VERMONT DEPARTMENT OF FINANCIAL REGULATION

RULE I-2018-01

FULLY-INSURED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS AND ASSOCIATION HEALTH PLANS

Section 1. Purpose

This rule is promulgated pursuant to 8 V.S.A. § 4079a and in response to the United States Department of Labor's June 21, 2018 amendment to 29 C.F.R. § 2510. *See* Definition of "Employer" Under Section 3(5) of ERISA—Association Health Plans, 83 Fed. Reg. 28,961 (June 21, 2018) (to be codified at 29 C.F.R. § 2510.3-5). The purpose of this rule is to set forth rules, forms, and procedures regarding fully-insured association health plans. This rule protects Vermont consumers and promotes the stability of Vermont's health insurance markets, to the extent permitted under federal law, including rules regarding licensure, solvency, reserve requirements, and rating requirements. This rule shall not apply to association health plans that are either fully or partially self-funded. Nothing in this rule shall be construed to provide an association or MEWA authority to operate in the State before September 1, 2018.

Section 2. Definitions

The following terms are defined for purposes of this rule as follows:

A. "Association" means any foreign or domestic association that complies with 8 V.S.A. § 4079(2)(A)-(D) and provides a health benefit plan that covers the employees of at least one employer that is either domiciled in Vermont or has its principal headquarters or principal administrative office in Vermont.

B. "Commissioner" means the Commissioner of the Vermont Department of Financial Regulation.

C. "Department" means the Vermont Department of Financial Regulation.

D. "Employee Welfare Benefit Plan," as used in this rule, has the same meaning as that contained in 29 U.S.C. § 1002(1).

E. "Fully Insured" means any association or MEWA health benefit plan coverage provided by a foreign or domestic insurer licensed to do business in Vermont under the provisions of 8 V.S.A. § 3301 *et seq.* and in compliance with 8 V.S.A. §§ 3368 and 4079(2) and 29 U.S.C. § 1144(b)(6)(D).

F. "Health Benefit Plan" means a policy, contract, certificate, or agreement offered or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health services, as defined in 33 V.S.A. § 1802(3). The health benefit plan is issued to an association; to a trust; or to one or more trustees of a fund established, created, or maintained

for the benefit of the members of one or more associations or a contract or plan issued by an association or trust or by a MEWA.

G. "Insurer" means any insurer, nonprofit hospital or medical service corporation, health maintenance organization, or managed care organization offering health insurance as defined in 8 V.S.A. § 3301(a)(2). An insurer shall not offer a health benefit plan to an association or MEWA with covered lives in Vermont unless it possesses a certificate of authority from the Commissioner.

H. "Multiple employer welfare arrangement (MEWA)," as used in this rule, have the same meaning as that contained in 29 U.S.C. § 1002(40).

Section 3. Authority

The Department has authority to promulgate rules for domestic and foreign fully-insured association health plans pursuant to 8 V.S.A. §§ 3368(a)(4) and 4079a(b) and 29 U.S.C. § 1144(b)(6)(A)(i).

Section 4. Licensing Requirement

A. Initial Filing Requirements. No association or MEWA may offer a fully-insured health benefit plan in this State unless duly licensed with the Department. An association or MEWA seeking to offer a fully-insured health benefit plan shall make application for a license to the Department by July 15 at 4:00 p.m. preceding the calendar year in which it seeks to operate and shall not offer such plans in this State until it is licensed. All licenses of associations or MEWAs issued pursuant to this rule shall take effect January 1 of the following calendar year and shall expire as of 12:01 a.m. the following January 1. The application for license shall be on a form prescribed by the Department and shall include the following, submitted under signature and certification of an officer, director, or trustee of the fully-insured association or MEWA:

1. Identifying information:

    a. Name of association or MEWA;

    b. Mailing address, email address, and telephone number at which communications are to be received;

    c. Names, titles, and business addresses of all principals, owners, officers, directors, trustees, and other persons responsible for the association or MEWA's operation;

    d. Names and addresses of the employer members and participants;

    e. Eligibility requirements for membership in the association or MEWA; and

f. Fees, if any, charged for membership.

2. A copy of the association or MEWA's by-laws and articles of incorporation;

3. A copy of the association or MEWA's certificate of good standing from the state in which it registered as a business;

4. Documentary evidence indicating compliance with the Statutes of Vermont relating to foreign corporations, if applicable;

5. The name and contact information for the Vermont registered agent for service of process;

6. A certification of an officer, director, or trustee of the association or MEWA that states compliance with 8 V.S.A. § 4079(2);

7. A copy of any documents required to be executed by an employer to become a member of the association or MEWA, including, but not limited to, an application for membership, a membership agreement, or any document proving the employer's health care information;

8. Biographical affidavits for all trustees, officers, directors, and other members of the association or MEWA's governing body responsible for its operation;

9. The names, addresses, and qualifications of persons who will solicit, negotiate, procure, or effect applications for coverage with the association or MEWA, including, but not limited to, the names, addresses, and license numbers of all brokers acting on behalf of the association or MEWA in Vermont;

10. A copy of all current policies or contracts of insurance issued to the association or MEWA that provide coverage for health care benefits and services to be offered in Vermont;

11. A copy of all current contracts between the association or MEWA and insurers to provide coverage for health care benefits and services to be offered in Vermont;

12. A copy of all current advertising and marketing materials used by the association or MEWA;

13. The names and addresses of all administrators and organizations, including third party administrators, responsible for the operation of the association or MEWA;

14. Most recent audited financial statement as defined in Section 9 of this rule;

15. A copy of the surety bond required in Section 5 of this rule;

16. Copy of M-1 filed with United States Department of Labor; and

17. A $750 filing fee.

B. Ongoing Filing Requirements. In addition to the requirements in subsection (A) above, fully-insured associations and MEWAs offering plans in the State shall annually, on or before July 1, submit the following information:

1. A Proof of Coverage form affirming that all the covered benefits are fully insured on a direct basis by an insurer, health maintenance organization, health services plan, or dental or vision services plan. This form is to be completed and certified by an officer, director, or trustee of the plan.

2. Demographic Information form providing association, MEWA, third party administrator, regulatory, and insurer contacts. The association or MEWA contact shall be the person responsible for filing all applicable forms and changes in information with the Department. The regulatory contact shall be the person responsible for receiving notice of laws, rules, bulletins, and the like that may affect the plan.

3. Notice of any changes in information previously filed with the Commissioner. This shall include, but is not limited to, the following items:

    a. Biographical Affidavits of any new trustees, officers, directors, or other members of the plan's governing body;

    b. The names, addresses, and qualifications of any new individuals responsible for the conduct of the plan's affairs, including any third-party administrators;

    c. The names, addresses, and qualifications of any new persons who will solicit, negotiate, procure, or effect applications for coverage with the plan, including, but not limited to, the names, addresses, and license numbers of all brokers acting on behalf of the association or MEWA in Vermont;

    d. The names and addresses of any new employers and participants enrolled in the plan;

    e. Any new policy or amendment;

    f. Any new Trust Agreement, Plan Document, Plan Summary, or Bylaws;

    g. Any new advertising and marketing material; and

h. Any other new agreements;

4. Most recent audited financial statement as defined in Section 9 of this rule; and

5. A $750 filing fee.

C. All filings made under this rule shall be submitted to:

Department of Financial Regulation
Insurance Division
Attn: Company Licensing
89 Main Street
Montpelier VT 05620-3101

D. The Commissioner shall review an application for license and notify the applicant in writing of any deficiencies within 45 business days of receipt. An applicant shall address any deficiencies in its application within 30 business days of notice thereof. Upon written request from the applicant and for good cause shown, the Commissioner may extend this 30-day time frame for no more than 30 business days. The Department shall notify the applicant in writing of its response to any such request.

E. If the Commissioner rejects a complete initial license application, or a subsequent annual license application filed pursuant to Section 4 of this rule, the Department shall advise the applicant in writing that the license request is denied and shall specify the reason for denial. The applicant or licensee may make written demand upon the Commissioner within a reasonable time for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action. The hearing shall be held within 30 days from the date of receipt of the written demand by the applicant and shall be held pursuant to 3 V.S.A. Chapter 25.

Section 5. Surplus Requirements

A. When a fully-insured association or MEWA submits its application for license with the Department, it shall have a minimum surplus that is not less than

1. $250,000 if the insurer directly bills certificate holders for premiums on behalf of the association or MEWA; or

2. $500,000 if the fully-insured association or MEWA bills its members for premiums and remits the premiums to the insurer.

B. A fully-insured association or MEWA shall continue to maintain the required minimum surplus indicated in subsection (A) of this Section so long as it continues to provide a health benefit plan in Vermont.

C. One year after the application for license is approved and annually thereafter, a fully-insured association or MEWA shall provide to the Department documentation of its annual premium for the preceding policy year and an estimate of its annual premium for the following year.

D. Surplus funds required under this Section are not to be used to fund the association or MEWA's normal operations, including providing a health benefit plan to its members. This unimpaired free surplus shall be in the form of cash or marketable securities.

E. The Commissioner may require additional surplus funds, based on the coverages and exposures involved.

F. If the level of surplus falls below the amounts specified in Section 5.A or 5.D, the association or MEWA shall notify the Commissioner within five days and file with the Commissioner within 45 days a plan to return the surplus to the required level. This plan shall include a report of the causes of the association or MEWA's insufficiency, the assessments necessary to replenish the minimum surplus, and the steps taken to prevent a recurrence of such circumstances.

G. In addition to the minimum surplus in Section 5.A or 5.D, the association or MEWA shall obtain a surety bond sufficient to cover 20% of its annual premium for Vermont members. For the first year of operation, the association or MEWA shall obtain a surety bond in the amount of $500,000 to ensure the association or MEWA's contractual obligations to its health benefit plan members. This bond shall be in a form to be determined by the Commissioner. The bond shall be issued by an insurer or surety licensed to transact such business in Vermont or any other insurer approved by the Commissioner. A copy of the bond shall be provided to the Commissioner at the time of application for license and annually thereafter. An association or MEWA shall notify the Department within five days of a notice of cancellation or termination of its surety bond.

Section 6. Rating Requirements

A. An insurer offering a health benefit plan to an association or MEWA shall obtain rate approval from the Green Mountain Care Board through the rate review process provided in 8 V.S.A. § 4062 and 4062a. An insurer may use its existing large group rates, without making an association-specific rate filing, so long as its large group rates have been filed with and approved by the Green Mountain Care Board and meet the requirements of this Section.

B. An association or MEWA shall meet the eligibility requirements of 8 V.S.A. § 4079(2) in order to qualify for a group health insurance policy.

C. Any insurer contracting with an association or MEWA to provide a health benefit plan shall use a community rating methodology acceptable to the Commissioner as outlined in this subsection. The association or MEWA may be rated based on the collective group experience of its members, provided that each certificate holder and dependent is charged

the same community rate. The following risk classification factors are prohibited from use in rating employees or members of such groups, and dependents of such employees or members:

1. demographic rating, including age and gender rating;
2. geographic area rating;
3. health status rating;
4. industry rating;
5. medical underwriting and screening;
6. experience rating;
7. tier rating (except for tiers related to family structure); or
8. durational rating.

D. The Commissioner may permit an insurer to establish rewards, premium discounts, split benefit designs, rebates, or otherwise waive or modify applicable co-payments, deductibles, or other cost-sharing amounts in return for adherence by a member or subscriber to programs of health promotion and disease prevention that are satisfactory to the Commissioner.

E. An insurer offering a health benefit plan to an association or MEWA shall guarantee acceptance of all persons within the association or MEWA and their dependents.

F. An insurer offering a health benefit plan or plans to an association or MEWA shall guarantee the rates on all such plans for a minimum of 12 months.

G. Medical Loss Ratio. A foreign or domestic insurer offering a health benefit plan to an association or MEWA with covered lives in Vermont shall comply, with respect to those covered lives, with the medical loss ratio and rebating requirements of 45 C.F.R. §§ 158.210-240.

H. Any fees associated with broker services shall not be incorporated into the medical loss ratio under subsection (G) of this Section, but shall be incorporated in the administrative expense portion of an insurer's rate filing.

Section 7. Benefit Requirements

A. Each health benefit plan offered to an association or MEWA in compliance with 8 V.S.A. § 4079 shall, at a minimum, provide the following benefits:

1. Essential Health Benefits as defined in 42 U.S.C. § 18022(b)(1).

2. Cost sharing requirements of 42 U.S.C. § 18022(c)(1), (c)(3).

3. Lifetime and annual limits as prescribed in 29 C.F.R. § 2590.715-2711.

4. A level of coverage equal to or greater than that designed to provide benefits that are actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan.

5. The requirements of Department Regulation H-2009-03.

6. All other insurance requirements and benefit mandates for health insurers as provided in 8 V.S.A. Chapter 107 and 18 V.S.A. Chapter 221, as may be amended from time to time, and as specified by rule by the Commissioner.

7. All other benefits required to comply with applicable federal laws and regulations.

8. Pediatric dental and vision coverage as required in (A)(1) of this Section may be offered to the association in either a stand-alone dental or vision plan or as a benefit embedded in the health benefit plan.

B. Every health benefit plan offered by any insurer to an association or MEWA shall include a process for subscribers to appeal adverse benefit determinations that complies with the requirements of 8 V.S.A. § 4089f and Department Regulation H-2011-02.

C. No health benefit plan or related policy, contract, certificate, or agreement offered or issued in this State may reserve discretion to the insurer to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State. Any such policy, contract, certificate, or agreement shall be null and void to the extent it conflicts with this subsection, pursuant to 8 V.S.A. § 4062f.

D. An insurer shall not deliver or issue for delivery an association or MEWA health benefit plan covering lives located in this State that contains an exclusion or limitation for pre-existing conditions or a waiting period on the coverage of pre-existing conditions.

Section 8. Membership Requirements

A. In addition to meeting the bona-fide-association test outlined in 8 V.S.A. § 4079, an association or MEWA offering a health benefit plan in the State shall meet the commonality-of-interest test. Pursuant to 83 Fed. Reg. 28,961 (to be codified at 29 C.F.R. § 2510.3-5(c)), employer members of an association or MEWA will be treated as having a commonality of interest if the standards of this Section are met, provided these standards are not implemented in a manner that is subterfuge for discrimination as is prohibited under 8 V.S.A. §§ 4062 and 4083 and 83 Fed. Reg. 28,961 (to be codified at 29 C.F.R. § 2510.3-5(d)).

1. The employers are in the same trade, industry, line of business, or profession; or

2. Each employer has a principal place of business in the State of Vermont.

B. An association or MEWA doing business in this State may not restrict membership to employers located within a particular geographic region of the State and shall accept employers with a principal place of business located in any part of the State.

Section 9. Filing Requirements

No policy of health insurance or certificate under a policy offering health insurance shall be delivered or issued for delivery in this State until a copy of the form and of the rules for the classification of risks has been filed with and approved by the Department in accordance with 8 V.S.A. §§ 3541 and 4062.

A. The following notice shall be provided to employers and employees who obtain coverage from an association or MEWA and shall be printed in no less than 12-point boldface type of uniform font:

"NOTICE

THE ASSOCIATION OR MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS NOT AN INSURANCE COMPANY. FOR ADDITIONAL INFORMATION ABOUT THE ASSOCIATION OR MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK QUESTIONS OF YOUR ASSOCIATION OR MULTIPLE EMPLOYER WELFARE ARRANGEMENT ADMINISTRATOR, OR YOU MAY CONTACT THE VERMONT DEPARTMENT OF FINANCIAL REGULATION AT _____."

B. Each association or MEWA notice under subsection A of this Section shall include the Department's current consumer service telephone number and website in the blank provided in this notice.

C. The insurer shall include in its policy document the following disclosures: (1) the Vermont employer or resident has the option of purchasing insurance on the Vermont Health Exchange (Exchange), (2) purchasing an association or MEWA health benefit plan may prevent the employer or individual from accessing premium subsidies and cost sharing reductions, and (3) purchasing an association or MEWA health benefit plan may be more expensive than purchasing a plan on the Exchange.

D. The insurer shall file its advertising and marketing materials with the Department for prior approval.

E. The insurer shall file policies, certificates, statement of benefits, brochures, and any other endorsement, rider, or application used in conjunction with the health benefit plan with the Department for prior approval.

Section 10. Enrollment Periods

An insurer enrolling employers or individuals in an association or MEWA health benefit plan shall comply with all open enrollment and special enrollment periods applicable to the Vermont Health Benefit Exchange.

Section 11. Financial Auditing

A. Each association or MEWA shall file annually with the Commissioner, and with the members of the association or MEWA, within 90 days after the end of the fiscal year, an audited financial statement for the most recently completed fiscal year certified by an independent certified public accountant. If the association or MEWA fails to file such audited financial statement, the Commissioner may perform the audit and the association or MEWA shall reimburse the Commissioner for the cost thereof.

B. At a minimum, the audited financial statement shall contain the following exhibits for the current and prior fiscal years:

1. Balance sheet;
2. Statement of income;
3. Statement of changes in equity;
4. Proof of minimum surplus, as defined in Section 5 of this rule;
5. Notes to financial statements; and
6. Management and internal control letters.

C. The financial statement shall be prepared in accordance with generally accepted accounting principles unless the Commissioner finds an exception to generally accepted accounting principles is necessary to preserve the fiscal integrity of the association or MEWA.

D. Each association or MEWA shall file a copy of the fidelity bond, or evidence acceptable to the Commissioner, covering the administrator, the association or MEWA employees and service agents with the audited financial statement.

E. In addition to the annual audited financial statement, the Commissioner may require any association or MEWA to file additional financial information including, but not limited to, interim financial reports, additional financial reports or exhibits, or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions, or affairs of the association or MEWA. The Commissioner shall establish reasonable deadlines for filing these additional reports, exhibits, or statements. The Commissioner may require verification of any additional required information.

F. Each association or MEWA shall file annually with the Commissioner the methodology for establishing the annual contributions of its members. Such contributions shall be based on reasonable assumptions and certified by an actuary.

G. An insurer offering a health benefit plan to an association or MEWA with covered lives in Vermont shall comply with all financial reporting requirements applicable to traditional insurance companies doing business in Vermont, including the requirement to file the Health Insurer Annual Statement (Act 152) Spreadsheet if it covered 2,000 or more Vermont lives at the end of the preceding calendar year. Instructions for annual filings by traditional insurance companies doing business in Vermont are set forth on the Insurance Division's webpages on the Department's website.

Section 12. Advertising and Marketing

A. Associations, MEWAs, and insurance agents or brokers acting on behalf of an association or MEWA may use only marketing materials that have been submitted to and approved by the Department pursuant to Section 4 of this rule. Associations, MEWAs, and insurance agents or brokers acting on their behalf are subject to 8 V.S.A. § 4084 and all other applicable provisions of law regarding advertising practices.

B. Using metal levels—bronze, silver, gold, and/or platinum—in the name of an association or MEWA health benefit plan shall be a per se violation of 8 V.S.A. § 4084.

Section 13. Record Retention

An association or MEWA doing business in Vermont shall maintain its books and records in accordance with Department Regulation 99-01.

Section 14. Enforcement Authority

A. To ensure compliance with the provisions of this rule and protect Vermont health care consumers, the Commissioner may, in his or her discretion, examine the business and financial affairs of an association or MEWA doing business in this State utilizing the powers granted by 8 V.S.A. §§ 13, 18, 3368-3390, 3563-3574, 4726, and other provisions of Titles 8 or 18 as may be applicable.

B. The Commissioner may decline to issue or renew a license issued pursuant to this rule if the Commissioner finds that an association or MEWA does not satisfy any standard or requirement of this rule or any provision of other applicable State or federal law or regulation.

C. The Commissioner may suspend or revoke a license issued pursuant to this rule for a violation of this rule or any provision of applicable State and federal law.

D. Any person or entity that violates any provision of this rule is subject to the penalties provided in Chapters 3, 101, 107, and 129 of Title 8 and such other provisions of Titles 8 or 18 as may be applicable.

E. When the Commissioner believes that an association, MEWA, or any other person is operating in this State without being duly licensed or has violated the law, an administrative rule of the Department, or an Order of the Commissioner, the Commissioner may issue an order to cease and desist such violation or take any other action set forth in 8 V.S.A. § 3661.

Section 15. Notification to the Department by Insurers of Contracts with Associations or MEWAs

A. An insurer shall notify the Department by December 31 of each year of all health insurance contracts and administrative-services-only contracts it issued, renewed, or had in force at any time during the 12-month period of that calendar year, that covered an association or MEWA with members having employees or dependents in Vermont.

B. The contract between the insurer and the association or MEWA shall contain a provision requiring that the insurer maintain coverage despite nonpayment of premium for a minimum of 24 days after payment becomes due. The 24-day minimum period of coverage after nonpayment includes a 10-day minimum grace period, pursuant to 8 V.S.A. § 4065(3), after which a notice of termination is permitted, and a 14-day minimum period between notice of termination and cancellation of coverage, pursuant to 8 V.S.A. § 4091c(c). The effective date of termination due to nonpayment of premium shall not be less than 24 days after payment becomes due. The insurer shall notify the Department within five days of any cancellation or termination of a contract that covered an association or MEWA with members having employees or dependents in Vermont.

C. Reporting Requirement for Fraudulent Association or MEWA Activity.

1. An insurer having knowledge or a reasonable suspicion that an association, MEWA, or entity holding itself out to be an association or MEWA in this State is not in compliance with the requirements of this rule shall immediately report to the Commissioner in writing regarding the identity of the entity, any known contact information or other materials, and the nature of the entity's practices triggering this reporting. This reporting obligation also requires an insurer report to the Commissioner any person, including a licensed or unlicensed agent, a broker, or other individual, soliciting, offering, or selling a health benefit plan on behalf of an association, MEWA, or entity holding itself out to be such an association or MEWA in this State without complying with the requirements of this rule.

2. Confidentiality.

a. The documents and evidence provided pursuant to subsection (C) of this Section or obtained by the Commissioner in an investigation of suspected or actual conduct in violation of this rule shall be privileged and

confidential, shall not be made public, and shall not be subject to discovery or introduction into evidence in any private civil action pursuant to 1 V.S.A. § 317(c)(26) and 8 V.S.A. § 3574.

b. Subdivision (a) of this subsection does not prohibit release by the Commissioner of documents and evidence obtained in an investigation of suspected or actual conduct in violation of this rule:

i. in administrative or judicial proceedings to enforce laws administered by the Commissioner;

ii. to federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing such conduct; or

iii. at the Commissioner's discretion in the furtherance of legal or regulatory proceedings brought as part of the Commissioner's official duties or to civil or criminal law enforcement authorities for use in the exercise of such authority's duties, in such manner as the Commissioner may deem proper.

c. Release of documents and evidence under subdivision (b) of this subsection does not abrogate or modify the privilege granted in subdivision (a) of this subsection.

Section 16. Insurance Agents and Brokers

A. Any person, including a licensed or unlicensed agent, a broker, or other individual, soliciting, offering, or selling a health benefit plan on behalf of an association or MEWA to a Vermont employer or a Vermont resident shall notify the Commissioner in writing prior to engaging in any conduct in connection with such sale. This written notification shall include, at a minimum, the person's name, address, telephone number, and email address; the name of the association or MEWA; and all materials in the person's possession used for the purposes of soliciting, offering, or selling the health benefit plan, including advertising and marketing materials.

B. Prior to completing a sale, any person, including a licensed or unlicensed agent, a broker, or other individual, soliciting, offering, or selling a health benefit plan on behalf of an association or MEWA to a Vermont employer or a Vermont resident shall disclose to the employer or resident that he/she is being compensated for the sale of the health benefit plan, that the employer or resident has the option of purchasing insurance on the Exchange, that purchasing such a health benefit plan may prevent the employer or individual from accessing premium subsidies and cost sharing reductions, and that purchasing such a health benefit plan may be more expensive than purchasing a plan on the Exchange. Any person, including a licensed or unlicensed agent, a broker, or other individual, soliciting, offering, or selling a health benefit plan on behalf of an association or MEWA to a Vermont

employer or a Vermont resident shall also provide the employer or resident with a crosswalk of benefits comparing the association or MEWA health benefit plan with plans offered on the Exchange.

C. A person, including a licensed or unlicensed agent, a broker, or other individual, soliciting, offering, or selling a health benefit plan on behalf of an association or MEWA to a Vermont employer or a Vermont resident, prior to engaging in or assisting any person to engage in offering an association or MEWA health benefit plan, shall carry out and document appropriate due diligence to establish, at a minimum, the following:

   a. That the insurer is licensed in the State;

   b. That the association or MEWA is licensed in the State;

   c. That the disclosures listed in subsection (B) are in the policy document; and

   d. That the advertising and marketing materials he/she is using have been approved by the Department.

D. Reporting Requirement for Fraudulent Association or MEWA Activity. Any person, including a licensed or unlicensed agent, a broker, or other individual, soliciting, offering, or selling a health benefit plan on behalf of an association, MEWA, or entity holding itself out to be such an association or MEWA, having knowledge or a reasonable suspicion that an association, MEWA, or entity holding itself out to be an association or MEWA in this State is not in compliance with the requirements of this rule shall immediately report to the Commissioner in writing regarding the identity of the entity, any known contact information or other materials, and the nature of the entity's practices triggering this reporting. This reporting obligation also requires such person to report to the Commissioner any person, including a licensed or unlicensed agent, a broker, or other individual, soliciting, offering, or selling a health benefit plan on behalf of an association, MEWA, or entity holding itself out to be such an association or MEWA in this State without complying with the requirements of this rule. The confidentiality provisions of Section 15(C)(2) shall apply to this subsection.

Section 17. Severability

If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this rule that can be given effect without the invalid provision or application, and to that end the provisions of this rule are severable.