


ERISA Health Plans: Seller Beware

The familiar warning *caveat emptor* (buyer beware) certainly applies to those shopping for affordable health coverage for themselves and their employees. The marketplace is filled with legitimate options, and sorting through the options and features can boggle the mind. However, there has been a trend in recent years for unscrupulous individuals to meet the growing need for less expensive health plans by marketing illegitimate programs under the guise of “ERISA health plans.” There are ways to identify and avoid such illegitimate schemes—hopefully saving both you and your clients the financial and legal troubles that have befallen many others.

Recent schemes have involved marketing materials purporting to provide a group health plan wherein an employee becomes eligible to participate merely by joining an association or union. However, the qualifications for joining involved only the payment of a small fee—there was usually no nexus between the association’s title and the job performed by the member. Unions and associations in these schemes exist only to provide purported health care benefits to members; they do not perform any collective bargaining or other typical functions. Employees from multiple employers would all be in the same plan, so long as they were members of an eligible association or union. Marketed as “ERISA health plans,” they have been sold as being unregulated by any Department of Insurance. Often, there is an offshore reinsurer listed, also purportedly unregulated. Thus, agents are told that performing due diligence by phoning the DOI is unlikely to bear fruit as there is no need for the DOI to register or approve these plans.

Premiums for these plans appear to be significantly lower than those required by other fully insured or partially self-insured plans. Agents’ commissions appear to be much higher as well. Let’s review: Easy access, unregulated, unusually low premiums, unusually high commissions and no legitimate health insurer registered with the DOI. The old saying, “if it sounds too good to be true, it probably is” applies perfectly to this situation. Thousands of individuals are now struggling to pay millions of dollars in unpaid medical bills because these fraudulent health insurance plans stopped paying benefits, and the insurance agents who sold the plans have been hauled into court potentially to bear responsibility.

ERISA applies to regulate an employer or union’s group health and pension benefits. It does not create an “end around” for an unlicensed insurer to do the business of insurance. It does not allow insurance marketers to create an unregulated Multiple Employer Welfare Arrangement (MEWA). If it smells like insurance, and walks like insurance, it is insurance, and it should be subject to regulation by the DOI. If you are asked to market a group health plan and the insurer is unidentified or otherwise not licensed to do business by your state’s DOI, a huge red flag should go up. If the premiums seem unusually low or the commissions unusually high, more red flags. If employees have to join a group that has no function other than creating eligibility for purported insurance benefits, even more red flags should pop up.

For more information, check out the U.S. Department of Labor and your state’s DOI Web sites. One particularly notorious scheme was marketed under the name Employers Mutual, LLC, and there are many materials available describing its operations and devastating effects on customers and sales agents. The diligence with which you must ensure that all the products you sell are legitimate cannot be overemphasized. The penalties for failure can include loss of your license, fines and responsibility for paying any unpaid health care costs incurred by your clients. Don’t take any shortcuts—there aren’t any. 

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What is ERISA?

The Employee Retirement Income Security Act (ERISA) is federal legislation that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans. The act regulates the health and pension plans provided by private employers and some unions. Recent amendments have added COBRA (mandating that employers allow former employees to continue participation in the group health insurance plan for a period of time following employment termination) and HIPAA (which provides protections for those with pre-existing conditions, among other things). As to health insurance plans, ERISA mandates that employers provide certain disclosures to their employees and provides certain minimum standards group health plans must meet.

—L.W.