

**TITLE 13 INSURANCE**  
**CHAPTER 19 NON-ADMITTED OR SURPLUS LINES INSURANCE**  
**PART 4 MULTIPLE EMPLOYER WELFARE ARRANGEMENTS**

**13.19.4.1 ISSUING AGENCY:** Office of Superintendent of Insurance.  
[13.19.4.1 NMAC - Rp/E, 13.19.4.1 NMAC, 8/27/2019]

**13.19.4.2. SCOPE:**

**A. Applicability.** These rules apply to any group establishing or maintaining a multiple employer welfare arrangement providing health benefits in accordance with Section 59A-15-16 NMSA 1978 for its participants or their beneficiaries. This rule also applies to authorized insurers selling fully-insured products to associations, discretionary groups or trusts.

**B. Exclusions.** Notwithstanding Subsection A of this section, these rules do not apply to any multiple employer welfare arrangement that:

- (1) establishes or maintains a multiple employer welfare arrangement plan pursuant to one or more agreements that the United States secretary of labor finds to be a collective bargaining agreement;
- (2) is a rural electric cooperative or a rural telephone cooperative association as those terms are defined in ERISA; or
- (3) has satisfactorily demonstrated to the superintendent that it is subject to the jurisdiction of another agency of this state or the federal government in accordance with Section 59A-15-17 NMSA 1978.

[13.19.4.2 NMAC - Rp/E, 13.19.4.2 NMAC, 8/27/2019]

**13.9.4.3 STATUTORY AUTHORITY:** Sections 59A-1-8, 59A-1-18, 59A-2-9, 59A-4-14, 59A-10-3, 59A-15-17, 59A-15-20, 59A-16-1, 59A-16-27, 59A-18-13.2, 59A-18-13.3, 59A-18-13.5, 59A-23-3, 59A-23c-3 NMSA 1978.

[13.19.4.3 NMAC - Rp/E, 13.19.4.3 NMAC, 8/27/2019]

**13.19.4.4 DURATION:** Permanent.

[13.19.4.4 NMAC - Rp/E, 13.19.4.4 NMAC, 8/27/2019]

**13.19.4.5 EFFECTIVE DATE:** August 27, 2019, unless a later date is cited at the end of a section.

[13.19.4.5 NMAC - Rp/E, 13.19.4.5 NMAC, 8/27/2019]

**13.19.4.6 OBJECTIVE:** The purpose of this rule is to establish eligibility requirements, registration, reporting, oversight and transparency requirements for multiple employer welfare arrangements (MEWAs). This rule also clarifies the applicability of state and federal statutes protecting consumers' access to care.

[13.19.4.6 NMAC - Rp/E, 13.19.4.6 NMAC, 8/27/2019]

**13.19.4.7 DEFINITIONS:** For definitions of terms contained in this rule, refer to 13.10.29 NMAC, unless otherwise noted below.

**A. "Association health plan or association or AHP"** means any foreign or domestic association that provides a health benefits plan that covers the employees of multiple employers or union members. All association health plans are multiple employer welfare arrangements.

**B. "By laws"** means the statements adopted by a MEWA that prescribe its purpose, government and administration.

**C. "Discretionary group"** means a group that does not meet the standard, eligible group requirements under state or federal law, but have otherwise obtained insurance by the discretion of the superintendent to operate.

**D. "Employer"** means:

- (1) a person who is an employer as that term is defined in Section 3(5) of the federal Employee Retirement Income Security Act of 1974, and who employs two or more employees; and
- (2) a partnership in relation to a partner pursuant to Section 59A-23E-17 NMSA 1978.

**E.** “ERISA” refers to the Employee Retirement Income Security Act of 1974 (29 United States Code Section 1002(4)), and ERISA’s implementing regulations, as currently enacted or subsequently amended;

(1) these rules incorporate the definitions in 29 U.S.C.A., § 1002, and in its implementing regulations, as currently enacted or subsequently amended.

(2) unless inconsistent with the definitions in 29 U.S.C.A., § 1002, or in its implementing regulations, these rules incorporate the definitions in the New Mexico Insurance Code.

**F.** “Fully-insured multiple employer welfare arrangement” means that an authorized insurer is obligated to provide all of the benefits and services owed to a participant in, or beneficiary of, a MEWA and is directly liable to each participant or beneficiary for those services or benefits.

**G.** “Insurance code” refers to the New Mexico Insurance Code and its implementing rules, as currently enacted or subsequently amended.

**H.** “M-1 filing” means a Form M-1 report that the federal department of labor requires a MEWA to file annually.

**I.** “Multiple employer welfare arrangement” or “MEWA” refers to any foreign or domestic entity that administers a multiple employer welfare arrangement pursuant to 29 U.S.C.A., § 1002(40)(A) and these rules.

**J.** “NAIC” means the National Association of Insurance Commissioners.

**K.** “Plan administrator or third-party administrator” means a person or entity engaged by a self-funded MEWA, as defined in this section, to act as executive director to carry out the policies established by the trustees and to otherwise administer and provide day-to-day management of the health benefits plan;

**L.** “Self-funded multiple employer welfare arrangement” or “association health plan” refers to a MEWA that is not fully-insured. A fully-insured MEWA shall be deemed a self-funded MEWA, subject to all of the laws and regulations pertaining thereto, if, at any time, any of the obligations owed by the MEWA to a participant or beneficiary will not be provided by an authorized insurer.

**M.** “Self-insure” means to assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.

**N.** “SERFF” means the System for Electronic Rates and Forms Filings.

[13.19.4.7 NMAC - Rp/E, 13.19.4.7 NMAC, 8/27/2019]

#### **13.19.4.8 ELIGIBILITY TO OPERATE:**

##### **A. Eligibility to operate as or offer coverage through a MEWA.**

(1) Self-funded MEWA. A self-funded MEWA shall be eligible to offer health benefits plans only after meeting the requirements outlined in this section

(2) Fully-insured MEWA. An insurance carrier shall confirm that any employer group, association, trust or union forming a MEWA to whom it is offers coverage conforms with the requirements of this section prior to the sale or delivery of any health benefits plan to MEWA members.

##### **B. Eligibility for status as MEWA.** A MEWA shall prove that it:

(1) is a bona fide association or MEWA, which means that the association or MEWA:

(a) has membership consisting solely of employers or union members;

(b) has been actively in existence for at least five continuous years;

(c) is engaged in substantial activities for its members, other than the sponsorship of an employee welfare benefit plan, and provides business or professional assistance and benefits to its members who share a common business interest and are primarily engaged in the same trade or business;

(d) does not condition membership in the association or MEWA on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee) and clearly so states in all membership and application materials;

(e) has within its membership the employers who participate in and fund the arrangement;

(f) makes health benefits plan coverage offered through the MEWA available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member) and clearly so states in all marketing and application materials;

(g) does not make health benefits plan coverage offered through the MEWA available other than in connection with a member of the MEWA and clearly so states in all marketing and application materials; and

(h) provides and annually updates information necessary for the superintendent to determine whether or not a MEWA meets the definition of a bona fide as a MEWA before qualifying as bona fide for the purposes of this rule.

(i) meets at least one of the following conditions:

(i) is a New Mexico entity;

(ii) includes a member that is a New Mexico entity or who conducts

business in New Mexico; or

(iii) has a participant who resides in New Mexico.

(2) shares a commonality of interests, which means that the employers or union members are in the same trade, industry, line of business, or profession; or

(3) does not charge employers or union members membership fees solely to participate in the MEWA and no membership fees are included in the premiums charged for health benefits plans.

**C. Limitations of membership.** A MEWA may only provide benefits to active or retired owners, officers, directors, or employees (and the domestic partners and family members of any of them) of participating employers or union members, except as may otherwise be limited by provisions of ERISA.

**D. MEWAs formed for the purposes of selling insurance, prohibited.** No MEWA, either fully-insured or self-insured, shall be formed solely for the purpose of selling insurance to a group.

**E. Limitations on large group plans.** A health benefits plan shall not be considered a large group plan exempt from state and federal laws governing individual or small group coverage solely because the aggregate number of lives covered by the MEWA meets the definition of a large group plan.

**F. Size of MEWA.** A self-funded MEWA proposing to provide a health benefits plan to fewer than 100 covered lives does not meet the criteria for eligibility under this rule, shall not be registered as an authorized MEWA and shall not offer a health benefits plan to any employees or union members.

[13.19.4.8 NMAC - Rp/E, 13.19.4.8 NMAC, 8/27/2019]

#### **13.19.4.9 MULTIPLE EMPLOYER WELFARE ARRANGEMENT OR ASSOCIATION HEALTH PLAN NAME:**

**A. Clarity of name usage.** No MEWA formed pursuant to this rule shall take any name that is the same as or closely resembles the name of any other MEWA possessing registration and doing business in this state. A MEWA must complete its application for registration to transact business under its own name and shall not adopt any assumed name, except that a MEWA by amending its articles may change its name or take a new name with the approval of the superintendent. A MEWA shall clearly state this name on all advertising materials.

**B. Legal proceedings.** Whenever it shall be necessary in any legal proceeding to prove the existence of a multiple-employer welfare arrangement, a certified copy of the MEWA registration in this state shall be prima facie evidence of the existence of the MEWA.

[13.19.4.9 NMAC - Rp/E, 13.19.4.9 NMAC, 8/27/2019]

#### **13.19.4.10 DUTIES AND COMPENSATION OF TRUSTEES, OFFICERS OR DIRECTORS:**

**A. Responsibilities of trustees, officers or directors.** The trustees, officers or directors of a MEWA shall give the attention and exercise the vigilance, diligence, care and skill that prudent persons use in like or similar circumstances.

**B. Authority of trustees, officers or directors.** The board of trustees, officers or directors shall select such directors as designated in the articles or bylaws or trust agreement and may appoint agents as deemed necessary for the transaction of the business of the MEWA. All directors and agents shall respectively have such authority and perform such duties in the management of the property and affairs of the MEWA as may be delegated by the board of trustees, officers or directors. Any director or agent may be removed by the board of trustees, officers or directors whenever in their judgment the business interests of the MEWA will be served by the removal. The board of trustees, officers or directors shall secure by bond or otherwise the fidelity of any or all such directors or agents who handle the funds of the MEWA.

**C. Duties of the trustees, officers or directors.** The trustees, officers or directors of a MEWA are responsible for the operations of the MEWA. The directors shall have, at minimum, the following duties:

(1) fiduciary responsibility for the MEWA operation and financial condition;

(2) selection, supervision, and evaluation of the service company, financial administrator, accountant, insurer, and any other contractors;

(3) on the basis of the plan's overall financial condition, authorizing changes in premium, reserve, or investment practices; and declaring assessments or dividends as appropriate;

- (4) approving all reports concerning the plan's operations and status to the superintendent and the members;
- (5) monitoring delinquent premiums, loss experience, and the financial condition of individual members; and authorizing disciplinary action or expulsion as appropriate;
- (6) authorizing acceptance or rejection of applications for membership;
- (7) as permitted by the bylaws, making or recommending changes to the bylaws for the improvement of the plan's operation and financial integrity; and
- (8) monitoring the plan's compliance with all statutes and rules governing its operation.

**D. Compensation of trustees, officers or directors.** Trustees, officers or directors shall serve without compensation from the MEWA except for actual and necessary expenses to perform the oversight functions of the MEWA.

**E. Compensation of employees or agents.** The compensation of any employee of a MEWA shall not be calculated directly or indirectly as a percentage of money or premium collected. The compensation of any agent shall not exceed five percent of the money or premium collected.

**F. Membership.** Members of the MEWA's board of trustees, officers or directors shall include individuals receiving benefits from the MEWA's health plan.

[13.19.4.10 NMAC - Rp/E, 13.19.4.10 NMAC, 8/27/2019]

#### **13.19.4.11 APPLICATION PROCESS FOR MEWAS:**

**A. Application requirements for registration generally.** All MEWAs shall submit an application for registration and receive approval from the superintendent before sale of any plans or products. All application materials shall be provided in the format specified by the superintendent on the office of superintendent of insurance website.

**B. Contents of application, generally.** An application for registration shall include the MEWA's most current M-1 filing with the United States department of labor. Unless the information in the documents requested below is provided in the M-1 filing, the MEWA must also file:

- (1) a certified copy of the formative documents that establish the MEWA entity name and type under which the MEWA will operate, the MEWA's federal employer identification number (FEIN) and filings which demonstrate that the MEWA is authorized to do business in New Mexico;
- (2) copies of all bylaws, operating agreements or similar documents that govern the control of the MEWA;
- (3) the name, address, and telephone number for the contact for each association, group, trust, employer or member participating in the MEWA;
- (4) the name, address, and telephone number of each officer, director, partner or trustee of the MEWA;
- (5) a description of all sources of financing and revenue of the MEWA;
- (6) the MEWA's current financial statements including audit reports, a balance sheet, income statement, cash flow statement and detailed listing of assets and debts, each developed according to generally accepted accounting principles;
- (7) an affidavit from an officer, director, fiduciary or trustee of the MEWA attesting that, based on the affiant's informed belief, the MEWA is in compliance with all applicable provisions of ERISA;
- (8) an affidavit from an officer, director, fiduciary or trustee of the MEWA attesting that, based on the affiant's informed belief, the MEWA is in compliance with all applicable provisions of the Insurance Code and applicable portions of the Affordable Care Act. Such affidavit does not absolve the MEWA from any rate or form filing requirements under 13.19.4.11.24 NMAC;
- (9) an affidavit from an officer, director or trustee of the MEWA certifying that all association members and their employees shall be eligible for participation in the MEWA;
- (10) a copy of any document executed by an employer or trust to become a member of the MEWA, including application for membership;
- (11) a description of all membership requirements;
- (12) the names and license numbers of any third-party benefit administrators administering health benefits offered by the MEWA; and
- (13) any additional information requested by the superintendent.

**C. Additional specifications for fully-insured MEWAs.** An application for a registration to operate as a fully-insured MEWA shall also include:

and

- (1) the NAIC number of each insurer who will provide benefits on behalf of the MEWA;
- (2) all contracts between the MEWA and each insurer identified in Paragraph (1) of this subsection.

**D. Additional specifications for self-insured MEWAs.** An application for registration to operate as a self-insured MEWA shall also include:

- (1) an actuarial opinion prepared, signed and dated by a person who is a member of the American Academy of Actuaries stating that appropriate loss and loss adjustment reserves have been established and that adequate premiums are being charged;
- (2) a copy of an indemnity agreement that jointly and severally binds the MEWA and each member thereof to meet the obligations of the MEWA;
- (3) a copy of a document that binds and obligates the board members of the MEWA to replace any funding shortfall relating to the MEWA operations in this state. Such document shall provide for the payment of one hundred percent of the covered amount of any claims covered by the plan in the event the MEWA operates in states other than New Mexico;
- (4) a copy of all stop-loss or reinsurance commitments, binders or policies insuring the MEWA or its members for benefits owed under the plan;
- (5) any applicable documents required to be filed pursuant to 13.2.7 NMAC; and
- (6) all documents necessary to demonstrate its solvency to the superintendent's satisfaction, as set forth in 13.19.4.14 NMAC.

**E. Application filing fee.** The application filing fee for registration to operate as a MEWA in New Mexico shall be the same as those described under Section 59A-6-1, NMSA 1978.  
[13.19.4.11 NMAC - Rp/E, 13.19.4.11 NMAC, 8/27/2019]

#### **13.19.4.12 APPLICATION REVIEW AND APPROVAL PROCESS FOR MEWAS:**

**A. Application completion requirements.** An application is not complete until the MEWA has met all the requirements of this section to the satisfaction of the superintendent. The superintendent shall examine the application and supporting documents submitted by the applicant and shall conduct any investigation that the superintendent deems necessary. Incomplete applications shall be denied.

**B. Application review.** Upon receipt of a complete application, the superintendent shall evaluate whether the MEWA is currently in compliance with all applicable provisions of federal law, the Insurance Code and these rules. Upon determining that the application is in compliance, the superintendent shall register the MEWA. If the superintendent finds that the applicant MEWA does not satisfy any requirement for registration, the superintendent shall notify the applicant setting forth each deficiency. If the MEWA does not correct the deficiency within 60 days from the date of transmission of the superintendent's notice, or within such other time specified by the superintendent, its application will be deemed denied and closed. An unsuccessful applicant may file a new application for registration at any time.

**C. Material changes.** A MEWA that has made an application under this rule shall amend such application within 30 days of the date the MEWA becomes aware, or through the exercise of due diligence should have become aware, of any material change to the information required to be filed. The amended application filing shall accurately reflect material changes to the information originally filed. Any changes made subsequent to the immediately preceding M-1 filing shall be specifically identified.

**D. Rate and form filing requirements.** A MEWA shall comply with the rate and form and filing requirements described in Chapter 59A, Section 18, NMSA 1978 and its implementing rules, as currently enacted or subsequently amended.. All forms, rates and advertisements shall be filed through SERFF prior to use.  
[13.19.4.12 NMAC - Rp/E, 13.19.4.12 NMAC, 8/27/2019]

**13.19.4.13 REVOCATION:** The superintendent may revoke a MEWA's registration upon determining that the MEWA is no longer in compliance with any applicable provision of federal law, the Insurance Code or these rules, even if the non-compliance pre-dated registration.  
[13.19.4.13 NMAC - Rp/E, 13.19.4.13 NMAC, 8/27/2019]

#### **13.19.4.14 SELF-FUNDED MEWA DEPOSIT REQUIREMENTS:**

**A. Deposit requirement.** Every self-funded MEWA shall make and maintain a deposit in trust of not less than \$300,000 for the benefit and protection of all of its participants and their beneficiaries. The deposit shall consist of assets eligible under Section 59A-10-3 NMSA 1978, and shall be deposited with or through the

superintendent or in a commercial depository located in the state of New Mexico approved by the superintendent subject to Section 59A-10-1 *et seq.*, NMSA 1978. For good cause shown, and in the superintendent's sole discretion, the superintendent may require a MEWA to make and maintain a deposit in an amount lesser or greater than otherwise required in this rule.

**B. Deposit release conditions.** Any such deposit shall be released only in the following instances:

- (1) upon extinguishment of all fixed and contingent liabilities of the MEWA secured by the deposit;
- (2) upon the assumption by an authorized insurer of the MEWA's fixed and contingent liabilities secured by the deposit; or
- (3) upon proper order of a court of competent jurisdiction, the reserve deposit may be released to the receiver, conservator, rehabilitator or liquidator of the MEWA for whose account the deposit is held.

**C. Uncovered expenditures insolvency deposit.** A MEWA shall maintain an uncovered expenditures insolvency deposit.

(1) **Amount and location of deposit.** If at any time uncovered expenditures exceed ten percent of total health care expenditures, a self-funded MEWA shall place an uncovered expenditures insolvency deposit with the superintendent, with any organization or trustee acceptable to the superintendent through which a custodial or controlled account is maintained, cash or securities that are acceptable to the superintendent.

(a) Such deposit shall at all times have a fair market value in an amount of one hundred twenty percent of the MEWA's outstanding liability for uncovered expenditures for enrollees in this state, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month.

(b) If a self-funded MEWA is not otherwise required to file a quarterly report, it shall file a report within 45 days of the end of the calendar quarter with information sufficient to demonstrate compliance with this paragraph.

(2) **Accounting of deposit.** The deposit required under Subsection C of this section is in addition to the deposit required under Subsection A and is an admitted asset of the MEWA in the determination of net worth. All income from such deposits or trust accounts shall be assets of the MEWA and may be withdrawn from such deposit or account quarterly with the approval of the superintendent.

(3) **Withdrawals.** A self-funded MEWA that has made a deposit may withdraw that deposit or any part of the deposit if a substitute deposit of cash or securities of equal amount and value is made, the fair market value of the deposit exceeds the amount of the required deposit, or the required deposit under Paragraph (1) of this section is reduced or eliminated. Deposits, substitutions or withdrawals may be made only with the prior written approval of the superintendent.

(4) **Use of deposit in case of insolvency.** The deposit required under Paragraph (1) of this section is in trust and may be used only as provided under this section. The superintendent may use the deposit of an insolvent MEWA for administrative costs associated with administering the deposit and payment of claims of enrollees of this state for uncovered expenditures in this state. Claims for uncovered expenditures shall be paid on a pro rata basis based on assets available to pay such ultimate liability for incurred expenditures. Partial distribution may be made pending final distribution. Any amount of the deposit remaining shall be paid into the liquidation or receivership of the MEWA.

(5) **Manner of paying claims.** The superintendent may prescribe the time, manner and form for filing claims under Paragraph (4) of this section.

(6) **Reporting.** The MEWA is required to file quarterly reports to demonstrate compliance with this section. The superintendent may require that the reports include liability for uncovered expenditures as well as an audit opinion.

(7) **Deposit release order.** No release of deposits shall be made except on application and written order of the superintendent made upon proof satisfactory to the superintendent of the existence of one or more of such grounds.

[13.19.4.14 NMAC - Rp/E, 13.19.4.14 NMAC, 8/27/2019]

#### **13.19.4.15 SELF-FUNDED MEWA MINIMUM SOLVENCY REQUIREMENTS:**

**A. Net worth requirements.** Every self-funded MEWA shall maintain an unallocated reserve level of not less than the greater of twenty percent of the total contributions in the preceding plan year or twenty percent of the total estimated contributions for the current plan year. The superintendent may require a self-funded MEWA to maintain a minimum net worth in an amount lesser or greater than otherwise required in this rule.

**B. Reserve accounting principles.** Every self-funded MEWA shall establish and maintain loss and loss adjustment reserves determined by sound actuarial principles in a format consistent with that required by the national association of insurance commissioners for commercial health insurers. These principles shall give proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor and a margin for error.

**C. Reserve requirements.** Reserves shall be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the superintendent has authorized by rule.

[13.19.4.15 NMAC - Rp/E, 13.19.4.15 NMAC, 8/27/2019]

#### **13.19.4.16 ACCOUNTING STANDARDS AND REPORTING REQUIREMENTS:**

**A. Annual statement required.** Each MEWA transacting business in this state shall file annually with the superintendent statements and reports in compliance with 13.2.5 NMAC. Additionally, each annual statement shall be filed:

(1) by June 1st of each year, financial statements audited by a certified public accountant;  
and

(2) by March 1st of each year, an actuarial opinion prepared and certified by an actuary who is not an employee of the MEWA and who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code §§ 1241 and 1242). The actuarial opinion shall include:

(a) a description of the actuarial soundness of the MEWA, including any recommended actions that the MEWA should take to improve its actuarial soundness;

(b) the recommended amount of cash reserves the MEWA should maintain, which shall not be less than the greater of twenty percent of the total contributions in the preceding plan year or twenty percent of the total estimated contributions for the current plan year;

(c) a calculation of cash reserves with proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premiums, an estimate for bad debts, a trend factor, and a margin for error; and

(d) the recommended level of specific and aggregate stop-loss insurance the multiple-employer welfare arrangement should maintain.

**B. Renewal contingent upon compliance.** The superintendent shall review the statements and reports required by Subsection A of this section. Renewal of a MEWA registration is contingent upon the superintendent finding that the MEWA meets the requirements of the Insurance Code and these sections.

**C. Order for actuarial review.** On a finding of good cause, the commissioner may order an actuarial review of a MEWA in addition to the actuarial opinion required by this section. The cost of any such additional actuarial review shall be paid by the MEWA.

**D. Quarterly reports.** The superintendent shall require a self-funded MEWA to file quarterly financial reports. Quarterly reports shall contain statements for each health benefits plan offered by the MEWA showing:

(a) current total cash on hand and on deposit, and total investments;  
(b) current total reserve for unearned and advance premiums, total reserve for outstanding losses reported and unreported, total operating full funding reserve, and total runoff full funding reserve;

(c) dividends declared during the quarter;

(d) gross premiums written during the quarter;

(e) losses paid during the quarter;

(f) proximity to the aggregate excess stop-loss insurance attachment point for the current fund year and, if applicable, the past fund year;

(g) current total employer members and covered lives; and

(h) any other matters the superintendent requests.

**E. Examination timeline.** The superintendent shall examine the affairs and conduct of a self-funded MEWA at least once every three years in the same manner that applies to domestic and foreign insurers with a certificate of authority to transact insurance in New Mexico. Expenses of examination shall be paid by each MEWA, or its insurers, pursuant to Section 59A-4-14 NMSA 1978.

**F. Penalties.** A MEWA failing to file, without just cause reasonably beyond control of the MEWA, its annual statement required by this section, shall be subject to penalties outlined in Section 59A-5-30 NMSA 1978.

[13.19.4.16 NMAC - Rp/E, 13.19.4.16 NMAC, 8/27/2019]

**13.19.4.17 INVESTMENT REQUIREMENTS OF SELF-FUNDED MEWAS:** Every self-funded MEWA shall comply fully with the investment requirements of Section 59A-9-2 NMSA 1978. In addition, a MEWA must not invest in securities or debt of a member employer, or a member employer's parent, subsidiary, or affiliate; or any person or entity under contract with the MEWA.

[13.19.4.17 NMAC - Rp/E, 13.19.4.17 NMAC, 8/27/2019]

**13.19.4.18 FINANCIAL INTEGRITY OF SELF FUNDED-MEWAS:**

**A. Fidelity bond.** All persons who handle self-funded MEWA funds or who will have authority to gain access to MEWA funds, including trustees, officers or directors must be covered by a fidelity bond. The bond must cover losses from dishonesty, robbery, forgery or alteration, misplacement, and mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be \$300,000 or more. The MEWA must purchase a fidelity bond covering the required persons, or submit separate proof of coverage for all required contractors and individuals not covered under the MEWAs bond.

**B. Integrity of assets.** A MEWA's assets:

- (1) must not be commingled with the assets of any employer member;
- (2) must not be loaned to anyone for any purpose, or used as security for a loan, except as permitted under Subsection C of this section for investments.
- (3) must be employed solely for the purposes stated in the bylaws, and in compliance with this chapter and related statutes; and
- (4) must not be considered the property or right of any member, covered employee, or other covered person, except:

- (a) for benefits under the coverage documents;
- (b) for dividends declared in accordance with Section 59A-37-22 NMSA 1978.
- (c) for a portion of the assets remaining after the plan's dissolution.

**C. Sources and uses of funds.** A MEWA may expend funds for payment of losses and expenses, and for other costs customarily borne by insurers under conventional insurance policies in New Mexico. A MEWA must not borrow money or issue debt instruments, except to maintain cash flow through a stop-loss policy requiring an insurer to advance funds to the MEWA under conditions approved by the superintendent. A MEWA may bring legal suits to collect legal debts. A MEWA must not obtain funds through subrogation of the rights of covered employees or other covered persons. A MEWA may receive funds only from:

- (1) its members as premiums, assessments or penalties;
- (2) its insurers or indemnitors pursuant to insurance or indemnification agreements;
- (3) dividends, interest, or the proceeds of sale of investments;
- (4) refunds of excess payments;
- (5) coordination of benefits with automobile coverage, workers' compensation coverage, and other employee health benefit coverage; or
- (6) collection of money owed to the MEWA.

**D. Separate accounts.** A MEWA may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the MEWA's third-party administrators, its authorized subcontractors or financial administrators as appropriate to the account's purpose. The amount in these special accounts must not exceed the amount reasonably sufficient to pay the claims or expenses for which it is established. All monetary and investment assets not in these accounts must be under the control of the financial administrator.

**E. Monitoring financial condition.** The trustees, officers or directors must regularly monitor the MEWA's revenues, expenses, and loss development, and evaluate its current and expected financial condition. The trustees, officers or directors must attempt in good faith to maintain or restore the MEWA's sound financial condition, using any means at its disposal. These means include but are not limited to adjusting premium rates, underwriting standards, dividend rates, expulsion standards, and other powers granted in this rule and the bylaws. If the superintendent judges that the trustees', officers' or director's actions are inadequate to maintain or restore the plan's sound financial condition, the superintendent shall, as appropriate: order an increase in the premium rates; revoke the MEWA's registration; or order that an assessment be levied against the members.

**F. Employee Protections.** Member employers must not require covered employees to pay a portion of an assessment, nor must covered employees be required to pay any amount for premium increases on coverage in



force. The amount of assessments must not be more than the amount of member employers' most recent annual premium, including the portion paid by covered employees.  
[13.19.4.18 NMAC - Rp/E, 13.19.4.18 NMAC, 8/27/2019]

**13.19.4.19 SELF-FUNDED MEWA STOP-LOSS COVERAGE REQUIREMENTS:**

**A. Proof of coverage.** Every self-funded MEWA shall maintain individual and aggregate excess stop-loss coverage from an authorized insurer. The MEWA must submit the commitment, binder or policy of stop-loss coverage to the superintendent for approval as a condition of approval of registration or continued approval.

**B. Purchase and alteration.** A MEWA must inform the superintendent at least 180 days prior to expiration of any required stop-loss insurance policy whether it intends to renew the policy, and whether the insurer is willing to renew the policy. Alteration of a required stop-loss insurance policy midterm with the effect of reducing coverage, and cancellation by the plan midterm, are prohibited. If more than one stop-loss insurance policy is obtained in fulfillment of this part's requirements, their expiration dates must be the same.

**C. Individual excess.** A MEWA shall have and maintain individual excess stop-loss insurance, that provides for the insurer to assume all liability in excess of the per person limit per year under all coverages the plan offers. The reporting period under this coverage shall be no less than one year after the fund year's conclusion. A MEWA must apply to the superintendent for a determination of the individual excess stop-loss insurance limit. The superintendent shall approve the application if the limit would not be detrimental to the solvency and stability of the plan, considering the plan's experience, size, surplus, and other factors affecting financial integrity.

**D. Aggregate excess.** A MEWA must have and maintain aggregate excess stop-loss insurance that provides for the insurer to assume all liability in excess of a specified amount of losses for each fund year. The aggregate excess coverage may be in the form of incurred basis stop-loss insurance or paid basis stop-loss insurance. MEWAs using paid basis stop-loss insurance shall have and maintain extended or runoff aggregate excess stop-loss insurance on an incurred basis. The extended or runoff coverage shall provide for the insurer to assume all liability in excess of a specified amount of losses incurred while the paid basis stop-loss insurance was in force, but paid after its termination or nonrenewal. The reporting period under paid basis insurance shall be no less than three months after the fund year's conclusion. The reporting period under incurred basis insurance, including extended or runoff insurance shall be no less than one year after the fund year's conclusion.

**E. Surety coverage.** A MEWA shall have and maintain the following language in its required aggregate excess stop-loss insurance policy, unless the superintendent determines that a policy with that language is not available in the market for stop-loss coverage, in which case, the superintendent may determine the requirements needed to obtain stop-loss coverage and meet solvency requirements: "The insurer shall, at the superintendent's request, assume direct responsibility for the MEWA's coverage and all other responsibilities under this chapter and related statutes, if the MEWA becomes insolvent, ceases operations without authorization, or otherwise fails to fulfill its responsibilities under this chapter and related statutes. The insurer may attempt to collect reimbursement from the MEWA or an employer member on whose behalf the insurer is called upon to pay premium, pay claims, or incur other extraordinary expenses. However, the insurer shall fulfill its responsibilities under this section while any collection attempts are pending. The insurer's responsibilities extend to all matters arising during or attributable to the policy period, and do not terminate with the end of the policy period." The policy shall not alter or qualify these terms to harm the plan's rights materially.

**F. Return of liability.** No liability or other responsibilities transferred to an insurer under this part may, directly or indirectly, be returned to a MEWA, an employer member, or an employer member's parent, subsidiary, or affiliate. This does not prohibit the insurer from seeking reimbursement from the MEWA or an employer member, as permitted under Subsections E and F of this section.

[13.19.4.19 NMAC - Rp/E, 13.19.4.19 NMAC, 8/27/2019]

**13.19.4.20 ENDING SELF-INSURANCE, RUNOFF PERIOD, AND PLAN DISSOLUTION:**

**A. Ending self-insurance registration.** A MEWA may decide to end its self-insurance registration and cease to provide coverage, effective at the end of a fund year. The MEWA shall notify the superintendent within 14 days of such a decision. A MEWA may not elect to end its self-insurance registration less than 45 days prior to the end of the fund year in question. Voluntary ending of self-insurance registration does not constitute MEWA dissolution under Subsection D of this section.

**B. Revocation of self-insurance registration.** The superintendent shall, by order, revoke the registration of a MEWA to self-insure upon ten days' written notice if any of the following events occur or conditions develop, and if the superintendent judges them to be material:

(1) failure of the MEWA to comply with this rule and all applicable statutes under the Insurance Code;

(2) failure of the MEWA to comply with any lawful order of the superintendent;

(3) commission by the MEWA of an unfair or deceptive practice or fraud as defined in Chapter 59A, Articles 16, 16b, or 16c of the Insurance Code or in related rules; or

(4) a deterioration of the MEWA's financial integrity to the extent that its present or future ability to meet obligations promptly and in full is or will be significantly impaired.

**C. Runoff period.** A health benefits plan offered by a MEWA shall continue to exist as a runoff plan after its self-insurance registration has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the plan provided coverage. A runoff plan shall continue to comply with all appropriate provisions of this rule, and with all other applicable New Mexico statutes and rules. Authority to exist as a runoff plan is open-ended, and does not require renewal of registration.

**D. Dissolution.** A MEWA, including a runoff health benefits plan offered by a MEWA, which desires to cease existence shall apply to the superintendent for authorization to dissolve. Applications shall be approved or disapproved within 60 days of receipt. Dissolution without authorization is prohibited and void, and does not absolve a MEWA or runoff plan from fulfilling its continuing obligations, and does not absolve its members from assessment under premium tax law. The MEWA's assets at the time of dissolution shall be distributed to the members and covered employees as provided in the bylaws. The superintendent shall grant authorization to dissolve if either of the following conditions are met:

(1) the MEWA demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

(2) the MEWA has obtained an irrevocable commitment from a licensed insurer that provides for payment of all outstanding liabilities, and for providing all related services, including payment of claims, preparation of reports, and administration of transactions associated with the period when the plan provided coverage.

[13.19.4.20 NMAC - Rp/E, 13.19.4.20 NMAC, 8/27/2019]

#### **13.19.4.21 EFFECT OF REGISTRATION:**

**A. Deemed to be an insurer.** Upon approval of the application for registration, a self-funded MEWA that is subject to these rules is deemed to be an "insurer" under Subsection A of Section 59A-1-8 NMSA 1978.

**B. Deemed to be an authorized issuer.** Upon approval of the application for registration, a self-funded MEWA is deemed to be an authorized insurer for purposes of compliance with state and federal law.

**C. Plan deemed to be a contract.** The health benefits plan of a self-funded MEWA that has been approved for registration is deemed to be a health benefits plan under state and federal law.

[13.19.4.21 NMAC - Rp/E, 13.19.4.21 NMAC, 8/27/2019]

#### **13.19.4.22 RENEWAL OF REGISTRATION:**

**A. Renewal requirements.** A MEWA's registration shall continue in force as long as the MEWA complies with these rules and all other applicable state and federal laws, unless suspended or revoked by the superintendent or terminated at the MEWA's request, subject to continuance of the registration by the MEWA each year by:

(1) payment on or before March 1 of a \$200.00 continuation fee;

(2) filing on or before March 1, by the MEWA or its authorized insurer(s), of an audited financial statement for the preceding year;

(3) payment by the MEWA, or its authorized insurer(s), of premium taxes for the preceding calendar year;

(4) reporting on demographic information, on a form approved by the superintendent, providing MEWA, and any third party administrator, intermediary, regulatory compliance, and insurer contacts that complies with the following requirements:

(a) the MEWA contact shall be the person responsible for filing all applicable forms and changes in information with the superintendent; and

(b) the regulatory contact shall be the person responsible for receiving notice of laws, rules, bulletins and the like that may affect the plan;

(5) notice of any changes in information previously filed with the superintendent, which shall include, but is not limited to, the following items:

- (a) biographical affidavits of any new trustees, officers, directors, or other members of the association's or MEWA's governing body;
- (b) the names, addresses, and qualifications of any new individuals responsible for the conduct of the plan's affairs, including third-party administrators;
- (c) any new policy or amendment;
- (d) any new trust agreement, plan document, plan summary, or bylaws;
- (e) any new advertising and marketing material;
- (f) any new members of the MEWA; and
- (g) any other new agreements.

**B. Expiration of registration and cure.** A MEWA's registration shall expire under the same conditions and be cured by the same processes as described in Section 59A-5-23, NMSA 1978. [13.19.4.22 NMAC - Rp/E, 13.19.4.22 NMAC, 8/27/2019]

**13.19.4.23 APPLICABILITY OF FEDERAL PREEMPTION REQUIREMENTS:**

**A. Jurisdiction of superintendent.** Notwithstanding any other provision of law, and except as provided in this regulation, any MEWA that provides coverage in this state for health benefits, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the superintendent unless the MEWA shows that while providing such services it is exempt from state jurisdiction as a result of federal preemption.

**B. Proof of federal jurisdiction.** A MEWA may show that it is subject to federal jurisdiction by providing to the superintendent the appropriate authorization issued by the federal agency that permits or qualifies it to provide those services for which it is authorized. An M-1 filing with the U.S. department of labor shall not, in and of itself, be sufficient to overcome the presumption of the superintendent's jurisdiction as set forth in this section. Proof of federal jurisdiction may include evidence that the plan is self-funded and provides benefits only to the employees of one employer.

**C. Examination requirement.** Except as otherwise set forth herein, any MEWA that is unable to show that it is solely subject to federal jurisdiction shall submit to an examination by the superintendent to determine whether the organization and solvency of such MEWA is in compliance with the applicable provisions of New Mexico law.

**D. Failure to demonstrate federal jurisdiction.** Any MEWA that is unable to show that it is solely subject to federal jurisdiction shall be subject to all appropriate provisions of this rule regarding the conduct of its business.

[13.19.4.23 NMAC – N/E, 8/27/2019]

**13.19.4.24 RATE AND FORM FILING REQUIREMENTS:**

**A. Rate and form filing requirements.** A MEWA selling health benefits plans to New Mexico residents or employers, or an insurance company offering coverage through a MEWA, shall set premiums in accordance with sound actuarial methods and the standards outlined below:

(1) All contracts evidencing benefits provided and all premium rates proposed, including any and all amendments, endorsements, riders, certificates or other modifications to contracts or premiums, shall conform to the filing and approval requirements contained in Sections 59A-18-13.2, 59A-18-13.3 and 59A-18-13.5 NMSA 1978, and any other applicable state or federal law.

(2) All MEWAs covering New Mexico residents shall charge premium rates in compliance with state and federal law, consistent with the market in which employer member is part; that is, a self-employed individual will have an individual policy, a small business will have a small group policy, and a large employer will have a large group policy.

(3) All MEWAs covering New Mexico residents shall file forms and rates in compliance with state and federal law, consistent with the market in which employer member is part, that is, a self-employed individual will have an individual policy, a small business will have a small group policy, a large employer will have a large group policy.

(4) All MEWAs covering New Mexico residents shall cover consumer protections in compliance with state and federal law, consistent with the market in which employer member is part, that is, a self-employed individual will have an individual policy, a small business will have a small group policy, a large employer will have a large group policy.

**B. Existing group rates use.** A fully-insured MEWA offering small or large group coverage may use its existing small or large group rates, as applicable, without making a MEWA-specific rate filing, so long as such group rates have been filed with and approved by the superintendent and meet the requirements of this section.

**C. Rate guarantee requirement.** A self-insured or fully-insured MEWA offering benefits plans to individuals through sole proprietorship businesses shall guarantee the rates on all such plans for a minimum of 12 months.

**D. Medical loss ratio requirements.** A self-insured or fully-insured MEWA offering a health benefit plan with covered lives in New Mexico shall comply with respect to those covered lives, with the medical loss ratio and rebating requirements of New Mexico law.

**E. Commissions and medical loss ratios.** Any fees associated with broker services shall not be incorporated into the medical loss ratio under Subsection D of this section, but shall be incorporated into the administrative expense portion of a self-insured or fully-insured MEWA's rate filing.

**F. Commission reimbursement.** A self-insured or fully-insured MEWA shall not pay commissions or fees higher than the commissions allowed for the same coverage offered as a qualified health plan in the individual or small group market, as applicable.

**G. Third party administrator contracts.** Prior to sale of any health benefits plan, a self-insured or fully-insured MEWA shall file in SERFF as informational filings all copies of all contracts or agreements between the MEWA and any other entity that govern the management or administration of the MEWA, including any third-party benefit administrators;

**H. Approval.** No health benefits plan or certificate of coverage shall be delivered or issued for delivery in this state until a copy of the form and of the rules for the classification of risks has been filed with and approved by the superintendent in accordance with state law.

[13.19.4.24 NMAC - N/E, 8/27/2019]

**13.19.4.25 BENEFIT REQUIREMENTS:** All MEWAs covering New Mexico residents or insurance companies offering coverage through MEWAs shall provide all mandated benefits and consumer protections, compliant with state and federal law, consistent with the product type and the market in which the employer member is a part, that is, a self-employed individual will have an individual policy, a small business will have a small group policy, and a large employer will have a large group policy.

[13.19.4.25 NMAC - N/E, 8/27/2019]

**13.19.4.26 NOTICE REQUIREMENTS:**

**A. Notice language.** The following notice shall be provided by a MEWA or third-party administrator within the policy documents to employers and employees who obtain coverage from a MEWA:

“Notice

The [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT in all capital letters] IS NOT AN INSURANCE COMPANY. FOR ADDITIONAL INFORMATION ABOUT THE [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT in all capital letters] YOU SHOULD ASK QUESTIONS OF THE ADMINISTRATOR OF THE [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT in all capital letters], OR YOU MAY CONTACT THE NEW MEXICO OFFICE OF THE SUPERINTENDENT OF INSURANCE USING THE CONTACT INFORMATION PROVIDED ON THE OSI WEBSITE.”

**B. Contact for superintendent.** Each MEWA related notice shall include the superintendent's current consumer service telephone number and website in this notice.

**C. Notice to individual and small group prospective enrollees.** Any MEWA, third-party administrator or agent or producer acting on behalf of a MEWA shall provide the following information to prospective purchasers of an individual or small group health benefits plan:

(1) A statement that the individual or small group has the option of purchasing insurance on the New Mexico Health Insurance Exchange;

(2) Contact information for the New Mexico health insurance marketplace, including website and phone number;

(3) A statement that purchasing a health benefits plan through the MEWA may result in preventing the employer or individual from accessing premium subsidies, cost sharing reductions, or other financial assistance that may otherwise be available through the New Mexico health insurance exchange; and

(4) A table showing current income eligibility guidelines for Medicaid and individual and family marketplace coverage through the New Mexico health insurance exchange.

**D. Advertising.** A self-funded or fully-insured MEWA shall file its advertising and marketing materials with the superintendent for approval prior to sale.  
[13.19.4.26 NMAC - N/E, 8/27/2019]

**13.19.4.27 ENROLLMENT PERIODS:** A self-funded or fully-insured MEWA shall offer open and special enrollment periods consistent with state and federal law and consistent with the market in which the employer member is a part; that is, a self-employed individual will have an individual policy, a small business will have a small group policy, and a large employer will have a large group policy.  
[13.19.4.27 NMAC - N/E, 8/27/2019]

**13.19.4.28 RECORD RETENTION:** A MEWA doing business in New Mexico shall maintain its books and records for a minimum period of seven years. Records shall be made available to the superintendent for review upon request.  
[13.19.4.28 NMAC - N/E, 8/27/2019]

**13.19.4.29 ENFORCEMENT:**

**A. Violation.** A violation of this rule shall be considered an unfair and deceptive trade practice under Section 59A-16-1 *et. seq.* NMSA 1978. Failure to file the information required in this rule shall be *prima facie* evidence of a deceptive practice that endangers the legitimate interests of consumers and public. If a MEWA does not qualify for an exemption under ERISA, after hearing, the MEWA may be found in violation of Section 59A-15-20 NMSA 1978.

**B. Enforcement action for failure to comply with rule.** The superintendent may revoke, suspend or refuse to continue the registration of a MEWA that fails to comply with this rule and may impose such other applicable administrative penalties authorized under the Insurance Code.

**C. Enforcement action for failure to comply with state or federal law.** The superintendent may decline to issue or renew a registration issued pursuant to this rule if the superintendent finds that a MEWA does not satisfy any standard or requirement of this rule or any provision of other applicable state or federal law or regulation.

**D. Cease and desist.** When the superintendent believes that a MEWA or any other person is operating in this state without a registration or has violated the law or a rule or order of the superintendent, the superintendent may issue an order to cease and desist such violation or take any other action set forth in Section 59A-16-27 NMSA 1978.

**E. Penalty.** Any person or entity who violates any provision of this rule is subject to the penalties provided in Section 59A-1-18 NMSA 1978.  
[13.19.4.29 NMAC - N/E, 8/27/2019]

**13.19.4.30 FRAUD REPORTING REQUIREMENT:**

**A. Reporting requirement.** An insurer, third-party administrator, or agent or broker having knowledge or reasonable suspicion that a MEWA or entity holding itself out to be a MEWA in this state is not in compliance with the requirements of this rule shall immediately report to the superintendent, in writing, regarding the identity of the entity, any known contact information or other materials, and the nature of the entity's practices that triggered this reporting. This reporting obligation also requires an insurer report to the superintendent any person, including a licensed or unlicensed agent, a broker, or other individual soliciting, offering, or selling a health benefit plan on behalf of a MEWA, or entity holding itself out to be such a MEWA in this state without complying with the requirements of this rule.

**B. Documents in evidence.** The documents and evidence provided pursuant to this subsection or obtained by the superintendent in an investigation or suspected or actual conduct in violation of this rule shall be privileged and confidential.

**C. Release of documents in evidence.** Subsection B of this section does not prohibit release by the superintendent of document and evidence obtained in an investigation of suspected or actual conduct in violation of this rule:

- (1) in administrative or judicial proceedings to enforce laws administered by the superintendent;
- (2) to federal, state or local law enforcement or regulatory agencies or to the NAIC; or
- (3) at the superintendent's discretion.

**D. Maintenance of privilege.** Release of documents and evidence under Subsection C of this section does not abrogate or modify the privilege granted in Subsection B.

[13.19.4.30 NMAC - N/E, 8/27/2019]

**13.19.4.31 INSURANCE AGENTS AND BROKERS:**

**A. Agent or broker compliance.** Any person, including a licensed agent, broker or other individual, soliciting, offering or selling a health benefit plan on behalf of a MEWA to a New Mexico employer or a New Mexico resident shall comply with the following requirements:

(1) Prior to completing a sale of individual or small group coverage, disclose to the employer or resident that:

(a) the agent or broker is being compensated for the sale of the health benefit plan;  
(b) that the small employer or individual has the option of purchasing insurance on the New Mexico health insurance marketplace;

(c) the eligibility guidelines for Medicaid coverage and financial assistance for coverage through the New Mexico health insurance exchange;

(d) contact information for the New Mexico health insurance exchange;

(e) a comparison table showing the similarities and differences in coverages between a MEWA with qualified health plans sold in the individual and small group market; and

(2) Prior to engaging in or assisting any person to engage in selling health benefits plans through a MEWA, an agent or broker shall document appropriate due diligence to establish, at a minimum; the following:

(a) that the MEWA's insurer or third-party administrator is licensed in the state;  
(b) that the MEWA has registered, permitting it to operate in the state;  
(c) that the disclosures listed in Paragraph (1) are in the policy document; and  
(d) that the advertising and marketing materials that the agent or broker is using have been approved by the superintendent.

**B. Fraud reporting requirement.** Any person, including a licensed or unlicensed agent, broker or other individual soliciting, offering or selling a health benefit plan on behalf of a MEWA or entity holding itself out to be such a MEWA in this state that is not in compliance with the requirements of this rule shall immediately report to the superintendent in writing regarding the identity of the entity, any known contact information or other materials, and the nature of the entity's practices triggering this reporting. This reporting obligation also requires such person to report to the superintendent any person, including a licensed or unlicensed agent, broker or other individual soliciting, offering or selling a health benefit plan on behalf of a MEWA or entity holding itself out to be such a MEWA in this state without complying with the requirements of this rule. The confidentiality provisions of Subsection B of 13.19.4.30 NMAC shall apply to this subsection.

**C. Lack of knowledge not a defense.** Lack of knowledge regarding the compliance of any MEWA is not a defense to a violation of this regulation. Any agent or broker involved in the solicitation or sale of health benefits plans through unauthorized insurers, MEWAs which are found not to be in compliance with the provisions of this regulation and applicable state and federal law are subject to discipline or action including fines, suspension or revocation of his or her license.

[13.19.4.31 NMAC - N/E, 8/27/2019]

**13.19.4.32 SHORT TERM LIMITED DURATION AND EXCEPTED BENEFIT PLANS:** No MEWA shall offer a short-term or excepted benefits plan to a resident of this state unless fully insured. All MEWAs offering short-term or excepted benefits plans shall comply with all sections of this rule pertaining to fully-insured MEWA plans. Any discretionary group, including a group formed by an association or trust, offering a short-term, limited duration or excepted benefit plan shall comply with the provisions of this section.

**A. Short term limited duration plans.** Any short-term, limited duration plan sold through a MEWA in this state shall:

(1) be defined as a nonrenewable health benefits plan covering a resident of this state, regardless of where the plan is delivered that:

(a) has a maximum specified duration of not more than three months after the effective date of the plan;

(b) is issued only to individuals who have not been enrolled in a health benefits plan that provides the same or similar nonrenewable coverage from any health insurance carrier within the three months preceding enrollment in the short-term plan; and

(c) is not an excepted benefit or combination of excepted benefits.

(2) only offer coverage that is fully-insured;

(3) shall comply with the requirements outlined in this rule, with the exception of Subsection D of Section 11, Sections 14, 15, 17, 18, 19, and 20; and

(4) shall comply with any other state law pertaining to the sale of short term plans.

**B. Excepted benefits plans.** Any excepted benefit plan sold through a MEWA in this state shall:

(1) mean a plan offering excepted benefits furnished pursuant to the following:

(a) coverage-only for accident or disability income insurance;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for on-site medical clinics;

(h) other similar insurance coverage specified in rule under which benefits for medical care are secondary or incidental to other benefits;

(i) the following benefits if offered separately:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care or any combination of those benefits; and

(iii) other similar excepted benefits specified in rule;

(j) the following benefits, offered as independent, non-coordinated benefits:

(i) coverage-only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance;

(iii) the following benefits if offered as a separate insurance policy:

(iv) medicare supplemental health insurance as defined pursuant to Section 1882(g)(1) of the federal Social Security Act; and

(v) coverage supplemental to the coverage provided pursuant to Chapter 55 of Title 10 USCA and similar supplemental coverage provided to coverage pursuant to a group health plan; and

(vi) other similar individual or group insurance coverage or arrangement designated by the superintendent pursuant to rule under which benefits are secondary or incidental to health events, services or medical care;

(2) only offer coverage that is fully insured;

(3) shall comply with the requirements outlined in this rule, with the exception of sections 11(D), 14, 15, 17, 18, 19, and 20, and

(4) shall comply with any other state law pertaining to excepted benefits plans.

[13.19.4.32 NMAC - N/E, 8/27/2019]

**13.19.4.33 VACCINE PURCHASING ACT COMPLIANCE:** A MEWA subject to this rule offering a major medical health benefits plan shall comply with the reporting requirements under the Vaccine Purchasing Act at 24-5a-1 et seq. NMSA 1978.

[13.19.4.33 NMAC - N/E, 8/27/2019]

**13.19.4.34 PHARMACY BENEFIT MANAGERS:** Any self-funded or fully-insured MEWA offering drug coverage through a pharmacy benefit manager shall comply with Section 59A-61-1 et seq. NMSA 1978.

[13.19.4.34 NMAC - N/E, 8/27/2019]

**13.19.4.35 DISCRETIONARY GROUPS:** A discretionary group, including any group formed as an association or trust, shall receive approval by the superintendent before issuing any products to members residing in this state.

**A. Approval.** A discretionary group shall file an application for approval pursuant to Section 13.19.4.11 NMAC and consistent with its product type. All rates and forms shall be approved prior to sale consistent with Section 13.19.4.24 NMAC.

**B. Rule compliance.** Any discretionary group, approved by the superintendent pursuant to Section 59A-23-3 NMSA 1978 shall comply with these rules in accordance with the type of product offered to group members.

**C. Portability trusts.** No discretionary group shall be approved in the form of a portability trust unless the trust is comprised of former employees from a single employer or union members from a single union.

**D. Discretionary groups approved out-of-state.** No discretionary group approved in another state shall offer or sell an insurance product to a New Mexico resident without first obtaining approval under these rules. [13.19.4.35 NMAC - N/E, 8/27/2019]

**13.19.4.36 OUT-OF-STATE MEWA:** An out-of-state self-funded or fully-insured MEWA that does not comply with this rule shall not:

- A.** advertise in the state as a benefit of membership for any group health insurance policy available to its members or beneficiaries;
- B.** issue a certificate for delivery in New Mexico to any resident of the state; or
- C.** solicit membership in the state on the basis of the existence or availability of such health insurance coverage.

[13.19.4.36 NMAC - N/E, 8/27/2019]

**13.19.4.37 PREMIUM TAX, FEES AND ASSESSMENTS:** A self-funded MEWA shall be considered an insurer for purposes of compliance with state law on premium tax, assessments, and fees. All insurance companies offering health benefits plans through a MEWA shall comply with state law on premium tax, assessments and fees applicable to the type of coverage offered.

[13.19.4.37 NMAC - N/E, 8/27/2019]

**13.19.4.38 COMPLIANCE FOR EXISTING MEWAS OR DISCRETIONARY GROUPS:** A MEWA or discretionary group subject to this rule on its effective date shall comply with the provisions of this rule no later than 45 days following its effective date. If a MEWA or discretionary group fails to comply with the provisions of this rule, it shall cease to offer health benefits plans to New Mexico residents.

[13.19.4.38 NMAC - N/E, 8/27/2019]

**13.19.4.39 DEADLINES:** The superintendent, for good cause, may shorten or extend any deadline set by this rule or under the Insurance Code.

[13.19.4.39 NMAC - N/E, 8/27/2019]

**13.19.4.40 SEVERABILITY:** If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to that end the provisions of this rule are severable.

[13.19.4.40 NMAC - N/E, 8/27/2019]

**HISTORY OF 13.19.4 NMAC:**

13.19.4 NMAC - Multiple Employer Welfare Arrangements filed 5/1/2002 was repealed and replaced by 13.19.4 NMAC - Multiple Employer Welfare Arrangements, effective 8/27/2019.