

# Insurance Markets

## Group Purchasing Arrangements: Implications of MEWAs

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Policymakers and small businesses have long been interested in establishing and promoting group purchasing arrangements for health insurance based on the premise that pooling risk and purchasing power can reduce premiums and increase access to coverage. Group purchasing arrangements — that is, arrangements that band employers together to provide health coverage — have also had a long history of financial instability. In 1995 the California Legislature authorized self-insured multiple employer welfare arrangements (MEWAs), a type of group purchasing arrangement, to improve access to health insurance for small businesses, self-employed individuals, and people with seasonal jobs, such as agricultural workers.

Nearly a quarter of a million people in California rely on licensed, self-insured MEWAs for their health insurance. Due to a limitation in the law allowing only MEWAs that filed an application by November 1995 to be eligible for licensing, no new MEWAs can be licensed in California.<sup>1</sup> However, an additional 100,000 Californians are covered by unlicensed, self-insured MEWAs.

While MEWAs currently cover a relatively small number of Californians, pending legislation at the state and federal levels could significantly expand their role in the health insurance market-

place. In California, a bill (AB 321) to authorize MEWA-type arrangements in rural areas was introduced in 2003.

On June 19, 2003, the U.S. House of Representatives passed HR 660. The U.S. Senate may consider similar legislation in the fall. These bills seek to establish federally regulated association health plans (MEWAs sponsored by trade and professional associations). President Bush has supported similar proposals.<sup>2</sup> A forthcoming issue brief from the California HealthCare Foundation will discuss association health plans.

This issue brief discusses MEWAs, particularly those that self-insure, and their role in the California insurance market. It summarizes state and federal laws protecting consumers covered by such arrangements, identifies lessons from MEWA management and state oversight, and discusses market problems such as insolvency, fraud, and unauthorized MEWAs.

### Overview

There are different types of MEWAs in California — authorized MEWAs, unauthorized MEWAs, and phony plans posing as authorized MEWAs.

Generally, an authorized MEWA provides an alternative to traditional coverage offered through insurance companies and health plans by allowing

employers to band together in order to either purchase health insurance or self-insure their health benefits. Those that self-insure collect premiums from enrollees for a special trust account established to pay medical claims, while fully insured MEWAs contract with an insurance company or health plan to provide benefits.

Fully insured MEWAs seek to save money by combining the purchasing power of participating employers to negotiate lower rates than the employers could obtain on their own. When a MEWA buys a fully insured product, the enrollees are covered by all the standard insurance protections including solvency requirements applicable to insurance companies and health plans. Either the California Department of Insurance (CDI) or the Department of Managed Health Care regulates such policies. Fully insured MEWAs are not required to be licensed. (This issue brief does not focus on fully insured arrangements.)

Self-insured MEWAs save costs because they are able to avoid the premium taxes paid by commercial insurers in California and are subject to less stringent solvency requirements. CDI regulates both licensed MEWAs and their coverage. Most, but not all, consumer protections

that apply to enrollees in fully insured products also apply to MEWA enrollees.

Unauthorized MEWAs are arrangements that self-insure but operate without a state license, a violation of California law. Additionally, small employers covered by unauthorized MEWAs do not receive the full protection of California’s laws, including protection against insolvency, guaranteed access, restrictions on premiums (e.g., limits on charging people with medical conditions higher rates), and other consumer protections. Information on the number of unauthorized MEWAs doing business in California has only recently come to light, and state regulators will have to address the problem.

Phony MEWAs are arrangements established by promoters who collect premiums for non-existent health insurance, do not pay claims (or only pay small claims to induce consumers to continue paying premiums), and leave small employers and individuals with unpaid medical bills. Phony MEWAs either self-insure or claim that they purchase licensed policies. Operators of such plans can face criminal penalties.<sup>3</sup>

**Table 1. Types of MEWAs and Applicable State Insurance Protections**

MEWA TYPE	Authorized MEWAs	Unauthorized MEWAs	Phony Health Plans/MEWAs
<b>Self-insured</b>	<ul style="list-style-type: none"> <li>Licensed by the California Department of Insurance</li> <li>Fewer solvency protections than traditional insurers</li> <li>Small group market reforms, benefit mandates, and other consumer protections apply</li> </ul>	<ul style="list-style-type: none"> <li>Should be licensed as an insurance company by the state but are not (operating without a license is illegal under state insurance law)</li> <li>Cannot be licensed as MEWA under current law</li> </ul>	<ul style="list-style-type: none"> <li>Collect premiums but do not pay claims</li> <li>Possible violations of criminal state and federal laws</li> </ul>
<b>Fully Insured</b>	<ul style="list-style-type: none"> <li>MEWA license not required</li> <li>State applies wide range of consumer protections by regulating insurers and policies</li> </ul>	N/A	<ul style="list-style-type: none"> <li>Purport to buy licensed policies but do not</li> <li>Possible violations of criminal state and federal laws</li> </ul>

## Authorized Self-insured MEWAs: Characteristics

There are currently five licensed MEWAs in California.<sup>4</sup> Under the 1995 legislation that authorized their creation, a nonprofit trade, industry, or professional association qualified for licensing if it:

- Operated on a self-funded basis for five years;
- Covered at least 2,000 employees and had 50 paid employer members;
- Granted its board of trustees complete fiscal control and oversight;
- Had adequate management and staff, or a contract with a licensed third-party administrator;
- Had a procedure for handling claims in the event of insolvency; and
- Offered benefits only to association members.

Some of California’s licensed, self-insured MEWAs also offer fully insured options in certain geographic areas, depending on the needs of their membership and the availability of policies from insurers. Coverage offered through self-insured MEWAs is priced to compete with carriers when options are available.

### Seasonal Workers: Agricultural MEWAs

Several MEWAs provide coverage to people who might otherwise have no access to health insurance. Eighty percent of Californians covered by the United Agriculture Trust (United Ag) and nearly 75 percent of those insured by Western Growers Assurance Trust (Western Growers) are Latino immigrants working in low-wage positions. According to staff from United Ag and the Western Growers, their participating employers would not be able to buy insurance for these workers from traditional carriers.

**Table 2. Licensed MEWAs in California**

MEWA	CHARACTERISTICS			
	Membership (Employer Size)	Eligibility	Health Plan (Self- or Fully Insured)	Covered Population
<b>United Agricultural Employee Welfare Benefit Plan and Trust</b>	Small and large employers	Agricultural businesses and affiliates	Self- and fully insured	Over 53,000 as of 3/03
<b>Western Growers Assurance Trust</b>	Small and large employers	Agricultural businesses and affiliates	Self- and fully insured	Nearly 100,000 as of 1/03
<b>Group Insurance Trust of California Society of CPAs</b>	Sole proprietors; small and large employers	Certified public accountants	Self- and fully insured	8,500 as of 1/03
<b>California Motor Car Dealers Employee Benefit Trust*</b>	Small and large employers	Car dealers	Self- and fully insured	24,582 as of 1/02
<b>Printing Industries†</b>	Small and large employers	Printing businesses and affiliates	Fully insured (except for self-insured vision and dental plans)	Nearly 40,000 as of 3/03

Source: MEWA staff interviews.

\*Information for the California Motor Car Dealers Employee Benefit Trust is based on the report on MEWAs prepared by the California Department of Insurance, December 4, 2001, and 2001 Form M-1 MEWA filing with the U.S. Department of Labor.

†Printing Industries of North and South California merged in January 2003.

One reason is that California's private market is dominated by managed care plans, which are typically not available in rural areas. MEWA staff noted that while preferred provider organizations (PPOs) and fee-for-service coverage are sold where agricultural workers live, health benefits are generally offered only to full-time employees, not seasonal workers. In addition, because of language barriers and cultural differences, available insurance products may not be suitable for Latino immigrants, who comprise the majority of the seasonal agricultural workforce. Staff also noted that some Latino workers prefer to receive medical care in Mexico. Both United Ag and Western Growers cover seasonal workers, have benefit materials in Spanish, employ bilingual staff to assist workers and their families, and cover services provided by medical providers in Mexico.<sup>5</sup>

Self-insured MEWAs provide a range of benefit packages, including low-cost options. While these basic plans are subject to benefit mandates, they lack the bells and whistles of more expensive plans and have more restrictive coverage limits. Employers can choose to offer several different benefit plans, with the more comprehensive (and thus more expensive) coverage typically offered to management, while basic plans are provided for low-wage workers. According to MEWA staff, the ability to offer low-cost options allows low-wage agricultural seasonal workers to be insured. Employers often cover 100 percent of the premium for their low-wage workers. In addition, workers can retain their coverage even when they move from farm to farm — as long as the new employer participates in the MEWA.

### Self-employed Accountants

The California Society of CPAs offers group coverage to small businesses and sole proprietors, some of whom would otherwise not be able to purchase insurance. In California, self-employed people typically only have access to individual policies, which can be both more expensive and less comprehensive than group policies.<sup>6</sup> Also, insurers are not required to offer an individual policy to everyone, which means that a person would have to pass medical underwriting and be relatively healthy to buy an individual policy; those denied coverage are eligible to enroll in the state's high-risk pool, but premiums are higher than those available through the commercial market and there is a waiting list.

Until recently, the California Society of CPAs made coverage available to all its members regardless of one's health or ability to pass medical underwriting. Sole proprietors not presently covered under the program are now required to pass medical underwriting.<sup>7</sup> The new requirement of medical underwriting may have resulted from adverse selection problems, meaning that without medical underwriting, the less healthy members enrolled in the program, while healthy members were able to buy less expensive coverage individually outside the plan.

### Consumer Protections

MEWAs are subject to both California insurance laws and a federal law called the Employee Retirement Income Security Act of 1974 (ERISA).<sup>8</sup> Federal standards are generally limited to fiduciary obligations (how assets are handled), disclosure and notification rules, and, more recently, a requirement to register with the U.S. Department of Labor.<sup>9</sup> ERISA does not require MEWAs to be licensed and does not provide for federal solvency

standards or other consumer protections similar to those enacted by the California Legislature (discussed below). However, ERISA does give authority to states to oversee the financial stability of MEWAs.<sup>10</sup>

State standards are more comprehensive than federal regulations. California requires that self-insured MEWAs be licensed and meet specific solvency thresholds. Significantly, licensed MEWAs are not exempted from the consumer protections that apply to other health insurers such as guaranteed access, renewability, rate standards, and other important safeguards (see Table 3).<sup>11</sup> This helps ensure that people with health insurance from licensed MEWAs receive the same protections as those with traditional coverage. It also helps avoid the market segmentation problems that have occurred in other states where MEWAs were exempt from such laws.<sup>12</sup>

### Solvency

Although California's rules are more comprehensive than federal rules, solvency standards applicable to MEWAs are less stringent than those applicable to traditional insurance companies. Lower reserve and surplus requirements, for example, may make it difficult to withstand rapid increases in health care costs. Raising premiums to make up for a shortfall may not be a realistic option, especially if less expensive traditional coverage is available to employers outside of the MEWA.<sup>13</sup> Additionally, a low financial cushion makes it more difficult to withstand problems from mismanagement, should they occur.

Unlike consumers with traditional insurance, there is no safety net for consumers with licensed, self-insured MEWA coverage.<sup>14</sup> For example, when an insurance company becomes insolvent, consumers generally are

**Table 3. Summary of Consumer Protections Applicable to Licensed MEWAs in California**

#### SOLVENCY STANDARDS

- Maintain surplus of \$1 million in 2003 (\$4 million by 2007);\*
- Stop-loss insurance with an aggregate attachment point not greater than 125 percent of annual expected claims and a specific attachment point not greater than 5 percent of annual expected claims;†
- Appropriate loss and loss adjustment reserves determined by sound actuarial principles;‡
- Annual audited financial statements filed with CDI;
- Unaudited financial statements certifying sufficient reserves and stop-loss insurance filed with CDI;§
- Premium rates filed with CDI prior to use; and
- Disclose to employers and employees that the state guaranty association does not protect enrollees if a MEWA becomes insolvent.

#### OTHER CONSUMER PROTECTIONS (including small group market rules)#

- Guaranteed access — offering coverage to any eligible small business;
- Nondiscrimination rules guaranteeing coverage to people regardless of their health or past medical history;
- Renewability of coverage protecting people who become sick;
- Portability rules — credit for prior coverage;
- Continuation of coverage rules like Cal-COBRA;
- Rules on how premiums are established (rating restrictions); and
- Mandated benefits, e.g., well-baby care, maternity care, and mental health benefits.

Sources: Cal Ins. Code §742.24, Cal Ins. Code §742.31, and interviews with CDI and the staffs of licensed MEWAs.

\* Surplus is determined by a MEWA's assets minus its liabilities.

† An aggregate attachment point is triggered when total group health claims reach a certain amount, agreed to in the contract between the stop-loss insurer and the MEWA. Once the threshold is reached, any additional claims are paid for by the stop-loss insurance policy. Similar to an aggregate attachment point, a specific stop-loss point is triggered when a claim/claims for a covered individual (not the entire group) reaches a pre-specified amount agreed to in the stop-loss contract.

‡ Amount of a MEWA's liabilities for claims that have not been settled including known claims but not yet paid, known claims not yet due, and incurred but not reported claims.

§ Such statements, although unaudited, help regulators to determine if sufficient premiums are collected to pay claims. Substantial changes in the quarterly statements may indicate a potential problem.

# California's small-group market rules apply to firms with 2 to 50 employees (and only to firms of that size) whether those firms participate in MEWAs or not.

not responsible for unpaid medical bills because California's guaranty association will pay claims. The guaranty association, however, does not protect consumers with coverage from a licensed, self-insured MEWA.<sup>15</sup>

Additionally, according to state regulators, the receivership law which allows the Department of Insurance to take over financially failing insurance companies is vague about the Department's authority to assume control of a licensed MEWA.<sup>16</sup> Typically, the insurance department or an independent receiver liquidates an insolvent insurance company, finding assets and paying claims. A receiver may also negotiate with providers on behalf of patients to accept a reduced fee when the amount in assets is insufficient to cover 100 percent of the claims. This greatly benefits consumers who otherwise would be responsible for unpaid medical bills.

Absent a receivership, licensed, self-insured MEWAs in California that become insolvent can end up in bankruptcy court. This was illustrated in November 2001, when the Sunkist Growers Plan (Sunkist), a licensed MEWA, filed for bankruptcy, reporting about \$11 million in outstanding medical claims and leaving more than 23,000 people without coverage. Being in bankruptcy court has significant implications for consumers because, unlike state receiverships, bankruptcy courts do not pay outstanding medical claims first. Some creditors of Sunkist may be paid prior to patients and providers.

The potential for MEWA insolvency presents a challenge to California policymakers. Even with active oversight, mismanagement of assets or merely a change in market conditions may result in an insolvency. The lack of a safety net for consumers, a vague receivership

law, and reserve and surplus requirements lower than those applicable to insurers mean that employers and their employees enrolled in a self-insured MEWA may be at higher risk for unpaid medical bills than are enrollees in fully insured products.

### **Lessons from Licensed MEWAs: How to Stay Solvent**

All California licensed MEWAs interviewed for this paper have adopted financial solvency practices exceeding those required by California law, including:<sup>17</sup>

- A financial approach that conservatively estimates claims and premiums, and makes safe and diverse investments (e.g., fixed income).
- Developing underwriting criteria<sup>18</sup> and implementing them when setting premiums.
- Establishing a surplus (a MEWA's assets minus its liabilities) based on an actuarially sound formula looking at projected claims plus an amount equal to at least 5 percent of the actuarially determined reserve requirement. Staff believe that California's statutory minimum for surplus (\$1 million in 2003) is not an adequate standard to ensure solvency because it does not reflect the size and other financial risk factors of a licensed MEWA. Instead, each MEWA uses the formula discussed above resulting in a surplus that exceeds the statutory minimum.<sup>19</sup>
- Involving members. Each person on the board of trustees is a member of the sponsoring association and is also enrolled in the health plan. Therefore, each board member has a personal stake in financial decisions beyond their legal duties as fiduciaries.

Additionally, MEWA staff believe that strong regulatory oversight is important to the early detection of financial problems. Thorough reviews of quarterly and annual filings, corrective actions required by regulators, and hands-on oversight would help avoid insolvency.<sup>20</sup> It is important to note, however, that even the most extensive oversight cannot prevent thinly capitalized licensed self-insured MEWAs from becoming insolvent.

### State Oversight

The Department of Insurance conducted an extensive investigation of each arrangement that initially applied for certification. In some cases, such investigations included on-site visits by insurance department investigators, interviews, and requests for information in addition to what was provided in the application. This process resulted in the licensing of only seven out of twelve arrangements that applied for certification by the November 1995 deadline. The five arrangements that were not licensed could not prove to the satisfaction of CDI that they met all the requirements for certification.

However, once MEWAs were licensed, CDI adopted a *laissez-faire* approach to further oversight. According to the licensed MEWAs, CDI did not audit or request information about reports filed with the Department after licensing. There were also no additional on-site audits or financial examinations. According to the insurance regulators, the Department's priorities had shifted and resources for oversight were limited.

In response to the Sunkist insolvency in 2001, CDI took steps to improve its approach in regulating MEWAs and successfully sought legislative changes to increase surplus requirements. The Department has designated a financial examiner for closer monitoring of MEWAs' financial statements. In some circumstances the

Department's in-house actuary also reviews such statements. This new hands-on approach has resulted in the Department identifying and closely monitoring a certified MEWA that may be in precarious financial condition. CDI is monitoring the MEWA monthly, requiring it to file monthly financial reports. The Department has also completed an on-site audit of the MEWA, similar to financial audits of insurers.

### Unauthorized MEWAs and Fraud

In addition to solvency of licensed self-insured MEWAs, another regulatory issue is the presence of unauthorized MEWAs in California. Some are self-insured MEWAs that are trying to provide a needed service but are unlicensed, while others are fraudulent. This creates a two-fold problem for policymakers—how to regulate unlicensed, self-insured MEWAs that comply with federal law but not California's consumer protections; and secondly, how to stop MEWAs that are fraudulent.

### Unlicensed MEWAs

In March of 2003, the U.S. Department of Labor (DOL) made public its new MEWA registration database. According to information filed with the federal government, 160 MEWAs sell coverage to consumers living in California, 57 of which are headquartered in California.<sup>21</sup> Also, regulators believe that some arrangements are operating that have not registered.

Most of those that have registered are fully insured and are not required to be licensed under California law. Some, however, are self-insured and are not licensed either as MEWAs or as insurance companies in violation of state law. California, like other states, prohibits insurers from doing business without a license. Nonetheless, there are nearly 100,000 individuals covered by unlicensed, self-insured MEWAs in California.<sup>22</sup>

Some unlicensed arrangements have been in operation for decades. Because information from the federal government was not readily available before the release of the DOL registration database, the problem of unlicensed, self-insured MEWAs is one that California regulators are just now having to confront. While these arrangements comply with federal law and appear solvent,<sup>23</sup> policymakers should address the issue to ensure that people covered by unlicensed, self-insured MEWAs benefit from the full protection of state law.

### Fraud

During the last twenty-five years, millions of American workers and their families have been left with millions of dollars in unpaid medical bills by unscrupulous individuals who target small businesses and self-employed people through legitimate and phony associations (MEWAs), and collect premiums for non-existent health insurance.

The incidence of fraudulent MEWAs tends to rise when premiums increase substantially. Recently, the number and magnitude of such scams have grown to unprecedented levels. In 2001 and 2002, for example, two nationwide arrangements with offices in California were shut down — Employers Mutual LLC and American Benefit Plans — leaving approximately 70,000 workers and their families with an estimated \$70 million in unpaid medical bills.<sup>24</sup> Between 1988 and 1991, also a period of high medical inflation and numerous scams, nearly 400,000 patients were left with medical bills exceeding \$123 million.<sup>25</sup>

Until employers and individuals have access to affordable health coverage, unscrupulous individuals will continue to take advantage of people looking for alternatives.

While policymakers debate how to address this broader problem, they must not delay addressing fraud.

## Conclusion: Implications for Policymakers

### Authorized Self-insured MEWAs

Some licensed, self-insured MEWAs in California have been able to cover consumers for whom traditional health insurance otherwise might not be available (i.e., seasonal agricultural workers and self-employed CPAs). The challenge for California policymakers is to strengthen solvency requirements and establish safety nets to protect employers and workers who rely on self-insured MEWAs.

Although the legislature in recent years has improved protections for consumers enrolled in licensed MEWAs, there are additional steps that legislators could take, including:

- Strengthen reserve and surplus requirements to reflect the size, risk, and investments of a MEWA (similar to solvency requirements applicable to traditional insurers);
- Develop a safety net for consumers similar to a guaranty fund that pays claims in case of insolvency;<sup>26</sup> and
- Clarify that the Department of Insurance has authority to take over a failing MEWA through a receivership.

In addition to strong laws, active oversight by the Department of Insurance is important. Although the Department has implemented significant and positive changes in this regard, regulating MEWAs and health insurance is but a small portion of its broad regulatory responsibilities. It remains to be seen whether adequate resources are allocated to regulating MEWAs.



### Unauthorized Self-insured MEWAs

A new federal MEWA registration requirement has uncovered the existence of many self-insured MEWAs operating without insurance licenses. State regulators now face the problem of how to respond to this. Regulators and policymakers could address this issue in the following ways:

- Require unlicensed self-insured MEWAs to cease operations in California. One potential negative consequence could be that some enrollees would not be able to buy health insurance in the private market;
- Require unlicensed self-insured MEWAs to become fully insured by buying insurance from a licensed insurer. Policies sold by licensed companies are regulated by the state and thus enrollees in fully insured MEWAs are protected; or
- Change existing licensing laws to allow unlicensed self-insured MEWAs to become licensed if they meet the applicable requirements. Currently, no new self-insured MEWAs can be licensed due to restrictions in the statute.<sup>27</sup>

### Fraud

Given an influx in phony health insurance promoted through MEWA scams, steps could be taken to protect consumers against fraud, including:

- Allocating additional resources to law enforcement activities within CDI to increase staff focusing on civil and criminal investigations;
- Assessing the existing criminal and civil penalties for adequacy and effectiveness; and
- Launching strong educational campaigns to inform consumers about phony health plans.

Meanwhile, proposed federal legislation (HR 660 and S 545) would scale back California's regulation of MEWAs and leave a significantly smaller portion of the health insurance market under state control. Licensed MEWAs in California would qualify for federal licensing as association health plans under HR 660. If the federal legislation passes, existing state regulation, including solvency standards and other consumer protections, would be replaced by federal standards. Proposed federal standards are not as strong as those in California and, if enacted, would weaken protections for California consumers.

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## ENDNOTES

1. Cal Ins. Code §742.24(h)
2. *Budget to Continue President's Initiatives for the Uninsured*, U.S. Department of Health and Human Services, Press Release, February 11, 2003.
3. For example, Phillip Harmon was sentenced to eight years in prison as a result of massive fraud “inducing” employers to pay millions of dollars into a trust for “nonexistent” health insurance (covering 6,500 individuals, primarily ministers of various churches and their families) nationwide. According to the U.S. Department of Labor’s Report to Congress, “No insurance was purchased; rather, the money went to benefit Harmon and others.... The total amount collected by Harmon through the schemes (which also included an investment scheme) was approximately \$40 million.” U.S. Department of Labor, Pension and Welfare Benefits Administration, Employee Retirement Income Security Act 1998 Report to Congress, 14.
4. Effective January 2003, the two Printing Industry Trusts — both licensed MEWAs — merged.
5. Interview with Clare Einsmann, executive vice president, United Agribusiness League, January 9, 2003 (hereinafter Einsmann Interview); Interview with Mary Eadson, director, Western Growers, January 17, 2003 (hereinafter Eadson Interview).
6. See Deborah Reidy Kelch, *Insurance Markets: Rules Governing California’s Individual Health Insurance Market*, California HealthCare Foundation, Oakland, CA: June 2003 (<http://www.chcf.org/topics/view.cfm?itemID=20739>).
7. Interview with John Phillips, executive director, Group Insurance Trust of the California Society of Certified Public Accountants, January 23, 2003 (hereinafter Phillips Interview).
8. For additional information about requirements under ERISA, see Patricia A. Butler and Karl Polzer, *Regulation of ERISA Plans: The Interplay of ERISA and California Law*, California HealthCare Foundation, Oakland, CA: June 2002 (<http://www.chcf.org/topics/view.cfm?itemID=19795>).
9. Information about registered MEWAs is available at <http://askebsa.dol.gov/epds>. Employers participating in the MEWA would have to also comply with the new claims regulation (time limits on deciding whether a benefit is covered) and HIPAA requirements (portability, non-discrimination, etc.).
10. Congress amended ERISA in 1982 to address widespread problems of MEWA fraud and insolvency. As a result, states have explicit authority to regulate MEWAs. For fully insured MEWAs, states can regulate for solvency; states can regulate self-insured MEWAs as insurance companies or in any way not inconsistent with ERISA.
11. For a detailed discussion of why small group market reforms are important, see Debra L. Roth, *Insurance Markets: Rules Governing California’s Small Group Health Insurance Market*, California HealthCare Foundation, Oakland, CA: June 2003 (<http://www.chcf.org/topics/view.cfm?itemID=20740>).
12. For a detailed discussion of market segmentation issues, see Mila Kofman, *Issue Brief: Group Purchasing Arrangements Issues for States*, State Coverage Initiatives, Vol. IV, No. 3, April 2003 (<http://www.statecoverage.net/pdf/issuebrief403.pdf>).
13. Self-insured MEWAs historically have had to cope with instability. One reason for this is that employers are free to leave and those with low health risks have an incentive to do so if they are pooled with employers with higher health risks. If healthier risks keep leaving, then average health care costs and premiums for those higher-risk groups left behind in the pool may become unaffordable.
14. Licensed health maintenance organizations (HMOs) are not covered by the guaranty association. However, HMOs have “hold harmless” clauses in contracts with providers. This means that in case of non-payment by

the HMO, the provider may not collect payment for unpaid claims from the patient.

15. Cal Ins. Code §1033(a)(2)(G).
16. Interviews with staff from the California Department of Insurance, February 4, 2003 (hereinafter Regulator Interviews). Although there is some vagueness in the law, some would argue that the Department's authority in regulating MEWAs is broad and that the Department may "apply any remedies authorized" by the insurance code. See Cal Ins. Code §742.35.
17. Staff from the California Motor Car Dealers MEWA were not available for interviews. Therefore, information about their strategy to remain solvent was not available.
18. Underwriting is the process of examining individual applicants (looking at their past medical history and probability of future claims) and determining the proper premium. Individuals who are likely to have high claims will probably be charged higher rates.
19. Additionally, the Group Insurance Trust of the California Society of CPAs, for example, establishes an actuarially determined reserve for incurred but unreported claims and maintains a large, unallocated surplus that is available to meet trust obligations. Staff indicate that these practices surpass statutory requirements and contribute to financial solvency.
20. Einsmann Interview; Eadson Interview; Phillips Interview; Bob Lindgren, president, Printing Industries Association of Southern California Benefit Trust Plan, January 10, 2003.
21. Data based on U.S. Department of Labor 2001 filings. Information available at <http://askebsa.dol.gov/epds>.
22. Data adjusted for covered lives, based on information filed with the U.S. Department of Labor.
23. One sign of solvency is paying claims when due. Regulators would learn about potential solvency problems because consumers would call either the U.S. Department of Labor or California Department of Insurance if their claims were not being paid.
24. Mila Kofman, Kevin Lucia, and Eliza Bangit, *Proliferation of Phony Health Insurance: States and the Federal Government Respond*, The Commonwealth Fund (forthcoming summer 2003) (manuscript on file with author). Additionally, for a detailed discussion of health insurance scams, see Mila Kofman, *Health Insurance Scams Promoted Through Associations: A Primer*, The Insurance Receiver, Vol. 11, No. 3 (September 2002).
25. U.S. General Accounting Office, *Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements*, GAO/HRD-92-40, at 2-3 (March 10, 1992).
26. If there was a guaranty fund covering only MEWAs, there is a danger that one insolvency would result in potentially millions of dollars in assessments to the other MEWAs, which might cause them to become insolvent. A guaranty fund established for a broader group of entities (not just MEWAs) might solve this problem.
27. A MEWA must have applied for licensing by November 30, 1995. Cal Ins. Code §742.24(h).

Future editions will identify trends in California's insurance markets, analyze regulatory and policy issues, and provide industry updates. Analyses will be posted as they become available at the California HealthCare Foundation's Web site at [www.chcf.org](http://www.chcf.org).

The California HealthCare Foundation's program area on Health Insurance Markets and the Uninsured seeks to improve the functioning of California's health insurance markets, particularly the small group and individual markets, and to expand coverage to the uninsured. For information on the work of Health Insurance Markets and the Uninsured, contact us at [insurance@chcf.org](mailto:insurance@chcf.org).