

1 Public Protection Cabinet
2 Department of Insurance
3 Division of Financial Standards and Examinations
4 (Amendment)

5 806 KAR 11:020. Multiple employer welfare arrangements.

6 RELATES TO: KRS 304.1-120, 304.1-050, 304, 304.2-160, 304.2-165 304.5-040, 304.9-
7 020, 304.9-051, 304.11-030, 304.11-045, 304.99-020, 304.17A-005(22), 304.17A-410(7), KRS
8 304.17A-600, 304.17A-633, 304.17A-802, 304.17A-812, 304.99-020 , 29 USC §1002(40).

9 STATUTORY AUTHORITY: KRS 304.2-110, 304.4-010

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes [provides]
11 that the Commissioner [Executive Director] of Insurance may make reasonable administrative
12 regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance
13 Code. KRS 304.4-010 requires the commissioner to prescribe the fees charged by the Department
14 and the services for which fees shall be charged by administrative regulation. This administrative
15 regulation requires multiple employer welfare arrangements to provide information to the
16 Commissioner [Executive Director] of Insurance so the Commissioner [Executive Director] of
17 Insurance can enforce applicable laws. This administrative regulation also identifies the provisions
18 of the Insurance Code that will be applicable to multiple employer welfare arrangements.

19 Section 1. Definitions. As used in this administrative regulation:

20 (1) “Administrator” has the meaning as defined by KRS 304.9-051(1).

21 (2) “Agent” has the meaning as defined by KRS 304.9-020(1).

1 (3) “Commissioner” [Executive director] means the Executive Director of the Kentucky
2 Office] of Insurance] is defined by KRS 304.1-050(1).

3 (4) “Department” is defined by KRS 304.1-050(2).

4 (5[2]) “Doing business” [has the meaning] is defined by set forth in KRS 304.11-030(2).

5 (6) “Health benefit plan” is defined by KRS 304.17A-005(22).

6 (7) “Health insurance policy” has the meaning of “health benefit plan” as defined by KRS
7 304.5-040.

8 (8) “Health insurance stop-loss policy” as defined by KRS 304.17A-410(7).

9 (9[3]) (a) “MEWA” [means a] or “multiple employer welfare arrangement”[~~], which is any~~
10 arrangement which is established or maintained for the purpose of offering or providing health
11 care benefits (other than life insurance benefits) to the employees of two (2) or more employers,
12 or to their beneficiaries] is defined by 29 USC §1002(40).

13 (b) [A] “MEWA” does not mean an arrangement under which health care benefits are fully
14 insured by an insurer authorized to do business in Kentucky.

15 (10) “Person” is defined by KRS 304.1-020.

16 (11) “Private review agent” is defined by KRS 304.17A-600(11).

17 Section 2. Information to be Provided to the Commissioner [Executive Director]. [(1)]
18 Prior to doing business in Kentucky, a MEWA shall file with the commissioner an Application for
19 a Certificate of Registration of a Multiple Employer Welfare Arrangement (MEWA) and obtain
20 registration approval from the commissioner pursuant to Section 4 of this regulation. A MEWA
21 shall submit an application fee of five hundred dollars (\$500) at the time of application. The
22 application shall include the information required in Section 3 of this administrative regulation.
23 [A MEWA now doing business in Kentucky shall, within twenty (20) days after the effective date

1 of this administrative regulation, file with the executive director in writing the information set forth
2 in Section 3 of this administrative regulation. The executive director will then decide which laws
3 apply to the MEWA and direct the MEWA to comply. If the MEWA does not comply with
4 applicable laws of Kentucky, the executive director shall take appropriate enforcement action.]

5 [(2) A MEWA not now doing business in Kentucky shall, prior to doing business in
6 Kentucky, file with the executive director the written information and set forth in Section 3 of this
7 administrative regulation. The executive director will then decide which laws apply to the MEWA
8 and direct the MEWA to comply. If the MEWA does not comply with the applicable laws of
9 Kentucky, the executive director shall take appropriate enforcement action.]

10 Section 3. Written Information to be Filed with the Commissioner [~~Executive Director~~].
11 The information required to be filed in writing with the commissioner [~~executive director~~] in
12 support of an application for a certificate of registration pursuant to Section 2 of this administrative
13 regulation shall be [~~is~~] as follows:

14 (1) The employer identification number assigned by the Internal Revenue Service to the
15 MEWA;

16 (2) A copy of any trust document used by the MEWA;

17 (3) A copy [~~Copies~~] of any health benefits or life benefits plan documents;

18 (4) A copy [~~Copies~~] of the most recent [~~all annual~~] Form 5500 and M-1 filing [~~reports~~]
19 made by the MEWA to the United States Department of Labor [~~(Form 5500)~~];

20 (5) A copy [~~Copies~~] of any audits conducted with respect to the MEWA;

21 (6) A copy of any [~~Copies of~~] actuarial reports prepared for the MEWA;

22 (7) A copy [~~Copies~~] of any summary annual reports published for participants in the
23 MEWA;

1 (8) A copy [~~Copies~~] of any contracts with agents or administrators;

2 (9) The names of insurers and policy numbers for bonds covering fiduciaries of the
3 MEWA;

4 (10) A copy [~~Copies~~] of any stop-loss, excess, or reinsurance policies held by the MEWA;

5 (11) The AM Best rating of the stop-loss insurer issuing a policy to the MEWA;

6 (12) A list of all Kentucky employers participating in the MEWA, including full mailing
7 addresses;

8 (13~~[2]~~) A list of the names, addresses, official positions, and biographical information of
9 all officers and trustees of the MEWA;

10 (14~~[3]~~) A copy [~~Copies~~] of any marketing materials and rate manuals; and

11 (15~~[4]~~) The total number of employees, dependents, and beneficiaries participating in the
12 MEWA.

13 Section 4. Issuance of Certificate of Registration

14 (1) Upon receipt of an application for a certificate of registration submitted in accordance
15 with Section 2 and the written information submitted in accordance with Section 3 of this
16 administrative regulation, the commissioner shall issue or deny the application. A certificate of
17 registration shall be issued only if the commissioner finds the following conditions are met:

18 (a) The persons responsible for the conduct of the affairs of the MEWA are competent,
19 trustworthy, and possess good reputations; and

20 (b) The MEWA is financially responsible and may reasonably be expected to meet its
21 obligations to participants and prospective participants. In making this determination the
22 commissioner may consider:

23 1. The adequacy of working capital;

1 2. Any agreement with an insurer, a government, or any other organization for insuring the
2 payment of health claims or the provisions for automatic applicability of an alternative coverage
3 in the event of discontinuance of the coverage offered through the MEWA; and

4 3. Compliance with KRS 304.17A-812, as a guarantee that the financial solvency
5 obligations of the MEWA will be met.

6 (2) A MEWA that is issued a certificate of registration shall comply with the requirements
7 as defined by KRS 304.17A-600 through 304.17A-633. A MEWA may contract with a registered
8 private review agent that is licensed in Kentucky to fulfill these requirements.

9 (3) A MEWA that is issued a certificate of registration shall be subject to the
10 commissioner’s authority to investigate complaints pursuant to KRS 304.2-160 and KRS 304.2-
11 165.

12 Section 5. Renewal of Certificate of Registration.

13 (1) A MEWA shall annually renew a certificate of registration by submitting:

14 (a) The application required by Section 2 of this administrative regulation;

15 (b) The information required by Section 3 of this administrative regulation.

16 (2) The information required by subsection (1) of this section shall be submitted to the
17 Department no later than March 1 of each year.

18 Section 6. Responsibility to Exercise Due Diligence

19 (1) Requirements of an Agent.

20 (a) Prior to engaging in or assisting any person to engage in, offering health care benefits
21 to an employer or person located in this state, an insurance agent shall perform appropriate due
22 diligence and apply professional judgment to establish that:

23 1. The entity providing the policy is:

1 a. A MEWA registered in accordance with Section 4 of this administrative regulation;

2 b. An insurer holding a certificate of authority to offer health insurance in this state;

3 c. An entity otherwise licensed to offer health insurance in this state; or

4 d. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11

5 045; and

6 2. The coverage is as represented in the marketing documents or other documents provided
7 to potential enrollees explaining the terms of coverage.

8 (2) Requirements of an Administrator.

9 (a) Prior to entering into any administrative contract to assist any person with
10 administration of health care benefits covering employees of an employer or a person located in
11 this state, an administrator shall carry out appropriate due diligence and apply professional
12 judgment to establish that:

13 1. The entity providing the health care benefits is:

14 a. A MEWA registered in accordance with Section 4 of this administrative regulation;

15 b. An insurer holding a certificate of authority to offer health insurance in this state;

16 c. An entity otherwise licensed to offer health insurance in this state; or

17 d. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-

18 045; and

19 2. The coverage is as represented in the marketing documents or other documents provided
20 to potential enrollees explaining the terms of coverage.

21 (4) Requirements of an Insurer.

1 Prior to issuing a stop-loss policy for a health insurance policy covering employees,
2 employee dependents, or individuals located in this state, an insurer shall carry out appropriate due
3 diligence and apply professional judgment to establish that:

4 (a) The entity providing the health care benefits is:

5 1. A MEWA registered in accordance with Section 4 of this administrative regulation;

6 2. An insurer holding a certificate of authority to offer health insurance in this state;

7 3. An entity otherwise licensed to offer health insurance in this state; or

8 4. An entity exempt from regulation in accordance with KRS 304.1-120 or KRS 304.11-
9 045; and

10 (b) The coverage is as represented in the marketing documents or other documents
11 provided to potential enrollees explaining the terms of coverage.

12 Section 7. Reporting Requirement

13 (1) An insurance agent, administrator, or insurer shall file a written complaint with the
14 department pursuant to KRS 304.2-160 and KRS 304.2-165 if, as a result of the due diligence
15 requirement in Section 6 of this administrative regulation, the insurance agent, administrator, or
16 insurer knows or has reason to know that:

17 (a) A health insurance policy is, or is about to be, offered to the public in this state by an
18 entity that is not permitted to offer health insurance in this state;

19 (b) The coverage is not as represented in the marketing documents or other documents
20 provided to potential enrollees explaining the terms of coverage; or

21 (c) The health insurance policy has not been filed with, and approved by, the department
22 and is not otherwise exempt from filing requirements.

1 (2) The written complaint required by subsection 1 of this section shall be filed within
2 fourteen (14) days of discovering activity prohibited by this regulation, determination of improper
3 registration, or otherwise unauthorized business.

4 Section 8. Penalties and Liability

5 (1) A person who violates Section 2 of this administrative regulation is subject to a civil
6 penalty of one thousand dollars (\$1000) for each violation.

7 (2) An insurance agent, administrator, or insurer that fails to file a written complaint in
8 accordance with Section 7 of this administrative regulation shall be subject to administrative
9 penalties, up to and including revocation, suspension, or civil penalty for each violation pursuant
10 to KRS 304.99-020.

11 Section 9. Exemptions. The provisions of this administrative regulation shall not apply to
12 a self-insured employer organized association group as defined in KRS 304.17A-802(10).

13 ~~[Effective Date. This administrative regulation shall become effective upon completion of its~~
14 ~~review pursuant to KRS Chapter 13A.]~~

15 Section 10. Incorporated by Reference. The following information is incorporated by
16 reference:

17 (a) Application for a Certification of Registration of a MEWA (CoR MEWA Form), 7/2021

18 (b) United States Department of Labor Form 5500, 2020

19 (c) United States Department of Labor Form M-1, 2020

20 (d) Kentucky Designation of Person to Receive Legal Process (Form 800), 1/2011

21 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
22 the Kentucky Department of Insurance, 500 Mero Street, Frankfort, Kentucky 40601, Monday through
23 Friday, 8 a.m. to 4:30 p.m. This material is also available on the department's internet Web site at
24 <http://insurance.ky.gov/>.

806 KAR 11:020
READ AND APPROVED:



7/7/2021

Sharon P. Clark
Commissioner, Department of Insurance

Date



7/8/2021

Kerry B. Harvey
Secretary, Public Protection Cabinet

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 AM on September 21st, 2021 at 500 Mero Street, Frankfort, KY 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on September 30th, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact Person: Abigail Gall
Title: Executive Administrative Secretary
Address: 500 Mero Street, Frankfort, KY 40601
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 11:020
Contact Person: Abigail Gall
Phone: +1 (502) 564-6026
Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets for the requirements and process for multiple employer welfare arrangements to apply for a certificate of registration in the state of KY. This administrative regulation requires multiple employer welfare arrangements to provide information to the Commissioner of Insurance in order to enforce applicable laws. This administrative regulation also identifies the provisions of the Insurance Code that will be applicable to multiple employer welfare arrangements.

(b) The necessity of this administrative regulation: KRS 304.2-110 authorizes that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the commissioner to prescribe the fees charged by the Department and the services for which fees shall be charged by administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1), authorizes that the Commissioner may promulgate administrative regulations to aid in effectuation of the Insurance Code.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation defines multiple employer welfare agreement, sets forth the required documentation that is to be submitted to the Commissioner so the Commissioner may enforce applicable laws.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments to this administrative regulation are extensive so that the applicable laws can be better interpreted and prescribed by the Commissioner. These include requiring MEWAs to file with the Commissioner an application for certification of registration, along with a \$500 filing fee. The regulation would now require any MEWA offering stop-loss policies to have an AM Best rating, any MEWA must submit personal and biographical information for its' officers and trustees. The administrative regulation has added sections that set forth reporting requirements, penalties and liabilities for MEWAs and exemptions to the regulation. The amendments also incorporate an internal application form (Form CoR MEWA) as well as the federal reporting forms to the Department of Labor (Form 5500 and M-1). There are also several technical amendments to adhere to the drafting requirements set forth in Chapter 13A.

(b) The necessity of the amendment to this administrative regulation: The necessity of this administrative regulation is prescribed by KRS 304.2-110 and 304.4-010. This administrative is necessary to implementing the Insurance Code as well as properly regulating multiple employer welfare agreements.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes that the Commissioner of Insurance may make reasonable administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.4-010 requires the commissioner to prescribe the fees charged by the Department and the services for which fees shall be charged by administrative regulation. KRS Chapter 13A sets forth the drafting and formatting requirements for administrative regulations. The amendments to this administrative regulation conforms to the authority granted in the above statutes.

(d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the Commissioner's authority to make administrative regulations to aid in the provision of the Kentucky Insurance Code, and help better regulate multiple employer welfare agreements.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There is only 1 MEWA listed in the Commonwealth today.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: MEWAs will need to file for an application for a certificate of registration with the Commissioner, and a \$500 filing fee. The entity acting as a MEWA must also submit additional written information as prescribed by Section 3. Any MEWA offering stop-loss policies will need to have an AM Best rating. MEWAs will need to have on file with the Commissioner the US Department of Labor M-1 and 5500 forms for consideration, as well as submitting personal and biographical information of the officers and trustees of the MEWA.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: A \$500 filing fee is required.

(c) As a result of compliance, what benefits will accrue to the entities: If all procedures and requirements are met the Commissioner may then make an informed decision on whether to approve a certificate of registration or deny the applicant. If any entity fails to comply with Section 2 then a \$1000 fine will be applied.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes, this administrative regulations establishes a \$500 filing fee for MEWAs.

(9) TIERING: Is tiering applied? Explain why or why not. Tiering is not applied because this administrative regulation effects all MEWAs.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 806 KAR 11:020

Contact Person: Abigail Gall

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Email: abigail.gall@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There is no fiscal impact known to be associated with this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue is expected to be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected.

(d) How much will it cost to administer this program for subsequent years? No cost is expected.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(4) Revenues (+/-): Neutral

(5) Expenditures (+/-): Neutral

(6) Other Explanation:

SUMMARY OF MATERIALS INCOPORATED BY REFERENCE

806R 11:020

(1) Application for a Certification of Registration of a MEWA (CoR MEWA Form), 7/2021; this form shall be filed with the Commissioner as well as any addition information requested to be attached for a MEWA to apply for a certification of registration.

(2) United States Department of Labor Form 5500, 2020; this forms is submitted to the United States Department of Labor that is part of ERISA's overall reporting and disclosure framework, which is intended to assure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants and beneficiaries, as well as regulators, are provided or have access to sufficient information to protect the rights and benefits of participants and beneficiaries under employee benefit plans.

(3) United States Department of Labor Form M-1, 2020; A MEWA must file a M-1 (MEWA registration) 30 days prior to beginning to operate in a state. A MEWA must file a M-1 (MEWA registration) within 30 days of: (1) The MEWA begins knowingly operating in any additional State; (2) The MEWA begins operating following a merger with another MEWA; (3) The number of employees receiving coverage for medical care under the MEWA is at least 50 percent greater than the number of such employees on the last day of the previous calendar year; or (4) The MEWA experiences a material change as defined by these instructions.

(4) Kentucky Designation of Person to Receive Legal Process (Form 800), 1/2011; this form is the designation application for the person responsible for receiving legal aside from the KY Secretary of State.

