Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
December 5, 2011

Multiple Employer Welfare Arrangements
Affordable Care Act Proposed Regulations

Multiple Employer Welfare Arrangements (MEWAs) are established for the purpose of offering health coverage and other benefits to the employees of two or more employers (including self-employed individuals). MEWAs are typically marketed to small employers as a low-cost alternative to traditional forms of health insurance. Although MEWAs that are properly operated can provide an option for small employers seeking affordable employee health coverage, many have deployed abusive and fraudulent practices and become financially unstable, resulting in too many cases in which MEWAs have failed to pay claims.

The promoters, marketers and operators of MEWAs have often taken advantage of gaps in the law to avoid State insurance regulations such as the requirement to maintain sufficient funding and adequate reserves to pay the health care claims of workers and their families. In the worst situations, MEWAs have been operated by individuals who drained families of their assets through excessive administrative fees or outright embezzlement. In some cases, individuals can incur significant medical bills before they learn that claims are not being paid – and that they are liable and need to pay their medical bills themselves.

- A nationwide MEWA called TRG Health Plan, for instance, left about $17.5 million in unpaid medical claims. Instead of paying medical claims, the MEWA operators had diverted millions of dollars of plan assets for their personal use.
- Employers Mutual, another nationwide MEWA, left $27 million in unpaid benefits. A large percentage of the premiums paid to the MEWA were used improperly by the MEWA operators, including to purchase residential real estate, a Jaguar automobile, and diamond jewelry.

The small businesses that are trying to do the right thing by offering their employees quality health coverage also suffer when their employees are harmed. The financial impact on employers or employee organizations that have paid premiums or made contributions to the MEWA can also be significant. Providers can also lose out when they are not paid for the services they have provided.

Based on its enforcement program experience, the Department is aware that fraudulent practices exist among some MEWAs. However, the current reporting scheme - particularly the penalties for a failure to report - actually creates a disincentive for MEWAs to notify the Department of their operations. By strengthening the incentive for all MEWAs to make enhanced filings with the Department, there is a better chance that troubled MEWAs can be identified before they harm employees and their families. The Affordable Care Act gives the Department the tools it needs to help close the gaps in the law and ensure consumers are protected.

Today, the US Department of Labor (Department) is releasing proposed rules pursuant to provisions and new authorities established under the Affordable Care Act that would:

- Require MEWAs to register with the Department of Labor prior to operating in a State or be subject to substantial penalties. This will allow the Department to track MEWAs as they move from State to State and identify their principals, which will provide the Department with important information regarding potentially fraudulent MEWAs.

- Allow the Secretary of Labor to issue a cease and desist order when it appears that fraud or other forms of abuse are taking place within a MEWA.
- Allow the Secretary to seize assets from a MEWA when there is probable cause that the plan is in a financially hazardous condition.

Plan participants, small businesses, and other interested parties have until March 5, 2012 (90 days from the December 6, 2011 publication date in the Federal Register) to submit comments.

MEWA Registration

While reporting requirements for MEWAs have been in place since 1999, the reality is that, currently, the Department often does not find out about insolvent or fraudulent MEWAs until significant harm has occurred to employers and participants. For example, Mutual Employees Benefit Trust, a MEWA that provided health benefits to over 1900 participants, allowed an individual previously convicted on criminal charges to serve as a fiduciary of the MEWA, which is prohibited by the Employee Retirement Income Security Act (ERISA). The Department's investigation indicated that more than $2.2 million in plan assets was diverted in the form of sham union and association fees. The Affordable Care Act amended ERISA to require MEWAs to register with the Secretary prior to operating in a State. This new registration enhances the existing reporting rules to require all MEWAs as well as certain other entities that offer or provide health benefits to the employees of two or more employers to register with the Department via the Form M-1. These proposed changes would also require MEWAs that are ERISA plans which are subject to the Form M-1 filing requirements to also file a Form 5500 Annual Return/Report, regardless of plan size. These new rules will allow the Department to collect certain custodial and financial information on these entities and assist with identifying abusive and fraudulent MEWAs before they harm small employers and participants. By requiring MEWAs to register with the Department before operating in a State, this proposed rule would enhance the State and Federal governments' joint mission to prevent and take enforcement action against fraudulent and abusive MEWAs and limit the losses suffered by American workers, their families, and businesses in instances when abusive MEWAs become insolvent and fail to reimburse medical claims.

New Authorities

The Affordable Care Act also amended ERISA to authorize the Secretary to issue a cease and desist order when it appears that conduct of the MEWA is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. A systematic failure to pay benefit claims or the diversion of premiums for personal use are common examples of these types of conduct. For example, Employers Mutual, a MEWA covering 22,000 individuals which turned out to be a nationwide health insurance fraud, advertised deceptively low premium rates that were far less than necessary to pay the promised benefits and misrepresented that the benefits were fully insured. Operators of this MEWA misused and embezzled premiums so extensively that by the time the Department was able to shut down the MEWA and appoint an independent fiduciary to take over, the fraud left $27 million in unpaid benefits. The Secretary may also issue an order to seize the assets of a MEWA that appears to be in a financially hazardous condition to ensure the financial protection of its enrollees.

Before this change provided for under the Affordable Care Act, stopping the activities of an abusive arrangement immediately and freezing its assets required a court-issued temporary restraining order and preliminary injunction. Obtaining this remedy required the Secretary to show the likelihood of a fiduciary breach, and the need for immediate protective action. With this new authority, the Secretary may take steps to protect plan participants and small employers much earlier in the process, before all of the assets have been exhausted.