Multiple Employer Welfare Arrangements

FEDERALIZED MEWA REGULATION *draft*

Current system. States currently have primary responsibility for regulating MEWAs. Today's regulatory system recognizes MEWAs for what they are - more like insurance carriers than individual employers or Taft-Hartley arrangements, despite what some MEWA operators profess.

MEWAs aren't individual employers: Employers that limit health benefit programs to their own workers and their families have a stake in their own workforce. They back promises to provide reliable health coverage with company assets in the event the health benefit plan comes up short.

MEWAs aren't Taft-Hartley plans: Employers that offer their workers health coverage through collectively bargained agreements must comply with such federal laws as the National Labor Relations Act. They and the unions involved have a stake in ~~the~~ seeing that the workers promised health coverage under the collective bargaining agreement get it, and extensive federal requirements protect those promises.

MEWAs as loose collections of employers: MEWAs usually have a smaller stake in the workers and family members that get health care coverage. MEWAs usually are a collection of unrelated employers; while each employer has a direct stake in their own workforce, MEWAs themselves simply facilitate the purchase of health care coverage by the employers.

Workers enrolled in MEWAs need state protection: Because MEWAs do not have the assets to fall back on like single employers do and because MEWAs are not Taft-Hartley plans subject to the extensive requirements of federal laws like the National Labor Relations Act, MEWAs are appropriately subject to state laws. The federal government has a back-up ~~enforcement~~ role to enforce ERISA's fiduciary responsibilities against MEWA operators and participating employers. This is the proper balance between states and the federal government.

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Invitation to fraud. While many MEWAs provide reliable health care coverage to workers and their families, both Republican and Democratic Administrations have recognized the serious harm that some MEWAs can and have caused. The House proposal would seriously increase the risk of harm to workers.

Fraudulent and abusive MEWAs bilk workers and consumers: Although MEWAs are subject to state insurance regulation, some abusive and fraudulent MEWA operators claim to be entities that states don't regulate, such as Taft-Hartley plans, or falsely assert that they are preempted from state regulation.

Republican and Democratic Administrations fight bad MEWAs: Both the Clinton and Bush Administrations implemented a forceful effort to eliminate scam association plans, and it paid off: because of the coordinated efforts between states and the federal government, scam associations are no longer the major source of fraudulent or abusive schemes that they once were.

The Clinton Administration has not only carried on the enforcement efforts against scam association plans, in 1994 it launched an intensive effort against other fraudulent and abusive schemes.

Consumers lose if MEWA regulation is federalized. Workers and their families who get their health care coverage through a MEWA receive the protections of state regulation. Federalizing MEWA regulation would rob consumers of these protections.

Federalized MEWA regulation: The House proposal essentially federalizes MEWAs, exempting them from state regulation unless DOL rejects a MEWA's application for exemption. DOL essentially would license federal MEWAs. This scheme would create a subcategory of health coverage under a new regulatory framework competing against state-regulated health insurance. This subcategory would be subject to far less regulation at the state level than insured health plans and hence offer far less protection to policy holders.

Workers are protected under state law: Today, people who receive insured coverage, whether through a MEWA or a single employer plan, usually have a state guaranty fund to protect their benefits if their insurer becomes insolvent. These guaranty funds generally require other insurers operating in that state to contribute towards a bail-out of the failed insurance carrier. By removing exempted MEWAs from state insurance regulation, the bill also removes the protection of state guaranty funds. But the House bill does not provide a substitute protection, such as a federal guaranty fund or similar source of protection.

If a federalized MEWA should fail, consumers and employers would find themselves with unpaid medical claims and no health coverage.

Convoluted scheme: And the scheme created by the House bill is so convoluted that even the savviest of MEWA operators would be hard-pressed to understand -- much less comply with -- the federal requirements imposed on them. Well-intentioned MEWA operators would be set up to fail.

The right way and the wrong way to help workers of small firms. Small employers should be encouraged to join together to share the efficiencies and purchasing muscle that larger groups enjoy, but there is a right way and a wrong way to do it.

Federalizing MEWAs is the wrong way. The right way is through purchasing cooperatives. Sens. Kassebaum and Kennedy as well as President Clinton would help employers join together to strengthen their purchasing power. Purchasing cooperatives would allow employers to buy health insurance while retaining the protections afforded by state insurance regulation.

States and the federal government have initiated successful efforts to crack down on the abuses of MEWA operators; federalizing MEWA regulations would be a step backward, reviving the problems which regulators have been able to redress.

FEDERALIZED MEWA REGULATION

Under current law, employers may group together to purchase health insurance for their employees either on their own or through collectively bargained arrangements. Many of these groups that do not have the benefit of a collectively bargained agreement are known as multiple employer welfare arrangements and are subject to ERISA. Among other things, ERISA specifies that MEWAs are subject to state health insurance regulation in addition to ERISA's fiduciary standards.

Threat to small group insurance market: Multiple employer purchasing arrangements would be treated very differently under H.R. 3103 as approved by the House of Representatives on March 28. This bill would create new federally regulated self-insured pooling arrangements called multiple employer health plans (MEHPs). These federalized MEHPs would not be subject to state insurance regulation, dramatically reducing states' long-established authority and ignoring the expertise that states have acquired over decades of insurance regulation.

H.R. 3103 gives federalized MEHPs a competitive advantage over insurers that are required to meet tougher state insurance standards, allowing MEHPs to attract small employers currently able to afford and offering insured health coverage. Without regard to state requirements imposed on their competitors - insurers - H.R. 3101 would give federalized MEHPs the authority to: 1) restrict eligibility to selected employers with low risk populations; 2) vary rates for reasons other than health status or claims experience that could make coverage prohibitively expensive for employers with high risk populations; 3) market only to employers with low risk populations; 4) offer cheaper coverage by eliminating areas of coverage which states require insurers to offer; and 5) offer cheaper coverage than insurers by avoiding state premium taxes (except for new small MEHPs) and state solvency requirements that may be stricter than the federal standards.

Encouraging employers to move out of small group insurance markets into federalized MEHPs could result in skimming the good risks from the small group market and thwarting states' efforts to effectively pool risks in the small group market. The danger of this cherry-picking is that only high risk individuals will be left in the state-regulated small group pools, leading to skyrocketing rates which those left in those pools could not afford.

Employer group purchasing works without federalized MEHPs: Federalized MEHPs free of state regulation are not needed to allow small employers the benefits of strong purchasing power. Statistical analyses support the proposition that a group of 5,000 individuals is plenty large enough to adequately spread health risks. We know from the April 1993 Current Population Survey that even the smallest state has at least 25,000 people (not including their dependents) who work in firms of under 100 employees and who are not offered health insurance coverage by their firm. This is more than five times the number of people needed to form an adequately sized risk pool - without going beyond state boundaries.

Small employers should be encouraged to join together to share the efficiencies and purchasing muscle that larger groups enjoy, but in a manner that retains the protections

afforded by state insurance regulation. Senators Kassebaum and Kennedy as well as President Clinton propose to help employers band together through purchasing cooperatives that offer insured health coverage to workers and their families.

Federal Bail-Out: Participants and beneficiaries who receive insured coverage, whether through a MEWA or a single employer, usually have a state guaranty fund to protect their benefits if their insurer becomes insolvent. H.R. 3103 does not provide for a federal guaranty fund or similar source of protection. If a federalized MEHP should fail, consumers and employers would look to the federal government, raising the specter of another federal bail-out of the scope of the savings and loan debacle.

States are best able to assure MEWA solvency: States and the federal government coordinate regulation of MEWAs pursuant to a 1983 amendment to ERISA. This amendment changed ERISA's preemption provisions to allow state insurance regulation of health arrangements involving employees of two or more employers, terming these entities "multiple employer welfare arrangements," or MEWAs. ERISA dual jurisdiction gives states primary responsibility over the financial soundness of MEWAs and the licensing of MEWA operators, reflecting the fact that MEWAs essentially act as insurance carriers. The Department of Labor enforces ERISA's fiduciary provisions against MEWA operators to the extent a MEWA holds plan assets.

Dual jurisdiction strengthens enforcement: State and federal governments have successfully recovered millions of dollars in premiums and unpaid claims for participants and employers. For example, state and federal governments have detected and taken action against: a MEWA in Florida with 40,000 participants which left $34 million in unpaid medical claims; a MEWA in Massachusetts where the operators diverted over $1 million in premium payments, the collapse of which left more than $4 million in unpaid claims, with individual claims of as much as $250,000; a MEWA in Colorado that left 3500 victims with over $5 million in unpaid claims; and an employee leasing scheme in North Carolina where operators embezzled $1.2 million, which covered 1300 health plans located in 37 states.

Enforcement of H.R. 3103 would require significant federal funding: The federal regulatory structure set forth in H.R. 3103 would be difficult for the federal government to enforce in this era of dramatic federal budget cuts and bipartisan efforts to achieve a balanced federal budget. For example, the Department of Labor alone would have to issue a substantial number of new regulations just to establish the major exemption program for federalized MEHPs.

H.R. 3103 moves authority from the states to the federal government: The House proposal to create federalized MEHPs runs counter to House members' otherwise strong efforts to decentralize authority from the federal to the state level. Rather than creating a new federal bureaucratic framework, we should build on the strengths of today's coordinated enforcement efforts by state governments and the Department of Labor to enhance the purchasing power of small employers in getting and maintaining health coverage for their workers.

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Summary of the MEWA Provisions in H.R. 3103

The reference numbers in bold are to the new Part 7 of ERISA added by the bill in section 161 unless otherwise noted.

The Difference Between a MEWA and a MEHP

Multiple employer welfare arrangements (MEWAs) as defined under ERISA provide health benefits to the employees of two or more employers. MEWAs are currently regulated by the States for solvency, financial reporting and other requirements of State insurance law, including consumer protection measures, but remain subject to ERISA's fiduciary standards. Under H.R. 3103 a self-insured MEWA offering only medical benefits (subject to DOL disregarding other incidental benefits by regulation) could seek an exemption from DOL in order to be excluded from State regulation. These exempted arrangements, known as multiple employer health plans (MEHPs), would be subject to federal standards under ERISA regarding financial, actuarial/solvency and other reporting requirements. MEWAs that do not obtain an exemption remain subject to State regulation. **[702]** Fully-insured MEWAs may operate as voluntary health insurance associations which are discussed on page 3.

Must a MEWA Go Through the Exemption Process to Become a MEHP?

Yes, but due to a class exemption in the bill it appears only small MEWAs would need an exemption before operating as MEHPs. MEWAs already in existence for at least 3 years with either (A) at least 1,000 covered participants and beneficiaries or (B) at least 2,000 employees of eligible participating employers under the MEWA could self-certify that they met the requirements at the time they applied for an exemption. The exemption would then be treated as granted unless and until DOL provided notice that it had been denied. **[702]**

Who Can Sponsor a MEHP?

MEHP plan sponsors must have been organized and maintained in good faith for at least 5 years with a constitution and bylaws stating the MEHP's purpose and providing for periodic meetings at least annually. They must be a trade, industry or professional association or chamber of commerce and operate on a cooperative basis for purposes other than providing medical care. They must also be permanent entities with the active support of their members and collect dues or contributions that are not conditioned on health status. **[703]**

Do MEHPs Have the Same Requirements as Insurers and HMOs?

The bill's provisions on guaranteed renewability and preexisting condition exclusions (listed below) would apply to MEHPs as well as insurers and HMOs. Regarding guaranteed availability, while the self-insured MEHPs are not required to accept as members all employers who seek to join, they are required to make the health benefits coverage available to all employers who are members. **[703]**

Are There Solvency Requirements for MEHPs?

MEHPs must maintain reserves sufficient for unearned contributions and for benefit liabilities incurred but not yet satisfied, and for expected administrative costs. The minimum amount for the reserves would be the greater of (1) 25% of expected incurred claims and expenses for the plan year, or (2) $400,000. DOL may provide additional requirements relating to reserves and excess/stop loss coverage. **[705]**

How Are the MEHP Requirements Enforced?

ERISA Part 5 enforcement mechanisms would apply in addition to a $1,000/day penalty for the failure to file information requested by DOL. States could enter into agreements with DOL regarding the enforcement of the federal standards for MEHPs but DOL would still retain concurrent authority. **[Act Sections 167 and 168]**

Are States Allowed To Tax the MEHPs?

States may impose premium taxes on MEHPs that are established after 3/6/96 or, if already in existence on that date, commenced operations in the State after 3/6/96. **[708]** Thus it appears that States would only be able to tax new MEHPs.

Do States Have Any Additional Authority to Regulate MEHPs?

Guaranteed Access States - If a State certifies to DOL that it provides its residents with guaranteed access to health insurance coverage then it may regulate health care coverage provided in the small group market (or prohibit the provision of such coverage) by a MEHP.

"Guaranteed Access" means (A) 90% of the State's residents have health insurance coverage or (B) there is guaranteed issue in the small group market for employees for at least one option of coverage offered by insurers and HMOs and the State has implemented rating reforms designed to make coverage more affordable. **[708]**

Exceptions for Certain MEHPs - Regulation by States that certify they have guaranteed access does not apply to MEHPs that-

> (1)(a) operate in the majority of the 50 States and in at least 2 regions of the U.S.; (b) cover at least 7,500 participants and beneficiaries, and (c) do not have an enforcement action by the State pending at the time of application for the exemption; or
>
> (2) were operating in the State as of 3/6/96 (regardless of size) and did not have any enforcement actions pending against them.

In addition, DOL may provide for an exemption in regulations from requirement (1) (a) for certain MEHPs that are limited to a single industry. **[708]**

Comment: These exceptions and limitations appear to have the effect of allowing States to regulate only new small MEHPs.

Specific Carve-outs - The above two exemptions do not apply to any State that as of 1/1/96 had laws that either provided guaranteed issue of individual insurance using pure community rating or required insurers of group health plan to reimburse insurers offering individual coverage for losses resulting from the offering of such coverage on an open enrollment basis. These two States are believed to be New York and New Jersey. **[708]**

What Is a Voluntary Health Insurance Association?

A voluntary health insurance association is a fully-insured MEWA maintained by a qualified association whose benefits include medical care. In general, the requirements for voluntary associations are very similar to those cited above for MEHPs such as being in existence for 5 years with a constitution and bylaws, being a permanent entity with active support of its members and collecting dues or contributions that are not conditioned on health status. In order to escape State regulation in States that certify they provide guaranteed access, large multistate associations and associations in existence as of March 6, 1996 may not exclude from membership any small employers in that State. **[Act Section 162]**

How Do the Purchasing Coalitions under the Kassebaum/Kennedy Bill (S. 1028) Differ from the MEHPs?

Under S. 1028 voluntary purchasing coalitions may be established to provide employers and individuals with access to fully-insured health plans. The coalitions negotiate with health care providers and health plans, prepare and distribute plan materials, market the plans and act as an ombudsman for enrollees. The coalitions may not perform any activity related to health plan licensing, assume financial risk in relation to the health plans or exclude anyone based on health status. The coalitions must generally be not-for-profit with an exception for those run by non-profit organizations.

The coalitions are certified by the State, chartered under State law and registered with DOL. If a State fails to implement a certification program then DOL shall certify the coalitions and oversee their operations. The requirements of parts 4 (Fiduciary Responsibility) and 5 (Administration and Enforcement) of title I of ERISA apply to the purchasing coalitions.

MEWAS: DANGER TO CONSUMERS, BANE OF REGULATORS

MEWAs have been the principal source of fraudulent and abusive conduct in the health care arena for years. They have a long history of scamming consumers - MEWAs have bilked participants and employers out of hundreds of millions of dollars in premiums and unpaid claims. States and the federal government have devoted vast resources and time to investigating, indicting, and prosecuting unscrupulous or fraudulent MEWA promoters and operators.

Years of tracking down and prosecuting fraudulent and abusive MEWAs provide plenty of evidence that federalized MEWAs could and would give unscrupulous operators a wide open chance to prey on consumers.

Elusive operators
MEWAs and their promoters are very difficult or impossible to locate until they are in financial trouble. Most operate as unlicensed health insurers.

Operators move quickly from state to state setting up new operations with new names as old MEWAs collapse. States and the federal government usually only learn of a MEWA when complaints come in about unpaid claims. By the time fraudulent operators are prosecuted, the money is usually gone and no recoveries can be made. These problems would only be exacerbated by eliminating states' ability to regulate MEWAs.

Danger to consumers
Because of the insufficient funding and inadequate reserves or, in some cases, excessive administrative fees and outright embezzlement, many MEWAs wind up failing to pay claims and going belly up.

When a MEWA folds, participants are left with unpaid claims and no health coverage. Participants of failed MEWAs face economic ruin, losing their life's savings and being forced into bankruptcy. An investigation by the General Accounting Office revealed how big the problem was even back in 1991. A 1992 GAO report found that over 2.5 million participants and beneficiaries were enrolled in MEWAs operating in 46 states in 1991, and more than 600 MEWAs failed to comply with state insurance laws. Between 1988 and 1991 unpaid claims by MEWAs totaled over $123 million.

Since 1990, for example, state and federal governments have detected and taken action against:

- a MEWA in Florida with 40,000 participants which left $34 million in unpaid medical claims.
- a MEWA in Massachusetts where the operators diverted over $1 million in premium payments. The collapse of the MEWA left more than $4 million in unpaid claims, with individuals claims of as much as $250,000.

- a multistate MEWA covering thousands of participants which embezzled more than $1 million in premiums and left more than $8 million in unpaid claims.
- a MEWA in Colorado that left 3500 victims with over $5 million in unpaid claims.
- an employee leasing scheme in North Carolina where operators embezzled $1.2 million. It covered 1300 health plans located in 37 states.
- a bogus union health plan in New York which embezzled $497,000 with 9000 participants.

H.R. 3103's provisions would profoundly increase the magnitude of this problem, setting up a situation that is ripe for rampant fraud. And small employers shopping for plans principally on the basis of price could too easily choose plans that ultimately fail to deliver benefits.

Genesis of MEWAs and the current regulatory framework

As a result of ERISA's preemption provisions and other factors, in the 1970s unscrupulous entrepreneurs began selling health insurance coverage to primarily small employers claiming, usually falsely, that the coverage they sold constituted ERISA-covered employee benefit plans and thus were removed from state regulation.

Because of the havoc created by these Ponzi schemes, Congress in 1983 changed ERISA's preemption provisions to allow state insurance regulation of health arrangements involving employees of two or more employers, terming these entities "multiple employer welfare arrangements," or MEWAs.

This ERISA dual jurisdiction gives states primary responsibility over the financial soundness of MEWAs and the licensing of MEWA operators. The Department of Labor's role is to enforce ERISA's fiduciary provisions against MEWA operators to the extent a MEWA holds plan assets. This allocation of responsibility gives to the states the substantive authority over areas where they have the most expertise, including reserve and other funding requirements for insurance companies.

Although untrue, many MEWAs still claim to be exempt from state insurance regulation or they fail to comply with it. Most claim not to be MEWAs but rather employee benefit societies, labor unions, employer associations, or employee leasing companies.

By avoiding state insurance reserve, contribution, and other requirements applicable to insurance companies, MEWAs are often able to market insurance at rates substantially below those of regulated insurance companies.

Wrong way to help small employers

There is a right way and a wrong way to help small employers. Federalizing MEWAs is the wrong way. The right way is through purchasing cooperatives. We can preserve the best aspects of the MEWA-type structure -- pooling employers together for purchasing power --

while preventing the fraud and abuse perpetrated by many MEWA operators today, by assisting employers to group together through purchasing cooperatives.

The approach in the Kassebaum-Kennedy bill and the President's budget proposal would help employers from one or more states to join together to strengthen their purchasing power while protecting worker's coverage by ensuring it is subject to state regulation.

DOL RECOMMENDATIONS FOR MEWA REGULATION

In Fawell bill

Exempt franchise-sponsored arrangements from state regulation as MEWAs, treating them as single-employer plans.

In bill

Treat plans sponsored by employers with more than 25 percent in common control as single-employer plans.

In bill - but problems with their definition

Clarify the definition of a collectively bargained arrangement to ensure that only multiemployer arrangements which cover overwhelmingly individuals who are subject to bona fide collective bargaining agreements are treated as multiemployer (i.e. non-MEWA) plans.

Slight modification of what's in the bill

Require MEWAs to register both initially and annually with the Department of Labor, with DOL sharing with the states the registration information to help them ensure compliance with their laws.

In bill in diff. form

Require periodic audited financial and actuarial reports from MEWAs to verify compliance with solvency requirements.

Give DOL authority to set minimum solvency requirements for self-funded MEWAs.

Clarify injunctive (i.e. cease and desist) authority of state and federal governments to shut down sham MEWAs and MEWAs that fail to meet solvency requirements.

In bill

Prohibit insurance/MEWA commissions and agency fees for purposes of marketing MEWAs.

MEWAs & Association Plans Under Fawell
(H.R. 995)

Current law:

1. Multiple employer arrangements that exist pursuant to a collectively bargained plan are considered ERISA plans and not subject to state law.

   --examples are the Taft-Hartley plans that exist in the mining and construction industries

   --in recent years, sham "collectively bargained" arrangements have been established in an attempt to avoid state regulation. The Department of Labor is developing a regulation to more clearly define what constitutes a legitimate collectively bargained plan, but the Fawell bill also defines the term in an attempt to clarify what is legitimate.

2. Multiple employer arrangements that are not established pursuant to a collectively bargained agreement are called Multiple Employer Welfare Arrangements, or MEWAs.

   --MEWAs are subject to state regulation and ERISA fiduciary standards.

   --MEWAs often claim to be ERISA plans in an attempt to avoid state regulation. ERISA has been amended in the past to clarify state and federal jurisdiction, but problems persist in identifying and prosecuting fraudulent MEWAs.

3. "Association plans" is not a clearly defined concept. Associations that qualify as IRC 501(c)(9) organizations may offer insurance as an ancillary service and receive certain tax benefits as VEBAs (voluntary employee benefit arrangements), and the Department of Labor has guidelines (who controls the association, the health plan, etc.) for determining legitimate associations.

   --Fully insured association plans are subject to state regulation.

   --Self-insured association plans are treated as MEWAs--i.e., subject to both federal and state oversight.

4. The biggest concern with self-insured MEWAs or association plans is that they are not subject to stringent solvency standards. States can regulate the solvency standards of MEWAs and association plans under ERISA, but almost no states have done so. (And unlike self-insured employer plans, where a claim could be made against the corporate assets in case of plan insolvency, there are no underlying assets in an association that could be reached if a plan gets in serious financial condition or becomes insolvent.)

Size of MEWA and association pools

1. Little reliable data exists.

--The only significant study of MEWAs was a March 1992 GAO report, which concluded over 2.5 million participants were enrolled in MEWAs operating in 46 states in 1991. More than 600 MEWAs failed to comply with state insurance laws, and unpaid claims over a four year period totaled over $123 million.

2. There is no estimate of the size of the association plans.

Concerns about Association plans and federalized MEWAs under the Fawell proposal

1. Under H.R. 995, the Department of Labor would have to promulgate regulations that would permit MEWAs to qualify as ERISA plans, thus avoiding any state regulation (the states could reach an enforcement agreement with the Department for these plans, however).

   --state mandated benefit laws would not apply to federalized MEWAs.

   --state premium rating restrictions would not apply to federalized MEWAs.

2. Although the Department of Labor would set solvency standards for the federalized MEWAs, the law sets no general standards. The concern is that the federal standards could be relatively weak, enabling these plans to gain a competitive edge over insurers subject to stricter state solvency standards.

3. Under ERISA there is no guaranty fund for MEWAs, whereas most states have guaranty funds to protect beneficiaries of licensed state insurance carriers that become insolvent.

4. Federalized MEWAs could easily skim the insurance market in the states. Over time, the states could be left with a relatively smaller and much higher risk pool for its insurance carriers. Carriers, in turn, may leave the state regulated market entirely and cater to the MEWA pools.

5. The Department of Labor does not have, nor is it likely to receive, the resources to regulate and monitor MEWAs effectively.

6. Fawell establishes clearer criteria for "association plans" (section 703), including sponsorship, plan of operation and trustees. (An association must clearly exist for some other purpose than to provide health insurance.)

   --the concern, as with MEWAs, is that these rules still may be easily manipulated and that it would be relatively easy to form an association that could select relatively better risks.

Purchasing Cooperatives

1. The Roukema proposal encourages the formation of cooperatives to assist small employers in buying insurance products at a discount. Cooperatives as envisioned under

the Roukema would realize lower costs through administrative efficiencies, but by requiring the cooperatives to buy state regulated insurance plans, the cooperatives would not be undermining the state's risk pool or overall insurance efforts.

Fawell Bill: H.R. 995
As Amended in Committee

Title I: Increased Availability and Continuity of Group Health Plan Coverage for Employees and Their Families

Section 101: Modifies ERISA definition of 'group health plan' for purposes of this bill [technical change]. Also, permits partners and sole proprietors to be included in the definition of 'group health plan' if they are part of a plan they purchase for their employees.

Section 102: Adds a new Part 8 to ERISA for purposes of group health plans. The new Part 8 contains the following:

Section 800: Definitions.

Section 801: Limits on Preexisting Condition Exclusions.

- -- 12 month maximum period (18 months for late entrants) with a 6 month look-back (12 months for late entrants).
- -- Nothing in this section may be constructed to require specific procedures, treatment or services.
- -- Federally qualified HMOs may establish pre-existing condition restrictions, as long as they are applied uniformity.
- -- HMOs that do not use a pre-existing condition restriction period may establish an "affiliation period" no longer than 90 days (180 days for late entrants).

Section 802: Portability.

- -- Requires a group plan to offset pre-existing condition periods month-for-month for previous qualifying coverage (including individual health insurance or government plans--e.g., Medicaid)
- -- Pre-existing condition restrictions may be imposed for benefits that were not provided by the previous plan. The maximum lapse of coverage is 60 days.
- -- A plan may require satisfactory documentation of previous coverage. The Secretary of Labor may prescribe regulations for documentation requirements.
- -- Newborns or adopted children are not subject to pre-existing condition restrictions if enrolled within 30 days of birth or adoption.

Section 803: Renewability Requirements.

- -- Multi employer plans, multiple employer health plans, and multiple employer welfare arrangements must renew coverage to an employer who is part of such an arrangement, unless there is no nonpayment of contributions, fraud; if the plans ceases to offer any

coverage in a geographical area; or if the terms of a collective bargaining agreement are not met.

- Insurers are required to renew except for such factors as nonpayment of premiums or fraud.

Section 103: The effective date is 18 months after enactment.

Section 804: Group health plan enrollment requirements.

Title II: Requirements for Insurers and Health Maintenance Organizations Offering Health Insurance Coverage to Group Health Plans of Small Employers.

Section 201: Amends ERISA with the following sections.

Section 811: Definitions

Section 812: Insurers and HMOs in the small group market.

- Insurers and HMOs that offer coverage to employers between 2 and 50 employees generally must accept every eligible employer (this requirement does not extend to small employers who obtain coverage through an association plan).
- plans must be sold with uniform participation and eligibility rules for employees, consistent with state law.
- HMOs and network plans can limit group access to geographic areas served.
- plans do not have to accept new groups if financial capacity limits are reached.

Section 202: Effective date is 18 months after enactment.

Title III: Encouragement of Multiple Employer Health Plans, Voluntary Health Insurance Associations, and Other Fully Insured Arrangements, Preemption.

Section 301: Scope of state regulation.

- a state may require an insurer in the small group market to offer specific items or services but the requirements may apply to only two plans offered by the insurer.
- creates a new entity: Voluntary Health Insurance Associations (VHIA) which are fully insured association plans. VHIAs are exempt from state mandated benefit laws and HIAs may set premiums based its group's claims experience.

Section 302: Secretary of Labor's duty to implement new regulations for "multiple employer health plans". (The MEHPs are currently called Multiple Employer Welfare Arrangements, or MEWAs, and are primarily regulated by the states, with federal enforcement under certain circumstances.) Amends ERISA with the following sections.

Section 701: definitions.

-- creates a new entity: Multiple Employer Health Plans (MEHP) which are self-insured MEWAs.

Section 702: MEHP are exempt from certain state laws.

-- MEHPs must meet certain reporting and disclosure, reserve, eligibility and fiduciary requirements established through regulation by the Secretary of Labor. The regulations must be promulgated.
-- a MEHP would apply for an exemption under the regulations with the Department of Labor. An exemption would be granted if the Secretary found the exemption to be administratively feasible and protective of the interests of the participants.
-- MEHPs must register with each state that has 5% or more of the individuals covered.

Section 703: Requirements relating to sponsors, boards of trustees, and plan operations.

-- a plan sponsor, which can be a trade association, an industry association, a professional association, or a chamber of commerce, must meet certain conditions, including three years of operation and a purpose independent of providing health insurance.
-- requirements include non-discrimination rules for individuals and employers within the association.
-- MEWA-like arrangements that are dominated by a single employer currently may not qualify as a MEWA. This provision changes lowers the "common control" standard in ERISA, as it applies to these type of arrangments, and allows the dominant employer and all other employers in the arrangement that are "related" to qualify as a MEHP.

Section 303: Clarification of scope of preemption rules. (A technical amendment)

Section 304: Clarification of treatment of single employer arrangements.

-- loosens the definition of 'common control' which is used to determine when an employer is a 'single employer' under ERISA.

Section 305: Clarification of certain collectively bargained arrangements.

-- Multi-employer plans that are collectively bargained are covered by ERISA and not subject to state law. This section clarifies what constitutes 'collectively bargained'.

-- to be collectively bargained, the plan must have been negotiated in accordance with the National Labor Relations Act, have joint trusteeship, limits on the inclusion of non-bargaining unit employees, limits on use of sales agents, and other restrictions.

Section 306: Treatment of church plans. The following new sections are added to ERISA.

Section 704: Special rules for church plans.

-- church plans may elect, irrevocably, to be covered under the provisions of this act (but would not otherwise be subject to ERISA).

Section 307: Enforcement provisions for MEWAs.

-- clarifies certain federal and state authorities for enforcement of MEWA requirements.

Section 308: Cooperation between federal and state authorities.

-- states may enter into an agreement with the Department of Labor to enforce MEWA provisions, but the Department would maintain concurrent authority.

Section 309: Filing requirements for MEWAs.

-- a MEWA must register with the Secretary of Labor before commencing operation and file annually thereafter.

Section 310: Single filing for all participating employers.

-- a single report must be filed with each employer in the MEWA.

Section 311: Effective date is no later than July 1, 1997 (earlier if regulations are promulgated).

Section 312: Rule of construction.

-- nothing in the act can be construed as to require a particular treatment or service as part of a health plan.