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State of Wisconsin
Office of the Commissioner of Insurance

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Bulletins to Insurers

Date: June 4, 2003
To: All Life and Health and Property and Casualty Insurers Licensed to Transact the Business of Insurance in Wisconsin
From: Jorge Gomez, Commissioner of Insurance
Subject: Regulatory Alert to Stop Loss Carriers and Third Party Administrators

You are asked to immediately review and update your internal policies and business practices to ensure that your company does not provide coverage or services to unlicensed (illegal) health insurance plans. Unlicensed (illegal) health plans have left millions in unpaid claims. Moreover, supporting these illegal health plans may lead to substantial liability and regulatory action against your company. Your company may be subject to regulatory penalties and may be liable for all unpaid claims under ss. 618.39 and 618.50, Wis. Stats. The office expects you to establish or strengthen company processes and procedures designed to ensure that:

Unlicensed MEWAs

Your company will not issue or purchase a stop loss policy or undertake to administer unlicensed "self-funded" health plans that cover the employees of two or more employers. These plans are insurers under the laws of this state and are transacting the business of insurance without a license. They commonly, and wrongly, claim to be exempt from state insurance law under the federal Employee Retirement Income Security Act of 1974 ("ERISA"). Since these entities meet the definition of a "multiple employer welfare arrangement" ("MEWA") under ERISA, they remain subject to state insurance law.

Professional Employee Organizations ("PEOs") Unlicensed Health Plans

Your company will not issue or purchase a stop loss policy or undertake to administer a "self-funded" health plan for an employee

leasing or professional employee organization. These firms commonly refer to their clients' employees as "co-employed" or as "leased" employees of the PEO. This characterization is legally insufficient to constitute the PEO as a "single employer." Under ERISA an individual is an employee only if the employer actually controls and directs the individual's work. Such a "self-funded" plan is almost certainly an unlicensed insurer under the laws of this state.

Out of State Trusts / Stop Loss "Reinsurance" For Unlicensed Health Plans

Your company will not issue or purchase stop loss policies or undertake to administer an unlicensed "self-funded" health plan for employers located in this state through an out of state trust. Operators of these arrangements purport they are exempt from this state's insurance laws because they solicit employers in this state to apply for stop loss coverage through a trust established in an out of state bank. Often these schemes falsely characterize the stop loss policy as "reinsurance." They also represent that all claims will be paid under the "self-funded" plan in return for a fixed contribution.

Each of these claims is legally wrong and factually false. An insurer that solicits the sale of stop loss coverage in this state is subject to this state's laws. Stop loss coverage is insurance, not "reinsurance," and usually there are substantial gaps in the coverage. The scheme's coverage of the "retention" is unauthorized insurance, not "self-funding." Most importantly, only licensed insurers may solicit the sale of stop loss policies in this state. A licensed insurer may offer only a filed and approved policy form.

Purported Collectively Bargained Plans

Your company will not issue or purchase stop loss policies or undertake to administer a health plan that falsely claims that it is established and maintained pursuant to a collective bargaining agreement. Boiler plate form "collective bargaining agreements," "union health plan" coverage sold by insurance agents called "labor consultants" or "business agents," and marketing directed to the self-employed and small business are a few obvious signs of bogus "collectively bargained" health plans.

The office expects that your company will take immediate steps to ensure that it will not provide support to these illegal operations. The office also expects your company to establish policies and procedures that direct company staff and your

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appointed agents to promptly report any operation described in this bulletin to the Office MEWA contact, Fred Nepple, General Counsel, 608-266-7726, e-mail, Fred.Nepple@oci.state.wi.us.

You may find a discussion of ERISA provisions governing this topic on the U.S. Department of Labor website at <http://www.dol.gov/ebsa/Publications/mewas.html>. You may contact Fred Nepple, General Counsel, to discuss any questions you may have regarding this bulletin.

Your company is encouraged to work with Mr. Nepple to resolve any questions about a particular operation. The insurance departments of other states will provide the same assistance, and may be contacted through the MEWA contact listed on the NAIC Web site at http://www.naic.org/documents/consumers_MEWAPublicList.pdf.

Thank you.

Updated: February 3, 2006

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