OFFICE OF LEGISLATIVE RESEARCH
Objective Research for Connecticut's Legislature

Issue Brief

Multiple Employer Welfare Arrangements and Association Health Plans in Connecticut

Federal law defines a multiple employer welfare arrangement (MEWA) as a plan or arrangement established and maintained to provide benefits to employees of two or more employers (29 U.S.C. § 1002(40)). In practice, a MEWA allows smaller businesses to join together to offer health insurance and other benefits to each business's employees and their dependents. How they do so, and under what conditions, depends on whether the companies form a "bona fide" association that offers an association health plan (AHP). States have broad authority to regulate MEWAs and AHPs to the extent regulations do not conflict with federal law, including certain consumer protections in Title I of the Employee Retirement Income Security Act (ERISA). Connecticut considered authorizing and regulating AHPs during the 2023 session.

An AHP is a type of MEWA offered by a bona fide association that, among other things, has (1) at least one substantial business purpose other than providing health care or benefits and (2) member employers that have a "commonality of interest" (i.e., they share a specific relationship to one another, such as sharing the same trade, line of business, or geographic area) (29 U.S.C. § 2510.3-55(b)).

Exclusions

Federal law excludes certain groups and benefit plans from MEWA laws, including any collectively bargained plans. In practice, these plans are regulated under different ERISA provisions.

According to the U.S. Department of Labor (DOL), an AHP (offered by a bona fide association) is considered a single health plan under ERISA. This allows several smaller businesses to offer a large employer health plan, which pools their risk and is subject to fewer regulations under state and federal law. MEWAs without a bona fide association are regulated as if each employer or member is offering its own plan, which may subject many members to the stricter small-business rating requirements. In this case, ERISA deems the MEWA as a vehicle for funding each employer's individual benefit plans, rather than as a single benefit plan covering all employers (DOL, *Multiple Employer Welfare Arrangements Under ERISA: A Guide to Federal and State Regulation*, pp. 8-9).

Generally, ERISA authorizes states to regulate self-funded and fully-insured MEWAs. In Connecticut, the state Insurance Department (1) requires that self-funded MEWAs operate with state authorization or licensure and (2) subjects fully-insured MEWAs to the small group rating requirements (Bulletins HC-32 (1983) and HC-123 (2018)). Connecticut regulations further require insurance agents and brokers to submit information to the Insurance Department before transacting insurance with certain MEWAs (Conn. Agencies Regs. §§ 38a-272-1 to 38a-272-10). During the 2023 legislative session, Connecticut debated explicitly authorizing AHPs and regulating them under the large group rating requirements (see below). Several other states already authorize and regulate these plans (see OLR Report 2023-R-0076).

sHB 6710 (2023): An Act Concerning Association Health Plans and Establishing a Task Force to Study Stop-Loss Insurance

As raised, HB 6710 would have required self-funded MEWAs to be licensed with the Insurance Department. It also would have required both self-funded and fully-insured MEWAs to (1) meet minimum federal Affordable Care Act standards (i.e., essential benefits); (2) cover all state-mandated benefits; (3) not exclude preexisting conditions coverage; and (4) have a minimum 60% actuarial value. Additionally, it would have established a task force to study whether stop-loss insurance could impact small group health insurance plans and their enrollees and medical spending in Connecticut. The bill incorporated many ERISA consumer protections by reference, and the Insurance and Real Estate Committee debated whether to explicitly list them or add additional protections.

The bill was publicly heard on February 21, 2023, with several advocates arguing that MEWAs (and AHPs specifically) are a tool to mitigate rising health insurance costs and several opponents arguing that AHPs lack many of the consumer protections and minimum benefits of other plans. A substitute bill was then delayed in the Insurance and Real Estate Committee until the Governor's staff offered to mediate some of the consumer protection concerns. The substitute bill reported favorably by the committee explicitly subjected MEWAs to the large group rating requirements and certain state and federal minimum consumer protection requirements.

With a few days left in the 2023 legislative session, a new version of the bill with additional consumer protections received the support of the Healthcare Advocate, who had been one of the primary opponents. Nonetheless, according to House leadership, the bill did not have enough support to pass as session concluded.

ERISA Title I and the Public Health Service Act

Federal law requires MEWAs to adhere to certain ERISA Title I requirements, including those related to (1) reporting and disclosure requirements (such as providing summary plan documents); (2) fiduciary responsibilities; (3) administration and enforcement (including providing remedies for participants who believe the plan has violated ERISA); (4) continuation coverage (i.e., COBRA coverage); and (5) health care provisions. The debate over sHB 6710 in Connecticut primarily focused on the extent to which this last item provided adequate consumer protections and whether the bill should incorporate additional protections even if it diminished the bill's cost effectiveness.

Health Care Provisions

Part 7 of ERISA Title I requires MEWAs to, among other things, (1) provide special enrollment periods to eligible individuals; (2) prohibit charging individuals higher premiums based on health factors; (3) include guaranteed renewability provisions; and (4) cover specified benefits (e.g., maternity and newborn benefits, mental health parity, breast reconstruction (Congressional Research Service, p. 43)). ERISA Title I also incorporates certain Affordable Care Act market reforms, which apply the Public Health Services Act (42 U.S.C. 2791) to the large group market. For fully-insured MEWAs, this includes an 85% medical loss ratio.

Learn More

MEWA Guide to State and Federal Regulation, U.S. Department of Labor

State Regulation of MEWAs, OLR Report 2023-R-0076

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