

CHAPTER 18 - MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

11 NCAC 18 .0101 PURPOSE AND SCOPE

The purpose of this Section is to implement the provisions of Article 49 of General Statute Chapter 58 and to regulate the issuance of a license and the operation of a MEWA as provided in that Article. The definition of "multiple employer welfare arrangement" or "MEWA" contained in G.S. 58-49-30(a) is incorporated herein by reference, including any subsequent amendments or editions.

History Note: Authority G.S. 58-2-40(1); 58-49-30; 58-49-35; 58-49-40; 58-49-50; 58-49-55; 58-49-60; 58-49-65;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0102 GENERAL ELIGIBILITY

(a) Each MEWA shall provide to the Commissioner adequate documentation that the exemption under Section 501(c) of the Internal Revenue Code has been granted, or that the MEWA will operate solely for the benefit of the members of the MEWA. Any profits from the operation of the MEWA shall be invested in securities as allowed by G.S. 58-7-160 through G.S. 58-7-200, and the interest or other profits accrued or received thereon shall be used to provide rate stability or provide other such benefits for the members to which the trustees and the Commissioner agree; and the trust agreement shall so state.

(b) Each MEWA shall be established by a trade association, industry association, or professional association.

(c) As used in this Rule:

- (1) "Industry association" means member employers who are in the same major group code, as defined by the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget; unless restricted by Subparagraph (c)(2) or (3) of this Rule.
- (2) "Professional association" means member employers who are of the same type of profession, such as physicians, dentists, accountants, lawyers, or architects; but is not limited to those professions. However, the profession must be one that is recognized by the required licensing agency.
- (3) "Trade association" means member employers who are in the same type of trade, such as plumbers or electricians; and any others that are trade designations as recognized by the required licensing agency.

(d) The feasibility study required by G.S. 58-49-50(7) shall disclose all material assumptions.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-50;
Eff. August 3, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0103 FILING REQUIREMENTS

(a) All communications and filings shall be made to the Deputy Commissioner, Life and Health Division, North Carolina Department of Insurance, 1201 Mail Service Center, Raleigh, North Carolina 27699-1201.

(b) To apply for licensure, an applicant shall submit the following information required by G.S. 58-49-50:

- (1) A Form MEWA-1 entitled "Application for License for Multiple Employer Welfare Arrangement (MEWA)";
- (2) A Form MEWA-3A entitled "Biographical Affidavit," for all officers, directors, and trustees of the MEWA that shall contain information to enable the Commissioner to determine if such persons are disqualified pursuant to G.S. 58-49-40(e);
- (3) A list of all names, addresses, and telephone numbers of participating employers and the number of employees covered by the MEWA;
- (4) A statement of the reasons for applying for a North Carolina MEWA license;
- (5) A description of how the MEWA proposes to develop and supervise its operations in North Carolina;
- (6) The name, title, and qualifications of the person who will be responsible for the MEWA's operation in North Carolina (the managing general agent if the MEWA is domiciled outside of North Carolina); and
- (7) The location of and a description of the office facilities that will be provided by the MEWA in North Carolina.

(c) All forms may be obtained from the Department's website at http://www.ncdoi.com/LH/Licensing,_Renewals_and_Other_-_MEWA.aspx#Certificate. Every application shall contain a certification that any changes to the information required by G.S. 58-49-50 and this Rule shall be reported to the Commissioner.

(d) During the pendency of an application, the MEWA shall update the Commissioner of any changes in the required information, statements, documents, and materials.

(e) An application for a license is not complete until the MEWA has satisfied the Commissioner that the MEWA is in compliance with all of the requirements of Article 49 of General Statute Chapter 58 and this Section. The Commissioner shall not process an incomplete application.

(f) All financial information required by G.S. 58-49-50 and the rules of this Section shall be prepared in accordance with statutory accounting principles.

(g) Any change in the information required by Article 49 of General Statute Chapter 58 or by this Section shall, unless otherwise specified in that Article or in this Section, be reported to the Commissioner within two business days after such change.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-50; 58-49-60;
Eff. July 1, 1992;
Readopted Eff. December 1, 2017.

11 NCAC 18 .0104 FINANCIAL

(a) A MEWA may participate in a cash management program as long as the MEWA has direct access to its funds at all times and the depository or custodian maintains a separate accounting for each account. The depository or custodian must be a national or state bank, savings and loan association, or trust company.

(b) No surplus note(s) or the interest thereon shall be paid or repaid without the specific written approval of the Department. If there is more than one surplus note, each note shall have its own unique identification number in the upper left hand corner of each page of the document.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-60;
Eff. August 3, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0105 ADMINISTRATIVE, PROVIDER, AND MANAGEMENT CONTRACTS

(a) As used in this Rule, "fees" means any compensation, including but not limited to, cash or other assets of a MEWA that is transferred for either contracted or noncontracted services that are rendered to the sponsoring association or the MEWA.

(b) A MEWA is prohibited from paying any fees, other than for reimbursement of specific expenses, to its sponsoring association unless the services rendered to the MEWA are available to the MEWA from persons other than the sponsoring association.

(c) The fees for such services shall not be in excess of what would be charged in an arms length transaction. Reasonable fees may also be determined by comparing those charged to other MEWAs in North Carolina.

(d) A MEWA shall give the Commissioner written notification of any proposed change to a management or administrative contract at least 45 days before the effective date of such change.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-50;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0106 ANNUAL REPORT

A request for an extension of time to file an annual report must be made in writing and filed with the Department no later than 15 days before the due date of the annual report. Any request for extension received less than 15 days before the due date of the annual report shall be denied except in instances of death or disability of key personnel or destruction of records by fire or by another event clearly out of the MEWA's control.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-60;

Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0107 EXAMINATION BY THE DEPARTMENT

If the Department determines that the records of a MEWA are not adequate to make a determination of solvency or insolvency, the Department may take any action, administrative or otherwise, available to the Department as if the MEWA were insolvent.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-55; 58-49-65;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0108 POWER OF ATTORNEY

A power of attorney appointing an individual to receive service of legal process must be submitted by every MEWA on Form MEWA-4 entitled "Power of Attorney". Such individual shall be a resident of North Carolina and either a corporate official of the MEWA or the MEWA's managing general agent for the State, and must be readily accessible and available for service. Both the residential and business addresses of such individual must be provided. Any change in the power of attorney after issuance of the MEWA's license must be reported to the Commissioner within two business days after the effective date of the change.

History Note: Authority G.S. 58-2-40(1); 58-16-30; 58-49-40; 58-49-50;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0109 FIDELITY BOND

The fidelity bond required by G.S. 58-49-50(5) shall be issued only by a surety company licensed to transact insurance in North Carolina. The bond shall be in an amount equal to no less than 10 percent of the funds or assets of the MEWA that are managed or handled annually, subject to the minimum and maximum amounts stated in G.S. 58-49-50(5). The MEWA shall notify the Commissioner of any change to the bond, including termination, change in bond amount, or change in bonded MEWA employee, within two business days after the effective date of the change.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-50;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0110 SALES AND MARKETING

Any person who solicits memberships for a MEWA shall solicit only eligible member employers of the sponsoring association, and only if that person is appointed to solicit by the Board of Trustees of the MEWA. The sponsoring association shall provide the representative with a list of eligible member employers that are not in the MEWA.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-50;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0111 DISCLOSURE

Any person who advertises or solicits coverage on behalf of a MEWA or who in any manner secures, helps, or aids in the planning or administration of coverage with any MEWA shall:

- (1) Prominently disclose in writing to every employer being solicited for participation the information specified in G.S. 58-49-25 and 58-49-40(b); and
- (2) Provide such employer with a statement, if applicable, as to which provisions of North Carolina insurance statutes and rules, such as mandated benefits, freedom of choice of providers, continuation

or conversion privileges, pre-existing conditions limitations, or premium rate revision guarantees, are not afforded by the MEWA.

History Note: Authority G.S. 58-2-40(1); 58-49-25; 58-49-40; 58-49-50;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0112 CLAIMS PAYMENTS

In order to assure that all valid claims for payments for benefits provided are paid within a reasonable time, the following standards apply:

- (1) Each MEWA shall pay within 30 days of receipt by the MEWA or its administrator, if applicable, all valid claims for benefits.
- (2) If the MEWA requires additional information, the MEWA shall request such additional information in writing within the 30-day period; and upon receipt of the additional information, the claim shall be paid within 30 days of receipt of the additional information.
- (3) If the claim is denied, the MEWA shall provide the reason or reasons for the denial in writing to the claimant and the claimant's health care provider.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-50;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0113 DISSOLUTION

Any application to dissolve a MEWA must be made on Form MEWA-5 entitled "Application for Dissolution". An application for dissolution will not be considered to have been received by the Commissioner until it has been completed to his satisfaction. Such application shall be filed with the Commissioner at the same time the MEWA files articles of dissolution with the Secretary of State of North Carolina, a copy of which articles shall accompany the application.

History Note: Authority G.S. 58-2-40(1); 58-49-40; 58-49-50;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0114 DEFINITIONS

As used in this Rule and in 11 NCAC 18 .0115, 11 NCAC 18 .0116, and 11 NCAC 18 .0117, the following terms have the meanings ascribed to them:

- (1) "Claims accrued" means that portion of claims incurred on or prior to the valuation date that result in liability of the MEWA for the payment of benefits for medical services that have been rendered on or prior to the valuation date, and for the payment of benefits for days of hospitalization and days of disability that have occurred on or prior to the valuation date, that the MEWA has not paid as of the valuation date, but for which it is liable, and will have to pay after the valuation date. This liability is sometimes referred to as a liability for accrued benefits.
- (2) "Claims reported" means when a MEWA has been informed that a claim has been incurred, if the date reported is on or prior to the valuation date, the claim is considered as a reported claim for annual statement purposes.
- (3) "Claims unaccrued" means that portion of claims incurred on or before the valuation date that result in liability of the MEWA for the payment of benefits for medical services expected to be rendered after the valuation date, and for benefits expected to be payable for days of hospitalization and days of disability occurring after the valuation date. This liability is sometimes referred to as a liability for unaccrued benefits.
- (4) "Claims unreported" means when a MEWA has not been informed, on or before the valuation date, concerning a claim that has been incurred on or prior to the valuation date, the claim is considered as an unreported claim for annual statement purposes.

- (5) "Claim reserves" mean reserves or liabilities held for claims incurred on or before the valuation date, but unpaid as of the valuation date. Claim reserves include both reported and unreported claims. Claim reserves are established for both accrued and unaccrued benefits.
- (6) "Incurred date" means the date that a claim is determined to be a liability of the MEWA. For example, the charges for inpatient hospital and physician visits in hospitals would be assigned an incurred date equal to the date of admission; outpatient hospital charges would be assigned an incurred date equal to the date of service; surgical expenses would be assigned an incurred date equal to the date of the surgery.
- (7) "Unearned premium reserves" mean reserves established for premiums received that produce insuring periods extending beyond the valuation date.

History Note: Authority G.S. 58-2-40; 58-49-40; 58-49-60;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0115 MINIMUM RESERVE STANDARDS

(a) The following two categories of reserves shall be established by every MEWA:

- (1) Claim reserves; and
- (2) Premium reserves.

(b) The adequacy of a MEWA's health insurance reserves shall be determined on the basis of the two categories combined; however, the standards in this Rule and in 11 NCAC 18 .0116 and .0117 emphasize the importance of determining appropriate reserves for each category separately.

(c) When a MEWA determines that adequacy of its health insurance reserves requires reserves in excess of these minimum standards, such increased reserves shall be held and shall be considered the minimum reserves for that MEWA.

History Note: Authority G.S. 58-2-40; 58-49-40; 58-49-60;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0116 CLAIM RESERVES

(a) Minimum claim reserves are required for all incurred but unpaid claims, which include claims accrued and claims unaccrued.

(b) For the current year exposures, where historical claim information is either not available or not credible as determined by an actuary, the minimum claim reserve shall be calculated in the following manner:

- (1) Calculate the total earned premium as of the end of a valuation period for each policy form, group of policy forms, master contract, or group of master contracts.
- (2) Multiply the total earned premium by the expected incurred loss ratio for each policy form, group of policy forms, master contract, or group of master contracts. The sum of the results of these multiplications is referred to as the "total incurred claims".
- (3) Subtract from the total incurred claims the total amount of claims paid as of the end of a valuation period. The result of this subtraction is the total "minimum" amount that shall be added to the claim reserves established at the beginning of the valuation period.
- (4) The calculations in Subparagraphs (b)(1) and (2) of this Rule may give recognition to duration.

(c) For later years of exposures, where historical claim information is available and credible as determined by an actuary, the minimum reserve shall be calculated using any generally accepted or reasonable actuarial claim runoff method. Claim runoff schedules shall be developed by using appropriate incurred dates and paid dates for claims. Adequacy of the claim reserves shall be determined in the aggregate.

(d) Appropriate claim expense reserves are required with respect to the estimated expense of settlement of all incurred but unpaid claims. Claim settlement expenses shall include both allocated and unallocated expenses.

(e) All claim reserves for prior valuation periods shall be tested for adequacy and reasonableness along the lines of claim runoff schedules in accordance with the statutory financial statement including consideration of any residual unpaid liability.

(f) Each MEWA shall develop a follow-up study comparing its previous reserve estimates against subsequent claims actually paid together with the remaining estimated liability as of the valuation date. The results of this study shall be filed with the Actuarial Service Division of the Department by March 1 of each calendar year.

History Note: Authority G.S. 58-2-40; 58-49-40; 58-49-60;
Eff. August 3, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0117 PREMIUM RESERVES

- (a) Unearned premium reserves are required for all MEWAs with respect to the period of coverage for which premiums, other than premiums paid in advance, have been paid beyond the date of valuation.
- (b) If premiums due and unpaid are carried as an asset, such premiums must be treated as premiums in force, subject to unearned premium reserve determination. The value of the unpaid commissions and the cost of collection associated with due and unpaid premiums must be carried as an offsetting liability.
- (c) The minimum unearned premium reserve with respect to any contract is the pro rata gross unearned modal premium that applies to the premium period beyond the valuation date.
- (d) MEWAs may employ suitable approximations or estimates, including groupings, averages, and aggregate estimation, in computing premium reserves. Such approximations or estimates shall be tested periodically to determine their continuing adequacy and reliability.

History Note: Authority G.S. 58-2-40; 58-49-40; 58-49-60;
Eff. July 1, 1992;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0118 MAXIMUM NET RETENTION STANDARD

- (a) The specific maximum net retention limit for any MEWA, associated with the period of time that the excess insurance coverage is in force, shall be calculated in the following manner:
 - (1) Determine the total expected dollar value of claims;
 - (2) Determine the total surplus at the beginning of the period of time that the excess insurance coverage is scheduled to be in force;
 - (3) Multiply Subparagraph (a)(1) of this Rule by one percent and add that product to Subparagraph (a)(2) of this Rule;
 - (4) Multiply the result of the calculation in Subparagraph (a)(3) of this Rule times itself;
 - (5) Multiply Subparagraph (a)(1) of this Rule by the number 3.4; and
 - (6) Divide the product of the calculation in Subparagraph (a)(4) of this Rule by the product of the calculation in Subparagraph (a)(5) of this Rule.
- (b) The specific maximum net retention limit shall not exceed the lesser of:
 - (1) The amount in Subparagraph (a)(6) of this Rule;
 - (2) Twenty-five thousand dollars (\$25,000); or
 - (3) The specific maximum net retention limit determined by or for the MEWA in accordance with sound actuarial principles.
- (c) The aggregate maximum net retention shall not exceed the lesser of:
 - (1) One hundred twenty-five percent of Subparagraph (a)(1) of this Rule; or
 - (2) The aggregate maximum net retention limit determined by or for the MEWA in accordance with sound actuarial principles.
- (d) The Commissioner may approve a specific maximum net retention limit or an aggregate maximum net retention limit or both in excess of those calculated pursuant to this Rule, upon application to the Commissioner and the Commissioner's determination that the increase would not inhibit the ability of the MEWA to perform its present and future contractual obligations to policyholders and participants under the MEWA's plan.

History Note Authority G.S. 58-2-40; 58-49-40(c);
Eff. July 1, 1992;
Amended Eff. October 1, 2008;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.

11 NCAC 18 .0119 "QUALIFIED ACTUARY"; MAXIMUM NET RETENTION FILING

(a) As used in this Rule and in 11 NCAC 18 .0120 and 11 NCAC 18 .0121, "qualified actuary" means an individual who is either an Associate or Fellow of the Society of Actuaries or a Member of the American Academy of Actuaries and who has at least five years of actuarial experience with MEWAs.

(b) Every year each MEWA shall calculate its maximum net retention limit in accordance with 11 NCAC 18 .0118. This calculation must be performed before the anniversary date of the MEWA's stop-loss insurance contract and shall be filed, no later than 30 days before the anniversary date of the stop-loss insurance contract, with the Actuarial Services Division of the Department. This calculation shall include the numerical results of all steps in 11 NCAC 18 .0118 and shall be performed by a qualified actuary.

*History Note: Authority G.S. 58-2-40; 58-49-40(c); 58-49-50;
Eff. July 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.*

11 NCAC 18 .0120 CERTIFICATION OF RESERVES FILING

Every year each MEWA shall file the following actuarial certifications executed by a qualified actuary in the following manner:

"I (Name of Qualified Actuary) am a qualified actuary as defined by 11 NCAC 18 .0119(a) and I have reviewed:"

- (1) 11 NCAC 18 .0115 titled, "Minimum Reserve Standards," and I certify that if the adequacy of the MEWA's reserves requires reserves in excess of the minimum standards described in 11 NCAC 18 .0116 and 11 NCAC 18 .0117, then such increased reserves will be held and considered the minimum reserves for (Name of MEWA).
- (2) 11 NCAC 18 .0116 titled, "Claim Reserves," and I certify that the MEWA's claim reserves are being calculated in an actuarially sound manner that produces reserves at least as great as those prescribed in 11 NCAC 18 .0116.
- (3) 11 NCAC 18 .0117 titled, "Premium Reserves," and I certify that the MEWA's premium reserves are being calculated in an actuarially sound manner that produces reserves at least as great as those prescribed in 11 NCAC 18 .0117.
- (4) 11 NCAC 18 .0118 titled, "Maximum Net Retention Standard," and I certify that the MEWA's maximum net retention limits are being calculated in an actuarially sound manner that produces maximum net retention limits no greater than those prescribed in 11 NCAC 18 .0118, unless the Commissioner of Insurance has approved such higher limits as described in 11 NCAC 18 .0118(d).

*History Note: Authority G.S. 58-2-40; 58-49-40(c);
Eff. July 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.*

11 NCAC 18 .0121 DEFINITIONS AND CERTIFICATION OF RATES FILING

(a) As used in this Rule, the following terms have the meanings ascribed to them:

- (1) "Rates are adequate" for a given block of policies or certificates means that the total payments collected now and in the future by the MEWA plus the investment earnings attributable to any net retained funds should be at least sufficient to fund the current and future benefits promised plus cover related expenses.
- (2) "Block of policies" means all policies or certificates issued by the MEWA under the same schedule of rates and on the same policy form or under the same group master contract.
- (3) "Rates are not excessive" for a given block of policies or certificates means that the most recent calendar year incurred loss ratio is greater than or equal to one minus the expense ratio for that given block of policies or certificates.

- (4) "Expense ratio" means the ratio of the MEWA's operating expenses for a block of policies or certificates to its earned premium for that block of policies or certificates.
 - (5) "Operating expense" means any combination of the following expenses:
 - (A) Commissions;
 - (B) Other acquisition;
 - (C) General administration;
 - (D) Taxes, licenses, and fees; and
 - (E) Profit and contingency margin.
 - (6) Rates are not "unfairly discriminatory" if they reflect equitably differences in expected risk.
- (b) Every year each MEWA shall file the following actuarial certification executed by a qualified actuary in the following manner:

"I (Name of Qualified Actuary) am a qualified actuary as defined in 11 NCAC 18 .0119(a) and I certify that the rates developed for (Name of MEWA) are calculated in an actuarially sound manner and that these rates are adequate, not excessive, and not unfairly discriminatory."

*History Note: Authority G.S. 58-2-40; 58-49-40(c); 58-49-50;
Eff. July 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 16, 2014.*