

1 1. One or more of the employer members of the MEWA is either
2 domiciled in this state or has its principal place of business or
3 principal administrative office in this state; and/or

4 2. The MEWA solicits an employer that is domiciled in this
5 state or that has its principal place of business or principal
6 administrative office in this state.

7 B. Each insurer licensed to do business in this state,
8 including any corporation organized under the provisions of Article
9 26 of ~~Title 36 of the Oklahoma Statutes~~ this title, that administers
10 a MEWA shall provide the Insurance Commissioner with such
11 information regarding the insurer's administrative services contract
12 or contracts with such MEWA or MEWAs that the Commissioner may
13 reasonably require.

14 C. A MEWA shall be administered only by a licensed insurer or a
15 licensed third-party administrator.

16 D. Any conflict between Article 6A of this title and applicable
17 federal law shall be resolved in favor of the federal standard and
18 the act shall be construed, consistent therewith.

19 SECTION 2. AMENDATORY 36 O.S. 2011, Section 634, is
20 amended to read as follows:

21 Section 634. A. It is unlawful to operate, maintain or
22 establish a MEWA unless the MEWA has a valid license issued by the
23 Insurance Commissioner. Any MEWA operating in this state without a
24 valid license is an unauthorized insurer.

1 B. This act shall not apply to:

2 1. A MEWA that offers or provides benefits that are fully
3 insured by an authorized insurer;

4 2. A MEWA that is exempt from state insurance regulation in
5 accordance with the Employee Retirement Income Security Act of 1974
6 (ERISA) (Public Law ~~43-406~~ 93-406);

7 3. Any plan that has no more than two employer members which
8 share substantial common support other than income generated by
9 their respective similar business classification;

10 4. A plan that has no more than two employer members, which
11 together have a combined net worth of more than Five Million Dollars
12 (\$5,000,000.00) and each of such member employers participated in
13 the continuous sponsorship and maintenance of such MEWA for the
14 benefit of their employees for a period of more than ten (10) years
15 next preceding the effective date of this act; or

16 ~~5. A MEWA which has been in existence and has provided health
17 insurance for at least five (5) years prior to January 1, 1993, and
18 which was established by a trade, industry or professional
19 association of employers that has a constitution or by laws, that
20 has been organized and maintained in good faith for at least thirty
21 (30) continuous years prior to January 1, 1993, and its members are
22 persons, firms or corporations qualified to print legal notices
23 pursuant to Section 106 of Title 25 of the Oklahoma Statutes; or~~

1 ~~6.~~ A nonprofit professional trade association pursuant to
2 Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section
3 501(c)(3), which has maintained either a self-funded plan or a fully
4 insured plan of coverage for the payment of expenses to or for
5 members of the association for a period of ten (10) or more
6 consecutive years and, if self-funded, which coverage is provided to
7 at least five hundred covered participants ~~to establish and maintain~~
8 ~~a self-funded plan.~~

9 C. Any entity which claims to be exempt from state regulation
10 pursuant to subsection B of this section shall provide to the
11 Commissioner strict proof establishing such exemption.

12 SECTION 3. AMENDATORY 36 O.S. 2011, Section 637, is
13 amended to read as follows:

14 Section 637. Each MEWA shall file with the Insurance
15 Commissioner an application for a license on a form prescribed by
16 the Commissioner and signed under oath by officers of the
17 association or the administrator of the MEWA. The application shall
18 include or have attached the following:

19 1. A copy of any articles of incorporation, constitution and
20 bylaws of any association;

21 2. A list of the names, addresses and official capacities with
22 the MEWA of the individuals who will be responsible for the
23 management and conduct of the affairs of the MEWA, including all
24 trustees, officers and directors. Such individuals shall fully

1 disclose the extent and nature of any contracts or arrangements
2 between them and the MEWA, including possible conflicts of interest;

3 3. A copy of the articles of incorporation, bylaws or trust
4 agreement that governs the operation of the MEWA;

5 4. A copy of the policy, contract, certificate, summary plan
6 description or other evidence of the benefits and coverages provided
7 to covered employees, including a table of the rates charged or
8 proposed to be charged for each form of such contract. A qualified
9 actuary shall certify that:

10 a. the rates are neither inadequate, nor excessive, nor
11 unfairly discriminatory,

12 b. the rates are appropriate for the classes of risks for
13 which that have been computed, and

14 c. an adequate description of the rating methodology has
15 been filed with the Commissioner and such methodology
16 follows consistent and equitable actuarial principles.

17 For purposes of this section and Section 639 of this title, a
18 "qualified actuary" is an actuary who is a Fellow of the Society of
19 Actuaries (FSA), a member of the American Academy of Actuaries, or
20 an Enrolled Actuary under the Employee Retirement Income Security
21 Act of 1974 (29 U.S.C., Section 1001 et seq.), and has experience
22 in establishing rates for a self-insured trust and health services
23 being provided;

24

1 ~~5.~~ Any administrator retained by the MEWA must be a licensed
2 third-party administrator. The MEWA must provide proof of a
3 fidelity bond which shall protect against acts of fraud or
4 dishonesty in servicing the MEWA, covering each person responsible
5 for servicing the MEWA, in an amount equal to the greater of ten
6 percent (10%) of the contributions received by the MEWA or ten
7 percent (10%) of the benefits paid, during the preceding calendar
8 year, with a minimum amount requirement of Twenty Thousand Dollars
9 (\$20,000.00) and a maximum amount requirement of Five Hundred
10 Thousand Dollars (\$500,000.00);

11 6. A copy of the MEWA's stop-loss agreement. The stop-loss
12 insurance agreement must be issued by an insurer authorized to do
13 business in this state and must provide both specific and aggregate
14 coverage with an aggregate retention of no more than one hundred
15 twenty-five percent (125%) of the expected claims for the next plan
16 year and a specific retention amount as annually indicated in the
17 actuarial opinion. ~~The Insurance Commissioner shall have the~~
18 ~~authority to waive the requirements for aggregate stop-loss coverage~~
19 ~~if deemed appropriate;~~

20 7. In the initial application, a feasibility study, made by a
21 qualified actuary with an opinion acceptable to the Commissioner,
22 that addresses market potential, market penetration, market
23 competition, operating expenses, gross revenues, net income, total
24 assets and liabilities, cash flow and other items as the

1 Commissioner requires. The study shall be for the greater of three
2 (3) years or until the MEWA has been projected to be profitable for
3 twelve (12) consecutive months. The study must show that the MEWA
4 would not, at any month end of the projection period, have less ~~that~~
5 than ninety percent (90%) of the reserves as required by a qualified
6 actuary;

7 8. A copy of an audited financial statement of the MEWA
8 prepared by ~~a~~ an independent licensed certified public accountant;

9 9. A copy of every contract between the MEWA and any
10 administrator or service company; and

11 10. Such additional information as the Commissioner may
12 reasonably require.

13 SECTION 4. AMENDATORY 36 O.S. 2011, Section 639, is
14 amended to read as follows:

15 Section 639. A. Every MEWA shall, within ninety (90) days
16 after the end of each fiscal year of the MEWA, or within any such
17 extension of time that the Insurance Commissioner for good cause
18 grants, file a report with the Commissioner, on forms acceptable to
19 the Commissioner and verified by the oath of a member of the board
20 of trustees or chief executive officer of any governing association
21 and by ~~an~~ the administrator of the MEWA, showing its financial
22 condition on the last day of the preceding fiscal year. The report
23 shall contain an audited financial statement of the MEWA prepared in
24 accordance with generally accepted accounting principles, including

1 its balance sheet and a statement of the operations for the
2 preceding fiscal year certified by an independent accounting firm or
3 independent individual holding a permit to practice certified public
4 accounting in this state. The report shall also include an analysis
5 of the adequacy of reserves and contributions or premiums charged,
6 based on a review of past and projected claims and expenses.

7 B. In conjunction with the annual report required in subsection
8 A of this section, the MEWA shall submit an actuarial certification
9 prepared by a qualified independent actuary that indicates:

10 1. The MEWA is actuarially sound, with the certification
11 considering the rates, benefits, and expenses of, and any other
12 funds available for the payment of obligations of the MEWA;

13 2. The rates being charged and to be charged for contracts are
14 actuarially adequate to the end of the period for which rates have
15 been guaranteed;

16 3. The recommended amount of cash reserves the MEWA should
17 maintain, which shall not be less than the greater of twenty percent
18 (20%) of the total contributions in the preceding plan year or
19 twenty percent (20%) of the total estimated contributions for the
20 current plan year. The cash reserves shall be calculated with
21 proper actuarial regard for known claims, paid and outstanding, a
22 history of incurred but not reported claims, claims handling
23 expenses, unearned ~~premium~~ premiums, a trend factor, and a margin
24 for error. Cash reserves required by this section shall be

1 maintained in cash or federally guaranteed obligations of less than
2 five-year maturity that have a fixed or recoverable principal amount
3 or such other investments as the Commissioner may authorize by rule;

4 4. Whether amounts reserved to cover the cost of health care
5 benefits are:

6 a. calculated in accordance with the loss reserving
7 standards that would be applicable to a private
8 insurance company writing the same coverage,

9 b. computed in accordance with accepted loss reserving
10 standards, including a reserve for Incurred But Not
11 Reported Claims (IBNR), and

12 c. fairly stated in accordance with sound loss reserving
13 standards;

14 5. The recommended level of specific and aggregate stop-loss
15 insurance that the MEWA should maintain and whether the MEWA is
16 funding at the aggregate retention plus all other costs of the MEWA;
17 and

18 6. Such other information relating to the performance of the
19 MEWA that is reasonably required by the Commissioner.

20 C. The MEWA shall send an annual report to all of the
21 employers, describing the financial condition of the MEWA as of the
22 end of the last fiscal year. The report must be sent at the same
23 time as the filing of the annual statement of the MEWA.

24

1 D. The Commissioner may require a MEWA to file quarterly,
2 within forty-five (45) days after the end of each of the remaining
3 fiscal quarters, a financial statement on a form prescribed by the
4 Commissioner, verified by the oath of a member of the board of
5 trustees and an administrator of the MEWA, showing its financial
6 condition on the last day of the preceding quarter and the statement
7 of a qualified actuary setting forth the actuary's opinion relating
8 to the level of cash reserves in accordance with paragraphs 3 and 4
9 of subsection B of this section.

10 E. Any MEWA that fails to file a report as required by this
11 section is subject to Section 311 of this title; and, after notice
12 and opportunity for hearing, the Commissioner may suspend the MEWA's
13 authority to enroll new insureds or to do business in this state
14 while the failure continues.

15 SECTION 5. AMENDATORY 36 O.S. 2011, Section 640, is
16 amended to read as follows:

17 Section 640. A. The Insurance Commissioner shall deny, suspend
18 or revoke a MEWA's license if, after notice and opportunity for a
19 hearing, the Commissioner finds that the MEWA:

20 1. Is insolvent;

21 2. Is using such methods and practices in the conduct of its
22 business as to render its further transaction of business in this
23 state hazardous or injurious to its participating employees, covered
24 employees and dependents, or to the public;

1 3. Has failed to pay any final judgment rendered against it in
2 a court of competent jurisdiction within sixty (60) days after the
3 judgment became final;

4 4. Is or has been in violation of any material provisions of
5 this act;

6 5. Is no longer actuarially sound; or

7 6. Is charging rates that are excessive, inadequate or unfairly
8 discriminatory.

9 B. The Commissioner may deny, suspend or revoke the license of
10 any MEWA if, after notice and opportunity for a hearing, the
11 Commissioner determines that the MEWA:

12 1. Has violated any lawful order or rule of the Commissioner or
13 any applicable provisions of this act;

14 2. Has refused to produce its accounts, records or files for
15 examination under Sections ~~308~~ 309.1 through ~~310~~ 310a.3 of ~~Title 36~~
16 ~~of the Oklahoma Statutes~~ this title or through any of its officers
17 has refused to give information with respect to its affairs or to
18 perform any other legal obligation as to an examination;

19 3. Utilized persons to solicit enrollments through an
20 unlicensed agent; or

21 4. Has violated any provision of the Unfair ~~Claim~~ Claims
22 Settlement Practices Act, Section ~~1221~~ 1250.1 et seq. of ~~Title 36 of~~
23 ~~the Oklahoma Statutes~~ this title.

24

1 C. Whenever the financial condition of the MEWA is such that,
2 if not modified or corrected, its continued operation would result
3 in impairment or insolvency, in addition to any provisions in this
4 act, the Commissioner may order the MEWA to file with the
5 Commissioner and implement a corrective action plan designed to ~~de~~
6 ~~one or more of the following:~~

7 ~~1. Reduce the total amount of present potential liability for~~
8 ~~benefits by reinsurance or other means;~~

9 ~~2. Reduce the volume of new business being accepted;~~

10 ~~3. Reduce the expenses of the MEWA by specified methods; or~~

11 ~~4. Suspend or limit the writing of new business for a period of~~
12 ~~time~~ correct such impairment or insolvency.

13 If the MEWA fails to submit a plan within the time specified by the
14 Commissioner or submits a plan that is insufficient ~~to correct the~~
15 ~~MEWA's financial condition~~, the Commissioner may order the MEWA to
16 implement ~~one or more of the~~ corrective actions ~~listed in this~~
17 subsection as necessary to correct the MEWA's financial condition.

18 D. The Commissioner shall, in ~~the~~ any order suspending the
19 authority of a MEWA to enroll new insureds, specify the period
20 during which the suspension is to be in effect and the conditions,
21 if any, that must be met prior to reinstatement of its authority to
22 enroll new insureds. The order of suspension is subject to
23 rescission or modification by further order of the Commissioner
24 before the expiration of the suspension period. Reinstatement shall

1 not be made unless requested in writing by the MEWA; however, the
2 Commissioner shall not grant reinstatement if it is found that the
3 circumstances for which suspension occurred still exist.

4 SECTION 6. This act shall become effective November 1, 2019.

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6 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 02/28/2019 - DO
7 PASS, As Coauthored.

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