

## **PROPOSED RULE 119**

### **MULTIPLE-EMPLOYER WELFARE BENEFIT PLANS**

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**SECTION 1. AUTHORITY**

This Rule is promulgated under Ark. Code Ann. § 23-92-101(c)(3), as amended by Act 919 of 2019, and Ark. Code Ann. § 23-61-108(a)(1). Under Ark. Code Ann. § 23-92-101(c)(3), the Arkansas Insurance Commissioner (“Commissioner”) is authorized to issue rules regulating multiple employer trusts and multiple employer welfare arrangements (“MEWAs”) which are not fully-insured concerning: (a) the criteria and application for obtaining a certificate of authority from the State Insurance Department to conduct business in Arkansas; (b) the benefits to be offered;(c) financial requirements; (d) fees; (e) insolvency procedures; (f) examinations; (g) filing of forms and rates; (h) written disclosures and other consumer protections; (i) reporting requirements; (j) excess or stop loss insurance; and (k) other factors the Commissioner deems necessary for the effective regulation of multiple employer welfare trusts and multiple employer welfare arrangements that are not fully-insured.

**SECTION 2. PURPOSE**

The purpose of this Rule is to establish requirements for licensing and operations of self-funded MEWAs and to explain registration requirements for fully-insured MEWAs.

**SECTION 3. APPLICABILITY & SCOPE**

Sections three (3) through eighteen (18) apply to self-funded multiple-employer welfare plans formed on or after the effective date of this Rule. Section twenty (20) applies to fully-insured MEWAs.

**SECTION 4. DEFINITIONS**

The following words and terms, when used in this Rule, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Board" means the board of trustees or directors, as applicable, of a multiple employer welfare arrangement.

(2) “Business plan” means the comprehensive, detailed plan by which the multiple-employer welfare arrangement conducts or proposes to conduct its business.

(3) "Employee welfare benefit plan" has the meaning assigned by Section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)).

(4) “Employer” has the meaning assigned by Section 3 (5) of the Employee Retirement Income Security Act of 1974, and shall include sole proprietors, as permitted by Federal law;

(4) "Health benefit plan" includes any plan that provides benefits for health care services. The term does not include:

(A) accident-only or disability income insurance coverage, or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

- (C) disability insurance;
- (D) coverage for a specified disease or illness;
- (E) Medicare services under a federal contract;
- (F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;
- (G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;
- (H) coverage that provides limited-scope dental or vision benefits;
- (I) coverage provided by a single service health maintenance organization;
- (J) workers' compensation insurance coverage or similar insurance coverage;
- (K) coverage provided through a jointly managed trust authorized under 29 U.S.C. Section 141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 U.S.C. Section 157;
- (L) hospital indemnity or other fixed indemnity insurance coverage;
- (M) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;
- (N) short-term major medical contracts;
- (O) liability insurance coverage, including general liability insurance coverage and automobile liability insurance coverage;
- (P) coverage issued as a supplement to liability insurance coverage;
- (Q) automobile medical payment insurance coverage;
- (R) coverage for on-site medical clinics;
- (S) coverage that provides other limited benefits specified by federal regulations; or
- (T) other coverage that is:
  - (i) similar to the coverage described by this subdivision under which benefits for medical care are secondary or incidental to other coverage benefits; and
  - (ii) specified in federal regulations.

(5) "Health status related factor" means:

- (A) health status;

- (B) medical condition, including both physical and mental illness;
  - (C) claims experience;
  - (D) receipt of health care;
  - (E) medical history;
  - (F) genetic information;
  - (G) evidence of insurability, including conditions arising out of acts of family violence;
- and
- (H) disability.

(6) "Multiple employer welfare arrangement" has the meaning assigned by Section 3(40) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(40)).

(7) "Organizational document" means the articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to a multiple employer welfare arrangement.

(8) "Participation criteria" means any criteria or rules established by an employer to determine the employees who are eligible for enrollment or continued enrollment under the terms of a health benefit plan.

## **SECTION 5. FORMS FOR LICENSURE OF SELF-FUNDED MEWAs**

(a) The Arkansas Insurance Department adopts by reference standard forms for use in the administrative regulation of self-funded multiple-employer welfare arrangements. Applicants and licensed self-funded multiple-employer welfare arrangements are required to utilize these forms in preparing applications, statements, notices of required information and other submissions required under this Rule. These forms are more specifically identified as follows:

- (1) Form Number 1, Name Application;
- (2) Form A-MEWA, Application for Certificate of Authority;
- (3) Form B-MEWA, Application to do Business as a Multiple-Employer Welfare Arrangement;
- (4) Officers, Directors or Trustees Page;
- (5) Biographical Affidavit;
- (6) Form MEWA-SOP (Service of Process).

## **SECTION 6. APPLICATION PROCESS FOR SELF-FUNDED MEWAs**

(a) Any person wishing to establish a multiple-employer welfare arrangement, on or after the effective date of this Rule, which is not fully-insured, must apply for and obtain a license pursuant to this Rule prior to conducting business or operations in this State.

(b) A complete application for a certificate of authority must be submitted to the Commissioner. In order to be considered complete, the application must contain the items described in paragraphs (1)-(13) of this subsection:

(1) certified copy of the articles of incorporation, if applicable;

(2) bylaws, constitution, or rules or regulations establishing and operating the multiple-employer welfare arrangement;

(3) trust agreements created in connection with the multiple-employer welfare arrangement. The trust agreements must be signed by all trustees;

(4) a welfare benefit plan document, including documentation or instruments describing the rights and obligations of employers, employees and beneficiaries with respect to the multiple-employer welfare arrangement;

(5) summary plan description with components and characteristics consistent with 29 United States Code § 1022, as provided in subparagraphs (A) and (B) of this paragraph:

(A) the summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan;

(B) the summary plan description shall contain the items of information set out in clauses (i)-(xii) of this subparagraph as follows:

(i) name and type of administration of the plan;

(ii) name and address of the administrator;

(iii) names and addresses of any trustee or trustees if they are persons different from the administrator;

(iv) plan requirements with respect to eligibility for participation and benefits;

(v) a description of provisions relating to nonforfeitable benefits if any are included in the plan;

(vi) a description of circumstances which may result in disqualification, ineligibility, or denial or loss of benefits;

(vii) the source of financing of the plan;

(viii) the identity of any organization through which benefits are provided;

(ix) the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis;

(x) the procedures to be followed in presenting claims for benefits under the plan;

(xi) remedies available under the plan for the redress of claims which are denied in whole or in part; and

(xii) a statement of guaranty fund non-participation;

(6) financial statements, as described in subparagraphs (A)-(F) of this paragraph:

(A) a current financial statement. If the multiple-employer welfare arrangement is already in business, the financial statement must include an annual balance sheet and income statement, developed on generally accepted accounting principles, for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(B) a projected balance sheet for a minimum of three years on a quarterly basis, including assumptions used in producing projections and must be developed in conformity with generally accepted accounting principles;

(C) a projected income statement, providing income forecasts for a minimum interval of three years, detailed on a quarterly basis. The projected income statement must be developed in conformity with generally accepted accounting principles;

(D) a projected cash flow analysis on a quarterly basis, for a minimum of three years. Line by line documentation of anticipated cash inflow and outflow by specific account type must be submitted;

(E) a statement of the proposed initial cash and cash reserves summary. This statement must include all items of funding, including but not limited to loan receipts, loan repayments, and stock sales. The statement must include a description of the source and terms of the funding;

(F) if an existing multiple-employer welfare arrangement, it must submit a copy of its Federal Form 5500 for the past five years, or since the inception of the MEWA, whichever time period is shorter;

(7) a copy of the fidelity bond issued in the name of the multiple-employer welfare arrangement protecting against acts of fraud and dishonesty by its trustees, directors, officers, employees, administrator or other individuals responsible for servicing the employer welfare benefit plan. Such bond should be in an amount equal to the greater of 10% of the premiums and contributions received by the multiple-employer welfare arrangement, or 10% of the benefits paid, during the preceding calendar year, with a minimum of \$10,000 and a maximum of \$500,000. No additional bond will be required of a third party administrator licensed to engage in business in this state;

(8) a business plan which includes the six major areas addressed in subparagraphs (A)-(F) of this paragraph:

(A) Current or proposed operations must be outlined with information by the applicant identifying the number of employers in the group currently participating or proposed to participate in the multiple-employer welfare arrangement. The outline should also include the number of participating units. To the extent such information is available, it also should include the number of dependents covered or to be covered by the multiple-employer welfare arrangement. A specific list of the benefits being provided or to be provided must also be included.

(B) Specific information about individuals providing or to provide management services is required. The applicant should indicate whether each trustee is an owner, partner, officer, or director, and/or employee of a participating employer or is committed to participate in the multiple-employer welfare arrangement. In addition, the applicant should provide the name and address of the employer represented by each trustee and by each officer and provide the association of the trustee or officer with such employer. The applicant must list the individuals responsible for managing or handling funds or assets of the multiple-employer welfare arrangement. A biographical affidavit must be completed and filed for each trustee, or officer or director or administrator of the multiple-employer welfare arrangement.

(C) With respect to administration of the present or proposed plan, the applicant must give the names and qualifications of individuals, or the third party administrator, responsible for or to be responsible for servicing the program of the multiple-employer welfare arrangement. If a third-party administrator is to service the plan, a copy of the company's Arkansas license should be attached. In addition, a copy of the agreement between the multiple-employer welfare arrangement and the third party administrator should be submitted, signed by the administrator and trustees or directors of the multiple-employer welfare arrangement.

(D) The applicant must provide documentation that the multiple-employer welfare arrangement has provided or will provide a sufficient number of competent persons to service its program in the areas of claims adjusting and underwriting. The applicant should also describe the present or proposed plan to service billings, claims, and underwriting. The criteria for underwriting shall be actuarially justified.

(E) The applicant must provide a specific outline and description of the management's marketing efforts. The applicant should list the names of all persons directly employed or to be employed by the arrangement, who solicit participants or adjust claims, indicating the qualifications and credentials of such individuals, and whether such persons hold any license issued by the department. Any such licenses held should be specified by type.

(F) The applicant must provide documentation showing that a procedure has been established for handling claims for benefits in the event of dissolution of the multiple-employer welfare arrangement.

(9) an actuarial opinion prepared by an actuary who is not an employee of the multiple-employer welfare arrangement and who is a fellow of the Society of Actuaries, a member of the American

Academy of Actuaries or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code § 1241 and § 1242). The actuarial opinion shall include the items described in subparagraphs (A)-(C) of this paragraph, as follows:

(A) a description of the actuarial soundness of the multiple-employer welfare arrangement, including any recommended actions that the multiple-employer welfare arrangement should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the multiple-employer welfare arrangement should maintain which shall not be less than the greater of 20% of the total contributions in the preceding plan year or 20% of the total estimated contributions for the current plan year; cash reserves shall be calculated with proper actuarial regard for known claims, paid and outstanding, a history of incurred but not reported claims, claims handling expenses, unearned premium, an estimate for bad debts, a trend factor, and a margin for error; and

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

(10) if the multiple-employer welfare arrangement is in existence at the time of its application, annual reports meeting the substantive requirements of 29 United States Code § 1023 and § 1024 shall be filed. To the extent that such annual reporting requirements are not otherwise met by existing multiple-employer welfare arrangements in complying with other provisions of this subchapter, a filing under this paragraph must be made, and must at a minimum include the items described in subparagraphs (A)-(C) of this paragraph, as follows:

(A) the administrator's report of essential information for most recent year ending, detailing the size and nature of the plan, and number of participating employees in the plan;

(B) the statement from any insurance company, insurance service, or other similar organization or organizations which sell or guarantee plan benefits, which statement shall detail:

(i) the premium rate or subscription charge and the total of such premiums or subscription charges in relation to the approximate number of persons covered by each class of benefits; and

(ii) the total amount of premiums received, approximate number of persons covered by each class of benefits, and total claims paid by such company, service and other organization; and

(C) the published summary plan description and annual report to participants and beneficiaries of the plan;

(11) documentation indicating that the multiple-employer welfare arrangement has applications from not less than two employers and will provide similar benefits for not less than 200 separate participating employees, and that the annual gross premiums of or contributions to the plan will be not less than \$20,000 for a vision-benefit-only plan, \$75,000 for a dental-benefits-only plan, and

\$200,000 for all other plans [*the Commissioner may modify these minimum numerical and premium requirements after reviewing public comments on this issue during the rule-making phase*];

(12) documentation that the multiple-employer welfare arrangement possesses a written commitment, binder or policy for stop-loss insurance issued by an insurer authorized to do business in this state providing not less than 30 days notice to the Commissioner of any cancellation or non-renewal of coverage and which provides both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the subsequent plan year and the specific retention amount determined by the actuarial report required by paragraph (9) of this subsection; and

(13) a certification provided by the applicant and signed by the president and secretary or the trustee of the MEWA, or other such official, attesting that the multiple-employer welfare arrangement is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974. (29 United States Code § 1001 et seq.).

(c) On finding of good cause, the Commissioner may order an actuarial review of a multiple-employer welfare arrangement. The cost of any such additional actuarial review shall be paid by the multiple-employer welfare arrangement.

(d) Upon application of a multiple-employer welfare arrangement, the Commissioner may waive or reduce the requirement for aggregate stop-loss coverage and the amount of reserves if it is determined that the interests of the participating employers and employees are adequately protected.

## **SECTION 7. REQUIRED APPLICATION DOCUMENTATION**

(a) The Commissioner shall promptly review the documentation submitted by the applicant and shall have the power to conduct any investigation which may be necessary and to examine under oath any persons interested or connected with the multiple-employer welfare arrangement. Unless such time is extended by the Commissioner, within 60 days of the filing of the completed application, the Commissioner shall issue a certificate of authority provided that the provisions of this Rule are satisfied and the conditions in paragraphs (1)-(15) of this subsection have been met, as follows:

(1) the employers in the multiple-employer welfare arrangement have formed a valid MEWA as defined under Section 4(6) of this Rule and are composed of at least two (2) employers engaged in the same or closely related trade or profession;

(2) the employee welfare plan of the association or group in the multiple-employer welfare arrangement is controlled and sponsored directly by participating employers, participating employees, or both;

(3) the association or group of employers in the multiple-employer welfare arrangement is a not-for-profit organization;

(4) for an association sponsored multiple-employer welfare arrangement, the association has been organized and maintained in good faith in active existence for at least two (2) years for purposes other than that of obtaining insurance or insuring members, employees, or employees of

members of the association for the benefit of persons other than the association or its officers or trustees;

(5) the multiple-employer welfare arrangement has within its own organization adequate facilities and competent personnel, as determined by the Commissioner, to service the employee benefit plan or has contracted with a third party administrator that holds a current certificate of authority to engage in business in the State of Arkansas;

(6) the multiple-welfare arrangement has applications from not less than two (2) employers, engaged in the same or closely related trade or profession, and will provide similar benefits for not less than 200 separate participating employees, and the annual gross premiums or contributions to the plan will be not less than \$20,000 for a plan that provides only vision benefits, \$75,000 for a plan that provides only dental benefits and \$200,000 for all other plans [*the Commissioner may modify these minimum numerical and premium requirements after reviewing public comments on this issue during the rule-making phase*];

(7) the multiple-employer welfare arrangement possesses a written commitment, binder, or policy for stop-loss insurance issued by an insurer that has a certificate of authority to transact business in the State of Arkansas, providing not less than 30 days notice to the Commissioner of any cancellation or non-renewal of coverage; (this instrument shall provide both specific and aggregate coverage with an aggregate retention of no more than 125% of the amount of expected claims for the next plan year and any specific retention amount as determined by the Finance Division of the Arkansas Insurance Department);

(8) both the specific and aggregate coverage will require all claims to be submitted within 90 days after the claim is incurred and provide a 12-month claims incurred period and a 15-month paid claims period for each policy year;

(9) the contributions shall be set to fund at least 100% of the aggregate retention plus all other costs of the multiple-employer welfare arrangement;

(10) if the required reserves exceed the greater of 40% of the total contributions for the current plan year, or 40% of the total contributions expected for the current plan year, the contributions may be reduced to fund less than 100% of the aggregate retention plus all other costs of the multiple-employer welfare arrangement, but in no event less than the level of contributions necessary to fund the minimum reserves required;

(11) the reserves shall be established before a certificate of authority is issued;

(12) the multiple-employer welfare arrangement has established a procedure for handling claims for benefits in the event of dissolution of the multiple-employer welfare arrangement;

(13) the multiple-employer welfare arrangement has obtained the required fidelity bond;

(14) the multiple-employer welfare arrangement has submitted its plan document or any instrument describing the rights and obligations of the employers, employees and beneficiaries with respect to the multiple-employer welfare arrangement; and

(15) the multiple-employer welfare arrangement has submitted a summary plan description and has filed for review any notifications such as an identification card, policy or contract, in connection with the employee welfare benefit plan, which notifications include any of the disclosures set out in subparagraphs (A)-(D) of this paragraph, as follow:

(A) that individuals covered by the plan are only partially insured;

(B) that in the event the plan or the multiple-employer welfare arrangement does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses;

(C) that, if applicable, the plan does not participate in the guaranty fund; such disclosure being provided in the same notice format required of insurers and health maintenance organizations in this State; and

(D) the toll-free number for the complaints section of the Arkansas Insurance Department consumer services division.

(b) Unless excepted by statute or by this Rule, a multiple-employer welfare arrangement may commence doing business in this state only after it receives its initial certificate of authority.

(c) The multiple-employer welfare arrangement shall appoint the Commissioner as its registered agent for service of process, by filing same on the prescribed form.

#### **SECTION 8. BOND AND FUNDING REPORTS FOR SELF-FUNDED MEWAs**

(a) A multiple-employer welfare arrangement shall file an application on the prescribed form and furnish such information as may be required by the Commissioner. The application shall include only those items described in paragraphs (1)-(4) of this subsection, as follow:

(1) the names and addresses of:

(A) the association or group of employers sponsoring the multiple-employer welfare arrangement;

(B) the members of the board of trustees or directors, as applicable, of the multiple-employer welfare arrangement;

(C) at least two employers, if the arrangement is not an association, which information shall be retained by the Commissioner as confidential;

(2) evidence that the fidelity bond requirements have been met;

(3) copies of all plan documents and agreements with service providers, which shall be retained by the Commissioner as confidential.; and

(4) a funding report containing:

(A) a statement certified by the board of trustees or directors, as applicable, and an actuarial opinion that is satisfactory to the Finance Division of the Arkansas Insurance Department;

(B) an actuarial opinion which sets forth a description of the extent to which contributions or premium rates:

(i) are not excessive;

(ii) are not unfairly discriminatory; and

(iii) are adequate to provide for the payment of all obligations and the maintenance of required cash reserves and surplus of the multiple-employer welfare arrangement;

(C) a certified statement of the current value of the assets and liabilities accumulated by the multiple-employer welfare arrangement (unless the application for final certificate of authority is filed 90 days or later following the close of the fiscal year for the multiple-employer welfare arrangement, in which case the financial statement shall be an audited statement), and a projection of the assets, liabilities, income and expenses of the multiple-employer welfare arrangement for the next 12-month period and that reflects that the MEWA has maintained adequate cash reserves; and

(D) a statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with operation of the multiple-employer welfare arrangement.

## **SECTION 9. APPEAL PROCESS FOR DENIALS OF SELF-FUNDED MEWA APPLICATIONS**

(a) If the Commissioner refuses to grant a certificate of authority to an applicant that fails to meet the requirements of this Rule, notice of refusal shall be in writing. Such notice shall set forth the basis for the refusal, and shall also constitute 30 days advance notice of revocation of the initial certificate of authority.

(b) If the applicant submits a written request for hearing within 30 days after mailing of the notice of refusal, revocation of the initial certificate of authority shall be temporarily stayed. The Commissioner shall promptly conduct a hearing in which the applicant shall be given an opportunity to show compliance with the requirements of this subchapter.

## **SECTION 10. FILING FEES FOR SELF-FUNDED MEWA LICENSURE APPLICATIONS**

The Commissioner shall collect, and the applicant affected shall pay to the Commissioner, the following fees:

(1) filing fee for filing an application for a certificate of authority — \$1,000;

(2) annual filing fee for filing and review of audited financial statement and actuarial opinion — \$500.

#### **SECTION 11. BENEFITS PROVIDED BY SELF-FUNDED MEWAs**

(a) A multiple-employer welfare arrangement licensed pursuant to the provisions of this rule shall be limited to providing benefits for health benefit plans, as defined under Section Four (4) of this Rule, and any other benefit authorized for health insurers in this State, or as permitted by the Commissioner.

(b) A multiple-employer welfare arrangement may only provide benefits to active or retired owners, officers, directors, or employees of or partners in participating employers; or the beneficiaries of such persons, except as may otherwise be limited by provisions of the Employer Retirement Income Security Act of 1974 (29 United States Code § 1001 et seq.).

(c) A multiple-employer welfare arrangement shall provide medical benefits, services and network rights, as are mandated upon fully-insured large group health benefit plans, by Arkansas law or Arkansas Insurance Department Rules and Bulletins.

#### **SECTION 12. NOTICE TO PARTICIPANTS IN SELF-FUNDED MEWAs**

(a) A multiple-employer welfare arrangement, in connection with an employee welfare benefit plan, which is self-funded, shall provide to each participating employee or former employee covered by the plan the written notice containing, at a minimum, the items described in paragraphs (1)-(5) of this subsection, at the time the coverage of such participating employee or former employee becomes effective:

(1) that individuals covered by the plan are only partially insured;

(2) that in the event the plan or the multiple-employer welfare arrangement does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses;

(3) that the plan does not participate in the guaranty fund;

(4) the toll-free telephone number for the complaints section of the Arkansas Insurance Department; and

(5) that a copy of the summary plan description may be obtained from the plan administrator, employer, or trustee, as applicable.

(b) The notice shall also briefly explain the types of information in the summary plan description.

#### **SECTION 13. SIMILARITY OF NAMES FOR SELF-FUNDED MEWAs**

(a) No multiple-employer welfare arrangement licensed under this subchapter shall take any name which is the same as or closely resembles the name of any other multiple-employer welfare arrangement possessing a certificate of authority and doing business in this state. A multiple-employer welfare arrangement must complete a name application form to transact business under its own name and shall

not adopt any assumed name, except that a multiple-employer welfare arrangement by amending its articles may change its name or take a new name with the approval of the Commissioner.

(b) Whenever it shall be necessary in any legal proceeding to prove the existence of a multiple-employer welfare arrangement, a certified copy of the multiple-employer welfare arrangement's certificate of authority shall be prima facie evidence of the existence of the multiple-employer welfare arrangement.

#### **SECTION 14. ANNUAL STATEMENTS OF SELF-FUNDED MEWAs AND RENEWAL REQUIREMENTS**

(a) Each self-funded multiple-employer welfare arrangement transacting business in this state shall file annually with the Commissioner statements and reports described in paragraphs (1) and (2) of this subsection, as follow:

(1) within 90 days of the end of the MEWA's fiscal year, financial statements audited by a certified public accountant; and

(2) within 90 days of the end of the MEWA's fiscal year, an actuarial opinion prepared and certified by an actuary who is not an employee of the multiple-employer welfare arrangement and who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 United States Code § 1241 and § 1242). The actuarial opinion shall include:

(A) a description of the actuarial soundness of the multiple-employer welfare arrangement, including any recommended actions that the multiple-employer welfare arrangement should take to improve its actuarial soundness;

(B) the recommended amount of cash reserves the multiple-employer welfare arrangement should maintain which shall not be less than the greater of 20% of the total contributions in the preceding plan year or 20% of the total estimated contributions for the current plan year;

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

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

(b) The cash reserves as required by the Finance Division of the Arkansas Insurance Department shall be maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable principal amount or such other investments as the Commissioner has authorized by rule.

(c) The Commissioner shall review the statements and reports required by subsection (a) of this section. The Commissioner shall automatically renew a multiple-employer welfare arrangement's certificate of authority on January 1 of each year unless the Commissioner finds that the multiple-

employer welfare arrangement does not meet the requirements of this Rule. At renewal, a self-funded MEWA shall provide the reports or statements required in this Section in addition to any modifications of documents required under Section(s) Six (6), Seven (7), Eight (8) and Twelve (12) which have changed from the previous plan year.

(d) On a finding of good cause, the Commissioner may order an actuarial review of a multiple-employer welfare arrangement in addition to the actuarial opinion required by the Insurance Code, Article 3.95-8(a)(2). The cost of any such additional actuarial review shall be paid by the multiple-employer welfare arrangement.

#### **SECTION 15. EXAMINATIONS OF SELF-FUNDED MEWAs**

(a) The Commissioner or any person appointed by the Commissioner shall have the power to examine the affairs and conduct of any multiple-employer welfare arrangement and for such purposes shall have free access to all the books, records, and documents that relate to the business of the plan and may examine under oath its trustees or directors, officers, agents, and employees in relation to the affairs, transactions, and condition of the multiple-employer welfare arrangement. Examinations of a multiple-employer welfare arrangement shall be made in the same manner and with the same frequency that applies to domestic and foreign insurers licensed to transact the business of insurance in this state.

(b) Expenses of examination shall be paid by each multiple-employer welfare arrangement in the same manner and to the same extent as is provided for domestic insurance companies under the Arkansas Insurance Code.

#### **SECTION 16. DUTIES OF TRUSTEES AND OFFICERS OF SELF-FUNDED MEWAs**

(a) The trustees or directors of a multiple-employer welfare arrangement shall give the attention and exercise the vigilance, diligence, care, and skill that prudent persons use in like or similar circumstances. Trustees or directors shall be responsible for all operations of the multiple-employer welfare arrangement and shall take all necessary precautions to safeguard the assets of the multiple-employer welfare arrangement.

(b) The board of trustees or directors shall select such officers 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 multiple-employer welfare arrangement. All officers and agents shall respectively have such authority and perform such duties in the management of the property and affairs of the multiple-employer welfare arrangement as may be delegated by the board of trustees or directors. Any officer or agent may be removed by the board of trustees or directors whenever in their judgment the business interests of the multiple-employer welfare arrangement will be served by the removal. The board of trustees or directors shall secure the fidelity of any or all such officers or agents who handle the funds of the multiple-employer welfare arrangement by bond or otherwise.

(c) Trustees or directors shall serve without compensation from the multiple-employer welfare arrangement except for actual and necessary expenses. A multiple-employer welfare arrangement shall not pay any salary, compensation, or emolument to any officer of the multiple-employer welfare arrangement unless the payment is first authorized by a majority vote of the board of trustees or directors of the multiple-employer welfare arrangement.

(d) An officer, employee, or agent of a multiple-employer welfare arrangement shall not be compensated unreasonably. The compensation of any officer or employee of a multiple-employer welfare arrangement shall not be calculated directly or indirectly as a percentage of money or premium collected. The compensation of any agent shall not exceed 5% of the money or premium collected.

#### **SECTION 17. OPERATIONAL REQUIREMENTS OF SELF-FUNDED MEWAs**

The application, formation, financial and reporting requirements in this Rule (Sections Six (6) through Section Sixteen (16)), or as modified annually at renewal, shall be maintained at all times during the active operations of a self-funded MEWA unless otherwise permitted under State or Federal law.

#### **SECTION 18. PARTICIPATION AND PREMIUM CHARGES FOR SELF-FUNDED MEWAs**

(a) A multiple employer welfare arrangement may charge premiums in accordance with this section to the group of employees or dependents who meet the participation criteria and who do not decline coverage.

(b) A multiple employer welfare arrangement may not charge an adjustment to premium rates for individual employees or dependents for health status related factors or duration of coverage. Any adjustment must be applied uniformly to the rates charged for all participating employees and dependents of participating employees of the employer.

(c) Subsection (b) does not restrict the amount that an employer may be charged for coverage.

(d) A multiple employer welfare arrangement may establish premium discounts, rebates, or a reduction in otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.

#### **SECTION 19. SUSPENSION, REVOCATION OR LIMITATION OF CERTIFICATE OF AUTHORITY FOR SELF-FUNDED MEWAs AND OTHER REMEDIE**

The Commissioner may suspend, revoke or limit the certificate of authority of a multiple-employer welfare arrangement if the Commissioner finds, after notice and hearing, that the multiple-employer welfare arrangement does not meet the requirements of this Rule.

#### **SECTION 20. FULLY-INSURED MEWA REGISTRATION REQUIREMENTS**

Fully-insured MEWAs shall continue to register with the Department filing the form and attachments required in AID Form Rev 2/16, entitled, "Instructions For Registration of Self-Funded Single Employer Plans, Collectively Bargained Welfare Benefit Plans, Multiple Employer Trusts and Multiple Employer Welfare Arrangements."

#### **SECTION 21. PENALTIES**

Violations of this Rule shall constitute an unfair or deceptive act under Ark. Code Ann. §23-66-206.

#### **SECTION 22. EFFECTIVE DATE**

The effective date of this Rule is January 1, 2020.

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**ALLEN KERR**  
**ARKANSAS INSURANCE COMMISSIONER**

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**DATE**

## **FORMS**

The below application forms are being created, consistent with the requirements in this Rule, and will be provided and attached to this Rule upon the close of the administrative record.

- (1) Form Number 1, Name Application;**
- (2) Form A-MEWA, Application for Certificate of Authority;**
- (3) Form B-MEWA, Application to do Business as a Multiple-Employer Welfare Arrangement;**
- (4) Officers, Directors or Trustees Page;**
- (5) Biographical Affidavit;**
- (6) Form MEWA-SOP (Service of Process).**