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**News for School Clients**

**RECENT CASE ON THE PRACTICES OF  
HEALTH INSURANCE PROVIDERS**

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## **Recent Case on the Practices of Health Insurance Providers**

Wisconsin Education Association Insurance Trust (“WEA Trust”) claims to offer less costly employee health insurance for small and medium school districts by rating a district based on “pooled” claims experience, rather than based on a district’s individual medical claims experience. Recently, with the costs of health insurance skyrocketing, even for those districts with pool-rated premiums, many school districts have considered seeking health insurance bids from interested insurance carriers for teachers, in accordance with Wis. Stat. §120.12(24), as well as for support staff.

In seeking meaningful bids from such insurance carriers, a school district often must provide the district’s medical claims experience. As such, it is necessary for the school district to obtain its claims experience from the district’s current health insurance provider. For those districts participating in WEA Trust’s health insurance pools, WEA has a practice of ousting school districts from the health insurance pool when a district requests its individual medical claims experience. Elimination from the pool means that the district’s premiums are determined based on the district’s individual medical claims experience, which could cause insurance costs to increase dramatically. Therefore, many school districts choose to avoid the risk of significantly increasing their insurance costs. As a result, such districts are forced to remain in the pool without knowing whether less costly health insurance is available.

A recent case before the Dane County Circuit Court addressed a school district’s ability to obtain information regarding the district’s particular individual claims experience, without penalty, from the district’s health insurance provider. In *Wisconsin Education Insurance Corporation v. Office of the Commissioner of Insurance*, Case No. 02-CV-1654 (Wis. Cir. Ct. Dane County, March 24, 2003), the court reviewed the WEA Trust practice of ousting a school district from a health insurance pool for requesting the particular district’s individual medical claims experience. The Court concluded that WEA Trust’s practice does not violate state law.

The case began with a complaint filed with the Wisconsin Office of the Commissioner of Insurance (“OCI”) against WEA Trust. OCI investigated the complaint and concluded that WEA Trust’s practice violated the law. OCI attempted to stop WEA Trust’s practice by imposing a cease and desist order on WEA Trust. However, WEA Trust appealed the order and in September of 2001, a hearing was held before OCI Administrative Law Judge (“ALJ”) Alice Shuman-Johnson regarding the validity of WEA Trust’s practice. At the hearing, representatives from school districts and technical colleges testified about their experiences with WEA Trust and explained that WEA Trust’s practice, in effect, prevents them from requesting their claims experience.

The parties submitted post-hearing briefs outlining their respective positions. OCI argued that WEA Trust's practice of "changing pool-rated groups to an experience premium rate based solely on the group's request for their claims experience violates both the language and the intent of Wis. Stat. § 632.797." *In the Matter of WEA Ins. Corp.*, Case No. 01-C-26897, at 7 (OCI, May 5, 2002). Wis. Stat. §632.797(1)(c) prohibits an insurance carrier from charging an employer for providing claims experience information. OCI asserted that Wis. Stat. § 632.797 requires that an insurance carrier provide claims experience upon an insured's request. Furthermore, OCI argued that "the clear intent of the legislature in enacting Wis. Stat. § 637.797 was to establish a mechanism to allow a group health insurance policyholder or employer access to its aggregate claims information – access that was not routinely provided." *Id.* at 9.

In response, WEA Trust argued that it did not "charge" the districts that requested individual claims experience because it did not charge a fee for providing claims experience information. Thus, WEA Trust's primary argument was that the term "charge" must be given its common and ordinary meaning—a monetary fee. *Id.* at 8. Further, WEA Trust argued that the pool participants waived their statutory right to receive claims experience in exchange for the benefits of participating in the pool.

ALJ Shuman-Johnson issued a decision declaring WEA Trust's practice in violation of Wisconsin laws. Specifically, she held that Wis. Stat. § 632.797(1) prohibits insurers from imposing a charge, cost, or consequence upon a group for requesting and/or obtaining its claims experience and WEA Trust violated the statute

when it "charged" districts for requesting their claims experience by ousting them from the pool. ALJ Shuman-Johnson concluded that the Wisconsin Legislature attempted to protect insureds' "right of access to information both to evaluate their current insurance and so they can obtain insurance quotes in the marketplace if they so choose." *Id.* at 11.

WEA Trust appealed the decision issued by ALJ Shuman-Johnson to the Dane County Circuit Court before Judge Sarah O'Brien. On March 24, 2003, Judge O'Brien issued a decision on the merits in the case of *WEA Trust v. OCI*. She concluded that the use of the word "charge" in Wis. Stat. §632.797 refers to a bill or an invoice, or a monetary fee, not a burden, duty, or obligation. Given this, she held that OCI's interpretation of the statute was unreasonable. She focused on the portion of the statute which provides that the employer or policyholder may obtain the claims experience once in a 12-month period without a charge. Wis. Stat. §632.797(1)(c). Judge O'Brien asserted that interpreting the word "charge" to mean a burden or obligation in this context would strain common sense because an insurance carrier is unlikely to impose multiple rating changes within a 12-month period. Finally, she suggested that the Wisconsin Legislature would have used the words "obligation" or "consequence" if it intended the broader meaning presented by OCI.

It is likely that this is not the end of the case of *OCI v. WEA Ins. Corp.* OCI may appeal Judge O'Brien's decision to the Wisconsin Court of Appeals. However, for the time being, in light of Judge O'Brien's decision, a school district participating in an employee health insurance pool must consider the impact of being ousted from the pool before requesting the district's individual claims experience.

*If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.*

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