



COMMENTS ON PROPOSED RULE 119

Arkansas Insurance Department

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Josh Archambault
Visiting Senior Fellow

Joel Allumbaugh
Visiting Senior Fellow

Opportunity Solutions Project (OSP) supports efforts in Arkansas to allow for more access to association health plans (AHPs). The proposed rule is well thought out, comprehensive, and navigable for groups that are looking to responsibly establish a multiple-employer welfare arrangement (MEWA) in the state. However, given a review of over 30 states' MEWA laws, OSP has specific recommendations for ways to improve the proposed rule and comments aimed at increasing clarity for any group interested in opening a MEWA.

Changes that would allow for more health coverage in Arkansas

1. *Correcting Participation Rules:* Section 7(a)(1) and (6) reference two or more employees in the same industry, which would appear to be inconsistent with the statute which also allows for associations representing multiple trades or industries. This should be changed to align with the newly-passed law.
2. *Reserve Flexibility:* Section 7(a)(11) requires reserves to be established prior to issuance of a MEWA license. For new MEWAs, we recommend allowing all or a portion of reserves to be secured with a letter of credit in lieu of cash. This change gives new MEWAs the flexibility to manage their cash resources which could also lower the cost of entry for member employers. A letter of credit ensures adequate financial strength to call upon the funds prior to the establishment of cash reserves. We would recommend the reserves to be 100 percent cash by the end of the second year of operation.
3. *Realistic Annual Audit Turnarounds:* Section 14 requires annual audited financial statements within 90 days of the close of the fiscal year. We recommend changing the regulation to allow for up to five months. We are aware of challenges with existing MEWAs that would make 90 days a real challenge. Accountants typically want a completed actuarial report of incurred but not reported claims, and the actuaries ideally want a full three months of run out completed before finalizing their report. Extending to five months allows adequate time for the various parties to complete the statements with the highest confidence level. This could also be accomplished by amending the rule to enable department discretion to extend beyond 90 days so that each MEWA can be looked at on the merits of the request for additional flexibility.
4. *Removing Violation of Privacy:* Section 6(b)(5)(B)(iii) requires the summary plan description (SPD) to provide the addresses of the trustees. This has the potential to violate trustees' privacy by allowing plan participants to access their personal information, which could potentially lead to personal safety issues for trustees. We recommend a simple fix of using the association's address or allowing the use of a separate PO box for the trust.
5. *Getting Consumers the Correct Information:* Paragraph 7(a)(15) requires the plan's SPD to contain a notice to employees. Generally, this is not an issue, but subparagraph (A) requires the notice to state "that individuals covered by the plan are only partially

insured...” This could undermine the MEWA’s goals and should be removed. The individual is not partially insured—the employer is. The individual is fully covered except for their out-of-pocket requirements. In addition, subparagraph (B) requires the statement to say that the employee may be liable for unpaid expenses. This, however, may not always be true. For example, the MEWA and the employer may fully indemnify the employee for unpaid expenses. This should be required in the notice only if it is accurate in that specific case.

6. *Protecting Employee Benefit Options*: Section 11(a) requires a self-funded MEWA’s benefits to be limited to health plans. We suggest additional clarity to the rule to specify whether such instances where a MEWA’s health coverage is self-funded but the other coverage is fully-insured would be permitted. For example, what if the MEWA wants to run a self-insured short-term disability plan? These are common, and there is no clear benefit to the state to prohibit such an arrangement. We recommend the rule permit a trust to carry other fully insured lines, but require Commissioner approval before expanding to additional self-insured lines.

Areas of the proposed rule that require additional clarity

1. Section 6(b)(5)(B)(i) of the rule requires the plan’s SPD to describe the “type of administration.” This language is unclear, and we are unsure what information a MEWA would submit to respond to that requirement.
2. In the same subparagraph (B), clause (viii) requires the SPD to provide the “identity of any organization through which benefits are provided.” It is unclear what is meant by “organization.” Clarify is needed to specify if this is the trust, the association, or the TPA (the stop-loss carrier).
3. Paragraph 7(a)(4) says, “for an association-sponsored multiple-employer welfare arrangement,” the two years in existence rule applies. This implies that there are other types of MEWAs besides association-sponsored MEWAs. Note that the term “association” is not defined. It appears that it would only apply to some MEWAs and not others. We recommend striking the time in-existence rule entirely or reducing the rule to one year as this creates an artificial delay for new associations interested in sponsoring a MEWA. The requirement to be formed for purposes other than providing insurance is also inconsistent with the federal rule and therefore the new statutory language. The remaining requirements are more than sufficient to ensure responsible actors, so adding additional waiting periods is unnecessary and will result in less access to more affordable association health plan (AHP) coverage in the state.
4. Section 12 is mostly repetitive of the notice requirements in paragraph 7(a), but this section appears to (a) be a free-standing requirement and (b) require that the notice contain a statement on how to obtain a copy of the SPD as well as a brief description of the SPD’s contents. This could mean that the employee gets the notice twice—once

in the SPD and once outside of it. We recommend making this one notice requirement and placing it in the SPD.

Conclusion

OSP applauds the Department's work on the proposed rule that follows the lead of the Governor and Legislature to provide additional affordable health options to Arkansans through AHPs. We believe the state has taken a responsible approach to reap the benefit of such plans, and we hope that with the suggested changes above, the final rule will strike the right balance to protect employers and employees.