OFFICE OF LEGISLATIVE RESEARCH
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ResearchReport

State Regulation of MEWAs

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Issue

This report discusses if states can regulate fully insured and self-funded multiple employer welfare arrangements (MEWAs). It notes Connecticut's current requirements for MEWAs and provides examples of other states that regulate self-funded MEWAs.

Summary

The federal Employee Retirement Income Security Act (ERISA) defines a MEWA as an employee welfare benefit plan, or any other arrangement, that is established or maintained for the purpose of offering or providing benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries. However, it does not include plans or arrangements established or maintained by a collective bargaining agreement, rural electrical cooperative, or rural telephone cooperative association (29 U.S.C. § 1002(40)).

Congress amended ERISA in 1983 to provide an exception to ERISA's general preemption provisions for MEWA regulation under state insurance laws. As a result, if an ERISA-covered employee welfare benefit plan is a MEWA, states may apply and enforce certain state insurance laws. (For further discussion on ERISA's general preemption provisions, see OLR Report 2020-R-0214.)

The extent to which state insurance laws apply to a MEWA depends on whether the plan is fully insured. In the case of a fully insured MEWA plan, a state's regulatory powers are limited to mandating and enforcing reserve requirements. If the MEWA plan is not fully insured (i.e., is self-funded), then any state insurance law generally may apply to the plan so long as it is not inconsistent with ERISA.

State laws governing self-funded MEWAs generally provide for state licensure requirements, financial reporting and solvency requirements, and membership eligibility. (See below for brief overviews of laws in Maine, New Jersey, and Virginia.)

In Connecticut, the Insurance Department requires that all self-funded MEWAs operate with state authorization or licensure. Failure to do so results in disciplinary action brought by the state for illegally transacting insurance business (Bulletins HC-32 (1983) and HC-123 (2018)). Connecticut regulations further require insurance agents and brokers to submit information to the state Insurance Department before transacting insurance with certain MEWAs (Conn Agencies Regs. §§ 38a-272-1 to 38a-272-10).

State Regulation of MEWAs

Fully Insured MEWAs

A MEWA plan is fully insured if the benefits provided are guaranteed under a contract or policy of insurance issued by an insurance company qualified under state law to conduct business in the state.

For fully insured MEWA plans, or any trust established under such a plan, the state's regulatory powers are limited to mandating and enforcing reserve requirements, which are designed to ensure the MEWA will meet its benefit obligations (29 U.S.C. § 1144(b)(6)(A)(i)). The U.S. Department of Labor (DOL) interprets ERISA as permitting states to subject MEWAs to licensing, registration, certification, financial reporting, examination, and any other requirement of state insurance law necessary to ensure compliance with the state insurance reserve requirements.

Self-funded MEWAs

Typically, self-funded benefit plans are exempt from state-enacted insurance benefit mandates. Under ERISA, states are prohibited from "deeming" self-insured plans as subject to state insurance requirements (29 U.S.C. § 1144(b)(2)(B)). However, Congress amended ERISA in 1983 to provide an exception to ERISA's general preemption provisions for MEWA regulation under state insurance laws (P.L. 97-473). As a result, if an ERISA-covered employee welfare benefit plan is a self-funded MEWA, states may apply and enforce state insurance laws so long as they are not inconsistent with ERISA (29 U.S.C. 1144(b)(6)(A)(ii)). According to the U.S. DOL, a state insurance law, in general, will not be inconsistent with ERISA if it requires the plan to meet more stringent standards of conduct or provide greater protection to plan participants and beneficiaries than required by ERISA.

Self-funded plans are not backed by an insurance policy. Rather, the employer offering the plan funds and administers it (i.e., pays claims covered by the plan from its own money). The employer may outsource or delegate plan administration to a third-party administrator (TPA) (often an insurance company), but the TPA does not provide the employer with any financial backing or assume any financial risk associated with the claims. (In contrast, for a fully insured plan, the insurer assumes the plan's financial risk in return for premium payments.)

Examples of Other States' Regulation of Self-funded MEWAs

Maine

Under Maine law, self-funded MEWAs may only operate with the state insurance superintendent's approval. To meet the requirements for approval, the MEWA must, among other things, be nonprofit and established by a trade or industry association that has operated for at least one year for purposes other than providing insurance; operate pursuant to a trust agreement; comply with state laws concerning continuity of coverage and solvency requirements; not deny coverage to any eligible individual on the basis of health status or claims experience; and only issue health care benefit plans that comply with state law, including state-mandated benefits.

Maine law further requires MEWAs to report business activities to the insurance superintendent at the end of each fiscal year. Also, MEWAs are required to maintain a positive balance of funds and excess insurance, and establish and maintain appropriate reserves (Me. Rev. Stat. Ann. tit. 24-A, §§ 6601-6616).

New Jersey

In New Jersey, self-funded MEWAs must register annually with the state commissioner of banking and insurance. The trade or industry association to which the MEWA belongs must comprise at least 100 or more people and have actively existed for more than one year and for purposes other than obtaining insurance.

Self-funded MEWAs must comply with all applicable small employer health benefit laws and financial requirements. They are also subject to both quarterly and annual reporting requirements. Additionally, the MEWA must maintain cash reserves of at least $200,000 and keep both aggregate and specific stop-loss coverage (N.J. Stat. Ann. § 17B:27C-1 et seq.; N.J. Admin. Code § 11:4-56.1 et seq).

Virginia

In Virginia, self-funded MEWAs may not operate unless they receive approval from the State Corporation Commission. To meet approval and operational requirements, the MEWA must be established by a trade or industry association, comply with ERISA requirements, operate under a trust agreement, and limit coverage to participating employees of the sponsoring association. Virginia law also requires that MEWAs comply with state laws on essential health benefits and the financial and solvency requirements that apply to other licensed insurers (Va. Code Ann. §§ 38.2-3420, 38.2-3432.2 & 59.1-590 and 14 Va. Admin. Code § 5-410).

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