

STATE OF NEW MEXICO

OFFICE OF SUPERINTENDENT OF INSURANCE



SUPERINTENDENT OF INSURANCE
Alice T. Kane

BULLETIN 2023-017

JUNE 23, 2023

TO: ALL MULTIPLE EMPLOYER WELFARE ARRANGEMENTS OPERATING IN NEW MEXICO

RE: INTERIM GUIDANCE ON MEWA REGISTRATION PENDING ISSUANCE OF FINAL REGULATION AT 13.19.4 NMAC

The Legislature directed the Superintendent to adopt and promulgate rules for Multiple Employer Welfare Arrangements (“MEWA”) in NMSA 1978 §59A-15-20. These regulations primarily addressed self-funded MEWAs, without specifically addressing requirements as other types of MEWAs, including Employee Leasing Contractors. On June 16, 2023, HB255 becomes law, which codifies Employee Leasing Contractors as MEWAs. The Superintendent is in the process of promulgating updated rules for MEWAs through 13.19.4 NMAC. This will streamline the regulatory process for fully-insured MEWAs. To date, no final rule has been issued.

Until the final MEWA rule goes into effect, the Superintendent offers the following guidance for Employee Leasing Contractors seeking registration in accordance with HB255.

All MEWAs must be properly registered with the Superintendent in order to operate in New Mexico. The Superintendent understands that some of the application requirements found in 13.19.4.11 NMAC may not be directly applicable to Employee Leasing Contractors. The Superintendent instructs all applicants to provide the items requested, or appropriate equivalent, whenever such documents are available to the MEWA seeking registration. For items that are not applicable to a fully-insured MEWA, the Superintendent instructs the applicant to note the item is “not applicable” and provide a brief description as to why the applicant is unable to provide the document in question.

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The Superintendent further clarifies that, in accordance with NMSA 1978 §59A-15-20(D), fully-insured MEWAs are not subject to the following sections of the current MEWA rules:

- 13.19.4.14 -- SELF-FUNDED MEWA DEPOSIT REQUIREMENTS
- 13.19.4.15 -- SELF-FUNDED MEWA MINIMUM SOLVENCY REQUIREMENTS
- 13.19.4.16 – ACCOUNTING STANDARDS AND REPORTING REQUIREMENTS
- 13.19.4.17 -- INVESTMENT REQUIREMENTS OF SELF-FUNDED MEWAS
- 13.19.4.18 -- FINANCIAL INTEGRITY OF SELF-FUNDED MEWAS
- 13.19.4.19 -- SELF-FUNDED MEWA STOP-LOSS COVERAGE REQUIREMENTS
- 13.19.4.20--ENDING SELF-FUNDED, RUNOFF PERIOD, AND PLAN DISSOLUTION
- 13.19.4.21 -- EFFECT OF REGISTRATION.

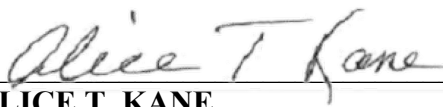
With regards to Rate and Form Filing Requirements specified in 13.19.4.23 NMAC, the Superintendent clarifies that all Employee Leasing Contractors covering New Mexico residents shall charge premium rates in compliance with state and federal law, consistent with the size of the market applicable to Employee Leasing Contractors as specified in HB255.

- If an Employee Leasing Contractor has at least two but not more than fifty employees, the Employee Leasing Contractor shall be treated as a small employer pursuant to the Health Insurance Portability Act, and the group health plan that it sponsors shall be subject to the rules of the small group market including rules applicable to the small group market by reason of the federal Patient Protection and Affordable Care Act; and
- If an Employee Leasing Contractor has fifty-one or more employees, the Employee Leasing Contractor shall be treated as a large employer pursuant to the Health Insurance Portability Act, and the group health plan that it sponsors shall be subject to the rules of the large group market, including rules applicable to the large group market by reason of the federal Patient Protection and Affordable Care Act.
- With respect to a group health plan described above that is subject to large group market rules, the rules shall apply to the group health plan as a whole and any rules applicable solely to other markets, such as the small group market or individual market, shall not apply to the group health plan or to any of the coverage provided by the group health plan.

Fully-insured MEWAs are responsible for ensuring any plans they purchase from insurance carriers have been approved by the OSI before the coverage goes into effect.

If you have questions regarding this Bulletin, please contact Cass Brulotte, Life & Health Attorney at cass.brulotte@osi.nm.gov.

ISSUED this 23RD day of June, 2023.



ALICE T. KANE
Superintendent of Insurance