

INSURANCE  
DEPARTMENT OF BANKING AND INSURANCE  
DIVISION OF INSURANCE

Actuarial Services

Self-Funded Multiple Employer Welfare Arrangements and Insured Multiple Employer Arrangements

Proposed New Rules: N.J.A.C. 11:4-56

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1 and 15e; P.L. 2001, c. 352 (codified as N.J.S.A. 17B:27C-1 et seq.); and N.J.S.A. 17B:27A-49.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-316

Submit comments by October 3, 2003 to:

Douglas Wheeler, Assistant Commissioner  
Department of Banking and Insurance  
Legislative and Regulatory Affairs  
20 West State Street  
PO Box 325  
Trenton, NJ 08625-0325  
Fax: (609) 292-0896  
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The agency proposal follows:

**Summary**

Health coverage can be provided by an employer to employees through a single employer health benefits plan, meaning a plan sponsored by one employer for its employees, or through a multiple employer health benefits plan, meaning a plan sponsored by two or more employers, including co-employers. Both single-employer and multiple-employer arrangements can be

either fully-insured plans purchased from a carrier or not fully-insured (that is, self-funded). These distinctions are relevant in determining the State and Federal laws that apply to a particular health benefits plan.

P.L. 2001, c. 352, the Self-Funded Multiple Welfare Arrangement Regulation Act (the Act) (codified as N.J.S.A. 17B:27C-1 et seq.), was approved on January 6, 2002, and became effective 90 days after enactment. The Act was intended to ensure the financial integrity of self-funded multiple employer welfare arrangements (self-funded MEWAs) through registration and reporting requirements, as well as sanctions for noncompliance. These proposed new rules implement the Act by establishing self-funded MEWA registration and reporting requirements.

These proposed new rules also implement N.J.S.A. 17B:27A-49, a provision of the Small Employer Health Benefits Law, which requires carriers that issue health benefits plans in this State to notify annually the Commissioner of the Department of Banking and Insurance of any health care coverage or benefits, stop-loss coverage, or administrative services only contracts they provide or enter into with a multiple employer arrangement (MEA) that provides health care benefits to employees and their dependents in this State.

N.J.A.C. 11:4-56.1 establishes the purpose and scope of these proposed new rules.

N.J.A.C. 11:4-56.2 contains definitions of the terms used throughout the subchapter.

N.J.A.C. 11:4-56.3 sets forth standards and procedures regarding the initial registration of self-funded MEWAs.

N.J.A.C. 11:4-56.4 contains renewal registration requirements for self-funded MEWAs.

N.J.A.C. 11:4-56.5 contains eligibility requirements for coverage obtained through self-funded MEWAs.

N.J.A.C. 11:4-56.6 sets forth the rating requirements applicable to self-funded MEWAs.

N.J.A.C. 11:4-56.7 contains the requirements applicable to self-funded MEWAs regarding changes to documents or information submitted to the Commissioner.

N.J.A.C. 11:4-56.8 contains the financial requirements applicable to self-funded MEWAs.

N.J.A.C. 11:4-56.9 sets forth self-funded MEWA financial reporting requirements. The annual report to be filed with the Commissioner is to be completed in accordance with the National Association of Insurance Commissioners (NAIC) Health Annual Statement Instructions. The Instructions are published annually by the NAIC, and contain a detailed explanation of how the annual report is to be completed. The annual report is to be completed on a statutory accounting principles basis, in accordance with the NAIC Accounting Practices and Procedures Manual published annually by the NAIC, and which contains statements of statutory accounting principles and is intended to be a comprehensive basis of accounting for reporting to state insurance regulators. Both the Instructions and Manual are incorporated by reference.

N.J.A.C. 11:4-56.10 contains rules regarding financial examinations of self-funded MEWAs.

N.J.A.C. 11:4-56.11 contains requirements for carriers to provide notice to the Department regarding contracts with multiple employer arrangements (MEAs).

N.J.A.C. 11:4-56.12 sets forth the penalties for noncompliance with this subchapter, as well as procedures for a hearing request for denial of either initial or subsequent annual registration.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

These proposed new rules will require self-funded MEWAs, insured MEAs and carriers to comply with certain registration and reporting requirements in order to ensure the financial integrity of these arrangements that provide health benefits to employees and/or their dependents. However, these regulatory measures should favorably impact these entities because the requirements will boost consumer confidence in the financial operations of these arrangements.

Employees covered under a self-funded MEWA will be favorably impacted by these rules because they will be assured that their employer-sponsored plan meets certain financial and reporting criteria, thereby helping to ensure the plan's continuing viability.

Small employers and their employees covered under self-funded MEWAs will be favorably impacted because they will have the benefit of requirements for the insured small employer health market, including guaranteed enrollment for members of the association, loss ratio and refund requirements, and limitations on permitted rating factors.

### **Economic Impact**

Self-funded MEWAs may be unfavorably impacted by the financial and reporting requirements contained in these proposed rules. Some of these requirements, such as the minimum \$200,000 deposit, a cash reserve adequate to provide for all incurred losses including unpaid claims, and aggregate stop-loss coverage, are mandated by the Act. Others, including a \$1,000 annual registration fee and various filing and reporting requirements, are being imposed by the Department's rules. Nevertheless, the rules establish consistent standards to be met by all

self-funded MEWAs operating in this State, thereby helping to ensure the economic viability of the plans.

The rules will have a positive economic impact on small employers that participate in self-funded MEWAs because these entities will now be subject to limited regulation by the Department.

#### **Federal Standards Statement**

A Federal standards analysis is not required because these rules are not subject to any Federal standards or requirements. Except for the requirements set forth in P.L. 2001, c. 352 and these rules, self-funded MEWAs are not considered insurance companies or insurers under the laws of this State. Self-funded MEWAs are subject to Federal requirements pursuant to the Employee Retirement Income Security Act (ERISA) at 29 U.S.C. § § 1001 et seq., but these proposed new rules do not interfere with or exceed any Federal standards or requirements.

#### **Jobs Impact**

The Department does not anticipate that the proposed new rules will result in the generation or loss of jobs.

#### **Agriculture Industry Impact**

The Department does not believe that the proposed new rules will have any impact on the agriculture industry in the State.

### **Regulatory Flexibility Analysis**

The proposed new rules may apply to “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules will subject all self-funded MEWAs and carriers contracting with insured MEAs to certain reporting recordkeeping and other compliance requirements.

P.L. 2001, c. 352 and these proposed rules do impose certain reporting, recordkeeping and other compliance requirements on self-funded MEWAs as stated in the Economic Impact above. However, the requirements contained in the legislation do not vary based on size because the legislation was intended to ensure the financial integrity of all MEWAs, and the Department believes that different reporting or compliance requirements for self-funded MEWAs based on size would not be appropriate or feasible; therefore, the proposed new rules provide no such differentiation.

The proposed new rules applicable to carriers contracting with insured MEAs implement the statutory reporting requirements of N.J.S.A. 17B:27A-49, and do not independently impose any additional costs or burdens on those entities. The legislation does not provide for any different compliance requirements based on carrier size. Accordingly, the Department believes that different compliance requirements based on size would not be appropriate or feasible.

The Department does not anticipate that any small businesses that may be affected by these rules would be required to hire additional staff or obtain professional services in order to comply with the rule's requirements.

**Smart Growth Impact Statement**

The proposed new rules have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed new rules follows:

SUBCHAPTER 56. SELF-FUNDED MULTIPLE EMPLOYER WELFARE  
ARRANGEMENTS AND INSURED MULTIPLE EMPLOYER  
ARRANGEMENTS

11:4-56.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17B:27C-1 et seq. by establishing rules for the registration, regulation and reporting of self-funded and partially self-funded multiple employer welfare arrangements (self-funded MEWAs). This subchapter also implements N.J.S.A. 17B:27A-49 by clarifying the requirement that insured multiple employer arrangements (MEAs) notify the Commissioner of certain information on an annual basis.

(b) This subchapter applies to self-funded and partially self-funded multiple employer welfare arrangements, other than governmental plans as defined in 29 U.S.C. §1002(32) and church plans as defined in 29 U.S.C. §1002(33), that provide a health benefit plan or plans to two or more employers who each have two or more employees, which plans cover at least one or more employers that are either domiciled in New Jersey or have their principal headquarters or principal administrative office located in New Jersey. This subchapter also applies to carriers providing health benefits coverage, stop-loss coverage or administrative services to multiple employer arrangements as defined at N.J.S.A. 17B:27A-17.

#### 11:4-56.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

“Administrator” means a person, partnership, corporation or other legal entity engaged by a self-funded MEWA, as defined in this section, to act as executive director to carry out the policies established by the trustees and to otherwise administer and provide day-to-day management of the health benefit plans.

“Association” means a group of 100 or more persons organized and maintained in good faith for purposes other than that of obtaining insurance, in active existence for more than one year, having a constitution and by-laws that provide that: the association holds regular meetings not less than annually to further the purposes of the members; except for credit unions, the association collects dues or solicits contributions from members; and the members have voting privileges and representation on the governing board and committees.

“Carrier” means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of hospital and medical services, including an insurance company authorized to issue health insurance, health maintenance organization, hospital service corporation, medical service corporation, health service corporation or any other entity providing a plan of hospital and medical insurance, benefits or services. The term “carrier” shall not include a joint health insurance fund established pursuant to N.J.S.A. 18A:18B-1 et seq. and 40A:10-36 et seq..

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Department” means the New Jersey Department of Banking and Insurance.

“Eligible employee” means a full-time employee who works a normal workweek of 25 or more hours. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under the health benefits plan of a small employer, but does not include employees who work less than 25 hours a week, work on a temporary or substitute basis or are participating in an employee welfare arrangement established pursuant to a collective bargaining agreement.

“Health benefits plan” means a hospital and medical benefit plan, including insured, self-funded and partially self-funded plans. “Health benefits plan” shall include pharmacy, dental and vision plans that are part of a hospital and medical benefit plan.

“Insured multiple employer arrangement,” “insured MEA” or “MEA” means an arrangement established or maintained to provide health benefits to employees and/or their dependents of two or more employers, under an insured plan purchased from a carrier which is not stop-loss insurance as defined at N.J.S.A. 17B:27A-17 or N.J.A.C. 11:4-40.2, as appropriate, and shall include, but is not limited to, a multiple employer welfare arrangement, multiple employer trust or other form of benefit trust.

“Qualified actuary” means a member in good standing of the American Academy of Actuaries with at least three years recent experience in health insurance pricing and reserving.

“Risk-based capital” or “RBC” means a method of measuring the minimum amount of capital appropriate for an entity to support its operations in consideration of its size and risk profile. Formulas for calculating RBC are provided in the RBC instructions

“RBC Instructions” means the National Association of Insurance Commissioners (NAIC) RBC Instructions as supplemented by the Commissioner.

“Regulatory action level RBC” means the product of 1.5 and the number determined for the separate trust account under the risk-based capital formula in accordance with the RBC instructions.

“Self-funded” means that the multiple employer welfare arrangement is covered by stop-loss insurance as defined at N.J.S.A. 17B:27A-17 or N.J.A.C. 11:4-40.2, as applicable, and that the group retains risk for all losses below the limits of the stop-loss insurance.

“Self-funded multiple employer welfare arrangement” or “Partially self-funded multiple employer welfare arrangement (collectively, MEWA) means a multiple employer welfare arrangement, other than a government or church plan as defined at 29 U.S.C. §1002(32) and (33), respectively, that provides a health benefit plan or plans to two or more employers who each have two or more employees, which plans cover at least one or more employers that are either domiciled in New Jersey or have their principal headquarters or principal administrative office located in New Jersey, and which is not fully insured as defined in 29 U.S.C. §1144(b)(6)(D).

“Servicing organization” means an individual, partnership, association or corporation, other than the administrator, that has contracted with the MEWA to provide any functions as designated by the trustees with respect to the health benefits plans, including, but not limited to, actuarial services, claims administration, provider networks, cost containment services, legal services, auditing services, financial services, coordination and preparation of plan documents, employee booklets and other documents, stop-loss or reinsurance producer services.

“Small employer” means any person, firm, corporation, partnership, or political subdivision that is actively engaged in business that employed an average of at least two but not more than 50 eligible employees on business days during the preceding calendar year and who

employs at least two employees on the first day of the plan year, and the majority of employees are employed in New Jersey. All persons treated as a single employer under subsection (b), (c), (m) or (o) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414) shall be treated as one employer.

“Total adjusted capital” means a self-funded MEWA’s statutory capital and surplus held in the separate trust account established for health benefits plans, as determined in accordance with statutory accounting applicable to the annual financial statements, increased or decreased by such other items, if any, as the RBC instructions may provide.

#### 11:4-56.3 Initial registration of self-funded MEWAs

(a) Within 90 days of the effective date of this subchapter, a self-funded MEWA operating in this State prior to the effective date of this subchapter shall file an application for initial registration with the Commissioner. A self-funded MEWA that was not operating in this State prior to the effective date of this subchapter shall not commence operations in this State until it submits an application for initial registration to the Commissioner, and said application is approved. The application for registration shall be on a form prescribed by the Commissioner, and shall include the following:

1. A certification of an officer, director or trustee of the self-funded MEWA that states:

i. The name of the self-funded MEWA, which shall not include the terms “insurance,” “mutual,” “casualty,” “surety,” “indemnity,” “HMO,” “assurance” or any other name likely to mislead;

- ii. The names and addresses of the employers who are members of the self-funded MEWA;
  - iii. The names and addresses of the trustees or other persons responsible for the operations of the self-funded MEWA;
  - iv. The mailing address and telephone number at which communications to the self-funded MEWA are to be received;
  - v. The eligibility requirements for membership in the association to which the self-funded MEWA provides a health benefit plan or plans; and
  - vi. The fees, if any, charged for membership in the association;
2. A completed Checklist and Certification (incorporated herein by reference as subchapter Appendix A), along with specimen forms, for each small employer plan of benefits offered by the self-funded MEWA;
  3. A specimen form of the notice to be provided to employers and employees pursuant to N.J.S.A. 17B:27C-7e;
  4. A copy of the trust agreement or other organizational documents relating to the self-funded MEWA, including the agreement to establish a separate trust account for the health benefits plans;
  5. A copy of any documents executed by an employer to become a member of the association and/or obtain coverage from the self-funded MEWA, including the application for membership in the self-funded MEWA;
  6. A description of the eligible employers that constitute the association, including their common or similar type of trade or business; the common trade association, professional association or other associations;

7. Biographical affidavits, on a form prescribed by the Commissioner, for all trustees and other persons responsible for the operations of the self-funded MEWA;

8. The names and addresses of all administrators and servicing organizations responsible for the operations of the self-funded MEWA with respect to its health benefits plans;

9. The most recent audited financial statement of the self-funded MEWA;

10. Three-year financial projections for the separate trust account to be established pursuant to N.J.A.C. 11:4-56.8(a);

11. If applicable, an actuarial opinion, prepared by a qualified actuary, that the reserves for health benefits are adequate;

12. If applicable, a calculation of the regulatory action level RBC;

13. A demonstration that the applicant will be able to provide the deposit required by N.J.S.A. 17B:27C-5a;

14. A demonstration, such as a binder, that the applicant will obtain "stop-loss" coverage as defined at N.J.S.A. 17B:27A-17 or N.J.A.C. 11:4-40.2, as applicable, as required by N.J.S.A. 17B:27C-5b and this subchapter at N.J.A.C. 11:4-56.8(g); and an actuarial certification with supporting documentation that the retention level for stop-loss coverage is based on sound actuarial principles; and

15. Any other information from a particular applicant deemed necessary by the Commissioner to determine compliance with the requirements of N.J.S.A. 17B:27C-1 et seq. and this subchapter.

(b) Filings described in (a) above shall be submitted to:

Att: Self-funded MEWA Registration  
NJ Department of Banking and Insurance  
20 West State Street

PO Box 325  
Trenton, NJ 08625-0325

(c) The Commissioner shall review an application for registration and notify the applicant in writing of any deficiencies contained therein within 60 days of receipt. An applicant shall address any deficiencies in its application within 60 days of notice thereof.

(d) Upon receipt and review of a complete application, the Commissioner shall approve the application if he or she finds that the MEWA meets the following standards:

1. All of the required application materials described in (a) above have been filed;

2. The persons responsible for conducting the MEWA's affairs are competent, trustworthy, possess good reputations and have appropriate experience, training and education;

3. The applicant has demonstrated that all the requirements of N.J.S.A. 17B:27C-1 et seq. and this subchapter have been met, including compliance with all applicable small employer health benefits laws and financial requirements. In the case of (e) below, the applicant has demonstrated that it will comply with these requirements; and

4. The Commissioner is satisfied that the plan of operation of the separate trust account is sound, supports the continuing operations of the MEWA, and complies with N.J.S.A. 17B:17C-1 et seq. and this subchapter on an ongoing basis.

(e) Within 15 days of notification to the applicant by the Commissioner that the application has been approved, and prior to the issuance of the registration, the applicant shall:

1. Deposit with the Commissioner securities, as defined at and pursuant to the provisions of N.J.S.A. 17B:18-37 and N.J.A.C. 11:2-32, having a market value of \$200,000 as required by N.J.S.A. 17B:27C-5;

2. Provide a signed copy of the stop-loss or reinsurance agreement; and
3. Provide evidence that the separate trust account for the health benefit plans

has been established.

(f) Upon receipt of the materials listed in (e) above, the Commissioner shall issue an initial registration to the applicant.

#### 11:4-56.4 Subsequent annual registration of self-funded MEWAs

(a) In application for subsequent annual registration following the initial registration shall be filed annually. The application shall be due on the same date as the annual financial statements filed pursuant to N.J.A.C. 11:4-56.9(a). The application for the subsequent annual registration shall consist of the certification of an officer, director or trustee of the self-funded MEWA on a form prescribed by the Commissioner that the MEWA continues to comply with the requirements of N.J.S.A. 17B:27C-1 et seq. and this subchapter.

(b) Filings described in (a) above shall be accompanied by a fee in the amount of \$1,000 made payable to “State of New Jersey – General Treasury,” and submitted to the following address:

Att: Self-funded MEWA Registration  
NJ Department of Banking and Insurance  
20 West State Street  
PO Box 325  
Trenton, NJ 08625-0325

(c) Within 90 days of receipt of the registration, the Commissioner shall issue a registration unless the Commissioner finds that the registrant is not in compliance with the requirements of N.J.S.A. 17B:27C-1 et seq. and this subchapter, or that the continued operations

of the self-funded MEWA with respect to the provision of health benefits are hazardous to enrollees, members, providers or residents of this State.

11:4-56.5 Eligibility requirements for self-funded MEWA coverage

(a) No self-funded MEWA, or association that obtains health coverage from a self-funded MEWA, shall refuse to provide coverage or deny membership in the association to any employer, employee or dependent based on any of the following characteristics of the employer, employee or dependent:

1. Health status;
2. Medical condition, including physical and mental illness;
3. Claims experience of the employer or any employee or dependent;
4. Receipt of health care;
5. Medical history;
6. Genetic information;
7. Evidence of insurability, including conditions arising out of acts of domestic violence;
8. Partial or total disability;
9. Group size;
10. Age;
11. Gender; or
12. Any other health status-related factor.

11:4-56.6 Rating requirements of self-funded MEWAs

(a) Prior to issuing benefit plans to small employers, a self-funded MEWA shall prepare, maintain and make available to the Department upon request, an exhibit showing the methodology for calculating assessments for small employer members. The exhibit shall contain:

1. A plan schedule describing each plan of benefits offered, which shall specify:
  - i. The benefit options available for each plan;
  - ii. The delivery system for each plan; and
  - iii. The in-network and out-of-network deductibles, coinsurance, and/or copays;
2. A rate manual containing:
  - i. The basic rates or rating factors applicable to each plan and option, including the difference when Medicare is primary or secondary, based on actual employee or spouse Medicare coverage status. Reduced rates or rating factors shall be provided when Medicare is primary coverage for an employee eligible for Medicare by reason of age;
  - ii. The numerical value of the classification factors used in the calculation of a small employer's assessment, limited to age, gender, geographic location, effective date, and rating tier of the covered persons in accordance with N.J.A.C. 11:21-7.14;
  - iii. A description of the assessment methodology in sufficient detail to allow the determination of the assessment by any particular small employer from the basic rates in (a)2i above; and
  - iv. A detailed example calculation for a representative plan showing all of the steps to develop the assessment for a small employer;

3. An actuarial memorandum setting forth the assumptions and methods used in the development of the assessment methodology;

4. The effective dates (beginning and ending) of rates in the exhibit. The beginning date cannot predate the date of the exhibit, and the ending date cannot be more than a year from the beginning date; and

5. The signature of the actuary who prepared the exhibit, and the date the exhibit was prepared.

(b) Whenever an exhibit is prepared or modified, a certification signed by a qualified actuary shall be filed with the Department, which shall state the following:

1. That an exhibit, which is accurate and complete and complies with all of the requirements of (a) above, has been prepared and will be maintained;

2. The beginning and ending effective dates, which dates shall not be more than 12 months apart, and with the beginning date not preceding the date of the certification;

3. That the certification is being filed with respect to an initial or revised exhibit, or that no changes have been made to the methodology since the previous exhibit and certification, specifying the effective dates of such prior exhibit and certification;

4. That a new exhibit and certification will be prepared if there is any change to the assessment methodology, but in any event with an effective date no later than one year from the effective date of the within exhibit and certification;

5. The anticipated incurred loss ratio, which shall not be less than 75 percent;

6. That for self-funded MEWAs that provided benefits in New Jersey prior to April 6, 2002:

i. For benefits provided between April 6, 2002 and April 5, 2003, the assessment methodology shall not result in assessments (for an individual and each family status) for the highest rated small employer which are greater than 300 percent of the assessments produced for the lowest rated small employer for each plan and option;

ii. For benefits provided between April 6, 2003 and April 5, 2004, the assessment methodology shall not result in assessments (for an individual and each family status) for the highest rated small employer which are greater than 250 percent of the assessments produced for the lowest rated small employer for each plan and option;

iii. For benefits provided after April 6, 2004, the assessment methodology shall not result in assessments (for an individual and each family status) for the highest rated small employer which are greater than 200 percent of the assessments produced for the lowest rated small employer for each plan and option;

7. That for self-funded MEWAs that did not provide benefits in New Jersey prior to April 6, 2002, the assessment methodology shall not result in assessments (for an individual and each family status) for the highest rated small employer which are greater than 200 percent of the assessments produced for the lowest rated small employer for each plan and option; and

8. That the assessments to be charged for any group do not vary based on any classification factor other than those permitted in (a)2ii above.

(c) Certifications described in (b) above shall be submitted to the Department at the following address:

MEWA Small Group Assessment Certifications  
Office of Life and Health  
New Jersey Department of Banking and Insurance  
20 West State Street  
P. O. Box 325  
Trenton, NJ 08625-0325

(d) A self-funded MEWA that provided benefits to small employers in New Jersey at any time during the preceding calendar year shall file with the Department an annual loss ratio report of its small employer business on the form set forth in this subchapter as Appendix B, incorporated herein by reference.

1. The loss ratio report shall be completed and filed with the Department on or before August 1 of the reporting year for the preceding calendar year.

2. Loss ratio reports shall be sent to the same address as the certifications referred to in (c) above.

3. If the preceding calendar year loss ratio is less than 75 percent, the self-funded MEWA shall include with the loss ratio report a plan to be approved by the Department for the distribution of all dividends and credits against future assessments for all members in the preceding calendar year. Such distribution amount shall be sufficient to assure that the claims in the preceding calendar year, plus the amount of dividends and credits, shall equal 75 percent of the assessment in the preceding calendar year.

4. The dividends or credits shall be issued to each small employer who was covered for any period in the preceding calendar year.

5. The dividend or credit amount per participant shall be determined by multiplying  $A \times B$ , where A is the assessment for each participant, and B is the percentage calculated by dividing the total dividend or credit by the total assessment; or on the basis of a practical and equitable alternate methodology filed by the self-funded MEWA in accordance with (a) above.

6. All dividends and credits shall be distributed by December 31 of the reporting year. A certification that all dividends have been paid shall be provided to the Department within 30 days of the payment.

11:4-56.7 Notice of change in documents of self-funded MEWAs

(a) A registered self-funded MEWA shall not modify any information or document furnished pursuant to this subchapter unless the MEWA files with the Commissioner a notice of the change or modification, together with any additional information to explain the change or modification, at least 60 days prior to the use or adoption of the change. If the Commissioner fails to affirmatively approve or disapprove the change or modification within 60 days of receipt of the notice, the notice of modification shall be deemed approved. The Commissioner may extend the 60-day review period for not more than 30 additional days by providing the MEWA with written notice of the extension before the expiration of the 60-day period. If a change or modification is disapproved, the Commissioner shall notify the MEWA in writing, and specify the reason for the disapproval.

11:4-56.8 Financial requirements of self-funded MEWAs

(a) A self-funded MEWA shall establish and maintain a separate trust account with respect to that segment of its operations that provides for health benefits plans. The trust account shall reflect the income, disbursements, assets and liabilities associated with providing health benefits. At all times, the trust account shall contain assets in an amount at least equal to the sum of its liabilities, including the claim reserve account, plus the required RBC.

(b) The separate trust account described in (a) above shall maintain capital and surplus at the following minimum levels:

1. For the calendar year ending December 31, 2003, 90 percent of the regulatory action level RBC determined in accordance with the RBC instructions;
2. For the calendar year ending December 31, 2004, 95 percent of the regulatory action level RBC determined in accordance with the RBC instructions; and
3. For the calendar years ending on or after December 31, 2005, the regulatory action level RBC determined in accordance with the RBC instructions.

(c) If the total adjusted capital of the self-funded MEWA's separate trust account is less than its regulatory action level RBC, the self-funded MEWA shall implement and file with the Commissioner, no later than March 31 of each year, a plan to correct the inadequacy. Such plan shall:

1. Identify the conditions that contribute to the inadequacy;
2. Contain proposals of corrective actions that the MEWA intends to take and that would be expected to result in the elimination of the inadequacy;
3. Provide projections of the separate trust account's financial results for the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels; and
4. Identify the key assumptions impacting the projections, and the sensitivity of the projections to the assumptions, and identify the quality of, and problems associated with, the operations of the separate trust account.

(d) The self-funded MEWA shall correct the inadequacy described in (c) above within 90 days of implementation of the plan, or no later than June 30 of each year.

(e) The self-funded MEWA shall maintain a deposit in the amount of not less than \$200,000 in cash or securities as defined in N.J.S.A. 17B:18-37.

(f) The self-funded MEWA shall maintain a cash reserve for loss in an amount established by a qualified actuary as being adequate to provide for all incurred losses, including unpaid claims.

(g) The self-funded MEWA shall maintain stop-loss coverage, which shall meet the following requirements:

1. Aggregate stop-loss coverage shall be maintained with a retention level of 125 percent of expected claims per year, including provisions to cover incurred, unpaid claims liability in the event of termination or liquidation of the self-funded MEWA;

2. Aggregate stop-loss coverage shall provide coverage for claims in excess of the retention limit in an amount of at least 25 percent of expected claims;

3. Specific stop-loss coverage shall be maintained with a retention level determined annually by a qualified actuary based on sound actuarial principles;

4. The stop-loss agreement shall provide a minimum run-out period for reporting claims of 12 months beyond the incurral period; and

5. The stop-loss agreement shall contain a provision that the stop-loss insurer shall give the self-funded MEWA and the Commissioner a minimum of 180 days notice of cancellation or nonrenewal.

## 11:4-56.9 Financial reporting of self-funded MEWAs

(a) A self-funded MEWA shall file with the Commissioner an annual report for the separate trust account established pursuant to N.J.A.C. 11:4-56.8 no later than May 15 of each calendar year, or four months and 15 days after the end of each fiscal year of the self-funded MEWA for the immediately preceding year.

1. The annual report shall be completed as prescribed by the National Association of Insurance Commissioners (NAIC) Health Annual Statement Instructions, and completed on a statutory accounting principles basis, in accordance with the NAIC Accounting Practices and Procedures Manual, effective January 1, 2001, both incorporated herein by reference, as amended and supplemented (NAIC, 2301 McGee Street, Kansas City, MO 64108).

(d) The annual report shall include a certification of, and an opinion by, a qualified actuary that the reserves required by N.J.A.C. 11:4-56.8(f), and included on the self-funded MEWA's annual report, are sufficient.

i. The actuarial certification shall identify the specific methodology used to determine the reserves, and shall specify whether and how the methodology has changed since the last report.

ii. The actuarial opinion shall include the workpapers prepared by the actuary in support of the certification.

(e) The annual report shall be submitted using the NAIC health blank in effect at the time of the year reported, and submitted to the following address:

New Jersey Department of Banking and Insurance  
Office of Solvency Regulation  
20 West State Street, 10<sup>th</sup> Floor  
PO Box 325  
Trenton, NJ 08625-0325

(b) A self-funded MEWA shall file with the Commissioner quarterly reports for the separate trust account established pursuant to N.J.A.C. 11:4-56.8 as follows:

1. The quarterly report shall be filed no later than 60 days following the close of each fiscal quarter;

2. The quarterly report shall be completed as prescribed by the NAIC Health Annual Statement Instructions;

3. The quarterly report shall be completed on a statutory accounting principles basis, in accordance with the NAIC Accounting Practices and Procedures Manual, effective January 1, 2001, as amended and supplemented; and

4. The quarterly report shall be submitted using the NAIC health blank in effect at the time of the quarter submitted.

(c) A self-funded MEWA shall file with the Commissioner the following audited annual financial reports for the immediately preceding calendar or fiscal year:

1. For the separate trust account established pursuant to N.J.A.C. 11:4-56.8, completed on a statutory accounting basis; and

2. With respect to all of its operations, completed on a generally accepted accounting principles basis.

(d) The reports shall be filed no later than May 15th (if on a calendar year basis) or four months and 15 days after the end of the fiscal year.

(e) The audited annual reports shall be certified by a qualified independent certified public accountant, who shall be in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, and who conforms to the standards of his or her profession as contained in the Code of Professional Ethics of the

American Institute of Certified Public Accountants and the Rules and Regulations, Code of Ethics, and Rules of Professional Conduct of the New Jersey Board of Public Accountancy or similar code.

(f) A self-funded MEWA shall file with the Commissioner a Risk-Based Capital Health Report for the separate trust account established pursuant to N.J.A.C. 11:4-56.8 on or before March 1 of each year, for the immediately preceding calendar year, completed as prescribed in a form and containing such information as is required by the instructions adopted by the NAIC.

(g) A self-funded MEWA shall file with the Commissioner proof of the stop-loss coverage required by section N.J.A.C. 11:4-56.8(g) above within 15 days of the renewal date of the stop-loss agreement.

(h) A self-funded MEWA shall file with the Commissioner within 60 days after the end of each fiscal quarter a report certifying that it maintains, in a claim reserve account within the trust account established pursuant to N.J.A.C. 11:4-56.8, cash or liquid assets sufficient to provide for all incurred losses, including paid claims.

#### 11:4-56.10 Financial examinations of self-funded MEWAs

(a) The Commissioner may, upon reasonable notice, conduct an examination of a registered self-funded MEWA as often as he or she deems necessary in order to protect the interests of enrollees, members, providers and the residents of this State. A registered self-funded MEWA shall make its books and records available for examination by the Commissioner, and retain its records for not less than seven years.

(b) The Commissioner may commission and employ such persons to conduct or assist in conducting the examination as he or she may deem advisable.

(c) The self-funded MEWA being examined shall bear the reasonable cost of the examination.

11:4-56.11 Notification to the Department by carriers of contracts with MEAs

(a) A carrier shall notify the Department by December 31 of each year of all health insurance contracts, health maintenance organization contracts, stop-loss contracts and administrative services only (ASO) contracts it issued, renewed, or had in force at any time during the 12-month period ending on September 30 of that calendar year, that covered a multiple employer arrangement (MEA) with employees and dependents in New Jersey.

(b) Such notice shall include:

1. The name and address of each MEA with whom the carrier contracted;
2. The state in which the health insurance contract, health maintenance organization contract, stop-loss contract or ASO contract was issued to the MEA;
  - i. If the issue state was New Jersey, the unique identifying form number of the health insurance contract, health maintenance organization contract or stop-loss contract issued to the MEA, and the date such form was approved by the Department;
3. The names and addresses of all employers covered by the MEA with employees or dependents in New Jersey and, for each such employer, the number of employees eligible for coverage; and

4. A copy of the health insurance contract, health maintenance organization contract, stop-loss contract or ASO contract between the carrier and the MEA in force at any time during the calendar year.

(c) Such notice shall be addressed to:

MEA Notice, Life and Health Section  
Department of Banking and Insurance  
PO Box 325  
Trenton, New Jersey 08625

11:4-56.12 Violations and penalties

(a) Persons failing to comply with any of the requirements of this subchapter shall be subject to revocation or suspension of a certificate of registration and/or a penalty of not more than \$1,000 for a first offense, and not more than \$5,000 for each subsequent offense pursuant to N.J.S.A. 17B:27C-10.

(b) A self-funded MEWA that fails to submit an application for registration, and covers employers domiciled in New Jersey or who have their principal headquarters or principal administrative offices in New Jersey, shall terminate coverage of such employers within eight months of the effective date of this subchapter, and shall provide 180 days notice of termination to affected employers.

(c) A self-funded MEWA whose application for initial or registration is denied or withdrawn, but that covers employers domiciled in New Jersey or who have their principal headquarters or principal administrative office in New Jersey, shall terminate coverage of such employers within eight months of the date of withdrawal or denial and shall provide 180 days notice of termination to affected employers.

(d) If the Commissioner rejects a complete initial registration application filed pursuant to N.J.A.C. 11:4-56.3, or a subsequent annual registration application filed pursuant to N.J.A.C. 11:4-56.4, the Department shall advise the applicant in writing that the registration request is denied; shall specify the reasons for the denial; and shall advise the applicant of the right to request a contested case hearing as defined at N.J.A.C. 1:1-2.1, and of the procedures for filing the request.

1. A request for a hearing shall be filed within 20 days of receipt of the letter denying the request for registration, and shall be forwarded to:

Assistant Commissioner  
Life and Health  
New Jersey Department of Banking and Insurance  
20 West State Street  
PO Box 325  
Trenton, NJ 08625-0325

2. The request for a hearing shall include a statement of the legal and factual basis upon which the applicant disagrees with the denial of either an initial or subsequent annual registration, and all documentation in support thereof.

3. Upon receipt of a request for a hearing on a registration denial, the Department shall review the application and attachments, the Department's records and any additional information submitted, and shall determine whether the registration will be issued.

inoregs/bbMEWAs2

APPENDIX A

State of New Jersey  
 Department of Banking and Insurance  
 Checklist and Certification  
 Multiple Employer Welfare Arrangement (MEWA) Health Plans  
 Filing Made Pursuant to P.L. 2001,c. 352

Plan Name: \_\_\_\_\_

ERISA Filing Identification: \_\_\_\_\_

List of Forms Submitted (Identify each as contract, insert pages, rider or amendment, summary plan description, application, enrollment form or other (please identify)).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

	YES	NO
1. Do the forms contain any provision, statements or questions that pertain to race, creed, color, national origin, ancestry or sexual orientation?		
2. Are the forms in final printed format?		
3. Do the forms contain unique identifying form numbers at the lower left corner of the first page?		
4. Have persons covered under the plans been issued information identifying the benefits the plans do not provide as required by N.J.S.A. 34:11A-14? If yes, attach a copy of the most recent list. If no, explain why below.		
5. Do the forms comply with the readability requirements set forth at N.J.S.A. 17B:17-21a?		
6. Do the forms comply with the regulation on domestic violence set forth at N.J.A.C. 11:4-42.5 (a)?		
7. Do the forms comply with the requirements of Discontinuance and Replacement set forth at N.J.A.C. 11:2-13?		
8. Do the forms contain a Coordination of Benefits provision consistent with the requirements of N.J.A.C. 11:4-28?		
9. Do the plans contain definitions of the following terms which are at least as favorable to consumers as those contained in Appendix Exhibit A of N.J.A.C. 11:21?		
a. Ambulatory Surgical Center		
b. Birthing Center		
c. Dependent		
d. Diagnostic Services		
e. Emergency		

f. Employee		
g. Experimental or Investigational		
h. Extended Care Center		
i. Health Status-Related Factor		
j. Hospice		
k. Hospital		
l. Medically Necessary and Appropriate		
m. Nurse		
n. Pre-Approval (or similar term)		
o. Pre-Existing Condition		
p. Private Duty Nursing		
q. Reasonable and Customary (or similar term)		
r. Rehabilitation Center		
s. Skilled Nursing Care		
t. Special Care Unit		
u. Total Disability or Totally Disabled		
v. Urgent Care		
10. Do the plans contain provisions as identified below which are at least as favorable to consumers as those contained in Appendix Exhibit A of N.J.A.C. 11:21?		
a. Incontestability		
b. Payment of Premiums – Grace period		
c. Participation Requirements		
d. Term of Policy- Renewal Privilege-Termination		
e. Waiting Period		
f. Incapacitated Children		
g. If a network based plan, Continuation of Care		
h. Preexisting conditions and continuity of coverage		
12. Do the forms provide benefits and coverage as identified below which are at least as favorable to consumers as those contained in Appendix Exhibit A of N.J.A.C. 11:21?		
a. Charges while hospitalized up to 30 days per calendar year (room and board) and ancillary charges		
b. Emergency and Urgent Care Services		
c. Testing Charges – x-ray and laboratory prior to hospitalization		
d. Charges while confined in an Extended Care or Rehabilitation Facility up to 60 days per calendar year (in lieu of hospital confinement, 2 for 1 exchange for hospital days)		
e. Charges for home health care up to 60 days per calendar year (2 for 1 exchange for hospital days)		
e. Charges for hospice care up to 60 days per calendar year (2 for 1 exchange for hospital days)		
f. Food and food products for inherited metabolic diseases		
g. Practitioner charges for nonsurgical treatment, while hospitalized		
h. Practitioner charges for surgery		
i. Second opinion charges		
j. Ambulatory surgical center charges		
k. Pregnancy as any other illness		
m. Birthing center charges		
n. Newborn child coverage		
o. Anesthesia		
p. Therapy services (as listed in Appendix exhibit A)		
q. Preventive care (\$100.00 per person; \$300.00 per family per calendar year; first dollar coverage)		
r. immunizations and lead screening		
s. Autologous bone marrow transplant and associated dose intensive chemotherapy, peripheral blood stem cell transplants		

t. Prescription drugs - inpatient		
u. insulin needles, syringes, glucose test strips, lancets		
v. colostomy bags belts and irrigators		

Explanation or clarification of response(s) to any item above:

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I understand and agree that:

- To the best of my knowledge the forms described herein provide benefits and coverage at least as favorable to the consumer as that provided by Plan A as set forth at Appendix Exhibit A of N.J.A.C. 11:20.
- I understand that the Department of Banking and Insurance will rely on this certification in accepting this submission.
- If it is determined that the forms do not provide at least the minimum level of benefits and coverage of Plan A I agree the plan will be amended to provide such benefits or coverage.
- I am aware of the penalties for submitting an improper certification or false submission.

\_\_\_\_\_  
Signature of Responsible Officer

\_\_\_\_\_  
Printed Name of Responsible Officer and Title

\_\_\_\_\_  
Date

**APPENDIX B**

Self Funded MEWA Loss Ratio Report Form  
 Small Employer Business  
 Reporting Year (Year in which this report was prepared)  
 For Preceding Calendar Year Ending December 31, \_\_\_\_\_

Name of MEWA: \_\_\_\_\_  
 Address of MEWA: \_\_\_\_\_

1. Premiums \_\_\_\_\_
2. Claims (a. + b. - c. + d. - e.)
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. \_\_\_\_\_
  - e. \_\_\_\_\_
3. Loss Ratio (2. /1.) \_\_\_\_\_
4. Dividends (.75 x line 1) - 2. \_\_\_\_\_

Signature of Preparer \_\_\_\_\_ Date \_\_\_\_\_  
 Name of Preparer \_\_\_\_\_ Title \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone Number \_\_\_\_\_

1. Premiums are total earned premiums for small employer business, before any dividends or credits applicable to prior years Loss Ratio Reports.
2. Claims for small employer business are equal to
  - a. Claims paid in the preceding calendar year regardless of year incurred..
  - b. Claims paid form January 1 to June 30 of the reporting year for claims incurred prior to January 1 of the reporting year
  - c. claims paid from January 1 through June 30 of the preceding calendar year for claim incurred prior to January 1 of the preceding calendar year (as reported in the preceding year's Loss Ratio Report)
  - d. a residual reserve equal to 3.3 percent of a. + b. - c.
  - e. a residual reserve as reported in the preceding year's Loss Ratio Report)
3. Loss Ratio is the quotient, to the nearest .1 percent, of the Claims divided by the premiums (2. divided by 1.)
4. Dividends are 0 if the amount on Line 3 is 75.0% or greater. Otherwise, dividends are equal to (75% of Line 1. minus Line 2.