

INSURANCE DIVISION [191]

Notice of Intended Action

Proposing rule making related to Multiple Employer Welfare Arrangements

The Insurance Division hereby proposes to amend Chapter 77, “Multiple Employer Welfare Arrangements,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 505.8, 509.13 and 507A.4, and 2018 Iowa Acts, Senate File 2349, sections 5 and 6. Emergency rule-making authority was granted to the Commissioner in 2018 Iowa Acts, Senate File 2349, section 7.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 507A.4, 2018 Iowa Acts, Senate File 2349.

Purpose and Summary

The adoption of the new rules herein serves two purposes, all of which are met by including the rules in one chapter to contribute to regulatory clarity.

The first purpose of the new rules is to comply with 2018 Iowa Acts, Senate File 2349, section 2, which requires the Insurance Commissioner to adopt rules to implement its provisions. Senate File 2349 provides, among other things, that an entity that wants to act in Iowa as a multiple employer welfare arrangement (MEWA) must, in addition to meeting the other requirements of Iowa Code chapter 507A, meet certain “membership stability” requirements set

forth by the Insurance Commissioner by rule. The new rules of Chapter 191—77 included in this Notice is intended to set forth such membership requirements for entities wishing to establish a fully insured MEWA, by ascertaining that there is a firm foundation for the stability of the underlying organization. Such stability is critical to ensure consumer protection.

Previously, the Division Adopted Emergency After Notice a rule making (ARC__) which rescinded the prior chapter 191—77 and replaced it with rules that set forth such membership requirements for entities wishing to establish a self-funded MEWA.

During the comment period for the Notice of Intended Action for the previously adopted chapter 191—77 (ARC 3894C), the Insurance Division received comments from stakeholders that asked the extent of the application of those new rules to fully insured MEWAs. Accordingly, by making changes to the noticed rules of ARC 3894C (the Division clarified that those rules shall apply only to self-funded MEWAs through the changes incorporated into ARC ____). In this rule-making (in which the Division clarifies that some of these rules specifically apply only to fully insured MEWAs), the Division addresses the confusion and clarifies the requirements for both types of MEWA.

The second purpose intended by these proposed new rules is to address the Department of Labor's rule, 83 FR 28912 (DOL rule) issued on June 19, 2018, which established criteria for the creation and administration of Association Health Plans (AHPs), and permitted the establishment of AHPs in a staggered implementation timeline beginning September 1, 2018.

The new DOL rule established some criteria under the Employee Retirement Income Security Act (ERISA) (section 3(5)), in addition to criteria already there. The new criteria permit a determination whereby employers may join together in a group or association of employers whereby, if the criteria are met, they will be permitted to be treated as if the group or

association of employers were an employer sponsor of a single multiple-employer “employee welfare benefit plan” and “group health plan,” as those terms are defined in Title I of ERISA. The DOL rule established a more flexible “commonality of interest” test for the employer members to support the establishment and maintenance of AHPs under ERISA. The DOL rule facilitates the adoption and administration of AHPs and expands access to affordable health coverage.

In anticipation of this rule, the Iowa Legislature granted the Insurance Commissioner rule-making authority, including emergency rule-making authority, over such AHPs in Iowa Code Chapter 514D, in 2018 Iowa Acts, Senate File 2349, Sections 5 and 7. The rules proposed in this rule making provide a framework for the establishment of both fully insured and self-insured AHPs, as contemplated in the DOL rule.

Comment and public hearing

Any interested person may make written suggestions or comments on these proposed amendments on or before October 30, 2018. Such written materials should be directed to Ann Outka, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-8813; e-mail ann.outka@iid.iowa.gov.

Also, there will be a public hearing on October 30, 2018, at 11:00am, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as ARC _____C. The purpose of this Notice is to solicit public comment on that submission, the subject matter of which is incorporated by reference.*

These rules are intended primarily to allow for the administration of AHPs in response to the new DOL rule. The insurance commissioner has filed these rules under his rule-making authority of Iowa Code chapters 505 and 514D.

The Insurance Division adopted these rules September 6, 2018, and the rules were made effective on September 18, 2018.

*Because the amendments in the Adopted and Filed Emergency rule making are incorporated by reference in the Notice of Intended Action, they are not included in the Notice of Intended Action.

Fiscal Impact

This rule making may have some fiscal impact to the State of Iowa, in that an increase in the number of these plans being sold would increase the amount of premium tax funds collected by the State from insurance companies providing coverage to fully insured MEWAs and fully insured AHPs.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. The staff of the Insurance Division should be able to handle the work required to administer these rules.

Waivers

The Division's general waiver provisions of 191—Chapter 4 apply to these rules.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Because the amendments in the Adopted and Filed Emergency rule making are incorporated by reference in the Notice of Intended Action, they are not included in the Notice of Intended Action.

The following rule-making action is adopted:

Adopt new rules **191—77.4(507A)** through **191—77.6(507A)** as follows:

191—77.4(507A) Fully insured Multiple Employer Welfare Arrangements.

77.4(1) *Certificate of registration.* A person shall not establish or maintain a fully insured employee welfare benefit plan that is a fully insured MEWA in this state unless the MEWA obtains and maintains a certificate of registration pursuant to this rule. Such certificate of registration is required for all MEWAs that elect to offer fully insured employee welfare benefit plans to residents of this state whether or not the MEWA is domiciled in the state.

77.4(2) *Application for certificate of registration for fully insured MEWA.*

a. A person wishing to obtain a certificate of registration as a fully insured MEWA pursuant to this chapter shall submit an application for registration to the commissioner. This application shall include the following:

(1) A business plan, including a copy of all health coverage contracts or other instruments which the fully insured MEWA applicant proposes to make with or sell to its employer members or its association's or group's members, a copy of its health coverage description, and the printed matter to be used in the solicitation of employer members or its association's or group's members to purchase the health coverage.

(2) Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the fully insured MEWA applicant.

(3) A current list of all members of the employer group or association sponsoring the fully insured MEWA applicant, a description of the relationship among the employers, a

description of how the relationship serves as the basis for the formation of the association or employer group, and a description of how the employer group or association complies with paragraphs 77.4(4)“a” and 77.4(4)“b”, if applicable.

(4) A description of the activities of the association or group of employers on behalf of its employer members or its association’s or group’s members other than the sponsorship of the fully insured MEWA applicant, to further demonstrate compliance with 77.4(4)“a”, if applicable.

(5) A statement from an authorized representative of the fully insured MEWA applicant that certifies all of the following:

1. The fully insured MEWA applicant shall be administered by an insurer authorized to do the business of insurance in this state or by an authorized third-party administrator (that holds a current certificate of registration issued by the commissioner pursuant to Iowa Code section 510.21).

2. The fully insured MEWA applicant is established by a trade, industry, or professional association of employers that has a constitution or bylaws, is organized and maintained in good faith, and meets all membership requirements set forth in subrule 77.4(4).

3. The association or group of employers sponsoring the fully insured MEWA applicant is engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan.

4. The association is a nonprofit entity organized or authorized to do business under applicable Iowa law.

5. No insurance producers or benefits consultants established, sponsored, administer, or serve as a trustee or on the governing body of the fully insured MEWA applicant.

(6) A certificate from an authorized representative of the fully insured MEWA applicant that, to the best of the authorized representative’s knowledge and belief, the fully insured MEWA applicant is in compliance with all applicable provisions of the Employee Retirement

Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(7) A description of and evidence of a mechanism, approved by the commissioner, to ensure that claims shall be paid in the event a member of the fully insured MEWA applicant is unable to comply with the fully insured MEWA applicant's contribution requirements.

(8) A copy of the most recent Form M-1 filed by the fully insured MEWA applicant with the U.S. Department of Labor, Pension and Welfare Benefits Administration.

(9) Biographical affidavits from all members of the board of directors of the fully insured MEWA applicant. The affidavits shall be prepared using the current template for biographical affidavits prescribed by the National Association of Insurance Commissioners. This requirement shall not apply to any MEWA registered with the state prior to January 1, 2018.

(10) Any additional information requested by the commissioner.

b. The commissioner shall examine the application and any supporting documents submitted by the fully insured MEWA applicant. The commissioner may conduct any investigation that the commissioner may deem necessary and may examine under oath any persons interested in or connected with the fully insured MEWA applicant.

c. Within a reasonable time, either the commissioner shall issue to the fully insured MEWA applicant a certificate of registration upon finding that the fully insured MEWA applicant has met all requirements or the commissioner shall deny the application for a certificate of registration and provide notice to the fully insured MEWA applicant setting forth reasons for finding that the fully insured MEWA applicant does not meet all the requirements. An unsuccessful applicant may file a new application for a certificate of registration at any time.

77.4(3) Filing requirements. A fully insured MEWA shall annually, on or before the first day of March, file a certificate of compliance, which shall be signed and dated by the fully insured MEWA's authorized representative and shall certify all of the following:

a. That the fully insured MEWA meets the requirements of this rule and the applicable

provisions of Iowa statutes and regulations; and

b. That the fully insured MEWA has contracted with an insurer authorized to do the business of insurance in this state or with a third-party administrator who holds a current certificate of registration issued by the commissioner pursuant to Iowa Code section 510.21.

77.4(4) Membership requirements.

a. Any employer group or association that intends to form a fully insured MEWA shall have been established for a good-faith purpose other than for the purpose of providing insurance or a health plan.

b. The employer group or association that wishes to form a fully insured MEWA shall have been in existence for a period of five years at the time it seeks a certificate of registration as a fully insured MEWA.

c. The employer group or association sponsoring the fully insured MEWA shall collect annual dues from its employer members.

d. Each employer member that participates in an employee welfare benefit plan offered by the fully insured MEWA may only provide coverage to “eligible employees” as defined in Iowa Code 513B.2. This requirement only applies to the type of employees permitted to be employed by an employer member of the fully insured MEWA, and has no impact on what type of rating must be utilized by the fully insured MEWA.

e. Any employer member that participates in an employee welfare benefit plan offered by a fully insured MEWA shall be a member of the employer group or association sponsoring the fully insured MEWA.

f. Any employer member that participates in an employee welfare benefit plan offered by a fully insured MEWA shall be required to participate in the fully insured MEWA for a period of not less than five calendar years. Any contract issued by a fully insured MEWA to an employer shall contain reasonable enforcement provisions, including but not limited to reasonable fees or

assessments for early departure or for enrollment in another fully insured MEWA during the early-departure period.

g. The activities of the fully insured MEWA, including the establishment and maintenance of the employee welfare benefit plan, shall be controlled by the fully insured MEWA's employer members, either directly or indirectly through the regular nomination and election of directors, trustees, officers, or other similar representatives to control on the employer members' behalf.

h. The membership requirements set forth in paragraphs 77.4(4)"a" through 77.4(4)"g" are not applicable to fully insured MEWAs that received a certificate of registration from the commissioner prior to January 1, 2018.

77.4(5) Policy or contract. Every health benefit plan offered by any insurer to the fully insured MEWA shall comply with the following:

a. Notice to purchasers. Every health benefit plan application for coverage and every policy and certificate issued by an insurer to the fully insured MEWA shall contain in 14-point type or, if electronic, of equivalent prominence, on the front page the following notice prominently displayed:

NOTICE

This policy is issued by a fully insured multiple employer welfare arrangement (MEWA). MEWAs are not subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your MEWA.

Please review the policy closely to understand the covered benefits.

b. Guaranteed issue. An insurer offering a health benefit plan to a fully insured MEWA shall guarantee acceptance of all eligible individuals that are part of the employer members or association's or group's members of the fully insured MEWA and, if coverage is offered to

spouses and dependents, to all of the spouses and dependents

c. Types of benefits that can be offered. Fully insured MEWAs shall offer only medical, dental, optical, surgical, hospital, accident and sickness, prescription, life insurance, or disability benefits. A fully insured MEWA that offers life insurance benefits shall comply with all applicable provisions of the Iowa Code relating to life insurance and life insurance companies.

d. Compliance with HIPAA. All contracts or policies issued by an insurer to a fully insured MEWA shall conform to all the provisions of P.L.104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to guaranteed issue of all products, preexisting condition limitations, renewability, and portability provisions as well as the issuance of prior coverage certificates to enrollees no longer eligible for plan coverage.

e. Compliance with state mandates. Every health benefit plan offered by an insurer to a fully insured MEWA shall comply with all applicable state mandates, including Iowa Code chapter 514C, as if the health benefit plan were a group health policy under Iowa Code chapter 509.

f. Actuarial Value. Every health benefit plan offered by an insurer to a fully insured MEWA must contain a level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

77.4(6) Trade practices and enforcement. A fully insured MEWA is subject to applicable provisions of the unfair trade practices Act, Iowa Code chapter 507B, as if the fully insured MEWA is a “person” as defined in Iowa Code section 507B.2(1) The commissioner may investigate whether a fully insured MEWA or an insurer providing health benefit plans under the direction of a fully insured MEWA has violated this rule and, after a hearing conducted pursuant to chapters 17A and 507B, may enter any orders authorized under Iowa Code 505, 507A, 507B, or any other applicable chapters.

77.4(7) Filing fee. A filing fee of \$100 shall accompany each application for a certificate of registration as a fully insured MEWA.

77.4(8) Suspension or revocation of certificate of registration. The commissioner may sanction a fully insured MEWA or suspend or revoke any certificate of registration issued to a fully insured MEWA upon any of the following grounds:

- a. Failure to comply with any provision of these rules or any applicable provision of the Iowa Code.
- b. Failure to comply with any lawful order of the commissioner.
- c. A finding that the application or any necessary forms that have been filed with the commissioner contain fraudulent information or omissions.

191—77.5(507A,513D) Self-Insured Association Health Plans.

77.5(1) Certificate of registration. A person shall not establish or maintain a self-insured association health plan in this state unless the self-insured AHP obtains and maintains a certificate of registration pursuant to this rule. Such certificate of registration is required for all AHPs that elect to offer self-insured association health plans to residents of this state whether or not the AHP is domiciled in the state.

77.5(2) Application for certificate of registration for self-insured AHPs.

a. A person wishing to obtain a certificate of registration as a self-insured AHP pursuant to this chapter shall submit an application and a plan of operation to the commissioner. This application and plan of operation shall include the following:

- (1) A business plan, including a copy of all health coverage contracts or other instruments which the self-insured AHP applicant proposes to make with or sell to its employer members or its association's or group's members, a copy of its health coverage description and the printed matter to be used in the solicitation of employer members or its association's or group's

members to purchase the health coverage.

(2) Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the self-insured AHP applicant.

(3) A current list of all members of the employer group or association sponsoring the self-insured AHP applicant, a description of the relationship among the employers, a description of how the relationship serves as the basis for the formation of the association or employer group, and a description of how the employer group or association complies with paragraphs 77.5(5)“a” and 77.5(5)“b,” if applicable.

(4) A description of the activities of the association or group of employers on behalf of its employer members or its association’s or group’s members other than the sponsorship of the self-insured AHP applicant, to further demonstrate compliance with paragraph 77.5(5)“a” if applicable.

(5) Current financial statements of the self-insured AHP applicant that shall include, at a minimum, balance sheets, an income statement, a cash flow statement and a detailed listing of assets.

(6) An actuarial opinion which is prepared, signed, and dated by a person who is a member of the American Academy of Actuaries and which states that appropriate loss and loss adjustment reserves have been established, that adequate premiums are being charged, and that the association is operating in accordance with sound actuarial principles and in conformance with this rule.

(7) A statement from an authorized representative of the self-insured AHP applicant that certifies all of the following:

1. The self-insured AHP applicant shall be administered by an insurer authorized to do business in this state or by an authorized third-party administrator that holds a current certificate

of registration issued by the commissioner pursuant to Iowa Code section 510.21.

2. The self-insured AHP applicant is established by a trade, industry, or professional association of employers that has a constitution or bylaws, is organized and maintained in good faith, and meets all membership requirements set forth in subrule 77.5(5).

3. The association or group of employers sponsoring the self-insured AHP applicant is engaged in at least one substantial business purpose for its members other than sponsorship of an employee welfare benefit plan.

4. The association is a nonprofit entity organized or authorized to do business under applicable Iowa law.

5. No insurance producers or benefits consultants established, sponsored, administer, or serve as a trustee or on the governing body of the self-insured AHP applicant.

(8) A certificate from an authorized representative of the self-insured AHP applicant that, to the best of the authorized representative's knowledge and belief, the self-insured AHP applicant is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(9) A description of and evidence of a mechanism, approved by the commissioner, to ensure that claims shall be paid in the event a member of the self-insured AHP applicant is unable to comply with the self-insured AHP applicant's contribution requirements.

(10) A copy of the most recent Form M-1 filed by the self-insured AHP applicant with the U.S. Department of Labor, Pension and Welfare Benefits Administration.

(11) Biographical affidavits from all members of the board of directors of the self-insured AHP applicant. The affidavits shall be prepared using the current template for biographical affidavits prescribed by the National Association of Insurance Commissioners.

(12) Any additional information requested by the commissioner.

b. The commissioner shall examine the application, the plan of operation, and any

supporting documents submitted by the self-insured AHP applicant. The commissioner may conduct any investigation that the commissioner may deem necessary and may examine under oath any persons interested in or connected with the self-insured AHP applicant.

c. Within a reasonable time, either the commissioner shall issue to the self-insured AHP applicant a certificate of registration upon finding that the self-insured AHP applicant has met all requirements or the commissioner shall deny the application for a certificate of registration and provide notice to the self-insured AHP applicant setting forth reasons for finding that the self-insured AHP applicant does not meet all the requirements. An unsuccessful self-insured AHP applicant may file a new application for a certificate of registration at any time.

77.5(3) *Financial requirements.*

a. Surplus.

(1) Unless otherwise provided below or pursuant to the discretion of the commissioner, each self-insured AHP shall deposit with an organization or trustee meeting the requirements of rule 191—32.4(508) cash, securities or any combination of these that is acceptable to the commissioner in the amount set forth below. In addition to the requirements set forth below, the commissioner may increase the amount required to be deposited based on the commissioner's written determination that such an increase is necessary to adequately secure any potential liability of the self-insured AHP to its employer members and enrollees, subject to Iowa Code chapter 17A proceedings.

(2) The surplus requirement for a self-insured AHP shall be the greater of:

1. \$500,000; or

2. An amount equal to 10 percent of the written premium as of the previous December

31.

b. Reserves and stop-loss coverage.

(1) A self-insured AHP shall have at all times aggregate excess stop-loss coverage

providing the self-insured AHP with coverage with an attachment point which is not greater than 120 percent of actuarially projected losses on a calendar-year basis.

(2) A self-insured AHP shall establish and maintain specific stop-loss coverage providing the self-insured AHP with coverage with an attachment point which is not greater than 5 percent of annual expected claims for purposes of this subrule and shall provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this subrule as determined by sound actuarial principles.

(3) A self-insured AHP shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles.

(4) Premiums shall be set to fund at least 100 percent of the self-insured AHP's actuarially projected losses plus all other costs of the self-insured AHP.

(5) All coverage obtained pursuant to subparagraphs 77.5(3)"b"(1) and 77.5(3)"b"(2) shall contain a provision allowing for at least 90 days' notice to the commissioner upon cancellation or nonrenewal of the contract.

(6) No contract or policy of per-occurrence or aggregate excess insurance shall be recognized in considering the ability of an applicant to fulfill its financial obligations under this subrule, unless such contract or policy is issued by a company that is:

1. Licensed to transact business in this state; or
2. Authorized to do business in Iowa as an accredited or certified reinsurer.

77.5(4) Filing requirements. A self-insured AHP shall file the following reports with the commissioner:

a. Annual report. A self-insured AHP shall annually, on or before the first day of March, file a report which has been verified by at least two of its principal officers and which covers the preceding calendar year. The report shall be on the form designated by the commissioner. The report shall be completed using statutory accounting practices and shall include

information required by the commissioner. The commissioner may request additional reports and information from a self-insured AHP as deemed necessary.

b. Independent actuarial report. A self-insured AHP shall annually, on or before the first day of March, file an independent actuarial opinion prepared in conformance with this rule. The commissioner may conduct an independent actuarial review of a self-insured AHP in addition to the actuarial opinion required by this rule. The cost of any actuarial review shall be paid by the AHP.

c. Certificate of compliance. A self-insured AHP shall annually, on or before the first day of March, file a certificate of compliance, which shall be signed and dated by the appropriate officer representing the self-insured AHP and shall certify all of the following:

(1) That the plan meets the requirements of this rule and the applicable provisions of Iowa statutes and regulations.

(2) That an independent actuarial opinion that attests to the adequacy of reserves, rates, and the financial condition of the plan has been attached to the certificate of compliance. The actuarial opinion must include, but is not limited to, a brief commentary about the adequacy of the reserves, rates, and other financial condition of the plan, a test of the prior year's claim reserve, a brief description of how the reserves were calculated, and whether or not the plan is able to cover all reasonably anticipated expenses. The actuarial opinion shall be prepared, signed, and dated by a person who is a member of the American Academy of Actuaries.

(3) That a written complaint procedure has been implemented. The certificate of compliance shall also list the number of complaints filed by participants under the written complaint procedure, and the percentage of participants filing written complaints in the prior calendar year.

(4) That the self-insured AHP has contracted with an insurer authorized to do the business of insurance in this state or with a third-party administrator who holds a current certificate

of registration issued by the commissioner pursuant to Iowa Code section 510.21.

d. Quarterly updates. A self-insured AHP formed on or after January 1, 2019, shall provide during the first year after the commissioner issues the self-insured AHP's certificate of registration a quarterly update comparing projections to actual experience.

e. Modifications to plan of operations. A self-insured AHP shall file any modifications to the self-insured AHP's plan of operation, including but not limited to amendments to articles of incorporation and bylaws.

77.5(5) Membership requirements.

a. Any employer group or association that intends to form a self-insured AHP must have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees as set forth in 29 CFR §2510.3-5(b)(1).

b. The employer group or association that wishes to form a self-insured AHP shall have been in existence for a period of five years at the time it seeks a certificate of registration as an AHP.

c. The employer group or association sponsoring the self-insured AHP shall collect annual dues from its employer members.

d. Each employer member of the group or association participating in the group health plan must be a person acting directly as an employer of at least one employee who is a participant covered under the plan. A working owner of a trade or business without common law employees may qualify as both an employer and employee when such working owner meets the requirements set forth in 29 CFR Section 2510.3-5(e).

e. Employer members of a group or association must demonstrate that there is a commonality of interest as defined in 29 CFR §2510.3-5(c).

f. Any employer member that participates in an employee welfare benefit plan offered

by an AHP shall be a member of the employer group or association sponsoring the self-insured AHP.

g. Any employer member that participates in an employee welfare benefit plan offered by a self-insured AHP shall be required to participate in the self-insured AHP for a period of not less than five calendar years. Any contract issued by a self-insured AHP to an employer shall contain reasonable enforcement provisions, including but not limited to reasonable fees or assessments for early departure and for enrollment in another self-insured AHP during the early-departure period.

h. The activities of the self-insured AHP, including the establishment and maintenance of the employee welfare benefit plan, shall be controlled by the self-insured AHP's employer members, either directly or indirectly through the regular nomination and election of directors, trustees, officers, or other similar representatives to control on the employer members' behalf.

77.5(6) Policy or contract. All contracts issued by a self-insured AHP shall comply with the following:

a. Notice to purchasers. Every self-insured AHP application for coverage under the health plan and every policy and certificate issued by a self-insured AHP shall contain in 14-point type or, if electronic, of equivalent prominence, on the front page the following notice prominently displayed:

NOTICE

This policy is issued by an association health plan (AHP), a type of multiple employee welfare arrangement (MEWA). MEWAs are not subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your AHP MEWA.

Please review the policy closely to understand the covered benefits.

b. Guaranteed issue. Self-insured AHPs shall offer on a guaranteed-issue basis health coverage to all individuals who qualify as enrollees of the employee welfare benefit plan offered by an employer member participating in the self-insured AHP. Further, if coverage is offered to spouses and dependents, the AHP shall offer on a guaranteed-issue basis health coverage to all of the spouses and dependents.

c. Types of benefits that can be offered. Self-insured AHPs shall offer only medical, dental, optical, surgical, hospital, accident and sickness, prescription, life insurance, or disability benefits. A self-insured AHP that offers life insurance benefits shall comply with all applicable provisions of the Iowa Code relating to life insurance and life insurance companies.

d. Compliance with HIPAA. All contracts or policies issued by a self-insured AHP shall conform to all the provisions of P.L. 104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to guaranteed issue of all products, preexisting condition limitations, renewability, and portability provisions as well as the issuance of prior coverage certificates to enrollees no longer eligible for plan coverage.

e. Compliance with state mandates. The health benefit plan offered by a self-insured AHP shall comply with all applicable state mandates, including Iowa Code chapter 514C, as if such self-insured AHP were offering a group health policy under Iowa Code chapter 509.

f. Actuarial value. Every health benefit plan offered by a self-insured AHP must contain a level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

g. Nondiscrimination. The self-insured AHP, and any health coverage offered by the self-insured AHP, must comply with the nondiscrimination provisions set forth in 29 CFR Section 2510.3-5(d)(1)-(5).

77.5(7) Disclosure. The following disclosure shall be made to each employer member of

the self-insured AHP:

The benefits and coverages described herein are provided through a self-insured trust fund established and funded in full or in part by a group of employers. It is not a licensed insurance company and it is not protected by a guaranty fund in the event of insolvency.

77.5(8) Filing fee. A filing fee of \$100 shall accompany each application for a certificate of registration as a self-insured AHP.

77.5(9) Applicability Date. This rule is applicable on January 1, 2019 for any association that is in existence as of June 21, 2018. This rule is applicable on April 1, 2019 for any other employee welfare benefit plan established to be an operated as an association health plan sponsored by a group or association of employers as set forth herein.

77.5(10) Agreements and management contracts. Any agreement between the self-insured AHP and any administrator, service company, or other entity shall be made available for review in the office of the commissioner upon request by the commissioner.

77.5(11) Examination.

a. Each self-insured AHP shall be subject to examination by the commissioner in accordance with Iowa Code chapter 507, as a “company,” and as if the self-insured AHP is an “insurer,” under the definitions of that chapter. Iowa Code chapter 507 shall govern all aspects of the examination.

b. The commissioner may make an examination of a self-insured AHP as often as the commissioner considers it necessary, but not less frequently than once every five years. The expenses of the examination shall be assessed against the self-insured AHP being examined in a manner in which expenses of examinations are assessed against a company under Iowa Code chapter 507.

77.5(12) *Trade practices and enforcement.* A self-insured AHP is subject to applicable provisions of the unfair trade practices Act, Iowa Code chapter 507B, as if the AHP is a “person” as defined in Iowa Code section 507B.2(1). The commissioner may investigate whether a self-insured AHP has violated this rule and, after a hearing conducted pursuant to chapters 17A and 507B, may enter any orders authorized under Iowa Code 505, 507A, 507B, or any other applicable chapters.

77.5(13) *Insolvency.* The provisions of Iowa Code chapter 507C shall apply to self-insured AHPs which shall be considered insurers for purposes of that chapter. However, a self-insured AHP shall not be subject to Iowa Code chapter 508C.

77.5(14) *Suspension or revocation of certificate of registration.* The commissioner may sanction a self-insured AHP or suspend or revoke any certificate of registration issued to an AHP upon any of the following grounds:

- a.* Failure to comply with any provision of these rules or any applicable provision of the Iowa Code.
- b.* Failure to comply with any lawful order of the commissioner.
- c.* Failure to promptly pay lawful benefit claims.
- d.* Committing an unfair or deceptive act or practice.
- e.* Deterioration of financial condition adversely affecting the self-insured AHP’s ability to pay claims.
- f.* A finding that the application or any necessary forms that have been filed with the commissioner contain fraudulent information or omissions.
- g.* A finding that the self-insured AHP or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to an employer member, a participant, or a person otherwise entitled thereto and that have been

entrusted to the self-insured AHP or its administrator in its fiduciary capacity.

191—77.6(507A) Fully insured association health plans.

77.6(1) Certificate of registration. A person shall not establish or maintain a fully insured association health plan in this state unless the group or association of employers obtains and maintains a certificate of registration pursuant to this subsection. Such certificate of registration is required for all fully insured association health plans that elect to offer fully insured association health plans to residents of this state whether or not the AHP is domiciled in the state.

77.6(2) Application for certificate of registration for fully insured AHPs.

a. A person wishing to obtain a certificate of registration as a fully insured AHP pursuant to this chapter shall submit an application to the commissioner. This application shall include the following:

(1) A business plan, including a copy of all health coverage contracts or other instruments which the fully insured AHP applicant proposes to make with or sell to its employer members or its association's or group's members, a copy of its health coverage description, and the printed matter to be used in the solicitation of employer members or its association's or group's members to purchase the health coverage.

(2) Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the fully insured AHP applicant.

(3) A current list of all members of the employer group or association sponsoring the fully insured AHP applicant, a description of the relationship among the employers, a description of how the relationship serves as the basis for the formation of the association or employer group, and a description of how the employer group or association complies with paragraphs 77.6(4)"a" and 77.6(4)"b," if applicable.

(4) A description of the activities of the association or group of employers on behalf of its employer members or its association's or group's members other than the sponsorship of the fully insured AHP applicant, to further demonstrate compliance with paragraph 77.6(4)"a", if applicable.

(5) A statement from an authorized representative of the fully insured AHP applicant that certifies all of the following:

1. The fully insured AHP applicant shall be administered by an insurer authorized to do the business of insurance in this state or by an authorized third-party administrator that holds a current certificate of registration issued by the commissioner pursuant to Iowa Code section 510.21.

2. The fully insured AHP applicant is established by a trade, industry, or professional association of employers that has a constitution or bylaws, is organized and maintained in good faith, and meets all membership requirements set forth in subrule 77.6(4).

3. The association or group of employers sponsoring the fully insured AHP applicant is engaged in at least one substantial business purpose for its members other than sponsorship of an employee welfare benefit plan.

4. The association is a nonprofit entity organized or authorized to do business under applicable Iowa law.

5. No insurance producers or benefits consultants established, sponsored, administer, or serve as a trustee or on the governing body of the fully insured AHP applicant.

(6) A certificate from an authorized representative of the fully insured AHP applicant that, to the best of the authorized representative's knowledge and belief, the fully insured AHP applicant is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(7) A description of and evidence of a mechanism, approved by the commissioner, to

ensure that claims shall be paid in the event a member of the fully insured AHP applicant is unable to comply with the fully insured AHP applicant's contribution requirements.

(8) A copy of the most recent Form M-1 filed by the fully insured AHP applicant with the U.S. Department of Labor, Pension and Welfare Benefits Administration.

(9) Biographical affidavits from all members of the board of directors of the fully insured AHP applicant. The affidavits shall be prepared using the current template for biographical affidavits prescribed by the National Association of Insurance Commissioners.

(10) Any additional information requested by the commissioner.

b. The commissioner shall examine the application and any supporting documents submitted by the fully insured AHP applicant. The commissioner may conduct any investigation that the commissioner may deem necessary and may examine under oath any persons interested in or connected with the fully insured AHP applicant.

c. Within a reasonable time, either the commissioner shall issue to the fully insured AHP applicant a certificate of registration upon finding that the fully insured AHP applicant has met all requirements or the commissioner shall deny the application for a certificate of registration and provide notice to the fully insured AHP applicant setting forth reasons for finding that the fully insured AHP applicant does not meet all the requirements. An unsuccessful fully insured AHP applicant may file a new application for a certificate of registration at any time.

77.6(3) Filing requirements. A fully insured AHP shall annually, on or before the first day of March, file a certificate of compliance, which shall be signed and dated by the appropriate officer representing the fully insured AHP and shall certify all of the following:

a. That the plan meets the requirements of this subsection and the applicable provisions of Iowa statutes and regulations.

b. That the fully insured AHP has contracted with an insurer authorized to do the business of insurance in this state or with a third-party administrator that holds a current certificate

of registration issued by the commissioner pursuant to Iowa Code section 510.21).

77.6(4) Membership requirements.

a. Any employer group or association that intends to form a fully insured AHP must have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees as set forth in 29 CFR Section 2510.3-5(b)(1).

b. The employer group or association that wishes to form a fully insured AHP shall have been in existence for a period of five years at the time it seeks a certificate of registration as a fully insured AHP.

c. The employer group or association sponsoring the fully insured AHP shall collect annual dues from its employer members.

d. Each employer member of the group or association participating in the association health plan must be a person acting directly as an employer of at least one employee who is a participant covered under the plan. A working owner of a trade or business without common law employees may qualify as both an employer and employee when such working owner meets the requirements set forth in 29 CFR §2510.3-5(e).

e. Employer members of a group or association must demonstrate that there is a commonality of interest as defined in 29 CFR Section 2510.3-5(c).

f. Any employer member that participates in an employee welfare benefit plan offered by a fully insured AHP shall be a member of the employer group or association sponsoring the AHP.

g. Any employer member that participates in an employee welfare benefit plan offered by a fully insured AHP shall be required to participate in the fully insured AHP for a period of not less than five calendar years. Any contract issued by a fully insured AHP to an employer shall contain reasonable enforcement provisions, including but not limited to reasonable fees or

assessments for early departure and for enrollment in another fully insured AHP during the early-departure period.

h. The activities of the fully insured AHP, including the establishment and maintenance of the employee welfare benefit plan, shall be controlled by the fully insured AHP's employer members, either directly or indirectly through the regular nomination and election of directors, trustees, officers, or other similar representatives to control on the employer members' behalf.

77.6(5) Policy or contract. Every health benefit plan offered by any insurer to the fully insured AHP shall comply with the following:

a. Notice to purchasers. Every health benefit plan application for coverage and every policy and certificate issued by an insurer to a fully insured AHP shall contain in 14-point type or, if electronic, of equivalent prominence, on the front page the following notice prominently displayed:

NOTICE

This policy is issued by a fully insured association health plan (AHP), a type of multiple employer welfare arrangement (MEWA). MEWAs are not subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your AHP MEWA.

Please review the policy closely to understand the covered benefits.

b. Guaranteed issue. An insurer offering a health benefit plan to a fully insured AHP shall guarantee acceptance of all eligible individuals that are part of the employer members or association's or group's members of the fully insured AHP and, if coverage is offered to spouses and dependents, to all of the spouses and dependents.

c. Types of benefits that can be offered. Fully insured AHPs shall offer only medical, dental, optical, surgical, hospital, accident and sickness, prescription, life insurance, or disability

benefits. A fully insured AHP that offers life insurance benefits shall comply with all applicable provisions of the Iowa Code relating to life insurance and life insurance companies.

d. Compliance with HIPAA. All contracts or policies issued by a fully insured AHP shall conform to all the provisions of P.L.104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to guaranteed issue of all products, preexisting condition limitations, renewability, and portability provisions as well as the issuance of prior coverage certificates to enrollees no longer eligible for plan coverage.

e. Compliance with state mandates. Every health benefit plan offered by an insurer to a fully insured AHP shall comply with all applicable state mandates, including Iowa Code chapter 514C, as if the health benefit plan were a group health policy under Iowa Code chapter 509.

f. Actuarial value. Every health benefit plan offered by an insurer to a fully insured AHP must contain a level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

g. Nondiscrimination. Any health coverage offered by an insurer to the fully insured AHP must comply with the nondiscrimination provisions set forth in 29 CFR Section 2510.3-5(d)(1)-(5).

77.6(6) *Filing fee.* A filing fee of \$100 shall accompany each application for a certificate of registration as a fully insured AHP.

77.6(7) *Trade practices and enforcement.* A fully insured AHP is subject to applicable provisions of the unfair trade practices Act, Iowa Code chapter 507B, as if the AHP is a “person” defined in Iowa Code section 507B.2(1). The commissioner may investigate whether a fully insured AHP or an insurer providing health benefit plans under the direction of a fully insured AHP has violated this rule, and after a hearing conducted pursuant to Iowa Code chapters 17A and

507B, may enter any orders authorized under Iowa Code chapters 505, 507A, 507B, or any other applicable chapters.

77.6(7) Suspension or revocation of certificate of registration. The commissioner may sanction a fully insured or suspend or revoke any certificate of registration issued to a fully insured AHP upon any of the following grounds:

- a.* Failure to comply with any provision of these rules or any applicable provision of the Iowa Code.
- b.* Failure to comply with any lawful order of the commissioner.
- c.* A finding that the application or any necessary forms that have been filed with the commissioner contain fraudulent information or omissions.