

INSURANCE DIVISION[191]

Notice of Intended Action

Proposing rule making related to fully insured multiple employer welfare arrangements and fully insured and self-insured association health plans and providing an opportunity for public comment

The Insurance Division hereby proposes to amend Chapter 77, “Multiple Employer Welfare Arrangements,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 505.8 and 507A.4; 2018 Iowa Acts, Senate File 2349; and U.S. Department of Labor, 83 FR 28912.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 507A; 2018 Iowa Acts, Senate File 2349; and U.S. Department of Labor, 83 FR 28912.

Purpose and Summary

The new rules proposed in this Notice of Intended Action serve two purposes, explained below; a third purpose of regulatory clarity is met by including in one chapter both the rules in this Notice together with the rules in **ARC 4039C**, IAB 9/26/18, on self-insured multiple employer welfare arrangements.

The first purpose of the new rules is to comply with 2018 Iowa Acts, Senate File 2349, section 2, which requires the Insurance Commissioner to adopt rules to implement the legislation’s provisions. Senate File 2349 provides, among other things, that an entity that wants to act in Iowa as a multiple employer welfare arrangement (MEWA) must, in addition to meeting the other requirements of Iowa Code chapter 507A, meet certain “membership stability” requirements set forth by the Insurance Commissioner by rule. The new rules proposed in this Notice are intended to set forth such membership requirements for entities wishing to establish a fully insured MEWA, by ascertaining that there is a firm foundation for the stability of the underlying organization. Such stability is critical to ensure consumer protection.

In addition, the Division has promulgated concurrently an Adopted and Filed Emergency After Notice rule making (**ARC 4039C**) which rescinds the current Chapter 77 and replaces it with a new Chapter 77 whose rules set forth such membership requirements for entities wishing to establish a self-insured MEWA.

During the comment period for the Notice of Intended Action (**ARC 3894C**, IAB 7/18/18) in which new Chapter 77 was proposed, the Insurance Division received comments from stakeholders who asked about the extent of the application of those new rules to fully insured MEWAs. Accordingly, by making changes to the Noticed rules of **ARC 3894C** and incorporating those changes in the adopted rules in **ARC 4039C**, the Division clarified that those rules shall apply only to self-insured MEWAs. In that rule making, together with this rule making (in which the Division clarifies that some of these rules specifically apply only to fully insured MEWAs), the Division addresses the confusion and clarifies the requirements for both types of MEWAs.

The second purpose intended by these proposed new rules is to address the U.S. Department of Labor’s rule 83 FR 28912 (DOL rule), issued on June 19, 2018, which establishes criteria for the creation and administration of association health plans (AHPs) and permits the establishment of AHPs in a staggered implementation timeline beginning September 1, 2018.

The new DOL rule establishes some criteria under the Employee Retirement Income Security Act (ERISA) (Section 3(5)) that are in addition to criteria already there. The new criteria permit a determination whereby employers may join together in a group or association of employers and whereby, if the criteria are met, the group or association of employees will be permitted to be treated

as if it were an employer sponsor of a single multiple employer “employee welfare benefit plan” and “group health plan,” as those terms are defined in Title I of ERISA. The DOL rule establishes a more flexible “commonality of interest” test for the employer members to support the establishment and maintenance of AHPs under ERISA. The DOL rule facilitates the adoption and administration of AHPs and expands access to affordable health coverage.

In anticipation of this rule, the Iowa Legislature granted the Insurance Commissioner rule-making authority, including emergency rule-making authority, over such AHPs in 2018 Iowa Acts, Senate File 2349, sections 5 and 7. The rules proposed in this rule making provide a framework for the establishment of both fully insured and self-insured AHPs, as contemplated in the DOL rule.

The rule makings of **ARC 4039C** and **ARC 4040C** were adopted emergency to be made effective September 12, 2018. If the Division determines through the rule-making process of this Notice that changes need to be made to the emergency-adopted rules of **ARC 4040C**, the Division intends that the rule-making process of this Notice shall incorporate those changes and shall be effective December 26, 2018.

Fiscal Impact

This rule making may have some fiscal impact to the State of Iowa, in that an increase in the number of these plans being sold would increase the amount of premium tax funds collected by the State from insurance companies providing coverage to fully insured MEWAs and fully insured AHPs.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

The Division’s general waiver provisions of 191—Chapter 4 apply to these rules.

Public Comment

Any interested person may make written suggestions or comments on these proposed amendments on or before 4:30 p.m. on October 30, 2018. Comments should be directed to:

Ann Outka
Insurance Division
Two Ruan Center
601 Locust Street, Fourth Floor
Des Moines, Iowa 50309
Fax: 515.281.3059
Email: ann.outka@iid.iowa.gov

Public Hearing

Also, there will be a public hearing, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule making.

October 30, 2018
11 a.m. to 12 noon

Division Offices, Fourth Floor
Two Ruan Center
601 Locust Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Division and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Emergency Rule Making Adopted by Reference

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC 4040C**). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.