MEWA like your HRA just don't give me a bad STLDI
Hint Summit April 26, 2019 – © Philip Eskew, DO, JD, MBA PHIL@DPCFrontier.com

Glossary	ERISA	State Regs	EO 13813
ERISA = Employee Retirement Income Security Act		No	
AHP = Association Health Plans	Yes*	Yes	06/19/18 Final
MEWA = Multiple Employer Welfare Arrangement	Yes*	Yes	06/19/18 Final
- MEP = Multiple Employer Plan (aka MEWA)			
- MET = Multiple Employer Trust (aka MEWA)			
HRA = Health Reimbursement Arrangement	Yes*	No	10/22/18 Proposed
STLDI = Short Term Limited Duration Insurance	No	Yes	08/03/18 Final
DPC = Direct Primary Care	Yes**	Yes	
DOL = Department of Labor			
HHS = Department of Health and Human Services			

* if elected ** if paid for by employer and elected (99% yes)

Timeline

10/12/17 Trump Executive Order 13813

- Secretaries (Treasury, Labor, HHS) directed to promote HRAs, STLDIs, AHPs (& MEWAs)

06/19/18 DOL Released AHP Final Rule

08/03/18 Secs Released STLDI Final Rule

- Litigation Pending (Assoc for Comm Aff Plans vs US)

10/22/18 Secs Released Proposed HRA Rule

03/28/19 AHP Expansion Blocked (State of New York v. U.S. Department of Labor)

Employee Retirement Income Security Act (ERISA)

Covers any "employee welfare benefit plan"

Is employer sponsored DPC part of ERISA?

- Generally Yes if employer has any ERISA offerings, maybe No if HRA only
- Remember COBRA 36 month rule

Does this interfere with other DPC tax issues (213d & 223c)? No - different definitions/jurisdictions

Why does an employer prefer ERISA?

- Plans are lower cost than standard ACA plans (Less plan liability)
- One plan can be offered nationwide (Federal ERISA preemption)
- Familiarity (ERISA started in 1974)
- Legal Risk (No current conflict of laws challenges, survived the ACA)

Association Health Plans (AHPs)

OLD Rule: "Bona Fide" Substantial business purpose unrelated to the provision of health care benefits

- 1) Purpose, 2) Commonality of Interest, 3) Control

NEW Rule: AHP members can be connected by: 1) geography alone, or 2) by common interests.

- Primary purpose may now be health coverage as long as it has at least one other purpose

State of New York v. U.S. Department of Labor, 18-cv-1747, U.S. District Court, District of Columbia

Types: 1) Association, 2) Captive, 3) Professional Employer Organization, 4) Self-insured AHP = MEWA

Multiple Employer Welfare Arrangements (MEWAs)

A MEWA is an arrangement where two or more employers pool their contributions to provide group health and other welfare benefits (such as dental, vision, life, and disability) to their employees. Welfare benefits under a MEWA may be self-insured or fully insured. Typically, employers make contributions to

the MEWA based on their number of covered employees and the estimated costs associated with each employee. Employee contributions can also be made to a MEWA.

- ERISA regulated – generally preferred since it limits state's regulatory flexibility (not required)
- May be paired with an HRA or paid for through an HRA (Yes – unlike an STLDI)
- May it also be an AHP? Yes, but this is a BAD idea (see State of NY v US DOL)

AHPs vs MEWAs

	Association Health Plan	Multiple Employer Welfare Arran
ERISA	May – NOT required	May – NOT required
Bona Fide Group / Association	Required	NA
Commonality of Interest	Required	NA
Members Must Control	Required	NA
Nondiscrimination	Required	Only Required if ERISA
State Regulations	Required	Required
Fiduciary Duty	Only Required if ERISA	Only Required if ERISA

Health Reimbursement Arrangement (HRA)

A group health plan 1) funded SOLELY by employer contributions 2) that reimburses an employee SOLELY for section 213(d) medical expenses. Reimbursements are excludable from an employee's income and wages for federal income tax and employment tax purposes. Some HRAs are designed to allow a carryover amount of unused account balances while others forfeit unused balances and some are funded only as needed.

Current law - 1) No HRA integration with individual coverage, and 2) Non-integrated plan = $100/day per employee (except for QSEHRAs)

Proposed Regulations (No Final Rule Yet, and thus no litigation yet)

HRAs Integrated with Individual Health Insurance Coverage, or standalone Excepted-Benefit HRAs up to $1,800 (as indexed for inflation). The proposed regulations expand the use of HRAs (or other account-based plans) by removing the current prohibition against integrating an HRA with individual health insurance coverage.

If the proposed rule is finalized, it will take effect on 01/01/2020 (would likely be delayed & litigated)

It doesn't matter that we are still a "plan" (Makes the 223(c) issue mostly irrelevant)

DPC is still left out of increased HRA usage unless we prove we are a medical expense (Support PCEA)

Could lead to the death of traditional employer coverage (just a small cash set aside)

Short-Term Limited Duration Insurance (STLDI) Plans

Plan duration extended from 3 to 12 months and may be renewed up to 36 months

After each 36 month period repeat underwriting is needed

Short-term plans do not have to comply with the Affordable Care Act's (ACA's) market reforms

Short-term insurers can:

- charge higher premiums based on health status,
- exclude coverage for preexisting conditions,
- impose annual or lifetime limits,
- opt not to cover entire categories of benefits (such as substance abuse or prescription drugs),
- rescind coverage, and
- require higher out-of-pocket cost-sharing than under the ACA.

ASSOCIATION FOR COMMUNITY AFFILIATED PLANS et al v. UNITED STATES DEPARTMENT OF TREASURY et al (DC District Court) Civil Action No. 18-2133