

WYOMING DEPARTMENT OF INSURANCE
MULTIPLE EMPLOYER WELFARE ARRANGEMENTS (MEWAs) AND
ASSOCIATION HEALTH PLANS (AHPs)
DRAFT STATUTE

ORIGINAL BILL NO.

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2019 GENERAL SESSION

AN ACT relating to Association Health Plans (AHP) and Multiple Employer Welfare Arrangements (MEWAs); defining and specifying licensing for participants; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

STATEMENT OF PURPOSE

This statute is proposed in response to the United States Department of Labor’s June 21, 2018 amendment to 29 C.F.R. § 2510. (See Definition of “Employer” Under Section 3(5) of ERISA— Association Health Plans, 83 Fed. Reg. 28,961 (June 21, 2018) (to be codified at 29 C.F.R. § 2510.3-5) and to clarify existing Wyoming state law definitions regarding association health plans (AHPs) and multiple employer welfare arrangements (MEWAs). This statute sets forth definitions, licensing, and procedures regarding MEWAs and AHPs. This statute protects Wyoming consumers and promotes the stability of Wyoming’s health insurance market, to the extent permitted under law, including laws regarding licensure, solvency, and reserve requirements for AHP/MEWAs. Nothing in this statute shall be construed to provide an association or MEWA authority to operate in the State before April 1, 2019.

NOTE: W.S. §26-19-102(a)(ii) is amended as follows:

“(ii) An association as defined in this section does not include a Multiple Employer Welfare Association (Association MEWA) for purposes of an Association MEWA Health Plan as defined in Employee Retirement Income Security Act (ERISA), Title 1, Section 3(5) and in W.S.

NEW CHAPTER:

MULTIPLE EMPLOYEE WELFARE ARRANGEMENT (MEWA).

A. Licensure of Multiple Employee Welfare Arrangement (MEWA). No person shall act or hold himself out as a Multiple Employee Welfare Arrangement (MEWA) in this state unless he obtains a license from the department. The department shall establish license requirements and

procedures for the licensing of MEWAs consistent with this act. The requirements shall provide for the adequate identification of licensees and the payment of the required licensing fee.

B. Definitions The following terms are defined for purposes of this article as follows:

1. "Association" in this chapter means an employer association or MEWA. Association in this chapter is not an individual association as defined at W.S. 26-19-102(a)(ii).
[LSO:the italicized sections are located elsewhere in Title 26. Should they be repeated in this section or not?]
2. *"Carrier" means any person who provides any health benefit plan in this state subject to state insurance regulation and includes, but is not limited to, an insurance company, a fraternal benefit society, a prepaid hospital or medical care plan, prepaid medical plan, a health maintenance organization and a multiple employer welfare arrangement. For purposes of this act, companies that are affiliated companies or that are eligible to file a consolidated tax return shall be treated as one (1) carrier except that any insurance company, health service corporation, hospital service corporation or medical service corporation that is an affiliate of a health maintenance organization located in this state, or any health maintenance organization located in this state which is an affiliate of an insurance company, health service corporation, hospital service corporation or medical service corporation may treat the health maintenance organization as a separate carrier and each health maintenance organization that operates only one (1) health maintenance organization in an established geographic service area of this state may be considered a separate carrier. W.S. 26-19-302(a)(v).*
3. "Commissioner" means the Wyoming Insurance Commissioner.
4. "Department" means the Wyoming Department of Insurance.
5. "Employee Welfare Benefit Plan," as used in this act, has the same meaning as that contained in 29 U.S.C. § 1002(1).
6. "Employer" for purposes of this act means an employer group or association of employers that will be treated as the "employer" sponsor of a single multiple-employer employee welfare benefit plan, multiple employer welfare association, association health plan or "group health plan" as those terms are defined in Title I of ERISA. "Employer" for purposes of this statute must satisfy the "commonality of interest" test articulated by the U.S. Department of Labor (DOL).
7. *"Health Benefit Plan" means any hospital or medical policy or certificate, major medical expense insurance, hospital or medical service plan contract or health maintenance organization subscriber contract. "Health benefit plan" does not include accident-only, credit, dental, vision, Medicare supplement, long-term care or disability income insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance or automobile medical-payment insurance, nor does it include policies or certificates of specified disease, hospital confinement indemnity or limited benefit health insurance if the carrier offering the policies or certificates certifies to the commissioner that policies or certificates described in this paragraph are being offered and marketed as supplemental health insurance and not as a substitute for hospital or medical expense insurance or major medical expense insurance as defined in-*

_____. A health benefit plan may be issued to an employer group or association of employers; to a trust; or to one or more trustees of a fund established, created, or maintained for the benefit of the members of one or more associations or a contract or plan issued by an association or trust or by a MEWA.

8. "Insurer" means any person engaged as an indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuity. W.S. §26-1-102(a)(xvi). An insurer shall not offer a health benefit plan to an association or MEWA with covered lives in Wyoming unless it possesses a certificate of authority from the Commissioner.
9. "Multiple Employer Welfare Arrangement" (MEWA) means any foreign or domestic employer association that provides a health benefit plan that covers the employees of at least one employer that is either domiciled in Wyoming or has its principal headquarters or principal administrative office in Wyoming and includes the definition of employer as contained in ERISA, Title 1. Section 3(5).
10. "Private health benefit plan" means any hospital or medical policy or certificate, major medical expense insurance, hospital or medical service plan contract or health maintenance organization subscriber contract. "Private health benefit plan" does not include accident only, credit, dental, vision, Medicare supplement, long-term care or disability income insurance, policies or certificates providing coverage for a specified disease or hospital confinement indemnity or limited benefit health insurance, coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or any hospital or medical policy, major medical expense insurance, hospital or medical service plan or contract which by contract or product design is intended to provide coverage for six (6) months or less (W.S. 26-1-108(a)).
11. "Third-party Administrator" **[or, this could reference the definition of TPA located at W.S. 26-53-101(a)]** means a person who directly or indirectly underwrites, collects charges, collateral or premiums from, or adjusts or settles claims on residents of this state, in connection with life, annuity, health, or stop-loss coverage offered or provided by an insurer, but does not include any of the following:
 - a. An employer on behalf of its employees or the employees of one (1) or more subsidiary or affiliated corporations of such employer;
 - b. A union on behalf of its members;
 - c. A fully self-funded insurance plan meeting the definition of employee benefit plan as set forth in the Employee Retirement Income Security Act of 1974;
 - d. An insurance company licensed in this state;
 - e. A prepaid hospital or medical care plan;
 - f. An insurance agent or broker licensed in this state when acting as an insurance agent or broker;
 - g. A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
 - h. A bank, credit union or other financial institution which is subject to supervision or examination by federal or state banking authorities when

acting as a bank, credit union or other financial institution and not as an administrator;

- i. A credit card company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims;
- j. A person who adjusts or settles claims in the normal course of the person's practice or employment as an attorney at law or an adjuster licensed in this state and who does not collect charges or premiums in connection with insurance coverage or annuities.

C. Initial Filing Requirements.

1. No Association or MEWA may offer a health benefit plan in this State unless duly licensed with the Department. An association or MEWA seeking to offer a health benefit plan shall make application for a license to the Department and shall not offer such plans in this State until it is licensed.

2. The application for license shall be on a form prescribed by the Department and shall include the following, submitted under signature and certification of an officer, director, or trustee of the association or MEWA:

- a. Name of association or MEWA;
- b. Mailing address, email address, and telephone number at which communications are to be received;
- c. Names, titles, and business addresses of all principals, owners, officers, directors, trustees, and other persons responsible for the association or MEWA's operation;
- d. Names and addresses of the employer members;
- e. Eligibility requirements for membership in the association or MEWA; and
- f. Schedule of fees, if any, charged for membership in the association or MEWA;
- g. A copy of the association or MEWA's by-laws and articles of incorporation;
- h. A copy of the association or MEWA's certificate of good standing from the state in which it registered as a business;
- i. Documentary evidence indicating compliance with the Wyoming laws relating to foreign corporations, if applicable;
- j. The name and contact information for the Wyoming registered agent for service of process;
- k. A certification of an officer, director, or trustee of the association or MEWA that states compliance with Wyoming law.
- l. A copy of any documents required to be executed by an employer to become a member of the association or MEWA, including, but not limited to, an application for membership, a membership agreement, or any document proving the employer's health care information;
- m. The names, addresses, and qualifications of persons who will solicit, negotiate, procure, or effect applications for coverage with the association or

MEWA, including, but not limited to, the names, addresses, and license numbers of all brokers acting on behalf of the association or MEWA in Wyoming;

- n. A copy of all current policies or contracts of insurance issued to the association or MEWA that provide coverage for health care benefits and services to be offered in Wyoming;
- o. A copy of all current advertising and marketing materials used by the association or MEWA;
- p. The names and addresses of all administrators and organizations, including third party administrators, responsible for the operation of the association or MEWA;
- q. An audited financial statement prepared by a licensed Certified Public Accountant within 90 days of the end of the MEWA's fiscal year. An actuarial opinion within 90 days of the end of the MEWA's fiscal year.
- r. Quarterly financial reports within 45 days after end of MEWAs fiscal year.
- s. Copy of Form M-1 submitted to the United States Department of Labor (DOL), and notice when it is subsequently approved by DOL;
- t. A copy of the surety bond required in Section E of this statute.
- u. \$500 annual filing fee.

D. Annual Filing Requirements. All licenses of associations or MEWAs issued pursuant to this statute shall expire as of December 31 of each year but may be continued for an additional one year period by submitting the following information on or before December 31:

1. Proof of Coverage form affirming that all the covered benefits are fully insured on a direct basis by an insurer, health maintenance organization, health services plan, or dental or vision services plan. This form is to be completed and certified by an officer, director, or trustee of the plan.

2. Demographic Information form providing association, MEWA, third party administrator, regulatory, and insurer contacts. The association or MEWA contact shall be the person responsible for filing all applicable forms and changes in information with the Department. The regulatory contact shall be the person responsible for receiving notice of laws, regulations, bulletins, and the like that may affect the plan.

3. Notice of any changes in information previously filed with the Commissioner. This shall include, but is not limited to, the following items:

a. Biographical Affidavits of any new trustees, officers, directors, or other members of the plan's governing body;

b. The names, addresses, and qualifications of any new individuals responsible for the conduct of the plan's affairs, including any third-party administrators;

c. The names, addresses, and qualifications of any new persons who will solicit, negotiate, procure, or effect applications for coverage with the plan, including, but not

limited to, the names, addresses, and license numbers of all producers acting on behalf of the association or MEWA in Wyoming;

d. The names and addresses of any new employers and participants enrolled in the plan;

e. Any new policy or amendment;

f. Any new Trust Agreement, Plan Document, Plan Summary, or Bylaws;

g. Any new advertising and marketing material; and

h. Any other new agreements;

i. Most recent audited financial statement as defined in Section H of this statute;

j. \$500 annual filing fee.

4. All filings made under this statute shall be submitted to the Wyoming Department of Insurance.

5. The Commissioner shall review an application for license and notify the applicant in writing of any deficiencies within 45 business days of receipt. An applicant shall address any deficiencies in its application within 30 business days of notice thereof. Failure to address application deficiencies within 90 days shall deem the application as withdrawn. Prior to the deadline, an applicant may submit a written request for extension of time. Upon a showing of good cause, the Commissioner may extend the time frame for submission of necessary documents for up to 30 additional business days. The Department shall notify the applicant in writing of its response to any such extension request.

6. If the Commissioner rejects a complete initial license application, or a subsequent annual license application filed pursuant to Section ___ of this statute, the Department shall advise the applicant in writing that the license request is denied and shall specify the reason for denial. The applicant or licensee may make written demand upon the Commissioner for a hearing pursuant to W.S. §26-2-125.

E. Surplus Requirements.

1. When an association or MEWA submits its application for license with the Department, it shall have a minimum surplus that is not less than:
 - a. \$250,000 if the insurer directly bills certificate holders for premiums on behalf of the association or MEWA; or
 - b. \$500,000 if the association or MEWA bills its members for premiums and remits the premiums to the insurer.
2. An association or MEWA shall continue to maintain the required minimum surplus indicated in subsection (A) of this Section so long as it continues to provide a health benefit plan in Wyoming.
3. One year after the application for license is approved and annually thereafter, a fully insured association or MEWA shall provide to the Department documentation of its

- annual premium for the preceding policy year and an estimate of its annual premium for the following year.
4. Surplus funds required under this Section are not to be used to fund the association or MEWA's normal operations, including providing a health benefit plan to its members.
 5. The Commissioner may require additional surplus funds, based on the coverages and exposures involved.
 6. If the level of surplus falls below the amounts specified in Section _____, the association or MEWA shall notify the Commissioner within five days and file with the Commissioner within 45 days a plan to return the surplus to the required level. This plan shall include a report of the causes of the association or MEWA's insufficiency, the assessments necessary to replenish the minimum surplus, and the steps taken to prevent a recurrence of such circumstances.
 7. In addition to the minimum surplus in Section _____, the association or MEWA shall obtain a surety bond sufficient to cover 20% of its annual premium for members. The State of Wyoming shall be named as the obligee in such bond for the benefit of the association or MEWA members. For the first year of operation, the association or MEWA shall obtain a surety bond in the amount of \$500,000 to ensure the association or MEWA's contractual obligations to its health benefit plan members. This bond shall be in a form to be determined by the Commissioner. The bond shall be issued by an insurer or surety licensed to transact such business in Wyoming or any other insurer approved by the Commissioner. A copy of the bond shall be provided to the Commissioner at the time of application for license and annually thereafter. An association or MEWA shall notify the Department within five days of any cancellation or termination of its surety bond.

F. Benefit Requirements

1. Each health benefit plan offered to an association or MEWA shall, at a minimum, comply with requirements of W.S. §§26-19-101 to 26-19-114, §§26-19-201 to 204 and §26-19-301 *et seq.*
2. 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.
3. All other insurance requirements and benefit mandates for health insurers as provided in Wyoming Statutes, Title 26, as may be amended from time to time, and as specified by statute by the Commissioner.
4. All other benefits required to comply with applicable federal laws and regulations.
5. Every health benefit plan offered by any insurer to an association or MEWA shall include a process for subscribers to appeal adverse benefit determinations that complies with the requirements of W.S.26-40-201.

6. No health benefit plan or related policy, contract, certificate, or agreement offered or issued in this State may reserve discretion to the insurer to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State. Any such policy, contract, certificate, or agreement shall be null and void to the extent it conflicts with this subsection.

G. Membership Requirements

1. An association or MEWA offering a health benefit plan in the State shall meet the commonality-of-interest test. Pursuant to 83 Fed. Reg. 28,961 (codified at 29 C.F.R. § 2510.3-5(c)), employer members of an association or MEWA will be treated as having a “commonality of interest” if the standards of this Section are met.

- a. The employers are in the same trade, industry, line of business, or profession;
or
- b. Maintain their principal places of business in a region that does not exceed the boundaries of the State of Wyoming or in the same metropolitan area if the metropolitan area includes more than one state.

2. An association or MEWA doing business in this State may not restrict membership to employers located within a particular geographic region of the State and shall accept employers with a principal place of business located in any part of the State.

H. Filing and Contract Requirements

1. Association or MEWA shall be in compliance with contract requirements of W.S. §§26-15-101 to 136.
2. The MEWA shall file policies, certificates, statement of benefits, brochures, and any other endorsement, rider, or application used in conjunction with the health benefit plan with the Department for prior approval.
3. The following notice shall be provided to employers and employees who obtain coverage from an association or MEWA and shall be printed in no less than 12-point boldface type of uniform font:

“NOTICE”

THE ASSOCIATION OR MULTIPLE EMPLOYER WELFARE ARRANGEMENT (MEWA) IS NOT AN INSURANCE COMPANY. YOUR ASSOCIATION OR MEWA MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATION IN WYOMING. THE WYOMING LIFE AND HEALTH GUARANTY ASSOCIATION DOES NOT PROVIDE COVERAGE FOR YOUR ASSOCIATION HEALTH PLAN OR MEWA. FOR ADDITIONAL INFORMATION ABOUT THE ASSOCIATION OR MEWA YOU SHOULD ASK QUESTIONS OF YOUR

**ASSOCIATION OR MEWA ADMINISTRATOR, OR YOU MAY
CONTACT THE WYOMING DEPARTMENT OF INSURANCE.**

4. Each association or MEWA notice under this Section shall include the Department's current consumer service telephone number and website in the blank provided in this notice.
5. The MEWA shall file its advertising and marketing materials with the Department for prior approval.

I. Financial Auditing

1. Each association or MEWA shall file annually with the Commissioner, and with the members of the association or MEWA, within 90 days after the end of the association or MEWA's fiscal year, an audited financial statement for the most recently completed fiscal year certified by an independent certified public accountant. If the association or MEWA fails to file such audited financial statement, the Commissioner may perform or cause to be performed, an audit. The association or MEWA shall pay for the cost thereof or the Commissioner may suspend or revoke the Association or MEWAs license.
2. At a minimum, the audited financial statement shall contain the following exhibits for the current and prior fiscal years:
 - a. Balance sheet;
 - b. Statement of gain or loss from operations;
 - c. Statement of changes in financial position;
 - d. Proof of minimum surplus, as defined in Section E of this act;
 - e. Notes to financial statements; and
 - f. Management and internal control letters.
3. The financial statements shall be prepared in accordance with W.S. §26-3-123.
 - a. Loss reserves shall not be discounted. The Commissioner may approve discounting of loss reserves if the association or MEWA's actuary certifies that said discounting is in accordance with the customary practice of the traditional insurance industry, and that said discounting will not adversely affect the fiscal integrity of the association or MEWA.
 - b. Any other exceptions to the statutory accounting principles the Commissioner finds necessary to preserve the fiscal integrity of the association or MEWA.
4. The association or MEWA shall include with the financial statement a statement of opinion as to the loss and loss expense reserves certified by an actuary.
5. Each association or MEWA shall obtain, maintain, and file a copy of fidelity bond(s) with the Commissioner, or evidence of the bond acceptable to the Commissioner, covering the administrator, the association or MEWA employees and service agents with the audited financial statement.
6. In addition to the annual audited financial statement, the Commissioner may require any association or MEWA to file additional financial information including, but not limited to, interim financial reports, additional financial reports or exhibits, or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions, or affairs of the association or MEWA. The Commissioner shall

establish reasonable deadlines for filing these additional reports, exhibits, or statements. The Commissioner may require verification of any additional required information.

7. Each association or MEWA shall file annually with the Commissioner the methodology for establishing the annual contributions of its members. Such contributions shall be based on reasonable assumptions and certified by an actuary.
8. An insurer offering a health benefit plan to an association or MEWA with covered lives in Wyoming shall comply with all financial reporting requirements applicable to traditional insurance companies doing business in Wyoming, including the requirement to file the Health Insurer Annual Statement. Instructions for annual filings by traditional insurance companies doing business in Wyoming are set forth on the Insurance Division's webpages on the Department's website.

J. Advertising and Marketing

1. Associations, MEWAs, insurers, and insurance producers acting on behalf of an association or MEWA may use only marketing materials that have been submitted to and approved by the Department. Associations, MEWAs, insurers, and insurance producers acting on their behalf are subject to applicable provisions of law regarding advertising practices.

K. Enforcement Authority

1. The Commissioner may, in his or her discretion, examine the business and financial affairs of an association or MEWA doing business in this State utilizing the powers granted by W.S. Title 26.
2. The Commissioner may decline to issue or renew, and may suspend or revoke a license issued pursuant to this statute if the Commissioner finds that an association or MEWA does not satisfy any standard or requirement of this statute or any provision of other applicable State or federal law or regulation.
3. The Commissioner may suspend or revoke a license at the expense of the association issued pursuant to this act for a violation of this or any provision of applicable State and federal law.
4. Any person or entity that violates any provision of this statute is subject to the penalties provided in Wyoming statute and duly promulgated agency statutes.
5. When the Commissioner believes that an association, MEWA, or any other person is operating in this State without being duly licensed or has violated Title 26, the Commissioner may issue an order to cease and desist such violation or take any other action set forth in law or regulation.

L. Examination and Notification to the Department by Insurers of Contracts with Associations or MEWAs

1. For the purposes of determining financial condition, ability to fulfill and the manner of fulfillment of its statutory duties, the nature of its operations and compliance with law, the insurance commissioner shall examine the affairs, accounts, records and assets of the Association Health Plans/MEWAs, as often as he deems advisable but

not less frequently than once every five (5) years. The cost for these examinations shall be the responsibility of the Association or MEWA.

2. An insurer shall notify the Department by December 31 of each year of all health insurance contracts and administrative-services-only contracts it issued, renewed, or had in force at any time during the 12-month period of that calendar year, that covered an association or MEWA with members having employees or dependents in Wyoming.

M. Insurance Producers

1. Any person soliciting, offering, or selling a health benefit plan on behalf of an association or MEWA to a Wyoming employer or a Wyoming resident shall notify the Commissioner in writing prior to engaging in any conduct in connection with such sale. This written notification shall include, at a minimum, the person's name, address, telephone number, and email address; the name of the association or MEWA; and all materials in the person's possession used for the purposes of soliciting, offering, or selling the health benefit plan, including advertising and marketing materials.

2. Prior to completing a sale, any person soliciting, offering, or selling a health benefit plan on behalf of an association or MEWA to a Wyoming employer or a Wyoming resident shall disclose to the employer or resident that he/she is being compensated for the sale of the health benefit plan, that the employer or resident has the option of purchasing insurance on the Exchange, that purchasing such a health benefit plan may prevent the employer or individual from accessing premium subsidies and cost sharing reductions, and that purchasing such a health benefit plan may be more expensive than purchasing a plan on the Exchange. Any person, including a licensed or unlicensed producer, or other individual, soliciting, offering, or selling a health benefit plan on behalf of an association or MEWA to a Wyoming employer or a Wyoming resident shall also provide the employer or resident with a crosswalk of benefits comparing the association or MEWA health benefit plan with plans offered on the Exchange.

3. A producer soliciting, offering, or selling a health benefit plan on behalf of an association or MEWA to a Wyoming employer or a Wyoming resident, prior to engaging in or assisting any person to engage in offering an association or MEWA health benefit plan, shall carry out and document appropriate due diligence to establish, at a minimum, the following:

- a. That the insurer is licensed in the State;
- b. That the association or MEWA is licensed in the State;
- c. That the disclosures are listed in the policy document; and
- d. That the advertising and marketing materials he/she is using have been approved by the Department.