

**191—77.6(507A) Fully insured association health plans.**

**77.6(1) Certificate of registration.** A person shall not establish or maintain a fully insured association health plan in this state unless the group or association of employers obtains and maintains a certificate of registration pursuant to this rule. Such certificate of registration is required for all fully insured association health plans that elect to offer fully insured association health plans to residents of this state whether or not the AHP is domiciled in the state.

**77.6(2) Application for certificate of registration.**

*a.* A person wishing to obtain a certificate of registration as a fully insured AHP pursuant to this chapter shall submit an application to the commissioner. This application shall include the following:

(1) A business plan, including a copy of all health coverage contracts or other instruments which the fully insured AHP applicant proposes to make with or sell to its employer members or its association's or group's members, a copy of its health coverage description, and the printed matter to be used in the solicitation of employer members or its association's or group's members to purchase the health coverage.

(2) Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the fully insured AHP applicant.

(3) A current list of all members of the employer group or association sponsoring the fully insured AHP applicant, a description of the relationship among the employers, a description of how the relationship serves as the basis for the formation of the association or employer group, and a description of how the employer group or association complies with paragraphs 77.6(4) "a" and 77.6(4) "b," if applicable.

(4) A description of the activities of the association or group of employers on behalf of its employer members or its association's or group's members other than the sponsorship of the fully insured AHP applicant, to further demonstrate compliance with paragraph 77.6(4) "a," if applicable.

(5) A statement from an authorized representative of the fully insured AHP applicant that certifies all of the following:

1. The fully insured AHP applicant shall be administered by an insurer authorized to do the business of insurance in this state or by an authorized third-party administrator that holds a current certificate of registration issued by the commissioner pursuant to Iowa Code section 510.21.

2. The fully insured AHP applicant is established by a trade, industry, or professional association of employers that has a constitution or bylaws, is organized and maintained in good faith, and meets all membership requirements set forth in subrule 77.6(4).

3. The association or group of employers sponsoring the fully insured AHP applicant is engaged in at least one substantial business purpose for its members other than sponsorship of an employee welfare benefit plan.

4. The association is a nonprofit entity organized or authorized to do business under applicable Iowa law.

5. No insurance producers or benefits consultants established, sponsored, administer, or serve as a trustee or on the governing body of the fully insured AHP applicant.

(6) A certificate from an authorized representative of the fully insured AHP applicant that, to the best of the authorized representative's knowledge and belief, the fully insured AHP applicant is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(7) A description of and evidence of a mechanism, approved by the commissioner, to ensure that claims shall be paid in the event a member of the fully insured AHP applicant is unable to comply with the fully insured AHP applicant's contribution requirements.

(8) A copy of the most recent Form M-1 filed by the fully insured AHP applicant with the U.S. Department of Labor, Pension and Welfare Benefits Administration.

(9) Biographical affidavits from all members of the board of directors of the fully insured AHP applicant. The affidavits shall be prepared using the current template for biographical affidavits prescribed by the National Association of Insurance Commissioners.

(10) Any additional information requested by the commissioner.

*b.* The commissioner shall examine the application and any supporting documents submitted by the fully insured AHP applicant. The commissioner may conduct any investigation that the commissioner may

deem necessary and may examine under oath any persons interested in or connected with the fully insured AHP applicant.

c. Within a reasonable time, either the commissioner shall issue to the fully insured AHP applicant a certificate of registration upon finding that the fully insured AHP applicant has met all requirements or the commissioner shall deny the application for a certificate of registration and provide notice to the fully insured AHP applicant setting forth reasons for finding that the fully insured AHP applicant does not meet all the requirements. An unsuccessful fully insured AHP applicant may file a new application for a certificate of registration at any time.

**77.6(3) Filing requirements.** A fully insured AHP shall annually, on or before the first day of March, file a certificate of compliance, which shall be signed and dated by the appropriate officer representing the fully insured AHP and shall certify all of the following:

a. That the plan meets the requirements of this rule and the applicable provisions of Iowa statutes and regulations.

b. That the fully insured AHP has contracted with an insurer authorized to do the business of insurance in this state or with a third-party administrator that holds a current certificate of registration issued by the commissioner pursuant to Iowa Code section 510.21.

**77.6(4) Membership requirements.**

a. Any employer group or association that intends to form a fully insured AHP must have at least one substantial business purpose unrelated to offering and providing health coverage or other employee benefits to its employer members and their employees as set forth in 29 CFR Section 2510.3-5(b)(1).

b. The employer group or association that wishes to form a fully insured AHP shall have been in existence for a period of five years at the time it seeks a certificate of registration as a fully insured AHP.

c. The employer group or association sponsoring the fully insured AHP shall collect annual dues from its employer members.

d. Each employer member of the group or association participating in the association health plan must be a person acting directly as an employer of at least one employee who is a participant covered under the plan. A working owner of a trade or business without common law employees may qualify as both an employer and employee when such working owner meets the requirements set forth in 29 CFR Section 2510.3-5(e).

e. Employer members of a group or association must demonstrate that there is a commonality of interest as defined in 29 CFR Section 2510.3-5(c).

f. Any employer member that participates in an employee welfare benefit plan offered by a fully insured AHP shall be a member of the employer group or association sponsoring the AHP.

g. Any employer member that participates in an employee welfare benefit plan offered by a fully insured AHP shall be required to participate in the fully insured AHP for a period of not less than five calendar years. Any contract issued by a fully insured AHP to an employer shall contain reasonable enforcement provisions, including but not limited to reasonable fees or assessments for early departure and for enrollment in another fully insured AHP during the early-departure period.

h. The activities of the fully insured AHP, including the establishment and maintenance of the employee welfare benefit plan, shall be controlled by the fully insured AHP's employer members, either directly or indirectly through the regular nomination and election of directors, trustees, officers, or other similar representatives to control on the employer members' behalf.

**77.6(5) Policy or contract.** Every health benefit plan offered by any insurer to the fully insured AHP shall comply with the following:

a. *Notice to purchasers.* Every health benefit plan application for coverage and every policy and certificate issued by an insurer to a fully insured AHP shall contain in 14-point type or, if electronic, of equivalent prominence, on the front page the following notice prominently displayed:

**NOTICE**

**This policy is issued by a fully insured association health plan (AHP), a type of multiple employer welfare arrangement (MEWA). MEWAs are not subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your AHP MEWA.**

**Please review the policy closely to understand the covered benefits.**

*b. Guaranteed issue.* An insurer offering a health benefit plan to a fully insured AHP shall guarantee acceptance of all eligible individuals who are part of the employer members or association's or group's members of the fully insured AHP and, if coverage is offered to spouses and dependents, to all of the spouses and dependents.

*c. Types of benefits that can be offered.* Fully insured AHPs shall offer only medical, dental, optical, surgical, hospital, accident and sickness, prescription, life insurance, or disability benefits. A fully insured AHP that offers life insurance benefits shall comply with all applicable provisions of the Iowa Code relating to life insurance and life insurance companies.

*d. Compliance with HIPAA.* All contracts or policies issued by a fully insured AHP shall conform to all the provisions of P.L. 104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to guaranteed issue of all products, preexisting condition limitations, renewability, and portability provisions as well as the issuance of prior coverage certificates to enrollees no longer eligible for plan coverage.

*e. Compliance with state mandates.* Every health benefit plan offered by an insurer to a fully insured AHP shall comply with all applicable state mandates, including Iowa Code chapter 514C, as if the health benefit plan were a group health policy under Iowa Code chapter 509.

*f. Actuarial value.* Every health benefit plan offered by an insurer to a fully insured AHP must contain a level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

*g. Nondiscrimination.* Any health coverage offered by an insurer to the fully insured AHP must comply with the nondiscrimination provisions set forth in 29 CFR Section 2510.3-5(d)(1)-(5).

**77.6(6) Filing fee.** A filing fee of \$100 shall accompany each application for a certificate of registration as a fully insured AHP.

**77.6(7) Trade practices and enforcement.** A fully insured AHP is subject to applicable provisions of Iowa Code chapter 507B, and rules promulgated under that chapter, as if the AHP is a "person" defined in Iowa Code section 507B.2(1). The commissioner may investigate whether a fully insured AHP or an insurer providing health benefit plans under the direction of a fully insured AHP has violated this rule and, after a hearing conducted pursuant to Iowa Code chapters 17A and 507B, may enter any orders authorized under Iowa Code chapter 505, 507A, or 507B or any other applicable chapters.

**77.6(8) Suspension or revocation of certificate of registration.** The commissioner may sanction a fully insured AHP or suspend or revoke any certificate of registration issued to a fully insured AHP upon any of the following grounds:

*a.* Failure to comply with any provision of these rules or any applicable provision of the Iowa Code.

*b.* Failure to comply with any lawful order of the commissioner.

*c.* A finding that the application or any necessary forms that have been filed with the commissioner contain fraudulent information or omissions.

[ARC 4040C, IAB 9/26/18, effective 9/12/18]