OLR Bill Analysis

sHB 6710

AN ACT CONCERNING ASSOCIATION HEALTH PLANS AND ESTABLISHING A TASK FORCE TO STUDY STOP-LOSS INSURANCE.

SUMMARY

This bill establishes a regulatory structure that allows self-funded and fully insured multiple employer welfare arrangements (MEWAs) to be sold in Connecticut. In practice, a MEWA is a group of employers (i.e., "employer members") that join together (i.e., into a "sponsoring association") to provide health benefit plans to the members' employees.

The bill requires MEWAs to meet certain minimum benefit standards, including covering the essential health benefits and any state mandated health insurance benefits and having an actuarial value of at least 60%. Additionally, self-insured MEWAs must be licensed with the Connecticut Insurance Department and meet certain fiduciary requirements. The bill subjects fully insured MEWAs to the large group health insurance rating requirements, rather than the small group requirements that apply to certain association health plans under current law. However, the bill requires both self-funded and fully insured MEWAs to comply with certain federal laws, which generally establish minimum consumer protections (see BACKGROUND).

Under the bill, a MEWA is comprised of "employer members," which are entities of a sponsoring association that conducts business and employs people in Connecticut. A "sponsoring association" is an industry trade group (or another group representing employers in multiple trades) that (1) is organized and has a written constitution or bylaws, (2) has at least 50 employer members, and (3) has been maintained in good faith for at least the preceding five years for reasons

other than providing insurance. Broadly, a fully insured MEWA purchases insurance from, and transfers risk to, a licensed insurer; a self-funded MEWA does not purchase an insurance plan and instead administers a benefit plan itself (i.e., pays claims from its own money).

The bill also establishes a 12-member task force to study whether stop-loss insurance may impact (1) small group health insurance plans and their enrollees and (2) medical spending in Connecticut. In practice, stop-loss insurance protects insureds from catastrophic claims by covering claims above a pre-set threshold. The bill requires the task force to report its findings to the Insurance and Real Estate Committee by February 1, 2024. The task force terminates on that date or when it submits its report, whichever is later.

EFFECTIVE DATE: October 1, 2023, except the task force provisions are effective upon passage.

§§ 1 & 2 — SELF-FUNDED MEWAS

The bill prohibits a self-funded MEWA from issuing a health benefit plan in Connecticut unless it first gets a license from the insurance commissioner. (The bill does not establish a licensure application, approval process, or fee.)

Under the bill, a "self-funded MEWA" is a health benefit plan that is (1) offered by a sponsoring association to provide insurance to its participating employer members and (2) not fully insured by a Connecticut-licensed insurer.

Minimum Coverage Requirements

The bill requires self-funded MEWAs that cover one or more employees of one or more participating employer members to:

1. cover the federal Affordable Care Act's essential health benefits, as required by federal law;

2. cover all state mandated health insurance coverage requirements (i.e., benefit mandates);

3. offer coverage with a minimum of 60% actuarial value, which is the average percentage of an individual's health care costs that a plan pays;

4. cover inpatient hospital services and physician services;

5. not limit or exclude coverage based on preexisting conditions, which is also a federal law requirement;

6. not discriminate against insureds based on health status for health benefit plan eligibility, premiums, or contribution requirements;

7. make health benefit plans available to all employer members, regardless of any employer or employee health status factors; and

8. comply with existing law's utilization review and benefit determination notification requirements.

Rating Requirements

The bill requires self-funded MEWAs to:

1. set base rates formed on an actuarily sound, modified community rating methodology that considers the pooling of all participants' claims;

2. use each employer member's risk profile to set premiums by actuarily adjusting the base rate; and

3. use pooling or reinsurance of individual large claimants to reduce the adverse impact on any specific employer member's premiums.

Plan Design

The bill requires self-funded MEWAs to implement value-based insurance design and value-based contracting, which may include centers of excellence, wellness programs, health enhancement programs, alternative payment models, chronic disease navigation,

patient-centered medical homes, and advanced primary care.

Under the bill, "value-based insurance design" is any material term in a health insurance policy that is designed to increase the quality of covered benefits or health care services while reducing their cost.

Trust Requirements

The bill requires a sponsoring association to form a trust to establish and maintain the health benefit plan. However, the bill prohibits a trust from including in its name the words "insurance," "insurer," "underwriter," "mutual," or any other description of insurance or an insurance company, unless the context specifies that the trust is not an insurer or transacting insurance. Additionally, all health benefit plan documents a self-funded MEWA issues must include the following statement on the first page in bold 14-point type:

> "This coverage is not insurance and is not offered through an insurance company. This coverage is not required to comply with certain federal market requirements for health insurance, and is not required to comply with certain state laws for health insurance. Each employer member shall be liable for such employer member's allocated share of the liabilities of the sponsoring association under the health benefit plans as determined by the board of trustees. Each employer member may be responsible for paying an additional sum if the annual premiums present a deficit of funds for the trust. The trust's financial documents shall be made available upon request by a participant in the health benefit plan."

The trust is authorized to sell health benefit plans to the employer members if the trust:

1. is subject to ERISA (the Employee Retirement Income Security Act) and any regulations or standards the U.S. Department of Labor (DOL) prescribes related to MEWAs; and

2. annually files Form M-1 with DOL (DOL requires MEWAs to file this form, which generally identifies the sponsoring association and has a description of the plans it offers).

The bill requires the trust's organizational documents to:

1. state that the trust is sponsored by the sponsoring association;

2. state that the trust's purpose is to provide health care benefits, including medical, prescription drug, dental, and vision benefits, to the members' employees and their dependents;

3. require that the trust's funds be used for the participating employees' benefit (and the benefit of their dependents) through (a) self-funding claims or purchasing reinsurance, or a combination of both, and (b) defraying the health benefit plan's administration costs and expenses;

4. limit participation in a health benefit plan to participating employees of the sponsoring association and their employee members;

5. implement a process for electing trustees to the board; and

6. require trustees to discharge their duties following commonly accepted fiduciary standards as the commissioner requires by regulations.

Board of Trustees

The bill also requires the trust documents to establish and maintain a board of at least five trustees that have fiscal control over the self-funded MEWA. Under the bill, the board has the authority to (1) approve employer member applications to participate in the MEWA and (2) contract with any licensed administrator or service company to administer the MEWA's daily operations (e.g., a third-party administrator).

The bill requires the board to (1) operate any health benefit plan following generally accepted fiduciary standards as the commissioner adopts in regulations and (2) have the authority to enforce and collect special assessments against employer members.

Minimum Reserves

The bill requires the trust to establish and maintain reserves calculated according to (1) the National Association of Insurance Commissioners Accounting Practices and Procedures Manual requirements and (2) any financial and solvency regulations the commissioner adopts.

Stop-Loss Insurance

Under the bill, a trust must purchase and maintain stop-loss insurance with retention levels set in keeping with actuarial principles from Connecticut-licensed insurers.

Fiduciary Liability Insurance and Bond

The bill also requires the trust to purchase and maintain:

1. commercially reasonable fiduciary liability insurance from a Connecticut-licensed insurer and

2. a bond, in a form and amount the commissioner approves.

Employer Member Liability

The bill makes each employer member liable for their allocated share of the sponsoring association's benefit plan liabilities, as the board of trustees determines.

Fully Insured Exemption

The bill regulates fully insured MEWAs separately (see below). As such, it specifies that the provisions above do not apply to them.

Regulations

The bill authorizes the commissioner to adopt implementing regulations, including requirements for licensing, financial condition and actuarial standards, solvency and insolvency, transparency and reporting, and filing.

§§ 1, 3 & 4 — FULLY INSURED MEWAS

A "fully insured MEWA" is a health benefit plan (1) offered by a sponsoring association to provide insurance to the participating employers' employees and (2) funded through an insurance policy

purchased from a Connecticut-licensed insurer.

Constitution and Bylaws (§ 3)

The bill requires a sponsoring association that sponsors a fully insured MEWA to have a written constitution and bylaws. These documents must require the sponsoring association to:

1. hold regular meetings, at least annually, to further its participating employers' purposes and
2. collect dues or solicit contributions from the participating employers.

Minimum Coverage Requirements (§ 3)

A fully insured MEWA must:

1. comply with all pertinent DOL regulations or standards,
2. qualify as a large group market plan subject to (a) all state health insurance benefit mandates and (b) all large group market regulations under the federal Public Health Service Act (see BACKGROUND),
3. adhere to all federal Affordable Care Act requirements applicable to large group plans,
4. not limit or exclude coverage for individuals based on preexisting conditions,
5. cover the Affordable Care Act's essential health benefits,
6. offer coverage that meets at least a 60% actuarial value, and
7. be available only to the MEWA's participating employers.

Fully Insured MEWAs as Large Employers (§ 4)

Current law allows an association health plan to provide health insurance to small employers subject to the small employer rating requirements. Insurance Bulletin HC-123 defines a "small employer" as between one and 50 employees (excluding sole proprietors).

The bill repeals this option for an association health plan to offer small group coverage. Instead, the bill subjects fully insured MEWAs to the large group requirements.

Among other things, this exempts fully insured MEWAs from requirements related to:

1. guaranteed issue and renewability (although the federal Affordable Care Act requires group insurers to offer coverage on both a guaranteed issue and guaranteed renewal basis) and

2. certain rating requirements, including that the association must be rated as a single pool, but may be adjusted by age and geographic area, as well as by actuarily justified differences in plan design, provider network, and administrative expenses.

§ 5 — STOP-LOSS INSURANCE TASK FORCE

The bill establishes a 12-member task force to study the structure of stop-loss insurance plans, including the impact they might have on (1) small groups and their enrollees, and (2) medical spending in Connecticut. For the purposes of this task force, a "small group" is an employer or other stop-loss purchaser with less than 100 employees or members and a "stop-loss insurance plan" is an insurance policy purchased by an employer, insurer, MEWA, or other provider of self-funded or fully insured group health coverage in Connecticut that limits the financial risk of medical claims.

The task force must make recommendations about:

1. how to ensure access to affordable health care services to stop-loss insurance purchasers and their enrollees;

2. any financial impact that stop-loss insurance plans may have on small groups in Connecticut, enrollees and their family members, and the fully insured health insurance market in Connecticut;

3. the appropriate role of stop-loss insurance plans in this state; and

4. consumer protections for small groups and their enrollees and

the enrollees' family members covered by stop-loss insurance plans in this state.

Task Force Members

Under the bill, the task force consists of the following members:

1. two members appointed by the House speaker, one representing a small group in Connecticut using stop-loss insurance, and the other representing a small group not using stop-loss insurance;

2. two members appointed by the Senate president pro tempore, one who has experience managing employee benefits and is knowledgeable about stop-loss insurance in Connecticut, and the other who is a Connecticut-licensed insurance producer with knowledge of stop-loss insurance;

3. one Connecticut-license physician appointed by the House majority leader;

4. one representative of a health equity advocacy organization, appointed by the Senate majority leader;

5. one Connecticut Association of Health Plans representative, appointed by the House minority leader;

6. one Connecticut Business and Industry Association representative, appointed by the Senate minority leader;

7. the Healthcare Advocate or his designee; and

8. three members appointed by the governor, one representing a labor organization, one representing an insurer licensed to issue stop-loss in Connecticut, and one representing a consumer advocacy organization.

The bill requires the appointing authorities to make their initial appointments within 30 days of the bill's passage and fill any vacancies.

Task force members must select one or two chairpersons from among

the members. The chairperson(s) must schedule the first meeting of the task force, which must be held within 60 days of the bill's passage.

Under the bill, the Insurance and Real Estate Committee staff serve as the task force's administrative staff.

BACKGROUND

Federal ERISA, Title 1

Although self-funded (also called self-insured) health benefit plans are generally exempt from state regulation, federal law explicitly allows states to regulate self-funded MEWAs as long as state law does not violate Title 1 of ERISA. Title 1 of ERISA imposes several requirements on self- and fully insured plans, including requiring the plan to:

1. provide summary plan documents to enrollees;
2. meet certain fiduciary standards and requirements relating to plan administration;
3. provide certain remedies for participants who believe the plan has violated ERISA requirements;
4. provide continuation of coverage (i.e., COBRA) benefits;
5. prohibit discrimination based on preexisting conditions;
6. provide special enrollment periods to eligible individuals;
7. prohibit charging individuals higher premiums based on health factors;
8. include guaranteed renewability provisions; and
9. cover specified benefits (e.g., maternity and newborn benefits, mental health parity, breast reconstruction).

ERISA Title 1 also incorporates certain Affordable Care Act market reforms, which apply the Public Health Services Act (42 U.S.C. 2791) to the large group market. For fully insured MEWAs, this includes an 85% medical loss ratio.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute
Yea 9 Nay 3 (03/14/2023)