

From: DMHC Licensing eFiling

Subject: APL 22-012 – Section 1357.503 Compliance and MEWA Registration

Date: Thursday, March 24, 2022 2:54 PM

Attachments: APL 22-012 – Section 1357.503 Compliance and MEWA Registration (3.24.22).pdf
DMHC 10-283 MEWA Registration Form (3.24.22).pdf

Dear Health Plan Representative,

This All Plan Letter (APL) discusses the requirements of Section 1357.503, including requirements of Plans, registration of Multiple Employer Welfare Arrangements (MEWAs), and other requirements. Plans are asked to disseminate this information to their contracted MEWAs.

Please see attached: APL 22-012 – Section 1357.503 Compliance and MEWA Registration; and, DMHC 10-283 MEWA Registration Form.

Thank you.



Gavin Newsom, Governor
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ALL PLAN LETTER

DATE: March 24, 2022

TO: All Health Care Service Plans

FROM: Jenny Phillips
Deputy Director
Office of Plan Licensing

SUBJECT: APL 22-012 (OPL) – Section 1357.503 Compliance and MEWA Registration

The Department of Managed Health Care (DMHC) issues this All Plan Letter (APL) to inform health care service plans (Plans) and association of employers defined as multiple employer welfare arrangement¹ (MEWA) of the requirements of SB 255 (Portantino, Ch. 725, Stats. 2021) and SB 718 (Bates, Ch. 736, Stats. 2021), including California Health and Safety Code section 1357.503.² This APL discusses the requirements of Section 1357.503, including requirements of Plans, registration of MEWAs, and other requirements. Plans are asked to disseminate this information to their contracted MEWAs.

I. BACKGROUND

SB 255 and SB 718 create narrow exemptions to existing law that makes explicit the general rule that small employers and individuals cannot purchase large group coverage through an Association Health Plan (AHP). SB 255 permits an association of employers to offer a large group health care service plan contract that is consistent with the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. Sec 1001 et. seq.) if the MEWA is fully insured as described in Section 514 of ERISA (29 U.S.C Sec. 1144) and is a bona fide association or group of employers that may act as an employer under Section 3(5) of ERISA, and was established prior to March 23, 2010, in continuous existence, and offers a large group contract in connection with an employee welfare benefit plan under Section 3(1) of ERISA. The large group contract is

¹ Multiple Employer Welfare Arrangement (MEWA) is defined under Section 3(40) of ERISA (29 U.S.C. Sec. 1002(40)).

² California Health and Safety Code sections 1340 et seq. (the “Act”). References herein to “Section” are to sections of the Act, unless otherwise noted.

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required to provide coverage for employees and their 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. As of January 1, 2019, the contract offered has provided an actuarial equivalence equal to or greater than platinum level of coverage under Covered California. There are other requirements for the contract that must be met and certified in order to meet the criteria for exemption.

SB 718 also creates an exception for a MEWA that meets certain criteria. SB 718 permits an association of employers to offer a large group health care service plan contract to small group employer members of the association consistent with ERISA, as amended (29 U.S.C. Sec. 1001 et seq), if specifications are met, such as the association is the sponsor of the MEWA, as defined under Section 3(40) of ERISA (29 U.S.C. Sec. 1002(40)). The MEWA is required to be fully insured as described, headquartered in California, and in full compliance with all applicable state and federal laws. SB 718 requires that the association sponsoring the MEWA to be established prior to March 23, 2010, serve employers in the biomedical industry, and to have offered a large group health care service plan since January 1, 2012. SB 718 requires the large group health care service plan to include coverage of common law employees, and their dependents, who are employed by an association member in the biomedical industry and whose employer has operations in California. The provisions related to SB 718 will sunset on January 1, 2026.

II. PLAN and MEWA REQUIREMENTS

A. Plan Filing Requirements Due April 15, 2022

To demonstrate compliance with SB 255 and SB 718, and Section 1357.503, Plans offering fully insured benefits to a MEWA through a large group health care service plan contract must provide a compliance filing on or before April 15, 2022. This compliance filing must contain the information and exhibits identified below.

1. Submit the filing via eFiling as an Amendment Filing titled "APL 22-012: Compliance with MEWA LG Contract"
2. Submit an Exhibit E-1 in the filing and include the following:
 - a. State the filing is provided to demonstrate compliance with APL 22-012 and Section 1357.503.
 - b. Identify the name of the MEWA obtaining the fully insured benefits through a large group service plan contract from the Plan, and provide the registration number of the MEWA.
 - c. Has the MEWA registered or applied with the DMHC under Section 1357.503(a)(2)(B) or (C)? If not, explain.
 - d. If the MEWA is registered or seeking registration with the DMHC under Section 1357.503(a)(2)(B), please provide the following Plan affirmations:
 - i. Affirm as of January 1, 2019, the large group health care service plan contract offered to employees has continuously provided a level of coverage having an actuarial value equivalent to, or greater than, the platinum level of coverage, as described in

- Section 1367.008, that is available through the California Health Benefit Exchange established pursuant to Section 100500 of the Government Code,³ and the large group health care service plan contract provides coverage for essential health benefits consistent with Section 1367.005 and any rules or regulations adopted pursuant to that section.⁴
- ii. Affirm the large group health care service plan contract includes coverage of employees, and their dependents, who are employed in designated job categories on a project-by-project basis for one or more participating employers, with no single project exceeding six months in duration, and who, in the course of that employment, are not covered by another group health care service plan contract in which the employer participates.⁵
 - iii. Affirm the employer members of the MEWA subsidizes at least 51 percent of the cost of individual employee premiums of their employees.⁶
 - iv. Affirm the benefits offered under the large group health care service plan contract are fully insured and guaranteed under the Plan.⁷
 - v. Affirm the large group health care service plan contract is treated as a single-risk-rated contract that is guaranteed issue and guaranteed renewable for employees and dependents.⁸
 - vi. Affirm an employee or dependent is not charged premium rates based on health status and is not excluded from coverage based upon any preexisting condition.⁹
 - vii. Affirm employee and dependent eligibility are not directly or indirectly based on health or claims of any person.¹⁰
 - viii. Affirm an employer is not excluded from participating in a MEWA or offering the large group health care service plan contract based on health status or claims of any employee or dependent.¹¹
 - ix. If the Plan is unable to make any of the above affirmations, please explain.
- e. If the MEWA is registered or seeking registration with the DMHC under Section 1357.503(a)(2)(C), please provide the following affirmations:
- i. Affirm the large group health care service plan offers to employees a level of coverage having an actuarial value or equivalent to, or greater than, the platinum level of coverage pursuant to Section

³ Section 1357.503(a)(2)(B)(IV).

⁴ Section 1357.503(a)(2)(B)(IV).

⁵ Section 1357.503(a)(2)(B)(V).

⁶ Section 1357.503(a)(2)(B)(V).

⁷ Section 1357.503(a)(2)(B)(VI).

⁸ Section 1357.503(a)(2)(B)(XI).

⁹ Section 1357.503(a)(2)(B)(XI).

¹⁰ Section 1357.503(a)(2)(B)(XI).

¹¹ Section 1357.503(a)(2)(B)(XI).

- 1367.009 available through the California Health Benefit Exchange established pursuant to Section 100500 of the Government Code.
- ii. Affirm the large group health care service plan contract provides coverage for essential health benefits consistent with Section 1367.005 and any rules or regulations pursuant to that section.¹²
 - iii. Affirm the large group health care service plan includes coverage of common law employees, and their dependents, who are employed by an association member in the biomedical industry and whose employer has operations in California.¹³
 - iv. Affirm the large group health care service plan offers only fully insured benefits through an insurance contract with the Plan.¹⁴
 - v. Affirm the large group health care service plan contract is treated as a single-risk-rated contract that is guaranteed issued and renewable for member employers, as well as their employees and dependents.¹⁵
 - vi. Affirm an employee or dependent is not charged premium rates based on health status and is not excluded from coverage based upon any preexisting condition. Section 1357.503(a)(1)(C)(XI).
 - vii. Affirm employee and dependent eligibility are not directly or indirectly based on health status or claims of any person.¹⁶
 - viii. Affirm an employer otherwise eligible is not excluded from participating in a MEWA, or offering or renewing the large group health care service plan contract based on health status or claims of any employee or dependent.¹⁷
- f. Explain whether the Evidence of Coverage (EOC) and Disclosure Form (DF) submitted in the filing is based on a previously approved DMHC EOC/DF. If based on a previously approved DMHC EOC/DF, provide the corresponding eFiling number and submit a redline copy.
3. Submit the Plan's Evidence of Coverage and Disclosure Form
 - a. The Plan's EOC/DF may be submitted in the following exhibit forms: Exhibit S-1: Disclosure Form, S-2: Disclosure Form Compliance Chart, and T-1: Evidence of Coverage, T-2: Evidence of Coverage Compliance Chart; or U-1: Combined EOC/Disclosure Form and U-2: Combined EOC/Disclosure Form Compliance Chart
 - b. If the MEWA is registered or seeking registration with the DMHC under Section 1357.503(a)(2)(B), demonstrate how the Plan's EOC complies with Sections 1357.503(a)(2)(B)(IV), (V), (VI), and (XI).

¹² Section 1357.503(a)(1)(C)(IV).

¹³ Section 1357.503(a)(1)(C)(V).

¹⁴ Section 1357.503(a)(1)(C)(VI).

¹⁵ Section 1357.503(a)(1)(C)(XI).

¹⁶ Section 1357.503(a)(1)(C)(XI).

¹⁷ Section 1357.503(a)(1)(C)(XI).

- c. If the MEWA is registered or seeking registration with the DMHC under Section 1357.503(a)(2)(C), demonstrate how the Plan's EOC complies with Sections 1357.503(a)(2)(C)(i)(IV), (V), (VI), and (XI).
4. Submit a California Essential Health Benefits Filing Worksheet as an Exhibit T-2 to demonstrate compliance with Section 1357.503(a)(2)(B)(i)(IV) or (C)(i)(IV).
5. Submit the contract between the Plan and MEWA as a "Miscellaneous Documents/Attachments" exhibit.
6. Submit an Exhibit FF-4 using the most recent Actuarial Value Calculator to demonstrate compliance with Section 1357.503(a)(2)(B)(IV) or (C)(IV). For background, refer to "Actuarial Value Calculation: Exhibit FF-4" in the [2023 Checklist and Worksheet for Qualified Health Plans in the California Health Benefit Exchange](#).

B. MEWA Registration Requirement Due June 1, 2022

Sections 1357.503(a)(2)(B) and (C) require MEWAs to register with the DMHC to offer a large group health care service plan contract. To comply, MEWAs must register on or before June 1, 2022, by submitting the attached fillable Application Form for MEWA Registration (DMHC 10-283). The DMHC will accept MEWA Registration Applications beginning April 15, 2022.

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

1. Cover Letter.
 - State the MEWA is submitting the MEWA Registration Application to register as a MEWA with the DMHC pursuant to Section 1357.503, effective June 1, 2022.
 - Provide a brief narrative introduction of the MEWA.
2. Completed Application Form for MEWA Registration (DMHC 10-283).
 - The Application Form for MEWA Registration is attached as Exhibit A to this APL.
 - The Application Form for MEWA Registration is also available online at the [DMHC's public website](#).
 - Submit the completed Application Form for MEWA Registration, cover letter, and any other related documents to the DMHC via electronic mail or US mail to the respective addresses identified below.

For electronic submissions:

TO: MEWA.Registration@dmhc.ca.gov

SUBJECT: MEWA Registration Application for <insert MEWA name>

For US Mail submissions:

DMHC-Office of Plan Licensing

ATTN: MEWA Registration

980 9th Street, Suite 500

Sacramento, CA 95814

III. QUESTIONS OR CONCERNS

If Plans have any questions or concerns regarding this APL, please contact your Plan's assigned Office of Plan Licensing reviewer.

If MEWAs have any questions or concerns regarding this APL, please contact the Office of Plan Licensing at MEWA.Registration@dmhc.ca.gov.