

191—77.3(507A) Self-insured multiple employer welfare arrangements.

77.3(1) Certificate of registration. A person shall not establish or maintain a self-insured employee welfare benefit plan that is a self-insured MEWA in this state unless the MEWA obtains and maintains a certificate of registration pursuant to this rule. Such certificate of registration is required for all MEWAs that elect to offer self-insured employee welfare benefit plans to residents of this state whether or not the MEWA is domiciled in the state.

77.3(2) Application for certificate of registration.

a. A person wishing to obtain a certificate of registration as a self-insured MEWA pursuant to this chapter shall submit an application and a plan of operation to the commissioner. This application and plan of operation shall include the following:

(1) A business plan, including a copy of all health coverage contracts or other instruments which the self-insured MEWA applicant proposes to make with or sell to its employer members or its association's or group's members, a copy of its health coverage description and the printed matter to be used in the solicitation of employer members or its association's or group's members to purchase the health coverage.

(2) Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to the self-insured MEWA applicant.

(3) A current list of all members of the employer group or association sponsoring the self-insured MEWA applicant, a description of the relationship among the employers, a description of how the relationship serves as the basis for the formation of the association or employer group, and a description of how the employer group or association complies with paragraphs 77.3(5) "a" and 77.3(5) "b," if applicable.

(4) A description of the activities of the association or group of employers on behalf of its employer members or its association's or group's members other than the sponsorship of the self-insured MEWA applicant, to further demonstrate compliance with paragraph 77.3(5) "a," if applicable.

(5) Current financial statements of the self-insured MEWA applicant that shall include, at a minimum, balance sheets, an income statement, a cash flow statement and a detailed listing of assets.

(6) An actuarial opinion which is prepared, signed, and dated by a person who is a member of the American Academy of Actuaries and which states that appropriate loss and loss adjustment reserves have been established, that adequate premiums are being charged, and that the association is operating in accordance with sound actuarial principles and in conformance with this rule.

(7) A statement from an authorized representative of the self-insured MEWA applicant that certifies all of the following:

1. The self-insured MEWA applicant shall be administered by an insurer authorized to do the business of insurance in this state or by an authorized third-party administrator that holds a current certificate of registration issued by the commissioner pursuant to Iowa Code section 510.21.

2. The self-insured MEWA applicant is established by a trade, industry, or professional association of employers that has a constitution or bylaws, is organized and maintained in good faith, and meets all membership requirements set forth in subrule 77.3(5).

3. The association or group of employers sponsoring the self-insured MEWA applicant is engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan.

4. The association is a nonprofit entity organized or authorized to do business under applicable Iowa law.

5. No insurance producers or benefits consultants established, sponsored, administer, or serve as a trustee or on the governing body of the self-insured MEWA applicant.

(8) A certificate from an authorized representative of the self-insured MEWA applicant that, to the best of the authorized representative's knowledge and belief, the self-insured MEWA applicant is in compliance with all applicable provisions of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(9) A description of and evidence of a mechanism, approved by the commissioner, to ensure that claims shall be paid in the event an employer member of the self-insured MEWA applicant is unable to comply with the self-insured MEWA applicant's contribution requirements.

(10) A copy of the most recent Form M-1 filed by the self-insured MEWA applicant with the U.S. Department of Labor, Pension and Welfare Benefits Administration.

(11) Biographical affidavits from all members of the board of directors of the self-insured MEWA applicant. The affidavits shall be prepared using the current template for biographical affidavits prescribed by the National Association of Insurance Commissioners. This requirement shall not apply to any MEWA registered with the state prior to January 1, 2018.

(12) Any additional information requested by the commissioner.

b. The commissioner shall examine the application, the plan of operation, and any supporting documents submitted by the applicant. The commissioner may conduct any investigation that the commissioner may deem necessary and may examine under oath any persons interested in or connected with the self-insured MEWA applicant.

c. Within a reasonable time, either the commissioner shall issue to the self-insured MEWA applicant a certificate of registration upon finding that the self-insured MEWA applicant has met all requirements or the commissioner shall deny the application for a certificate of registration and provide notice to the self-insured MEWA applicant setting forth reasons for finding that the self-insured MEWA applicant does not meet all the requirements. An unsuccessful applicant may file a new application for a certificate of registration at any time.

77.3(3) Financial requirements.

a. Surplus.

(1) Unless otherwise provided below or pursuant to the discretion of the commissioner, each self-insured MEWA shall deposit with an organization or trustee meeting the requirements of rule 191—32.4(508) cash, securities or any combination of these that is acceptable to the commissioner in the amount set forth below. In addition to the requirements set forth below, the commissioner may increase the amount required to be deposited based on the commissioner's written determination that such an increase is necessary to adequately secure any potential liability of the self-insured MEWA to its employer members and enrollees, subject to Iowa Code chapter 17A proceedings.

(2) The surplus requirement for a self-insured MEWA shall be the greater of:

1. \$500,000; or
2. An amount equal to 10 percent of the written premium as of the previous December 31.

b. Reserves and stop-loss coverage.

(1) A self-insured MEWA shall have at all times aggregate excess stop-loss coverage providing the self-insured MEWA with coverage with an attachment point which is not greater than 120 percent of actuarially projected losses on a calendar-year basis.

(2) A self-insured MEWA shall establish and maintain specific stop-loss coverage providing the self-insured MEWA with coverage with an attachment point which is not greater than 5 percent of annual expected claims for purposes of this subrule and shall provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this subrule as determined by sound actuarial principles.

(3) A self-insured MEWA shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles.

(4) Premiums shall be set to fund at least 100 percent of the self-insured MEWA's actuarially projected losses plus all other costs of the self-insured MEWA.

(5) All coverage obtained pursuant to 77.3(3)"b"(1) and 77.3(3)"b"(2) shall contain a provision allowing for at least 90 days' notice to the commissioner upon cancellation or nonrenewal of the contract.

(6) No contract or policy of per-occurrence or aggregate excess insurance shall be recognized in considering the ability of an applicant to fulfill its financial obligations under this subrule, unless such contract or policy is issued by a person that is:

1. Licensed to transact business in this state; or
2. Authorized to do business in Iowa as an accredited or certified reinsurer.

77.3(4) Filing requirements. A self-insured MEWA shall file the following reports with the commissioner:

a. Annual report. A self-insured MEWA shall annually, on or before the first day of March, file a report which has been verified by at least two of its principal officers and which covers the preceding calendar year. The report shall be on the form designated by the commissioner. The report shall be completed using statutory accounting practices and shall include information required by the commissioner. The commissioner may request additional reports and information from a self-insured MEWA as deemed necessary.

b. Independent actuarial report. A self-insured MEWA shall annually, on or before the first day of March, file an independent actuarial opinion prepared in conformance with this rule. The commissioner may conduct an independent actuarial review of a self-insured MEWA in addition to the actuarial opinion required by this rule. The cost of any actuarial review shall be paid by the self-insured MEWA.

c. Certificate of compliance. A self-insured MEWA shall annually, on or before the first day of March, file a certificate of compliance, which shall be signed and dated by the appropriate officer representing the self-insured MEWA and shall certify all of the following:

(1) That the plan meets the requirements of this rule and the applicable provisions of Iowa statutes and regulations.

(2) That an independent actuarial opinion that attests to the adequacy of reserves, rates, and the financial condition of the plan has been attached to the certificate of compliance. The actuarial opinion must include, but is not limited to, a brief commentary about the adequacy of the reserves, rates, and other financial condition of the plan, a test of the prior year's claim reserve, a brief description of how the reserves were calculated, and whether or not the plan is able to cover all reasonably anticipated expenses. The actuarial opinion shall be prepared, signed, and dated by a person who is a member of the American Academy of Actuaries.

(3) That a written complaint procedure has been implemented. The certificate of compliance shall also list the number of complaints filed by participants under the written complaint procedure, and the percentage of participants filing written complaints in the prior calendar year.

(4) That the self-insured MEWA has contracted with an insurer authorized to do the business of insurance in this state or with a third-party administrator that holds a current certificate of registration issued by the commissioner pursuant to Iowa Code section 510.21.

d. Quarterly updates. A MEWA formed after January 1, 2018, shall provide during the first year after the commissioner issues the self-insured MEWA's certificate of registration a quarterly update comparing projections to actual experience.

e. Modifications to plan of operation. A self-insured MEWA shall file any modifications to the self-insured MEWA's plan of operation, including but not limited to amendments to articles of incorporation and bylaws.

77.3(5) Membership requirements.

a. Any employer group or association that intends to form a self-insured MEWA shall have been established for a good-faith purpose other than for the purpose of providing insurance or a health plan.

b. The employer group or association that wishes to form a self-insured MEWA shall have been in existence for a period of five years at the time it seeks a certificate of registration as a self-insured MEWA.

c. The employer group or association sponsoring the self-insured MEWA shall collect annual dues from its employer members.

d. Each employer member that participates in an employee welfare benefit plan offered by the self-insured MEWA may only provide coverage to "eligible employees" as defined in Iowa Code section 513B.2. This requirement only applies to the type of employees permitted to be employed by an employer member of the self-insured MEWA and has no impact on what type of rating must be utilized by the self-insured MEWA.

e. Any employer member that participates in an employee welfare benefit plan offered by a self-insured MEWA shall be a member of the employer group or association sponsoring the self-insured MEWA.

f. Any employer member that participates in an employee welfare benefit plan offered by a self-insured MEWA shall be required to participate in the self-insured MEWA for a period of not less than five calendar years. Any contract issued by a self-insured MEWA to an employer shall contain reasonable

enforcement provisions, including but not limited to reasonable fees or assessments for early departure or for enrollment in another MEWA during the early-departure period.

g. The activities of the self-insured MEWA, including the establishment and maintenance of the employee welfare benefit plan, shall be controlled by the self-insured MEWA's employer members, either directly or indirectly through the regular nomination and election of directors, trustees, officers, or other similar representatives to control on the employer members' behalf.

h. The membership requirements set forth in paragraphs 77.3(5) "a" through 77.3(5) "g" are not applicable to self-insured MEWAs that received a certificate of registration from the commissioner prior to January 1, 2018.

77.3(6) Policy or contract. All contracts issued by a self-insured MEWA shall comply with the following:

a. *Notice to purchasers.* Every self-insured MEWA application for coverage under the health plan and every policy and certificate issued by a self-insured MEWA shall contain in 14-point type or, if electronic, of equivalent prominence, on the front page the following notice prominently displayed:

NOTICE

This policy is issued by a multiple employer welfare arrangement (MEWA). MEWAs are not subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your MEWA.

Please review the policy closely to understand the covered benefits.

b. *Guaranteed issue.* Self-insured MEWAs shall offer on a guaranteed-issue basis health coverage to all individuals who qualify as enrollees of the employee welfare benefit plan offered by an employer member participating in the self-insured MEWA.

c. *Types of benefits that can be offered.* Self-insured MEWAs shall offer only medical, dental, optical, surgical, hospital, accident and sickness, prescription, life insurance, or disability benefits. A self-insured MEWA that offers life insurance benefits shall comply with all applicable provisions of the Iowa Code relating to life insurance and life insurance companies.

d. *Compliance with HIPAA.* All contracts or policies issued by a self-insured MEWA shall conform to all the provisions of P.L. 104-191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), including but not limited to guaranteed issue of all products, preexisting condition limitations, renewability, and portability provisions as well as the issuance of prior coverage certificates to enrollees no longer eligible for plan coverage.

e. *Compliance with state mandates.* The employee welfare benefit plan offered by a self-insured MEWA shall comply with all applicable state mandates, including Iowa Code chapter 514C, as if the health benefit plan were a group health policy under Iowa Code chapter 509.

f. *Actuarial value.* Every health benefit plan offered by an insurer to a self-insured MEWA must contain a level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

77.3(7) Disclosure. The following disclosure shall be made to each employer member of the self-insured MEWA in 14-point type or, if electronic, of equivalent prominence, on the front page of the policy or certificate:

The benefits and coverages described herein are provided through a self-insured trust fund established and funded in full or in part by a group of employers. It is not a licensed insurance company, and it is not protected by a guaranty fund in the event of insolvency.

77.3(8) Filing fee. A filing fee of \$100 shall accompany each application for a certificate of registration as a self-insured MEWA.

77.3(9) Agreements and management contracts. Any agreement between the self-insured MEWA and any administrator, service company, or other entity shall be made available for review in the office of the commissioner upon request by the commissioner.

77.3(10) Examination.

a. Each self-insured MEWA shall be subject to examination by the commissioner in accordance with Iowa Code chapter 507, as a “company,” and as if the self-insured MEWA is an “insurer,” under the definitions of that chapter. Iowa Code chapter 507 shall govern all aspects of the examination.

b. The commissioner may make an examination of a self-insured MEWA as often as the commissioner considers it necessary, but not less frequently than once every five years. The expenses of the examination shall be assessed against the self-insured MEWA being examined in a manner in which expenses of examinations are assessed against a company under Iowa Code chapter 507.

77.3(11) *Trade practices and enforcement.* A self-insured MEWA is subject to applicable provisions of Iowa Code chapter 507B, and rules promulgated under that chapter, as if the self-insured MEWA is a “person” as defined in Iowa Code section 507B.2(1). The commissioner may investigate whether a self-insured MEWA has violated this rule and, after a hearing conducted pursuant to Iowa Code chapter 17A, may enter any orders authorized under Iowa Code chapter 505, 507A or 507B.

77.3(12) *Insolvency.* The provisions of Iowa Code chapter 507C shall apply to self-insured MEWAs, which shall be considered insurers for purposes of that chapter. However, a self-insured MEWA shall not be subject to Iowa Code chapter 508C.

77.3(13) *Suspension or revocation of certificate of registration.* The commissioner may sanction a self-insured MEWA or suspend or revoke any certificate of registration issued to a self-insured MEWA upon any of the following grounds:

- a.* Failure to comply with any provision of these rules or any applicable provision of the Iowa Code.
- b.* Failure to comply with any lawful order of the commissioner.
- c.* Failure to promptly pay lawful benefit claims.
- d.* Committing an unfair or deceptive act or practice.
- e.* Deterioration of financial condition adversely affecting the self-insured MEWA’s ability to pay claims.
- f.* A finding that the application or any necessary forms that have been filed with the commissioner contain fraudulent information or omissions.
- g.* A finding that the self-insured MEWA or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to an employer member, a participant, or a person otherwise entitled thereto and that have been entrusted to the self-insured MEWA or its administrator in its fiduciary capacity.

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