

# Health Care Reform Management Alert Series

## New Enforcement and Reporting Rules Applicable to Multiple Employer Welfare Arrangements (MEWAs)



Issue 55

*This is the fifty-fifth issue in our health care reform series of alerts for employers on selected topics and health care reform (our general summary of health care reform and other issues in this series can be accessed by clicking [here](#)). This series of health care reform management alerts is designed to provide a more in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.*

On March 1, 2013, the Department of Labor published two sets of final regulations relating to multiple employer welfare arrangements (MEWAs) - one containing enforcement rules and the other reporting requirements. (In general, a MEWA is any arrangement which is established or maintained for the purpose of offering or providing health or other welfare benefits to the employees of two or more employers).

### Background

Although properly structured and managed MEWAs that are licensed to operate in a state may provide a viable option for some employers to purchase affordable health coverage, some MEWAs are marketed by unlicensed entities attempting to avoid state insurance reserve, contribution and consumer protection requirements. Due to insufficient funding and inadequate reserves, in some situations MEWAs have become insolvent and unable to pay benefit claims.

The Affordable Care Act (ACA) prohibits a person who is marketing or selling a MEWA from knowingly making false statements concerning a MEWA's financial condition or solvency, the benefits provided by the MEWA, or the MEWA's regulatory status under federal or state law. Criminal penalties may apply to anyone convicted of violating this provision. In addition, the ACA provides the Department of Labor (DOL) with authority to issue cease and desist orders or summary seizure orders if it appears that the conduct of a MEWA is fraudulent or dangerous to the public. Finally, the ACA mandated that the DOL issue regulations requiring MEWAs to register with the DOL prior to operating in a State and to report annually on their compliance with certain ERISA requirements.

### Enforcement Rules

Previously, the DOL's primary enforcement tool against fraudulent and abusive MEWAs was court-ordered injunctive relief. Now, ERISA permits the DOL to issue cease and desist orders, without prior notice or a hearing, when it appears that a MEWA has engaged in conduct which:

- is fraudulent;
- creates an immediate danger to the public safety or welfare; or
- causes or can be expected to cause significant, imminent and irreparable public injury.

The DOL is also authorized to issue a summary order to seize the assets of a MEWA that the DOL determines to be in a financially hazardous condition.

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The final regulations set forth procedures that the DOL will follow to issue cease and desist and summary seizure orders. The regulations provide that a cease and desist order may apply to MEWAs and to persons having custody or control of assets of the MEWA, authority over management of a MEWA, or any role in the transaction of a MEWA's business. Thus, a cease and desist order or summary seizure order could apply to a third party administrator.

For purposes of the enforcement rules, a MEWA is an arrangement, as defined in ERISA, that either is an ERISA plan or offers benefits in connection with one or more ERISA plans. The regulations expressly exclude an health insurance issuer and/or HMO that is licensed to provide health insurance to the public and employers from the definition of a MEWA.

### Reporting Requirements

The ACA required new MEWAs (providing benefits that consist of medical care) which are not group health plans to register with the DOL prior to commencing operations in a state.

For more than a decade, MEWAs have been subject to reporting requirements aimed at identifying MEWAs and curbing fraud and abuse. All MEWAs that provide medical benefits, whether or not a group health plan, must file a Form M-1 annually. In addition, entities claiming exception (ECEs) (i.e. entities claiming that they are not a MEWA on the basis that they are established or maintained pursuant to a collective bargaining agreement) have been required to file a similar report annually during the first three years of operation. Despite these requirements, abuses persisted.

The final regulations establish new registration and reporting requirements for plan MEWAs, non-plan MEWAs and ECEs. The revised Form M-1 must be filed electronically, and will require more extensive financial information and more information about a broader group of individuals associated with the MEWA. In addition to the annual filing, a special Form M-1 filing will be required 30 days prior to operating in any State and within 30 days after certain triggering events such as: (i) operating in any new State not previously identified, (ii) a merger with another MEWA, (iii) the number of employees receiving coverage under the MEWA increasing 50% or more, or (iv) a material change. Similar requirements apply to ECEs. The final regulations also require ERISA-covered plans subject to the Form M-1 reporting rules to include proof of Form M-1 filings as part of the Form 5500.

### Delayed Filing Deadlines

The filing deadline for the 2012 Form M-1 (which would normally be due March 1, 2013) has been delayed to **May 1, 2013**, with an extension available to July 1, 2013. New and special filings are due for events after July 1, 2013, with a 60 day extension available.

By: *Joy Sellstrom* and *Lauren Worssek*

*Joy Sellstrom* is senior counsel in Seyfarth's Chicago office. *Lauren Worssek* is an associate in Seyfarth's Washington D.C. office. If you have questions regarding these new rules, please do not hesitate to contact the Seyfarth Shaw LLP attorney with whom you usually work, or Joy Sellstrom at [jsellstrom@seyfarth.com](mailto:jsellstrom@seyfarth.com) or Lauren Worssek at [LWorssek@seyfarth.com](mailto:LWorssek@seyfarth.com).

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