the commissioner finds that the MEWA has failed to meet the requirements of this rule or any applicable statute.

(b) The commissioner shall deny, suspend, or revoke the certificate of registration of a MEWA if the commissioner finds any of the following exist:
(1) The MEWA has a negative fund balance.
(2) The MEWA has refused to:
(A) be examined; or
(B) produce the MEWA's accounts, records, and files for examination;
or any of the MEWA's officers have refused to give information with respect to the MEWA's affairs to perform any other legal obligation as to such examination when required by the commissioner.
(3) The MEWA has failed to pay a final judgment rendered against it in court within thirty (30) days.
(4) The MEWA no longer meets the requirements for the authority originally granted.
(Department of Insurance; 760 IAC 1-68-13)

760 IAC 1-68-14 Termination
Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 14. If a MEWA is terminated for any reason, the trust may not be dissolved until all outstanding financial obligations of the MEWA are paid. The MEWA may retain sufficient funds to provide coverage for an additional period as the trustees of the MEWA consider prudent. The trustees may purchase additional insurance for protection against potential future claims. Any funds remaining in the MEWA after satisfaction of all obligations must be paid to participating employers or covered employees in an equitable manner meeting with the approval of the commissioner. Written notice of the termination must be provided to each covered employee, the United States Department of Labor, and the commissioner at least thirty (30) days before the effective date of the termination. *(Department of Insurance; 760 IAC 1-68-14)*

760 IAC 1-68-15 Liability of participants
Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 15. (a) The liability of each employer participant for the obligations of the MEWA is joint and several.

(b) Each employer participant has a contingent assessment liability pursuant to this section for payment of

actual losses and expenses incurred while the participation agreement was in force.

(c) Each participation agreement or contract issued by the MEWA must contain a statement of the contingent liability of employer participants. Both the application for participation and the participation agreement must contain, in contrasting color and not less than twelve (12) point type, the statement, "This is a fully assessable contract. In the event (the MEWA) is unable to pay its obligations, participating employers will be required to contribute through an equitable assessment the money necessary to meet any unfulfilled obligations.". *(Department of Insurance; 760 IAC 1-68-15)*

760 IAC 1-68-16 Written notice
Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 16. (a) A MEWA shall provide to each participating employer the written notice, "In the event the plan or the MEWA does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer may be liable for those expenses.".

(b) Every application and coverage form, including certificates of coverage, must contain in not less than twelve (12) point type the notice, "Your coverage is issued by a multiple employer welfare arrangement. The multiple employer welfare arrangement may not be subject to all of the insurance laws and regulations of Indiana. State insurance guaranty funds are not available for your multiple employer welfare arrangement.". *(Department of Insurance; 760 IAC 1-68-16)*

760 IAC 1-68-17 Fees
Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 17. The following fees apply to MEWAs:
(1) An applicant shall pay a nonrefundable fee of three hundred fifty dollars ($350) for filing an application for a certificate of registration.
(2) Each MEWA holding a certificate of registration shall pay an annual internal audit fee of one hundred dollars ($100).
(3) A fee of fifty dollars ($50) shall accompany the filing of the annual report required by section 8 of this rule.
(4) A fee of thirty-five dollars ($35) shall accompany each form filed as required by section 10 of this rule.
(Department of Insurance; 760 IAC 1-68-17)

760 IAC 1-68-18 Fully insured MEWAs
Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 18. This rule does not apply to a fully insured MEWA. A fully insured MEWA is a MEWA that provides benefits to its participating employees and beneficiaries for which one hundred percent (100%) of the liability has been assumed by an insurance company or health maintenance organization holding a certificate of authority in Indiana. The covered individual must be entitled to make a claim for payment directly to the insurance company or health maintenance organization. *(Department of Insurance; 760 IAC 1-68-18)*

760 IAC 1-68-19 Severability
Authority: IC 27-1-34-9
Affected: IC 27-1-34

Sec. 19. If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected. *(Department of Insurance; 760 IAC 1-68-19)*

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 26, 2002 at 10:00 a.m., at the Department of Insurance, 311 West Washington Street, Suite 300, Indianapolis, Indiana the Department of Insurance will hold a public hearing on a proposed rule regarding requirements for multiple employer welfare arrangements to obtain a certificate of registration, including reinsurance requirements, reserve levels, deposits, financial reporting, fidelity bonds, and operation of a multiple employer welfare arrangement, and to otherwise implement IC 27-1-34. Copies are available at the Web site for the Department of Insurance at www.state.in.us/idoi. Copies of these rules are now on file at the Department of Insurance, 311 West Washington Street, Suite 300 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Sally McCarty
Commissioner
Department of Insurance