

**PROPOSED RULES**

**NORTH DAKOTA ADMINISTRATIVE CODE  
CHAPTER 45-06-14  
SELF-INSURANCE POOLS**

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

1. "Board" means a pool's board of trustees.
2. "Bylaws" means the statements and organizational documents adopted by a pool 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, by virtue of the coverage document.
5. "Coverage document" means the document specifying the characteristics and duration of coverage provided through a pool. Characteristics of coverage include the kind of loss or benefit that the pool will reimburse, subject to specific exclusions, limitations, or deductibles.
6. "Days" means calendar days.

7. "Employee health benefit pool" means a pool that covers employee health benefits, disability benefits, or both.
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. "Fund year" means a pool'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.
12. "Premium" means the amount charged by the pool for health coverage. Premium does not include assessments or penalties.
13. "Runoff pool" means a pool that no longer has authority to self-insure, but that continues to exist for the purpose of paying claims, preparing reports, and administering transactions associated with the period when the pool 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. "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 total assets minus total liabilities. Surplus includes paid-in capital and retained earnings. The amount of a pool's surplus is determined according to the instructions provided for a pool's financial statements.

**History:** Effective \_\_\_\_.

**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. The provisions are intended to ensure the financial integrity and the competent and equitable administration of the pool.

**History:** Effective \_\_\_\_\_.

**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.

**History:** Effective \_\_\_\_\_.

**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 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, including standards of financial integrity and loss experience;
  - j. The procedure for admitting new members to the pool;
  - k. The criteria for expelling members from the pool for reasons including nonpayment of premium;
  - l. The procedure for withdrawal and expulsion of members from the pool, including the minimum required period of membership;
  - m. A statement of the coverages to be provided by the pool;
  - 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 funds and the purposes for which pool 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 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 must file bylaw changes with the commissioner not less than thirty days after adoption.

**History:** Effective \_\_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4

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

- 1. Structure. A pool 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, if any. No member may have more than one representative on the board, unless the pool 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 service company, financial administrator, insurer, or other person or entity under contract with the pool, 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. The board may delegate some or all of its responsibilities to the chairperson or other trustees between board meetings. All responsibilities of the pool 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 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 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 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 operation and financial integrity; and
  - h. Monitor the pool's compliance with all statutes and rules governing its operation.

**History:** Effective \_\_\_\_\_.

**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. Applications must be submitted on forms prescribed by the commissioner and must include a proposed business plan. The

appropriate filing fee must accompany the application. An application must be submitted no later than sixty days prior to the requested date for authority to self-insure. 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. **Renewal.** Authority to operate as an existing pool will automatically renew annually with the filing of the pool's annual report to the commissioner and the payment of the appropriate fee, subject to the pool maintaining its financial ability to pay claims and expenses.
3. **Merger.** Two or more existing pools may apply to merge, provided the merged pool assumes all financial and regulatory obligations of the former pools. Merger applications must be filed with the commissioner and are subject to the same requirements as prospective new pools.
4. **Approval or disapproval.** Upon approval of an application, the commissioner shall issue a certificate authorizing the proposed self-insurance pool. The initial certificate for a new pool is effective until revoked by the commissioner. Approval of an application for authority to self-insure must be granted if the proposed pool conforms with:
  - a. All requirements of this chapter;
  - b. All applicable requirements of North Dakota insurance statutes and rules, as described in North Dakota Century Code title 26.1 and North Dakota Administrative Code title 45; and
  - c. All applicable requirements of other North Dakota statutes and rules.

**History:** Effective \_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4

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

1. **Termination.** A pool may terminate its self-insurance authority and cease to provide coverage effective at the end of a fund year. The pool must notify the commissioner within fourteen days of its decision to terminate. A pool may not terminate its self-insurance authority less than forty-five days prior to the end of the fund year in question. The voluntary termination of self-insurance authority does not constitute pool dissolution under subsection 4.
2. **Revocation.** The commissioner shall, by order, revoke the authority of a pool to self-insure 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 to comply with this chapter or with other applicable North Dakota laws or rules;
  - b. Failure of the pool to comply with any lawful order of the commissioner;
  - c. Commission by the pool 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 financial integrity to the extent that its present or future ability to meet its obligations is or will be significantly impaired.
3. **Runoff pool.** A pool must continue to exist as a runoff pool after its authority to self-insure has ended, for the purpose of paying claims, preparing reports, and administering transactions associated with the period during which the pool provided coverage. A runoff pool must continue to comply with this chapter and with other applicable North Dakota laws and rules.
  4. **Dissolution.** A pool, including a runoff pool, 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 or runoff pool 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 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 are met:
    - a. The pool demonstrates that it has no outstanding liabilities, including incurred but not reported liabilities; or
    - b. The pool 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 provided coverage.

**History:** Effective \_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4

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

1. **Service company.** A pool must contract with a service company for services necessary to conduct the pool'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. 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 record keeping;
  - 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 must contract with a financial administrator for investment of the pool'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. A pool 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 records in order to verify the pool'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 operations are the pool's property.

**History:** Effective \_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4

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

1. Availability. A pool must establish nondiscriminatory criteria for membership. A pool may reject applicants or dispel members that do not meet the pool'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 obligations. The membership agreement must disclose that under the rules governing the pool, the board of trustees, or the commissioner, may order



that an assessment be levied against the members if necessary to maintain the pool'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. A member must notify the pool 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 to be in violation of the minimum annual premium requirement or would compromise the pool's financial integrity the pool 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 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. **Expulsion.** At least annually a pool 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. Runoff pool membership. After revocation of a pool's self-insurance authority or after a pool notifies the commissioner in writing of its intent to terminate the pool, no member may join, leave, or be expelled from the pool.

**History:** Effective \_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4

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

1. Coverage. A pool is subject to the requirements of North Dakota statutes and rules applicable to insurance companies providing insurance in North Dakota similar to the pool's coverage. These include requirements contained in North Dakota Century Code and rules adopted under these chapters, concerning:
  - a. Filing and requesting approval for coverage documents and rates;
  - b. Coverage document content and language;
  - c. Coverage administration, including notices to covered parties;
  - d. Underwriting;
  - e. Claim administration; and
  - f. Other practices affecting coverage.
2. Uniform underwriting. A pool 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, a pool 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 dissolves under subsection 4 of section 45-06-14-07.

**History:** Effective \_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4

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

1. Minimum annual premium. A pool must have and maintain an annual premium volume of no less than three hundred thousand dollars. A pool or prospective

pool 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 must demonstrate that the lesser premium volume would not compromise its financial integrity and stability.

2. **Monitoring premium volume.** A pool 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 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 must notify the commissioner:
  - a. Of its intent to end its self-insurance 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 continues to be out of compliance, the commissioner may revoke the pool’s self-insurance authority.
3. **Surplus or stop-loss advancement.** To maintain its financial integrity, a pool must either:
  - a. Establish and maintain a surplus consisting of funds contributed by members and the pool’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 if the pool’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 deposit premium.** As a condition for authorization to self-insure a prospective pool must submit evidence that an initial premium payment has been made.
  - a. The initial premium payment must be no less than twenty-five 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 may apply to the commissioner for reduction of the new pool 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 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 has made under subsection 3 in evaluating the application.
5. Premium payments. A pool 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 may declare and pay a dividend or distribution from its surplus only if:
  - a. The dividend will not impair the pool's surplus; and
  - b. The pool does not have an outstanding loan or an outstanding advancement from a stop-loss carrier.

**History:** Effective \_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4

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

**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 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 financial integrity, the pool must notify the commissioner prior to the termination or modification. The pool must inform the commissioner of corrective action that will be taken to maintain the pool's financial integrity.
2. Required stop-loss coverage. A pool 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 with less than one year's

experience must use the pool's estimated premium volume during the first full fund year. The pool 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 or a member.

**History:** Effective \_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4

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

1. Each current member of a pool is jointly and severally liable for all liabilities and expenses of the pool. Each past member is jointly and severally liable for all liabilities and expenses of the pool for three complete fund years after leaving the pool. After the period of continuing liability, a past member is no longer jointly and severally liable for the pool's liabilities and expenses, except as provided in subsection 2.
2. Runoff liability. If a pool's self-insurance 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 liabilities and expenses until final pool dissolution, as follows:
  - a. All members at the termination of self-insurance authority are jointly and severally liable for all pool liabilities and expenses until the pool is dissolved; and
  - b. All past members that were jointly and severally liable under subsection 1 at the time self-insurance authority is ended continue to be jointly and severally liable until the pool is dissolved.
3. Deficits. If at any time a pool'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 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 authority ending under subsection 1 or 2 of section 45-06-14-07 is the basis of assessments until final pool 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 in poor loss years are assessed more than members belonging to the pool 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 financial strength. The assessment may be calculated using any reasonable procedure, consistent with the pool's bylaws.

**History:** Effective \_\_\_\_.

**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 funds or who will have access to pool 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 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 assets:
  - a. May not be commingled with the assets of any member;

- b. May not be loaned to anyone for any purpose or used as security for a loan, except as permitted under subsection 5 for investments;
  - c. May not be employed for any purpose other than for the purposes stated in the bylaws, and in compliance with this chapter and related statutes; and
  - d. May not be 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 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 may not borrow money or issue debt instruments. A pool may bring legal suits to collect delinquent debts. A pool may not obtain funds through subrogation of the rights of covered persons. A pool 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.
4. Separate accounts. A pool may establish separate accounts for the payment of claims or certain type 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 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 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.

6. **Monitoring financial condition.** The board must monitor the pool's revenues, expenses, and losses, and evaluate its current and expected financial condition. The board must maintain the pool'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 sound financial condition, the commissioner may order an increase in the premium rates, revoke the pool's self-insurance authority, order that an assessment be levied against the members, or take other appropriate action.

**History:** Effective \_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4

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

1. **Financial statements.** A pool 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 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 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 financial integrity is such that the pool's ability to meet obligations promptly and in full will be significantly impaired, the commissioner may require that the pool 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 financial integrity is restored. A quarterly report must contain statements of the pool'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 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 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 reserving, accounting, or record keeping practices. The audits are in addition to the commissioner's rights to examine self-insurance pools 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 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, or with the pool'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 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 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 \_\_\_\_.

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

**Law Implemented:** NDCC 26.1-01-07.4