

OSI Staff Response to Comments on Repealing and Replacing Rules Codified at 13.19.4 NMAC

Case No: 2022-0065

Section	Commenter	Comment Summary	OSI Response
General	Licensing Bureau	The OSI Licensing Bureau noted inconsistent use of terminology throughout the rule that could cause confusion.	<p>OSI Staff agree with the importance of clear and consistent use of terminology.</p> <p>As such, OSI recommends changing all references to “certificate of authority” or “license” with “registration.” This is in accordance with NMSA §59A-15-20(A)(1) which requires these regulations “provide for registration” of all MEWAs. OSI attached an updated form of proposed regulation incorporating these changes.</p>
General	Associated General Contractors New Mexico (AGC)	<p>AGC generally notes their position that MEWAs and Association Health Plans are advantageous to businesses and allow for lower premiums.</p> <p>AGC opposes that prohibition on self-funded MEWAs, recommending that New Mexico protect consumers through stringent regulation of self-funded MEWAs.</p>	<p>OSI filed three informational documents in the record in this matter on October 13, 2022, including a copy of the Department of Labor’s M-1 filing list, which identifies all federally registered MEWAs operating in the United States.</p> <p>There are no MEWAs currently registered in New Mexico.</p> <p>The M-1 list demonstrates that the following MEWAs are operating in New Mexico without proper state registration in violation of the existing MEWA regulations: Advantage Health Plans Trust, American Council of Engineering Companies, APP Management Co LLC Welfare Plan, APRx MEWA Health Plan, The Auberge-Moana Benefits Trust, Blue and Gold Automotive Health Trust Fundz, CBA Association Benefits Trust Fund Plan, CBA Healthcare Plan, CBIZ Insurance Trust, Chick-fil-A Associated Employers Welfare Benefit Plan, Crete Carrier Corporation Welfare Benefits Trust, The Contractors Plan Trust, The Contractors Plan Trust II, The Contractors Plan Trust New York, CVR Management, LLC, Employee Benefits Committee, Envision Healthcare Corporation Welfare Benefit Plan, Farmers Agent Group Benefits Program,</p>

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		<p>Stringent regulation of MEWAs has failed to produce any compliance with consumer protections. There are 61 MEWAs openly operating in violation of state law.</p> <p>OSI further filed a copy of the Department of Labor’s (DOL) April 2022 “MEWAs: A Guide to Federal and State Regulation” in this matter under Docket Item #19. As noted on Page 3 of the Guide, unregulated self-funded MEWAs pose a significant risk to consumers.</p> <p>“By avoiding State insurance reserve, contribution and other requirements applicable to insurance companies, MEWAs are often able to market insurance coverage at rates substantially below those of regulated insurance companies, thus, in concept, making the MEWA an attractive alternative for those small businesses finding it difficult to obtain affordable health care coverage for their employees. In practice, however, a number of MEWAs have been unable to pay claims as a result of insufficient funding and inadequate reserves. Or in the worst situations, they were operated by individuals who drained the MEWA’s assets through excessive administrative fees and outright embezzlement.”</p> <p>With the elimination of the individual mandate, OSI has seen an increase in marketing and sale of unregulated self-funded multiple employer and association plans that have the barest of coverages that do not protect New Mexico consumers. These plans also create instability in the employer market by adversely attracting/selecting lower risk employer groups/associations. As a result, this drives up the insurance costs for employers seeking more comprehensive coverage in the fully-insured markets. Eliminating self-funded MEWAs will diversify risk in the group market and ensure that New Mexicans are receiving comprehensive coverages.</p>
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General	Cyber Security Works (CSW)	CSW is a cybersecurity firm that is currently obtaining benefits through their partnership with TriNet, and is concerned this rule would jeopardize their benefits.	<p>This rule does not impact a PEOs ability to continue to offer fully insured health benefit plans. It will merely require registration and reporting by those PEOs sponsoring MEWAs. The requirements for a PEO to be considered a MEWA were originally laid out by the Department of Labor on page 23 of “MEWAs: A Guide to Federal and State Regulation,” and then incorporated in the proposed regulation at 13.19.4.2(A)(1) NMAC.</p> <p>OSI appreciates the comment from CSW, but notes that it is an unfounded concern, with no support in the text of the proposed regulation.</p>
General	TriNet	<p>TriNet is a PEO. They are concerned this rule would stop them from offering benefits to small and medium sized clients.</p> <p>TriNet supports the recommended changes proposed by NAPEO.</p>	<p>OSI appreciates the comments from TriNet, but notes that nothing in this regulation places restrictions on the ability of PEOs to continue to offer fully-insured health benefits to their clients, regardless of size.</p> <p>OSI addresses each of NAPEO’s proposed changes in their respective sections.</p>
General	JustWorks	JustWorks is concerned the rule would “disrupt our ability to offer our fully-insured large group health plan coverage.” However, JustWorks acknowledges that OSI has repeatedly affirmed this concern is not based on any language found in the proposed rule, and is not OSI’s intent.	<p>OSI appreciates that JustWorks acknowledges the pervasive concern that this regulation will interfere with MEWAs, PEOs, and ELCs ability to continue to offer fully-insured health plans is neither found in the language of the rule, nor the intent of the Superintendent.</p> <p>OSI has held multiple meetings with industry representatives to attempt to address these concerns, and has determined they are based on unfamiliarity with the technical terminology and processes utilized in insurance regulation.</p> <p>Based on JustWork’s description of their business in their comments, they meet the federal definition of a MEWA, and only offer fully-insured health care plans to their clients. Fully-insured health plans purchased by JustWorks are already required to be</p>

			<p>reviewed and approved by OSI prior to sale by the health insurance carrier, in accordance with NMSA 59A-18-13.</p> <p>This means the proposed regulation should not impact JustWork's business beyond compliance with registration and annual reporting requirements.</p>
General	Sigma Additive Solutions	<p>Sigma received fully-insured health plans through JustWorks, and finds their relationship with the PEO to be beneficial to the company.</p> <p>Sigma believes that their fully insured health coverage is at risk, would financially harm their organization, and create an administrative burden to their company.</p> <p>They request removing all reference to PEOs from the rule, or, in the alternative, to create a general grandfathering exemption.</p>	<p>OSI appreciates the comments from Sigma, but notes that this regulation will not have any direct or indirect impact on their company.</p> <p>Sigma notes that they are happy with their current fully-insured health coverage, that they receive through JustWorks.</p> <p>Fully insured health coverage is purchased through major medical health carriers, such as Blue Cross Blue Shield, United, Molina, Western Sky, or Presbyterian. These insurance carriers have been required to obtain prior approval of their health plans prior to sale, pursuant to NMSA § 59A-18-13, since 1984. This means that the plan offered to Sigma by JustWorks should have already been approved prior to sale.</p> <p>OSI does not support any requests to remove or otherwise exempt PEOs from this rule.</p>
General	Leadership + Design (L+D)	<p>L+D is a client of JustWorks that values their professional relationship. L+D notes that JustWorks sponsors fully-insured health plans for their employees.</p> <p>L+D utilizes the exact language stated by Sigma to express a belief that their fully insured health coverage is at risk, would financially harm their organization, and create an administrative burden to their company. L+D further uses the exact language Sigma utilized in requesting</p>	<p>OSI notes that L&D's comment is a template response received by multiple clients of JustWorks.</p> <p>OSI staff feel it is important to note that the only additional administrative burden found under this rule will be borne by JustWorks, not their clients. Under this regulation, JustWorks, will need to register, submit annual reporting, obtain approval of insurance advertising (if any), and ensuring they are only purchasing health coverage that has been approved by the OSI. The latter of which is information any entity could confirm online through SERFF's free public access portal, if they had reason to</p>

		PEOs be removed from the rule, or otherwise provided a grandfathering exemption.	believe the insurance carrier they were partnering with does not comply with New Mexico law. OSI does not support the changes proposed in the template letter.
General	Deciens Capital	Deciens Capital is a client of ADP Total Source, and values that professional relationship. Deciens Capital's comment is an identical restatement of the comments provided by L+D and Sigma.	Deciens submitted a template letter provided by multiple PEO clients. The template letter demonstrates a fundamental misunderstanding of the change to the regulation. The determination of whether a PEO qualifies as a MEWA is strictly a matter of federal law. <i>See</i> , Nationwide Mutual Insurance Company v. Darden, 503 U.S. 318, n. 5 (1992); See also, page 59 of "Health and Welfare Plans under ERISA," which is one of the reference documents filed by the OSI on October 13, 2022 under Docket Item #19 in this matter. The federal Department of Labor issued updated guidance for MEWAs in April of 2022, which has been filed in the record for the hearing officer to review. This guidance made a clear determination as to when PEOs qualify as MEWAs. OSI incorporated this language into the proposed language to ensure we are in compliance with federal law. OSI cannot exempt PEOs from the federal determination that they are sponsoring MEWAs, as contrary state laws are preempted by federal law. OSI opposes the changes proposed in the template letter as they would place New Mexico regulations in direct conflict with federal law and would be preempted.
General	ADP Total Source	ADP is a PEO that supports the comments suggested by the NAPEO. ADP notes that they sponsor only fully-insured ACA-compliance health plans purchased through Aetna and UHC.	As previously noted, OSI cannot remove PEOs from this proposed rule. PEOs that offer health coverage to two or more employers have been determined to be MEWAs by the Department of Labor. OSI staff refer the hearing officer to the two reference manuals filed in

		<p>ADP requests that PEOs be removed from the proposed rule.</p>	<p>the record on October 13, 2022 under Docket #19 for a detailed discussion of the legal history and analysis that led to this federal determination.</p> <p>OSI’s recommended language in 13.19.4.2(A)(2) was pulled directly from page 23 of the Department of Labor’s “MEWAs: A Guide to Federal and State Regulation.”</p> <p>OSI has no discretion in this area as whether or not an arrangement qualifies as a MEWA is a matter of federal law, and any state regulations to the contrary would be automatically preempted.</p> <p>OSI met with PEO industry representatives on multiple occasions to ensure they understood the federal guidance, and to discuss paths to streamline administrative processes for PEOs that are sponsoring MEWAs.</p> <p>OSI notes that all PEOs that commented on this rule, including ADP, indicate they only offer fully-insured ACA-compliant products, meaning they are opposed to de minimus requirements such as registration and annual reporting, and ensuring the plans they purchase from carriers have been properly reviewed and approved by OSI in compliance with the law.</p> <p>OSI opposes ADP’s request to remove PEOs from this regulation.</p>
General	R.F. Seaton	<p>Mr. Seaton responded to all comments issued in this matter, noting that “many parties have promulgated inaccurate, confusing, or illogical statements about MEWAs”</p> <p>Mr. Seaton opposes all efforts to exempt PEOs or ELCs from this regulation, and agrees that the proposed language</p>	<p>OSI agrees with Mr. Seaton’s responses.</p> <p>OSI made a deliberate choice to design this regulation so that the MEWA itself was held responsible for compliance, rather than the “administrator of the MEWA.” Under federal law, the “administrator” is an individual designated by the MEWA to ensure compliance. OSI agrees that functionally, a specific individual will be responsible for ensuring a MEWA’s compliance with state regulation. OSI has no objection to any</p>

		<p>appropriately enacts federal law while limiting the application of the regulations only to those PEOs and ELCs that are actually operating as MEWAs</p> <p>Mr. Seaton notes one primary distinction OSI has taken from federal law, which is to consistently refer to the obligations and responsibilities of the MEWA itself, rather than the “administrator” of the MEWA.</p>	<p>addition to the regulation to specify tasks are completed by an administrator, rather than the MEWA as a whole, though staff do not believe it is strictly necessary.</p>
13.19.4.2	Blue Cross Blue Shield (BCBS)	<p>BCBS argues the proposed pre-emption provisions are insufficient, and that the extraterritorial applications are overly burdensome.</p> <p>They recommend that the rule only apply to out of state MEWAs or associations that cover more than 100 NM residents.</p> <p>Recommended change:</p> <p>13.19.4.2(B)(4) Is an out-of-state MEWA or bona fide association which has 100 or fewer New Mexico resident employees at any time during the calendar year.</p>	<p>The Superintendent’s jurisdiction over policies issued to New Mexico residents was established by statute in 1984 pursuant to NMSA 1978 § 59A-1-14, and can also be found in 59A-18-1 which sets forth authority over “all insurance contracts...covering individuals resident, or risks located, or insurance protection to be rendered in this state.” This statute was originally codified in 1984, and has been amended three times since then. The legislature declined to limit the Superintendent’s jurisdiction. NMSA 1978 §59A-23-8 reinforced this extraterritorial jurisdiction over group policies as far back as 1991, by clearly stating provisions “apply to the offering in this state of a policy issued in another state.”</p> <p>Under NMSA 59A-23E-2 (X) a “large employer” in connection with a group health plan is only 51 employees. BCBS is requesting that OSI decline jurisdiction established by statute as far back as 1984, for groups all small group MEWAs, as well as a significant percentage of large group MEWAs, operating in New Mexico, so long as they are sitused in another state.</p> <p>This would exempt both fully- and self-insured MEWAs from New Mexico regulation, and all consumer protections. It would render the entire regulation meaningless, as a review of the federal M-1 filings demonstrated that 59 of the 61 MEWAs</p>

			<p>known to be currently operating without registration in New Mexico are situated elsewhere.</p> <p>OSI is opposed to this change.</p>
13.19.4.2	JustWorks	<p>JustWorks recommends the following amendment to 13.19.4.2(A)(1):</p> <p>(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. <u>Notwithstanding the foregoing, when an insured health plan sponsored by an employee leasing company or professional employer organization provides health coverage to client employers subject to a client service agreement with the employee leasing company or professional employer organization, such plan shall be treated as a large group plan for purposes of Subsection A(2) of 13.19.4.21 NMAC, Section 13.19.4.22 NMAC, and Section 13.19.4.24 NMAC</u></p>	<p>OSI opposes this change.</p> <p>This amendment would allow groups that would otherwise qualify for individual or small group coverage to bypass the ACA consumer protections for small groups, and form large groups. Large groups are able to bypass some ACA consumer protections, such as the requirement for coverage of the 10 categories of essential health benefits (including maternity coverage, prescription drugs, and habilitative benefits). Aggregating individual leased employees and small groups of leased employees into large groups may result into adverse selection into large group plans. This adverse selection into large group coverage creates an unlevel playing field, driving up costs for individual and small group coverages. Additionally, OSI has also seen less advantageous plans being offered by associations than what is available in the subsidized individual market. Exempting PEOs from this requirement thus may result in leasing companies ironically offering less affordable and less comprehensive coverage to individuals who would be better off in ACA markets.</p>
13.19.4.2	National Association of Professional Employer	<p>NAPEO objects to classifying PEOs as MEWAs, and believes the rule as written will endanger fully-insured health benefits offered by PEOs,</p>	<p>As noted in detail above, classification of an entity as a MEWA is strictly federal matter. The Department of Labor made a clear determination regarding PEOs in the April 2022 updated to “MEWAs: A Guide to Federal and State Regulation.” The</p>

	Organizations (NAPEO)	NAPEO further requests the same amendment proposed by JustWorks to the proposed NMAC 13.19.4.2(A)(1), in order to obtain a blanket guarantee that all PEO-sponsored plans be regulated as large group plans.	<p>language in 13.19.4.2 is pulled directly from federal guidance, and ensures that New Mexico state regulations are in compliance with – and thus not preempted by – federal law.</p> <p>Nothing in the regulation currently prevents a PEOs from operating in the large group market. However, OSI cannot support exempting all PEOs, regardless of the size of the plan in question, from consumer protections in the individual and small group markets.</p> <p>As noted in 13.19.4.21 (A)(2), the proposed regulation mandates health plans offered by MEWAs to comply with state and federal laws in accordance with the market the employer-client is a member of, whether individual, small group, or large group. Thus ensuring consumers are able to access the same quality health care regardless of whether the health plan in question is purchased directly from a carrier, through the health insurance exchange, or through a PEO/MEWA/ELC.</p> <p>OSI opposes this change.</p>
13.19.4.2	R.F. Seaton	Mr. Seaton opposes all amendments to this section proposed by other commenters.	OSI agrees with Mr. Seaton’s arguments and analysis.
13.19.4.5	National Association of Professional Employer Organizations (NAPEO)	NAPEO requests that OSI extend the effective date to 1/1/24 since most PEOs work on calendar year basis	OSI has no objections to this change.
13.19.4.5	JustWorks	JustWorks recommends that the effective date be extended to 2024.	OSI has no objections to this change.
13.19.4.5	R.F.Seaton	Mr. Seaton agrees a request to extend the effective date is valid, but believes a full year might be excessive.	OSI agrees with Mr. Seaton’s arguments and analysis.

13.19.4.11	National Association of Professional Employer Organizations (NAPEO)	NAPEO requests that 13.19.4.11(C)(4) be removed from the application process, as PEOs and ELCs properly registered with the New Mexico Regulation and Licensing Department are not obligated to obtain a certificate of authority as insurers, and thus should not be held to such deposit standards.	OSI has no objections to this change.
13.19.4.11	JustWorks	JustWorks request removal of requirement in 13.19.4.11 (C)(4) requiring deposit.	OSI has no objections to this change.
13.19.4.11	R.F. Seaton	Mr. Seaton does not agree with the request to remove these requirements for all PEOs and ELCs, arguing it should be decided on a case-by-case basis.	OSI appreciates Mr. Seaton's thoughtful suggestion, that each situation be judged individually. However, as indicated above, OSI found the comment by NAPEO and JustWorks to be well-taken, and supported removal of the bond requirement.
13.19.4.14	National Association of Professional Employer Organizations (NAPEO)	<p>NAPEO objects to the requirements that fully insured MEWAs comply with 59A-5-29 and 13.2.5, as the only relevant information is the underlying financial health of the insurance carrier the MEWA purchased health insurance from.</p> <p>Suggested Change to Proposed NMAC 13.19.4.14(A): Strike paragraphs 1 and 2 and renumber all following paragraphs accordingly.</p>	<p>OSI agrees that the annual statement and reporting requirements are not clearly delineated in the proposed form of regulation, as they are spread throughout 13.19.4.14 and 13.19.4.16. OSI further agrees that some of the requirements are more appropriate for the carriers rather than MEWAs purchasing fully-insured products from carriers.</p> <p>As such, OSI recommends the following changes:</p> <p>13.19.4.14 STANDARDS AND REPORTING REQUIREMENTS:</p> <p>A. Annual statement required. Each MEWA transacting business in this state shall annually file by March 1st with the superintendent:</p> <ul style="list-style-type: none"> (1) current M-1 filings required by the department of labor; (2) current registration with the New Mexico regulation and licensing department, if any; and (3) financial statements audited by a certified public accountant.

			<p>B. Annual report required:</p> <p>(1) notice of any changes in information previously filed with the superintendent, which shall include, but is not limited to, the following items:</p> <p>(a) biographical affidavits of any new trustees, officers, directors, or other members of the association's or MEWA's governing body;</p> <p>(b) the names, addresses, and qualifications of any new individuals responsible for the conduct of the plan's affairs, including third-party administrators;</p> <p>(c) any new trust agreement or bylaws;</p> <p>(d) any new members of the MEWA; and</p> <p>(e) any other new agreements.</p> <p>(2) verification the MEWA or association is operating in compliance with these rules and all other applicable state and federal laws.</p> <p>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.</p> <p>C. Examination timeline. The superintendent shall examine the affairs and conduct of a MEWA at least once every three to five years 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.</p> <p>13.19.4.16 RENEWAL:</p> <p>A. Renewal requirements. A MEWA's shall submit for a renewal registration each year by:</p> <p>(1) payment on or before March 1 of a \$200.00 continuation fee;</p> <p>(2) reporting on demographic information, on a form approved by the superintendent, providing MEWA, and any third</p>
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			<p>party administrator, intermediary, regulatory compliance, and insurer contacts that complies with the following requirements:</p> <p style="padding-left: 40px;">(a) the MEWA contact shall be the person responsible for filing all applicable forms and changes in information with the superintendent; and</p> <p style="padding-left: 40px;">(b) the regulatory contact shall be the person responsible for receiving notice of laws, rules, bulletins and the like that may affect the plan;</p> <p style="padding-left: 40px;">B. Expiration 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.</p>
13.19.4.14	JustWorks	JustWorks shares NAPEO's concerns that the annual statements and reporting requirements are more appropriate for the carriers, rather than MEWAs purchasing health plans from them.	See above, regarding OSI's proposed edits to 13.19.4.14 and 13.19.4.16 to streamline, clarify, and appropriate narrow the annual reporting requirements.
13.19.4.14	R.F. Seaton	Mr. Seaton disagreed with JustWork's and NAPEO's one-size-fits-all exemption approach for PEOs and ELCs. However, he did agree that the section "could be improved to more overtly acknowledge the several possible cases."	OSI finds Mr. Seaton's remarks that this section to be well-taken, and recommends the rewrite of Sections 13.19.4.14 and 13.19.4.16 recommended above. These edits are included in the updated proposed rule filed by OSI in conjunction with these responses.
13.19.4.18	NAPEO	<p>NAPEO argues this section appears to require that PEOs and ELC obtain dual registration as both a MEWA and bona fide association, which they argue is not possible to achieve.</p> <p>Suggested Change to Proposed NMAC 13.19.4.18(B): "Prior to approval of any policy issued by any entity described in Paragraph 1 of Subsection A of this section, the proposed policyholder shall submit an application for registration with the Superintendent as a bona fide</p>	<p>OSI agrees with NAPEO that subsection B as written does appear to require PEOs and ELCs obtain dual registration as both a MEWA and bona-fide association. This is required by NMSA 1978 §59A-23G-6 only in the event that the MEWA wishes to offer excepted benefits, as is clarified in 13.19.4.29.</p> <p>The intent was not to require that all PEOs and ELCs register as both bona fide associations and MEWAs. However, OSI does not agree with NAPEO's proposed clarification, as it does not address the necessity for trusts and other organizations to be properly formed prior to being determined a policy holder.</p> <p>As such, OSI recommends the following clarifying language.</p>

		association pursuant to Subsection C of 59A-23E-2 NMSA 1978	13.19.4.18(B) 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. <u>A PEO or ELC that is a registered MEWA only needs to submit an application for registration as a bona fide association if intending to be the policyholder for an excepted benefits plan pursuant to NMSA 1978 59A-23G-6.</u> Such application shall be in the form and manner prescribed by the Superintendent and shall, at a minimum:
13.19.4.18	JustWorks	Requests limiting language to 13.19.4.18(B) so it only applies to associations.	JustWorks makes the same request as NAPEO. OSI again acknowledges the intent of the section was not clear, but cannot support the precise change requested by JustWorks due to statutory requirements. See above for OSI's proposed clarifying language.
13.19.4.18	R.F. Seaton	Mr. Seaton objects to the changes to this section proposed by NAPEO and JustWorks, noting again that their attempts to exempt all PEOs from this requirement are not proper.	OSI agrees with Mr. Seaton's analysis.
13.19.4.19	National Association of Professional Employer Organizations (NAPEO)	They object to being considered the policy holder of a "health plan" rather than an "insurance policy," or classifying worksite employees as "members." Suggested Changes to Proposed NMAC 13.19.4.19(C): - Revise paragraph 1 to read as follows: "(1) A PEO or ELC shall be the policyholder of any insurance policy issued to the PEO or ELC for the	OSI disagrees with these recommended changes, and refers the hearing officer to the comments filed by Mr. R.F. Seaton, which also oppose this change, as well as the previous responses filed by OSI in response to NAPEO's requested changes to 13.19.4.2, which provide a detailed analysis of the problems with NAPEO's overarching request to be exempted from state regulation. Furthermore, the proposed regulation clearly mandates that MEWA sponsored plans will operate in the market size appropriate for the plan in question, as can be seen in 13.19.4.21,

		<p>benefit of its worksite employees.” - Add the following sentence to the end of paragraph 2: “Provided that such PEO or ELC is in compliance with these rules, nothing within these rules shall be construed to limit the ability of a PEO or ELC to obtain a large group policy and make coverage under that policy available for the benefit of its worksite employees.”</p> <p>Suggested deletion of 13.19.4.19(D).</p>	<p>a section that NAPEO does not propose any edits to. Definitions of the individual, small, and large group market are set in statute, and cannot be altered in this regulation. Any attempt to redesignate the “large group market” in this regulation as something that any PEO can enter, regardless of the number of individuals covered under the health plan in question, would place this regulation in direct conflict with statute. When there is a conflict between statute and regulation, the statute is controlling. This would render the proposed changes by NAPEO meaningless.</p>
13.19.4.19 (C)	JustWorks	<p>JustWork’s recommends the same edits proposed by NAPEO, without discussion. These edits are a continuation of the edits requested for 13.19.4.2</p>	<p>OSI continues to oppose all proposed changes to exempt or otherwise limit PEOs from compliance with this regulation.</p> <p>OSI refers the hearing officer to Mr. R.F. Seaton’s comments, which succinctly address the systematic problems found in these requests, as well as staff’s prior arguments issued above.</p> <p>The federal government has determined when PEOs are operating as MEWAs, which OSI is obligated to enforce. Furthermore, both federal and state statutes determine when any insurance policy is a health plan, and when such health plans constitute individual, small, or large group plans.</p> <p>The changes proposed by JustWorks would be instantly preempted by state and federal law, and are thus not supportable.</p>
13.19.4.19 (D)	JustWorks	<p>Requests deletion of Section 13.19.4.19 (D).</p>	<p>OSI opposes this change, which was deliberately included in the regulation to ensure that unrelated individuals are not forced into health plans designed and purchased for distinct employers and associations.</p>
13.19.4.8 (E), 13.19.4.11 (A), 13.19.4.12(D)	Blue Cross Blue Shield (BCBS)	<p>BCBS correctly identifies all sections of the rule that would require a MEWA subject to this regulation to meet “major medical plan requirements” and to file</p>	<p>OSI appreciates BCBS’s concern for the burden to OSI staff, but notes that the Superintendent’s jurisdiction over plans sold to New Mexico residents has been repeatedly established in statute. See, NMSA 1978 § 59A-1-14, 59A-18-1, and §59A-23-8.</p>

<p>, 13.19.4.18(C) , and 13.19.4.21(A thru G)</p>		<p>and receive approval from the OSI before being allowed to have a member of a MEWA in New Mexico.</p> <p>Blue Cross expresses concern about the administrative burden for MEWAs situated in other jurisdictions, that are offering health plans to New Mexico residents, as well as on the OSI to review such plans. They recommend that OSI waive the prior approval requires for forms and rates that have been reviewed and approved by another state that “offers protections that, in the discretion of the superintendent, are equivalent to or more protective than New Mexico law.”</p>	<p>So long as health plans are sold to New Mexico residents, and are not preempted by federal law, they are subject to New Mexico statutes and regulation.</p> <p>Any conflict of law scenario that develops in the future, can and would be resolved through existing regulatory processes. There is no need to create a separate process for MEWAs.</p> <p>Furthermore, OSI notes that New Mexico has some of the strongest consumer protections for insured individuals found in the nation. Neighboring states, such as Texas, approve insurance products that would be found to be entirely inadequate under New Mexico law. OSI does not support delegating any regulatory authority to other jurisdictions.</p>
<p>13.19.4.8 (E), 13.19.4.11 (A), 13.19.4.12(D) , 13.19.4.18(C) , and 13.19.4.21(A thru G)</p>	<p>R.F. Seaton</p>	<p>Mr. Seaton indicates strong disagreement with BCBS’s concerns and proposed edits. In closing he argues, “there need be no conflict of laws involved; if any insurer desires to issue a contract that covers residents of multiple states, and needs to apply differing terms to residents of different states, those multiple terms must be stated in any pertinent contracts, and that is simply the fact the insurer faces, in order to implement its desired goals. Many insurance contracts have been written with provisions accommodating multiple states' residents. If other states' laws are "equivalent to or more protective than New Mexico law", then the issue is that much simpler to resolve; but the OSI would still have to review forms and</p>	<p>OSI agrees with Mr. Seaton’s arguments and analysis.</p>

		rates for approval anyway, just to confirm that this is the case.”	
13.19.4.22	BCBS	BCBS correctly notes that this section would essentially create a look through requirement that would require all MEWAs to provide each of its members with a plan that is appropriate for the size/market in which that employer member would otherwise be purchasing coverage: a small employer must have a policy that is compliant with all New Mexico small group requirements, and recommends deletion of this section, based on speculation that MEWAs would refuse to accept small employers in an effort to avoid regulatory protections for small business owners and their employees.	<p>It is OSI's intent to establish a look through requirement in order to curb adverse selection away from individual and small group markets. The proposed rule would not prohibit a collection of small group plans from forming a MEWA as long as small group coverage and rating requirements were applied. Many states have instituted look through requirements in order to curb adverse selection. See: https://www.mintz.com/sites/default/files/media/documents/2018-10-02/State_AHP_Guidance_Table.pdf</p> <p>OSI opposes deletion of this section.</p>
13.19.4.22	R.F. Seaton	Mr. Seaton responded to BCBS’s concerns for this section, and indicated disagreement.	OSI agrees with Mr. Seaton’s analysis.
13.19.4.33	BCBS	BCBS notes that the 60 day compliance deadline would present “significant operational burdens” if implemented mid-plan year, and recommends the regulation not go into effect until the beginning of the plan year following the effective date of the rule.	<p>OSI disagrees with this recommendation. As noted above, OSI has already agreed to extend the effective date of the rule to January 1, 2024. This will provide all impacted MEWAs an entire calendar year to prepare for implementation of this rule, including the needs to properly register.</p> <p>OSI reaffirms that there are currently no MEWAs registered with New Mexico, including the MEWAs that commented on this proposed regulation, and the 61 MEWAs that are registered with the Department of Labor.</p> <p>OSI further refers the hearing officer to Mr. Seaton’s comments, which oppose this recommendation.</p>

13.19.4.33	R.F.Seaton	Mr. Seaton's response to BCBS's recommendation is that it is "unworkable" and advised that OSI adopt an effective date for the rule that serves the public, rather than the industry.	OSI agrees with Mr. Seaton's analysis.
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