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California Department of Insurance

Guidance SB 326/SB 718:1

Multiple Employer Welfare Arrangement (MEWA) Registration and Compliance Implementation

May 6, 2022

The California Department of Insurance (CDI) issues this guidance¹ to all health insurers and all associations of employers defined as fully insured² multiple employer welfare arrangements³ (MEWAs) regarding the requirements of Section 10753.05, as amended by SB 326 (Pan) (Stats. 2021, Ch. 764), SB 718 (Bates) (Stats. 2021, Ch. 736), and SB 255⁴ (Portantino and Kamlager) (Stats. 2021, Ch. 725). This guidance describes the requirements of Section 10753.05, including requirements on health insurers, registration of MEWAs, and other requirements. Insurers are asked to share this information with their contracted MEWAs.

Key Deadlines

Requirement	Deadline
MEWA Application for Registration	June 1, 2022

The Department will address insurer compliance requirements in subsequent guidance.

I. Background

SB 326 and SB 718 create two pathways to obtain an exemption from existing law that prohibits small employers and individuals from purchasing large group coverage through an association health plan. Each pathway sets different criteria, for the association and the large group health coverage offered to employer-members, which must be met to qualify for exemption.

The first pathway, described in **subparagraph (B)** of Section 10753.05(b)(8), permits an association of employers to offer a large group health insurance policy, consistent with the Employee Retirement Income Security Act of 1974 (ERISA), as amended (29 U.S.C. § 1001 *et*

¹ This guidance is issued pursuant to California Insurance Code Section 10753.05(b)(8)(B)(ii)(II) and (8)(C)(ii)(II). Citations are to the California Insurance Code, unless otherwise noted.

² Self-funded or partially self-funded multiple employer welfare arrangements subject Section 742.20 *et seq.* are not subject to these requirements. (§ 10753.05(b)(8)(B)(ii)(III) & (8)(C)(ii)(III).)

³ A multiple employer welfare arrangement is defined in Section 3(40) of ERISA (29 U.S.C. § 1002(40)).

⁴ SB 255 was chaptered out due to order of enactment, but contains the same language as SB 326.

seq.), under specified conditions. The MEWA must be fully insured as described in Section 514 of ERISA (29 U.S.C § 1144), and a bona fide association or group of employers that may act as an employer under Section 3(5) of ERISA. In addition, the MEWA must have been established prior to March 23, 2010, in continuous existence, and offer large group health coverage in connection with an employee welfare benefit plan under Section 3(1) of ERISA (29 U.S.C. § 1002(1)). The large group policy must provide coverage for employees (and dependents) who are employed in designated job categories on a project-by-project basis for one or more employers, with no single project exceeding six months in duration. And as of January 1, 2019, the policy offered to employees must have provided an actuarial value equivalent to, or greater, than the platinum level of coverage available through Covered California, cover essential health benefits as defined, and meet other specified requirements.

The second pathway, described in **subparagraph (C)** of Section 10753.05(b)(8), is established by SB 326 and allows an association of employers in the biomedical industry to offer a large group health insurance policy to small employer-members of the association consistent with ERISA (29 U.S.C. § 1001 *et seq.*). The association must be the sponsor of the MEWA, as defined under Section 3(40) of ERISA (29 U.S.C. § 1002(40)), must have been established prior to March 23, 2010, serve employers in the biomedical industry, and have offered a large group health insurance policy since January 1, 2012. The MEWA must be fully insured as described, headquartered in California, and in full compliance with all applicable state and federal laws. The large group health insurance policy must cover common law employees (and their dependents) who are employed by an employer association member in the biomedical industry with operations in California, and meet other coverage criteria specified in statute. (Ins. Code § 10753.05(b)(8)(C)(i).) This exemption pathway is temporary and sunsets January 1, 2026.

II. MEWA Registration Requirement Due June 1, 2022

Subparagraphs (B) and (C) of Section 10753.05(b)(8) require MEWAs who intend to offer a large group health insurance policy to their members to register with CDI. To comply, MEWAs must register on or before June 1, 2022 by submitting the attached fillable Application Form for MEWA Registration. (§ 10753.05(b)(8)(B)(i)(XII) & (C)(i)(XIII).) MEWAs whose registration is approved must thereafter submit an application form annually by September 1 to demonstrate ongoing compliance with the law. (§ 10753.05(b)(8)(B)(ia) & (C)(ia).)

The MEWA's submission must contain the following information and documents:

1. Cover Letter
 - a. State the MEWA is submitting a MEWA Registration Application to register as a MEWA with CDI pursuant to Section 10753.05, effective June 1, 2022.
 - b. Provide a brief narrative introduction of the MEWA.
2. Completed Application Form for MEWA Registration
 - a. The Application Form for MEWA Registration is attached to this guidance, and is also available on CDI's website at www.insurance.ca.gov.
 - b. Submit the completed Application Form for MEWA Registration, cover letter, and any other related documents to CDI via email to the address identified below. Electronic submissions are strongly encouraged. If an applicant wishes to submit a paper application, please contact the Department at the email address below to coordinate a paper submission by mail.

Electronic submissions:

TO: MEWA.Registration@insurance.ca.gov

SUBJECT: MEWA Registration Application for [insert MEWA name]

- c. If submitting an amended Application Form, please complete all parts of the application.

III. Insurer Compliance Requirements

Insurance Code Section 10753.05, as amended by SB 326 and SB 718, imposes various requirements and limitations on insurers offering fully insured large group health insurance coverage to members of an association through a MEWA. The Department will address insurer compliance requirements in subsequent forthcoming guidance. In the meantime, insurers should take steps to ensure any large group health coverage sold through associations and MEWAs conforms to the requirements of Section 10753.05, including, but not limited to, those set forth in paragraph (b)(8) of the statute.

IV. Questions or Concerns

Please direct any questions or concerns regarding this bulletin to MEWA.Registration@insurance.ca.gov.