

## Proposed Rule- Repealing and Replacing Existing Rule

FILED

08/23/2022 03:33:43 pm

**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, 13.19.4.1 NMAC, 01/01/2023]

**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.

(1) An employee leasing company or professional employer organization, that is providing health coverage to two or more employers, is operating a MEWA for purposes of this rule. All references to MEWA throughout this rule include employee leasing companies and professional employer organizations that are operating a MEWA.

(2) Any group, association, or trust that covers multiple entities is operating a MEWA for purposes of this rule.

**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 received a certificate of approval by the Director of the Worker's Compensation Administration pursuant to Section 52-6-3 NMSA 1978.

[13.19.4.2 NMAC - Rp, 13.19.4.2 NMAC, 01/01/2023]

**13.19.4.3 STATUTORY AUTHORITY:** Sections 59A-1-8.1, 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, and 59A-23C-3 NMSA 1978.

[13.19.4.3 NMAC - Rp, 13.19.4.3 NMAC, 01/01/2023]

**13.19.4.4 DURATION:** Permanent.

[13.19.4.4 NMAC - Rp, 13.19.4.4 NMAC, 01/01/2023]

**13.19.4.5 EFFECTIVE DATE:** January 1, 2023, unless a later date is cited at the end of a section.

[13.19.4.5 NMAC - Rp, 13.19.4.5 NMAC, 01/01/2023]

**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 applies state and federal statutes protecting consumers' access to care to MEWAs.

[13.19.4.6 NMAC - Rp, 13.19.4.6 NMAC, 01/01/2023]

**13.19.4.7 DEFINITIONS:** All definitions of terms contained in the Insurance Code, Section 59A-1-1 et seq NMSA 1978, and 13.10.29.7 NMAC are incorporated herein as though stated fully.

**A. "Administrator"** means a person who is an administrator as that term is defined in 29 USCA §1002.

**B. "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 MEWAs.

**C. "By laws"** means the statements adopted by a MEWA or bona fide association that prescribe its purpose, government, and administration.

**D. "Employee leasing company"** means a business that leases one or more persons to perform services for another business, subject to the direction and control of the latter.

**E. "Employer"** means a person who is an employer as that term is defined in Section 59A-23E-2 NMSA 1978.

**F.** “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.

**G.** “Evidence of individual insurability” means information used to determine whether coverage of an individual within the group is to be limited or excluded.

**H.** “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.

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

**J.** “Multiple employer welfare arrangement” or “MEWA” is defined in Section 59A-1-8.1 NMSA 1978.

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

**L.** “NAIC” means the national association of insurance commissioners.

**M.** “Portable trust” means a trust formed for the purpose of porting members of a group properly established under the terms of this rule into a new plan. The group shall only be ported for reasons of termination of coverage under the original plan.

**N.** “Professional employer organization” means an organization that contracts with client employers to provide a range of human resource management, payroll, administrative, and employee benefit services to client employers and the employees of the client employers.

**O.** “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, 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.

**P.** “SERFF” means the system for electronic rates and forms filings.  
[13.19.4.7 NMAC - Rp, 13.19.4.7 NMAC, 01/01/2023]

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

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

(1) Self-funded MEWA. A person may not establish, operate, provide benefits, provide coverage, or maintain a self-funded multiple employer welfare arrangement in this state.

(2) Fully-insured MEWA. A fully-insured MEWA shall confirm that its offered coverage conforms with the requirements of this rule 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) a bona fide association as defined in Subsection C of 59A-23e-2 NMSA 1978;

or

(b) subject to and in compliance with the federal reporting requirements under 29

C.F.R. §2520.101–2.

(2) provides and annually updates information necessary for the superintendent to determine whether or not a MEWA maintains status to operate as a MEWA or bona fide association for the purposes of this rule.

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

(a) is established, operated, or maintained in New Mexico;

(b) includes a member that is established, operated, or maintained in New Mexico;

or

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

(4) 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 or association may only provide benefits to active or retired owners, officers, directors, or employees (and the domestic partners, family members, and dependents 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 sole purpose of selling insurance, prohibited.** No MEWA shall be formed solely for the purpose of selling insurance to a group.

**E. Types of coverage.** Health insurance plans offered by the MEWA must:

(1) meet major medical plan requirements;

- (2) if an excepted benefits plan, meet all requirements found in 13.19.34 NMAC, or
  - (3) if a stand-alone dental or vision plan, meet all requirements found in 13.19.35 NMAC.
- [13.19.4.8 NMAC - Rp, 13.19.4.8 NMAC, 01/01/2023]

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

**A. Clarity of name usage.** No MEWA, or bona fide association formed pursuant to this rule shall take any name that is the same as or closely resembles the name of any other MEWA, or bona fide association 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, or M-1 filing, shall be prima facie evidence of the existence of the MEWA.

[13.19.4.9 NMAC - Rp, 13.19.4.9 NMAC, 01/01/2023]

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

**A. Responsibilities of trustees, officers, or directors.** If a MEWA or bona fide association is governed by the trustees, officers, or directors, they 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.** A governing 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 governing trustees, officers, or directors of a MEWA or bona fide association are responsible for the operations of the MEWA or bona fide association. 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 the amount described in Subsection D of Section 13.19.4.10 NMAC.

**E. Membership.** Members of the MEWA's governing board of trustees, officers or directors shall include at least two individuals receiving benefits from the MEWA's health plan

[13.19.4.10 NMAC - Rp, 13.19.4.10 NMAC, 1/1/2023]

**13.19.4.11 INITIAL APPLICATION:**

**A. Application requirements.** All MEWAs shall submit an initial application for a certification of authority and receive approval from the superintendent before beginning to advertise or sell plans or products in New Mexico.

(1) Applicants must be in compliance with federal M-1 filings prior to submitting the initial application to operate in New Mexico;

(2) All application materials shall be provided in the format specified by the superintendent on the office of superintendent of insurance website.

**B. Contents of initial application for MEWAS.** An application for registration shall include the following:

(1) a copy of the most current M-1 filing with the United States department of labor;

(2) a certified copy of the Articles of Incorporation, complete with original signature and any amendments that are certified and the MEWA's FEIN number;

(3) copies of all bylaws, operating agreements or similar documents that govern the control of the MEWA;

(4) the name, address, and telephone number for the contact for each association, group, trust, employer or member participating in the MEWA;

(5) a description of all sources of financing and revenue of the MEWA;

(6) NAIC Form 12 Uniform Consent to Service of Process appointing the superintendent, his successors in office and duly authorized deputies as the true and lawful attorney of such applicant in and for this state;

(7) a deposit with the insurance division in accordance with Section 59A-5-16 NMSA 1978;

(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 ERISA;

(9) 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 this rule;

(10) 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;

(11) a copy of any document executed by an employer or trust to become a member of the MEWA, including application for membership;

(12) a description of all membership requirements;

(13) the names and license numbers of any third-party benefit administrators administering health benefits offered by the MEWA;

(14) the NAIC number of each insurer who will provide benefits on behalf of the MEWA;

(15) fidelity bond issued in the name of the arrangement protecting its trustees, directors, officers, employees, administrator or other individuals responsible for servicing the employer welfare benefit plan, against fraud or dishonesty; and

(16) any additional information requested by the superintendent.

**C. Initial application for entities registered with the regulation and licensing department.**

Organizations that are operating a MEWA in accordance with Paragraph (1) of Subsection A of 13.19.4.2 NMAC shall submit an application for MEWA registration with the superintendent. The contents of the application shall include the following:

(1) a copy of the most current M-1 filing with the United States department of labor;

(2) a copy of the most current approved registration with the regulation and licensing department, demonstrating compliance with applicable statutes, including the Employee Leasing Act Section 60-13A-1 et seq, NMSA 1978;

(3) NAIC Form 12 Uniform Consent to Service of Process appointing the superintendent, his successors in office and duly authorized deputies as the true and lawful attorney of such applicant in and for this state;

(4) a deposit with the insurance division in accordance with Section 59A-5-16 NMSA 1978;

(5) 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;

(6) an affidavit from an officer, director, fiduciary or trustee of the employee leasing company 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 entity from any rate or form filing requirements under this rule;

(7) the names and license numbers of any third-party benefit administrators administering health benefits offered by the MEWA;

(8) the NAIC number of each insurer who will provide benefits on behalf of the MEWA;

**D. Application filing fee.** The application filing fee for approval 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, 13.19.4.11 NMAC, 01/01/2023]

#### **13.19.4.12 INITIAL 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 applicable provisions of federal law, the Insurance Code, and these rules. Within 90 days of receipt, the superintendent shall make a final determination.

(1) Upon determining that the application is in compliance, the superintendent shall notify the MEWA, in writing, that the application was approved.

(2) If the superintendent finds that the applicant MEWA does not satisfy legal requirements, the superintendent shall notify the applicant setting forth each deficiency.

(a) If the MEWA or association 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.

(b) An unsuccessful applicant may file a new application 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 ensure that all plans delivered or issued for delivery to its members comply with rate, form and filing requirements, as approved by the superintendent. A MEWA may not offer a health benefits plan purchased from a health insurance carrier that has not been approved by the superintendent.

[13.19.4.12 NMAC - Rp, 13.19.4.12 NMAC, 01/01/2023]

**13.19.4.13 REVOCATION:** The superintendent may revoke a MEWA's certificate of authority 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, 13.19.4.13 NMAC, 01/01/2023]

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

**A. Annual statement required.** Each MEWA transacting business in this state shall annually file by June 1st with the superintendent:

(1) financial statements and reports in compliance with Section 59A-5-29 NMSA 1978;

(2) all documentation required pursuant to 13.2.5 et seq NMAC;

(3) current M-1 filings required by the department of labor;

(4) financial statements audited by a certified public accountant; and

**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. Examination timeline.** The superintendent shall examine the affairs and conduct of a MEWA at least once every three to five years in the same manner that applies to domestic and foreign insurers with a certificate of authority to transact insurance in New Mexico pursuant to Section 59A-4-5-NMSA 1978. Expenses of examination shall be paid by each MEWA, or its insurers, pursuant to Section 59A-4-14 NMSA 1978.

[13.19.4.14 NMAC - Rp, 13.19.4.16 NMAC, 01/01/2023]

#### **13.19.4.15 MARKET EXIT AND PLAN DISSOLUTION:**

**A. Discontinuing coverage.** A MEWA or bona fide association may discontinue offering coverage in accordance with the requirements found in Sections 59A-23E-13 and 59A-23E-19 NMSA 1978.

**B. Revocation of registration.** The superintendent shall, by order, revoke the authority of a MEWA or bona fide association to operate in New Mexico 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 or bona fide association shall continue to exist as a runoff plan after registration or coverage 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. [13.19.4.15 NMAC - Rp, 13.19.4.20 NMAC, 01/01/2023]

#### **13.19.4.16 RENEWAL:**

**A. Renewal requirements.** A MEWA's certificate of authority 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) 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;
- (3) 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 and cure.** A MEWA's certificate of authority shall expire under the same conditions and be cured by the same processes as described in Section 59A-5-23 NMSA 1978. [13.19.4.16 NMAC - Rp, 13.19.4.22 NMAC, 01/01/2023]

#### **13.19.4.17 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 for health benefits to residents of this state, 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 be sufficient to overcome the presumption of the superintendent's jurisdiction as set forth in this section.

**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.

[13.19.4.17 NMAC – Rp, 13.19.4.17 NMAC, 01/01/2023]

#### **13.19.4.18 REQUIREMENTS FOR COMBINED GROUPS OR ENTITIES:**

**A. Applicable entities.** Upon meeting the requirements of this rule, any one of the following entities may be approved as a policyholder of a fully-insured group health plan:

- (1) associations;
- (2) trusts;
- (3) labor unions or organizations; or
- (4) professional employer organizations (PEO) or employee leasing companies.

**B. Entity formation.** Prior to approval of any policy issued by any entity described in this section, the proposed policyholder shall submit an application for registration with the Superintendent as a bona fide association pursuant to Subsection C of 59A-23E-2 NMSA 1978. Such application shall be in the form and manner prescribed by the Superintendent, and shall, at a minimum:

- (1) demonstrate that the entity has been in existence for five or more years;
- (2) demonstrate that the entity was formed, created, and operated without the involvement of any insurance company, plan administrator, agent, broker, or representative thereof.
  - (a) Insurance carriers, pharmacy benefits managers, and third party administrators may not create, operate, or form an entity pursuant to this rule.
  - (b) Any commonality between an insurance carrier, pharmacy benefit manager, or third party administrator and the entity shall preclude the entity from registration.
- (3) demonstrate that the entity was formed and maintained in good faith for purposes other than obtaining insurance;
- (4) demonstrate that it does not condition membership in the entity on any health status related factor relating to any individual, their family members, or dependents;
- (5) demonstrate that health insurance coverage offered through the entity is available to all members regardless of any health status related factor relating to the members or individuals eligible for coverage through a member;
- (6) demonstrate that it does not offer health insurance coverage except in connection with a member of the entity; and
- (7) any other information the superintendent deems necessary.

**C. Application review and approval process.** The superintendent shall examine the application and supporting documents submitted by the applicant and shall conduct any investigation that the superintendent deems necessary.

- (1) The superintendent shall notify the entity, in writing, that the application was approved.
- (2) If the superintendent determines the entity is a MEWA, the entity shall also be required to apply for and obtain a certificate of authority in accordance with Section 11 of this rule.
- (3) Incomplete applications shall be rejected.
- (4) An application from an entity, or successor entity, that has been ordered to cease and desist its practices by any other state or federal agency shall be denied.
- (5) If the superintendent finds that the applicant entity does not satisfy legal requirements to be determined a bona fide association, the superintendent shall notify the applicant setting forth each deficiency. If the entity 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.

**D. Beneficiary status.** A plan issued to a bona fide association in accordance with this rule, must only be on behalf of the bona fide association's members, beneficiaries, or employees, their family members, and their dependents.

**E. Eligibility for coverage.** Eligibility for coverage under any plan issued to the bona fide association shall be all members of an affiliated class, such as the members, employees, beneficiaries, or retired employees of the bona fide association, and may include the family members and dependents of the eligible class.

**F. Sole proprietors.** A group health plan shall not be issued to a bona fide association with members that include sole proprietors without employees.

**G. Premium payment.** The premium for the plan shall be paid either by funds from the bona fide association, from funds contributed by the insured members, beneficiaries, employers, or employees, specifically for their insurance, or from both. Membership fees shall not be included in the premium costs for health benefits.

**H. Rejection of coverage.** A plan in which no part of the premium is to be derived from funds contributed by the insured members, beneficiaries, or employees, specifically for their insurance, must insure all eligible members, beneficiaries, or employees, except those who reject coverage in writing.

**I. Vaccine Purchasing Act.** All registered bona fide associations offering health benefits shall comply with the provisions of the Vaccine Purchasing Act.

**J. Other applicable provisions.** All health benefits offered to members of a registered bona fide associations shall comply with the applicable provisions outlined in 13.10.5 NMAC.

[13.19.4.18 NMAC – Rp, 13.19.14.18 NMAC, 01/01/2023]

#### **13.19.4.19 ADDITIONAL REQUIREMENTS FOR SPECIFIC ENTITIES:**

**A. Plans issued through a trust.** The following provisions shall apply to any group health plan issued through a trust:

- (1) If a plan is issued through a trust, the policyholder of the trust shall be:
  - (a) the trust or trustees of a fund;
  - (b) that is established by one or more employers or labor unions; and
  - (c) maintained, directly or indirectly, by the participating employers or labor union.
- (2) Any group of employers or labor unions that creates a trust to administer a health benefits plan shall be similar to or substantially similar to employee organizations. Similar or substantially similar employee organizations shall belong to the same industry or job type.
- (3) The trustees shall have a fiduciary duty to properly manage the fund on behalf of the plan's beneficiaries.
- (4) Portability trusts shall comply with the following provisions:
  - (a) Policyholders shall affirmatively consent to portability during the application process of any plan issued through a portability trust.
  - (b) No portability trust shall issue a health benefits plan to a New Mexico resident unless the health benefits plan forms and rates have been approved by the superintendent.
  - (c) The provisions of this rule that are applicable to association health plans and MEWAs shall apply to a portability trust created for a group formed by employees or beneficiaries of multiple entities. This provision also applies to insurer owned portability trusts.
  - (d) The creation of the original trust from which the benefits will be ported shall have been for purposes other than the sale of insurance. The portable trust may be created solely for the purposes of porting beneficiaries of a plan issued to a previously approved as bona fide association into a new plan.
  - (e) The benefits offered under the plan issued by the portable trust may be different than the group members' original plan only if all group members have been provided notice of the changes in writing.

**B. Plans issued to members of an association.** A bona fide association shall be the policyholder of any health plan issued on its behalf to members.

(1) A plan issued to a trust for the benefit of members of a bona fide association shall comply with all sections of this rule pertaining to association plans, MEWAs, and trusts.

(2) The carrier shall disclose, prominently and in writing, to all persons covered by an association plan:

- (a) all costs related to joining and maintaining membership in the association, such as the membership processing fees, the initial association membership fee and the amount of annual association dues;
- (b) that membership fees or dues are in addition to the plan premium;
- (c) that the association is the master policyholder;
- (d) that the premium charged and the terms and conditions of coverage are determined between the association and carrier; and
- (e) that the premium and the terms and conditions of coverage may be changed by agreement of the association group policyholder and the insurer, without the consent of the individual certificate holder.



(3) If solicitation of insurance is used as a method to obtain new members, any carrier selling a plan through an association shall inform, verbally and in writing, to the potential new member any fees associated with membership prior to the sale of the plan.

(4) An association cannot accept membership fees or dues through an insurance premium.

**C. Professional employer organizations (PEO) or employee leasing companies (ELC).**

(1) A PEO or ELC shall be the policyholder of any health plan issued on its behalf to members.

(2) A PEO or ELC that is operating a MEWA in accordance with Paragraph (1) of Subsection A of 13.19.4.2 shall comply with all sections of this rule pertaining to MEWAs.

(3) A plan issued to a trust for the benefit of a PEO or ELC shall comply with all sections of this rule pertaining to trusts and MEWAs.

**D. Direct relationship between entity forming group and group members.** No policyholder shall be farther removed from the plan than the beneficiaries than the entity forming the group, or a trust formed by such group.

[13.19.4.19 NMAC – Rp, 13.19.4.19 NMAC, 01/01/2023]

**13.19.4.20 EVIDENCE OF PROPER GROUP FORMATION:**

**A. Evidence requirement.** Entities described in 13.19.4.18 NMAC shall provide evidence of proper, approved, group formation to any entity or individual submitting documents through SERFF for approval on behalf of the entity.

**B. Submission.** The filer shall submit this evidence via SERFF simultaneously with the request for approval of any health plan rate, form, or advertising documents.

[13.19.4.20 NMAC – Rp, 13.19.4.20 NMAC, 01/01/2023]

**13.19.4.21 RATE AND FORM FILING REQUIREMENTS:**

**A. Rate and form filing requirements.**

(1) No health benefit plans shall be delivered or issued for delivery by a MEWA or bona fide association in this state unless the forms and rates have been filed with and approved by the superintendent in accordance with applicable state or federal law.

(2) All health plans offered by MEWAs covering New Mexico residents shall include 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.** An insurance carrier offering small or large group coverage through a MEWA, 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.** All rates on health benefits plan offered by a MEWA or bona fide association to individuals through sole proprietorship businesses shall be guaranteed for a minimum of 12 months.

**D. Medical loss ratio requirements.** A health benefit plan with covered lives in New Mexico shall comply, with the applicable medical loss ratio and rebating requirements found in 13.10.27 NMAC, 13.10.34 NMAC, and 13.10.35 NMAC.

**E. Commissions and medical loss ratios.** Any fees associated with broker services shall be incorporated into the administrative expense portion of the approved rate filing.

**F. Commission reimbursement.** A MEWA or bona fide association 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 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; [13.19.4.21 NMAC - Rp, 13.19.4.23 NMAC, 01/01/2023]

**13.19.4.22 BENEFIT REQUIREMENTS:** All MEWAs and bona fide associations issuing health benefit plans to New Mexico residents 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.  
[13.19.4.22 NMAC - Rp, 13.19.4.24 NMAC, 01/01/2023]

**13.19.4.23 NOTICE REQUIREMENTS:**

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

“Notice

The [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT/BONA FIDE ASSOCIATION/PEO/ELC in all capital letters] IS NOT AN INSURANCE COMPANY. FOR ADDITIONAL INFORMATION ABOUT THE [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT/ASSOCIATION/PEO/ELC in all capital letters] YOU SHOULD ASK QUESTIONS OF THE ADMINISTRATOR OF THE [Insert the name of the MULTIPLE EMPLOYER WELFARE ARRANGEMENT/ASSOCIATION/PEO/ELC 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 or bona fide association 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 or bona fide association, or third-party administrator, agent or producer acting on behalf of a MEWA or bona fide association, 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 exchange, including website and phone number;

(3) A statement that purchasing a health benefits plan through the MEWA or bona fide association 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 MEWA, or bona fide association shall ensure that all advertising and marketing materials have been filed with and approved by the superintendent prior to use.

[13.19.4.23 NMAC - Rp, 13.19.4.25 NMAC, 01/01/2023]

**13.19.4.24 ENROLLMENT PERIODS:** A MEWA or bona fide association 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.

[13.19.4.24 NMAC - Rp, 13.19.4.26 NMAC, 01/01/2023]

**13.19.4.25 RECORD RETENTION:** A MEWA, or bona fide association 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.

[13.19.4.25 NMAC - Rp, 13.19.4.27 NMAC, 01/01/2023]

**13.19.4.26 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. Submission of an M-1 filing to the department of labor shall demonstrate prima facie evidence that the issuer is a MEWA and subject to the provisions of this rule.

**B. Enforcement action for failure to comply with rule.** The superintendent may revoke, suspend or refuse to continue the certificate of authority or registration of a MEWA, or bona fide association 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 certificate of authority issued pursuant to this rule if the superintendent finds that an entity subject to 13.19.4.19B NMAC does not satisfy any standard or requirement of this rule or any provision of other applicable state or federal law or regulation.

**D. Operating without a certificate of authority or registration.** When the superintendent believes that a MEWA or entity is operating in this state without a valid certificate of authority or registration, the superintendent shall:

- (1) issue an order to cease and desist as set forth in Section 59A-16-27 NMSA 1978; and
- (2) issue a daily administrative penalty for each day the MEWA or entity operated in New Mexico without registration in accordance with Section 59A-1-18 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.

**F. Lack of knowledge not a defense.** Lack of knowledge is not a defense to a violation of this regulation.

[13.19.4.26 NMAC - Rp, 13.19.4.28 NMAC, 01/01/2023]

#### **13.19.4.27 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.

[13.19.4.27 NMAC - Rp, 13.19.4.29 NMAC, 01/01/2023]

#### **13.19.4.28 INSURANCE PRODUCERS:**

**A. Insurance producer compliance.** Any person, including an insurance producer, 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) Shall be currently licensed in good standing in accordance with Section 59A-12-4 NMSA 1978;
- (2) Prior to completing a sale of individual or small group coverage, disclose to the employer or resident that:
  - (a) the insurance producer 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 exchange;
  - (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

(3) 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 (2) 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 an insurance producer 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 an insurance producer 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.

**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 insurance producer involved in the solicitation or sale of health benefits plans through unauthorized 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.

[13.19.4.28 NMAC - Rp, 13.19.4.30 NMAC, 01/01/2023]

**13.19.4.29 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 through a bona fide association in accordance with Section 59A-23G-6 NMSA 1978. All MEWAs and bona fide associations offering a short-term, limited duration or excepted benefit plan shall comply with the provisions of 13.10.3 NMAC, 13.10.34 NMAC and 13.10.35 NMAC.

[13.19.4.29 NMAC - Rp, 13.19.4.31 NMAC, 01/01/2023]

**13.19.4.30 VACCINE PURCHASING ACT COMPLIANCE:** A MEWA or bona fide association subject to this rule shall comply with the reporting requirements under the Vaccine Purchasing Act at 24-5a-1 et seq. NMSA 1978.

[13.19.4.30 NMAC - Rp, 13.19.4.32 NMAC, 01/01/2023]

**13.19.4.31 PHARMACY BENEFIT MANAGERS:** Any MEWA or bona fide association offering drug coverage through a pharmacy benefit manager shall comply with Section 59A-61-1 et seq. NMSA 1978.

[13.19.4.31 NMAC - Rp, 13.19.4.33 NMAC, 01/01/2023]

**13.19.4.32 OUT-OF-STATE MEWA:** An out-of-state MEWA or bona fide association 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.

[13.19.4.32 NMAC - Rp, 13.19.4.32 NMAC, 01/01/2023]

**13.19.4.33 COMPLIANCE FOR EXISTING MEWAS OR ASSOCIATIONS:** A MEWA or bona fide association subject to this rule on its effective date shall comply with the provisions of this rule no later than 60 days following its effective date. If a MEWA or bona fide association fails to comply with the provisions of this rule, it shall cease to offer health benefits plans to New Mexico residents.

[13.19.4.33 NMAC - Rp, 13.19.4.34 NMAC, 01/01/2023]

**13.19.4.34 DEADLINES:** The superintendent, for good cause, may shorten or extend any deadline set by this rule or under the Insurance Code.  
[13.19.4.34 NMAC - Rp, 13.19.4.35 NMAC, 01/01/2023]

**13.19.4.35 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.  
[13.19.4.35 NMAC - Rp, 13.19.4.38 NMAC, 01/01/2023]

**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.

13.19.4 NMAC – Multiple Employer Welfare Arrangements filed 2/25/2020 was repealed and replaced by 13.19.4 NMAC - Multiple Employer Welfare Arrangements, effective 1/1/2023.