

TO: All Insurers Licensed to Write Accident & Sickness Policies, All HMOs; Health Services Plans; MCHIPS, and All Interested Parties

RE: [INS-2022-00190](#) Order Amending Chapter 410 and Adopting New Chapter 415-MEWAs

The State Corporation Commission, having considered the Bureau's proposal to amend and adopt Rules, the comments filed by VBA Benefits Corporation, and the Bureau's Response, concludes that: (1) a hearing to consider the proposal to amend Chapter 410 and adopt Chapter 415 is not necessary; and (2) Chapter 410 should be amended, and Chapter 415 should be adopted by the Commission, as modified, effective **May 1, 2023**.

A copy of this order and the proposed rules may also be found on [NEW TO REVIEW](#) on the SCC's website.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, MARCH 24, 2023

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. INS-2022-00190

Ex Parte: In the matter of amending Rules
Governing Multiple Employer Welfare
Arrangements and Adopting Rules Governing
Self-Funded Multiple Employer Welfare Arrangements

ORDER AMENDING AND ADOPTING REGULATIONS

On December 28, 2022, the State Corporation Commission ("Commission") entered an Order to Take Notice of the Bureau of Insurance ("Bureau")'s proposal to: (1) amend rules set forth in Chapter 410 of the Virginia Administrative Code, 14 VAC 5-410-10 *et seq.*, entitled "Rules Governing Multiple Employer Welfare Arrangements" ("Chapter 410"); and (2) adopt new Chapter 415 of the Virginia Administrative Code, 14 VAC 5-415-10 *et seq.*, entitled "Rules Governing Self-Funded Multiple Employer Welfare Arrangements" ("Chapter 415") (together, "Rules").

The Bureau has recommended the amendment of Chapter 410 and the adoption of Chapter 415 to effectuate amendments to Chapter 34 of Title 38.2 of the Code of Virginia ("Code") providing for the licensure of self-funded Multiple Employer Welfare Arrangements ("MEWAs") by the Commission.¹ The proposed amendments to Chapter 410 limit that chapter to apply only to fully insured MEWAs.² Newly proposed Chapter 415 establishes the

¹ See 2022 Va. Acts Chs. 404 and 405.

² As part of its proposed amendments to Chapter 410 and to reflect this limitation, the Bureau suggests changing the title of that chapter to "Rules Governing *Fully Insured* Multiple Employer Welfare Arrangements." (Emphasis added).

requirements for licensure as a self-funded MEWA, and "address[es] the self-funded MEWA's financial condition, solvency requirements, and insolvency plan and its exclusion, pursuant to § 59.1-592, from the Virginia Life, Accident and Sickness Insurance Guaranty Association established under Chapter 17 (§ 38.2-1700 et seq.)".³

The Order to Take Notice, proposed amendments to Chapter 410 and proposed new Chapter 415 were posted on the Commission's website; sent to all carriers licensed in Virginia to write accident and sickness insurance and to all interested persons on January 9, 2023; sent to the Office of the Virginia Attorney General's Division of Consumer Counsel ("Consumer Counsel"); and published in the *Virginia Register of Regulations* on January 30, 2023. Licensees, Consumer Counsel, and other interested parties were afforded the opportunity to file written comments and/or request a hearing on or before March 1, 2023.

The Bureau received one set of comments to the proposed amendments to Chapter 410 and adoption of Chapter 415, which was filed by the Virginia Bankers Association Benefits Corporation ("VBA Benefits Corporation"). Specifically, the VBA Benefits Corporation requested that Chapter 410 and Chapter 415 include an exemption applicable to trusts that comply with and are established pursuant to § 6.2-952 of the Code. In support of its request, the VBA Benefits Corporation asserts that Code §§ 6.2-953 A and B specifically exempt trusts established under Code § 6.2-952, and their sponsoring association and subsidiaries, from the provisions of Title 38.2 of the Code and regulations adopted thereunder.

The Bureau considered the VBA Benefits Corporation's filed comments and responded to such comments in its Response to Comments ("Response"), filed with the Clerk of the Commission on March 10, 2023. In its Response, the Bureau recommended including the VBA

³ See § 38.2-3420 B 4 of the Code.

Benefits Corporation's proposed clarification in Chapter 410 and Chapter 415. The Bureau also proposed an additional clarification to align 14 VAC 5-410-20 C with 14 VAC 5-415-10 B.

As part of its comments, the VBA Benefits Corporation requested a hearing should the Commission not accept its proposed clarification. The Bureau has taken the position that acceptance of the proposed clarification to Chapter 410 and Chapter 415 resolves any issue raised by the comments and no hearing should be needed.

NOW THE COMMISSION, having considered the Bureau's proposal to amend and adopt Rules, the comments filed by VBA Benefits Corporation, and the Bureau's Response, concludes that: (1) a hearing to consider the proposal to amend Chapter 410 and adopt Chapter 415 is not necessary; and (2) Chapter 410 should be amended and Chapter 415 should be adopted by the Commission, as modified and attached hereto, effective May 1, 2023.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to "Rules Governing Multiple Employer Welfare Arrangements," 14 VAC 5-410-10 *et seq.* of the Virginia Administrative Code, which are attached hereto and made a part hereof, are hereby ADOPTED effective May 1, 2023.

(2) The "Rules Governing Self-Funded Multiple Employer Welfare Arrangements," 14 VAC 5-415-10 *et seq.* of the Virginia Administrative Code, which are attached hereto and made a part hereof, are hereby ADOPTED effective May 1, 2023.

(3) The Bureau shall provide notice of the amendments to Chapter 410 and the adoption of Chapter 415 to all carriers licensed in Virginia to write accident and sickness insurance and to all persons known to the Bureau to have an interest in accident and sickness insurance.

(4) The Commission's Office of General Counsel shall cause a copy of this Order and the attached Rules to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

(5) The Commission's Division of Information Resources shall make available this Order and the attached Rules on the Commission's website: scc.virginia.gov/pages/Case-Information.

(6) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (3) above on or before May 1, 2023.

(7) This case is dismissed.

Commissioner Patricia L. West participated in this matter.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, at MBrowder@oag.state.va.us; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald Beatty.

Project 7418 - Proposed

State Corporation Commission, Bureau of Insurance

Amend CH 410 and add CH 415

Chapter 410

Rules Governing Fully Insured Multiple Employer Welfare Arrangements

14VAC5-410-20. Applicability and scope.

A. This chapter shall apply to all multiple employer welfare arrangements offering or providing coverage in this Commonwealth if any of the following conditions is met:

1. The multiple employer welfare arrangement is domiciled in Virginia;
2. At least one employer whose principal office or headquarters is located in Virginia provides health care benefits to his employees through the multiple employer welfare arrangement, regardless of the plan's place of domicile; or
3. At least one employee who is employed in Virginia and who has been initially enrolled in the plan in Virginia is being provided health care benefits through the multiple employer welfare arrangement, regardless of the plan's place of domicile or the location of the employer's principal office or headquarters.

B. Multiple employer welfare arrangements shall be subject to all of the provisions of Title 38.2 of the Code of Virginia to the extent that such provisions are applicable to multiple employer welfare arrangements in accordance with § 38.2-3421 of the Code of Virginia.

C. This chapter shall not apply to [a not-for-profit benefits consortium established under § 15.2-1517.1 of the Code of Virginia, a benefits consortium established under § 6.2-952 or § 23.1-106 of the Code of Virginia, a multiple employer welfare arrangement meeting the requirements of § 38.2-3420 C of the Code of Virginia, or a] self-funded multiple employer

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welfare arrangement [s] licensed pursuant to Rules Governing Self-Funded Multiple Employer Welfare Arrangements (14VAC5-415).

14VAC5-410-30. Definitions.

As used in this chapter:

"Commission" means the State Corporation Commission.

"Contribution" means the amount paid or payable by the employer or employee for services provided through the multiple employer welfare arrangement.

"Direct basis" means that the liability of the insurer, health maintenance organization, health services plan, or dental or optometric services plan runs directly to the insured employee or certificate holder.

"Domicile" means the situs of the trust through which the multiple employer welfare arrangement is established, the plan's place of incorporation or, if not set up through a trust or incorporated, the location of the plan's headquarters.

"Fully insured" means all of the covered benefits are (i) insured on a direct basis by an insurance company licensed and in good standing to transact the business of insurance in Virginia pursuant to Title 38.2 of the Code of Virginia or (ii) arranged for or provided on a direct basis by (a) a health services plan licensed and in good standing in Virginia pursuant to Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 of the Code of Virginia, (b) a health maintenance organization licensed and in good standing in Virginia pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia, (c) a dental or optometric services plan licensed and in good standing in Virginia pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia, or (d) any combination thereof. The existence of contracts of reinsurance will not be considered in determining whether a plan is "fully insured."

"Good standing" means the license of any (i) company to transact the business of insurance in the Commonwealth of Virginia pursuant to Title 38.2 of the Code of Virginia, (ii) health services plan licensed pursuant to Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 of the Code of Virginia, (iii) health maintenance organization licensed pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia, or (iv) dental or optometric services plan licensed pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia where the license is not suspended or revoked, or the company, health services plan, health maintenance organization, or dental or optometric services plan is not precluded by order of the Commission commission from soliciting, negotiating, procuring, or effecting contracts of insurance.

"Health care services" means services ~~which~~ that are furnished to an individual for the purpose of preventing, alleviating, or healing human illness, injury, or physical disability. Such terminology may include services for optometric or dental care.

"Member" means an employer ~~which~~ that participates in a multiple employer welfare arrangement.

"Multiple employer welfare arrangement" means any plan or arrangement ~~which~~ that is established or maintained for the purpose of offering or providing coverage for health care services, whether such coverage is by direct payment, reimbursement, or otherwise, to employees of two or more employers, or to their beneficiaries except that such term does not include any such plan or other arrangement ~~which~~ that is established or maintained:

1. Under or pursuant to one or more agreements ~~which~~ that the Secretary of the United States U.S. Department of Labor finds to be collective bargaining agreements, or
2. By a rural electric cooperative.

For purposes of the definition of multiple employer welfare arrangement:

a. Two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group;

b. The term "control group" means a group of trades or businesses under common control;

c. The determination of whether a trade or business is under "common control" with another trade or business shall be determined under regulations of the Secretary of the ~~United States~~ U.S. Department of Labor applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under ~~section~~ § 4001(b) of the Employee Retirement Income Security Act, (29 USCS § 1301(b)), except that, for purposes of this subdivision, common control shall not be based on an interest of less than 25%; and

d. The term "rural electric cooperative" means:

(1) Any organization ~~which~~ that is exempt from tax under ~~section~~ § 501(a) of the Internal Revenue Code of 1986 (26 USC § 501(a)) and ~~which~~ that is engaged primarily in providing electric service on a mutual or cooperative basis, and

(2) Any organization described in paragraph (4) or (6) of ~~section~~ § 501(c) of the Internal Revenue Code of 1986 (26 USC § 501(c)(4) or (6)) ~~which~~ that is exempt from tax under ~~section~~ § 501(a) of such Code (26 USC § 501(a)) and at least 80% of the members of which are organizations described in subdivision d (1) of this definition.

"Self-funded multiple employer welfare arrangement" or "self-funded MEWA" means any multiple employer welfare arrangement that is not fully insured by a licensed insurance

company. This term includes a benefit consortium established under Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 of the Code of Virginia.

14VAC5-410-40. Licensing and filing requirements.

A. A multiple employer welfare arrangement that is not fully insured as defined in this chapter shall not operate in this Commonwealth without first (i) complying with the requirements of Rules Governing Self-Funded Multiple Employer Welfare Arrangements (14VAC5-415) or (ii) meeting the criteria and becoming appropriately licensed as an insurance company, health maintenance organization, health services plan, or a dental or optometric services plan pursuant to Title 38.2 of the Code of Virginia.

B. A fully insured multiple employer welfare arrangement shall not operate in this Commonwealth without first filing with the ~~Commission~~ commission:

1. The names, addresses, and biographical summaries of the plan's trustees, officers, directors, or other members of the plan's governing body.
2. The names, addresses, and qualifications of individuals responsible for the conduct of the plan's affairs, including any third-party administrators.
3. The names, addresses, and qualifications of persons who will solicit, negotiate, procure, or effect applications for coverage with the plan.
4. The names and addresses of employers participating in the plan.
5. Proof of coverage showing that the plan is fully insured by an insurer, health maintenance organization, health services plan, or dental or optometric services plan as required by the definition of "fully insured" in 14VAC5-410-30 ~~of this chapter~~. Proof of coverage shall be submitted on a form prescribed by the ~~Commission~~ commission and shall include ~~but not be limited to~~ (i) a copy of the policy insuring the plan; (ii) confirmation from the insurer, health maintenance organization, health services plan, or

a dental or optometric services plan that coverage is in force; and (iii) a statement indicating the length of time coverage has been in force.

6. Any other information the ~~Commission~~ commission may require including ~~but not limited to~~ information pertaining to the adequacy of the plan's level of reserves and contributions.

C.1. If a multiple employer welfare arrangement changes coverage or does not remain fully insured as the term is defined in 14VAC5-410-30 ~~of this chapter~~, the plan shall notify the ~~Commission~~ commission at least 30 days prior to the effective date of any change or reduction in coverage.

2. Any multiple employer welfare arrangement ~~which~~ that ceases to remain fully insured shall, at least 30 days prior to the effective date of coverage termination, (i) notify the ~~Commission~~ commission of a replacement policy in accordance with subdivision B 5 of this section, (ii) apply for a license as a self-funded MEWA pursuant to 14VAC5-415, or ~~(ii)~~ (iii) apply for a license as an insurer, health maintenance organization, health services plan, or a dental or optometric services plan and be subject to all applicable provisions of Title 38.2 of the Code of Virginia. Such plan shall not be required to cease operations or discontinue benefits to existing members during this 30-day period. However, such plan shall not solicit, negotiate, procure, or effect coverage for new enrollments other than for dependents of employees already enrolled during this 30-day period unless (i) the plan has been licensed as required by this chapter, (ii) the plan becomes fully insured as the term is defined in 14VAC5-410-30 ~~of this chapter~~ and has provided the ~~Commission~~ commission with proof of coverage as required by subdivision B 5 of this section, or (iii) the plan is granted an extension by the ~~Commission~~ commission for good cause shown. Nothing contained in this section shall prevent the

~~Commission~~ commission from proceeding with an action in accordance with the provisions of 14VAC5-410-60 of this chapter.

3. Any insurer, health maintenance organization, health services plan, or dental or optometric services plan providing coverage to a multiple employer welfare arrangement shall notify the ~~Commission~~ commission and the multiple employer welfare arrangement of any change or reduction in coverage at least 45 days prior to the effective date of such change or reduction in coverage.

4. Any insurer, health maintenance organization, health services plan, or dental or optometric services plan failing to provide notice to the ~~Commission~~ commission as required by subdivision 3 of this subsection shall be required to continue coverage to the multiple employer welfare arrangement for an additional 45 days after notice of cancellation is provided to the ~~Commission~~ commission.

D. In addition to the filing requirements stated in subsection B of this section, each fully insured multiple employer welfare arrangement shall file on or before March 1 of each year (i) proof of coverage as set forth in subdivision B 5 of this section and (ii) notice of any changes in information as filed with the ~~Commission~~ commission.

E. Any multiple employer welfare arrangement offering or providing coverage in this Commonwealth shall be subject to examination by the ~~Commission~~ commission in accordance with § 38.2-3422 of the Code of Virginia.

F. Notwithstanding any other provision of this chapter, any multiple employer health care plans licensed and operating, or whose license application is pending with the ~~Commission~~ commission on the effective date of this chapter and subsequently approved by the ~~Commission~~ commission may continue to operate as a multiple employer health care plan in the Commonwealth of Virginia, pursuant to the ~~Commission's~~ commission's Rules Governing

Multiple Employer Health Care Plans, for a period not to exceed three years after the effective date of this chapter January 15, 1995.

14VAC5-410-70. Service of process.

Suits, actions, and proceedings may be begun against any multiple employer welfare arrangement providing coverage in this Commonwealth by serving process on any trustee, director, officer, or agent of the plan, or, if none can be found, on the clerk Clerk of the Commission. ~~If any multiple employer welfare arrangement that is not fully insured provides coverage in this Commonwealth without obtaining a license as required by 14VAC5-410-40 of this chapter, it shall be deemed to have thereby appointed the Clerk of the Commission its attorney for service of process.~~ Service of process shall be made as provided for in Article 1 (§ 38.2-800 et seq.) of Chapter 8 of Title 38.2.

Chapter 415

Rules Governing Self-Funded Multiple Employer Welfare Arrangements

14VAC5-415-10. Applicability and scope.

A. This chapter shall apply to self-funded multiple employer welfare arrangements that issue health benefit plans in Virginia, including a benefits consortium established under Chapter 55 (§ 59.1-589 et. seq.) of Title 59.1 of the Code of Virginia.

B. This chapter shall not apply to a not-for-profit benefits consortium established under § 15.2-1517.1 of the Code of Virginia, a benefits consortium established under [§ 6.2-952 or] § 23.1-106 of the Code of Virginia, a multiple employer welfare arrangement meeting the requirements of § 38.2-3420 C of the Code of Virginia, or a fully insured multiple employer welfare arrangement registered pursuant to Rules Governing Fully Insured Multiple Employer Welfare Arrangements (14VAC5-410).

C. Self-funded multiple employer welfare arrangements shall be subject to the provisions of Title 38.2 of the Code of Virginia to the extent that such provisions are applicable to self-funded multiple employer welfare arrangements in accordance with § 38.2-3420 of the Code of Virginia.

14VAC5-415-20. Definitions.

Terms found in this chapter are used as defined in § 38.2-3431 B of the Code of Virginia. The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Benefits consortium" means a trust that is a self-funded MEWA, as defined in § 38.2-3420 of the Code of Virginia, and that complies with the conditions set forth in § 59.1-590 of the Code of Virginia.

"Commission" means the State Corporation Commission.

"ERISA" means the federal Employee Retirement Income Security Act of 1974, P.L. 93-406, 88 Stat. 829, as amended.

"Fully insured" means all of the covered benefits are (i) insured on a direct basis by an insurance company licensed and in good standing to transact the business of insurance in Virginia pursuant to Title 38.2 of the Code of Virginia or (ii) arranged for or provided on a direct basis by (a) a health services plan licensed and in good standing in Virginia pursuant to Chapter 42 (§ 38.2-4200 et seq.) of Title 38.2 of the Code of Virginia; (b) a health maintenance organization licensed and in good standing in Virginia pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 of the Code of Virginia; (c) a dental or optometric services plan licensed and in good standing in Virginia pursuant to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2 of the Code of Virginia; or (d) any combination thereof. The existence of contracts of reinsurance will not be considered in determining whether a plan is "fully insured."

"Self-funded multiple employer welfare arrangement" or "self-funded MEWA" means any multiple employer welfare arrangement that is not fully insured by a licensed insurance company. This term includes a benefit consortium established under Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 of the Code of Virginia.

14VAC5-415-30. Establishment of self-funded multiple employer welfare arrangements.

A. No person shall establish or operate a self-funded multiple employer welfare arrangement in the Commonwealth without obtaining a license from the commission. Any person may apply to the commission for a license to establish and operate a self-funded MEWA in compliance with this chapter.

B. Each application for a license shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the commission, and shall set forth or be accompanied by the following:

1. A copy of any basic organizational documents of the applicant, including the articles of incorporation, articles of association, trust agreement, or other applicable documents, and all amendments to those documents;
2. A copy of the bylaws, rules and regulations, or any similar document regulating the conduct of the internal affairs of the applicant;
3. The names, addresses, and official positions, and biographical information on forms acceptable to the commission of each member of the governing body and any person with authority to manage or establish policy;
4. Financial statements showing the applicant's assets, liabilities, and sources of financial support and a copy of the applicant's most recent audited financial statement completed no more than one year prior to the date of application;

5. A complete description of the plan of operation, including (i) the method of marketing the plan, (ii) a statement regarding the sources of working capital as well as any other sources of funding, and (iii) a description of any insurance, reinsurance, or alternative coverage arrangements proposed, including specific, aggregate, and terminal excess insurance or stop loss insurance;

6. A financial feasibility plan that includes (i) detailed enrollment projections; (ii) the methodology for determining premium rates to be charged during at least the first three years of operations and extending one year beyond the anticipated break-even point certified by an actuary; and (iii) a projection, along with material assumptions, of balance sheets, cash flow statements showing capital expenditures and purchase and sale of investments and income statements on a quarterly basis for at least three years and extending one year beyond the anticipated break-even point;

7. The names, addresses, and qualifications of persons responsible for the conduct of the applicant's affairs, including any third-party administrators;

8. The names, addresses, and qualifications of persons who will solicit, negotiate, procure, or effect applications for coverage with the self-funded MEWA;

9. Copies of (i) policies providing specific, aggregate, and terminal excess insurance; (ii) fiduciary liability insurance; (iii) the bond that satisfies the requirements of ERISA; and (iv) guarantees or standby letters of credit;

10. A copy of the self-funded MEWA's Form M-1, Report for Multiple Employer Welfare Arrangements, for the applicable plan year;

11. A signed attestation confirming that:

14VAC5-415-40. Issuance of license; fee; minimum net worth; impairment.

A. The commission shall issue a license to a self-funded MEWA after the receipt of a complete application and payment of a \$500 nonrefundable application fee if the commission is satisfied that the following conditions are met:

1. The persons responsible for the conduct of the affairs of the applicant are competent, trustworthy, and reputable;

2. The self-funded MEWA is financially responsible and may reasonably be expected to meet its obligations to members and prospective members. In making this determination, the commission may consider:

a. The financial soundness of the health benefit plan's arrangements for health care services;

b. The adequacy of working capital;

c. Any agreement with an insurer, a health services plan, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage if the health care plan is discontinued;

d. The deposit of acceptable securities in an amount satisfactory to the commission, submitted in accordance with § 38.2-1045 of the Code of Virginia as a guarantee to the self-funded MEWA's liabilities to its members and creditors;

e. The applicant's net worth, which shall include minimum net worth in an amount at least equal to \$4 million; and

f. A financial statement of the self-funded MEWA on the form required by 14VAC5-415-50; and

3. If applicable, the self-funded MEWA is in compliance with the requirements of § 59.1-590 B 5 through B 10 of the Code of Virginia.

B. A licensed self-funded MEWA shall have and maintain at all times the minimum net worth described in subdivision A 2 e of this section. If the commission finds that the minimum net worth of a self-funded MEWA is impaired, the commission shall issue an order requiring the self-funded MEWA to eliminate the impairment within a period not exceeding 90 days. The commission may, by order served upon the self-funded MEWA, prohibit the self-funded MEWA from issuing any new contracts while the impairment exists. If, at the expiration of the designated period, the self-funded MEWA has not satisfied the commission that the impairment has been eliminated, an order for the rehabilitation or liquidation of the self-funded MEWA may be entered.

C. A self-funded MEWA must comply with the requirements of Chapter 55 (§ 38.2-5500 et seq.) of Title 38.2 of the Code of Virginia.

D. A self-funded MEWA must (i) operate any health benefit plans in accordance with the fiduciary duties defined in ERISA and (ii) have the power to make and collect special assessments against members, and if any assessment is not timely paid, to enforce collection of such assessment. Each member of a self-funded MEWA shall be liable for that member's allocated share of the liabilities of the self-funded MEWA.

E. A self-funded MEWA must purchase and maintain policies of specific, aggregate, and terminal excess insurance with retention levels determined in accordance with sound actuarial principles from insurers licensed to transact the business of insurance in the Commonwealth. If a self-funded MEWA replaces, modifies, or otherwise changes coverage for specific, aggregate, or terminal excess insurance, the self-funded MEWA must notify the commission at least 30 days prior to the effective date of any such change in coverage.

F. The commission may refuse to issue a license to any self-funded MEWA and may suspend or revoke the license to any licensee pursuant to Article 6 (§ 38.2-1040 et seq.) of Chapter 10 of Title 38.2 of the Code of Virginia.

G. Each self-funded MEWA licensed under this section shall renew its license with the commission annually by July 1 pursuant to § 38.2-1025 of the Code of Virginia. The renewal license shall not be issued until the self-funded MEWA has paid all fees and charges imposed on it and has complied with all other requirements of law.

14VAC5-415-50. Annual statement, additional reports, and examinations.

A. Each self-funded MEWA shall file an annual statement as provided in § 38.2-1300 of the Code of Virginia with the commission annually by March 1. The statement shall be verified by at least two principal officers and shall cover the preceding calendar year.

B. In addition to the annual statement, the commission may require a licensed self-funded MEWA to file additional reports as provided in §§ 38.2-1301 and 38.2-1301.1 of the Code of Virginia, exhibits, or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions, or affairs of the self-funded MEWA. The commission shall establish deadlines for filing these additional reports, exhibits, or statements and may require verification by any officers of the self-funded MEWA designated by the commission.

C. The commission shall examine the affairs of each self-funded MEWA and its members as provided for in § 38.2-1317 of the Code of Virginia as often as the Bureau of Insurance deems necessary. The self-funded MEWA may be required to pay to the commission the expenses incurred by it in making an examination authorized under this section.

14VAC5-415-60. Investments.

A self-funded MEWA must comply with Chapter 14 (§ 38.2-1400 et seq.) of Title 38.2 of the Code of Virginia. In doing so, a self-funded MEWA may only invest in any Category 1 investment. A self-funded MEWA may petition the commission for permission to invest in any other investment allowed under the provisions of Chapter 14 prior to making such investment.

14VAC5-415-70. Protection against insolvency.

Each self-funded MEWA shall deposit and maintain acceptable securities with the State Treasurer in amounts prescribed by § 38.2-1045 of the Code of Virginia. The deposit shall be held as a special fund in trust, as a guarantee to the self-funded MEWA's liabilities to its members and creditors. The securities shall be deposited pursuant to a system of book-entry evidencing ownership interests of the securities with transfers of ownership interests effected on the records of a depository and its participants pursuant to rules and procedures established by the depository. Upon a determination of insolvency or action by the commission pursuant to Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia, the deposit shall be an asset subject to the provisions of Chapter 15 and shall be used to protect the interests of the self-funded MEWA's enrollees and to ensure continuation of covered services to enrollees.

14VAC5-415-80. Financial and solvency requirements.

A. The financial and solvency requirements applicable to self-funded MEWAs granted a license under this chapter, insofar as they are not inconsistent with this chapter, include Articles 3 (§ 38.2-1017 et seq.), 4 (§ 38.2-1019 et seq.), 5 (§ 38.2-1024 et seq.), 6 (§ 38.2-1040 et seq.), and 7 (§ 38.2-1045 et seq.) of Chapter 10; Articles 1 (§ 38.2-1300 et seq.), 2 (§ 38.2-1306.2 et seq.), 3 (§ 38.2-1311 et seq.), 3.1 (§ 38.2-1316.1 et seq.), and 4 (§ 38.2-1317 et seq.) and §§ 38.2-1322 through 38.2-1332 and §§ 38.2-1333 through 38.2-1334.2:3 of Article 5 of Chapter 13; Articles 1 (§ 38.2-1400 et seq.), 2 (§ 38.2-1412 et seq.), and 4 (§ 38.2-1446 et seq.) of

Chapter 14; Chapter 15 (§ 38.2-1500 et seq.); and Chapter 55 (§ 38.2-5500 et seq.) of Title 38.2 of the Code of Virginia.

B. For purposes of applying this section, "insurer" when used in a section of the Code of Virginia cited in subsection A of this section shall be construed to mean and include "self-funded MEWA" unless the section cited clearly applies to self-funded MEWAs without such construction.

14VAC5-415-90. Disclosure.

A. A self-funded MEWA shall provide meaningful disclosure to its members; members' participating and prospective participating employees regarding the medical, prescription drug, dental, and vision benefits provided to participating employees of the sponsoring association or its members; and the dependents of those employees through the health benefit plans offered by the self-funded MEWA.

B. A self-funded MEWA subject to Chapter 55 (§ 59.1-589 et seq.) of Title 59.1 of the Code of Virginia shall comply with the requirements of § 59.1-591 C of the Code of Virginia.

C. All other self-funded MEWAs shall include on health benefits plans, as applicable, the substance of the information required by § 59.1-591 C of the Code of Virginia.

14VAC5-415-100. Acts of other persons.

A self-funded MEWA is responsible for the acts of all persons who solicit, negotiate, procure, or effect applications for coverage with the self-funded MEWA.

14VAC5-415-110. Violations.

Any violation of this chapter shall be punished as provided for in § 38.2-218 of the Code of Virginia and any applicable law of the Commonwealth. The provisions of §§ 38.2-219 through

38.2-222 of the Code of Virginia shall also apply to a self-funded MEWA that fails to comply with the provisions set forth in this chapter.

14VAC5-415-120. Service of process.

Suits, actions, and proceedings may be begun against a self-funded MEWA offering or providing coverage in the Commonwealth by serving process on any trustee, director, officer, or agent of the self-funded MEWA, or if none can be found, on the Clerk of the Commission. If a benefits consortium offers or provides coverage in this Commonwealth without obtaining a license as required by this chapter, it shall be deemed to have thereby appointed the Clerk of the Commission its attorney for service of process. Service of process shall be made as provided for in Article 1 (§ 38.2-800 et seq.) of Chapter 8 of Title 38.2 of the Code of Virginia.

14VAC5-415-130. Severability.

If any provision of this chapter or the application to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected.

FORMS (14VAC5-415)

MEWA Attestation R21 (eff. 5/2023)

Self-Funded MEWA Application SCCBOI153 (eff. 5/2023)