Revisiting MEWAs

Years after insolvency, unpaid claims and fraudulent schemes soiled multiple employer welfare arrangements, regulatory improvements have made them viable again for smaller markets

By Bruce Shutan

The MEWA acronym used to be a four-letter word in the eyes of regulators who decades ago dismissed multiple employer welfare arrangements as hotbeds of insolvency, unpaid claims and fraud. Key culprits were inadequate reserves, criminal activity or a combination thereof.

These self-funded vehicles are still subject to close regulatory scrutiny and pose governance challenges related to the Employee Retirement Income Security Act (ERISA) and state insurance requirements. However, MEWAs also offer a viable and affordable solution for covering diverse employer groups and associations when solvency standards and risk management strategies are deployed. As such, they're getting a closer look across the self-insured community.

There's no denying the MEWA's checkered past, including wild tales of embezzlement. "Unfortunately, stories of operators going to Belize with the money were true," quips William F. Megna, co-chair of the insurance law practice group at Genova Burns and a co-founder of the MEWA Association of America.

The view of MEWAs by many seasoned industry executives "is clouded by what happened in the '80s when there were a lot of unscrupulous people in the business," agrees David Wilson, president and senior actuary of Windsor Strategy Partners, Inc.

Describing this period as "ancient history," he attributes most of those failures to bad pricing and poor management rather than brazen attempts by individuals to enrich themselves at the expense of the plan *per se*.

But much has changed since then.

Checks and balances at the state level

Many states have enacted reasonable structural regulations for MEWAs that require financial reporting, which was missing in the early days when some operators of these arrangements lacked both insurance expertise and the best of intentions, according to John J. McSorley, president and CEO of RiskEval Resources LLC. Each state, however, will have different requirements for plan documents and benefit inclusions, he adds.

Several states have established a solid regulatory framework that Megna says place solvency ahead of entrepreneurial aspirations. Examples of MEWA-friendly jurisdictions include New Jersey and Georgia, whose regulations have a risk-based capital component to that's similar to what commercial carriers follow. Both self-funded MEWAs registered in New Jersey have seen exceptional growth in their membership, he reports.

Wilson has been involved with a MEWA in New Jersey that has been operating since the Garden State passed legislation in the early 2000s designed to jumpstart these arrangements once again. Despite some ups and downs, he says it has done quite well. Regulators established solvency standards "that were just slightly looser than for a mutual health insurance company," he explains. MEWAs in the state are subject to the same forms, annual filings and risk-based capital standards as a mutual health insurer.

Georgia followed suit, but added some improvements, he reports, while both states tie financial responsibility for solvency of the plan to all members, which means they could be called upon to pay more into the plan to maintain solvency.

This small insurer approach provides an early warning system for state regulators to "become actively engaged in either getting the plan back on track from a solvency perspective, or winding down the plan risk so there's a minimal detrimental fiscal effect for everybody involved," according to Wilson.

Meanwhile in Texas, the fully-funded fees charged to MEWAs must cover up to the aggregate attachment level. Wilson calls it *"a much more prudent approach than the old days where people would charge everybody, which might include stop-loss or reinsurance, and then they would charge basically expected claims."*

There also have been similar efforts involving MEWA oversight at the federal level. For example, the Affordable Care Act (ACA) sought to reduce MEWA fraud and abuse through expanded reporting and stronger enforcement – the latter requiring registration with the U.S. Department of Labor (DOL) prior to operating in a state.

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In doing so, the ACA gave the labor secretary "authority to issue a cease and desist order when a MEWA engages in fraudulent or other abusive conduct and issue a summary seizure order when a MEWA is in a financially hazardous condition," according to a DOL guide to federal and state regulation of MEWAs.

An exception to ERISA's broad preemption provisions was made in 1983 to allow for the regulation of MEWAs under state insurance laws. The move was considered "both appropriate and necessary for states to be able to establish, apply and enforce state insurance laws with respect to MEWAs," the DOL stated, noting a brewing battle over ERISA preemption.

In pursuit of shared risk

One motivation behind this regulatory pursuit could be that MEWAs serve as a vehicle for small businesses that, left to their own devices, lack the purchasing power and resources of larger firms. Companies with anywhere from two to 300 lives are a good candidate for a MEWA, Megna notes, while in some cases mixing small and larger employers is helpful to achieve greater diversification of risk and geography.

MEWAs tend to turn smaller groups into a larger risk group with enough reserves to help moderate any real fluctuations, explains McSorley, whose experience managing health plan operations runs deep.

He says the impetus starts with an association or group of companies seeking to share risk in providing health benefits on behalf of their employees and dependents. A feasibility study is then performed to actuarially determine whether or not the MEWA will be beneficial, he adds. Other key components include calculating commercial insurance rates, building a good distribution network and hiring experts to oversee the operation.

With regard to the last point, McSorley says actuaries conduct periodic reviews on financials and reserves, as well as set rates in the marketplace and analyze health care trend, while an underwriting vendor can also

assist with the sales function. He cites the role of other players that include the services of a solid third-party administrator and legal input on compliance.

Adopting a risk-based, capital formalization in the rate-making process is an extremely helpful best practice that acts as an early warning system to detect any actuarial concerns, Megna explains. Partnerships with a reinsurer and network providers also are critical and require constant monitoring and vigilance, he adds.

"You cannot be an absentee landlord," he says. *"You need an active board that holds the program providers accountable, asks the right questions, and has team members that are responsive and can work well together."*

Megna believes MEWA stability has captured the attention of more employers and brokers who are considering it as a viable option. "The criticism that these plans do not provide the coverage that you'd normally find in the commercial market is unfounded," he says.

Acknowledging that the devil is in the details of MEWAs, which must be carefully inspected in order to live up to their expectations, Wilson also believes they generally provide an attractive alternative to traditional insurance solutions.

Scrubbing claims for discrepancies

MEWAs, no doubt, have come a long way since initially earning a questionable reputation, but that doesn't necessarily mean they're beyond reproach.

Mark Flores, an ERISA claim appeal and compliance specialist who co-founded Avym Corp., estimates that between 30% and 50% of all national claims expenditures never make it to the medical provider. His job is to ensure that doctors and hospitals are properly paid when claims are filed by self-insured plans, including MEWAs.

While all the plan documentation his firm reviews typically is compliant, he has seen "major discrepancies or incongruities" surface when medical claims are denied. A troubling pattern has been that MEWAs and third-party administrators don't show the actual fees. He says most of them consider contractual payments and fee schedules proprietary so that they're not undercut by competitors. The inference is that plan administrators inflate claims and siphon out a portion of the self-funded expenditure by rationalizing that physicians charge too much anyway.

"There's no way for the plan to ever actually verify, A, what the doctor's real charge was and B, out of the money given to the administrator, how much was actually paid to the doctor," he says.

These circumstances represent a breach of

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fiduciary responsibility under ERISA to act in the best interest of plan participants and beneficiaries, according to Flores. It's particularly vexing in the case of MEWAs because he says "it's easy to hide money" when there are so many different companies, plans or administrators involved.

That's why Flores suggests "there must be an independent way to validate and ensure that the amount of money that came out of the employer's bank account for any given claim is, or equals, the amount of money that was paid to the provider by that claim." ■

Bruce Shutan is a Los Angeles freelance writer who has closely covered the employee benefits industry for 30 years.

For more information about MEWAs, please be sure to attend SIIA's upcoming National Conference & Expo. One of the featured panel discussion sessions is "AHPs, MEWAs and Stop-Loss Captive Programs — So Many Options, So Much to Know." Event details can be accessed on-line at www.siia.org