

**PROPOSED RULES**

**CHAPTER 45-03-07.1  
CREDIT FOR REINSURANCE MODEL REGULATION**

Subdivision a of subsection 1 of Section 45-03-07.1-04.1 is amended as follows:

**45-03-07.1-04.1. Credit for reinsurance - Certified reinsurers.**

1. Pursuant to subsection 5 of North Dakota Century Code Section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of subsection 5 of North Dakota Century Code section 26.1-31.2-01 and section 26.1-31.2-02 and North Dakota Administrative Code section 45-03-07.1-07, 45-03-07.1-08, or 45-03-07.1-09. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

a.	Ratings	Security Required
	Secure - 1	0%
	Secure - 2	0% <u>10%</u>
	Secure - 3	20%
	Secure - 4	50%
	Secure - 5	75%
	Vulnerable - 6	100%

Paragraph 1 of subdivision d of subsection 2 of Section 45-03-07.1-04.1 is amended as follows:

- d. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and

individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include the following:

- (1) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC, CCC+, CC, CCC-, DD

**History:** Effective January 1, 2016; amended effective April 1, 2017.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

Section 45-03-07.1-08 is amended as follows:

**45-03-07.1-08. Letters of credit qualified under section 45-03-07.1-06.**

1. The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03. The letter of credit must contain an issue date and expiration date and stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself may not contain reference to any other agreements, documents, or entities, except as provided in subdivision a of subsection 9. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.
2. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that the information is for internal identification purposes only.
3. The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
4. The term of the letter of credit must be for at least one year and must contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than thirty days' notice prior to the expiration date or nonrenewal.
5. The letter of credit must state whether it is subject to and governed by the laws of this state or the uniform customs and practice for documentary credits of the international chamber of commerce, publication 600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), and all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.
6. If the letter of credit is made subject to the uniform customs and practice for documentary credits of the international chamber of commerce,

publication ~~500~~ 600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), or any successor publication, then the letter of credit ~~must~~ shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in article ~~47~~ 36 of publication ~~500~~ 600 or any other successor publication occur.

7. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection 1, then the following additional requirements must be met:
  - a. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
  - b. The "evergreen clause" must provide for thirty days' notice prior to the expiration date for nonrenewal.
8. Reinsurance agreement provisions.
  - a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
    - (1) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.
    - (2) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
      - (a) To pay or reimburse the ceding insurer for:
        - [1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;
        - [2] The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding

insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

[3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(b) If the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in paragraph 2 of subdivision a as may remain after withdrawal and for any period after the termination date.

(3) All of the provisions of this subdivision must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

b. Nothing contained in subdivision a precludes the ceding insurer and assuming insurer from providing for:

(1) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph 2 of subdivision a; or

(2) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

**History:** Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016; April 1, 2017.

**General Authority:** NDCC 26.1-31.2-04

**Law Implemented:** NDCC 26.1-31.2

## PROPOSED RULES

### CHAPTER 45-03-20 ANNUAL FINANCIAL REPORTING MODEL REGULATION

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<u>45-03-20-15</u>	<u>Internal Audit Function Requirements</u>

**45-03-20-02. Definitions.** The terms and definitions in this section are intended to provide definitional guidance as the terms are used within this chapter.

1. "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American institute of certified public accountants and in all states in which they are licensed to practice. For Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.
2. An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

3. "Audit committee" means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, the internal audit function of an insurer or group of insurers, if applicable, and external audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. Refer to subsection 5 6 of section 45-03-20-12.1 for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.
4. "Audited financial report" means and includes those items specified in section 45-03-20-04.
5. "Group of insurers" means those licensed insurers included in the reporting requirements of North Dakota Century Code chapter 26.1-10, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financing reporting.
6. "Indemnification" means an agreement of indemnity or a release from liability if the intent or effect is to shift or limit in any manner the potential liability of a person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.
7. "Independent board member" has the same meaning as described in subsection 3 4 of section 45-03-20-12.1.
8. "Insurer" means a licensed insurer as defined in North Dakota Century Code chapter 26.1-02.
9. "Internal audit function" means a person or persons that provide independent, objective, and reasonable assurance designed to add value and improve an organization's operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.
10. "Internal control over financial reporting" means a process effected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, that is those items specified in subsections 2 through 7 of section 45-03-20-04 and includes those policies and procedures that:

- a. Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
  - b. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in subsections 2 through 7 of section 45-03-20-04 and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
  - c. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in subsections 2 through 7 of section 45-03-20-04.
40. 11. "Section 404" means section 404 of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204; 116 Stat. 745] and the United States securities and exchange commission's rules and regulations promulgated thereunder.
41. 12. "Section 404 report" means management's report on internal control over financial reporting as defined by the United States securities and exchange commission and the related attestation report of the independent certified public accountant as described in subsection 1.
42. 13. "SOX-compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 [Pub. L. 107-204; 116 Stat. 745]:
- a. The preapproval requirements of section 201 (section 10A(i) of the Securities Exchange Act of 1934 [Pub. L. 73-291; 48 Stat. 881]);
  - b. The audit committee independence requirements of section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934 [Pub. L. 73-291; 48 Stat. 881]); and
  - c. The internal control over financial reporting requirements of section 404 (item 308 of the United States securities and exchange commission regulation S-K).

**History:** Effective October 1, 1995; amended effective January 1, 2008; April 1, 2010; April 1, 2017.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1

**45-03-20-12.1. Requirements for audit committees.** This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX-compliant entity or a direct or indirect wholly owned subsidiary of a SOX-compliant entity.

1. The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work pursuant to this chapter. Each accountant shall report directly to the audit committee.
2. The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities if required by section 45-03-20-15.
- ~~3.~~ 3. Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection ~~5~~ 6 of this section and subsection 3 of section 45-03-20-02.
- ~~3.~~ 4. In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in the member's capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.
- ~~4.~~ 5. If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.
- ~~5.~~ 6. To exercise the election of the controlling person to designate the audit committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which

shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

- ~~6.~~ 7. a. The audit committee shall require the accountant that performs for an insurer any audit required by this chapter to timely report to the audit committee in accordance with the requirements of statements on auditing standards no. 61, communication with audit committees, or its replacement, including:
- (1) All significant accounting policies and material permitted practices;
  - (2) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
  - (3) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.
- b. If an insurer is a member of an insurance holding company system, the reports required by subdivision a may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

~~7.~~ 8. The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0-\$300,000,000	Over \$300,000,000-\$500,000,000	Over \$500,000,000
No minimum requirements. See also notes A and B.	Majority (50% or more) of members be independent. See also notes A and B.	Supermajority of members (75% or more) shall be independent. See also note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a risk-based capital action level event, meets one or more of the standards of an insurer deemed to be in

hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

8. 9. An insurer with direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars may make application to the commissioner for a waiver from this section requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the national association of insurance commissioners. If the nondomestic state accepts electronic filing with the national association of insurance commissioners, the insurer shall file the approval in an electronic format acceptable to the national association of insurance commissioners.

**History:** Effective April 1, 2010; amended effective April 1, 2017.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1

#### **45-03-20-13. Exemptions and effective dates.**

1. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. The hearing must be held in accordance with the rules and regulations of the North Dakota insurance department pertaining to administrative hearing procedures.
2. Domestic insurers retaining a certified public accountant on October 1, 1995, who qualify as independent shall comply with this chapter for the

year ending December 31, 1996, and each year thereafter unless the commissioner permits otherwise.

3. Domestic insurers not retaining a certified public accountant on October 1, 1995, who qualify as independent may meet the following schedule for compliance unless the commissioner permits otherwise:
  - a. As of December 31, 1996, file with the commissioner an audited financial report.
  - b. For the year ending December 31, 1996, and each year thereafter, the insurers shall file with the commissioner all reports and communications required by this chapter.
4. Foreign insurers shall comply with this chapter for the year ending December 31, 1996, and each year thereafter, unless the commissioner permits otherwise.
5. The requirements of subsection 4 of section 45-03-20-06 shall be in effect for audits of the year beginning January 1, 2010, and thereafter.
6. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members, as opposed to a supermajority, because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.
7. The requirements of section 45-03-20-01, subsection 3 of section 45-03-20-03, subsections 7 through 12 of section 45-03-20-06, and sections 45-03-20-08 and 45-03-20-12.3, except for section 45-03-20-12.1 covered above, are effective beginning with the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded, but not earlier than December 31, 2010, to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

8. The requirements of section 45-03-20-15 are to be in effective April 1, 2017. If an insurer or group of insurers that is exempt from the section 45-03-20-15 requirements no longer qualifies for that exemption, it shall have one year after the year the threshold is exceeded to comply with the requirements of this article.

**History:** Effective October 1, 1995; amended effective April 1, 2010; April 1, 2017.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1

#### **45-03-20-15. Internal audit function requirements.**

1. Exemption. An insurer is exempt from the requirements of this section if:
  - a. The insurer has annual direct written and unaffiliated premium, including international direct and assumed premium but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars; and
  - b. If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than one billion dollars.

An insurer or group of insurers exempt from the requirements of this section is encouraged, but not required, to conduct a review of the insurer business type, sources of capital, and other risk factors to determine whether an internal audit function is warranted. The potential benefits of an internal audit function should be assessed and compared against the estimated costs.

2. Function. The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.
3. Independence. In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal

audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

4. Reporting. The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.
  
5. Additional requirements. If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

**History:** Effective April 1, 2017.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-03-07, 26.1-03-11.1

## PROPOSED RULES

### CHAPTER 45-06-14

#### SELF-INSURANCE POOLS MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

##### Section

- 45-06-14-01 Definitions
- 45-06-14-02 Purpose
- 45-06-14-03 Scope
- 45-06-14-04 Bylaws
- 45-06-14-05 Board
- 45-06-14-06 Application
- 45-06-14-07 Ending ~~Self-Insurance~~ Self-Funding, Runoff Period, and Plan Dissolution
- 45-06-14-08 Administration
- 45-06-14-09 Membership
- 45-06-14-10 Coverage
- 45-06-14-11 Premiums, Cashflow, and Dividends
- 45-06-14-12 Reserves
- 45-06-14-13 Stop-Loss Insurance
- 45-06-14-14 Deficit and Assessments
- 45-06-14-15 Financial Integrity
- 45-06-14-16 Reporting
- 45-06-14-17 Trade Practices
- 45-06-14-18 Disclosure
- 45-06-14-19 Sanctions

##### **45-06-14-01. Definitions.**

1. "Board" means a pool's multiple employer welfare arrangement's board of trustees.
2. "Bylaws" means the statements and organizational documents adopted by a pool 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 pool 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 pool multiple employer

welfare arrangement. Characteristics of coverage include the kind of loss or benefit that the pool multiple employer welfare arrangement will reimburse, subject to specific exclusions, limitations, or deductibles.

6. "Days" means calendar days.
7. ~~"Employee health benefits, disability benefits, or both"~~ "Employee health welfare benefit pool plan" means a pool that covers ~~employee health benefits, disability benefits, or both~~ means an employee welfare benefit plan as defined by 29 U.S.C. § 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 pool's multiple employer welfare arrangement's twelve-month fiscal year.
10. ~~"Member means a public school district, a political subdivision, or private employer member of a pool. Reference to actions of a member include actions on behalf of the member's covered employees or other covered persons.~~
11. ~~"Pool" means any self-insurance fund or agreement for the reciprocal assumption of risk established by or among two or more groups for coverage of each group's employee health benefits and disability benefits. Actions of a pool include actions by the pool's designated agents. "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined by 29 U.S.C. § 1002.~~
12. "Premium" means the amount charged by the pool 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 on-going and extended, rather than a temporary or project-specific, relationship.
14. "Runoff ~~pool~~ multiple employer welfare arrangement" means a ~~pool~~ multiple employer welfare arrangement that no longer has authority to self-insure ~~self-fund~~ but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the ~~pool~~ multiple employer welfare arrangement provided coverage.
14. "Self-insure" means to ~~assume primary liability or responsibility for certain risks or benefits, rather than transferring liability or responsibility to some other entity.~~
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 title 26.1 of the North Dakota Century Code.
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.
16. "Sponsoring association" means a group that sponsors or organizes a pool.
17. "Surplus" means a ~~pool's~~ multiple employer welfare arrangement's total assets minus total liabilities. "Surplus" includes paid-in capital and retained earnings. The amount of a ~~pool's~~ multiple employer welfare arrangement's surplus is determined according to the instructions provided for a ~~pool's~~ 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

**45-06-14-02. Purpose.** This chapter governs the formation, operation, and dissolution of an ~~employee health benefit pool~~ a multiple employer welfare arrangement. The provisions are intended to ensure the financial integrity and the competent and equitable administration of the ~~pool~~ 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

**45-06-14-03. Scope.** The following are subject to the requirements of this chapter:

1. ~~A group that organizes an employee health benefit pool;~~
2. ~~A group that forms, joins, or leaves an employee health benefit pool; and~~
3. ~~A service company that provides services to an employee health benefit pool.~~

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

**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 employee health benefit pool's~~ 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 pool multiple employer welfare arrangement, including standards of financial integrity and loss experience;
- j. The procedure for admitting new members to the pool multiple employer welfare arrangement;
- k. The criteria for expelling members from the pool multiple employer welfare arrangement for reasons including nonpayment of premiums;
- l. The procedure for withdrawal and expulsion of members from the pool multiple employer welfare arrangement, including the minimum required period of membership;
- m. A statement of the coverages to be provided by the pool 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 pool multiple employer welfare arrangement funds and the purposes for which pool 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 pool's 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 pool 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

#### **45-06-14-05. Board.**

1. **Structure.** A pool 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 or of the ~~sponsoring association~~ multiple employer welfare arrangement, if any. No member may have more than one representative on the board, unless the pool multiple employer welfare arrangement has only two members, in which case each member must have at least one representative on the board. ~~The sponsoring association must not have majority representation on the board.~~ No trustee may be an employee, agent, or representative of the pool's multiple employer welfare arrangement's service company, financial administrator, insurer, or other person or entity under contract with the pool multiple employer welfare arrangement, ~~except that 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.~~ 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 pool 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 pool 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 pool's 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 pool's 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 pool's 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 pool's multiple employer welfare arrangement's operation and financial integrity; and
- h. Monitor the pool's 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

#### **45-06-14-06. Application.**

1. **Initial application.** ~~Two or more groups may apply to the commissioner for authority to form a self-insurance pool. 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 and must include a proposed business plan. The appropriate filing fee pursuant to N.D.C.C. § 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-insure 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.~~ 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 and must include a proposed business plan. The appropriate filing fee pursuant to N.D.C.C. § 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-insure 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 pool multiple employer welfare arrangement will automatically renew annually with the filing of the pool's multiple employer welfare arrangement's annual report to the commissioner and the payment of the appropriate fee pursuant to N.D.C.C. § 26.1-01-07, subject to the pool multiple employer welfare arrangement maintaining its financial ability to pay claims and expenses.
3. 4. **Merger.** Two or more existing pools multiple employer welfare arrangements may apply to merge, provided the merged pool multiple employer welfare arrangement assumes all financial and regulatory obligations of the former pools multiple employer welfare arrangements. Merger applications must be filed with the commissioner and are subject to the same requirements as prospective new pools multiple employer welfare arrangements.
4. 5. **Approval or disapproval.** Upon approval of an application, the commissioner shall issue a certificate authorizing the proposed self-insurance pool self-funded multiple employer welfare arrangement. The initial certificate for a new pool multiple employer welfare arrangement is effective until revoked by the commissioner. Approval of an application for authority to ~~self-insure~~ self-fund must be granted if the proposed pool 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

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

1. **Termination.** A ~~pool~~ multiple employer welfare arrangement may terminate its ~~self-insurance~~ self-funded authority and cease to provide coverage effective at the end of a fund year. The ~~pool~~ multiple employer welfare arrangement must notify the commissioner within ~~fourteen~~ ninety days of its decision to terminate. A ~~pool~~ multiple employer welfare arrangement may not terminate its ~~self-insurance~~ self-funding authority less than ~~forty-five~~ ninety days prior to the end of the fund year in question. The voluntary termination of ~~self-insurance~~ self-funding authority does not constitute ~~pool~~ multiple employer welfare arrangement dissolution under subsection 4.
2. **Revocation.** The commissioner shall, by order, revoke the authority of a ~~pool~~ multiple employer welfare arrangement to ~~self-insure~~ 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 ~~pool~~ 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 ~~pool~~ 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 ~~pool~~ 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 ~~pool's~~ 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 ~~pool~~ multiple employer welfare arrangement.** A ~~pool~~ multiple employer welfare arrangement must continue to exist as a runoff ~~pool~~ multiple employer welfare arrangement after its authority to ~~self-insure~~ self-fund has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period during which the ~~pool~~ multiple employer welfare arrangement provided coverage. A runoff ~~pool~~ multiple employer welfare arrangement must continue to comply with this chapter and with other applicable North Dakota laws and rules.
4. **Dissolution.** A ~~pool~~ multiple employer welfare arrangement, including a runoff ~~pool~~ 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 pool multiple employer welfare arrangement or runoff pool 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 pool's 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 pool multiple employer welfare arrangement demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or
- b. The pool 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 pool 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

#### **45-06-14-08. Administration.**

1. **Service company.** A pool multiple employer welfare arrangement must contract with a service company for services necessary to conduct the pool's multiple employer welfare arrangement's day-to-day operations, except services and responsibilities reserved to the members, the board, individual trustees, the financial administrator, the accountant, or other contractors. The service company must have expertise in and be licensed for the coverages provided by the pool 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 pool multiple employer welfare arrangement must contract with a financial administrator for investment of the pool's 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 pool multiple employer welfare arrangement must maintain within North Dakota 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 pool's multiple employer welfare arrangement's records in order to verify the pool's 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 pool's multiple employer welfare arrangement's operations are the pool's 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

#### **45-06-14-09. Membership.**

1. **Availability.** A pool multiple employer welfare arrangement must establish nondiscriminatory criteria for membership. A pool multiple employer welfare arrangement may reject applicants or dispel members that do not meet the pool's 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 pool's multiple employer welfare arrangement's obligations. The membership agreement must disclose that under the rules governing the pool 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 pool's multiple employer welfare arrangement's sound financial condition.

3. **Public and private pool membership.** ~~Only North Dakota domiciled employers whose primary places of employment are within North Dakota are eligible for membership in a pool. As a condition of a private employer's membership in a pool, the employer must furnish a surety bond in a form prescribed by the commissioner. The pool shall be the bond's obligee, conditioned on the employer paying all premiums, penalties, and assessments when due. The bond must be maintained on file with the commissioner until the end of the period of continuing liability, or until the pool terminates, whichever occurs first. The period of continuing liability is as defined in subsection 1 of section 45-06-14-14. The bond must provide a penalty amount no less than:~~
  - a. ~~The greatest one-year premium paid by the member for the coverage through the pool during the past three years;~~
  - b. ~~If the member has not belonged to the pool for one full fund year, the annual premium to be paid by the member for the first year's coverage; or~~
  - c. ~~If the member no longer belongs to the pool, the greatest one-year premium paid by the past member during the final three years in the pool.~~
4. **Withdrawal.** The membership agreement must include the procedures for withdrawing from the pool multiple employer welfare arrangement. A member must notify the pool 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 pool multiple employer welfare arrangement to be in violation of the minimum annual premium requirement or would compromise the pool's multiple employer welfare arrangement's financial integrity, the pool 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 ~~pool~~ 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.
- ~~5.~~ 4. **Expulsion.** At least annually a ~~pool~~ 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.
- ~~6.~~ 5. **Runoff ~~pool~~ multiple employer welfare arrangement membership.** After revocation of a ~~pool's self-insurance~~ multiple employer welfare arrangement's self-funding authority or after a ~~pool~~ multiple employer welfare arrangement notifies the commissioner in writing of its intent to terminate the ~~pool~~ multiple employer welfare arrangement, no member may join, leave, or be expelled from the ~~pool~~ 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

#### **45-06-14-10. Coverage.**

- 1. **Coverage.** A ~~pool~~ multiple employer welfare arrangement must provide coverage as authorized by the board.
- 2. **Uniform underwriting.** A ~~pool~~ 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-insure self-fund, a ~~pool~~ 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 pool 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

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

1. **Minimum annual premium.** A pool multiple employer welfare arrangement must have and maintain an annual premium volume of no less than three hundred thousand dollars. A pool multiple employer welfare arrangement or prospective pool 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 pool multiple employer welfare arrangement must demonstrate that the lesser premium volume would not compromise its financial integrity and stability.
2. **Monitoring premium volume.** A pool 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 pool 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 pool multiple employer welfare arrangement must notify the commissioner:
  - a. Of its intent to end its ~~self-insurance~~ 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 pool multiple employer welfare arrangement continues to be out of compliance, the commissioner may revoke the ~~pool's self-insurance~~ multiple employer welfare arrangement's self-funding authority.

3. **Surplus or stop-loss advancement.** To maintain its financial integrity, a pool multiple employer welfare arrangement must either:
  - a. Establish and maintain a surplus consisting of funds contributed by members and the pool's 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 pool multiple employer welfare arrangement if the pool's 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 pool multiple employer welfare arrangement deposit premium.** As a condition for authorization to self-insure self-fund, a prospective pool 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 ~~twenty-five~~ 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 pool multiple employer welfare arrangement may apply to the commissioner for reduction of the new pool multiple employer welfare arrangement deposit premium 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 pool 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 pool multiple employer welfare arrangement has made under subsection 3 in evaluating the application.
5. **Premium payments.** A pool 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 pool multiple employer welfare arrangement may declare and pay a dividend or distribution from its surplus only if:

- a. The dividend will not impair the pool's multiple employer welfare arrangement's surplus; and
- b. The pool 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

**45-06-14-12. Reserves.** A pool 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

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

1. **Purchase.** A pool 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 pool's multiple employer welfare arrangement's financial integrity, the pool multiple employer welfare arrangement must notify the commissioner prior to the termination or modification. The pool multiple employer welfare arrangement must inform the commissioner of corrective action that will be taken to maintain the pool's multiple employer welfare arrangement's financial integrity.
2. **Required stop-loss coverage.** A pool 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 pool multiple employer welfare arrangement with less than one year's experience must use the pool's multiple employer welfare arrangement's estimated premium volume during the first full fund year. The pool 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. A pool's

self-insured retention per person per year may not exceed fifty thousand dollars.

3. **Return of liability.** Liability transferred to an insurer under subsection 2 may not be directly or indirectly returned to a pool 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

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

1. Each current member of a pool multiple employer welfare arrangement is jointly and severally liable for all liabilities and expenses of the pool multiple employer welfare arrangement. Each past member is jointly and severally liable for all liabilities and expenses of the pool multiple employer welfare arrangement for three complete fund years after leaving the pool multiple employer welfare arrangement. After the period of continuing liability, a past member is no longer jointly and severally liable for the pool's multiple employer welfare arrangement's liabilities and expenses, except as provided in subsection 2.
2. Runoff liability. If a pool's self-insurance 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 pool's multiple employer welfare arrangement's liabilities and expenses until final pool multiple employer welfare arrangement dissolution, as follows:
  - a. All members at the termination of self-insurance self-funding authority are jointly and severally liable for all pool multiple employer welfare arrangement liabilities and expenses until the pool multiple employer welfare arrangement is dissolved; and
  - b. All past members that were jointly and severally liable under subsection 1 at the time self-insurance self-funding authority is ended continue to be jointly and severally liable until the pool multiple employer welfare arrangement is dissolved.
3. Deficits. If at any time a pool's 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 pool 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 pool's self-insurance 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 pool 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 pool multiple employer welfare arrangement in poor loss years are assessed more than members belonging to the pool 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 pool's multiple employer welfare arrangement's financial strength. The assessment may be calculated using any reasonable procedure consistent with the pool's 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

#### **45-06-14-15. Financial integrity.**

1. **Fidelity bond.** All contractors and individuals who handle pool multiple employer welfare arrangement funds or who will have access to pool 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 pool 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 pool's 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 pool 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 pool multiple employer welfare arrangement may not borrow money or issue debt instruments. A pool multiple employer welfare arrangement may bring legal suits to collect delinquent debts. A pool multiple employer welfare arrangement may not obtain funds through subrogation of the rights of covered persons. A pool 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 pool multiple employer welfare arrangement.
4. **Separate accounts.** A pool 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 pool's 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 pool 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 pool multiple employer welfare arrangement.
6. **Monitoring financial condition.** The board must monitor the pool's multiple employer welfare arrangement's revenues, expenses, and losses and evaluate its current and expected financial condition. The board must maintain the pool's 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 pool's multiple employer welfare arrangement's sound financial condition, the commissioner may order an increase in the premium rates, revoke the pool's ~~self-insurance~~ 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

#### **45-06-14-16. Reporting.**

1. **Financial statements.** A pool 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 March first of each year. ~~The~~ 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 pool's multiple employer welfare arrangement's fund year. The first annual financial statement and every second annual financial statement thereafter must be accompanied by a statement from a qualified actuary. The actuary's statement and the scope of the actuarial review must be according to requirements prescribed by the commissioner.
2. **Quarterly reports.** If the commissioner determines that a pool's multiple employer welfare arrangement's financial integrity is such that the pool's multiple employer welfare arrangement's ability to meet obligations promptly and in full will be significantly impaired, the commissioner may require that the pool 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 pool's multiple employer welfare arrangement's financial integrity is restored. A quarterly report must contain statements of the pool's 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 pool 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 pool 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 pool's multiple employer welfare arrangement's reserving, accounting, or recordkeeping practices. The audits are in addition to the commissioner's rights to examine self-insurance pools self-funded multiple employer welfare arrangements directly, as applicable to insurance companies under North Dakota Century Code chapter 26.1-03. ~~The commissioner may investigate:~~
- a. ~~Losses that appear significantly different than losses experienced by other self-insurance pools or insurance companies for similar coverage;~~
  - b. ~~Unusual changes in the amount of entries from period to period that are not sufficiently explained by the financial statements or footnotes; or~~
  - c. ~~Other indications that a pool's financial statements may not accurately reflect the pool's status and transactions.~~
4. **Annual status report.** On or before March first of each year, a pool multiple employer welfare arrangement must file with the commissioner a statement describing any changes that have occurred in the information filed with its initial application for authority to self-insure self-fund or with the pool's multiple employer welfare arrangement's most recent status report. The status report must be filed in a form and according to instructions prescribed by the commissioner. The commissioner may inquire into the condition of the pool multiple employer welfare

arrangement as allowed in North Dakota Century Code section 26.1-02-03.

5. **Penalty.** The financial statements and status report required under subsections 1 and 4 are considered together to be a pool's 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

**45-06-14-17. Trade practices.** Multiple employer welfare arrangements are subject to the provisions of the unfair trade practices act found at N.D.C.C. § 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

**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

**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

**PROPOSED RULES**

**CHAPTER 45-12-01  
NORTH DAKOTA BOILER RULES**

Subsections 4 and 23 of Section 45-12-01-01 are amended as follows:

**45-12-01-01. Definitions.**

4. "A.S.M.E. code" means the boiler and pressure vessel construction code of the American society of mechanical engineers of which sections I, II, IV, V, VIII (divisions 1, 2 and 3), IX, and X, ~~2013~~ 2017 edition, are hereby adopted by the commissioner and incorporated by reference as a part of this article. A copy of the American society of mechanical engineers code is on file at the office of the boiler inspection program. The American society of mechanical engineers code may be obtained from the American society of mechanical engineers headquarters at 2 park avenue, New York, New York 10016-5990 or from [www.asme.org](http://www.asme.org).
  
23. "National board inspection code" means the manual for boiler and pressure vessel inspectors supplied by the national board. The national board inspection code, ~~2013~~ 2017 edition, is hereby adopted by the commissioner and incorporated by reference as a part of this article. Copies of this code may be obtained from the national board at 1055 crupper avenue, Columbus, Ohio 43229.

**History:** Effective June 1, 1994; amended effective April 1, 1996; January 1, 2000; October 1, 2002; January 1, 2006; January 1, 2008; April 1, 2010; July 1, 2012; January 1, 2014; April 1, 2017.

**General Authority:** NDCC 26.1-22.1-14

**Law Implemented:** NDCC 26.1-22.1-14

**PROPOSED RULES****CHAPTER 45-15-01  
INSURANCE FRAUD**

**45-15-01-01. Insurance fraud.** A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act has been, is being, or will be committed shall provide information concerning the known or suspected fraudulent insurance act to the commissioner in writing within ~~sixty~~ seven days of having that knowledge or reasonable belief. The information may be reported on the national association of insurance commissioners uniform suspected insurance fraud reporting form, a copy of which is attached as appendix A. Thereafter, the person engaged in the business of insurance shall promptly provide to the commissioner any additional information that the commissioner may request concerning the known or suspected fraudulent insurance act. For the purposes of this rule, a reasonable belief means that the person engaged in the business of insurance has ~~ascertained, after reviewing the facts surrounding the possible fraudulent insurance act through its internal fraud activities and processes, if such activities and processes are in place, that a given fact or combination of facts exist and that the circumstances in their totality result in a determination that~~ a specific and articulate reason to believe a fraudulent insurance act was ~~has been, is being, or will be~~ committed.

**History:** Effective March 1, 2004; amended effective April 1, 2017.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 26.1-02.1, 26.1-02.1-11