



STATE OF ARIZONA
DEPARTMENT OF INSURANCE

JANE DEE HULL
Governor

2910 NORTH 44th STREET, SUITE 210
PHOENIX, ARIZONA 85018-7256
602/912-8456 (phone) 602/912-8452 (fax)

CHARLES R. COHEN
Director of Insurance

Former Director Susan Gallinger issued the following Circular Letter on July 23, 1992:

CIRCULAR LETTER NO. 92-5

TO: ALL ARIZONA INSURANCE AGENTS AND THIRD PARTY ADMINISTRATORS

FROM: UNITED STATES DEPARTMENT OF LABOR AND ARIZONA DEPARTMENT OF INSURANCE DIRECTOR SUSAN GALLINGER

DATE: JULY 23, 1992

RE: JOINT STATE/FEDERAL STATEMENT ON REGULATION OF MEWAs

The Arizona Department of Insurance (ADOI) wishes to remind all licensed insurance agents and third party administrators that solicitation or sale of unauthorized insurance not only jeopardizes the security of Arizona insurance consumers, but also subjects agents and third party administrators who sell such insurance to severe consequences, including suspension or revocation of their license, civil fines and penalties, and personal liability for unpaid claims.

The Arizona Insurance Code provides that the transaction of insurance be performed only by individuals and entities who comply with statutory requirements. Under A.R.S. §§ 20-106 and 20-401.01 any insurer underwriting coverage to Arizona residents must either hold a certificate of authority or have a valid, documented claim of exemption.

While the above provisions apply to all lines of insurance, the ADOI is particularly concerned with the sale of unauthorized accident and health products. During the past several years, many Arizonans have been sold health coverage, underwritten by self-funded or partially self-funded multiple employer welfare arrangements ("MEWAs"). As noted above, in some cases, licensed agents and/or third party administrators have made these sales.

This Circular Letter is to remind all agents and third party administrators that any self-funded or partially self-funded MEWA which operates in Arizona without a certificate of authority is doing so as an unauthorized insurer, and is subject to injunction, taxes, fines and other penalties. Arizona law provides that any person, including an insurance agent and/or third party administrator who directly or indirectly places business with an unauthorized insurer is liable for valid claims which are not paid, for any reason, by the unauthorized insurer. See State v. Arizona Pension Planning, 154 Ariz. 56, 739 P.2d 1373 (1987).

Many Arizona residents who thought they had legitimate "health insurance" have been left with unpaid claims when MEWAs turned out to be either fraudulently operated, underfunded, or both. Since there is no guaranty fund coverage for unauthorized insurers, the State of Arizona will look to agents and third party administrators for payment of these claims.

On many occasions, unauthorized insurers represent their programs as employee welfare benefit plans subject to only federal regulations, and therefore assert that a state has no authority to enforce its insurance statutes and regulations.

The U.S. Department of Labor (the Department) joins in this bulletin to notify you that, in general, the federal law regulating employee benefit plans, the Employee Retirement Income Security Act of 1974 (ERISA), will not interfere with a state's authority to enforce its own insurance regulations, including the State of Arizona's authority to regulate MEWAs under its state laws. The Department notes that some promoters may style a program of health benefits as "collectively-bargained" plans or "employee-leasing" plans. The determination as to whether these particular programs may be regulated by a state usually may only be made on a case by case basis.

Although the ADOI believes only a small minority of agents and third party administrators are engaging in the abuses outlined herein, the harm caused when consumers are left with unpaid claims is great. Please remember that it is the duty of every licensed agent and third party administrator to represent only insurers which have the legal authority to do business in Arizona. To determine whether or not an entity is licensed, you may call the ADOI or secure a copy of the ADOI's Annual Report. If you have any information regarding the operations of any unauthorized insurer, you should contact Assistant Director, Mary Butterfield at (602) 912-8430.