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December 26, 2001

BULLETIN NO. 01-01

TO: ALL LICENSED ACCIDENT AND HEALTH INSURANCE COMPANIES, HEALTH MAINTENANCE ORGANIZATIONS, LICENSED AND REGISTERED THIRD PARTY ADMINISTRATORS, AND REGISTERED PROFESSIONAL EMPLOYEE ORGANIZATIONS

ALL AGENT TRADE ASSOCIATIONS, INSURER TRADE ASSOCIATIONS, AND OTHER INTERESTED PARTIES

FROM: THE LOUISIANA DEPARTMENT OF INSURANCE

RE: SALE OF UNAUTHORIZED ACCIDENT AND HEALTH INSURANCE PLANS IN THE STATE OF LOUISIANA

BY THIS BULLETIN, THE LOUISIANA DEPARTMENT OF INSURANCE ASKS ALL LICENSED INSURERS TO DISTRIBUTE THIS INFORMATION TO THEIR AGENTS / PRODUCERS.

Nationwide, the health insurance marketplace is facing tougher times. Across the country, the cost of health insurance is increasing and consumers cope with difficult choices. Into this climate enter shady operators seeking to take advantage of consumers. Calling themselves "ERISA exempt," "ERISA plans," "union plans," "welfare trust", "association plans", "voluntary employees beneficiary associations (VEBA)", or some variation thereof. These entities boast low rates and minimal or no underwriting.

Remember, if it seems too good to be true, it probably is. There is a good chance that these entities are not legitimately exempt from state laws, but instead are offering unauthorized health insurance.

These entities claim that they are not subject to state insurance regulation because of "ERISA." Some claim that agents are used only as "labor consultants" or "business agents" to "enroll" or "negotiate" with potential members, and not to sell. Such claims should be viewed with skepticism. It is a crime to solicit or sell an unauthorized insurance product.

Legitimate ERISA plans (plans governed by the federal Employee Retirement Income Security Act of 1974) and union plans may be exempt from state insurance regulation, which is why criminals try to fool people by making these claims. However, legitimate ERISA or union plans are established by unions for its own members or by an employer for the employer's own employees. They are not sold by insurance agents.

Read all materials and websites carefully. Consider the following list of some circumstances and plan characteristics that should prompt your very careful investigation, including contacting the insurance department:

- The plan operates like insurance but claims that it is not.
- You are asked to avoid certain insurance terminology, even though the plan operates like insurance, i.e. "moneys collected are called contributions, not premiums".
- The plan is covered only by "stop loss insurance" or refers to "reinsurance."
- You are asked to sell a "federally approved ERISA" or "union" plan, especially any self-funded plan or program marketed to both employers for coverage of employees and, to individuals without regard to their employment status.
- You are asked to sell an "employee leasing" arrangement with self-funded health coverage or to target "professional employer organizations" for participation in a self-funded health plan.
- The plan targets individuals or groups with employees that have pre-existing conditions.
- The plan advertises unusually low premiums and/or unusually generous benefits, low (or no) minimum requirements for participation, and loose (or no) underwriting guidelines.

Insurance agents should contact the Louisiana Department of Insurance anytime they are approached about an entity that seems suspicious. If you are asked to sell health coverage and it is represented as exempt from insurance regulation under "ERISA" or as a "union", it may be illegal. The insurance agent who does not inform the Insurance Department takes an enormous risk. An agent who fails to report and sells unauthorized insurance should expect to lose his or her license, possibly be subject to criminal prosecution, be liable for any taxes owed the state, and face personal liability for any claims incurred under the unauthorized coverage.

Anyone with information about an entity offering health coverage without state authorization should contact the MEWA Task Force at (225) 342-2480 or by e-mail at workgroup@ldi.state.la.us.