



**BlueCross BlueShield  
Association**

An Association of Independent  
Blue Cross and Blue Shield Plans

March 5, 2012

The Honorable Hilda Solis  
Secretary  
U.S. Department of Labor  
Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
Room N-5653  
U.S. Department of Labor  
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Submitted via the Federal Rulemaking Portal: <http://www.regulations.gov>

**Re: Comments on Proposed Regulations on *Ex Parte* Cease and Desist  
and Summary Seizure Orders – Multiple Employer Welfare  
Arrangements (RIN 1210-AB48; Section 521 Orders Proposed  
Regulations)**

Dear Secretary Solis:

The Blue Cross and Blue Shield Association (“BCBSA”) appreciates the opportunity to submit comments on the proposed rules that authorize the Secretary of Labor to issue *ex parte* cease and desist orders with respect to fraudulent multiple employer welfare arrangements (“MEWAs”) and summary seizure orders with respect to MEWAs that are in a financially hazardous condition, and provide for administrative hearings before an Administrative Law Judge for challenges to such orders (the “Rules”), as issued in the *Federal Register* on December 6, 2011 (76 Fed. Reg. 76235).

BCBSA is a national federation of 38 independent, community-based, and locally operated Blue Cross and Blue Shield companies (“Plans”) that collectively provide healthcare coverage for more than 99 million – one in three – Americans. Blue Cross and Blue Shield Plans offer coverage in every market and every zip code in America. Plans also partner with the government in Medicare, Medicaid, the Children’s Health Insurance Program (“CHIP”), and the Federal Employees Health Benefits Program.

BCBSA commends the Department of Labor (the “Department”) for establishing procedures in the Rules under which the Department may issue *ex parte* cease and desist orders and summary seizure orders with respect to fraudulent or

insolvent MEWAs. We believe that these procedures are consistent with the statutory language in section 521 of the Employee Retirement Income Security Act of 1974 (“ERISA”), as added by Section 6605 of the Affordable Care Act, and they provide the Department with effective enforcement tools to protect plan participants and beneficiaries, employers and employee organizations from fraudulent or financially unstable MEWAs.

In particular, BCBSA believes that the Department should focus on using the new enforcement tools in these Rules to combat abusive or fraudulent self-insured MEWAs. As the Department stated in the preamble to the Rules, some self-insured MEWAs have been found to have failed to use sound underwriting practices and have paid excessive amounts to operators and administrative service providers. 76 Fed. Reg. 76236. The Department noted that in certain cases a MEWA may have simply lacked sufficient resources or financial and administrative expertise, while in others a MEWA’s financial instability resulted from fraud, and that when MEWAs such as these have become insolvent, individuals have been left with millions of dollars in unpaid medical bills. *Id.*

We also recommend that the Department use the procedures in these Rules to target abusive or fraudulent MEWAs that are not fully insured within the meaning of ERISA section 514(b)(6)(D). As the Department has previously determined, a MEWA that provides group health benefits is fully insured for these purposes only if the MEWA obtains “insurance from an insurer that is licensed or admitted to conduct business under a state’s insurance laws governing group health insurance, and the policy guaranteeing the benefits [is] regulated under the group health insurance laws of a state.” DOL Advisory Opinion 2011-01A (February 1, 2011). In contrast, a MEWA that purchases only insurance products (e.g., stop-loss or reinsurance arrangements) that are not regulated as group health insurance under the group health insurance laws of a state might not have sufficient resources to provide promised health benefits to participants and beneficiaries and therefore may merit greater oversight to ensure their solvency.

In order to protect plan participants and beneficiaries who believe they have adequate health coverage through a MEWA when they in fact do not, as well as the employers and employee organizations that have contributed to the MEWA, we strongly recommend that the Department focus the new enforcement tools in the Rules to combat fraudulent and unsound financial practices by self-insured and non-fully insured MEWAs.

\* \* \*

We appreciate your consideration of our comments. We look forward to continuing to work with the Department on implementation issues related to the Affordable Care Act. If you have any questions, please contact Kris Haltmeyer at

Proposed Regulations  
MEWA *Ex Parte* Cease and Desist,  
Summary Seizure Orders  
RIN 1210-AB48

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or [Patrick.Watts@bcbsa.com](mailto:Patrick.Watts@bcbsa.com).

Sincerely,

A handwritten signature in black ink that reads "Justine Handelman". The signature is written in a cursive style with a long, sweeping underline.

Justine Handelman  
Vice President, Legislative and Regulatory Policy  
Blue Cross and Blue Shield Association