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**Financial Institutions &  
Insurance Committee**

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**HB 2526**

**Brief Description:** Regulating self-funded multiple employer welfare arrangements.

**Sponsors:** Representatives Schual-Berke, Benson, Simpson, G., McMorris, Moeller, Priest and Chase.

**Brief Summary of Bill**

- Creates a state regulatory framework for self-funded multiple employer welfare arrangements.
- Establishes solvency, operational, and reporting requirements.
- Authorizes sanctions for noncompliance with statutory requirements.

**Hearing Date:** 1/28/04

**Staff:** Caroleen Dineen (786-7156).

**Background:**

The federal Employee Retirement Income Security Act (ERISA) establishes a regulatory structure for employee welfare benefit plans and pension benefit plans. An employee welfare benefit plan is defined in ERISA to include medical, surgical, or hospital care or benefits as well as sickness, accident, disability, and death benefits. ERISA specifies reporting and disclosure, claims procedure, bonding, and other requirements for defined employee welfare benefit plans. ERISA also prescribes fiduciary conduct standards applicable to persons responsible for benefit plan administration and management.

A multiple employer welfare arrangement (MEWA) is defined in ERISA as an employee welfare benefit plan or other arrangement established or maintained to offer or provide welfare plan benefits to employees of two or more employers or their beneficiaries. Certain exceptions are specified for plans and arrangement under this definition.

ERISA preempts all state laws relating to any employee benefit plan with certain exceptions. One exception allows the application of state insurance laws to ERISA-covered welfare plans that meet the MEWA definition.

## **Summary of Bill:**

The Self-Funded Multiple Employer Welfare Arrangement Regulation Act is enacted as a new chapter in the state insurance code. Statutory purposes for establishing a regulatory framework for self-funded MEWAs and relevant definitions are specified.

A self-funded MEWA is defined for purposes of state law as a MEWA that does not provide for payment of benefits solely through a policy or policies of insurance issued by one or more licensed insurers. MEWA is defined in state statute as in federal ERISA law, except the state definition does not include any arrangement, plan, program, or interlocal agreement of or between political subdivisions in the state.

### Certificate of Authority

No person may establish, operate, provide benefits, or maintain a self-funded MEWA in Washington without obtaining a certificate of authority from the Commissioner. This requirement applies to any MEWA with one or more participating employer members either domiciled in or maintaining a principal place of business in this state. April 1, 2005, is the certificate application deadline for a MEWA established, operated, providing benefits, or maintained in this state before January 1, 2004. An existing MEWA filing a substantially complete application by that deadline may continue to operate until the Commissioner makes a decision regarding the application.

Required documentation to be filed with the certificate application is specified. Documentation required includes the MEWA's governing documents, summary plan description, evidence of coverage, financial statements, loss insurance coverage policies, biographical reports for officers and fiduciaries, background check information for certain employees, and an actuarial opinion stating the MEWA's unpaid claim liability satisfies state law standards. The MEWA also must submit proof that fidelity bonds required under federal law will be maintained. Finally, the MEWA must submit a statement certifying its compliance with certain state law and federal law requirements.

To obtain a certificate of authority from the Commissioner, the MEWA:

- must have been in existence and operated actively for a continuous period of five years;
- must provide only health care services in this state;
- must provide health care services to no fewer than two employers and no fewer than 75 employees;
- may not solicit participation from the general public but may employ or contract for employer enrollment and renewal of employer enrollments; and
- must not be organized or maintained solely as a conduit for collection of premiums forwarded to an insurer.

Participating employers must either be engaged in the same trade, profession, or industry or be members of a bona fide association. Participating employers also must exercise control over the MEWA according to specified provisions.

The Commissioner must either grant or deny the application within 180 days of receiving the application and required documentation. A denial is subject to appeal according to the

Administrative Procedure Act. A certificate of authority is effective unless revoked by the Commissioner.

#### Solvency and Operational Requirements – MEWAs Formed After October 1, 2004

Self-funded MEWAs formed after October 1, 2004, must meet certain solvency requirements. These MEWAs must either:

- deposit \$200,000 with the Commissioner for payment of claims if insolvency occurs and submit a written plan to ensure financial integrity; or
- demonstrate their ability to remain financially solvent.

These MEWAs also must demonstrate to the Commissioner's reasonable satisfaction their ability to remain financially solvent. In making this determination, the Commissioner may consider factors such as financial statements, participants' experience, required deposits, and types and levels of loss insurance coverage. Base contribution rates for initial year participation must be approved by the Commissioner.

Operational requirements also are specified for self-funded MEWAs formed after October 1, 2004. These MEWAs must maintain a calendar year for operations and reporting purposes. The Commissioner may require information on pro rata assessments of MEWA members to be included in articles, bylaws, agreements, trusts, or other documents. In addition, MEWAs with fewer than 1,000 covered persons or MEWAs in their first year of operation must have aggregate stop loss coverage under specified conditions.

A self-funded MEWA formed after October 1, 2004, must demonstrate continued compliance to receive and maintain a certificate of authority, unless this requirement is waived by the Commissioner.

#### Surplus and Contribution Rates

Requirements for surplus amounts and contribution rates are specified. Self-funded MEWAs must establish and maintain a surplus equal to the greater of 10 percent of the next 12 months of projected incurred claims or \$2 million. Contribution rates for participation must equal or exceed:

- the sum of projected incurred claims for the year and all projected operational costs plus any surplus deficiency amount or minus any excess surplus amount; or
- a funding level established by a qualified actuary's report.

#### Reporting and Notice Requirements

MEWAs must file certain reports and documents with the Commissioner. Before March 1st of each year, a MEWA must file a verified statement of its financial condition, transactions, and affairs for the preceding year. A MEWA also must file a copy of its Internal Revenue Service Form 5500. In addition, a MEWA must file its annual, financial and other statements as required of other insurers by state insurance law and comply with state insurance code assets and liabilities and investment provisions.

Each MEWA policy must contain a specific notice stating the policy is issued by a self-funded MEWA. The notice must state that the MEWA may not be subject to all state insurance law

requirements. The notice also must specify that state insurance insolvency guaranty funds are not available for the MEWA.

#### Enforcement

The Commissioner may impose sanctions against a MEWA that does not comply with the statutory requirements. A maximum fine of \$10,000 per violation is authorized. In addition, the Commissioner may issue a notice of intent to revoke the MEWA's certificate of authority. The Commissioner also may impose other sanctions for failure to maintain the required surplus.

#### Application of Other Statutory Requirements

MEWAs are subject to state risk-based capital requirements as well as insurer rehabilitation and managing general agent provisions. A self-funded MEWA is deemed an insurer for purposes of statutory merger, rehabilitation, and liquidation provisions.

**Appropriation:** None.

**Fiscal Note:** Requested on January 28, 2004.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.