



HEALTH CARE REFORM'S IMPACT ON MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

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Multiple employer welfare arrangements (“MEWAs”) will be required to comply with many of the insurance market reforms passed last month in the Patient Protection & Affordable Care Act. In addition, the legislation contains several provisions targeted specifically at MEWAs, including provisions aimed at deterring fraud. Many questions are still unanswered regarding the new law’s impact on MEWAs, however, the following is an overview of some of the issues that have been identified to date.

1. New MEWA Provisions.

The legislation adopted additional requirements and penalties for MEWAs including the following:

- Requires MEWAs to register with the Department of Labor prior to operating in a State;
- Authorizes the Secretary of the Department of Labor to issue cease and desist orders and seize temporary control of a MEWA if it believes the MEWA has engaged in fraudulent activity or may cause irreparable or significant public injury, including a finding that the MEWA is in a financially hazardous condition; and
- Subjects individuals to criminal and civil penalties if they make false statements or representations concerning the financial condition or solvency of a MEWA, the benefits provided by the MEWA, or the MEWA’s regulatory status or exemption from State regulation

These provisions are still rather vague and we expect the Department of Labor to issue regulations providing additional details.

MEWAs will want to look out for additional guidance as it becomes available on these provisions. In the meantime, MEWAs should carefully review their marketing materials and plan literature to ensure they are accurate and not misleading.

2. Employer Responsibility for Providing Health Insurance

Because employers are now penalized for failing to provide affordable health care coverage, employers participating in a MEWA will want to ensure that the coverage offered through the MEWA meets one of the requirements for being “affordable” by covering 60% of allowed costs.

Prior to January 1, 2014, MEWAs will want to ensure that their plan covers at least 60% of allowed costs.

3. Lifetime & Annual Limits

Beginning with plan years starting on or after September 23, 2010, group health plans, including MEWAs, may no longer impose lifetime limits on the dollar value of “essential health benefits.” HHS is to define “essential health benefits” but at a minimum must include the following benefits in the definition:

- ambulatory services
- emergency services
- hospitalization
- maternity/newborn care
- mental health/substance abuse
- prescription drugs
- rehabilitative and habilitative services and devices
- laboratory services
- preventative and wellness/chronic disease management; and
- pediatric services, including oral and vision

Beginning with plan years starting on or after September 23, 2010, group health plans may only impose annual limits on essential health benefits as determined by HHS. Beginning with plan years that start on or after January 1, 2014, no annual limits may be imposed on any essential health benefits.

MEWAs will need to update their plan documents for plan years on or after September 23, 2010 to provide for the elimination of lifetime limits and restriction on annual limits.

4. Expansion of Dependent Coverage

Beginning with plan years starting on or after September 23, 2010, group health plans that offer dependent coverage must offer coverage for adult children, even if they are married, up to the age of 26. Prior to January 1, 2014, coverage does not have to be offered to adult children who are eligible to enroll under another employer-sponsored health plan. Grandchildren are not included in the expanded definition

MEWAs will need to update their plan documents for plan years on or after September 23, 2010 to provide for the expanded definition of “dependent.”

5. Pre-Existing Condition Exclusions

Beginning with plan years starting on or after September 23, 2010, group health plans, including MEWAs, may no longer impose pre-existing condition limitations on children under the age of 19. Effective January 1, 2014, a MEWA can not impose pre-existing condition exclusions on any participant/beneficiary.

MEWAs should revise their plan documents to eliminate pre-existing condition exclusions for children under 19. By January 1, 2014, these documents will need to be revised to exclude pre-existing condition limitations on any participant or beneficiary.

6. Uniform Explanation of Coverage Documents

Effective March 23, 2012, MEWAs will need to comply with the provisions requiring dissemination of uniform documents summarizing and explaining the coverage provided. HHS is to provide guidance on the uniform terms and format that must be utilized.

MEWAs should watch for guidance on this issue and revise their plan summaries as needed to comply with the new requirements.

7. “Cadillac” plans

Effective on January 1, 2018, high-cost or “Cadillac” plans will be subject to an excise tax. If the MEWA offers a plan design that costs more than \$10,200 for individual coverage or \$27,500 for coverage other than individual coverage, the plan administrator or health insurance issuer will be subject to a 40% tax on the cost of the coverage that exceeds these limits. These limits are subject to inflation and may also be adjusted if

health insurance costs increase as measured by the increase in the cost of the standard plan option offered by the Federal Employees Health Benefits Plan.

MEWAs will want to review their plan designs and determine if there are any that could be subject to the excise tax. To the extent a MEWA does offer a “Cadillac” plan it will likely want to consider whether it wishes to continue to offer this type of benefit and pay the additional tax (which can be passed on to participants) or revise its plan design.

8. Reinsurance for Early Retirement Benefits

Although we are waiting on additional guidance from HHS, it is possible that MEWAs may be eligible for the reinsurance program for early retirement benefits provided by employers. Only a limited amount of funds are available under the program and funds will be administered based on applications filed by employers. The program is to be established no later than June 21, 2010. Because of the limited amount of funding available, employers are encouraged to apply as soon as they are able.

MEWAs that have participating employers who provide early retirement benefits should keep abreast of any developments relating to this reinsurance program and encourage participating employers to apply when the funding becomes available.

9. Grandfather Plan Status

Many of the health insurance market reforms are not applicable to plans in existence prior to March 23, 2010. It is unclear, however, whether a plan will continue to maintain its grandfathered status if it substantially changes or expands into new markets.

Until further guidance is received on this issue, MEWAs undergoing substantial modifications or expansions into new markets should discuss with their legal counsel whether they will continue to maintain their grandfathered status. If they lose this status, they will need to comply with additional regulatory reforms not discussed in this document.

In addition to the above issues, MEWAs are likely to be impacted by other factors relating to health care reform, including increased competition. We will continue to provide updates as additional information and guidance relating to the new law’s impact on MEWAs becomes available.

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