2007 SUNSET REVIEW

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Multiple Employer Welfare Arrangement Pilot Program

October 15, 2007

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
Office of Policy, Research and Regulatory Reform
Bruce Harrelson, Director

1560 Broadway, Suite 1550
Denver, CO 80202
Phone: (303) 894-7855
FAX: (303) 894-7885
www.dora.state.co.us/opr

Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

October 15, 2007

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Multiple Employer Welfare Arrangement (MEWA) pilot program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2008 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

> The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...
>
> The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination…

The report discusses the question of whether the MEWA pilot program provided under Part 9 of Article 16 of Title 10, C.R.S., serves to protect the public health, safety or welfare. The report also discusses the effectiveness of the Division of Insurance and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn
Executive Director

2007 Sunset Review
Multiple Employer Welfare Arrangement Pilot Program

Department of Regulatory Agencies

Bill Ritter, Jr.
Governor

D. Rico Munn
Executive Director

Executive Summary

Quick Facts

What is Regulated? Multiple Employer Welfare Arrangements (MEWAs) created after 2003.

How Many Are There? No MEWAs have been created since 2003, although one that was created prior to 1993 still exists.

How is it Regulated? Under the MEWA pilot program, participants (employers) are able to choose to form a self-funded or a fully insured MEWA. To participate in a MEWA, the employer must be a member of a *bona fide* association that satisfies certain, enumerated statutory criteria. The basic premise of the MEWA pilot program is to allow a *bona fide* association to group together its members to create a larger health insurance-purchasing pool, thereby reducing the premium charged to individual participants.

What Does it Cost? No state expenditures are associated with MEWAs.

What Disciplinary Activity is There? There have been no disciplinary actions against MEWAs.

Where Do I Get the Full Report? The full sunset review can be found on the internet at: http://www.dora.state.co.us/opr/oprpublications.htm

Key Recommendations

Sunset the MEWA pilot program.
A MEWA, on the surface, seems to be a viable alternative to the small group health insurance market. However, if MEWA participants become ill or need extensive medical attention, individual premiums could potentially increase causing healthy participants to choose to re-enter the small group health insurance market and leave the MEWA. This is because in leaving the relatively large small group market, where the entire market serves as the pool for underwriting purposes, MEWA participants essentially form their own, smaller pool. In this regard, MEWAs are simply unworkable and the pilot program should be sunsetted.

Additionally, the General Assembly directed the Department of Regulatory Agencies to address four specific issues in this sunset report:

- The number of persons who are insured through a MEWA = 0
- The effect of allowing MEWAs to offer health benefit coverage to employers in the insurance market in Colorado = none
- The cost of premiums for a MEWA compared to other group insurance = no comparison possible
- Any other factors deemed necessary by the Division of Insurance = none

Major Contacts Made During This Review

Colorado Association of Health Plans
Colorado Motor Carrier Association
Division of Insurance
National Federation of Independent Business
Rocky Mountain Health Plans

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.state.co.us/opr

Table of Contents

Background 1

The Sunset Process 1

Methodology 3

Profile of the Program 4

History of Regulation 5

Legal Framework 6

Program Description and Administration 10

Analysis and Recommendations 12

Recommendation 1 – Sunset the Mulitple Employer Welfare Arrangement pilot program. 12

Appendix A – Sunset Statutory Evaluation Criteria 14

Appendix B – Division of Insurance Letter Regarding Multiple Employer Welfare Arrangements 15

Background

The Sunset Process

Regulation, when appropriate, can serve as a bulwark of consumer protection. Regulatory programs can be designed to impact individual professionals, businesses or both.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation. Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

As regulatory programs relate to businesses, they can enhance public protection, promote stability and preserve profitability. But they can also reduce competition and place administrative burdens on the regulated businesses.

Regulatory programs that address businesses can involve certain capital, bookkeeping and other recordkeeping requirements that are meant to ensure financial solvency and responsibility, as well as accountability. Initially, these requirements may serve as barriers to entry, thereby limiting competition. On an ongoing basis, the cost of complying with these requirements may lead to greater administrative costs for the regulated entity, which costs are ultimately passed on to consumers.

Many programs that regulate businesses involve examinations and audits of finances and other records, which are intended to ensure that the relevant businesses continue to comply with these initial requirements. Although intended to enhance public protection, these measures, too, involve costs of compliance.

Similarly, many regulated businesses may be subject to physical inspections to ensure compliance with health and safety standards.

Regulation, then, has many positive and potentially negative consequences.

The regulatory functions of the Multiple Employer Welfare Arrangement (MEWA) pilot program within the Division of Insurance (DOI) in accordance with Part 9 of Article 16 of Title 10, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2008, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the MEWA pilot program pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the MEWA pilot program should be continued for the protection of the public and to evaluate the performance of the MEWA pilot program and staff of the DOI. During this review, the DOI must demonstrate that the MEWA pilot program serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 14.

It is important to note that the Governor's Blue Ribbon Commission for Health Care Reform[1] (Commission) is currently in the process of evaluating comprehensive statewide health care reform options and developing specific recommendations to improve the health care system in Colorado. The Commission will present its findings to the General Assembly in January 2008.

Methodology

As part of this review, DORA staff interviewed DOI staff, interviewed officials with state and national professional associations, interviewed health insurance carriers, reviewed Colorado statutes and DOI rules, and reviewed the laws of other states.

[1] Because the Commission was created with the passage of Senate Bill 06-208, it is also known as the 208 Commission.

Profile of the Program

The MEWA pilot program has been available in Colorado as an alternative to the small group health insurance market since 2003. MEWAs are designed to allow:

> self-employed people, small businesses, and, in some cases, larger businesses to purchase insurance – all seeking to save money and maximize affordability of coverage by using their leverage as a large group to negotiate lower individual premiums.[2]

The cost of health insurance in Colorado has continued to increase. As a result, consumers, as well as employers, have been forced to pay much higher costs for health insurance. For example, small group health insurance individual premiums increased an average of 84 percent between 1996 and 2002 in Colorado as well as the nation.[3]

In an attempt to combat the escalating health insurance premiums for individuals, the MEWA pilot program was created by House Bill 03-1164. The basic premise behind the MEWA pilot program was to allow *bona fide* associations to pool (group) together their members, spreading health-related risks to a greater number of people, thereby reducing the premium charged to individual participants.

A single base rate is determined for each MEWA. This base rate is then used as the basis for calculating individual premiums, based on certain allowable rating factors.

Under the MEWA pilot program, participants could form either a fully insured or self-funded MEWA. A fully insured MEWA purchases coverage from a licensed insurance carrier in Colorado. A self-funded (self-insured) MEWA collects individual premiums from the participating employers and individuals for a trust account[4] from which claims are paid. Current Colorado law, specifically section 10-16-902(1)(b)(I), C.R.S., states that a self-funded MEWA must deposit $200,000 with the Commissioner of Insurance to be used for the payment of claims in the event that the self-funded MEWA becomes insolvent. To further protect against insolvency, a self-funded MEWA is required to establish and maintain, by the end of its first year of operation, reserves equal to at least 25 percent of the annual expected claims of liability of the MEWA.[5]

---

[2] Mila Kofman, Eliza Bangit and Kevin Lucia, *Issue Brief: MEWAs: The Threat of Plan Insolvency and Other Challenges*, Task Force on the Future of Health Insurance, March 2004, p. 1.
[3] *The Small Group Health Insurance Market in Colorado,* Colorado Health Institute, March 2005, p. 1. Retrieved June 11, 2007, from http://www.coloradohealthinstitute.org
[4] Mila Kofman and Jennifer Libster, *Turbulent Past, Uncertain Future: Is it Time to Re-evaluate Regulation of Self-Insured Multiple Employer Arrangements?* Journal of Insurance Regulation, National Association of Insurance Commissioners, 2006, p. 20.
[5] § 10-16-902(1)(b)(III), C.R.S.

History of Regulation

The passage of the federal Employee Retirement Income Security Act of 1974 (ERISA) severely restricted states' authority to regulate group purchasing requirements[6] related to employee welfare benefit plans. Under ERISA, states were prohibited from enacting group purchasing requirements. Instead of the states assuming regulatory authority of the aforementioned plans, the federal government, specifically the United Stated Department of Labor, was charged with regulating the plans.

The intent of ERISA in the original legislation was to replace state standards with less stringent federal standards in an attempt to entice employers to provide health insurance to their workers. The federal statute required ERISA-covered health plans to comply only with fiduciary standards and reporting and disclosure requirements, but did not require such plans to be licensed or to meet any solvency requirements.[7]

In 1983, Congress amended ERISA to permit states to enforce and enact consumer-based protections that addressed employee welfare benefit plans, including MEWAs. The amendment allowed states to regulate both self-insured and fully insured MEWAs. Also, states could now require an operator of a fully insured arrangement to obtain a license[8] to conduct business.

Additionally, subsequent to the 1983 amendment of ERISA, state standards regarding the regulation of MEWAs were much more stringent and comprehensive. States began developing standards that were geared towards enhancing consumer protection. State insurance laws began including licensing, solvency, and benefit requirements; the enrollee's right to an external appeal when benefits are denied and other consumer protections.

Between 1983 and 1993, Colorado's MEWAs were regulated by the DOI. Nationally, MEWAs experienced a number of insolvencies during this period. As a result, many states, including Colorado, opted to prohibit the formation of new MEWAs while allowing existing MEWAs to continue to operate.

New MEWAs were prohibited from being formed in Colorado from 1993 until 2003, when the MEWA pilot program was enacted.

---

[6] Mila Kofman, Eliza Bangit and Kevin Lucia, *Issue Brief: MEWAs: The Threat of Plan Insolvency and Other Challenges*, Task Force on the Future of Health Insurance, March 2004, p. 3.
[7] *Id.*
[8] *Id*. at 4.

Legal Framework

The Multiple Employer Welfare Arrangement (MEWA) pilot program is created in section 10-16-901, *et seq.,* Colorado Revised Statutes (C.R.S.)(Act). The Act outlines the statutory requirements implementing the MEWA pilot program. Specifically, the Act directs the Commissioner of Insurance (Commissioner) to promulgate rules necessary for the implementation of the MEWA pilot program.

Under the MEWA pilot program, participants may choose to form a self-funded or fully insured MEWA. In order to participate in the MEWA pilot program, an employer must be a member of a *bona fide* association. A *bona fide* association has met the following requirements:[9]

- Has been in existence for at least five years;
- Has been formed and maintained in good faith for purposes other than obtaining insurance and does not condition membership on the purchase of association-sponsored insurance;
- Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee) and clearly so states in all membership and application materials;
- Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member) and clearly so states in all marketing and application materials;
- Does not make health insurance coverage offered through the association available other than in connection with a member of the association and clearly so states in all marketing and application materials; and
- Provides and annually updates information necessary for the Commissioner to determine whether the association qualifies as a *bona fide* association.

[9] § 10-16-102(5.5), C.R.S.

A self-funded MEWA pays health care benefits from its assets, not through an insurance company. In order to operate a self-funded MEWA in Colorado, the MEWA must obtain a certificate of authority from the Commissioner. The Commissioner may not issue a certificate of authority to a self-funded MEWA unless the arrangement establishes, to the reasonable satisfaction of the Commissioner, that the following requirements have been met:[10]

- The employers participating in the self-funded MEWA are members of a *bona fide* association that has deposited $200,000 with the Commissioner to be used for the payment of claims in the event that the self-funded MEWA becomes insolvent;
- The self-funded MEWA submits to the Commissioner a written plan of operation that, in the reasonable discretion of the Commissioner, ensures the financial integrity of the MEWA and demonstrates its financial solvency; and
- The self-funded MEWA establishes, by the end of the first year of its operation, and maintains at all times, reserves equal to at least 25 percent of the annual expected claims liability of the MEWA.

A self-funded MEWA is required to deposit all of the money collected from participating employers into a fund that is subject to the following requirements:[11]

- A board of trustees elected by participating employers must serve as fund managers on behalf of participants (a minimum of two and a maximum of seven trustees may be elected);
- Each trustee of the fund must be bonded in an amount not less than $100,000 nor an amount greater than $500,000 from a licensed bond company;
- Investment of MEWA plan moneys must be limited to investments in securities or other investments permitted by state law for the investment of assets constituting the legal reserves for a life insurance company in Colorado; and
- Trustees, on behalf of the fund, must file annual reports summarizing the financial condition of the fund with the Commissioner within 30 days immediately following the end of each calendar year.

Also, a *bona fide* association may form a fully insured MEWA in Colorado. A fully insured MEWA means that a licensed insurer is directly obligated by contract to provide for all of the participants under the MEWA arrangement.[12]

[10] § 10-16-902(1)(b), C.R.S.
[11] § 10-16-905(1), C.R.S.
[12] § 10-16-901(2)(a)(I), C.R.S.

A fully insured MEWA is required to submit a variety of items to the Commissioner prior to operating a MEWA in Colorado, including but not limited to:[13]

- A detailed business plan (that provides sufficient information to verify that the association qualifies as a *bona fide* association) outlining its current and proposed business operations;
- A copy of the association's organizational documents, membership criteria, ownership and a summary of the activities and benefits, other than health plan coverage provided to its membership;
- A summary of benefits and confirmation that each plan will be in compliance with the state's requirements; and
- An application fee of $500.

Additionally, both a self-funded and fully insured MEWA may use the following factors consistent with rating provisions for the small group market carriers for the establishment of an individual's premium:[14]

- Age;
- Family composition;
- Geographic location;
- Health status;
- Claims experience; and
- Standard industrial code.

It is important to note that the legislature, during the 2007 session, passed House Bill 1355, which was signed by the Governor, modifying the existing factors for establishing base rates. Effective January 1, 2009, insurance carriers may no longer use health status or claims experience but they may use family size, geographic location, age and standard industrial code as adjustments to the carrier's base rate to determine an individual's premium.

Prior to January 1, 2008, a MEWA in the pilot program can adjust individual premiums for a participating employer between 75 percent and 110 percent of its base rate for health status and claims experience of the participating employers' employees and dependents. House Bill 1355 repeals the increases to the base rate on and after January 1, 2008, and repeals the decreases on and after January 1, 2009.

[13] *Multiple Employer Welfare Arrangement Pilot Program Check Sheet – Self Funded Programs*, Colorado Division of Insurance.
[14] §§ 10-16-105(8)(e), 10-16-105(8.5)(a), 10-16-105(13) and 10-16-902(1)(c), C.R.S.

Under the MEWA pilot program, a MEWA is required to offer both standard and basic health benefit plans to participants.[15] A standard health benefit plan is reflective of the average offering in the small group market, while a basic health benefit plan approximates the lowest level of coverage offered in the small group market and may be a high-deductible health plan, a "mandate lite" type of plan, or a combination thereof.

[15] § 10-16-902(1)(c), C.R.S.

Program Description and Administration

The Multiple Employer Welfare Arrangement (MEWA) pilot program was designed to allow participation of no more than 18 MEWAs. A participating MEWA may be either fully insured or self-funded.

Once the MEWA pilot program was enacted, eight *bona fide* associations took the initial steps to participate; however, only one *bona fide* association completed the necessary information required by the Commissioner of Insurance (Commissioner) to participate in the MEWA pilot program.

Even though the *bona fide* association completed the proper steps to participate in the MEWA pilot program, the *bona fide* association did not actively participate in the MEWA pilot program, either as a self-funded or fully insured MEWA. Only one insurance carrier was willing to issue a policy to the MEWA, but the carrier required the MEWA to provide more than 250 lives (people). The MEWA did not have the required 250 participants; therefore, the insurance carrier did not provide health insurance coverage to the MEWA.

In order to participate in the MEWA pilot program as a self-funded MEWA, *bona fide* associations are required to complete a MEWA self-funded check sheet, which was developed by Division of Insurance (DOI) staff. The self-funded check sheet's requirements include:[16]

- General information regarding the *bona fide* association, including name, contact, address, and telephone number;
- $500 nonrefundable fee (as outlined in section 10-16-902(5)(a), Colorado Revised Statutes (C.R.S.));
- $200,000 deposit;
- Description of the current business of the *bona fide* association;
- Proof that the self-funded MEWA will provide health benefits to a minimum of 100 employees and dependents;
- Organizational documents of the *bona fide* association (articles of incorporation, bylaws, partnership agreement or trust instrument);
- A detailed business plan, including a description of health coverages to be provided, deductibles and co-payments;
- Information regarding the qualification and experience of the MEWA's senior management;
- Description of the method(s) to be used to market and enroll eligible participants;
- A copy of an actuarial opinion reflecting the adequacy of the health plan reserves and liabilities reflected in the financial report;

[16] *Multiple Employer Welfare Arrangement Pilot Program Check Sheet – Self Funded Programs*, Colorado Division of Insurance.

- A copy of the underlying actuarial report supporting the actuarial opinion;
- A copy of an agreement demonstrating adequate aggregate excess loss coverage;
- Information on the employer contribution requirements;
- Information on the manner in which funds will be held in trust, including location and copies of pertinent agreements;
- A copy of the products offered;
- Documentation that the MEWA offers at least basic and standard health plans; and
- A notice that the MEWA does not participate in the guaranty fund.

Additionally, a *bona fide* association interested in participating in the MEWA pilot program as a fully insured MEWA must also complete the aforementioned check sheet; however, information that is not applicable may be omitted. For example, a fully insured MEWA under the MEWA pilot program is not obligated to produce the $200,000 minimum deposit to the DOI.

A fully insured MEWA must also secure an insurance carrier that is willing to write a health insurance policy covering the MEWA.

Analysis and Recommendations

Recommendation 1 – Sunset the Mulitple Employer Welfare Arrangement pilot program.

The Multiple Employer Welfare Arrangement (MEWA) pilot program was created to provide an alternative health insurance option for Colorado residents. The MEWA pilot program specifically targets small businesses, with the idea that by participating in a MEWA and participating in a *bona fide* association, health insurance base rates, as well as individual premiums could potentially be less expensive. The idea is premised on the fact that more insured lives (people) would participate in a MEWA, thereby creating a larger pool of lives, and, in turn, spreading the risk when someone sustains a serious illness or gets injured. The benefit of participation in MEWAs is the potentially lower individual premiums participants pay by being part of a larger insured group, which spreads the risk among a greater number of insured individuals.

Initially, the premise of a MEWA appears to have merit; however, the actual effects are counter-intuitive. In actuality, MEWAs separate participating members from the small group health insurance market pool and create an isolated group seeking health insurance. Rather than receiving a base rate based on the pool of participants in the small group health insurance market (which is much larger than the pool created by an individual MEWA) MEWA participants are pooled together, spreading the health risk among a much smaller population, as MEWAs are considerably smaller than the collective small group market in Colorado.

If all of the participants in the MEWA are healthy, individual premiums would probably remain stagnant. However, if an employee of a participating member contracts a debilitating illness or receives expensive surgery, base rates could potentially increase, which could trigger an increase in individual premiums, for the MEWA participants.

A MEWA, on the surface, seems to be a viable alternative to the small group health insurance market in Colorado; however, if MEWA participants become ill or need extensive medical attention, individual premiums could potentially increase causing healthy participants to choose to re-enter the small group health insurance market and leave the MEWA. This scenario could cause a MEWA to collapse under its own weight. As a result, only one MEWA formed under the MEWA pilot program and that MEWA was not able to secure health insurance coverage from a health insurance carrier. In the end, the MEWA pilot program has had no effect on individual premiums in Colorado.

Additionally, section 10-16-910(2), Colorado Revised Statutes (C.R.S.), requires the Department of Regulatory Agencies (DORA) to respond to the following questions regarding the MEWA pilot program:

- The number of persons who are insured through a MEWA;
- The effect of allowing MEWAs to offer health benefit coverage to employers in the insurance market in Colorado;
- The cost of individual premiums for a MEWA compared to other group insurance; and
- Any other factors deemed necessary by the Division of Insurance (DOI).

Only one *bona fide* association completed the necessary information required by the Commissioner of Insurance in order to participate in the MEWA pilot program. However, the *bona fide* association did not secure an insurance carrier to issue a health insurance policy to the MEWA. Further, the MEWA did not complete the necessary steps to create and ultimately function as a self-funded MEWA. As a result, there were zero persons participating in the MEWA pilot program.

Because there were zero participants in the MEWA pilot program, MEWAs did not have an effect on the insurance market in Colorado.

The cost of premiums for MEWAs compared to other group insurance cannot be compared due to the fact that no *bona fide* associations participated in the MEWA pilot program.

Finally, the DOI, in a formal letter submitted to the Office of Policy Research and Regulatory Reform within DORA, did not have any additional issues to research for the MEWA pilot program review. A copy of the DOI letter is included in Appendix B on page 15 of this report.

The aforementioned information illustrates the fact that the MEWA pilot program is not a viable alternative in Colorado's small group insurance market. Therefore, the General Assembly should sunset the MEWA pilot program.

Appendix A – Sunset Statutory Evaluation Criteria

(I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;

(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;

(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;

(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;

(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;

(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;

(VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;

(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

(IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Appendix B – Division of Insurance Letter Regarding Multiple Employer Welfare Arrangements

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES
D. Rico Munn
Executive Director

DIVISION OF INSURANCE
Marcy Morrison
Commissioner of Insurance
1560 Broadway, Suite 850
Denver, CO 80202

Bill Ritter
Governor

May 10, 2007

Saul Larsen
Policy Analyst
Office of Policy Research and Regulatory Reform
Department of Regulatory Agencies
1560 Broadway, Ste. 1550
Denver, CO 80203

Re: Sunset review of the Multiple Employer Welfare Arrangement pilot program

Dear Mr. Larsen:

Thank you for the opportunity to provide information concerning the sunset review for the Multiple Employer Welfare Arrangement (MEWA) pilot program, part 9 of article 16 of title 10, C.R.S.

As you will recall, eight entities filed initial applications to participate in the pilot program (attached is a list of the applicants). Only one entity completed the process and attempted to obtain insurance. We only have anecdotal information on this MEWA's ability to obtain coverage. We do know that there are no MEWAs operating under the pilot program today.

We are aware the General Assembly has spent some energy evaluating MEWAs in the past few years. The division had concerns when the pilot program was enacted. Our experience with MEWAs during the late 1980s and 1990s, demonstrated many instances of consumer fraud and insolvency.

As an agency, we do not have suggestions for you on reforming the MEWA pilot program. If you need additional information, please let me know.

Very truly yours,

Marcy Morrison
Insurance Commissioner

"The Mission of the Division of Insurance is Consumer Protection"

General Number: (303) 894-7499 / Consumer Complaints: (303) 894-7490 / Toll Free 1-800-930-3745 / FAX: (303) 894-7455
Producer Licensing/Promisor: 1-800-275-8247 / TTY Relay for the Deaf and Hearing Impaired: Dial 711
http://www.dora.state.co.us/insurance