

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 (“OSI”).
[13.19.4.1 NMAC – N, 2/25/2020]

13.19.4.2. SCOPE:

A. Applicability. These rules apply to any group establishing or maintaining a multiple employer welfare arrangement (“MEWA”) providing health benefits in accordance with Section 59A-15-16 NMSA 1978 for its participants or their beneficiaries. An unregistered MEWA shall not:

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

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 – N, 2/25/2020]

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 – N, 2/25/2020]

13.19.4.4 DURATION: Permanent.

[13.19.4.4 NMAC – N, 2/25/2020]

13.19.4.5 EFFECTIVE DATE: February 25, 2020, unless a later date is cited at the end of a section.

[13.19.4.5 NMAC – N, 2/25/2020]

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. This rule also applies state and federal statutes protecting consumers’ access to care to MEWAs.

[13.19.4.6 NMAC – N, 2/25/2020]

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, 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**” 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 – N, 2/25/2020]

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. A fully-insured MEWA shall confirm that its offered 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, which means that the association:

(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 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;

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

(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; and

(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, shall be formed solely for the purpose of selling insurance.

E. Limitations on large group plans. A health benefits plan offered by a MEWA 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 – N, 2/25/2020]

13.19.4.9 MULTIPLE EMPLOYER WELFARE ARRANGEMENT OR ASSOCIATION HEALTH PLAN NAME:

A. Name. 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 MEWA, 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 – N, 2/25/2020]

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.** The compensation of any commissioned sales agent shall not exceed five percent of the premium attributable to that agent.
- E. 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 – N, 2/25/2020]

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 13.19.4.23 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;
 - (13) a copy of a binder or policy of stop loss coverage required by 13.19.4.19; and
 - (14) any additional information requested by the superintendent, including but not limited to any documents required by 13.19.4.23 to establish compliance with 13.19.4.11 NMAC
- C. Additional specifications for fully-insured MEWAs.** An application for a registration to operate as a fully-insured MEWA shall also include:
- (1) the NAIC number of each insurer who will provide benefits on behalf of the MEWA;
- and

(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 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 13.19.4.15 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 – N, 2/25/2020]

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. The superintendent shall register the MEWA upon finding that:

(1) the persons responsible for the conduct of the MEWA are competent, financially responsible and of good moral character;

(2) the applicant MEWA satisfies the requirements of 13.19.4.14 - 13.19.4.19 NMAC; and

(3) the applicant MEWA satisfies the requirements of 13.19.4.23 NMAC.

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, Article 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 – N, 2/25/2020]

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 – N, 2/25/2020]

13.19.4.14 SELF-FUNDED MEWA DEPOSIT REQUIREMENTS:

A. Deposit requirement. Every self-funded MEWA shall make and maintain deposits in trust of for the benefit and protection of all of its participants and their beneficiaries as specified by the superintendent in the certificate of registration. 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.

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 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.
- [13.19.4.14 NMAC – N, 2/25/2020]

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 premiums in the preceding plan year or twenty percent of the total estimated premiums 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 liquid admitted assets.

[13.19.4.15 NMAC – N, 2/25/2020]

13.19.4.16 ACCOUNTING STANDARDS AND REPORTING REQUIREMENTS:

A. Annual statement required. Each self-funded 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 self-funded 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 self-funded MEWA, including any recommended actions that the self-funded MEWA should take to improve its actuarial soundness;
 - (b) the recommended amount of cash reserves the self-funded 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 MEWA 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 self-funded MEWA registration is contingent upon the superintendent finding that the self-funded MEWA meets the requirements of Subsection B of 13.19.4.12 NMAC.

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

D. Quarterly reports. A self-funded MEWA shall file quarterly financial reports. Quarterly reports shall contain statements for each health benefits plan offered by the self-funded MEWA pursuant to NAIC standards set forth in Model Law 430 Section 25 and Section 26.

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.

[13.19.4.16 NMAC – N, 2/25/2020]

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 – N, 2/25/2020]

13.19.4.18 FINANCIAL INTEGRITY OF SELF FUNDED-MEWAS:

A. Fidelity bond. All persons who handle 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 at least \$300,000. The MEWA must submit a fidelity bond covering the required persons, or submit proof of coverage for all required 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 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;
- (6) collection of money owed to the MEWA; or
- (7) subrogation.

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 review the MEWA's revenues, expenses, and loss development, and evaluate its current and expected financial condition quarterly. 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.
[13.19.4.18 NMAC – N, 2/25/2020]

13.19.4.19 SELF-FUNDED MEWA STOP-LOSS COVERAGE REQUIREMENTS:

A. 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, is 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.

B. 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.

C. 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 claim 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 claim 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.

D. Contractual Requirements. 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."

[13.19.4.19 NMAC – N, 2/25/2020]

13.19.4.20 ENDING SELF-FUNDED, RUNOFF PERIOD, AND PLAN DISSOLUTION:

A. Ending self-funded registration. A MEWA may decide to end its self-funded 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-funded registration less than 45 days prior to the end of the fund year in question. Voluntary ending of self-funded registration does not constitute MEWA dissolution under Subsection D of this section.

B. Revocation of self-funded 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-funded 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 – N, 2/25/2020]

13.19.4.21 EFFECT OF REGISTRATION:

A. Deemed to be an insurer. Upon approval of the application for registration, a self-funded MEWA 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 registered self-funded MEWA is deemed to be a health benefits plan under state and federal law.

[13.19.4.21 NMAC – N, 2/25/2020]

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) timely 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 comply 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 – N, 2/25/2020]

13.19.4.23 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 forms of 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.

[13.19.4.23 NMAC - N, 2/25/2020]

13.19.4.24 MANAGED HEALTH CARE COMPLIANCE PLAN AND BENEFITS REQUIREMENTS:

A healthcare plan offered by a MEWA, or by an insurer offering coverage through a MEWA, shall comply with all state and federal laws that mandate benefits, that mandate consumer protections and that mandate managed health care requirements.

[13.19.4.24 NMAC – N, 2/25/2020]

13.19.4.25 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.

[13.19.4.25 NMAC – N, 2/25/2020]

13.19.4.26 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.

[13.19.4.26 NMAC – N, 2/25/2020]

13.19.4.27 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.

[13.19.4.27 NMAC – N, 2/25/2020]

13.19.4.28 ENFORCEMENT:

A. 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.

B. 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.

C. 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.

[13.19.4.28 NMAC – N, 2/25/2020]

13.19.4.29 FRAUD REPORTING REQUIREMENT: Any regulated entity who knowingly aids, assists or abets violations of these rules is subject to the same penalties as the MEWA.

[13.19.4.29 NMAC – N, 2/25/2020]

13.19.4.30 INSURANCE AGENTS AND BROKERS: 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:

- A.** Prior to completing a sale of individual or small group coverage, disclose to the employer or resident that:
- (1) the agent or broker is being compensated for the sale of the health benefit plan;
 - (2) that the small employer or individual has the option of purchasing insurance on the New Mexico health insurance marketplace;
 - (3) the eligibility guidelines for Medicaid coverage and financial assistance for coverage through the New Mexico health insurance exchange;
 - (4) contact information for the New Mexico health insurance exchange; and
 - (5) 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

B. Prior to engaging in or assisting any person to engage in selling health benefits plans through a MEWA, shall document appropriate due diligence to establish, at a minimum; the following:

- (1) that the MEWA's insurer or third-party administrator is licensed in the state;
- (2) that the MEWA has registered, permitting it to operate in the state;
- (3) that the disclosures listed in Paragraph (1) are in the policy document; and
- (4) that the advertising and marketing materials that the agent or broker is using have been

approved by the superintendent.

[13.19.4.30 NMAC – N, 2/25/2020]

13.19.4.31 SHORT TERM LIMITED DURATION AND EXCEPTED BENEFIT PLANS: Only a fully-insured MEWA shall offer a short-term or excepted benefits plan. A MEWA offering short-term or excepted benefits plans shall comply with all sections of this rule pertaining to fully-insured MEWA plan.

[13.19.4.31 NMAC – N, 2/25/2020]

13.19.4.32 VACCINE PURCHASING ACT COMPLIANCE: A MEWA 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.

[13.19.4.32 NMAC – N, 2/25/2020]

13.19.4.33 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.

[13.19.4.33 NMAC – N, 2/25/2020]

13.19.4.34 COMPLIANCE FOR EXISTING MEWAS OR DISCRETIONARY GROUPS: A MEWA 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.

[13.19.4.35 NMAC – N, 2/25/2020]

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

[13.19.4.36 NMAC – N, 2/25/2020]

13.19.4.36 RULE NONCOMPLIANCE: Failure to comply with any provision of these rules is a violation of the Insurance Code and punishable pursuant to Section 59A-5-30 NMSA 1978.

[13.19.4.37 NMAC – N, 2/25/2020]

13.19.4.37 HEARING RIGHTS: Any person aggrieved by any action, threatened action, or failure to act by the superintendent shall have the same right to a hearing before the superintendent with respect thereto as provided for in general under Chapter 59A, Article 4 NMSA 1978 and the implementing rules.

[13.19.4.38 NMAC – N, 2/25/2020]

13.19.4.38 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.

[13.19.4.38 NMAC – N, 2/25/2020]

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, as an emergency rule, effective 8/27/2019. Emergency rule expired 2/24/2020, refiled as a permanent rule, effective 2/25/2020.