Leveraging the Power of **Group Purchasing**

Association health plans and multiple employer welfare arrangements gaining traction for small and midsize employers seeking to pool risk

Written By Bruce Shutan

While self-insurance is built on wresting control of an organization's medical claims from third parties that muddle the supply chain with added layers of cost, some vehicles gain strength in numbers. Small and midsize employers in the 100 to 500-employee range, for instance, may want to pool their risk through a homogeneous or heterogeneous group captive arrangement with like-minded employers and reap dividends from wise investments.

But there also are other self-insured avenues leveraging the power of group purchasing that are better suited to small or midsize groups so they can manage their risks as effectively as large employers.

Two such solutions that allow groups to share resources and have earned renewed attention include association health plans (AHPs), which were developed in the late 1990s and promoted during President Donald Trump's first term, and multiple employer welfare arrangements (MEWAs), which have survived periodic headwinds dating back to their 1983 creation.

AHPs also may be classified as MEWAs, depending on how they're structured and are considered a type of group health plan that allows small businesses or self-employed individuals to band together (often by industry or geography) through a bona fide association to purchase insurance. They're typically governed under ERISA and can sometimes avoid some Affordable Care Act requirements if classified as a large group plan.

MEWAs, on the other hand, involve two or more unrelated employers that provide health or welfare benefits to their employees under a single plan that can be fully insured or self-insured. They're also governed by ERISA but subject to both federal and state regulation, often more heavily than AHPs.

These vehicles offer a large enough risk pool wherein healthy enrollees theoretically counterbalance the claims experience involving unhealthy members of the group. Actuaries will develop premiums based on the blend of individuals and their health claims experience that will sufficiently handle each risk pool.

PARSING OUT SIMILARITIES AND DIFFERENCES

While the differences between AHPs and MEWAs are slight from both a regulatory and risk standpoint, deciding whether to adopt one or the other approach comes down to risk pooling, according to David Wilson, president and senior actuary of Windsor Strategy Partners, Inc. He believes groups with fewer than 100 lives "may have some financial benefits from working at a well-run MEWA or AHP vs. staying in a larger insurance pool."

SIIA Washington Counsel Chris Condeluci estimates that there are at least hundreds of self-insured MEWAs operating today, while Department of Labor (DOL) M-1 reporting forms MEWAs must file suggest that about three million employees and family members are covered by both fully insured and self-insured arrangements. Estimating the number of AHPs is another story. "It's not easy to get the data or accurate enrollment number," he explains.

While AHPs and MEWAs are essentially one and the same, he says many MEWAs that could be characterized as AHPs offer a comprehensive range of major medical health coverages that mirror a large employer's benefits offering.

While some arrangements offer a series of limited benefit plans with indemnity, disability, short-term or so-called "skinny plan" coverage that a broker ties into an association, he doesn't consider them an AHP. That distinction is important because opponents of self-insured MEWAs and AHPs, which include insurance regulators and health insurance companies tied to the fully insured market, argue that they don't provide good coverage.

EASING PLAN RESTRICTIONS

When Rene Alexander Acosta served as labor secretary in Trump's first administration, the hope among MEWA advocates at that time was to allow these arrangements to easily cross state lines. That meant breaking free of the patchwork of 50 state regulatory requirements – an aspiration that never was realized.

Bill Dyer, co-founder and VP of member relations for the MEWA Association of America and co-founder and VP of HCP National, who is sometimes known as "Mr. MEWA," notes that risk-retention groups through which associations acquire liability insurance have been crossing state lines for 40 years.

"I don't understand why this particular class of business could be any different if they're meeting the reserving requirements of the state that is also regulating them?" he wonders about MEWAs, adding that it has stunted the industry's growth.

Asked when it would make sense to adopt a single-employer AHP, Condeluci notes that the DOL treats employers in the same industry that have pooled their purchasing power as a single plan, whereas that's not the case for non-industry-based employers sponsoring a health plan. However, he adds that actuaries still pool everybody together, irrespective of this distinction.

The first Trump administration sought to treat non-industry-based plans like industry-based ones as part of a single risk pool – a streamlined definition currently being worked on that hope will find its way into congressional legislation. "That would, in theory, increase adoption by providing more legal certainty and less ambiguity for employer members of associations and chambers of commerce and for insurance regulators," he adds.

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AHP bills recently introduced in the House and Senate seek to help employers work around federal rules that restrict employers and individuals teaming up to buy health coverage. Sen. Rand Paul's (R-Ky.) proposal, similar to a health marketplace pool bill he introduced last November, is nearly identical to a version from Rep. Tim Walberg (R-Mich.), who chairs the House Education and the Workforce Committee.

THREAT OF INSOLVENCY

While there are merits to pooling risk, the fact is that it can be a risky business. In groups of about 500 lives, Dyer explains that a few significant catastrophic claims could knock a MEWA upside down, whereas one with 20,000 to 30,000 lives would involve a bigger spread of risk and more predictability. If a MEWA is well run, he says rates will decrease, stay the same or increase only slightly.

Whatever the circumstances might be, he says there are five key ingredients to a successful MEWA. First, an association must have at least $1 million for actuarial and legal expenses, as well as paying for stop loss and having adequate reserves. Secondly, the group has to be fully integrated to a point where it can drive volume very quickly by having at least 1,000 lives but, ideally, 5,000 in order for a greater spread of risk that will help sustain success over the long run. Thirdly, it helps to be located in a state that allows underwriting so that a higher premium can be charged to insure risky health conditions. Finally, it's important to have adequate stop-loss and liability coverages, as well as hire the right management company to handle compliance.

Management companies that organize MEWAs charge fees to help associations unpack the complexity of these arrangements that they could never figure out on their own, he explains, adding that "there are some very good ones out there that charge a fair rate."

The potential for underfunding and insolvency, however, is still top of mind 42 years after MEWAs were introduced. "When you have multiple employers and one of them is not kicking in their share, it can have a domino effect on other members of the plan," explains Mark Flores, co-founder and executive vice president of Avym Corp, noting there's a cost to defaulting on financial obligations for the rest of the group.

"That's a huge issue, and there's no clear guidance as to what entity is required to disclose both direct and non-direct fees under the CAA [Consolidated Appropriations Act of 2022)." But it also could be extremely difficult for self-insured plan sponsors to attest what they're paying in fees that are bundled and understand how they're calculated, he explains. Moreover, problems could arise when there's a potential conflict between delegating fiduciary obligation and not periodically assessing plan data.

Apart from the CAA's impact, COVID also has been a significant factor in that it caused some plans to shut down. For example, Wilson notes that while many MEWAs had enough capital to absorb random fluctuations in their business, they fell short of the mark when it came to the larger impact of the pandemic.

"Nobody anticipated a pandemic, and then the government's response where maybe they were doing the right thing from a population health standpoint, but plans were asked to cover expenses that were never part of their mandate," he explains.

Since that time, he says rates have stabilized, and his firm has done several feasibility studies suggesting a desire to expand these plans to more states or start new ones altogether.

Another issue that arose soon after MEWAs were introduced and continues to be a concern involves intentional misrepresentation or fraud. If the fees being paid are nearly 100% opaque, Flores can't imagine how a group of plans would ever be able to properly identify and reconcile what they're paying in fees – and, therefore, be caught up in malfeasance.

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"I think there's ample legal evidence over the past few years that this is actually happening," he observes, noting that many employers are suing carrier TPAs that are refusing to provide them any clarity with respect to their own plan data. "Ultimately, they may be suing them because they know that they're probably going to get sued themselves by their own members if they don't go after this money."

Other issues beneath the surface that must be addressed include whether a group or trustees will be tasked with hearing and deciding on an appeal that complies with ERISA and who is liable if that process is not followed. "It just creates a Pandora's box of issues as to who's accountable," he says.

Where captives would be more useful than AHPs or MEWAs is when small employers actually purchase medical stop-loss insurance through the captive – a growing part of the market – and the price tag makes more sense to them.

"The reason why it's not a MEWA is because stop loss is not major medical coverage, and therefore, it doesn't meet the definition about distinguishing major medical vs. limited benefit plans," Condeluci explains. Those small employers that worry about plan administration, want to be hands off or feel it's important to support their trade association will want to choose an AHP or MEWA, he adds.

STATE OBSTACLES TO PLAN CREATION

Dyer, meanwhile, laments the sad state of affairs in some states where insurance companies with tremendous political power create barriers to even starting a MEWA. In California, where he's based, it costs $5 million just to launch a MEWA. "Who has that kind of money?" he asks.

He admits "there was a lot of shenanigans going on" in the salad days of MEWA when brokers would naively start them, not realizing they had to go through their state department of insurance and the federal government. Some nefarious brokers, along with other individuals, would even charge steep commissions, keep premiums, and not pay claims. "Most of the stop-loss insurers told us to get lost because they thought MEWAs were prone to fraud and abuse," Dyer reports.

But today, he says the majority of MEWAs are legitimate, and many have been around for a very long time. They're subject not only to state regulatory requirements but also filing with the DOL, which he says does its share of audits to catch illegal activities.

One caveat to consider along the way to starting a MEWA is the importance of vetting stop-loss carriers. "We have seen three clients that had claims denied because the insurer used language in their policy that is oriented toward a self-insured single employer, not a MEWA," he says. Employers, therefore, need to know what a MEWA is, how to find the right stop-loss insurance and how to get an insurer to rewrite their policy.

Being in a self-insured MEWA can be a costly proposition for employer members relative to a fully insured MEWA arrangement because they're the ones that hold all the liability as fiduciaries, even though another service provider is being paid to adjudicate claims and fill in some of these roles, Flores cautions.

Without clear guidance from the federal government on who's responsible for what in a MEWA, he believes it opens the door to chaos. However, he doesn't expect any clear guidance from the Trump administration because it's not a simple issue, nor is it a priority relative to the dozens of other new policy initiatives that have been seeded.

"The best people in the country disagree about the best ways to do this – even those with the best intentions," Flores opines. "We need a sophisticated advocate on the government side who understands this and, at minimum, could provide accountability."■

Bruce Shutan is a Portland, Oregon-based freelance writer who has closely covered the employee benefits industry for more than 35 years.