

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

INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §§7.1901, 7.1902, and 7.1904 - 7.1915. The commissioner also adopts new §7.1916 and §7.1917. The new and amended sections concern licensing requirements for multiple employer welfare arrangements (MEWAs). The commissioner also adopts the repeal of §7.1903.

Sections 7.1901, 7.1908, 7.1909, 7.1911, and 7.1913 - 7.1916 are adopted without changes to the proposed text published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2968). Sections 7.1902, 7.1904 - 7.1907, 7.1910, and 7.1912 are adopted with changes to the proposed text. These sections were revised in response to public comments. TDI revised §7.1917 to clarify that the entire section applies only to a MEWA that offers or seeks to offer a comprehensive health benefit plan.

REASONED JUSTIFICATION. Amendments to §§7.1901, 7.1902, and 7.1904 - 7.1915, and new §7.1916 and §7.1917 are necessary to implement House Bill 290, 88th Legislature, 2023, and Insurance Code Chapter 846. Insurance Code §846.0035 as added by HB 290 creates a new path for MEWAs. The path treats a MEWA, under certain conditions and as determined by the commissioner, as though it were an insurer, the individuals covered as though they were insured, and the benefits provided as though through an insurance policy.

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 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. HB 290 expands who may organize and participate in a MEWA under Insurance Code Chapter 846, including permitting the MEWA to be organized on the basis of employer location rather than industry, permitting a MEWA under certain circumstances when it has been in existence for at least two years, and permitting working owner members in the MEWA. These HB 290 provisions providing

flexibility are somewhat similar to a federal rule on association health plans (AHPs) that was adopted in 2018 at 29 CFR §2510.3-5 but was repealed soon after the TDI rule was proposed. See 89 Federal Register 34127 (April 30, 2024). Because of that repeal, it will be more difficult for a MEWA licensed under the HB 290 flexibility provisions to be able to demonstrate federal compliance.

Under current federal law, following the repeal of the 2018 federal AHP rule, a MEWA that does not qualify as a bona fide employer association plan is not considered 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 in §7.1904 allowed a statement by the applicant certifying compliance. The adopted sections clarify the minimum information required when a MEWA seeks to demonstrate compliance with federal law. TDI will review the submitted information to determine whether the MEWA has sufficiently demonstrated compliance with state and federal law.

In addition to the new and amended sections that implement HB 290, the rule also removes the requirement that MEWAs file the specific forms adopted by reference in §7.1903. Section 7.1903 is repealed because the elements of the forms are integrated into amendments to §§7.1904, 7.1906, and 7.1912. The previously adopted forms will remain on TDI's website at www.tdi.texas.gov/forms for use as a reference and resource for compliance. MEWAs must provide the required information under Insurance Code

Chapter 846 and 28 TAC Chapter 7, Subchapter S, and may continue--but are not required--to use the TDI forms for compliance.

Nonsubstantive amendments are adopted 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 "which" with "that," "prior to" with "before," "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 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 repeal of §7.1903 is necessary to implement Insurance Code Chapter 846, Subchapters B and D. The 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 the proposal.

Descriptions of the sections' adopted amendments and repeal follow.

Section 7.1901. The amendments to §7.1901 replace "these sections apply" with "this subchapter applies," "these sections do" with "this subchapter does," and "Chapter 3, Subchapter I, concerning the licensing and regulation of such arrangements" with "Chapter 846, concerning Multiple Employer Welfare Arrangements." Other amendments to punctuation and grammar are adopted for consistency with agency drafting style and plain language preferences.

Nonsubstantive amendments also restructure subsection (b) and amend punctuation to create two separate paragraphs for plain language and ease of reading.

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

As proposed, former §7.1902(2), now redesignated as §7.1902(4), expanded the definition of "employee welfare benefit plan" to include a MEWA on the basis of the location of the employers' principal places of business as permitted under Insurance Code §846.0035 and §846.053(b)(2). As adopted, the definition of "employee welfare benefit plan" cites to the definition in Insurance Code §846.001(2), which assigns the meaning in Section 3(1) of ERISA (29 United States Code §1002(1)) to the term. This change ensures

that the rule is consistent with both Insurance Code Chapter 846 and federal law following the repeal of the federal AHP rule and provides flexibility should federal law change in the future.

The amendments to redesignated paragraph (5) remove "describes an entity which" and "the" before "Insurance Code," and replace "Article 3.95-4" with "§846.201," and "§7.1908" with "§7.1909."

Section 7.1903. Section 7.1903 is repealed because the requirements in the forms have 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 must provide the required information under Insurance Code Chapter 846 and 28 TAC Chapter 7, Subchapter S, and may continue--but are not required--to use the TDI forms for compliance.

Section 7.1904. The amendments to §7.1904 remove former subsection (a) regarding which entities must file an application for initial certificate of authority because it is no longer necessary and redesignate part of former subsection (b) as a new subsection (a). New (a) requires a MEWA to submit a complete application for an initial certificate of authority to the commissioner 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 new paragraphs (1) - (4) to incorporate information previously contained in the forms listed in §7.1903.

New subsection (b)(1) includes the information from TDI Form FIN300, concerning the application for and reservation of a MEWA's name. As adopted, paragraphs (1)(C) and (1)(D) are changed in response to comment to specify that the MEWA must list every state where the MEWA is licensed to do business, "whether the MEWA is fully insured or not," and paragraph (1)(D) is changed to add "or license" for consistency with paragraph (1)(C).

New subsection (b)(2) includes the information from TDI Forms FIN374, FIN375, and FIN376, including MEWA-specific information and information about the officers, directors, and trustees. Under subsection (b)(2), a MEWA applicant must submit a notarized 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. To correct an error made in the proposal, paragraph (2)(C) as adopted removes an errant "the" from the notation of "{MEWA Name}" in a required form so it matches other form requirements in the section.

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 TDI Form FIN311. As adopted, subsection (b)(3)(F) is modified in response to comment to clarify that the affiant must provide "any previous or current" ownership or control of entities involved in the business of insurance.

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 TDI Form FIN377 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). As adopted, subsection (b)(11) is changed in response to comment to replace the word "employer" with the word "employee" and to clarify that fidelity bonds issued in the name of the MEWA must also protect against acts of fraud and dishonesty by those with access to funds held on behalf of individual employer plans, for MEWAs that are not bona fide associations or groups under ERISA.

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 must be provided and prepared according to the specified requirements. In response to comment, the rule text is changed to clarify that an actuary preparing an opinion must not have a relationship with the MEWA or its affiliates because such relationships may create a conflict of interest. As adopted, subsection (b)(13) now states that the actuary preparing the opinion must not be "an employee of the MEWA's employer-members, an affiliate of the MEWA, or an affiliate of the MEWA's employer-members, or an employee of an affiliate of the MEWA."

The adopted language is an expansion of redesignated subsection (b)(13), which prohibited only the MEWA employment relationship. 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 also comply with reserve requirements in Insurance Code Chapter 421. As adopted, subsection (b)(13) is changed in response to comment to clarify that a MEWA that provides a comprehensive health benefit plan must comply with reserve requirements in both Insurance Code Chapter 421 and §846.154. A clarifying change is also made to state

that all MEWAs must comply with the recommended amount of reserves under Insurance Code §846.154. Former subsection (b)(13), which addressed the certification that an applicant could provide to attest to compliance with all applicable provisions of ERISA, is removed.

New subsection (b)(16) states that a MEWA that is formed under Insurance Code §846.053(b)(2) must provide documentation to TDI to demonstrate compliance.

Under new subsection (b)(18), 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 documents that will demonstrate compliance include:

- a list of and access to all ERISA 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 3 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 that the plan is in compliance with federal and state laws.

New subsection (b)(19) implements 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 amendments remove unnecessary introductory text before lists throughout the section. For example, the words "described in paragraphs (1) - (13) of this subsection" are removed so the statement is simplified to "In order to be considered complete, the

application must contain the following items." Similar changes, made throughout the section, are intended to increase readability of the requirements.

The amendments revise 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; remove "which provides," "the summary plan description shall," and "or"; and add "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.

Amendments also replace "should" with "must," "with components and characteristics" with "that is," "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," and "management's" with "MEWA's."

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.

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. The amendments also clarify which reserve requirements a MEWA must

comply with, depending on whether the MEWA is formed under Insurance Code §846.0035.

As adopted, subsections (a)(10) and (a)(11) are changed in response to comment to replace the term "or" with "and" to clarify that all MEWAs are required to comply with the reserve requirements in Insurance Code §846.154 and that MEWAs that provide comprehensive health benefit plans must also comply with Insurance Code Chapter 421.

The amendments also add subsection (a)(16) to clarify that a MEWA that will provide a comprehensive health benefit plan must submit documentation as specified in §7.1917 that adequately demonstrates compliance with applicable requirements before the commissioner will issue an initial certificate of authority.

The amendments remove the safe harbor provision in subsection (a) that provided that a MEWA 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.

Nonsubstantive amendments restructure multiple paragraphs in the section and redesignate paragraphs and subparagraphs throughout to reflect the amendments. 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 redesignated subsection (a)(15) that reads "set out in subparagraphs (A) - (D) of this paragraph, as follows" now reads "in the following."

Amendments to redesignated 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).

Additional nonsubstantive amendments remove "to"; add "in"; and replace "transact" with "engage in," "shall have the power to" with "may," "shall be" with "is," "which may be necessary" with "necessary," "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," and, in the section title, "Temporary" with "Initial."

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 designates part of subsection (a) as new subsection (b) and redesignates former subsection (b) as subsection (c).

An amendment also adds new paragraph (5) to the text that makes up new subsection (b), inserting a requirement currently found in forms required in §7.1903. This amendment requires 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.

As adopted, redesignated subsection (c) is changed in response to comment to clarify that the MEWA must demonstrate compliance with the requirements in Insurance

Code Chapter 846, the requirements in these rules, and "other applicable Insurance Code provisions" before the commissioner will issue a final certificate of authority.

Other amendments replace "which sets forth a description of" with "that describes," "Article 3.95-8" and "Chapter 3, Subchapter I" with "Chapter 846," and "which" with "whose."

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 a final certificate of authority.

New subsection (d) provides that when a timely filed application is incomplete and a MEWA fails to respond to a notice of deficiency within the timelines in new subsection (e), a MEWA's initial certificate of authority will expire five days after the date the response was due or on the one-year anniversary following the issuance of the initial certificate of authority, whichever is later.

New subsection (e) establishes the timeframe for a timely response to a notice of deficiency. A response to a notice of deficiency is timely if it provides all the information requested by TDI in writing within the timeframes listed. As proposed, subsection (e)(3) classified a response to a notice of deficiency as timely if it was received "as otherwise agreed to by the department." As adopted, subsection (e)(3) is changed in response to comment to state that a response to a notice of deficiency will be considered timely if the response provides all information requested by TDI in writing "within a reasonable time period as agreed to by the department based on the MEWA's circumstances."

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 basis for an extension. Subsection (f) also clarifies that only one extension will be granted under the subsection. As adopted, subsection (f) is changed in response to comment to clarify that the initial certificate of authority may be extended on a determination that the MEWA is likely to meet the requirements of the subchapter "within the granted extension period."

Section 7.1908. Amendments to §7.1908 reduce the fee for filing an annual audited financial statement and actuarial opinion to \$0. The filing fees for 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).

Section 7.1909. Amendments to §7.1909 remove "in paragraphs (1) - (3) of this subsection" in subsection (a) and replace "pursuant to the provisions of" with "under" and "optical" with "vision." A citation to the United States Code is also revised to remove italicized formatting.

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 remove the reference to the "Texas Department of Insurance consumer services division." The requirements in §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). As adopted, subsection (a) is changed in response to comment to clarify that the required notice is "in addition to any other notices required by law." Several nonsubstantive amendments for consistency with current agency drafting style and plain language preferences are also made.

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 replacing "any other" with "another."

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. In response to comment, the rule text is changed to clarify that an actuary preparing an opinion must not have a relationship with the MEWA or its affiliates because such relationships may create a conflict of interest. Subsection (a)(2) is changed from the proposal to state that the actuary preparing the opinion must not be "an employee of the MEWA's employer-members, an affiliate of the MEWA, or an affiliate of the MEWA's employer-member, or an employee of an affiliate of the MEWA." As proposed, subsection (a)(2)(B) outlined the reserve requirements for MEWAs that provide a comprehensive health benefit plan and MEWAs that do not provide a comprehensive health benefit plan. As adopted, subsection (a)(2)(B) is changed in response to comment to clarify that all MEWAs must comply with the reserve requirements in Insurance Code §846.154, and that a MEWA that provides a comprehensive health benefit plan must also comply with Insurance Code Chapter 421.

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 TDI Form FIN378. Form FIN378 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 FIN378, which is available on TDI's website at www.tdi.texas.gov/forms, as a resource to comply.

Amendments also replace "these sections" with "this subchapter." Several nonsubstantive changes for consistency with current agency drafting style and plain language preferences are also made.

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 also replace the citation to Insurance Code Article 1.16 with recodified citations in Insurance Code Chapter 401, Subchapter D, and the corresponding titles and add a citation to Insurance Code §1301.0056.

Section 7.1914. Amendments to §7.1914 add "required" and replace "shall respectively have such" with "may exercise the" and "such" with "the."

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

Section 7.1916. 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 ERISA reports for the last five years filed with the United States Department of Labor;
- a copy of its Federal Form 5500 for the past five years, or since the MEWA's inception, whichever is shorter;
- if the MEWA is an employee welfare benefit plan, an advisory opinion from the United States Department of Labor that is not more than 3 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. 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.

In addition, 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.

New §7.1917 also requires an opinion from an attorney attesting 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.

As adopted, subsection (a) is changed to clarify that the section only applies to a MEWA that offers or seeks to offer a comprehensive health benefit plan. Because this change is made, the text of subsection (b) as proposed is changed to remove the introductory phrase "If a MEWA will provide a comprehensive health benefit plan."

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on June 3, 2024.

Commenters: TDI received written comments from three commenters. Commenters in support of the proposal were the Texas Dental Association. Commenters in support of the proposal with changes were the Texas Medical Association and the Texas Professional Service Providers Benefits Trust. No commenters spoke on the proposal at a public hearing held on May 23, 2024.

General Comments.

Comment. A commenter expresses support of the proposal and the passage of HB 290. The commenter states that HB 290 authorizes TDI to approve a MEWA that offers a comprehensive health benefit plan, which will allow Texas small businesses and self-employed individuals to obtain affordable comprehensive health benefit coverage.

Agency Response. TDI appreciates the commenter's support.

Comment. A commenter asks TDI to explain its rationale for allowing a person applying for an initial certificate of authority on or after January 1, 2024, to be considered a "MEWA to which Insurance Code §846.0035 applies" when Insurance Code §846.0035(a) states that it only applies to (1) a MEWA that "was issued" (i.e., already received) an initial certificate of authority on or after January 1, 2024, or (2) a MEWA that existed before 2024 and elects for it to apply.

Agency Response. TDI reads Insurance Code §846.0035 as applying to new MEWAs on or after January 1, 2024, and to pre-2024 MEWAs that make the election. This reading is supported by the House Research Organization's bill analysis, which states that "requirements in the bill would apply to MEWAs issued a certificate of authority on or after January 1, 2024, or to those that chose to comply with the requirements in the bill as prescribed by the insurance commissioner" (emphasis added; see www.hro.house.texas.gov/pdf/ba88r/hb0290.pdf). There is no evidence that the bill was intended to not apply to new MEWAs after January 1, 2024, or that those new MEWAs would need to elect to be bound to Insurance Code §846.0035. To the contrary, the legislation was clearly attempting to increase the ability of MEWAs to obtain licensure and

provide health coverage in Texas. Because of this, TDI disagrees with the commenter's interpretation and declines to make a change.

Comments on §7.1902. Definitions.

Comment. One commenter expresses concern about the definition for "comprehensive health benefit plan" proposed in §7.1902(2). The commenter notes that, from an operational standpoint, the definition as proposed departs from the underlying statutory directive and has a potential for unintended consequences. The commenter states that "comprehensive health benefit plans" are generally understood as major medical health insurance and can include a wide range of services and medical costs, such as preventative services and services to treat illnesses. The commenter also notes that there is not a clear distinction between "comprehensive health benefit plan" and other "health benefit plans" offered by MEWAs. The commenter requests clarification from TDI on what plans would fall outside the definition of "comprehensive health benefit plan" while still being a "health benefit plan" that a MEWA may provide under Insurance Code Chapter 846.

Agency Response. TDI declines to make a change to the definition of "comprehensive health benefit plan" as proposed. TDI agrees with the commenter that a comprehensive health benefit plan is generally understood to mean major medical health insurance and notes that other stakeholders indicated the same in response to TDI's informal request for information posted on TDI's website on August 22, 2023. The proposed definition of "comprehensive health benefit plan" was drafted by stating the exclusions, which is consistent with how the Insurance Code defines other health plans or insurance policies.

As the commenter notes, the definition incorporates the meaning of "health benefit plan" and the associated exclusions under Insurance Code §846.001. This

incorporation aligns with both state and federal law. Because of this alignment with federal law, a plan that falls within the definition of health benefit plan will almost always be subject to federal essential health benefit and annual and lifetime limit restrictions under 45 CFR §147.126, forcing it to be somewhat comprehensive. To prevent unintended consequences and to reflect the variable nature of "major medical health insurance," TDI declines to create overly prescriptive requirements. A comprehensive health benefit plan may include a number of different benefit types, coverages, and levels or tiers. TDI anticipates reviewing a MEWA's health benefit plan filing like it does filings submitted by other Texas carriers to determine whether the proposed coverage is "comprehensive."

TDI will monitor this issue and encourages stakeholders to submit formal complaints if operational issues arise that can be addressed through future rulemaking or other agency action.

Comment. One commenter raises concern about §7.1902(4) as proposed, which broadens the definition of "employee welfare benefit plan" to include a MEWA when each of the employers 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. The commenter notes that the recent United States Department of Labor (DOL) action that formally rescinded the rule titled "Definition of 'Employer' - Association Health Plans" reinstated the longstanding guidance that the DOL uses to determine whether an employer group or association is a bona fide group or association. The commenter states that an employee welfare benefit plan must meet specific federal requirements in order to meet the federal definition of "employee welfare benefit plan" and that the proposed definition expanding the scope

may result in confusion and noncompliance. The commenter suggests that, if TDI retains this definition, the term "in the same region" be specifically defined and repropose so that stakeholders have an opportunity to provide comments on the definition.

Agency Response. TDI agrees, in part, and has modified the definition of "employee welfare benefit plan" to remove the reference to principal place of business in the same region. As adopted, §7.1902(4) assigns the term the meaning under Section 3(1) of ERISA, which is consistent with Insurance Code §846.001(2). The definition of "employee welfare benefit plan" as adopted also removes the previous plan requirements because those specific plan requirements are addressed throughout §7.1904. Removing the plan requirements in the definition section is not intended to change the requirement that a plan be established for a particular purpose; clearly set out the rights, privileges, obligations, and duties of employers, employees, and beneficiaries; and plainly describe certain plan information required by federal law.

TDI declines to define "in the same region" at this time or to repropose this rulemaking. Given the recent changes in federal law, it is unclear how many MEWAs will be able to offer coverage compliant with federal law where the only commonality between employers is geographic. It is also unclear in what ways geography could be used by a MEWA to unfairly exclude employers. TDI will continue to monitor the issue to determine whether additional rulemaking may be necessary in the future.

Comment. One commenter states that HB 290 authorized working owners to participate in a MEWA as an employer and an employee. The commenter requests confirmation that, because TDI declined to address working owners in the proposed definition of MEWA in §7.1902(5), no additional clarification is needed under HB 290. Another commenter notes

that, although HB 290 authorizes sole proprietors (i.e., working owners) without common law employees to qualify as an employer and as an employee, the proposed rule is broader than federal law, regulation, or guidance. This commenter states that a working owner may be considered an employer for purposes of the MEWA definition in Section 3(40) of ERISA (29 United States Code §1002(40)), but not for purposes of the definition of "employee welfare benefit plan" under Section 3(1) of ERISA (29 United States Code §1002(1)).

Agency Response. HB 290 authorizes working owners, also known as "sole proprietors," to qualify as both an employer and as an employee of the trade or industry for the purposes of MEWA formation and structure. One reason this was not addressed in the rule is because no clarification of the statute is needed, and it is not necessary to repeat the statute in rule. Additionally, HB 290 requires all MEWAs to comply with both state and federal law. The federal rules that broadened the definition of "employer" under ERISA were rescinded on April 30, 2024, and the Department of Labor signaled a return to pre-2018 AHP Rule guidance, which requires certain criteria to be met before the association is deemed a bona fide association. TDI agrees that current federal law does not authorize working owners to qualify as an employer and an employee for purposes of ERISA's definition of "employee welfare benefit plan" under Section 3(1) of ERISA (29 United States Code §1002(1)). Under current federal law, working owners as defined in Insurance Code §846.0035(d-1) are not eligible employers for purposes of creating or participating in a bona fide association or group under ERISA.

TDI recognizes that federal law may change to authorize expanded eligibility, similar to the 2018 AHP rules that were recently rescinded. TDI will continue to monitor federal law for amendments that broaden the employers that may participate in a bona

fide association but will apply HB 290 as written by requiring MEWAs to comply with current federal law.

Comments on §7.1904. Application for Initial Certificate of Authority.

Comment. One commenter notes that the rule text in §7.1904(b)(1)(C) and (D) is incongruent because the rule text fails to include the term "license" in §7.1904(b)(1)(D). The commenter also suggests modifying the rule text in both subparagraphs to clarify that the MEWA must report the list of states where it "is otherwise authorized to do business in that state" whether it is fully insured or not.

Agency Response. TDI declines to add the statement "otherwise authorized to do business in that state" in §7.1904(b)(1)(C) or §7.1904(b)(1)(D), as it may inadvertently broaden the reporting requirements to include inapplicable businesses. However, TDI agrees to modify the rule text in those sections to add the requirement that a MEWA must report every state where the MEWA is licensed or has a certificate of authority, "whether the MEWA is fully insured or not." All plan- and non-plan MEWAs must complete and file the Federal Form M-1 annual report with the Employee Benefits Security Administration of the United States Department of Labor, including reporting all of the states where the MEWA is operating and whether the entity is fully insured in that state. Because MEWAs must already compile this information, the additional reporting requirement in Texas should not impose a cost to MEWAs to comply. In response to this comment, TDI has also modified the rule text in §7.1904(b)(1)(D) to add "license" to the list for consistency with §7.1904(b)(1)(C).

Comment. One commenter suggests clarifying §7.1904(b)(3)(F) by adding that each trustee, officer, director, or administrator must include "any previous or current" ownership or control of entities involved in the business of insurance when the person completes the biographical affidavit required in a MEWA application.

Agency Response. TDI agrees with the commenter's suggested changes and has modified the rule text to add the suggested language in §7.1904(b)(3)(F). To hasten application review time, MEWAs may continue to use TDI Form FIN311, available on TDI's forms website at www.tdi.texas.gov/forms to comply with §7.1904(b)(3).

Comment. One commenter recommends adding language in §7.1904(b)(11) that clarifies that, for MEWAs that are not bona fide associations or groups under ERISA, the fidelity bond issued in the name of the MEWA must also protect against acts of fraud or dishonesty by those "with access to funds held by the MEWA on behalf of separate employee welfare benefit plans established or maintained by the MEWA's employer-members." The commenter also notes a mistake in §7.1904(b)(11) where the term "employer" was used in error.

Agency Response. TDI agrees with the commenter's suggested changes and has modified the rule text to add similar language as recommended by the commenter and to fix the noted error.

Comment. One commenter recommends that TDI investigate whether the \$500,000 cap on a fidelity bond is appropriate for MEWAs that fund multiple individual ERISA-covered employee welfare benefit plans.

Agency Response. TDI declines to make a change to the rule text as proposed, as it is outside the scope of this rulemaking. TDI, however, will monitor this issue to ensure that the \$500,000 cap on the fidelity bond is appropriate for the types of MEWAs referenced by the commenter.

Comment. One commenter suggests broadening the employee-employer relationships listed in §7.1904(b)(13) that are prohibited between an actuary and the MEWA. The commenter proposes clarifying that an actuary may not prepare an actuarial opinion if the actuary is an employee of the MEWA's employer-members, an affiliate of the MEWA or its employer-members, or an employee of an affiliate of the MEWA.

Agency Response. TDI agrees to change the rule text in §7.1904(b)(13) and §7.1912(a)(2) to expand the employee-employer relationships that are prohibited. As adopted, the rule text adds the language as suggested by the commenter in §7.1904(b)(13) and §7.1912(a)(2).

Comment. One commenter states that Insurance Code §846.0035(b), which requires MEWAs that provide a comprehensive health benefit plan to comply with the Insurance Code Chapter 421, does not prohibit the application of Insurance Code §846.154 in addition to the requirements in Insurance Code Chapter 421. This commenter recommends that TDI modify §7.1904(b)(13)(B) to require MEWAs subject to Insurance Code §846.0035(b) to comply with reserve requirements in both Insurance Code §846.154 and Insurance Code Chapter 421.

Agency Response. TDI agrees that MEWAs that provide a comprehensive health benefit plan must comply with the reserve requirements in both Insurance Code Chapter 421 and

§846.154. Insurance Code Chapter 421 requires an insurer in Texas to maintain reserves in an amount estimated in the aggregate based on certain loss or claims data for which the insurer may be liable. Under Insurance Code §846.154, the amount of cash reserves recommended under Insurance Code §846.153(c)(2) may not be less than the greater of (I) 20% of the total contributions in the preceding plan year or (II) 20% of the total estimated contributions for the current plan year. Section 846.154 also states the standards for calculating the cash reserves required under Insurance Code Chapter 846. Insurance Code Chapter 421 and §846.154 may be read consistently and, as a result, a MEWA must comply with both provisions.

In response to this comment, TDI has modified the rule text in multiple sections to clarify that both Insurance Code Chapter 421 and §846.154 apply to MEWAs under Insurance Code §846.0035. In §7.1904(b)(13)(B)(i) and (ii) and §7.1912(a)(2)(B)(i) and (ii), TDI has modified the rule text to state that all MEWAs must comply with the reserve requirements in Insurance Code §846.154 and that MEWAs that provide a comprehensive health benefit plan must also comply with Insurance Code Chapter 421, in addition to those requirements in Insurance Code §846.154. TDI has also modified §7.1905(a)(10) and (11) to replace "or" with "and" between Insurance Code §846.154 and Insurance Code Chapter 421 to clarify that these MEWAs must comply with both requirements.

Comment. One commenter requests clarification on whether MEWAs that provide comprehensive health benefit plans under HB 290 must comply with 28 TAC §7.402, which requires certain carriers to file electronic versions of risk-based capital (RBC) reports and supplemental RBC forms with the National Association of Insurance Commissioners (NAIC). The commenter states that the reporting requirements under §7.402 should not

apply because a MEWA is not an insurance company and does not file those documents with the NAIC. The commenter suggests that a MEWA could instead file the documents required under §7.402 with TDI directly.

Agency Response. TDI understands that MEWAs generally do not file the RBC reports and forms required under 28 TAC §7.402 with the NAIC. At this time, TDI will not require a MEWA to file the documentation required under §7.402 with TDI. However, a MEWA may file this or similar documentation with TDI if it so chooses. TDI will continue to monitor this issue to determine whether this or similar information is needed and will take appropriate action as necessary.

Comments on §7.1906. Application for Final Certificate of Authority.

Comment. One commenter suggests adding language in §7.1906(c) to clarify that a MEWA must comply with "any Insurance Code chapter provisions that apply to a MEWA that provides a comprehensive health benefit plan under Insurance Code §846.0035" before the commissioner will issue a final certificate of authority.

Agency Response. TDI agrees with the commenter and has changed the rule text as proposed in §7.1906(c) to clarify that the commissioner will issue a final certificate of authority to a MEWA only after examination, investigation, and determination that the requirements of Insurance Code Chapter 846, other applicable Insurance Code provisions, and the rules in Chapter 7, Subchapter S have been met.

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

Comment. One commenter expresses concern about the proposed language in §7.1907(e) that authorizes TDI to extend the deadline to correct a deficiency "as otherwise agreed to by the department." The commenter states that TDI lacks statutory authority for such an open-ended extension of the deadline and recommends TDI either remove §7.1907(e)(3) from the adoption order or cap the potential extension at not more than 40 days after the date the notice of deficiency is received.

Agency Response. TDI disagrees with the commenter's statement that TDI lacks statutory authority to work with a MEWA to ensure filed applications are complete, but has modified the rule text to clarify that TDI will consider a response to a notice of deficiency timely if the MEWA responds with all the information requested "within a reasonable time period as agreed to by the department based on the MEWA's circumstances." Under Insurance Code §846.056, a MEWA must apply for a final certificate of authority before the one-year term of the initial certificate of authority ends. TDI has found that providing flexibility in the timeframes for MEWAs to submit requested information to TDI is sometimes useful and believes that it has the authority to agree to reasonable extensions of time.

Comment. One commenter states that §7.1907(f) as proposed improperly expands Insurance Code §846.055 by allowing the extension of the initial certificate of authority to be made "at the discretion of the commissioner on a determination that the MEWA is likely to meet the requirements of this subchapter within one year." The commenter suggests modifications to §7.1907(f) to more closely reflect Insurance Code §846.055 by removing the reference to commissioner discretion and adding clarification that the

MEWA compliance with the subchapter must be based on the commissioner's determination that compliance will occur within the granted extension period.

Agency Response. TDI disagrees that §7.1907(f) as proposed improperly expands Insurance Code §846.055 because it permits the commissioner to extend the term of an initial certificate of authority for a period not to exceed one year if the commissioner determines that the MEWA is likely to meet the requirements for a final certificate of authority within that period. For clarity and consistency with Insurance Code §846.055, TDI has modified §7.1907(f) by deleting the statement "within one year" as proposed, and replaced it with the phrase "within the granted extension period" as suggested by the commenter.

Comments on §7.1910. Required Notice to Participants.

Comment. One commenter states that §7.1910(a) as proposed lists notices that a MEWA must provide to any employee covered by an employee welfare benefit plan in connection with the MEWA. The commenter notes that these notices are only required to be provided to a participating employee or former employee covered by the plan, appearing to suggest that the notices should also go to all plan participants. The commenter also notes that the rule does not reference the provision of any other notices required by the Insurance Code.

Agency Response. TDI declines to extend the notice requirement to all plan participants as the scope currently tracks the notice requirement of Insurance Code §846.254. TDI agrees that the rule is not intended to imply that other notices may not also be required. Accordingly, language has been added to clarify that the notices required in §7.1910 are

in addition to any other notices required by law. TDI will monitor this issue to determine whether additional agency action is warranted.

Comment. One commenter recommends requiring a MEWA to provide standardized consumer disclosures regarding the comprehensive or non-comprehensive nature of the plan to lessen the potential consumer confusion related to the differences in covered benefits. The commenter suggests including specific disclosures that notify the consumer about such issues as covered benefits, preexisting-condition exclusions, and cost-sharing provisions under the specific plan.

Agency Response. While drafting the proposal, TDI considered requiring a consumer disclosure that outlined the differences in comprehensive health benefit plans and non-comprehensive health benefit plans. TDI declined to propose this requirement and declines to make this change in the adoption order because staff concluded that the requirement would be redundant. A MEWA is already subject to federal disclosure requirements under 29 United States Code §1022, 29 CFR §2520, and 45 CFR §147.200, as applicable. For example, a MEWA offering a group health plan (as defined in 45 CFR §146.145) must provide a summary plan description to participants and beneficiaries that includes information about coverage for drugs and medical tests, devices, and procedures; cost-sharing provisions; and other information about the plan. TDI will enforce this under §7.1904(b)(9) and (b)(19). It must also provide a summary of benefits and coverage that includes a description of the coverage, including cost-sharing. MEWA group health plans may not exclude preexisting conditions under 45 CFR §147.108. A MEWA offering a product other than a group health plan will generally have to meet the definition of an excepted benefit under 45 CFR §146.145 and will be required to provide

different disclosures. For example, fixed indemnity products must provide the disclosure required by 45 CFR §146.145. Other than fixed indemnity, excepted benefit product coverages are so limited that TDI believes they will rarely be confused with comprehensive health plans.

Comment on §7.1917. Comprehensive Health Benefit Plan.

Comment. One commenter states that HB 290 expressly requires the commissioner to determine whether a plan provided by a MEWA is a "comprehensive health benefit plan." The commenter states that §7.1917 as proposed is insufficient to meet the statutory obligations under HB 290, which requires that the commissioner determine whether a plan is a "comprehensive health benefit plan." The commenter reasons that, because §7.1917 only authorizes the commissioner to review the sufficiency of the filing under §7.1917, if the commissioner determines that the filing is complete, the commissioner will have "determined" the plan is a comprehensive health benefit plan. The commenter recommends that TDI modify the rules in §7.1902 and §7.1917 to clarify that the commissioner must make the determination that a plan is a "comprehensive health benefit plan" under HB 290. The commenter also recommends that TDI describe the factors or processes the commissioner will use in making this determination.

Agency Response. TDI disagrees with the commenter's interpretation of HB 290 and declines to make the change to the rule text. TDI will review each MEWA filing according to its standard practice of reviewing plan or policy documents to determine whether all of the discrete federal and state requirements are met.

Comment. One commenter requests clarification on compliance requirements when a MEWA uses an admitted insurance carrier in Texas for its network, claims processing, and care management. The commenter asks whether TDI will automatically deem a MEWA in compliance with the requirements under Insurance Code §846.0035 if the admitted insurance carrier is in compliance with those requirements and has filed as such. Alternatively, the commenter asks whether the MEWA could file that the MEWA is using an admitted carrier and provide a letter from the carrier that indicates compliance with the provisions in Insurance Code §846.0035.

Agency Response. TDI expects MEWAs to comply with the reporting requirements in Insurance Code Chapter 846 and other provisions in the Insurance Code, as applicable, as well as the requirements in Chapter 7, Subchapter S. MEWAs are responsible for ensuring compliance with all the applicable requirements. A MEWA may work with a third-party administrator according to Insurance Code §846.303. If a MEWA has contracted with a third-party administrator that has previously made filings with TDI, the MEWA is encouraged to provide documentation that references the most recent filings for the applicable services being used by the MEWA. This information will help TDI expedite its review.

**Subchapter S. 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. The commissioner adopts amendments to 28 TAC §§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 MEWA may elect to be bound by Insurance Code §846.0035.

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

Insurance Code §846.0035(c) authorizes the commissioner to determine whether a MEWA 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 MEWA 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 Texas residents.

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.

TEXT.**§7.1901. Scope and Applicability.**

(a) This subchapter applies to any multiple employer welfare arrangement that is subject to Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements.

(b) This subchapter does not apply to any arrangement or plan that is established or maintained:

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

(2) 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, have the following meanings unless the context clearly indicates otherwise.

(1) Business plan--The comprehensive, detailed plan by which the 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) Employee welfare benefit plan--Has the meaning assigned by Insurance Code §846.001, concerning Definitions.

(5) Multiple employer welfare arrangement--An employee welfare benefit plan, or any other arrangement that is established or maintained for the purpose of offering or providing any benefit described in Insurance Code §846.201, and restated in §7.1909 of this title (relating to Benefits Allowed To Be Provided by 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 meets either or both of the following criteria:

(A) one or more of the employer members in the 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 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 complete application for initial 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.

(b) In order to be considered complete, the application must contain the following items:

(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, whether the MEWA is fully insured or not; and

(D) a list of all the states where the MEWA holds a certificate of authority or license under an assumed name, whether the MEWA is fully insured or not;

(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 any previous or current 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 certified copy of the articles of incorporation, if applicable;

(6) a certified copy of the bylaws, constitution, or rules or regulations establishing and operating the MEWA;

(7) trust agreements created in connection with the MEWA, which must be signed by all trustees;

(8) a welfare benefit plan document, including documentation or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the MEWA;

(9) a summary plan description, consistent with 29 United States Code §1022, that:

(A) is written in a manner calculated to be understood by the average plan participant and is 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:

- (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 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 are denied in whole or in part; and

(xii) a statement of guaranty fund 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);

(10) financial statements, including:

(A) a current financial statement. If the MEWA 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 must be developed according to 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 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, 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) a copy of the fidelity bond issued in the name of the MEWA protecting against acts of fraud and dishonesty by its trustees, directors, officers, employees, administrator, or other individuals responsible for servicing the employee welfare benefit plan, including, for MEWAs that are not bona fide associations or groups under ERISA, those individuals with access to funds held by the MEWA on behalf of separate employee welfare benefit plans established or maintained by the MEWA's employer-members. Such bond must be in an amount equal to the greater of 10% of the premiums and contributions received by the MEWA, 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 administrator licensed to engage in business in this state;

(12) a business plan that includes the following six major areas.

(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. The outline must also include the number of participating units. To the extent such information is available, it also must include the number of dependents covered or to be covered by the MEWA. 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 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. In addition, the applicant must 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.

(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 administrator responsible for or proposed to be responsible for servicing the program of the MEWA. If a third-party administrator is to service the plan, a copy of the third-party administrator's Texas license must be attached. In addition, a copy of the agreement between the MEWA and the third-party administrator must be submitted, signed by the third-party administrator and trustees or directors of the MEWA.

(D) The applicant must provide documentation that the MEWA 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 also describe the present or proposed plan to service billings, claims, and underwriting. The criteria for underwriting must be actuarially justified.

(E) The applicant must provide a specific outline and description of the MEWA's marketing efforts. The applicant must 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.

(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;

(13) subject to Insurance Code §846.157(b), concerning Renewal of Certificate; Additional Actuarial Review, an actuarial opinion prepared by an actuary who is not an employee of the MEWA, an employee of the MEWA's employer-members, an affiliate of the MEWA, or an affiliate of the MEWA's employer-members, or an employee of an affiliate of the MEWA; 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 include the following:

(A) a description of the actuarial soundness of the MEWA, including any recommended actions that the MEWA should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the MEWA should maintain.

(i) For all MEWAs, the recommended amount may 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 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 Insurance Code §846.154, concerning Cash Reserve Requirements, must 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

(ii) 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 also comply with Insurance Code Chapter 421, concerning Reserves in General.

(C) the recommended level of specific and aggregate stop-loss insurance the MEWA should maintain;

(14) if the MEWA is in existence at the time of its application, annual reports meeting the substantive requirements of 29 United States Code §1023 and §1024 must be filed. To the extent that such annual reporting requirements are not otherwise met by existing MEWAs when complying with other provisions of this subchapter, a filing under this paragraph must be made, and must include, at a minimum:

(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 plan benefits. The statement must 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) documentation indicating that the MEWA 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) documentation that the MEWA possesses a written commitment, binder, or policy for stop-loss insurance issued by an insurer authorized to do business in this state that provides:

(A) at least 30 days' notice to the commissioner of any cancellation or nonrenewal of coverage; and

(B) 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 Insurance Code §846.153, concerning Required Filings, and paragraph (13) of this subsection;

(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.

(c) On finding of good cause, the commissioner may order an actuarial review of a MEWA in addition to the actuarial opinion required by Insurance Code §846.153. The cost of any such additional actuarial review must be paid by the MEWA.

(d) Upon application of a MEWA, the commissioner may waive or reduce the requirement for aggregate stop-loss coverage and the amount of reserves required by Insurance Code §846.154, 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 Certificate of Authority.

(a) The commissioner will promptly review the documentation submitted by the applicant and may conduct any necessary investigation and examine under oath any persons interested in or connected with the multiple employer welfare arrangement (MEWA). Within 60 days of the filing of a completed application, the commissioner will issue an initial certificate of authority, which is a temporary certificate of authority for a term of one year, to the MEWA, provided that all of the following conditions have been met:

(1) the employers in the MEWA:

(A) are members of an association or group of five or more businesses that are the same trade or industry, including closely related businesses that 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 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 has been in existence for a

period of not less than two years before 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 is controlled and sponsored directly by participating employers, participating employees, or both;

(5) the association or group of employers in the MEWA is a not-for-profit organization;

(6) the MEWA 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 administrator that holds a current certificate of authority to engage in business in the State of Texas;

(7) the MEWA 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 possesses a written commitment, binder, or policy for stop-loss insurance issued by an insurer that has a certificate of authority to engage in business in the State of Texas that provides:

(A) at least 30 days' notice to the commissioner of any cancellation or nonrenewal of coverage;

(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, and verified by the signature of the actuary who prepared the report; and

(C) 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) the contributions must be set to fund at least 100% of the aggregate retention plus all other costs of the MEWA;

(10) if the reserves required by Insurance Code §846.154, concerning Cash Reserve Requirements, exceed the greater of 40% of the total contributions for the preceding 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, but in no event less than the level of contributions necessary to fund the minimum reserves required under Insurance Code §846.154, and Insurance Code Chapter 421, concerning Reserves in General, for comprehensive health benefit plans;

(11) the minimum reserves required by Insurance Code §846.154, and Insurance Code Chapter 421 for comprehensive health benefit plans have been established or will be established before the final certificate of authority is issued;

(12) the MEWA has established a procedure for handling claims for benefits in the event of dissolution of the MEWA;

(13) the MEWA has obtained the required fidelity bond;

(14) the MEWA has submitted its plan document or any instrument describing the rights and obligations of the employers, employees, and beneficiaries with respect to the MEWA;

(15) the MEWA 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 notifications include any of the disclosures in the following:

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

(B) that in the event the plan or the MEWA 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 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 department as required under Insurance Code §521.005, concerning Notice to Accompany Policy; and

(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 may commence doing business in this state only after it receives its initial certificate of authority.

(c) The MEWA must 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).

§7.1906. Application for Final Certificate of Authority.

(a) A multiple employer welfare arrangement (MEWA) that 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 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.

(b) The application must include only the following information:

(1) the names and addresses of:

(A) the association or group of employers sponsoring the MEWA;

(B) as applicable, the members of the board of trustees or directors of the MEWA; and

(C) at least five employers, if the arrangement is not an association, whose information will 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 be retained by the commissioner as confidential. (Indicate on what pages the specific benefits are listed);

(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 Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, have been met;

(B) an actuarial opinion that describes 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;

(C) a certified statement of the current value of the assets and liabilities accumulated by the MEWA (unless the application for final certificate of authority is filed 90 days or later following the close of the fiscal year for the MEWA, in which case the financial statement must be an audited statement), and a projection of the assets, liabilities, income, and expenses of the MEWA 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

(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) After examination, investigation, and determination that all the requirements of Insurance Code Chapter 846, other applicable Insurance Code provisions, and this subchapter have been met, the commissioner will issue a final certificate of authority to the MEWA.

§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 be in writing. Such notice will set forth the basis for the refusal, and constitutes 30 days' advance notice of revocation of the initial certificate of authority.

(b) If the 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. The commissioner will promptly conduct a hearing in which the applicant will 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) within a reasonable time period as agreed to by the department based on the MEWA's circumstances.

(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 the granted extension period. 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 collect, and the applicant affected must 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.

§7.1909. Benefits Allowed To Be Provided by Multiple Employer Welfare Arrangements.

(a) A multiple employer welfare arrangement (MEWA) licensed under Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, and this subchapter will be limited to providing any one or more of the benefits described as follows:

- (1) medical, dental, vision, 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 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.).

§7.1910. Required Notice to Participants.

(a) In addition to any other notices required by law, a multiple employer welfare arrangement (MEWA), in connection with an employee welfare benefit plan, must provide to each participating employee or former employee covered by the plan a written notice at the time the coverage of such participating employee or former employee becomes effective. The written notice must contain, at a minimum, the following:

- (1) that individuals covered by the plan are only partially insured;
- (2) that in the event the plan or the MEWA 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 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 department as required under Insurance Code §521.005, concerning Notice to Accompany Policy; 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 also briefly explain the types of information in the summary plan description.

§7.1911. Name Eligibility and Proof of Existence.

(a) A multiple employer welfare arrangement (MEWA) licensed under this subchapter may not take any name that is the same as or closely resembles the name of another MEWA possessing a certificate of authority and doing business in this state. A MEWA 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 not adopt any assumed name, except that a MEWA by amending its articles may change its name or take a new name with the approval of the commissioner.

(b) Whenever it is necessary in any legal proceeding to prove the existence of a MEWA, a certified copy of the MEWA's certificate of authority is prima facie evidence of the existence of the MEWA.

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

(a) Each multiple employer welfare arrangement (MEWA) transacting business in this state must file annually with the commissioner statements and reports described as follows:

(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, an employee of the MEWA's employer-members, an affiliate of the MEWA, or an affiliate of the MEWA's employer-member, or an employee of an affiliate of the MEWA; 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 include:

(A) a description of the actuarial soundness of the MEWA, including any recommended actions that the MEWA should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the MEWA should maintain, as follows:

(i) for all MEWAs, the recommended amount may 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; and

(ii) 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 also comply with Insurance Code Chapter 421, concerning Reserves in General;

(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 should maintain.

(b) The cash reserves required by Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, and this subchapter must 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 review the statements and reports required by subsection (a) of this section. The commissioner will automatically renew a MEWA's certificate of authority unless the commissioner finds that the MEWA does not meet the requirements of Insurance Code Chapter 846, and this subchapter.

(d) On a finding of good cause, the commissioner may order an actuarial review of a MEWA in addition to the actuarial opinion required by Insurance Code §846.153(a)(2), concerning Required Filings. The cost of any such additional actuarial review must be paid by the MEWA.

(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 Welfare Arrangements.

(a) The commissioner or any person appointed by the commissioner will have the power to examine the affairs and conduct of any multiple employer welfare arrangement (MEWA) and for such purposes will 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. Examinations of a MEWA will 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 be paid by each MEWA in the same manner and to the same extent as is provided for domestic insurance companies in 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.

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

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

(b) The board of trustees or directors must 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. All officers and agents may exercise the authority and perform the duties required in the management of the property and affairs of the MEWA 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 will be served by the removal. The board of trustees or directors must secure the fidelity of any or all such officers or agents who handle the funds of the MEWA by bond or otherwise.

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

(d) An officer, employee, or agent of a MEWA may not be compensated unreasonably. The compensation of any officer or employee of a MEWA may not be calculated directly or indirectly as a percentage of money or premium collected. The compensation of any agent may 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 Insurance Code §846.003, concerning Limited Exemption from Insurance Laws; Applicability of Certain Laws, the commissioner may suspend, revoke, or limit the certificate of authority of a multiple employer welfare arrangement (MEWA) if the commissioner finds, after notice and hearing, that the MEWA does not meet the requirements of Insurance Code Chapter 846, concerning Multiple Employer Welfare Arrangements, and this subchapter.

§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 offers or seeks to offer a comprehensive health benefit plan and 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) 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 Welfare Arrangements Requirements for
Obtaining and Maintaining Certificate of Authorization
~~[28 TAC §7.1903]~~**

STATUTORY AUTHORITY. The commissioner adopts 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.

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 adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on October 17, 2024.

2024-8916

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 7. Corporate and Financial Regulation

Adopted Sections
Page 72 of 72

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

The repeal of 28 TAC §7.1903, and the new and amended sections in 28 TAC §§7.1901, 7.1902, and 7.1904 - 7.1917 are adopted.

Signed by:
Cbrown
FC5D7EDDFFB4F8... _____
Cassie Brown
Commissioner of Insurance

Commissioner's Order No. 2024-8916