

TESTIMONY

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Before: **Health Care Reform Review Committee**
 Representative George Keiser, Chairman

Date: **September 14, 2017**

Good Afternoon Chairman Keiser and members of the committee. My name is Jeff Ubben and I am the Deputy Insurance Commissioner and General Counsel for the North Dakota Insurance Department.

As Commissioner Godfread said, Multiple Employer Welfare Arrangements or “MEWAs” have become a popular alternative to Obamacare plans in the last few years. MEWAs are not subject to the heavy rules and regulations that come with Obamacare, therefore, they are able to be more flexible and responsive to the needs of the people they serve.

We have eight MEWAs domiciled in North Dakota. Based on the most recent available data, those eight MEWAs cover 8,331 participants. A participant would be akin to a policyholder on an insurance policy. MEWAs are not required to report to us how many lives are covered under each participant’s plan, but it is safe to say that number is significantly higher than 8,331. We expect more MEWAs to form in North Dakota in the coming years, especially if Congress is not able to agree to make meaningful changes to Obamacare.

Should the Legislature decide to move the PERS health insurance plan to a self-funded plan, this plan would be considered a MEWA and fall under the scope of the MEWA administrative rules found at chapter 45-06-14 of the North Dakota Administrative Code. N.D.A.C. § 45-06-14-03 (page 3 of the rules) defines the scope of the rules and says the rules apply to “all multiple employer welfare arrangements which offer or maintain

an employee welfare benefit plan that is not fully insured, to or on behalf of an employer domiciled in this state” As the PERS health insurance plan covers multiple North Dakota employers – the State, numerous counties, cities, school districts, etc., it is clear that if the plan were to become a self-funded plan, it would fall under the scope of these rules.

It is important to note that a fully insured MEWA is not subject to these rules because the Insurance Department closely regulates the financial integrity of the insurance companies providing the coverage for fully insured MEWAs, meaning these administrative rules would be duplicative if they were to be applied to fully insured MEWAs. Also, a single employer who sets up a health benefit plan for its employees does not fall under the scope of these MEWA rules because the benefit plan in that case would fall under the federal Employee Retirement Income Security Act of 1974 (commonly known as “ERISA”), meaning these plans are solely regulated by the federal government.

The Insurance Department has the task of ensuring the financial integrity and the competent and equitable administration of self-funded MEWAs domiciled in North Dakota. These rules reflect that duty and do not reach beyond providing us with the necessary tools to accomplish these tasks. The Department worked with industry while promulgating these rules and made several amendments to the rules based on information the industry provided. Ultimately, no one opposed these rules when we had our hearing before the Administrative Rules committee in March 2017.

The rules require a self-funded MEWA to have a board of trustees that are ultimately responsible for the MEWA’s operation. Some of the more prominent duties the Board has are exercising fiduciary responsibility for the MEWA’s operation and control; supervising and evaluating the MEWA’s financial administrator, accountant, and any other contractors; authorizing changes in premium, reserve, or investment practices; monitoring compliance with all state laws and regulations; accepting or rejecting

applications for membership; and declaring assessments to the employers as appropriate.

A self-funded MEWA seeking to offer an employee benefit plan must apply to the Insurance Commissioner for a certificate of authority. The Department then reviews the application to ensure the MEWA meets the requirements set forth by the rules.

In order to demonstrate and maintain its financial sufficiency, a self-funded MEWA must meet one of the two following options:

1. Establish and maintain a surplus consisting of funds contributed by members and the MEWA's retained earnings sufficient to pay claims as they occur; or
2. Negotiate a stop-loss insurance policy requiring the insurer to advance funds to the MEWA if the MEWA's policy limits have been or are likely to be exceeded. Stop-loss insurance is coverage purchased in order to limit exposure at a previously determined amount to the employers participating in a self-funded plan.

The rules also require a MEWA to purchase stop-loss insurance for liability exposure. The stop-loss insurance company must be licensed in North Dakota.

The Board is allowed to assess current employer members of the MEWA in order to increase the surplus. The assessment may be made at any time in the discretion of the Board to improve the MEWA's financial strength.

A self-funded MEWA must prepare and file financial statements with the Department annually. For MEWAs with annual premiums greater than \$2 million, the financial statements must be audited by an independent certified public accountant.

The Commissioner has the discretion to require quarterly financial reports from a MEWA if the Commissioner determines a MEWA's financial integrity is such that the MEWA's ability to meet obligations promptly and in full is significantly impaired. The Commissioner also has the ability to investigate the accuracy of one or more entries on submitted financial statement by hiring an independent expert or experts to investigate and verify the accuracy of an entry.

A self-funded MEWA must maintain all records necessary to verify the accuracy and completeness of all reports submitted to the Commissioner. The Commissioner is allowed to examine the MEWA's records in order to verify compliance with the rules and other applicable state laws. Essentially, the Commissioner is permitted to examine a self-funded MEWA in the same way in which the Insurance Department examines an insurance company.

Finally, the Insurance Commissioner is allowed to sanction a self-funded MEWA. Some examples of conduct that could lead to a sanction from the Commissioner include failure to comply with any provision of the rules governing self-funded MEWAs, failure to comply with any lawful order of the Commissioner, and committing an unfair or deceptive act or practice.

I would also like to note that state insurance insolvency guaranty funds are not available for self-funded MEWAs in the unlikely event that a self-funded MEWA is not able to pay its claims.

I would be happy to take any questions the committee may have.

CHAPTER 45-06-14
MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

Section

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45-06-14-01. Definitions.

1. "Board" means a multiple employer welfare arrangement's board of trustees.
2. "Bylaws" means the statements and organizational documents adopted by a multiple employer welfare arrangement that prescribe its purpose, government, and administration.
3. "Commissioner" means the insurance commissioner.
4. "Coverage" means the right of a covered person or entity to benefits or indemnification provided directly or indirectly by a multiple employer welfare arrangement, by virtue of the coverage document.
5. "Coverage document" means the document specifying the characteristics and duration of coverage provided through a multiple employer welfare arrangement. Characteristics of coverage include the kind of loss or benefit that the multiple employer welfare arrangement will reimburse, subject to specific exclusions, limitations, or deductibles.
6. "Days" means calendar days.
7. "Employee welfare benefit plan" means an employee welfare benefit plan as defined by 29 U.S.C. section 1002.
8. "Financial administrator" means an entity employing persons trained and experienced in money management and investments, and possessing no less than five years' experience as an organization in money management and investments with demonstrated competence.
9. "Fully insured" means that for the health care benefits or coverage provided or offered by or through a multiple employer welfare arrangement:
 - a. An admitted insurer is directly obligated by contract to each participant to provide all of the coverage under the plan or arrangement; and

- b. The liability and responsibility of the admitted insurer to provide covered services or to pay benefits is not contingent, and is provided directly to the individual employee, member, or dependent.
- 10. "Fund year" means a multiple employer welfare arrangement's twelve-month fiscal year.
- 11. "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined by 29 U.S.C. section 1002.
- 12. "Premium" means the amount charged by the multiple employer welfare arrangement for health coverage. "Premium" does not include assessments or penalties.
- 13. "Professional employer organization" means an arrangement, under contract or otherwise, whereby one business or entity represents that it co-employs or leases workers to another business or entity for an ongoing and extended, rather than a temporary or project-specific, relationship.
- 14. "Runoff multiple employer welfare arrangement" means a multiple employer welfare arrangement that no longer has authority to self-fund but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the multiple employer welfare arrangement provided coverage.
- 15. "Self-funded multiple employer welfare arrangement" means a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies with a certificate of authority under North Dakota Century Code title 26.1.
- 16. "Service company" means an entity licensed under North Dakota Century Code chapter 26.1-27 as an administrator or an entity licensed under North Dakota Century Code title 26.1 as an insurance company, health maintenance organization, or nonprofit health service corporation.
- 17. "Sponsoring association" means a group that sponsors or organizes a multiple employer welfare arrangement. A multiple employer welfare arrangement may have more than one sponsoring association.
- 18. "Surplus" means a multiple employer welfare arrangement's total assets minus total liabilities. "Surplus" includes paid-in capital and retained earnings. The amount of a multiple employer welfare arrangement's surplus is determined according to the instructions provided for a multiple employer welfare arrangement's financial statements.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-02. Purpose.

This chapter governs the formation, operation, and dissolution of a multiple employer welfare arrangement. The provisions are intended to ensure the financial integrity and the competent and equitable administration of the multiple employer welfare arrangement.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-03. Scope.

This chapter shall apply to all multiple employer welfare arrangements which offer or maintain an employee welfare benefit plan that is not fully insured, to or on behalf of an employer domiciled in this state or to an employer which has its principal headquarters or principal administrative offices in this state and to all service companies that provide services to the employee welfare benefit plan or multiple employer welfare arrangement.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-04. Bylaws.

1. **Content.** Bylaws may contain any provision that does not conflict with this chapter. Bylaws must, at a minimum, contain the following provisions:
 - a. The multiple employer welfare arrangement's name, purpose, fiscal year, and initial date of existence;
 - b. Definitions of key terms;
 - c. A statement of the powers, duties, and responsibilities assigned to the board, the service company, the financial administrator, and reserved by the membership;
 - d. The number, term of office, and method of selection and replacement of the members of the board;
 - e. The procedure for calling board meetings;
 - f. The method of periodic selection and review of the service company and financial administrator;
 - g. The procedure for amending the bylaws;
 - h. The procedure for resolving disputes among members, which must not include submitting disputes to the commissioner;
 - i. The criteria for membership in the multiple employer welfare arrangement, including standards of financial integrity and loss experience;
 - j. The procedure for admitting new members to the multiple employer welfare arrangement;
 - k. The criteria for expelling members from the multiple employer welfare arrangement for reasons, including nonpayment of premiums;
 - l. The procedure for withdrawal and expulsion of members from the multiple employer welfare arrangement, including the minimum required period of membership;
 - m. A statement of the coverages to be provided by the multiple employer welfare arrangement;
 - n. The procedure for including and excluding a member's participation in a particular coverage;
 - o. The proposed initial premium payments by members and, if applicable, by the members' employees;
 - p. The procedure for changing premium rates;

- q. The procedure for levying and collecting an assessment;
 - r. A statement identifying those with access to multiple employer welfare arrangement funds and the purposes for which multiple employer welfare arrangement funds may be spent;
 - s. The procedure for distributing dividends, and the eligibility of past members and past covered employees for dividends; and
 - t. The procedure for distributing any assets remaining upon the multiple employer welfare arrangement's dissolution.
2. **Adoption and changes.** The bylaws must be adopted in writing by all initial members. Authority to change the bylaws must reside with the membership or the board, according to the terms of the bylaws. The multiple employer welfare arrangement must file bylaws changes with the commissioner within thirty days after adoption.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-05. Board.

1. **Structure.** A multiple employer welfare arrangement must have a board of trustees consisting of at least three persons, who must be officials or employees of the members of the multiple employer welfare arrangement or of the sponsoring association of the multiple employer welfare arrangement. No member may have more than one representative on the board, unless the multiple employer welfare arrangement has only two members, in which case each member must have at least one representative on the board. No trustee may be an employee of, or receive compensation from, the multiple employer welfare arrangement's service company, financial administrator, or insurer. A trustee may be an employee, agent, or representative of the sponsoring association. Trustees shall be elected by the membership or appointed by the sponsoring association. A majority of the trustees must be employees of members and be covered by the benefits provided by the multiple employer welfare arrangement. One trustee shall be designated the chairperson. The board shall meet no less than four times annually.
2. **Duties.** The board is responsible for operation of the multiple employer welfare arrangement. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the multiple employer welfare arrangement not expressly delegated by the board or this chapter are the responsibility of the board. The board shall, at a minimum, have the following responsibilities:
 - a. Exercise fiduciary responsibility for the multiple employer welfare arrangement's operation and financial condition;
 - b. Select, supervise, and evaluate the service company, financial administrator, accountant, insurer, and any other contractors;
 - c. On the basis of the multiple employer welfare arrangement's overall financial condition, authorize changes in premium, reserve, or investment practices and declare assessments or dividends as appropriate;
 - d. Approve all reports concerning the multiple employer welfare arrangement's operations and status and oversee filing of reports with the commissioner;

- e. Monitor delinquent premiums, loss experience, and the financial condition of individual members and authorize disciplinary action or expulsion as appropriate;
- f. Accept or reject applications for membership;
- g. As permitted by the bylaws, make or recommend changes to the bylaws for the improvement of the multiple employer welfare arrangement's operation and financial integrity; and
- h. Monitor the multiple employer welfare arrangement's compliance with all statutes and rules governing its operation.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-06. Application.

1. **Initial application.** A multiple employer welfare arrangement seeking to offer an employee welfare benefit plan that is not fully insured shall apply for a certificate of authority. Applications must be submitted on forms prescribed by the commissioner. The appropriate filing fee pursuant to North Dakota Century Code section 26.1-01-07 must accompany the application. An application must be submitted no later than sixty days prior to the requested date for authority to self-fund. An incomplete application must be returned to the applicant. An application not returned to the applicant within fourteen days of receipt must be acted upon within sixty days of receipt.
2. **Documents which must accompany application.** A multiple employer welfare arrangement shall file all of the following with its initial application:
 - a. A copy of the organizational documents of the multiple employer welfare arrangement, including the articles of incorporation and bylaws, partnership agreement, or instrument;
 - b. A copy of each insurance or reinsurance contract that purports to insure or guarantee any portion of benefits or coverage offered by the multiple employer welfare arrangement;
 - c. A copy of the benefit plan description and any other materials intended to be distributed to potential members; and
 - d. The names and addresses of all persons performing or expected to perform the functions of a financial administrator or service company.
3. **Renewal.** Authority to operate as an existing multiple employer welfare arrangement will automatically renew annually with the filing of the multiple employer welfare arrangement's annual report to the commissioner and the payment of the appropriate fee pursuant to North Dakota Century Code section 26.1-01-07, subject to the multiple employer welfare arrangement maintaining its financial ability to pay claims and expenses.
4. **Merger.** Two or more existing multiple employer welfare arrangements may apply to merge, provided the merged multiple employer welfare arrangement assumes all financial and regulatory obligations of the former multiple employer welfare arrangements. Merger applications must be filed with the commissioner and are subject to the same requirements as prospective new multiple employer welfare arrangements.
5. **Approval or disapproval.** Upon approval of an application, the commissioner shall issue a certificate authorizing the proposed self-funded multiple employer welfare arrangement. The

initial certificate for a new multiple employer welfare arrangement is effective until revoked by the commissioner. Approval of an application for authority to self-fund must be granted if the proposed multiple employer welfare arrangement conforms with all requirements of this chapter.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-07. Ending self-funding, runoff period, and plan dissolution.

1. **Termination.** A multiple employer welfare arrangement may terminate its self-funded authority and cease to provide coverage effective at the end of a fund year. The multiple employer welfare arrangement must notify the commissioner within ninety days of its decision to terminate. A multiple employer welfare arrangement may not terminate its self-funding authority less than ninety days prior to the end of the fund year in question. The voluntary termination of self-funding authority does not constitute multiple employer welfare arrangement dissolution under subsection 4.
2. **Revocation.** The commissioner shall, by order, revoke the authority of a multiple employer welfare arrangement to self-fund upon no less than ten days' written notice if any of the following events occur or conditions develop, and if the commissioner determines that the conditions are material:
 - a. Failure of the multiple employer welfare arrangement to comply with this chapter or with other applicable North Dakota laws or rules or the applicable laws and rules of any other state;
 - b. Failure of the multiple employer welfare arrangement to comply with any lawful order of the commissioner or the lawful order of the commissioner of another state;
 - c. Commission by the multiple employer welfare arrangement of a prohibited practice as defined by North Dakota Century Code chapter 26.1-04 or in related rules; or
 - d. A deterioration of the multiple employer welfare arrangement's financial integrity to the extent that its present or future ability to meet its obligations is or will be significantly impaired.
3. **Runoff multiple employer welfare arrangement.** A multiple employer welfare arrangement must continue to exist as a runoff multiple employer welfare arrangement after its authority to self-fund has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period during which the multiple employer welfare arrangement provided coverage. A runoff multiple employer welfare arrangement must continue to comply with this chapter and with other applicable North Dakota laws and rules.
4. **Dissolution.** A multiple employer welfare arrangement, including a runoff multiple employer welfare arrangement, must apply to the commissioner for authorization to dissolve. An application must be approved or disapproved within sixty days of receipt. Dissolution without authorization is prohibited and void and does not absolve a multiple employer welfare arrangement or runoff multiple employer welfare arrangement from fulfilling its continuing obligations and does not absolve its members from assessments under subsection 3 of section 45-06-14-14. The multiple employer welfare arrangement's assets at dissolution must be distributed to the members and covered persons as provided in the bylaws. Authorization to dissolve must be granted if either of the following conditions is met:
 - a. The multiple employer welfare arrangement demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or

- b. The multiple employer welfare arrangement has obtained an irrevocable commitment from a licensed insurer to pay all outstanding liabilities and to provide all related services, including the payment of claims, preparation of reports, and the administration of transactions associated with the period during which the multiple employer welfare arrangement provided coverage.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-08. Administration.

1. **Service company.** A multiple employer welfare arrangement must contract with a service company for services necessary to conduct the multiple employer welfare arrangement day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors unless the multiple employer welfare arrangement has the staff and expertise to perform the day-to-day operations. The service company must have expertise in and be licensed for the coverages provided by the multiple employer welfare arrangement. Subject to the oversight of the board, the service company shall, directly or through subcontractors, provide all services directly related to the administration of coverage. These services include:
 - a. Accounting and recordkeeping;
 - b. Billing and collection of premiums and assessments;
 - c. Claims investigation, settlement, and reserving;
 - d. Claims payment, including claims wholly or partially subject to stop-loss insurance or member deductibles;
 - e. General administration;
 - f. Loss control, safety programs, or both; and
 - g. Underwriting.
2. **Financial administrator.** A multiple employer welfare arrangement must contract with a financial administrator for investment of the multiple employer welfare arrangement's assets and other financial or accounting services. A staff member of the financial administrator may not be an owner, officer, employee, or agent of the service company, or of a subcontractor of the service company.
3. **Recordkeeping and examination authority.** A multiple employer welfare arrangement must maintain all records necessary to verify the accuracy and completeness of all reports submitted to the commissioner under section 45-06-14-16. The commissioner may examine the multiple employer welfare arrangement's records in order to verify the multiple employer welfare arrangement's compliance with this chapter and with other statutes and rules. The provisions of North Dakota Century Code chapter 26.1-03 apply to the commissioner's examination. All records concerning claims, reserves, financial transactions, and other matters necessary for the multiple employer welfare arrangement's operations are the multiple employer welfare arrangement's property and shall be retained for the current year plus the previous five years.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-09. Membership.

1. **Availability.** A multiple employer welfare arrangement must establish nondiscriminatory criteria for membership. A multiple employer welfare arrangement may reject applicants or dispel members that do not meet the multiple employer welfare arrangement's underwriting standards.
2. **Joining.** A new member must be admitted according to the standards and procedures specified in the bylaws. Membership is not effective until the applicant has signed a membership agreement affirming its commitment to comply with the bylaws and this chapter, including joint and several liability for the multiple employer welfare arrangement's obligations. The membership agreement must disclose that under the rules governing the multiple employer welfare arrangement, the board of trustees, or the commissioner, may order that an assessment be levied against the members if necessary to maintain the multiple employer welfare arrangement's sound financial condition.
3. **Withdrawal.** The membership agreement must include the procedures for withdrawing from the multiple employer welfare arrangement. A member must notify the multiple employer welfare arrangement of its desire to withdraw not less than thirty days before the date upon which it desires to withdraw. If the board determines that the withdrawal would cause the multiple employer welfare arrangement to be in violation of the minimum annual premium requirement or would compromise the multiple employer welfare arrangement's financial integrity, the multiple employer welfare arrangement must notify the commissioner as required under subsection 2 of section 45-06-14-11. Withdrawal is prohibited and void unless:
 - a. The member has belonged to the multiple employer welfare arrangement continuously for the period required by the bylaws, which shall provide for a minimum of one complete fund year.
 - b. All outstanding premiums and assessments owed by the member have been paid.
4. **Expulsion.** At least annually a multiple employer welfare arrangement must review the status and experience of each member relative to the criteria for expulsion in the bylaws. Expulsion is subject to the procedures and requirements for voluntary withdrawal of a member, except that:
 - a. A member may be expelled with outstanding premiums or assessments owing; and
 - b. A member may be expelled notwithstanding that the minimum term of membership has not been satisfied.
5. **Runoff multiple employer welfare arrangement membership.** After revocation of a multiple employer welfare arrangement's self-funding authority or after a multiple employer welfare arrangement notifies the commissioner in writing of its intent to terminate the multiple employer welfare arrangement, no member may join, leave, or be expelled from the multiple employer welfare arrangement.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-10. Coverage.

1. **Coverage.** A multiple employer welfare arrangement must provide coverage as authorized by the board.

2. **Uniform underwriting.** A multiple employer welfare arrangement must offer its coverages subject to the same underwriting standards to all members and, if applicable, to all members' employees.
3. **Continuing responsibility.** Notwithstanding cancellation or termination of coverage to a particular member, ceasing to offer a particular coverage, or termination or revocation of authority to self-fund, a multiple employer welfare arrangement retains indefinitely all responsibilities to members and other covered persons associated with the period while coverage was in force. This responsibility ceases only after a multiple employer welfare arrangement dissolves under subsection 4 of section 45-06-14-07.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-11. Premiums, cashflow, and dividends.

1. **Minimum annual premium.** A multiple employer welfare arrangement must have and maintain an annual premium volume of no less than three hundred thousand dollars. A multiple employer welfare arrangement or prospective multiple employer welfare arrangement may apply to the commissioner for a reduction of the minimum annual premium requirement, stating the amount of reduction and the reasons supporting the request. The commissioner must act on the application within sixty days after receipt. The multiple employer welfare arrangement must demonstrate that the lesser premium volume would not compromise its financial integrity and stability.
2. **Monitoring premium volume.** A multiple employer welfare arrangement must monitor its premium volume. If annual premium is more than three hundred thousand dollars but less than four hundred thousand dollars, or less than one hundred thirty-three percent of the amount approved pursuant to subsection 1, the multiple employer welfare arrangement must notify the commissioner at monthly intervals of the then-current annualized premium volume, until the annualized volume exceeds four hundred thousand dollars. "Annualized premium volume" means the gross premiums written for the previous twelve months. If premium decreases to an annualized volume of less than three hundred thousand dollars, or a lesser amount if approved pursuant to subsection 1, the multiple employer welfare arrangement must notify the commissioner:
 - a. Of its intent to end its self-funding authority; or
 - b. Of its proposal for restoring compliance with subsection 1. If the proposal is unlikely, in the commissioner's judgment, to restore compliance with subsection 1 within ninety days, or if after ninety days the multiple employer welfare arrangement continues to be out of compliance, the commissioner may revoke the multiple employer welfare arrangement's self-funding authority.
3. **Surplus or stop-loss advancement.** To maintain its financial integrity, a multiple employer welfare arrangement must either:
 - a. Establish and maintain a surplus consisting of funds contributed by members and the multiple employer welfare arrangement's retained earnings sufficient to pay claims as they occur; or
 - b. Negotiate a stop-loss insurance policy requiring the insurer to advance funds to the multiple employer welfare arrangement if the multiple employer welfare arrangement's policy limits have been or are likely to be exceeded. The funds may be considered an advance against the insurer's potential liability for the policy period.

4. **New multiple employer welfare arrangement deposit premium.** As a condition for authorization to self-fund, a prospective multiple employer welfare arrangement must submit evidence that an initial premium payment has been made.
 - a. The initial premium payment must be no less than ten percent of the combined initial members' first-year premium. If the initial payment is less than one hundred percent of the initial members' first-year premium, the remainder of the initial members' first-year premium must be paid in six or more equal installments at equal intervals throughout the year.
 - b. A prospective multiple employer welfare arrangement may apply to the commissioner for reduction of the initial premium deposit requirement, stating the payment schedule requested and the reasons supporting the request. The commissioner may approve the applications within sixty days after receipt if the multiple employer welfare arrangement has demonstrated that the proposed payment schedule would not compromise its ability to pay large claims promptly during its first year of operation. The commissioner may consider arrangements the multiple employer welfare arrangement has made under subsection 3 in evaluating the application.
5. **Premium payments.** A multiple employer welfare arrangement must promptly take appropriate action to collect premiums, assessments, or penalties that are past due. Collection costs are the obligation of the delinquent member.
6. **Dividend procedures.** A multiple employer welfare arrangement may declare and pay a dividend or distribution from its surplus only if:
 - a. The dividend will not impair the multiple employer welfare arrangement's surplus; and
 - b. The multiple employer welfare arrangement does not have an outstanding loan or an outstanding advancement from a stop-loss carrier.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-12. Reserves.

A multiple employer welfare arrangement must establish reserves for all incurred losses, both reported and unreported, and for unearned premiums. To the extent that the amount of a loss is uncertain, the reserve must be set conservatively and adjusted as new information becomes available. Accounting for reserves must be as required by the financial statement forms and instructions under subsection 2 of section 45-06-14-16.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-13. Stop-loss insurance.

1. **Purchase.** A multiple employer welfare arrangement may purchase stop-loss insurance to cover a portion of its losses. If a stop-loss insurance policy is terminated or modified causing a violation of subsection 2, or otherwise compromising the multiple employer welfare arrangement's financial integrity, the multiple employer welfare arrangement must notify the commissioner prior to the termination or modification. The multiple employer welfare arrangement must inform the commissioner of corrective action that will be taken to maintain the multiple employer welfare arrangement's financial integrity.

2. **Required stop-loss coverage.** A multiple employer welfare arrangement may not retain liability on any one incident of more than ten percent of its annual premium volume during the most recent fund year, plus twenty percent of its surplus. A multiple employer welfare arrangement with less than one year's experience must use the multiple employer welfare arrangement's estimated premium volume during the first full fund year. The multiple employer welfare arrangement must purchase stop-loss insurance for liability exposure. The stop-loss carrier must be licensed to do business in North Dakota.
3. **Return of liability.** Liability transferred to an insurer under subsection 2 may not be directly or indirectly returned to a multiple employer welfare arrangement or a member.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-14. Deficit and assessments.

1. Each current member of a multiple employer welfare arrangement is jointly and severally liable for all liabilities and expenses of the multiple employer welfare arrangement. Each past member is jointly and severally liable for all liabilities and expenses of the multiple employer welfare arrangement for three complete fund years after leaving the multiple employer welfare arrangement. After the period of continuing liability, a past member is no longer jointly and severally liable for the multiple employer welfare arrangement's liabilities and expenses, except as provided in subsection 2.
2. **Runoff liability.** If a multiple employer welfare arrangement's self-funding authority is ended under subsection 1 or 2 of section 45-06-14-07, members and past members continue to be jointly and severally liable for the multiple employer welfare arrangement's liabilities and expenses until final multiple employer welfare arrangements dissolution, as follows:
 - a. All members at the termination of self-funding authority are jointly and severally liable for all multiple employer welfare arrangement liabilities and expenses until the multiple employer welfare arrangement is dissolved; and
 - b. All past members that were jointly and severally liable under subsection 1 at the time self-funding authority is ended continue to be jointly and severally liable until the multiple employer welfare arrangement is dissolved.
3. **Deficits.** If at any time a multiple employer welfare arrangement's total liabilities exceed its total assets, the board must restore a positive surplus and must do so within ninety days. A deficit may be corrected using one or more of the types of assessments set forth below. A multiple employer welfare arrangement may elect to assess some but not all jointly and severally liable members and past members. The method of assessment may not arbitrarily exclude members or past members, or impose arbitrary amounts in relation to the amounts imposed on other members and past members. The bylaws may identify methods of assessment. If the board fails to do so when required, the commissioner must order an assessment to correct a deficit using the procedure described in subdivision a.
 - a. All jointly and severally liable members and past members may be assessed proportionately to their share of the total premiums paid and owed during the assessment base period. The assessment base period at the time of a multiple employer welfare arrangement's self-funding authority ending under subsection 1 or 2 of section 45-06-14-07 is the basis of assessments until final multiple employer welfare arrangement dissolution. The assessment base period includes all completed quarters of the current fund year and the most recent three complete fund years.

- b. Jointly and severally liable members and past members may be assessed, whereby members and past members are assessed in proportion to the member's loss experience over the assessment base period if provided for in the bylaws.
 - c. Jointly and severally liable members and past members may be assessed, whereby current members pay more than past members if provided for in the bylaws.
 - d. Jointly and severally liable members and past members may be assessed whereby members belonging to the multiple employer welfare arrangement in poor loss years are assessed more than members belonging to the multiple employer welfare arrangement in better loss years if provided for in the bylaws.
 - e. Jointly and severally liable members and past members may be assessed according to any formula stated in the bylaws, including combinations of subdivisions a to d, if the formula is consistent with the provisions of this section.
4. Assessment to increase surplus. The board may assess current members in order to increase the surplus. The assessment may be made at any time in the discretion of the board to improve the multiple employer welfare arrangement's financial strength. The assessment may be calculated using any reasonable procedure consistent with the multiple employer welfare arrangement's bylaws.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-15. Financial integrity.

1. **Fidelity bond.** All contractors and individuals who handle multiple employer welfare arrangement funds or who will have access to multiple employer welfare arrangement funds, including board members, must be covered by a fidelity bond providing standard fidelity coverage, including coverage against dishonesty, theft, forgery, alteration, misplacement, or mysterious and unexplainable disappearance. The amount of coverage for each occurrence must be at least three hundred thousand dollars. The multiple employer welfare arrangement must purchase a fidelity bond covering the required contractors and individuals, or submit separate proof of coverage for all required contractors and individuals not covered under the plan's bond.
2. **Integrity of assets.** A multiple employer welfare arrangement's assets may not be:
 - a. Commingled with the assets of any member;
 - b. Loaned to anyone for any purpose or used as security for a loan, except as permitted under subsection 5 for investments;
 - c. Employed for any purpose other than for the purposes stated in the bylaws and in compliance with this chapter and related statutes; or
 - d. Considered the property or right of any member or covered person, except:
 - (1) For benefits under the coverage documents;
 - (2) For dividends declared in accordance with subsection 5 of section 45-06-14-11; and
 - (3) For a portion of the assets remaining after the plan's dissolution, in accordance with subsection 4 of section 45-06-14-07.

3. **Sources and uses of funds.** A multiple employer welfare arrangement may expend funds for payment of losses and expenses and for other costs similar to those incurred by insurers under conventional insurance policies in North Dakota. Except as provided in subdivision b of subsection 3 of section 45-06-14-11, a multiple employer welfare arrangement may not borrow money or issue debt instruments. A multiple employer welfare arrangement may bring legal suits to collect delinquent debts. A multiple employer welfare arrangement may not obtain funds through subrogation of the rights of covered persons. A multiple employer welfare arrangement may receive funds only from:
 - a. Its members as premiums, assessments, or penalties;
 - b. Its insurers or indemnitors pursuant to insurance or indemnification agreements;
 - c. Dividends, interest, or the proceeds of sale of investments;
 - d. Refunds of excess payments;
 - e. Coordination of benefits with other insurance or group self-insurance coverages; or
 - f. Collection of money owed to the multiple employer welfare arrangement.
4. **Separate accounts.** A multiple employer welfare arrangement may establish separate accounts for the payment of claims or certain types of expenses. These accounts must be used only by the service company, its authorized subcontractors, or the financial administrator, as appropriate to the account's purpose. The amount in a special account may not exceed an amount reasonably sufficient to pay the claims or expenses for which it is established.
5. **Investments.** A multiple employer welfare arrangement's investments are subject to North Dakota Century Code chapter 26.1-05, as regards both permitted and prohibited investments, maturities, and depositories. In addition, a multiple employer welfare arrangement may not invest in securities or debt of a member, or a member's parent, subsidiary, or affiliate, or any person or entity under contract with the multiple employer welfare arrangement.
6. **Monitoring financial condition.** The board must monitor the multiple employer welfare arrangement's revenues, expenses, and losses and evaluate its current and expected financial condition. The board must maintain the multiple employer welfare arrangement's sound financial condition at all times. The board may adjust premium rates, underwriting standards, dividend rates, expulsion standards, and invoke other powers granted in this chapter and the bylaws. If the commissioner determines that the board's actions are inadequate to maintain the multiple employer welfare arrangement's sound financial condition, the commissioner may order an increase in the premium rates, revoke the multiple employer welfare arrangement's self-funding authority, order that an assessment be levied against the members, or take other appropriate action.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-16. Reporting.

1. **Financial statements.** A multiple employer welfare arrangement must prepare annual financial statements containing a balance sheet; a statement of revenues, expenses, and surplus; a statement of changes in financial position; and a schedule of investments. The statements must be prepared on forms and according to instructions prescribed by the commissioner. The financial statements must be filed with the commissioner no later than one hundred eighty days after the end of the multiple employer welfare arrangement's fund year. For multiple employer welfare arrangements with annual premiums greater than two million

dollars, the financial statements must be audited by an independent certified public accountant, and the auditor's report must be submitted no later than one hundred eighty days after the end of the multiple employer welfare arrangement's fund year.

2. **Quarterly reports.** If the commissioner determines that a multiple employer welfare arrangement's financial integrity is such that the multiple employer welfare arrangement's ability to meet obligations promptly and in full will be significantly impaired, the commissioner may require that the multiple employer welfare arrangement file quarterly reports with the commissioner no later than thirty days after the end of the first, second, and third quarters of each fund year. The commissioner may remove the requirement to file quarterly reports when the multiple employer welfare arrangement's financial integrity is restored. A quarterly report must contain statements of the multiple employer welfare arrangement's:
 - a. Current total cash on hand and on deposit, and total investment;
 - b. Current total reserve for unearned and advance premiums, and total reserve for outstanding losses reported and unreported;
 - c. Dividends declared and dividends paid during the quarter;
 - d. Gross premiums written during the quarter;
 - e. Losses paid during the quarter;
 - f. Current total members; and
 - g. Any other information that the commissioner requests.
3. **Extraordinary audits.** As necessary, the commissioner may require a multiple employer welfare arrangement to investigate the accuracy of one or more entries on its financial statements or quarterly reports and to report its findings. The commissioner may require that a multiple employer welfare arrangement hire a qualified actuary, claims specialist, auditor, or other specialist as appropriate to the type of entry being investigated. If warranted by the investigation's findings, the commissioner may require changes in the multiple employer welfare arrangement's reserving, accounting, or recordkeeping practices. The audits are in addition to the commissioner's rights to examine self-funded multiple employer welfare arrangements directly, as applicable to insurance companies under North Dakota Century Code chapter 26.1-03.
4. **Penalty.** The financial statements required under subsection 1 is considered to be a multiple employer welfare arrangement's annual statement. This filing and other filings required by this chapter and related statutes are subject to North Dakota Century Code chapter 26.1-03, as applicable to licensed insurance companies for comparable filings.

History: Effective January 1, 2007; amended effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-17. Trade practices.

Multiple employer welfare arrangements are subject to the provisions of the unfair trade practices act found at North Dakota Century Code section 26.1-04-03.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-04-03, 26.1-07.1

45-06-14-18. Disclosure.

Each policy issued by a self-funded multiple employer welfare arrangement must contain, in at least ten-point type on the front page and the declaration page, the following notice:

NOTICE

This policy is issued by a self-funded multiple employer welfare arrangement. A self-funded multiple employer welfare arrangement may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for a self-funded multiple employer welfare arrangement.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1

45-06-14-19. Sanctions.

The commissioner may sanction a multiple employer welfare arrangement or suspend or revoke any certificate of authority issued to a multiple employer welfare arrangement upon any of the following grounds:

1. Failure to comply with any provision of these rules or any applicable provision of the North Dakota Century Code;
2. Failure to comply with any lawful order of the commissioner of North Dakota or of any other state;
3. Committing an unfair or deceptive act or practice;
4. Deterioration of financial condition adversely affecting the multiple employer welfare arrangement's ability to pay claims;
5. A finding that the application or any necessary forms that have been filed with the commissioner contain fraudulent information or omissions; or
6. A finding that the multiple employer welfare arrangement or its service company or financial administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to a member, a participant, or a person otherwise entitled thereto and that have been entrusted to the multiple employer welfare arrangement or its service company or financial administrator in its fiduciary capacity.

History: Effective April 1, 2017.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-01-07.4, 26.1-07.1