

TITLE 210 – NEBRASKA DEPARTMENT OF INSURANCE

CHAPTER 78 - MULTIPLE EMPLOYER WELFARE ARRANGEMENT

001. Authority. This rule is adopted and promulgated by the Director of Insurance of the State of Nebraska pursuant to the Multiple Employer Welfare Arrangement Act (“MEWA Act”), NEB. REV. STAT. §44-7601 ET SEQ., and specifically §§44-7605, 44-7613(1), (2) and 44-7615.

002. Purpose. The purpose of this rule is to set forth rules and procedural requirements which the director deems necessary to carry out the provisions of NEB. REV. STAT. §44-7601 ET SEQ.

003. Severability. If any section of this rule, or the applicability thereof to any person or circumstance, is held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

004. Scope. This rule shall apply to all multiple employer welfare arrangements, which offer or maintain a health benefit plan that is not fully insured, to or on behalf of an employer domiciled in this state or to an employer which has its principal headquarters or principal administrative offices in this state.

005. Definitions. For purposes of this rule:

005.01 Certificate of registration means a document issued by the director authorizing a multiple employer welfare arrangement to offer a health benefit plan that is not fully insured;

005.02 Covered employee means an employee who is covered by a health benefit plan provided through a multiple employer welfare arrangement in which the employer is participating. Covered employee includes a dependent of an employee as defined under the terms of the health benefit plan;

005.03 Director means the Director of Insurance;

- 005.04 Fully insured health benefit plan means a health benefit plan which provides for health benefits, all of which are guaranteed under a contract or policy of insurance issued by an insurance company licensed to transact the business of insurance in this state;
- 005.05 Health benefit plan means an employee welfare benefit plan to the extent that it provides any hospital, surgical, or medical expense benefits to covered employees directly or through insurance, reimbursement, or otherwise. Health benefit plan does not include (a) accident-only, disability income, hospital confinement indemnity, dental, or credit insurance, (b) coverage issued as a supplement to liability insurance, (c) Medicare or insurance provided as a supplement to Medicare, (d) insurance arising from workers' compensation provisions, (e) automobile medical payment insurance, (f) any other specific limited coverage, or (g) insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy;
- 005.06 Multiple employer welfare arrangement means a multiple employer welfare arrangement ("MEWA"), as defined by 29 U.S.C. §1002, as such section existed on January 1, 2002, if the multiple employer welfare arrangement is sponsored by an association of employers that offers a health benefit plan that is not fully insured; and
- 005.07 Participating employer means an employer that participates in a multiple employer welfare arrangement.

006. Application for Certificate of Registration.

- 006.01 A multiple employer welfare arrangement seeking to offer a health benefit plan that is not fully insured shall apply for a certificate of registration in a form prescribed by the director. The application shall be completed and submitted to the director together with a one-thousand-dollar fee and the following:
- 006.01(A) Copies of all articles, bylaws, agreements, and other documents or instruments describing the organizational structure of the applicant;
- 006.01(B) Copies of all materials and documents describing the rights and obligations of participating employers and covered employees with respect to the applicant, including evidence of activities of the association or group of employers on behalf of its members other than the sponsorship of the

MEWA, a current list of all members of the employer group or association sponsoring the MEWA, and a description of the relationship among all such employers which serves as the basis for the formation of the association or employer group;

- 006.01(C) A copy of the trust agreement of the applicant, which contains:
- 006.01(C)(i) A provision that the Board of Trustees shall be the fiduciary of the trust;
 - 006.01(C)(ii) A provision that the members of the Board of Trustees shall be the plan administrator of the health benefit plan; and
 - 006.01(C)(iii) A provision that the members of the Board of Trustees shall be responsible for implementing and carrying out the rules of operation and financial control of the health benefit plan based upon an annual plan of operation adequate to carry out terms of the health benefit plan, and to meet all requirements of the MEWA Act;
- 006.01(D) Copies of all documents referencing that the Board of Trustees is authorized to assess the participating employers an amount necessary to remedy any deficiency if the assets of the MEWA and the stop-loss insurance policy issued to the MEWA are at any time insufficient to pay claims made against a health benefit plan, or to discharge liabilities and obligations relating to the claims or other expenses of the health benefit plan;
- 006.01(E) A signed statement of each member of the Board of Trustees which states that the member is an owner, partner, officer, director, or employee of one or more of the employers participating in the health benefit plan, is not an owner, officer or employee, or a partner in, or contract administrator, or other service provider to the health benefit plan or of any third party administrator of the MEWA, and that he or she has not been convicted of any felony or a Class I, II, or III misdemeanor;

- 006.01(F) A statement from the Board of Trustees which certifies compliance with NEB. REV. STAT. §44-7606, and NEB. REV. STAT. §44-7607, including all of the following:
- 006.01(F)(i) The association which sponsors the MEWA has been in existence for at least three years prior to the date the MEWA filed its application for a certificate of registration with the Department;
 - 006.01(F)(ii) The MEWA was established by a trade, industry, or professional association of two or more employers of the same trade or industry that has a constitution or bylaws, and has been organized and maintained in good faith for at least three continuous years prior to the date the MEWA filed its application for a certificate of registration with the Department;
 - 006.01(F)(iii) The association or group of employers all sponsoring the MEWA is engaged in substantive activity for its members other than sponsorship of a health benefit plan; and
 - 006.01(F)(iv) A certificate from the applicant that, to the best of its knowledge and belief, the MEWA is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. §1001 et seq.)
- 006.01(G) A copy of the unaudited financial statement required by NEB. REV. STAT. §44-7613, as described in section 007 of this rule;
- 006.01(H) A statement showing in full detail the plan for offering a health benefit plan by the applicant;
- 006.01(I) Copies of all contracts and other instruments proposed to be made, offered, or sold by the applicant to its participating employers, together with a copy of its health benefit plan and summary plan description, and the proposed advertising materials to be used in the solicitation of participating employers;
- 006.01(J) A copy of the contract with the third-party administrator retained, if any, to administer the health benefit plan;

- 006.01(K) A copy of the stop-loss insurance policy required by NEB. REV. STAT. §44-7609, as described in section 007 of this rule;
- 006.01(L) An actuarial opinion required by NEB. REV. STAT. §44-7613, as described in section 007 of this rule;
- 006.01(M) A copy of the most recent Form 5500 filed by the MEWA with the United States Department of Labor;
- 006.01(N) A copy of the most recent Form M-1 filed by the MEWA with the United States Department of Labor, Employee Benefits Security Administration;
- 006.01(O) A statement providing in specific detail the date the MEWA's annual fiscal year begins as well as the date the MEWA's annual fiscal year ends; and
- 006.01(P) Any other reasonable information requested by the director.

006.02 The director shall examine the application and supporting documents submitted by the applicant and shall conduct any investigation, which the director may deem necessary, and examine under oath any persons interested in or connected with the MEWA.

006.03 Within a reasonable time, the director shall issue to the MEWA a certificate upon finding that the applicant MEWA has met all requirements, or the director shall notify the applicant setting forth reasons for a denial upon finding that the applicant MEWA does not meet all the requirements.

006.04 Modifications to the plan of operation, including but not limited to amendments to articles of incorporation and bylaws, shall be submitted for prior approval to the director.

006.05 The director shall deny a certificate of registration if the applicant does not meet the requirements of the Multiple Employer Welfare Arrangement Act. Notice of denial shall be in writing and shall set forth the basis for the denial. If the applicant submits a written request for reconsideration within thirty (30) days after the notice was sent by the director, the director shall conduct a hearing on the denial pursuant to the Administrative Procedure Act.

007. Financial Requirements.

007.01 Stop-Loss Insurance Policy. A MEWA offering a health benefit plan that is not fully insured shall be a named insured under a stop-loss insurance

policy that provides coverage in excess of the MEWA's retention of one hundred twenty-five percent of the MEWA's expected health claims costs as determined on an aggregate basis. A policy issued to satisfy the requirements of this section shall be evidenced by a binder or a copy of a policy issued by an insurer licensed to transact the business of insurance in this state and shall contain a provision that the coverage may not be terminated by the insurer unless the MEWA and the director receive a written notice of termination from the insurer at least thirty days (30) before the effective date of the termination.

007.02 Annual Financial Statement. A MEWA shall file with the director, on an annual basis and within ninety (90) days after the last day of such MEWA's fiscal year, an unaudited financial statement for the preceding fiscal year, accompanied by a filing fee of two hundred dollars, which has been attested to by at least two members of the Board of Trustees, one of whom shall be the chairperson or president of the Board of Trustees. The financial statement attested to by such members of the Board of Trustees shall include language to the effect that the undersigned swears that (s)he has read the financial statement, is familiar with its contents, and that the facts therein are true and correct to the best of his/her knowledge, information and belief. The financial statement shall include at a minimum, balance sheets, income statements, and cash flow statement.

007.03 Actuarial Statement. A MEWA shall file with the director, on an annual basis and within ninety (90) days after the last day of such MEWA's fiscal year, a statement prepared, signed, and dated by a person who is a member of the American Academy of Actuaries, which shall include:

007.03(A) a statement that the rates charged and reserves, both (a) incurred and (b) incurred but not reported, are sufficient to pay claims and associated expenses for the health benefit plan;

007.03(B) a test of the prior fiscal year's claim reserves;

007.03(C) a brief description of how the reserves were calculated;

007.03(D) confirmation that the stop-loss insurance policy, required by NEB. REV. STAT. §44-7609, is in force;

007.03(E) confirmation that appropriate loss and loss adjustment reserves have been established; and

007.03(F) confirmation that rates being charged are adequate to fund one hundred percent of the losses plus other costs borne by the multiple employer welfare arrangement.

008. Certificate of Compliance. A MEWA shall file with the director, on an annual basis and within 90 days after the last day of such MEWA's fiscal year, a certificate of compliance. The certificate of compliance shall be signed and dated by at least two members of the Board of Trustees of the MEWA, one of whom shall be the chairperson or president of the Board of Trustees, and shall certify that to the best of their knowledge, information, and belief, the plan has been conducted in accordance with the applicable provisions of Nebraska law and rules and regulations relating to multiple employer welfare arrangements.

009. United States Department of Labor Forms. Each year, a MEWA shall, within ninety (90) days of the last day of such MEWA's fiscal year, file with the Department, the most recent Form 5500 filed by the MEWA with the United States Department of Labor, the most recent Form M-1 filed by the MEWA with the United States Department of Labor Employee Benefits Security Administration and a detailed listing of assets, if such listing is not otherwise included as part of the Form 5500 filing.

010. Additional Information. The director may request additional reports and/or information as deemed necessary to assure the legitimacy and the financial integrity of the multiple employer welfare arrangement.

011. Extension of Time. Upon the written request of a multiple employer welfare arrangement and for good and sufficient cause shown, the director may grant a reasonable extension of time not to exceed thirty (30) days within which the documents referenced in sections 007.02, 007.03, 008, 009, and 010 of this rule, may be filed.

012. Change in Fiscal Year. A MEWA shall notify the Department thirty (30) days before a change is made to the beginning or ending dates of the MEWA's annual fiscal year. In addition to the notification, the MEWA shall also provide to the Department a statement similar to that required in section 006.01(O) of this rule.

013. Agreements and Management Contracts. Any agreement entered into between a MEWA that is subject to this rule and an administrator, service company, or any other entity shall be made available for review in the office of the director if requested by the director to determine the legitimacy or financial condition of the multiple employer welfare arrangement.

014. Notice to Department.

014.01 A MEWA shall notify the Department at least thirty (30) days before an assessment is levied to cure a deficiency and at least thirty (30) days before any changes in the following become effective:

014.01(A) Administrator or service company and any material change in such agreements with the administrator or service company;

014.01(B) Articles of incorporation, association and by-laws of the MEWA; and

014.01(C) Stop-loss insurance policy.

014.02 Such notified changes shall become effective no less than thirty (30) days after having been submitted to the Department.

015. Penalties. Any multiple employer welfare arrangement, which violates any of the provisions of this regulation, shall be subject to a monetary penalty and/or cease and desist order, suspension or revocation of their certificate of registration pursuant to NEB. REV. STAT. §44-7614.