

This rule was filed as 13 NMAC 19.3.

TITLE 13 INSURANCE
CHAPTER 19 NON-ADMITTED OR SURPLUS LINES INSURANCE
PART 3 REPORTING REQUIREMENTS FOR MULTIPLE EMPLOYER WELFARE
ARRANGEMENTS

13.19.3.1 ISSUING AGENCY: New Mexico State Corporation Commission [Public Regulation Commission], Department of Insurance, Post Office Box 1269, Santa Fe, NM 87504-1269.
[7/1/97; Recompiled 11/30/01]

13.19.3.2 SCOPE: This rule applies to all persons licensed or required to be licensed by the superintendent.
[7/1/97; Recompiled 11/30/01]

13.19.3.3 STATUTORY AUTHORITY: Sections 59A-2-9 and 59A-15-20 NMSA 1978.
[5/1/92; Recompiled 11/30/01]

13.19.3.4 DURATION: Permanent.
[7/1/97; Recompiled 11/30/01]

13.19.3.5 EFFECTIVE DATE: May 1, 1992, unless a later date is cited at the end of a section or paragraph. Repromulgated in NMAC format effective July 1, 1997.
[5/1/92, 7/1-97; Recompiled 11/30/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

13.19.3.6 OBJECTIVE: The purpose of this rule is to require licensed agents, insurance consultants, insurance administrators and insurers to submit information to the department of insurance prior to assisting in any way the transaction of insurance by certain types of multiple employer arrangements identified in this rule. These reports will help the department identify unauthorized insurance arrangements before the transactions occur. The reports also will help licensees identify unauthorized insurance arrangements so that they can protect themselves from potential liability for assisting in the transaction of unauthorized insurance.
[5/1/92; Recompiled 11/30/01]

13.19.3.7 DEFINITIONS:

A. **"Agent"** has the definition ascribed thereto in Section 59A-12-2A NMSA 1978 of the New Mexico Insurance Code.

B. **"Arrangement"** means a fund, trust, plan, program or other mechanism by which a person provides, or attempts to provide, health care benefits to individuals.

C. **"Authorized insurer"** has the definition ascribed thereto in Section 59A-1-8B NMSA 1978. For purposes of this rule, nonprofit health care plans holding a valid and subsisting certificate of authority, issued by the superintendent under Article 47 of the Insurance Code, and health maintenance organizations holding a valid and subsisting certificate of authority, issued by the superintendent under Article 46 of the Insurance Code, shall also be defined as authorized insurers.

D. **"Collectively bargained arrangement"** means an arrangement which provides or represents that it is providing health care benefits or coverage under or pursuant to one or more collective bargaining agreements.

E. **"Employee leasing arrangement"** means an arrangement, under contract or otherwise, whereby one business or other entity leases all or a significant number of its workers from another business or entity.

F. **"Employee welfare benefit plan"** means any plan, fund or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment.

G.. **“Fully insured by an authorized insurer”** means that, for all of the health care coverage provided or offered by or through an arrangement:

- (1) an authorized insurer is directly obligated by contract to provide all of the coverage to or under the arrangement;
- (2) the authorized insurer assumes all of the risk for payment of all covered services or benefits; and
- (3) the liability of the authorized insurer for payment of the covered services or benefits is directly to the individual employee, member or dependent receiving the health care services.

H. **“Insurance administrator”** has the definition ascribed thereto in Section 59A-12A-2B NMSA 1978 of the New Mexico Insurance Code.

I. **“Insurance consultant”** has the definition ascribed thereto in Section 59A-11A-1NMSA 1978 of the New Mexico Insurance Code.

J. **“Multiple employer welfare arrangement”** has the meaning given in Section 59A-1-8.1 NMSA 1978 of the New Mexico Insurance Code.

K. **“Reportable MEWA”** means a person or entity that provides health care benefits or coverage to the employees of two or more employers. Reportable MEWA does not include:

- (1) an authorized insurer;
- (2) an arrangement which is fully insured by an authorized insurer;
- (3) a collectively bargained arrangement;
- (4) an employee welfare benefit plan established or maintained by a rural electric cooperative or a rural telephone cooperative; or
- (5) a multiple employer welfare arrangement that has satisfactorily demonstrated to the superintendent that it is subject to the jurisdiction of another agency of this state or the federal government in accordance with Section 59A-15-17 NMSA 1978 of the Health Care Benefits Jurisdiction Act.

L. **“Rural electric cooperative means”:**

- (1) any organization which is exempt from tax under Section 501(a) of Title 26 of the United States Code and which is engaged primarily in providing electric service on a mutual or cooperative basis; or
- (2) any organization described in Paragraph (4) or (6) of Section 501(c) of Title 26 of the United States Code which is exempt from tax under Section 501(a) of Title 26 and at least eighty percent (80%) of the members of which are organizations described in 13 NMAC 19.3.7.11.1 [now Paragraph (1) of Subsection K of 13.19.3.7 NMAC].

M. **“Rural telephone cooperative”** means an organization described in Paragraph (4) or (6) of Section 501(c) of Title 26 of the United States Code which is exempt from tax under Section 501(a) of Title 26 and at least eighty percent (80%) of the members of which are organizations engaged primarily in providing telephone service to rural areas of the United States on a mutual, cooperative or other basis.
[5/1/92; Recompiled 11/30/01]

13.19.3.8 AGENTS AND INSURANCE CONSULTANTS PROHIBITED FROM ASSISTING REPORTABLE MEWAS PRIOR TO FILING:

A. No agent or insurance consultant may solicit, advertise, or market in this state health benefits or coverage from, or accept an application for, or place coverage for a person who resides in this state, with a reportable MEWA unless the agent or insurance consultant first files the information required under 13 NMAC 19.3.12 [now 13.19.3.12 NMAC].

B. No agent or insurance consultant may solicit another agent or insurance consultant to enter into an arrangement to solicit, advertise or market services, health benefits or coverage of a reportable MEWA unless the soliciting agent or insurance consultant first files the information required under 13 NMAC 19.3.12 [now 13.19.3.12 NMAC].
[5/1/92; Recompiled 11/30/01]

13.19.3.9 AGENTS AND INSURANCE CONSULTANTS PROHIBITED FROM ASSISTING EMPLOYEE LEASING ARRANGEMENTS PRIOR TO FILING:

A. No agent or insurance consultant may solicit, advertise or market in this state services, health benefits or coverage for an employee leasing arrangement or a person or arrangement which represents itself as an employee leasing arrangement unless the agent or insurance consultant first files the information required under 13 NMAC 19.3.12 [now 13.19.3.12 NMAC].

B. No agent or insurance consultant may solicit another agent or insurance consultant to enter into an arrangement to solicit, advertise or market the health benefits, coverage or services of an employee leasing arrangement unless the soliciting agent or insurance consultant first files the information required under 13 NMAC 19.3.12 [now 13.19.3.12 NMAC].
[5/1/92; Recompiled 11/30/01]

13.19.3.10 AGENTS AND INSURANCE CONSULTANTS PROHIBITED FROM ASSISTING COLLECTIVELY BARGAINED ARRANGEMENTS PRIOR TO FILING:

A. No agent or insurance consultant may solicit, advertise, or market in this state health benefits or coverage from, or accept an application for, or place coverage for a person who resides in this state with, a collectively bargained arrangement or an arrangement which represents itself as a collectively bargained arrangement unless the agent or insurance consultant first files the information required under 13 NMAC 19.3.12 [now 13.19.3.12 NMAC].

B. No agent or insurance consultant may solicit another agent or insurance consultant to enter into an arrangement to solicit, advertise or market the health benefits or coverage of a collectively bargained arrangement unless the soliciting agent or insurance consultant first files the information required under 13 NMAC 19.3.12 [now 13.19.3.12 NMAC].
[5/1/92; Recompiled 11/30/01]

13.19.3.11 INSURANCE ADMINISTRATORS AND AUTHORIZED INSURERS PROHIBITED FROM ASSISTING REPORTABLE MEWAS PRIOR TO FILING:

A. No insurance administrator may solicit or effect coverage of, underwrite for, collect charges or premium for, or adjust or settle claims of a resident of this state for, or enter into any agreement to perform any of those functions for a reportable MEWA which provides coverage to residents to this state unless the insurance administrator first files the information required under 13 NMAC 19.3.12 [now 13.19.3.12 NMAC].

B. No authorized insurer may solicit or effect coverage of, underwrite for, collect charges or premiums for, or adjust or settle claims of a resident of this state for, or enter into any agreement to perform any of those functions for a reportable MEWA which provides coverage to residents of this state unless the insurer first files the information required under 13 NMAC 19.3.12 [now 13.19.3.12 NMAC].

C. An authorized insurer which issues or has issued any insurance coverage to a reportable MEWA which covers residents of this state including, but not limited to, specific or aggregate stop-loss coverage shall file the information required under 13 NMAC 19.3.12 [now 13.19.3.12 NMAC] within thirty (30) days after the coverage is issued or within thirty (30) days after the date the reportable MEWA first provides coverage to a resident of this state, or within thirty (30) days of the effective date of this rule, whichever is later.

[5/1/92; Recompiled 11/30/01]

13.19.3.12 INFORMATION REQUIRED TO BE FILED AND KEPT CURRENT:

A. An agent, insurance consultant, insurance administrator or insurer required to file under 13 NMAC 19.3.8 through 19.3.11 [now 13.19.3.8 NMAC through 13.19.3.11 NMAC], inclusive, shall file all of the following information on a form approved by the superintendent:

(1) a copy of the organizational documents of the reportable MEWA, employee leasing firm or collectively bargained arrangement, including the articles of incorporation and bylaws, partnership agreement or trust instrument;

(2) a copy of each insurance or reinsurance contract which concerns all or any portion of benefits or coverage offered by the reportable MEWA, employee leasing firm or collectively bargained arrangement;

(3) a clear and complete statement describing the extent to which the benefits provided or offered by the reportable MEWA, employee leasing firm or collectively bargained arrangement are insured or reinsured;

(4) the names and addresses of any person performing or expected to perform the functions of an insurance administrator for the reportable MEWA, employee leasing firm or collectively bargained arrangement; and

(5) a copy of the most recent financial statement of the reportable MEWA, employee leasing firm or collectively bargained arrangement, or a sworn statement that no such financial statement is available.

B. A filing under this rule is ineffective and is not in compliance with this rule if:

(1) it is incomplete or inaccurate; or

(2) a change occurs which makes the information filed inaccurate, unless an amended filing is made within sixty (60) days after the date the change occurs and the amended filing accurately reflects the change.

C. The superintendent shall acknowledge receipt of the filing under this rule within sixty (60) days of receipt of such filing. If the superintendent fails to acknowledge receipt within such time period, the filing shall be deemed to be complete and filed.

[5/1/92; Recompiled 11/30/01]

13.19.3.13 LACK OF KNOWLEDGE NOT A DEFENSE:

A. Lack of knowledge or intent with respect to the status, organization or filings of a reportable MEWA, employee leasing firm or collectively bargained arrangement is not a defense to a violation of this rule.

B. A filing under this rule is solely for the purpose of providing information to the superintendent. This rule and filings hereunder do not authorize or license a reportable MEWA, employee leasing firm, collectively bargained arrangement or any other arrangement to engage in business in this state if otherwise prohibited by law.

[5/1/92; Recompiled 11/30/01]

13.19.3.14 LIABILITY FOR VIOLATION OF THIS RULE: Any agent, insurance consultant, insurance administrator or insurer who or which assists in any way the transaction of insurance with any arrangement and who or which fails to report in accordance with this regulation shall be liable to any insured in the event that an arrangement fails to pay a claim or loss in this state within the terms of the policy or contract with any insured. The licensee's liability in each such instance shall be coextensive with the arrangement's contractual obligation to its insured, subject to proportional contributions from any other licensee(s) involved in the transaction of insurance with an arrangement in violation of this rule.

[5/1/92; Recompiled 11/30/01]

13.19.3.15 PENALTIES: The superintendent of insurance may revoke, suspend or refuse to continue the license or certificate of authority or other authorization of any person who fails to comply with this rule and may impose such other administrative penalties as may be authorized by the Insurance Code.

[5/1/92; Recompiled 11/30/01]

HISTORY OF 13.19.3 NMAC:

Pre-NMAC History: The material in this rule was originally filed with the State Records Center as: SCC 92-3-IN, Reporting Requirements for Licensees Seeking to do Business with Certain Unauthorized Multiple Employee Welfare Arrangements (Article 15, Rule 1), filed 3/31/92.

History of Repealed Material: [RESERVED]