

**Subchapter S. Multiple Employer [~~Multiple-Employer~~] Welfare Arrangements
Requirements for Obtaining and Maintaining Certificate of Authorization
28 TAC §§7.1901, 7.1902, 7.1904 - 7.1915, 7.1916, and 7.1917
[~~28 TAC §7.1903~~]**

INTRODUCTION. The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §§7.1901, 7.1902, and 7.1904 - 7.1915. TDI also proposes new §7.1916 and §7.1917. The new and amended sections concern licensing requirements for multiple employer welfare arrangements (MEWAs). Sections 7.1901, 7.1906 - 7.1909, 7.1911, and 7.1913 - 7.1915 implement Insurance Code Chapter 846. Sections 7.1902, 7.1904, 7.1905, 7.1910, 7.1912, and new §7.1916 and §7.1917 implement House Bill 290, 88th Legislature, 2023. TDI also proposes to repeal 28 TAC §7.1903 to implement Insurance Code Chapter 846, Subchapters B and D.

EXPLANATION. Amendments to §§7.1901, 7.1902, and 7.1904 - 7.1915, and new §7.1916 and §7.1917 are necessary to implement HB 290 and Insurance Code Chapter 846. Insurance Code §846.0035 as added by HB 290 creates a new path for MEWAs. Under new Insurance Code §846.0035, all new MEWAs that apply for an initial certificate of authority on or after January 1, 2024, and existing MEWAs that elect to comply with the new section are subject to the new provisions.

New Insurance Code §846.0035(b) and (c) outline the Insurance Code provisions a MEWA is subject to when it:

- provides a comprehensive health benefit plan, as determined by the commissioner; or
- provides a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan (PPO) or an exclusive provider benefit plan (EPO) as defined in Insurance Code §1301.001, as determined by the commissioner.

The proposed new and amended sections clarify which plans or coverages constitute a "comprehensive health benefit plan" for the purposes of Insurance Code §846.0035(b) and what information a MEWA must provide to TDI to demonstrate compliance when the MEWA will provide a comprehensive health benefit plan under Insurance Code §846.0035. A MEWA that provides a comprehensive health benefit plan that is structured in the manner of a PPO or EPO must comply with the requirements in Insurance Code Chapters 1301 and 1467, and the rules that implement those provisions.

HB 290 also requires a MEWA that applies for a certificate of authority to demonstrate, as determined by the commissioner, that the arrangement is in compliance with all applicable federal and state laws. Under current federal law, a MEWA that does not qualify as a bona fide employer association plan is not a single group employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA) (29 United States Code §1001 et seq.). If the MEWA is not considered a single group employee welfare benefit plan under ERISA, each participating employer will be seen as sponsoring its own employee welfare benefit plan. The MEWA must demonstrate that each plan meets federal requirements for individual, small, or large group health benefit plans, as applicable. The previous requirement under Insurance Code Chapter 846 allowed a statement by the applicant certifying compliance. The proposed new and amended sections clarify what information will demonstrate compliance with federal law.

HB 290 expands who may qualify as an employer in a MEWA under new §846.0035. Where new §846.0035 applies, a MEWA may organize based on the location of the employers' principal place of business and does not need to meet the requirement for the association to have been in existence for two years. The proposed new and amended sections modify the definitions and adjust requirements to reflect this expanded eligibility.

In addition to the proposed new and amended sections that implement HB 290, the proposal also removes the requirement that MEWAs file the specific forms adopted

by reference in §7.1903. Because the elements of the forms are integrated into amendments to §§7.1904, 7.1906, and 7.1912, §7.1903 is proposed for repeal. The previously adopted forms will remain on TDI's website at www.tdi.texas.gov/forms for use as a reference and resource in complying with the requirements in Chapter 7, Subchapter S. MEWAs are not required to use the TDI forms, but they must provide the required information under Insurance Code Chapter 846 and Title 28, Texas Administrative Code, Chapter 7, Subchapter S.

The proposal makes nonsubstantive changes to reflect current agency drafting style and plain language preferences, including (1) updating statutory references to reflect Insurance Code recodification; (2) adding or amending Insurance Code section titles and citations; (3) updating TDI contact information, including website addresses; and (4) correcting and revising punctuation, capitalization, and grammar.

Specifically, amendments to multiple sections include the replacement of "shall" with "must" or another context-appropriate word, and "multiple-employer welfare arrangement" with "multiple employer welfare arrangement" or "MEWA" for consistency with usage in the Insurance Code. These proposed amendments, along with other nonsubstantive amendments discussed in the following paragraphs, reflect current agency drafting style, adhere to plain language practices, and promote consistency in TDI rule text.

The proposed repeal of §7.1903 is necessary to implement Insurance Code Chapter 846, Subchapters B and D. The proposed repeal removes the forms that were previously adopted by reference for use in the regulation of MEWAs and integrates the required information into rule text, as discussed in a previous paragraph.

TDI received comments on an informal working draft that requested input on specific implementation questions. TDI posted the draft on its website on August 22, 2023, and considered those comments when drafting this proposal.

The proposed new, amended, and repealed sections are described in the following paragraphs.

Section 7.1901. The amendments to §7.1901 replace "these sections apply" with "this subchapter applies," "these sections do" with "this subchapter does," "multiple-employer" with "multiple employer," "which" with "that," and "Chapter 3, Subchapter I, concerning the licensing and regulation of such arrangements" with "Chapter 846, concerning Multiple Employer Welfare Arrangements." The proposal amends punctuation and removes "provisions of the," "or pursuant to," and "to any arrangement or plan that is established or maintained."

Nonsubstantive amendments also restructure subsection (b) to create two separate paragraphs for plain language and ease of reading. Amendments to punctuation in subsection (b) reflect the restructuring of the section. This restructuring is not intended to create substantive changes in the requirements of §7.1901.

Section 7.1902. The amendments to §7.1902 reflect the enactment of HB 290 by adding a definition of "comprehensive health benefit plan." A comprehensive health benefit plan is defined as any health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness. The definition specifies which plans or coverage do not constitute comprehensive health benefit plans for the purposes of HB 290 and is based on exclusions in Insurance Code §846.001(3).

The proposed amendments also define "department" as the "Texas Department of Insurance" and redesignate the paragraphs throughout the section to reflect the addition of new definitions.

The proposal amends former §7.1902(2), now redesignated as §7.1902(4), to expand the definition of "employee welfare benefit plan" to include a multiple employer

welfare arrangement based on the location of the employers' principal places of business as permitted under Insurance Code §846.0035 and §846.053(b)(2).

Nonsubstantive amendments restructure portions of the existing definition in §7.1902(4) into subparagraphs (A) - (C) and update punctuation to reflect the restructuring of the paragraph. This restructuring in subparagraphs (A) - (C) is not intended to create substantive changes in the requirements.

The proposal also amends punctuation throughout; removes "shall," "describes an entity which," and "the" before "Insurance Code"; and replaces "multiple-employer" with "multiple employer," "which" with "that," "Article 3.95-4" with "§846.201," and "§7.1908" with "§7.1909."

Section 7.1903. Section 7.1903 is proposed for repeal because the requirements in the forms have instead been added to the text of §§7.1904, 7.1906, and 7.1912. The forms will remain accessible as a reference and resource on TDI's website at www.tdi.texas.gov/forms. Companies and MEWAs may continue to use the forms to comply with the requirements of this subchapter.

Section 7.1904. The amendments to §7.1904 remove existing subsection (a) because it is no longer necessary and redesignate part of existing subsection (b) as a new subsection (a). Redesignated subsection (a) requires a MEWA to complete an application for an initial certificate of authority and authorizes the MEWA to use forms available on TDI's website at www.tdi.texas.gov/forms as a resource to comply.

Amendments to new subsection (b) clarify the information needed for an application for an initial certificate of authority to be considered complete and add subsection (b)(1) - (4) to incorporate information previously contained in the forms listed in §7.1903.

New subsection (b)(1) includes the information from Form FIN 300, concerning the application for and reservation of a MEWA's name. New subsection (b)(2) includes the information from Forms FIN 374, FIN 375, and FIN 376, including MEWA-specific information and information about the officers, directors, and trustees. Under subsection (b)(2), a MEWA applicant must submit an affidavit signed by the president, secretary, and treasurer or the trustees, and must include a declaration that the affiant knows of no reason under the Texas Insurance Code as to why the MEWA is not entitled to an initial certificate of authority. New subsection (b)(3) requires a MEWA to submit a biographical affidavit for each trustee, officer, director, or administrator of the MEWA and include certain identifying information and contact information contained in Form FIN 311. New subsection (b)(4) requires the affiant to designate the commissioner of insurance as the MEWA's resident agent for purposes of service of process. A MEWA may use Form FIN 377 to comply with this requirement, but is not required to do so. The remaining paragraphs in subsection (b) are redesignated to reflect the addition of subsection (b)(1) - (4).

The amendments to new subsection (b) also add to or amend redesignated paragraphs (13), (16), (18), and (19) to implement HB 290.

Redesignated subsection (b)(13) is revised to clarify that, subject to Insurance Code §846.157(b), an actuarial opinion prepared according to §7.1904(b)(13) is required. The actuarial opinion must include the recommended amount of cash reserves the MEWA should maintain, among other things. To implement HB 290, an amendment to subsection (b)(13) clarifies that a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035 must comply with reserve requirements in Insurance Code Chapter 421. For MEWAs that do not provide a comprehensive health benefit plan, amendments to subsection (b)(13)(B)(ii) clarify that the recommended amount remains the same as was required before the passage of HB 290.

Redesignated subsection (b)(16) states that a MEWA that is formed under Insurance Code §846.0053(b)(2) must provide documentation to TDI to demonstrate compliance.

Redesignated subsection (b)(18) is revised to remove the certification that an applicant could provide to attest to compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.). Under the proposal, an applicant must provide documentation, as determined by the commissioner, that demonstrates that the MEWA is in compliance with all applicable federal and state laws. The proposed documents that will demonstrate compliance include:

- a list of and access to all reports for the last five years filed with the United States Department of Labor;
- if the MEWA is an employee welfare benefit plan, an advisory opinion from the United States Department of Labor that is not more than three years old for certain MEWA structures or an opinion from an attorney attesting to the structure of the MEWA; and
- for each plan sponsored by the applicant, an opinion from an attorney attesting to the fact that the plan is in compliance with federal and state laws.

Redesignated subsection (b)(19) is revised to implement HB 290 by requiring a MEWA that will provide a comprehensive health benefit plan under Insurance Code §846.0035 to provide additional information in accordance with proposed new §7.1917.

The proposal removes unnecessary introductory text before lists throughout the section. For example, the proposal removes the words "described in paragraphs (1) - (13) of this subsection" so the statement is simplified to "In order to be considered complete, the application must contain the following items." Similar changes are made throughout

the section and are not intended to be substantive. Rather, the changes are intended to increase readability of the requirements.

The proposal revises the statement "any such licenses held should be specified by type" in subsection (b)(8)(E) to say "the applicant must specify any such licenses by type" to increase readability; removes "the" before Insurance Code, "which provides," "the summary plan description shall," "shall," and "or"; and adds "proposed" throughout for consistency with drafting in the section, "and" after subsection (b)(9)(A) to reflect that it is part of a list, and "the" at the beginning of clauses in subsection (b)(9)(B), as appropriate.

Proposed amendments also update Insurance Code citations with recodified citations throughout and replace "should" with "must"; "with components and characteristics" with "that is"; "which" with "that" or "the," as appropriate; "shall" with "must"; "non-renewal" with "nonrenewal"; "non-participation" with "nonparticipation"; "in conformity with" with "according to"; "third party" with "third-party"; "company's" with "third-party administrator's"; "management's" with "MEWA's"; and "multiple-employer welfare arrangement" with "multiple employer welfare arrangement" or "MEWA," as appropriate.

Section 7.1905. The amendments to §7.1905 clarify that employers in a MEWA may either be members of an association or group of five or more businesses within the same trade or industry or be formed under Insurance Code §846.053(b)(2), which requires the employers to each have a principal place of business in the same region that does not exceed the boundaries of the state or metropolitan statistical area designated by the United States Office of Management and Budget. These amendments implement HB 290, which expands the type of employers that may form a MEWA.

The amendments also clarify that the requirement that an association be in existence for at least two years before engaging in any activities related to the provision of employer health benefits does not apply to MEWAs formed under Insurance Code

§846.0035. Proposed amendments also clarify what reserve requirements a MEWA must comply with, depending on whether the MEWA is formed under Insurance Code §846.0035.

The amendments also add subsection (a)(17) to clarify that a MEWA must comply with the requirements in proposed §7.1917 before the commissioner will issue an initial certificate of authority.

The proposal removes the safe harbor provision in subsection (a) that clarifies that MEWAs that timely filed notice for an initial and final certificate of authority would not be denied a certificate based on the fact that it engaged in the business of insurance in Texas on an unauthorized basis prior to September 1, 1993, because this provision is no longer necessary.

The proposal amends the structure of multiple paragraphs in the section and redesignates paragraphs and subparagraphs throughout to reflect the amendments. These proposed changes are nonsubstantive. For example, the bulk of paragraph (1) is broken into two subparagraphs for ease in reading and to include the second pathway created by HB 290. In addition, introductory text before lists throughout the section is amended. For example, the introductory text in subsection (a)(15) that reads "set out in subparagraphs (A) - (D) of this paragraph, as follows" now reads "in the following."

Proposed amendments to subsection (a)(15)(D) clarify that a MEWA must provide TDI's website in addition to the toll-free telephone number for consistency with 28 TAC §1.601 and remove the reference to the "Texas Department of Insurance consumer services division." The requirements in 28 TAC §1.601 implement provisions of the Insurance Code, including Insurance Code §521.005, which a MEWA must comply with under Insurance Code §846.003(b)(12).

The proposal makes additional nonsubstantive changes by updating Insurance Code citations with recodified citations throughout; removing "to"; adding "in"; and

replacing "transact" with "engage in," "shall" with "will," "shall have the power to" with "may," "shall be" with "is," "which may be necessary" with "necessary," "which" with "that" or "these," "prior to" with "before," "third party" with "third-party," "providing not less than," with "that provides," "days" with "days'," "non-renewal" with "nonrenewal," "current" with "preceding," "Texas Department of Insurance consumer services division" with "department," "Temporary" with "Initial" in the section title, and "multiple-employer welfare arrangement" with "multiple employer welfare arrangement (MEWA)" on the first instance and then "MEWA" through the remainder of the section.

Section 7.1906. An amendment to §7.1906(a) provides that applicants for a final certificate of authority may use MEWA forms on TDI's website at www.tdi.texas.gov/forms as a resource when complying with the section requirements.

An amendment also adds new paragraph (5) to subsection (b), inserting a requirement currently found in forms required in §7.1903. This amendment adds a requirement that the application for a final certificate of authority include a notarized statement that affirms that the affiant knows of no reason under the Texas Insurance Code as to why the MEWA is not entitled to a final certificate of authority.

An amendment to subsection (b) adds the title of Insurance Code Chapter 846 to a citation to the chapter, for consistency with other amendments to the rule and to reflect agency drafting style and plain language preferences.

Other amendments remove "the" before "Insurance Code" and replace "multiple-employer" with "multiple employer"; "which" with "that"; "multiple-employer welfare arrangement" with "MEWA"; "which sets forth a description of" with "that describes"; "Article 3.95-8" and "Chapter 3, Subchapter I" with "Chapter 846"; "which" with "whose"; and "shall" with "must" or "will," as appropriate.

Section 7.1907. Amendments to §7.1907 provide additional information about requesting an extension of an initial certificate of authority and the timelines for TDI's review of filed applications for a final certificate of authority. Existing subsection (b) is removed, and existing subsection (c) is redesignated as new subsection (b). The contents of existing subsection (b) are incorporated into new subsection (f), as discussed in a later paragraph.

The text of redesignated subsection (b) is clarified to provide that if an applicant submits a written request for a hearing within 30 days after the notice of refusal to grant a final certificate of authority is sent, revocation of the initial certificate of authority will be temporarily stayed.

New subsection (c) clarifies that a MEWA's initial certificate of authority will not expire during TDI's review of a timely filed application for final certificate of authority.

When a timely filed application is incomplete and a MEWA fails to respond to a notice of deficiency within the proposed timelines in new subsection (e), a MEWA's initial certificate of authority will expire five days after the date the response was due.

New subsection (d) requires a MEWA to timely respond to a notice of deficiency, and it also provides that the MEWA's initial certificate of authority will expire five days after the response due date or the one-year anniversary of the date the initial certificate of authority was issued, whichever occurs later.

New subsection (e) establishes the timeframe for a timely response to a notice of deficiency.

New subsection (f) incorporates requirements removed with the deletion of existing subsection (b) and additional new text provides that the request to extend the initial certificate of authority must occur before the end of the one-year term, must be in writing, and must explain in detail the reason for an extension. Subsection (f) also clarifies that only one extension will be granted under this subsection.

Amendments also replace "shall" with "will," "shall also constitute" with "constitutes," and "multiple-employer welfare arrangement" with "MEWA."

Section 7.1908. Amendments to §7.1908 reduce the fees for filing an annual audited financial statement and actuarial opinion to \$0. The fees for filing the initial and final certificate of authority are retained to cover the administrative cost to review the filings. The fee for an appointment of the commissioner of insurance as the agent for service of process remains \$50 because this amount is statutorily required under Insurance Code §846.059(c).

In addition, "shall" is replaced with "will" and "must" in the first sentence of the section.

Section 7.1909. Amendments to §7.1909 replace "pursuant to the provisions of" with "under," "optical" with "vision," "multiple-employer welfare arrangement" with "MEWA," and "multiple-employer" with "multiple employer" in the rule text and section title. In addition, the amendments revise a citation to the United States Code to remove italicized formatting in the citation.

Amendments also add the title of Insurance Code Chapter 846 to a citation to the chapter and remove "in paragraphs (1) - (3) of this subsection" in subsection (a).

Section 7.1910. Amendments to §7.1910 clarify in subsection (a)(4) that a MEWA must provide TDI's website in addition to the toll-free telephone number, for consistency with 28 TAC §1.601 and they also remove the reference to the "consumer services division." The requirements in 28 TAC §1.601 implement provisions of the Insurance Code, including Insurance Code §521.005, which a MEWA must comply with under Insurance Code §846.003(b)(12).

Amendments also add "(MEWA)" at the end of the first use of "multiple employer welfare arrangement" and replaces "multiple-employer" with "multiple employer," "must

be" with "being," "shall" with "must," and "multiple-employer welfare arrangement" with "MEWA."

Section 7.1911. Amendments to §7.1911 clarify that a MEWA must complete a name application form, as described in §7.1904(b)(1), to transact business in Texas. The amendments also remove "no" at the beginning of subsection (a) and replace "shall" with "may not" to reflect the removal of "no," which is consistent with current agency drafting style and plain language preferences to remove "shall."

In addition, amendments include adding "(MEWA)" after the first use of "multiple employer welfare arrangement" and replacing "multiple-employer" with "multiple employer," "which" with "that," "any other" with "another," "multiple-employer welfare arrangement" with "MEWA," and "shall be" with "is."

Section 7.1912. Amendments to §7.1912 clarify that a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035 must comply with reserve requirements in Insurance Code Chapter 421. For MEWAs that do not provide a comprehensive health benefit plan, the recommended amount is unchanged and is found in subsection (a)(2)(B)(ii).

New subsection (e) requires a MEWA to file updated information when a material change occurs to documents previously provided in the application for the initial or final certificate of authority, which includes information previously listed in Form FIN 378. Form FIN 378 requires a MEWA to file updated plan documents when changes occur. To ensure that TDI has the most accurate information, a MEWA must provide updated information within 30 days of the material change. MEWAs may continue to use Form FIN 378, which is available on TDI's website at www.tdi.texas.gov/forms, as a resource to comply.

Amendments also update Insurance Code citations with recodified citations throughout the section; remove "the" before "Insurance Code"; and replace "multiple-

employer" with "multiple employer," "multiple-employer welfare arrangement" with "MEWA," "shall" with "must" or "will," and "these sections" with "this subchapter."

Section 7.1913. Amendments to §7.1913 clarify that a MEWA that will provide a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan or exclusive provider benefit plan under Insurance Code §1301.001 must comply with the examination requirements in Insurance Code §1301.0056.

The amendments replace the citation to Article 1.16 with recodified citations in Insurance Code Chapter 401, Subchapter D, and the corresponding titles; add a citation to Insurance Code §1301.0056; remove "the" before "Insurance Code"; and add "(MEWA)" after the first use of "multiple employer welfare arrangement."

The proposal also replaces "multiple-employer" with "multiple employer" in the rule text and section title; "multiple-employer welfare arrangement" with "MEWA"; and "shall" with "will" or "must," as appropriate.

Section 7.1914. Amendments to §7.1914 remove "shall"; add "required"; and replace "multiple-employer" with "multiple employer," "multiple-employer welfare arrangement" with "MEWA," "shall respectively have such" with "may exercise the," "such" with "the," "shall be" with "must," and "shall" with "may" or "must," as appropriate.

Section 7.1915. Amendments to §7.1915 replace citations to Article 3.95-13 and Chapter 3, Subchapter I, with the recodified citations to Insurance Code §846.003 and Insurance Code Chapter 846, respectively. The proposal also adds the section titles to both updated citations.

Nonsubstantive amendments also remove "the" before "Insurance Code," "add "(MEWA)" after the first use of "multiple employer welfare arrangement," and replace "multiple-employer" with "multiple employer" and "multiple-employer welfare arrangement" with "MEWA."

Section 7.1916. Proposed new §7.1916 states how a MEWA that was issued a certificate of authority before January 1, 2024, may elect to be subject to certain Insurance Code provisions under Insurance Code §846.0035. To make the election, a MEWA must complete and submit a statement signed and dated by an authorized officer, director, or trustee electing to be bound by additional provisions under Insurance Code §846.0035. The MEWA may use the forms accessible on TDI's website at www.tdi.texas.gov/forms as a resource to comply with the filing requirements.

In addition to the statement electing to be bound by additional provisions under Insurance Code §846.0035, the MEWA must submit documentation demonstrating that it is in compliance with all applicable federal and state laws including, at a minimum:

- a list of and access to all reports for the last five years filed with the United States Department of Labor;
 - if the MEWA is an employee welfare benefit plan, an advisory opinion from the United States Department of Labor that is not more than three years old, for certain MEWA structures, or an opinion from an attorney attesting to the structure of the MEWA;
- and
- for each plan sponsored by the MEWA, an opinion from an attorney attesting to the fact that the plan is in compliance with federal and state laws.

A MEWA that will provide a comprehensive health benefit plan under Insurance Code §846.0035 must also comply with new §7.1917.

Section 7.1917. Proposed new §7.1917 applies only to a MEWA that intends to provide a comprehensive health benefit plan under Insurance Code §846.0035. If a MEWA intends to provide a comprehensive health benefit plan, the MEWA must submit a form to TDI that includes a statement declaring the MEWA's intention to provide a comprehensive health benefit plan as defined in §7.1902.

To be complete, a MEWA must submit a detailed compliance plan to address the additional requirements under Insurance Code §846.0035(b). If a MEWA provides a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan under Insurance Code §1301.001, then the MEWA must submit a detailed compliance plan to address the requirements under Insurance Code §846.0035(c), in addition to those requirements in Insurance Code §846.0035(b). A MEWA may use forms accessible on TDI's website at www.tdi.texas.gov/forms as a resource to comply with the requirements of the section.

Proposed §7.1917 also requires an opinion from an attorney attesting to the fact that each comprehensive health benefit plan sponsored by the applicant is in compliance with all applicable federal and state laws. Specifically, the opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.). The opinion must explain how each plan will comply with federal requirements applicable to large group, small group, or individual markets.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the sections as proposed are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. Ms. Walker made this determination

because the sections as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed sections.

Ms. Walker does not anticipate measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the sections as proposed are in effect, Ms. Walker expects that enforcing and administering the sections will have the public benefit of ensuring that TDI's rules conform to Insurance Code §§846.0035, 846.052, and 846.053 as added or amended by House Bill 290, 88th Legislative Session, 2023, and §§846.056, 846.153, 846.154, and 846.157.

Ms. Walker expects that the proposed new and amended sections that implement HB 290 will not increase the cost of compliance with Insurance Code Chapter 846 because the sections as proposed do not impose requirements beyond those in statute.

Insurance Code §846.0035 permits a MEWA to provide comprehensive health benefit plans, as determined by the commissioner, and specifies additional Insurance Code provisions with which a MEWA must comply. MEWAs that provide a comprehensive health benefit plan and that the commissioner determines are structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance Code §1301.001 are subject to Insurance Code Chapters 1301 and 1467, and the rules that implement those provisions. Compliance with those additional requirements under Insurance Code §846.0035 may impose a significant cost on MEWAs that provide those particular plans.

MEWAs that elect to provide a comprehensive health benefit plan under Insurance Code §846.0035 and those that also elect to structure the plan as a preferred provider benefit plan or an exclusive provider benefit plan must do so by filing additional

information with TDI for review under proposed new §7.1916 and §7.1917. Ms. Walker anticipates that preparing and filing the additional information for TDI review may result in administrative costs to the MEWAs.

MEWAs applying for their initial certificate of authority and MEWAs that already hold a final certificate of authority are not required to provide a comprehensive health benefit plan under Insurance Code §846.0035. MEWAs may continue to provide other coverage authorized under Insurance Code Chapter 846.

For MEWAs that elect to be bound to the new provisions in HB 290, the imposed costs on regulated persons are a result of implementing HB 290, so Government Code §2001.0045 does not apply under §2001.0045(c)(9).

Ms. Walker expects that the proposed repeal of §7.1903 will not increase the cost of compliance with Insurance Code Chapter 846 because the proposed repeal does not change any previously adopted requirements. The repeal of §7.1903 removes the requirement that MEWAs complete and file the forms previously identified and adopted by reference.

The technical requirements found in the forms in §7.1903, such as notarization or the inclusion of an association seal, are proposed to be incorporated into the rule text in §§7.1904, 7.1906, and 7.1912. Because these changes do not require MEWAs to comply with new or additional requirements, the proposed repeal of §7.1903 and incorporation of the form elements into the rule text do not impose an additional cost on MEWAs. In addition, the proposed repeal of §7.1903 does not require MEWAs to create or use their own forms. MEWAs may continue to use the forms on TDI's website at www.tdi.texas.gov/forms to comply with the requirements in this subchapter.

Ms. Walker anticipates that the proposed requirement in §7.1912(e) to file updated information within 30 days when a material change occurs to information provided in the application for an initial or final certificate of authority may impose a cost to regulated

persons. Under Insurance Code §846.153(a)(3), a MEWA must file modified terms of a plan document with a certification from the trustees that the changes are in compliance with the minimum requirements of Insurance Code Chapter 846.

For any other documents or information not subject to the filing requirement in Insurance Code §846.153(a)(3), Ms. Walker anticipates that preparing and filing the additional updated information may result in administrative costs to MEWAs. The requirement that a MEWA update its previously provided application information when a material change occurs will have the benefit of ensuring TDI retains accurate information about MEWAs that hold a certificate of authority in Texas. Ms. Walker anticipates that, although preparing and filing the additional information may result in a cost to regulated persons, the cost will be offset by the removal of certain annual filing fees in §7.1908, discussed in the subsequent paragraph.

The proposed amendments to §7.1908 reduce the fees for filing the annual audited financial statement and actuarial opinion to \$0. The fees for filing the initial and final certificate of authority are retained to cover the administrative cost to review the filings. The \$50 fee for an appointment of the commissioner of insurance as the MEWA's agent for the purposes of service of process remains as it is required in Insurance Code §846.059(c).

Ms. Walker anticipates that removing the annual fees in §7.1908 will offset any outstanding costs to regulated persons for complying with the proposed amendments to §7.1912(e).

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the sections as proposed will not have an adverse economic effect on small or micro businesses, or on rural communities. MEWAs are nonprofit entities, so they do not meet the definition of a small or micro business under Government Code

§2006.001. As a result, and in accordance with Government Code §2006.002, TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the sections as proposed are necessary to implement legislation. The proposed rule implements Insurance Code §846.0035 and §846.052, as added by House Bill 290, 88th Legislative Session, 2023.

Because proposed amendments to §7.1904 and §7.1906 add requirements previously found in forms required under §7.1903, the requirements likely do not impose a possible cost on regulated persons. The requirements in §7.1912 may impose a cost to regulated persons, but the proposed removal of certain filing fees in §7.1908 will offset those costs.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the sections as proposed are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on June 3, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2844 at 2:00 p.m., central time, on May 23, 2024, in Room 2.035 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

**Subchapter S. Multiple Employer [~~Multiple Employer~~] Welfare Arrangements
Requirements for Obtaining and Maintaining Certificate of Authorization
28 TAC §§7.1901, 7.1902, 7.1904 - 7.1915, §7.1916 and §7.1917**

STATUTORY AUTHORITY. TDI proposes amendments to §§7.1901, 7.1902, and 7.1904 - 7.1915, and new §7.1916 and §7.1917 under Insurance Code §§846.0035(a), 846.0035(b), 846.0035(c), 846.005(a), 846.052(b)(5), 1301.007, 1451.254, 1467.003, 4201.003, and 36.001.

Insurance Code §846.0035(a) authorizes the commissioner to prescribe the manner by which a multiple employer welfare arrangement may elect to be bound by Insurance Code §846.0035.

Insurance Code §846.0035(b) authorizes the commissioner to determine when a multiple employer welfare arrangement provides a comprehensive health benefit plan and is subject to additional requirements.

Insurance Code §846.0035(c) authorizes the commissioner to determine whether a multiple employer welfare arrangement is structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan.

Insurance Code §846.005(a) provides that the commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement Insurance Code Chapter 846.

Insurance Code §846.052(b)(5) authorizes the commissioner to determine whether a multiple employer welfare arrangement has demonstrated that it is in compliance with all applicable federal and state laws.

Insurance Code §1301.007 directs the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §1451.254 directs the commissioner to adopt rules necessary to implement Insurance Code Chapter 1451, Subchapter F.

Insurance Code §1467.003 directs the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §4201.003 authorizes the commissioner to adopt rules to implement Insurance Code Chapter 4201.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 7.1902, 7.1905, and 7.1910, and new §7.1916 and §7.1917 implement HB 290. Section 7.1901 implements Insurance Code §846.005. Section 7.1904 implements HB 290 and Insurance Code Chapter 846, Subchapters B and D. Section 7.1906 implements Insurance Code §846.056. Section 7.1907 implements Insurance Code §846.055 and §846.057. Section 7.1908 implements Insurance Code §846.059(b). Section 7.1909 implements Insurance Code §846.201. Section 7.1910 implements Insurance Code §§521.005(b), 846.003(b)(12), and 846.254. Section 7.1911 implements Insurance Code §846.159. Section 7.1912 implements HB 290 and Insurance Code §846.153. Section 7.1913 implements Insurance Code §846.158. Section 7.1914 implements Insurance Code Chapter 846, Subchapter C. Section 7.1915 implements Insurance Code §846.060.

TEXT.

§7.1901. Scope and Applicability.

(a) This subchapter applies [~~These sections apply~~] to any multiple employer [~~multiple employer~~] welfare arrangement that [~~which~~] is subject to [~~provisions of the~~] Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements [~~Chapter 3, Subchapter I, concerning the licensing and regulation of such arrangements~~].

(b) This subchapter does ~~[These sections do]~~ not apply to any arrangement or plan that is established or maintained:

(1) under ~~[or pursuant to]~~ one or more agreements that ~~[which]~~ the United States Secretary of Labor finds to be a collective bargaining agreement~~;~~[;] or

(2) ~~[to any arrangement or plan that is established or maintained]~~ by a rural electric cooperative or a rural telephone cooperative association, as those terms are defined in the Employee Retirement Income Security Act of 1974 (29 United States Code §1002(40)).

§7.1902. Definitions.

The following words and terms, when used in this subchapter, ~~[shall]~~ have the following meanings~~;~~[;] unless the context clearly indicates otherwise.

(1) Business plan--The comprehensive, detailed plan by which the multiple employer ~~[multiple employer]~~ welfare arrangement conducts or proposes to conduct its business.

(2) Comprehensive health benefit plan--Any health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness. The term does not include:

(A) accident-only or disability income insurance coverage, or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance;

(D) coverage for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides limited-scope dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) workers' compensation insurance coverage or similar insurance coverage;

(K) coverage provided through a jointly managed trust authorized under 29 United States Code §141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 United States Code §157;

(L) hospital indemnity or other fixed indemnity insurance coverage;

(M) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(N) short-term major medical contracts;

(O) liability insurance coverage, including general liability insurance coverage and automobile liability insurance coverage;

(P) coverage issued as a supplement to liability insurance coverage;

(Q) automobile medical payment insurance coverage;

(R) coverage for on-site medical clinics;

(S) coverage that provides other limited benefits specified by federal regulations; or

(T) other coverage that is:

(i) similar to the coverage described by subparagraphs (A) - (S) of this paragraph under which benefits for medical care are secondary or incidental to other coverage benefits; and

(ii) specified in federal regulations.

(3) Department--Texas Department of Insurance.

(4) [(2)] Employee welfare benefit plan--Any plan, fund, or program established or maintained by an employer or employers as members of an association or group of five or more businesses in the same trade or industry. An employee welfare benefit plan includes a multiple employer welfare arrangement under Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits, when each of the employers in the multiple employer welfare arrangement has a principal place of business in the same region that does not exceed the boundaries of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget. The plan must:

(A) be established or maintained for the purpose of providing for its participants or their beneficiaries one or more of those benefits permitted under Insurance Code §846.201, concerning Benefits Allowed;

(B) at a minimum, set out the rights, privileges, duties, and obligations of employers, employees, and beneficiaries with respect to the multiple employer welfare arrangement in a manner calculated to be understood by the average plan participant; and

(C) plainly describe:

(i) the benefits the plan intends to provide;

(ii) the persons the plan benefits are intended to apply to;

(iii) the source of funding for the intended benefits; and

(iv) a clear and complete procedure for beneficiaries to apply for and collect the intended benefits under the plan. [~~to the extent that such plan, fund, or program is established or maintained for the purpose of providing for its participants or their beneficiaries those benefits which are permitted under the Insurance Code, Article 3.95-4. Such plan must, at a minimum, clearly set out the rights, privileges, duties, and obligations of employers, employees, and beneficiaries with respect to the multiple-employer welfare arrangement. The plan must clearly set forth benefits intended to be provided under the plan, persons to whom the benefits are intended to be provided, the source of funding for such intended benefits, and a clear and complete procedure for the application for, and collection of, such benefits by beneficiaries of the plan.~~]

(5) Multiple employer [~~(3) Multiple-employer~~] welfare arrangement--An employee welfare benefit plan, or any other arrangement that [~~which~~] is established or maintained for the purpose of offering or providing any benefit described in [~~the~~] Insurance Code §846.201 [~~Article 3.95-4~~], and restated in §7.1909 [~~§7.1908~~] of this title (relating to Benefits Allowed To Be Provided by Multiple Employer [~~Multiple-Employer~~] Welfare Arrangements), to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, provided that the arrangement [~~describes an entity which~~] meets either or both of the following criteria:

(A) one or more of the employer members in the multiple employer [~~multiple-employer~~] welfare arrangement is either domiciled in this state or has its principal headquarters or principal administrative office in this state; or

(B) the multiple employer [~~multiple-employer~~] welfare arrangement solicits an employer that is domiciled in this state or has its principal headquarters or principal administrative office in this state.

§7.1904. Application for Initial Certificate of Authority.

(a) Any person seeking to establish a multiple employer welfare arrangement (MEWA) that is not fully insured, as that term is defined in Insurance Code §846.002(a), concerning Applicability of Chapter, must submit a [(b)-A] complete application for initial certificate of authority [must be submitted] to the commissioner and may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply.

~~[(a) Entities which must file applications under this subchapter are set out in paragraphs (1) and (2) of this subsection.]~~

~~[(1) Any person wishing to establish a multiple employer welfare arrangement which is not fully insured, as that term is defined in the Insurance Code, Article 3.95-1(4), must apply for and obtain a license after September 1, 1993.]~~

~~[(2) To avoid prosecution for engaging in the unauthorized business of insurance, a multiple employer welfare arrangement which is not fully insured, as that term is defined in the Insurance Code, Article 3.95-1(4), and which was in existence on June 1, 1993, and which has continued after that date to provide any of the services regulated by Insurance Code, Chapter 3, Subchapter I, shall complete its application for initial certificate of authority by June 1, 1994, and timely file an application for final certificate of authority.]~~

(b) In order to be considered complete, the application must contain the following items [described in paragraphs (1)-(13) of this subsection]:

(1) a name application form signed and dated by an authorized representative of the applicant that includes:

(A) the name of the MEWA; the physical address where the MEWA is incorporated; contact information, including telephone number and email address; and

title or relationship of each organizer to the proposed MEWA, along with the same information about any affiliated organizations;

(B) a statement that the applicant is seeking to reserve a name as a MEWA and whether the purpose of the application is to change the name of an existing MEWA, form a new MEWA, or seek to be admitted to the State of Texas as a foreign MEWA;

(C) a list of all the states where the MEWA holds a certificate of authority or license; and

(D) a list of all the states where the MEWA holds a certificate of authority under an assumed name;

(2) a notarized affidavit signed by the president, secretary, and treasurer, or all of the trustees, that contains:

(A) information about the MEWA, including:

(i) the MEWA's full name;

(ii) the physical address of the MEWA's home office;

(iii) the employer identification number;

(iv) the point of contact's name and contact information; and

(v) the association's seal, if applying as an association. If not applying as an association, a notation that the affiant is a group of employers;

(B) information about the officers, directors, and trustees, as applicable, including:

(i) the full name, social security number, and appointment or election date of the president, secretary, and treasurer; and

(ii) the full name, social security number, and appointment or election date of any other directors or trustees; and

(C) a statement that affirms the following: "We hereby apply for an initial Certificate of Authority authorizing {MEWA name} to act as a Multiple Employer Welfare Arrangement in the State of Texas for a period of twelve (12) months. We know of no reason under the provisions of the Texas Insurance Code why {MEWA name} is not entitled to such a Certificate of Authority";

(3) a biographical affidavit that is completed and filed for each trustee, officer, director, or administrator of the MEWA that includes the following information:

(A) the affiant's current legal name and any names the individual may have used in the past, social security number, date of birth, citizenship(s), and current mailing addresses, phone numbers, and email addresses;

(B) the name and address of the MEWA;

(C) the affiant's current or proposed position or title at the MEWA;

(D) information regarding the affiant's education, memberships in professional organizations, and any professional, occupational, or vocational licenses held (current and past), including a statement whether any were refused, suspended, or revoked in the last 10 years;

(E) the affiant's employment history for the previous 10 years; and

(F) the affiant's fidelity bond coverage history, criminal history, any bankruptcy history, lawsuit history in the past five years, and ownership or control of entities involved in the business of insurance, including a statement whether any became insolvent or were placed under supervision or in receivership, rehabilitation, liquidation, or conservatorship, or had their certificate of authority suspended or revoked;

(4) a notarized service of process form signed by the president and secretary or the trustees that designates the commissioner as the MEWA's resident agent for purposes of service of process and includes the following:

(A) the mailing address of the MEWA;

(B) a statement substantially similar to the following: "{MEWA Name} hereby appoints the commissioner of insurance, located at 1601 Congress Ave., Austin, Texas 78701, as its resident agent for service of process under Texas Insurance Code Section 846.059. All process or pleadings in any civil suit or action against {MEWA Name} may be served on the commissioner as though served on {MEWA Name} directly. {MEWA Name} waives all claims of error by reason of this appointment and admits or agrees that this appointment of the commissioner of insurance as its resident agent for service of process will be taken and held as valid and sufficient as though served directly on {MEWA Name}. This appointment will continue for as long as any liability remains outstanding against {MEWA Name} pertaining to any such matters."; and

(C) the MEWA's seal, as applicable;

(5) a [(1)] certified copy of the articles of incorporation, if applicable;

(6) a certified copy of the [(2)] bylaws, constitution, or rules or regulations establishing and operating the MEWA; [multiple-employer welfare arrangement;]

(7) [(3)] trust agreements created in connection with the MEWA, which [multiple-employer welfare arrangement. The trust agreements] must be signed by all trustees;

(8) [(4)] a welfare benefit plan document, including documentation or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the MEWA; [multiple-employer welfare arrangement;]

(9) a [(5)] summary plan description, [with components and characteristics] consistent with 29 United States Code §1022, that: [as provided in subparagraphs (A) and (B) of this paragraph:]

(A) is [the summary plan description shall be] written in a manner calculated to be understood by the average plan participant and is [shall be] sufficiently

accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan; and

(B) contains the following information: [~~the summary plan description shall contain the items of information set out in clauses (i)-(xii) of this subparagraph as follows:~~]

- (i) the name and type of administration of the plan;
- (ii) the name and address of the administrator;
- (iii) the names and addresses of any trustee or trustees if they are persons different from the administrator;
- (iv) the plan requirements with respect to eligibility for participation and benefits;
- (v) a description of provisions relating to nonforfeitable benefits if any are included in the plan;
- (vi) a description of circumstances that [~~which~~] may result in disqualification, ineligibility, or denial or loss of benefits;
- (vii) the source of financing of the plan;
- (viii) the identity of any organization through which benefits are provided;
- (ix) the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis;
- (x) the procedures to be followed in presenting claims for benefits under the plan;
- (xi) remedies available under the plan for the redress of claims that [~~which~~] are denied in whole or in part; and
- (xii) a statement of guaranty fund nonparticipation [~~nonparticipation~~], if applicable, in the same form as set out for insurers and health

maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Nonparticipation [~~Non-participation~~]);

(10) [~~(6)~~] financial statements, including: [~~as described in subparagraphs (A)-(F) of this paragraph:~~]

(A) a current financial statement. If the MEWA [~~multiple-employer welfare arrangement~~] is already in business, the financial statement must include an annual balance sheet and income statement, developed on generally accepted accounting principles, for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(B) a projected balance sheet for a minimum of three years on a quarterly basis, including assumptions used in producing projections. The projected balance sheet [~~and~~] must be developed according to [~~in conformity with~~] generally accepted accounting principles;

(C) a projected income statement, providing income forecasts for a minimum interval of three years, detailed on a quarterly basis. The projected income statement must be developed according to [~~in conformity with~~] generally accepted accounting principles;

(D) a projected cash flow analysis on a quarterly basis, for a minimum of three years. Line by line documentation of anticipated cash inflow and outflow by specific account type must be submitted;

(E) a statement of the proposed initial cash and cash reserves summary. This statement must include all items of funding, including but not limited to loan receipts, loan repayments, and stock sales. The statement must include a description of the source and terms of the funding; and

(F) if an existing MEWA, [~~multiple-employer welfare arrangement, it must submit~~] a copy of its Federal Form 5500 for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(11) [(7)] a copy of the fidelity bond issued in the name of the MEWA [~~multiple-employer welfare arrangement~~] protecting against acts of fraud and dishonesty by its trustees, directors, officers, employees, administrator, or other individuals responsible for servicing the employer welfare benefit plan. Such bond must [~~should~~] be in an amount equal to the greater of 10% of the premiums and contributions received by the MEWA, [~~multiple-employer welfare arrangement,~~] or 10% of the benefits paid, during the preceding calendar year, with a minimum of \$10,000 and a maximum of \$500,000. No additional bond will be required of a third-party [~~third-party~~] administrator licensed to engage in business in this state;

(12) [(8)] a business plan that includes the following six major areas. [~~which includes the six major areas addressed in subparagraphs (A)–(F) of this paragraph:]~~

(A) Current or proposed operations must be outlined with information by the applicant identifying the number of employers in the group currently participating or proposed to participate in the MEWA [~~multiple-employer welfare arrangement~~]. The outline must [~~should~~] also include the number of participating units. To the extent such information is available, it also must [~~should~~] include the number of dependents covered or to be covered by the MEWA [~~multiple-employer welfare arrangement~~]. A specific list of the benefits being provided or proposed to be provided must also be included.

(B) Specific information about individuals providing or proposed to provide management services is required. The applicant must [~~should~~] indicate whether each trustee is an owner, partner, officer, or director, and/or employee of a participating employer or is committed to participate in the MEWA [~~multiple-employer welfare~~

~~arrangement~~]. In addition, the applicant must ~~[should]~~ provide the name and address of the employer represented by each trustee and by each officer and provide the association of the trustee or officer with such employer. The applicant must list the individuals responsible for managing or handling funds or assets of the MEWA. ~~[multiple-employer welfare arrangement. A biographical affidavit must be completed and filed for each trustee, officer director or administrator of the multiple-employer welfare arrangement.]~~

(C) With respect to administration of the present or proposed plan, the applicant must give the names and qualifications of individuals~~[-]~~ or the third-party ~~[third party]~~ administrator~~[-]~~ responsible for or proposed to be responsible for servicing the program of the MEWA ~~[multiple-employer welfare arrangement]~~. If a third-party ~~[third party]~~ administrator is to service the plan, a copy of the third-party administrator's ~~[company's]~~ Texas license must ~~[should]~~ be attached. In addition, a copy of the agreement between the MEWA ~~[multiple-employer welfare arrangement]~~ and the third-party ~~[third party]~~ administrator must ~~[should]~~ be submitted, signed by the third-party administrator and trustees or directors of the MEWA ~~[multiple-employer welfare arrangement]~~.

(D) The applicant must provide documentation that the MEWA ~~[multiple-employer welfare arrangement]~~ has provided or will provide a sufficient number of competent persons to service its program in the areas of claims adjusting and underwriting. The applicant must ~~[should]~~ also describe the present or proposed plan to service billings, claims, and underwriting. The criteria for underwriting must ~~[shall]~~ be actuarially justified.

(E) The applicant must provide a specific outline and description of the MEWA's ~~[management's]~~ marketing efforts. The applicant must ~~[should]~~ list the names of all persons directly employed or proposed to be employed by the arrangement~~[-]~~ who solicit participants or adjust claims, indicating the qualifications and credentials of such individuals~~[-]~~ and whether such persons hold any license issued by the department. The

applicant must specify any such licenses by type. [~~Any such licenses held should be specified by type.~~]

(F) The applicant must provide documentation showing that a procedure has been established for handling claims for benefits in the event of dissolution of the MEWA; [~~multiple-employer welfare arrangement.~~]

(13) subject to Insurance Code §846.157(b), concerning Renewal of Certificate; Additional Actuarial Review, [(9)] an actuarial opinion prepared by an actuary who is not an employee of the MEWA [~~multiple-employer welfare arrangement~~] and who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code §1241 and §1242). The actuarial opinion must [~~shall~~] include the following [~~items described in subparagraphs (A)-(C) of this paragraph, as follows~~]:

(A) a description of the actuarial soundness of the MEWA [~~multiple-employer welfare arrangement~~], including any recommended actions that the MEWA [~~multiple-employer welfare arrangement~~] should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the MEWA [~~multiple-employer welfare arrangement~~] should maintain.

(i) For a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035, concerning Applicability of Certain Laws to Associations Providing Health Benefits, the MEWA must comply with Insurance Code Chapter 421, concerning Reserves in General.

(ii) For a MEWA that does not provide a comprehensive health benefit plan under Insurance Code §846.0035, the recommended amount may [~~which shall~~] not be less than the greater of 20% of the total contributions in the preceding plan year or 20% of the total estimated contributions for the current plan year; cash reserves must [~~shall~~] be calculated with proper actuarial regard for known claims, paid and

outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor, and a margin for error (cash reserves required by ~~the~~ Insurance Code §846.154, concerning Cash Reserve Requirements, must ~~[Article 3.95-8, shall]~~ be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount, or such other investments as the commissioner may authorize by rule); and

(C) the recommended level of specific and aggregate stop-loss insurance the MEWA ~~[multiple-employer welfare arrangement]~~ should maintain;

(14) ~~[(10)]~~ if the MEWA ~~[multiple-employer welfare arrangement]~~ is in existence at the time of its application, annual reports meeting the substantive requirements of 29 United States Code §1023 and §1024 must ~~[shall]~~ be filed. To the extent that such annual reporting requirements are not otherwise met by existing MEWAs when ~~[multiple-employer welfare arrangements in]~~ complying with other provisions of this subchapter, a filing under this paragraph must be made, and must include, at a minimum: ~~[at a minimum include the items described in subparagraphs (A)-(C) of this paragraph, as follows:]~~

(A) the administrator's report of essential information for the most recent year ending, detailing the size and nature of the plan, and the number of participating employees in the plan;

(B) the statement from any insurance company, insurance service, or other similar organization that sells or guarantees ~~[or organizations which sell or guarantee]~~ plan benefits. The ~~[which]~~ statement must ~~[shall]~~ detail:

(i) the premium rate or subscription charge and the total of such premiums or subscription charges in relation to the approximate number of persons covered by each class of benefits; and

(ii) the total amount of premiums received, approximate number of persons covered by each class of benefits, and total claims paid by such company, service, and other organization; and

(C) the published summary plan description and annual report to participants and beneficiaries of the plan;

(15) ~~[(14)]~~ documentation indicating that the MEWA ~~[multiple-employer welfare arrangement]~~ has applications from not less than five employers and will provide similar benefits for not less than 200 separate participating employees, and that the annual gross premiums of or contributions to the plan will be not less than \$20,000 for a vision-benefit-only plan, \$75,000 for a dental-benefits-only plan, and \$200,000 for all other plans;

(16) for a MEWA that is formed according to Insurance Code §846.053(b)(2), concerning Eligibility Requirements for Initial Certificate of Authority, documentation demonstrating that the employers in the MEWA applicant each have a principal place of business in the same region that does not exceed the boundaries of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget;

(17) ~~[(12)]~~ documentation that the MEWA ~~[multiple-employer welfare arrangement]~~ possesses a written commitment, binder, or policy for stop-loss insurance issued by an insurer authorized to do business in this state that provides ~~[providing not less than]~~:

(A) at least 30 days' ~~[days]~~ notice to the commissioner of any cancellation or nonrenewal ~~[non-renewal]~~ of coverage; and

(B) [which provides] both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the subsequent plan year and the specific retention amount determined by the actuarial

report required by [the] Insurance Code §846.153, concerning Required Filings, [Article 3.95-8,] and paragraph (13) [(9)] of this subsection; ~~and~~

(18) documentation demonstrating that the MEWA is in compliance with all applicable federal and state laws, including, at a minimum, the following:

(A) for all plans sponsored by the applicant, whether operating in Texas or in any other state, a list of and access to all reports for the last five years filed with the United States Department of Labor in compliance with the Employee Retirement Income Security Act of 1974, 29 United States Code §§1021(g), 1023, and 1024;

(B) if the MEWA is an employee welfare benefit plan for purposes of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.), either:

(i) an advisory opinion from the United States Department of Labor that is no more than three years old recognizing the employer group or association as a bona fide employer association or group if the relevant MEWA structure addressed by the advisory opinion has not changed and will not change after licensure; or

(ii) an opinion from an attorney attesting that the employer group or association as it will be structured after licensure qualifies as a bona fide employer association or group for purposes of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.). An attorney attestation must adequately explain how and why the employer group or association meets all of the factors to be a bona fide employer association or group, based on the facts and circumstances of the employer group's or association's governance and operations during the 12 months immediately preceding submission of the application, and on how the MEWA will be structured after licensure, with explicit references to relevant language drawn from the employer group's or association's bylaws, trust agreement, or other

organizational documents, which must be submitted to the department with the attorney's attestation; and

(C) for each plan that will be provided by the applicant, an opinion from an attorney attesting to the fact that the plan is in compliance with all applicable federal and state laws. The opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.), including how each plan complies with federal requirements applicable to large group, small group, or individual markets, as applicable; and

(19) if the MEWA will provide a comprehensive health benefit plan, the MEWA must provide additional information in accordance with §7.1917 of this title, concerning Comprehensive Health Benefit Plans.

~~[(13) a certification, provided by the applicant and signed by the president and secretary or the trustee of the MEWA, or other such official, attesting that the multiple-employer welfare arrangement is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.);]~~

(c) On finding of good cause, the commissioner may order an actuarial review of a MEWA ~~[multiple-employer welfare arrangement]~~ in addition to the actuarial opinion required by ~~[the]~~ Insurance Code §846.153. ~~[, Article 3.95-8(a)(2).]~~ The cost of any such additional actuarial review must ~~[shall]~~ be paid by the MEWA ~~[multiple-employer welfare arrangement]~~.

(d) Upon application of a MEWA ~~[multiple-employer welfare arrangement]~~, the commissioner may waive or reduce the requirement for aggregate stop-loss coverage and the amount of reserves required by ~~[the]~~ Insurance Code §846.154 ~~[, Article 3.95-~~

~~8(a)(2)(B)~~, if it is determined that the interests of the participating employers and employees are adequately protected.

§7.1905. Commissioner Review of Application; Issuance of Initial ~~Temporary~~ Certificate of Authority.

(a) The commissioner will ~~shall~~ promptly review the documentation submitted by the applicant and may ~~shall have the power to~~ conduct any necessary investigation ~~[which may be necessary]~~ and ~~to~~ examine under oath any persons interested in or connected with the multiple employer welfare arrangement (MEWA). ~~[multiple-employer welfare arrangement. An existing multiple-employer welfare arrangement which timely files notice for an initial and a final certificate of authority will not be denied such certificate based on the fact that it engaged in the business of insurance in this state on an unauthorized basis prior to September 1, 1993.]~~ Within 60 days of the filing of a the completed application, the commissioner will ~~shall~~ issue an initial certificate of authority, which is ~~shall be~~ a temporary certificate of authority for a term of one year, to the MEWA ~~[multiple-employer welfare arrangement]~~, provided that all of the following conditions ~~[in paragraphs (1)-(16) of this subsection]~~ have been met~~[, as follows]~~:

(1) the employers in the MEWA: ~~[multiple-employer welfare arrangement]~~

(A) are members of an association or group of five or more businesses that ~~[which]~~ are the same trade or industry, including closely related businesses that ~~[which]~~ provide support, services, or supplies primarily to that trade or industry; or

(B) for a MEWA that is formed based under Insurance Code §846.053(b)(2), concerning Eligibility Requirements for Initial Certificate of Authority, each has a principal place of business in the same region that does not exceed the boundaries

of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget;

(2) if the applicant is an association, that the association in the MEWA [~~multiple-employer welfare arrangement~~] is engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan;

(3) if the applicant is an association and Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits, does not apply to the MEWA, that the association in the MEWA [~~multiple-employer welfare arrangement~~] has been in existence for a period of not less than two years before [~~prior to~~] engaging in any activities relating to the provision of employer health benefits to its members;

(4) the employee welfare plan of the association or group in the MEWA [~~multiple-employer welfare arrangement~~] is controlled and sponsored directly by participating employers, participating employees, or both;

(5) the association or group of employers in the MEWA [~~multiple-employer welfare arrangement~~] is a not-for-profit organization;

(6) the MEWA [~~multiple-employer welfare arrangement~~] has within its own organization adequate facilities and competent personnel, as determined by the commissioner, to service the employee benefit plan or has contracted with a third-party [~~third party~~] administrator that holds a current certificate of authority to engage in business in the State of Texas;

(7) the MEWA [~~multiple-welfare arrangement~~] has applications from not less than five employers and will provide similar benefits for not less than 200 separate participating employees, and the annual gross premiums or contributions to the plan will be not less than \$20,000 for a plan that provides only vision benefits, \$75,000 for a plan that provides only dental benefits, and \$200,000 for all other plans;

(8) the MEWA [~~multiple-employer welfare arrangement~~] possesses a written commitment, binder, or policy for stop-loss insurance issued by an insurer that has a certificate of authority to engage in [~~transact~~] business in the State of Texas that provides: [~~providing not less than~~]

(A) at least 30 days' [~~days~~] notice to the commissioner of any cancellation or nonrenewal [~~non-renewal~~] of coverage; [~~(this instrument shall provide)~~

(B) both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the next plan year and a specific retention amount annually determined by the actuarial report required by Insurance Code §846.153(a)(2), concerning Required Filings, [~~Article 3.95-8(a)(2),~~] and verified by the signature of the actuary who prepared the report; and [~~;~~]

(C) [~~(9)~~] both the specific and aggregate coverage will require all claims to be submitted within 90 days after the claim is incurred and provide a 12-month claims incurred period and a 15-month paid claims period for each policy year;

(9) [~~(10)~~] the contributions must [~~shall~~] be set to fund at least 100% of the aggregate retention plus all other costs of the MEWA [~~multiple-employer welfare arrangement~~];

(10) [~~(11)~~] if the reserves required by Insurance Code §846.154, concerning Cash Reserve Requirements, [~~Article 3.95-8(a)(2)(B)~~] exceed the greater of 40% of the total contributions for the preceding [~~current~~] plan year[~~;~~] or 40% of the total contributions expected for the current plan year, the contributions may be reduced to fund less than 100% of the aggregate retention plus all other costs of the MEWA [~~multiple-employer welfare arrangement~~], but in no event less than the level of contributions necessary to fund the minimum reserves required under Insurance Code §846.154, or Insurance Code Chapter 421, concerning Reserves in General, for comprehensive health benefit plans [~~Article 3.95-8(a)(2)(B)~~];

(11) [(12)] the minimum reserves required by Insurance Code §846.154 or Insurance Code Chapter 421 for comprehensive health benefit plans [described in Article 3.95-8(a)(2)(B)] have been established or will be established before the final certificate of authority is issued;

(12) [(13)] the MEWA [multiple-employer welfare arrangement] has established a procedure for handling claims for benefits in the event of dissolution of the MEWA [multiple-employer welfare arrangement];

(13) [(14)] the MEWA [multiple-employer welfare arrangement] has obtained the required fidelity bond;

(14) [(15)] the MEWA [multiple-employer welfare arrangement] has submitted its plan document or any instrument describing the rights and obligations of the employers, employees, and beneficiaries with respect to the MEWA; [multiple-employer welfare arrangement; and]

(15) [(16)] the MEWA [multiple-employer welfare arrangement] has submitted a summary plan description and has filed for review any notifications such as an identification card, policy, or contract, in connection with the employee welfare benefit plan. These [-which] notifications include any of the disclosures in the following: [set out in subparagraphs (A)-(D) of this paragraph, as follow:]

(A) that individuals covered by the plan are only partially insured;

(B) that in the event the plan or the MEWA [multiple-employer welfare arrangement] does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses;

(C) that, if applicable, the plan does not participate in the guaranty fund; such disclosure must be [being] provided in the same notice format required of

insurers and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Nonparticipation); and

(D) the toll-free telephone number and website for ~~[the complaints section of]~~ the department as required under Insurance Code §521.005, concerning Notice to Accompany Policy; and ~~[Texas Department of Insurance consumer services division.]~~

(16) for a MEWA that will provide a comprehensive health benefit plan, the MEWA has submitted documentation that adequately demonstrates compliance with applicable requirements, as specified in §7.1917 of this title (relating to Comprehensive Health Benefit Plans).

(b) Unless excepted by statute, a MEWA ~~[multiple-employer welfare arrangement]~~ may commence doing business in this state only after it receives its initial certificate of authority.

(c) The MEWA must ~~[multiple-employer welfare arrangement shall]~~ appoint the commissioner of insurance as its registered agent for service of process, by filing the form as described in §7.1904(b)(4) of this title (relating to Application for Initial Certificate of Authority) ~~[same on the prescribed form]~~.

§7.1906. Application for Final Certificate of Authority.

(a) A multiple employer ~~[multiple-employer]~~ welfare arrangement (MEWA) that ~~[which]~~ has received its initial certificate of authority must apply for a final certificate of authority no later than one year after the issuance of its initial certificate of authority. The MEWA must submit a complete ~~[multiple-employer welfare arrangement shall file an]~~ application for final certificate of authority to the commissioner and may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply ~~[on the prescribed form and furnish such information as may be required by the commissioner]~~.

(b) The application must ~~[shall]~~ include only the following information: ~~[those items described in paragraphs (1)-(4) of this subsection, as follow:]~~

(1) the names and addresses of:

(A) the association or group of employers sponsoring the MEWA ~~[multiple-employer welfare arrangement]~~;

(B) as applicable, the members of the board of trustees or directors ~~[, as applicable,]~~ of the MEWA ~~[multiple-employer welfare arrangement]~~; and

(C) at least five employers, if the arrangement is not an association, whose ~~[which]~~ information will ~~[shall]~~ be retained by the commissioner as confidential;

(2) evidence that the fidelity bond requirements have been met;

(3) copies of all plan documents and agreements with service providers, which will ~~[shall]~~ be retained by the commissioner as confidential. (Indicate on what pages the specific benefits are listed); ~~[and]~~

(4) a funding report containing:

(A) a statement certified by the board of trustees or directors, as applicable, and an actuarial opinion that all applicable requirements of ~~[the]~~ Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, ~~[, Article 3.95-8,]~~ have been met;

(B) an actuarial opinion that describes ~~[which sets forth a description of]~~ the extent to which contributions or premium rates:

(i) are not excessive;

(ii) are not unfairly discriminatory; and

(iii) are adequate to provide for the payment of all obligations and the maintenance of required cash reserves and surplus of the MEWA ~~[multiple-employer welfare arrangement]~~;

(C) a certified statement of the current value of the assets and liabilities accumulated by the MEWA [~~multiple-employer welfare arrangement~~] (unless the application for final certificate of authority is filed 90 days or later following the close of the fiscal year for the MEWA [~~multiple-employer welfare arrangement~~], in which case the financial statement must [~~shall~~] be an audited statement), and a projection of the assets, liabilities, income, and expenses of the MEWA [~~multiple-employer welfare arrangement~~] for the next 12-month period and that reflects that the MEWA has maintained adequate cash reserves; and

(D) a statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with operation of the MEWA; and [~~multiple-employer welfare arrangement.~~]

(5) a notarized statement signed by an authorized director, officer, or trustee that affirms the following: "I know of no reason under the provisions of the Texas Insurance Code why {MEWA Name} is not entitled to a final certificate of authority."

(c) [(b)] After examination, investigation, and determination that all the requirements of [the] Insurance Code Chapter 846 [~~Chapter 3, Subchapter 1,~~] and this subchapter [~~these sections~~] have been met, the commissioner will [~~shall~~] issue a final certificate of authority to the MEWA [~~multiple-employer welfare arrangement~~].

§7.1907. Denial of Final Certificate of Authority and Extension of Initial Certificate of Authority.

(a) If the commissioner refuses to grant a final certificate of authority to an applicant that fails to meet the requirements of §7.1906 of this title (relating to Application for Final Certificate of Authority), notice of refusal will [~~shall~~] be in writing. Such notice will [~~shall~~] set forth the basis for the refusal, and constitutes [~~shall also constitute~~] 30 days' advance notice of revocation of the initial certificate of authority.

~~[(b) The initial certificate of authority may be extended for up to one year at the discretion of the commissioner on a determination that the multiple-employer welfare arrangement is likely to meet the requirements of this subchapter within one year. No more than one extension of the initial certificate of authority shall be granted, regardless of the length of time for which an extension was granted.]~~

(b) [(c)] If the applicant submits a written request for a hearing within 30 days after [mailing of] the notice of refusal to grant a final certificate of authority is sent, revocation of the initial certificate of authority will [shall] be temporarily stayed. The commissioner will [shall] promptly conduct a hearing in which the applicant will [shall] be given an opportunity to show compliance with the requirements of this subchapter.

(c) The term of the multiple employer welfare arrangement's (MEWA's) initial certificate of authority does not expire during the department's review of a timely filed application for a final certificate of authority.

(d) If a timely filed application is not complete, the MEWA must timely respond to a notice of deficiency from the department. If a MEWA fails to timely respond to a notice of deficiency, the MEWA's initial certificate of authority expires five days after the date the response was due or on the one-year anniversary of the date that the MEWA's initial certificate of authority was issued, whichever occurs later.

(e) A response to a notice of deficiency is timely if the response provides all information requested by the department and is made in writing:

(1) not later than the 15th day after the date the notice of deficiency is received;

(2) not later than the 25th day if the department receives written notice from the MEWA that additional time is required to respond to the inquiry; or

(3) as otherwise agreed to by the department.

(f) Before the end of the one-year term of its initial certificate of authority, a MEWA may request an extension of its initial certificate of authority. The request must be in writing and must explain in detail the basis for an extension. The initial certificate of authority may be extended for up to one year at the discretion of the commissioner on a determination that the MEWA is likely to meet the requirements of this subchapter within one year. No more than one extension of the initial certificate of authority will be granted, regardless of the length of time for which an extension was granted under this subsection.

§7.1908. Required Filing Fees.

The commissioner will ~~[shall]~~ collect, and the applicant affected must ~~[shall]~~ pay to the commissioner, the following fees:

- (1) filing fee for filing an application for the initial certificate of authority--\$5,000;
- (2) filing fee for final certificate of authority--\$1,500;
- (3) filing fee for appointment of commissioner of insurance as the attorney for service of process--\$50; and
- (4) annual filing fee for filing audited financial statement and actuarial opinion--\$0 ~~[\$500]~~.

§7.1909. Benefits Allowed To Be Provided by Multiple Employer ~~[Multiple-Employer]~~ Welfare Arrangements.

(a) A multiple employer ~~[multiple-employer]~~ welfare arrangement (MEWA) licensed under ~~[pursuant to the provisions of]~~ Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, and this subchapter ~~[these sections]~~ will be limited to

providing any one or more of the benefits described ~~[in paragraphs (1)–(3) of this subsection,]~~ as follows:

- (1) medical, dental, vision ~~[optical]~~, surgical, or hospital care;
- (2) benefits in the event of sickness, accident, disability, or death; and
- (3) any other benefit authorized for health insurers in this state.

(b) A MEWA ~~[multiple-employer welfare arrangement]~~ may only provide benefits to active or retired owners, officers, directors, or employees of or partners in participating employers, or the beneficiaries of such persons, except as may otherwise be limited by provisions of the Employer Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) ~~[(29 United States Code §1001 et seq.)]~~.

§7.1910. Required Notice to Participants.

(a) A multiple employer ~~[multiple-employer]~~ welfare arrangement (MEWA), in connection with an employee welfare benefit plan, must ~~[shall]~~ provide to each participating employee or former employee covered by the plan a [the] written notice at the time the coverage of such participating employee or former employee becomes effective. The written notice must contain [containing], at a minimum, the following: [the items described in paragraphs (1)–(5) of this subsection, at the time the coverage of such participating employee or former employee becomes effective:]

- (1) that individuals covered by the plan are only partially insured;
- (2) that in the event the plan or the MEWA ~~[multiple-employer welfare arrangement]~~ does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses;
- (3) that, if applicable, the plan does not participate in the guaranty fund; such disclosure must be ~~[being]~~ provided in the same notice format required of insurers

and health maintenance organizations in §1.1001 of this title (relating to Disclosure of Guaranty Fund Nonparticipation);

(4) the toll-free telephone number and website for ~~[the complaints section of]~~ the department as required under Insurance Code §521.005, concerning Notice to Accompany Policy ~~[Texas Department of Insurance consumer services division]~~; and

(5) that a copy of the summary plan description may be obtained from the plan administrator, employer, or trustee, as applicable.

(b) The notice must ~~[shall]~~ also briefly explain the types of information in the summary plan description.

§7.1911. Name Eligibility and Proof of Existence.

(a) A multiple employer ~~[No multiple employer]~~ welfare arrangement (MEWA) licensed under this subchapter may not ~~[shall]~~ take any name that ~~[which]~~ is the same as or closely resembles the name of another MEWA ~~[any other multiple employer welfare arrangement]~~ possessing a certificate of authority and doing business in this state. A MEWA ~~[multiple employer welfare arrangement]~~ must complete a name application form, as described in §7.1904(b)(1) of this title (relating to Application for Initial Certificate of Authority), to transact business under its own name and may ~~[shall]~~ not adopt any assumed name, except that a MEWA ~~[multiple employer welfare arrangement]~~ by amending its articles may change its name or take a new name with the approval of the commissioner.

(b) Whenever it is ~~[shall be]~~ necessary in any legal proceeding to prove the existence of a MEWA ~~[multiple employer welfare arrangement]~~, a certified copy of the MEWA's ~~[multiple employer welfare arrangement's]~~ certificate of authority is ~~[shall be]~~ prima facie evidence of the existence of the MEWA ~~[multiple employer welfare arrangement]~~.

§7.1912. Filings by Multiple Employer [~~Multiple-Employer~~] Welfare Arrangements; Report of Cash Reserves; Approval by Commissioner; Additional Actuarial Review.

(a) Each multiple employer [~~multiple-employer~~] welfare arrangement (MEWA) transacting business in this state must [~~shall~~] file annually with the commissioner statements and reports described as follows: [~~in paragraphs (1) and (2) of this subsection, as follow:~~]

(1) within 90 days of the end of the MEWA's fiscal year, financial statements audited by a certified public accountant; and

(2) within 90 days of the end of the MEWA's fiscal year, an actuarial opinion prepared and certified by an actuary who is not an employee of the MEWA [~~multiple-employer welfare arrangement~~] and who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code §1241 and §1242). The actuarial opinion must [~~shall~~] include:

(A) a description of the actuarial soundness of the MEWA [~~multiple-employer welfare arrangement~~], including any recommended actions that the MEWA [~~multiple-employer welfare arrangement~~] should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the MEWA [~~multiple-employer welfare arrangement~~] should maintain, as follows:

(i) for a comprehensive health benefit plan under Insurance Code §846.0035, concerning Applicability of Certain Laws to Associations Providing Health Benefits, the MEWA must comply with Insurance Code Chapter 421, concerning Reserves in General; or

(ii) for a MEWA that does not provide a comprehensive health benefit plan under Insurance Code §846.0035, the recommended amount that may [~~which~~

~~shall~~] not be less than the greater of 20% of the total contributions in the preceding plan year or 20% of the total estimated contributions for the current plan year;

(C) a calculation of cash reserves with proper actuarial regard for known claims, paid and outstanding, a history of incurred by not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor, and a margin for error; and

(D) the recommended level of specific and aggregate stop-loss insurance the MEWA [~~multiple-employer welfare arrangement~~] should maintain.

(b) The cash reserves required by [~~the~~] Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, [~~Chapter 3, Subchapter 1,~~] and this subchapter must [~~these sections shall~~] be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the commissioner has authorized by rule.

(c) The commissioner will [~~shall~~] review the statements and reports required by subsection (a) of this section. The commissioner will [~~shall~~] automatically renew a MEWA's [~~multiple-employer welfare arrangement's~~] certificate of authority unless the commissioner finds that the MEWA [~~multiple-employer welfare arrangement~~] does not meet the requirements of [~~the~~] Insurance Code Chapter 846, [~~Chapter 3, Subchapter 1,~~] and this subchapter. [~~these sections.~~]

(d) On a finding of good cause, the commissioner may order an actuarial review of a MEWA [~~multiple-employer welfare arrangement~~] in addition to the actuarial opinion required by [~~the~~] Insurance Code §846.153(a)(2), concerning Required Filings [~~Article 3.95-8(a)(2)~~]. The cost of any such additional actuarial review must [~~shall~~] be paid by the MEWA [~~multiple-employer welfare arrangement~~].

(e) A MEWA must file updated information within 30 days when a material change occurs to information provided in the application for an initial or final certificate of

authority according to the requirements of Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, and this subchapter.

§7.1913. Examination of Multiple Employer [~~Multiple-Employer~~] Welfare Arrangements.

(a) The commissioner or any person appointed by the commissioner will [~~shall~~] have the power to examine the affairs and conduct of any multiple employer [~~multiple-employer~~] welfare arrangement (MEWA) and for such purposes will [~~shall~~] have free access to all the books, records, and documents that relate to the business of the plan and may examine under oath its trustees or directors, officers, agents, and employees in relation to the affairs, transactions, and condition of the MEWA [~~multiple-employer welfare arrangement~~]. Examinations of a MEWA will [~~multiple-employer welfare arrangement shall~~] be made in the same manner and with the same frequency that applies to domestic and foreign insurers licensed to transact the business of insurance in this state, including as provided in Insurance Code §1301.0056, concerning Examinations and Fees, for a MEWA that provides a comprehensive health benefit plan that is determined by the commissioner to be structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance Code §1301.001, concerning Preferred Provider Benefit Plans.

(b) Expenses of examination must [~~shall~~] be paid by each MEWA [~~multiple-employer welfare arrangement~~] in the same manner and to the same extent as is provided for domestic insurance companies in [~~the~~] Insurance Code §§401.151, concerning Expenses of Examination of Domestic Insurer; 401.152, concerning Expenses of Examination of Other Insurers; 401.155, concerning Additional Assessments; 401.156, concerning Deposit and Use of Assessment and Fee; and 1301.0056. [~~Article 1.16.~~]

§7.1914. Duties and Compensation of Trustees, Officers, or Directors.

(a) The trustees or directors of a multiple employer [~~multiple-employer~~] welfare arrangement (MEWA) must [~~shall~~] give the attention and exercise the vigilance, diligence, care, and skill that prudent persons use in like or similar circumstances. Trustees or directors are [~~shall be~~] responsible for all operations of the MEWA [~~multiple-employer welfare arrangement~~] and must [~~shall~~] take all necessary precautions to safeguard the assets of the MEWA [~~multiple-employer welfare arrangement~~].

(b) The board of trustees or directors must [~~shall~~] select such officers as designated in the articles or bylaws or trust agreement and may appoint agents as deemed necessary for the transaction of the business of the MEWA [~~multiple-employer welfare arrangement~~]. All officers and agents may exercise the [~~shall respectively have such~~] authority and perform the [~~such~~] duties required in the management of the property and affairs of the MEWA [~~multiple-employer welfare arrangement~~] as may be delegated by the board of trustees or directors. Any officer or agent may be removed by the board of trustees or directors whenever, in their judgment, the business interests of the MEWA [~~multiple-employer welfare arrangement~~] will be served by the removal. The board of trustees or directors must [~~shall~~] secure the fidelity of any or all such officers or agents who handle the funds of the MEWA [~~multiple-employer welfare arrangement~~] by bond or otherwise.

(c) Trustees or directors must [~~shall~~] serve without compensation from the MEWA [~~multiple-employer welfare arrangement~~] except for actual and necessary expenses. A MEWA may [~~multiple-employer welfare arrangement shall~~] not pay any salary, compensation, or emolument to any officer of the MEWA [~~multiple-employer welfare arrangement~~] unless the payment is first authorized by a majority vote of the board of trustees or directors of the MEWA [~~multiple-employer welfare arrangement~~].

(d) An officer, employee, or agent of a MEWA may [~~multiple-employer welfare arrangement shall~~] not be compensated unreasonably. The compensation of any officer or employee of a MEWA may [~~multiple-employer welfare arrangement shall~~] not be calculated directly or indirectly as a percentage of money or premium collected. The compensation of any agent may [~~shall~~] not exceed 5.0% of the money or premium collected.

§7.1915. Suspension, Revocation, or Limitation of Certificate of Authority and Other Remedies.

In addition to any requirements or remedies set out in [~~the~~] Insurance Code §846.003, concerning Limited Exemption from Insurance Laws; Applicability of Certain Laws, [~~Article 3.95-13,~~ the commissioner may suspend, revoke, or limit the certificate of authority of a multiple employer [~~multiple-employer~~] welfare arrangement (MEWA) if the commissioner finds, after notice and hearing, that the MEWA [~~multiple-employer welfare arrangement~~] does not meet the requirements of [~~the~~] Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, [~~Chapter 3, Subchapter I,~~ and this subchapter. [~~these sections.~~]

§7.1916. Election for the Application of Certain Laws.

(a) A multiple employer welfare arrangement (MEWA) that was issued a certificate of authority under Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, before January 1, 2024, may elect to be subject to certain Insurance Code provisions under Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits.

(b) A MEWA that makes an election under this section is bound to the provisions enumerated in Insurance Code §846.0035.

(c) To make an election, the MEWA must submit to the department a statement that is substantially similar to the following that is signed and dated by an authorized officer or trustee: "{MEWA name} hereby makes an election under Texas Insurance Code §846.0035 to be subject to additional Texas Insurance Code provisions." The MEWA may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply.

(d) In addition to the statement required in subsection (c) of this section, the MEWA must submit the following:

(1) documentation demonstrating that the MEWA is in compliance with all applicable federal and state laws, including, at a minimum, the following:

(A) for all plans sponsored by the MEWA, whether operating in Texas or in any other state, a list of and access to all reports for the last five years filed with the United States Department of Labor in compliance with the Employee Retirement Income Security Act of 1974, 29 United States Code §§1021(g), 1023, and 1024;

(B) a copy of its Federal Form 5500 for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(C) if the MEWA is and will continue to be an employee welfare benefit plan for purposes of the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.), either:

(i) an advisory opinion from the U.S. Department of Labor that is no more than three years old recognizing the employer group or association as a bona fide employer association or group if the relevant MEWA structure addressed by the opinion has not changed and will not change after the election under this section; or

(ii) an opinion from an attorney attesting to the fact that the employer group or association as it will be structured after the election under this section qualifies as a bona fide employer association or group for purposes of the Employee

Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.). An attorney attestation must adequately explain how and why the employer group or association meets all of the factors to be a bona fide employer association or group, based on the facts and circumstances of the employer group's or association's governance and operations during the 12 months immediately preceding submission of the election under this section, and on how the MEWA will be structured after the election under this section, with explicit references to relevant language drawn from the employer group's or association's bylaws, trust agreement, or other organizational documents, which must be submitted to the department with the attorney's attestation; and

(D) for each plan that will be provided by the MEWA, an opinion from an attorney attesting to the fact that the plan is in compliance with all applicable federal and state laws. The opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.), including how each plan complies with federal requirements applicable to large group, small group, or individual markets, as applicable; and

(2) if the MEWA will provide a comprehensive health benefit plan, the MEWA must also comply with §7.1917 of this title (relating to Comprehensive Health Benefit Plans).

§7.1917. Comprehensive Health Benefit Plans.

(a) This section applies only to a multiple employer welfare arrangement (MEWA) that:

(1) was issued an initial certificate of authority under §846.054, concerning Issuance of Initial Certificate of Authority, on or after January 1, 2024; or

(2) elects to be bound by Insurance Code §846.0035, concerning Applicability of Certain Laws to Association Providing Health Benefits, under §7.1916 of this title (relating to Election for the Application of Certain Laws).

(b) If a MEWA will provide a comprehensive health benefit plan, the MEWA must submit a form signed and dated by an authorized officer or trustee to the department that includes the following:

(1) a statement that is substantially similar to the following: "This document is being submitted in accordance with 28 Texas Administrative Code §7.1917. {MEWA Name} will provide a comprehensive health benefit plan as defined by 28 Texas Administrative Code §7.1902"; and

(2) if the comprehensive health benefit plan is not structured as a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance Code §1301.001, concerning Definitions, a description of the health care provider and benefit structure of the plan and an explanation of how it does not qualify as a preferred provider benefit plan or an exclusive provider benefit plan.

(c) In addition to the form required in subsection (b) of this section, the MEWA must submit the following:

(1) a detailed compliance plan addressing the following requirements:

(A) Insurance Code Chapter 421, concerning Reserves in General;

(B) Insurance Code Chapter 422, concerning Asset Protection Act;

(C) Insurance Code Chapter 1451, Subchapter C, concerning Selection of Practitioners; Subchapter F, concerning Access to Obstetrical or Gynecological Care; and Subchapter K, concerning Health Care Provider Directories; and

(D) Insurance Code Chapter 4201, concerning Utilization Review Agents;

(2) if the MEWA provides a comprehensive health benefit plan that is structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan as defined in Insurance Code §1301.001, concerning Definitions, a detailed compliance plan addressing the following requirements:

(A) Insurance Code Chapter 1301, concerning Preferred Provider Plans; and

(B) Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution; and

(3) for each comprehensive health benefit plan that will be sponsored by the MEWA, an opinion from an attorney attesting to the fact that the plan is in compliance with all applicable federal and state laws. The opinion must adequately explain how each plan complies with the Employee Retirement Income Security Act of 1974 (29 United States Code §1001 et seq.) and the Patient Protection and Affordable Care Act (42 United States Code §18001 et seq.), including how each plan complies with federal requirements applicable to large group, small group, or individual markets, as applicable.

(d) A MEWA may use the MEWA forms accessible on the department's website at www.tdi.texas.gov/forms as a resource to comply with the requirements in subsections (b) and (c) of this section.

**Subchapter S. Multiple Employer [~~Multiple-Employer~~] Welfare Arrangements
Requirements for Obtaining and Maintaining Certificate of Authorization
[~~28 TAC §7.1903~~]**

STATUTORY AUTHORITY. TDI proposes the repeal of §7.1903 under Insurance Code §846.005(a) and 36.001.

Insurance Code §846.005(a) provides that the commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement Insurance Code Chapter 846.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §7.1903 implements Insurance Code Chapter 846.

TEXT.

§7.1903. Forms and Documentation Required To Be Filed To Obtain an Initial Certificate of Authority as a Multiple-Employer Welfare Arrangement.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on April 19, 2024.

DocuSigned by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance