

MWCARP Agent Guide

Introduction

The purpose of the MWCARP Agent Guide is to give employers and agents the relevant procedural information that they will need regarding the Minnesota Workers Compensation Assigned Risk Plan (MWCARP or Plan). It will describe manuals, payroll, policies, pay plan options, commissions, the underwriting process, endorsements, certificates of insurance, dispute resolution process, cancellations, reinstatements, audits, waiver of subrogation, loss control, claims administration, and rating information.

The agent guide does not replace or supersede any state statutes or regulations.

Is it important to remember that the MWCARP is a mechanism that is designed to address a basic need – *to provide workers compensation and employers liability policies to employers that are unable to obtain such coverage in the voluntary market.* The MWCARP was created by the State Legislature to ensure that all Minnesota employers can obtain workers' compensation coverage as required by law.

Part A. – MWCARP Insurance Coverage

Section 1. Eligibility and Application.

Employers are eligible for coverage in the MWCARP provided the application is submitted with the correct payment or deposit premium, the declination requirements are met (which includes a current written notice of refusal), the application is signed by the applicant and the agent, there is no record of coverage in force in the association file, the employer expressly represents that such insurance is sought in good faith, or the employer does not owe money to the assigned risk plan for previous coverage or has not failed to comply with the audit conditions of a previous policy.

Agents are not agents of the Plan and cannot issue certificates of insurance or bind coverage.

The assigned risk application may be completed and submitted online. You may also make electronic payments by electronic check or credit card when you do the online submission.

Available online at www.mwcia.org – under the assigned risk tab:

- Online Assigned Risk Application
- Hardcopy Assigned Risk Application
- Assigned Risk Premium Calculator
- Classification Code Search
- Assigned Risk Rates

Application helpful hints:

- Be sure to include the special compensation fund surcharge (SCF), the terrorism charge, and the expense constant in the premium calculation.
- If this premium is financed with a premium finance company, you should attach a copy of the premium finance agreement.
- Make sure the application is signed by the employer and the agent.
- Attach a copy of the agent's non-resident license, if applicable.
- Pay special attention to Section VI. Elections Available Under the Law. ONLY list the sole proprietor, partners, executive officers or family members, who are ELECTING TO BE COVERED.
- Send all correspondence directly to the Servicing Carrier after coverage is bound.
- Agents are not authorized to issue a certificate of insurance on behalf of the MWCARP in MN.

You may obtain contact information or other miscellaneous information from our websites: www.mwcia.org or www.mwcarp.com

Section 2. WARNING NOTICE: No Coverage Outside Minnesota.

Workers' compensation insurance policies issued by the MWCARP **DO NOT** provide coverage for workers' compensation benefits to injured employees which the policyholder is obligated to provide under the workers' compensation laws of any other state.

MWCARP policies only cover lawful claims for workers' compensation benefits allowed under Minnesota law. MWCARP policies **DO NOT** provide coverage for a policyholder's workers' compensation liability to injured employees that work outside of Minnesota, and who are not entitled to receive benefits under Minnesota's workers' compensation law.

MWCARP policies **DO NOT** cover workers' compensation liability under another state's workers' compensation law if an injured employee elects to receive benefits under that other state's workers' compensation law in lieu of receiving workers' compensation benefits payable under Minnesota law.

MWCARP policies **DO** provide coverage under Minnesota's workers' compensation law for benefits to an injured employee who regularly performs their primary duties of employment within Minnesota but who are injured while working temporarily outside of this state, as required by Minn. Stat. §176.041, subd. 2-4 (2009).

Coverage for out of state employees can be complicated. If you do business outside Minnesota, employ persons that perform work outside Minnesota or have any question regarding what benefits are provided to your employees by Minnesota's workers' compensation law, you should consult your insurance agent or other knowledgeable professionals regarding your obligations in this area.

Part B. – Policy Issuance Services

Section 1. The Workers' Compensation and Employers' Liability Manuals.

The Servicing Carrier will administer Plan policies in conformance with the requirements and standards provided in the Workers' Compensation and Employers' Liability Manuals as approved for use in Minnesota by the Commissioner, or as approved for use by members of a licensed data service organization pursuant to Minn. Stat, Sect. 79.62 and related rules, except where such requirements and standards are contravened by Minnesota Statute, rule or by the terms of this document.

Section 2. Renewals. Renewal offers will be mailed to eligible policyholders who have in force policies with the Plan no less than sixty (60) calendar days prior to expiration. The offer of renewal will state clearly that coverage will unconditionally lapse if payment is not received on or before the effective date.

Section 3. Payroll Estimates. The Servicing Carrier will estimate the payroll for all renewal policies in conformance with generally accepted insurance industry practices. The estimate will incorporate all information normally and reasonably accessible to the Servicing Carrier, including current information submitted by the employer.

a) Renewal Policies. The Servicing Carrier will utilize payroll estimates based on the most recently conducted audit of policyholder payroll, or on payroll submissions from the policyholder to determine an estimated premium to be collected for the renewal policy period. However, the payroll estimates may be modified during the policy period based upon information obtained during a previous policy's audit or other more accurate information.

b) Payroll Adjustments. The Servicing Carrier may routinely increase estimated payroll by 5% (or such other amount approved by the Plan Administrator) for inflation, provided that the increase shall not be made if information submitted by the employer indicates the increase is unwarranted.

c) **Division of Payroll.** The Servicing Carrier will divide the payroll of individual employees into more than one classification, or divide total payroll into multiple classifications where the Basic Workers' Compensation and Employers' Liability Manual allows such action in accordance with Minnesota Stat., Sect. 79.211, Subd. 2 and guidelines and rules governing such division of payroll.

d) **Employee Status.** The Servicing Carrier will include in its payroll estimates the payments to be made by the employer to persons who, in the Servicing Carrier's judgment, would probably be considered employees for workers' compensation purposes pursuant to the guidelines for distinguishing between employees and independent contractors, or as determined by the Minnesota Department of Labor and Industry or a court. Such payments shall be included notwithstanding that the employer maintains the persons are not employees. The Servicing Carrier will base its judgment on the statutes, rules, and court decisions which apply to employee and independent contractor status.

Section 4. Rating. The Servicing Carrier will calculate the premium for all renewal policies according to the most recent rate schedule and rating plan approved or adopted by the Commissioner for the Plan, including any applicable experience modification or merit rating, based on the most recent information available to the Servicing Carrier. Experience modification factors and merit rating factors for Plan policyholders will be developed and maintained by the Commissioner's designee for assignments and data collection.

Section 5. Terms of Coverage. Assigned risk policies shall provide Minnesota statutory Workers' Compensation Coverage (Part One) and Employers' Liability Coverage (Part Two). They shall conform with all reasonable instructions concerning terms of coverage as indicated by the Commissioner, the Commissioner's designee for assignments and data collection and/or the Plan Administrator. Should the circumstances of the policyholder subsequently change, the Servicing Carrier may alter the terms of coverage to accommodate such changes, subject to the terms and standards of this section.

a) **Effective Time.** For new policies, coverage shall be effective as of: (1) 12:01 A.M. the day after the postmark date on the envelope containing the application and deposit premium; or (2) 12:01 A.M. the day

after receipt of the application and deposit premium if not postmarked or if made by personal delivery; or (3) 12:01 A.M. for any future date requested. For renewals, coverage shall be effective as of 12:01 A.M. on the date of the prior policy's expiration date.

b) Policy Term. Policies shall provide coverage for one year, unless the Servicing Carrier and the policyholder agree to an alternative term of coverage which complies with the requirements and standards applicable under Part B. - Section 1 of this guide.

c) Employers Liability. Part Two shall provide the standard limit of liability of \$100,000. The Servicing Carrier may permit a Part Two limit of liability of up to \$1,000,000 if requested by the policyholder. Increased limits of 500/500/500 cost 1% of the total premium subject to a minimum charge of \$50. A 1mil/1mil/1million increase costs 5% of the total premium subject to a minimum charge of \$150.

d) Item 3.A Coverage. No state other than Minnesota may be designated in Item 3.A. of the Information Page unless otherwise instructed by the Commissioner.

Section 6. Endorsements. The Servicing Carrier will attach appropriate endorsements to the policy which are approved for use in Minnesota to effect allowable changes or terms requested by the policyholder or the agent, to correct clerical errors, or to otherwise bring the policy into compliance with applicable statutes, rules, or other required procedures.

a) Name Change. When the Servicing Carrier receives a written request to change the name of the policyholder on, or add another name to, a policy, the Servicing Carrier shall either (1) amend the policy as requested or (2) issue a new policy after receipt of an assignment letter from the Commissioner's designee for assignments and data collection.

b) Timing. All endorsements shall be issued within thirty (30) calendar days after receipt of the request for change, subject to the recommendation of the Commissioner's designee for assignments and data collection and/or Plan Administrator, if appropriate.

c) **Other-States Endorsement.** The Servicing Carrier shall not attach the Other-States Endorsement to any policy issued through the Plan.

d) **Experience Modification Factor.** If the applicable experience modification factor or merit rating is not available at the time of policy issuance, the Servicing Carrier will apply the current modification or merit rating and attach an Experience Rating Modification Factor Endorsement. When the experience modification or merit rating becomes available, premium shall be adjusted in accordance with the rules, and the employer notified of the adjustment.

e) **Federal Programs.** The Servicing Carrier may attach endorsements to provide coverage under “Program I” of the United States Longshore and Harbor Workers’ Act or the Federal Employers’ Liability Act, as specified in the Basic Manual for Workers’ Compensation and Employers’ Liability Insurance, unless otherwise instructed by the Commissioner.

f) **Maritime.** The Servicing Carrier may attach the Maritime Coverage Endorsement to provide coverage for masters and members of the crew of vessels subject to standard limit of liability of \$25,000.

g) **Voluntary Coverage.** The Servicing Carrier shall not endorse policies to provide Voluntary Compensation Coverage.

Section 7. Terms of Payment. Premiums shall be required to be paid according to the following terms and conditions:

a) **Basic Terms.** The basic terms for the premium payment plan (using estimated annual premium) are as follows:

- Less than \$2,000 - 100% of premium shall be paid in advance.
- \$2,000 - \$9,999 - the employer shall have the option of paying 100% or 50% of premium in advance.
- \$10,000 or more - the employer shall have the option of paying 100%, 50% or 35% of premium in advance. If 50% of the premium is paid in advance, the remainder shall be paid in three (3)

equal quarterly installments. If 35% is paid in advance, the remainder shall be paid in eight (8) equal installments.

All such advance payments shall be credited to the estimated annual premium.

1. **Agent Checks** - Payment submitted with an application should be made by the insured to the Assigned Risk Plan. If payment is made by an agent, the agent understands that it will be solely responsible for reimbursement from the insured and will have no right to cancel the policy for nonpayment by the insured, unless cancellation is agreed to by the insured. All premium refunds are issued to the insured.

b) Installment Payments. For policies which permit installment payments, the due date for each installment shall be no less than 30 days prior to the period to which the premium applies to allow time to issue a cancellation for non-payment of premium. The first quarterly payment applies to the second quarter after the policy's inception. The first monthly payment applies to the third month after the policy's inception. If the installment premium payment is not received by the due date, cancellation will be effective ten (10) days after the due date. However, if payment is received by mail that is postmarked on or before the due date, provided it is received within ten (10) days after the due date, the Servicing Carrier may continue coverage without a lapse.

Section 8. Policy Issuance. After receipt of the initial premium due, the Servicing Carrier will issue and deliver said new and renewal policies, including any endorsements, to Plan insureds on forms approved by the Commissioner or Plan Administrator.

a) Timing. Policies shall be issued to the employer in accordance with the Servicing Carrier Minimum Performance Standards within twenty-five (25) calendar days after receipt of the initial premium, or ten (10) days after the policy's inception date, whichever is later.

b) Receipt of Premium. Unless otherwise approved by the Plan Administrator, the Servicing Carrier will not issue renewal policies to

employers if the initial premium due is not received by the policy's inception date, or if received by mail that is postmarked on or before the policy's inception date, provided that payment is received within ten (10) days after the inception date.

If the renewal payment is not received within the above-referenced ten (10) day grace period but is received within twenty (20) days after the inception date, the Servicing Carrier shall issue a new policy to the employer without requiring the employer to reapply to the Plan. The new policy will be effective as of 12:01 A.M. the day after postmark. If the payment is received more than twenty (20) days after the inception date, The Servicing Carrier shall instruct the employer to reapply to the Plan for coverage and shall indicate that the employer will not be accepted if it has an outstanding debt to the Plan.

Section 9. Agent Relations. For policies with a designated agent of record, the Servicing Carrier will keep the agent informed of the status of the policy and consult with the agent as is customary and appropriate in the insurance industry concerning transactions and issues associated with the policy.

a) Information. The Servicing Carrier will provide the designated agent of record with copies of offers to renew, all information unique to the policy in force, notices of cancellation, and any other correspondence or filings where it is customary and appropriate that the agent be informed.

b) Change of Agent. The Servicing Carrier will permit the agent of record to be changed, pursuant to a written request from the policyholder, on renewal of the policy only and not midterm. The Servicing Carrier shall not designate an agent of record if the employer fails to name one.

c) Commission. The Servicing Carrier will pay commissions to the agent of record, if any, on all Plan policies issued. Effective January 1, 2018, commissions **will not** be paid if the policy is cancelled due to the agent of record's failure to provide a valid declination notice to the Servicing Carrier within 90 days of the policy effective date. When a policy is endorsed mid-term and results in a change in estimated Annual Premium, the commission shall be adjusted. If the policy is audited and the earned Annual Premium is less than the estimated Annual Premium, the

commission shall be adjusted at the time of the next regularly scheduled commission payment. If the earned Annual Premium is more than the estimated Annual Premium, the commission shall be adjusted at the time of the next regularly scheduled commission payment, however, the commission shall not be adjusted if the additional premium is collected by the Plan's collection agency. Commission amounts are based on the policy premium as follows:

- Under \$1,000 is 5%;
- \$1,000 to \$5,000 is 4%, but not less than \$50;
- \$5,000 to \$10,000 is 3.5%, but not less than \$200;
- Over \$10,000 is 1%, but not less than \$350.

There is a Commission maximum of \$3,500 per policy if no service fee is charged by the agent. There is a Commission maximum of \$1,500 per policy if a service fee is charged by the agent.

d) Return Commission. If the final premium adjustment results in a return premium to the policyholder and a return commission due from the agent, the Servicing Carrier shall draft a check to the policyholder for the full amount of the return premium due and forward the check to the policyholder, and obtain from the agent a refund of the return commission due or offset the amount of the return commission due against other amounts owed to the agent.

e) Service Fee. If a service fee is charged by the agent, the fee must be mutually agreed to in writing by both the agent and the insured. A separate agreement must be prepared for each policy year that a fee is charged.

Section 10. Initial Information. At the time of each policy issuance, the Servicing Carrier will provide each policyholder with information which clearly describes: (1) the procedure for filing claims; (2) the terms of payment applicable to the policy, (3) the procedure for auditing payroll and billing or refunding based on final audit; (4) the loss control and safety services available through the Plan; (5) any other information which, in the judgment of the Servicing Carrier, the Commissioner and/or Plan Administrator, would be helpful to the policyholder; and (6) the procedure for obtaining answers to any questions the employer may have about its rights or obligations under the policy.

Section 11. Loss & Premium Report. The Servicing Carrier will, within thirty (30) days, comply with the reasonable written requests of a policyholder for a written statement concerning its losses and/or premiums under a current or recent Policy administered by the Servicing Carrier.

Section 12. Certificates of Insurance. The Servicing Carrier will issue Certificates of Insurance as soon as reasonably possible, and no later than three (3) business days after the date the request is received. All certificates shall state whether the policyholder/employer, where applicable, has elected coverage for him/herself.

a) Insurance agencies are not authorized to issue a Certificate of Insurance on behalf of the MWCARP in Minnesota. **This activity is not in compliance with the operation of the MWCARP.** On page 4 of the Application for Workers' Compensation Insurance, number 5, under Application Rules and Procedures states: **"Agents are not agents of the Assigned Risk Plan and cannot issue certificates of insurance or bind coverage"**. Your agency should request any Certificate of Insurance that is needed for policies written through the MWCARP from the Servicing Carrier to whom the coverage has been assigned. These Certificates of Insurance must be issued by the Servicing Carrier.

Section 13. Special Issues.

a) **Fourteen-Factor Test.** Under Minnesota statute 181.723, an individual is an independent contractor and not an employee if they:

1. was established and maintained separately from and independently of the person or whom the services were provided or performed;
2. owns, rents, or leases equipment, tools, vehicles, materials, supplies, office space, or other facilities that are used by the business entity to provide or perform building construction or improvement services;
3. provides or performs, or offers to provide or perform, the same or similar building construction or improvement services for multiple persons or the general public;
4. is in compliance with all of the following:
 - i. holds a federal employer identification number if required by federal law;

- ii. holds a Minnesota tax identification number if required by Minnesota law;
 - iii. has received and retained 1099 forms for income received for building construction or improvement services provided or performed, if required by Minnesota or federal law;
 - iv. has filed business or self-employment income tax returns, including estimated tax filings, with the federal Internal Revenue Service and the Department of Revenue, as the business entity or as a self-employed individual reporting income earned, for providing or performing building construction or improvement services, if any, in the previous 12 months; and
 - v. has completed and provided a W-9 federal income tax form to the person for whom the services were provided or performed if required by federal law;
5. is in good standing as defined by section 5.26, if applicable;
 6. has a Minnesota unemployment insurance account if required by chapter 176;
 7. has obtained required workers' compensation insurance coverage if required by chapter 176;
 8. holds current business licenses, registrations, and certifications if required by chapter 326B and sections 327.31 to 327.36;
 9. is operating under a written contract to provide or perform the specific services for the person that:
 - i. is signed and dated by both an authorized representative of the business entity and of the person for whom the services are being provided or performed;
 - ii. is fully executed no later than 30 days after the date work commences;
 - iii. identifies the specific services to be provided or performed under the contract;
 - iv. provides for compensation from the person for the services provided or performed under the contract on a commission or per-job or competitive bid basis and not on any other basis;
 - v. the requirements of item (ii) shall not apply to change orders;
 10. submits invoices and receives payments for completion of the specific services provided or performed under the written proposal,

contract, or change order in the name of the business entity. Payments made in cash do not meet this requirement.

11. the terms of the written proposal, contract, or change order provide the business entity control over the means of providing or performing the specific services, and the business entity in fact controls the provision or performance of the specific services;

12. incurs the main expenses and costs related to providing or performing the specific services under the written proposal, contract, or change order;

13. is responsible for the completion of the specific services to be provided or performed under the written proposal, contract, or change order and is responsible, as provided under the written proposal, contract or change order, for failure to complete the specific services; and,

14. may realize additional profit or suffer a loss, if costs and expenses to provide or perform the specific services under the written proposal, contract, or change order are less than or greater than the compensation provided under the written proposal, contract, or change order.

Subcontractors that fail to meet the above fourteen-factor test will be considered to be EMPLOYEES, and therefore, subject to premium charges, regardless of the following:

1. proof of workers compensation insurance coverage via a Certificate of Insurance form
2. registration with the DOLI Construction Contractor Registration Program

If you have any questions regarding the application of the fourteen-factor test, please contact your Servicing Carrier or the Plan Administrator via the MWCARP website – <http://www.mwcarp.org/contactus.htm>.

For addition information, please refer to the Minnesota Department of Labor and Industry website: [Misclassification FAQs | Minnesota Department of Labor and Industry](#)

b) Deductible Application and Guidelines. Deductibles are available in the amounts of \$250 to \$10,000. New applicants to the MWCARP seeking a deductible must apply for the deductible program. Current MWCARP policyholders seeking a deductible or wanting to continue with a deductible must submit an application for a deductible 90

days prior to their renewal date. The MWCARP will grant or deny a deductible request within 20 days after receiving a complete application. For further information, go to www.mwcarp.com under Forms on the home page.

c) MCPAP Factor. The Minnesota Contractors' Premium Adjustment Program (MCPAP) is a special credit-only program that was created for qualifying employers in the construction industry. Eligible employers can receive MCPAP factors that provide up to a 25% maximum credit that is applied after the experience modification factor when calculating the employer's premium.

d) Waiver of Subrogation. A risk insured in the Minnesota Workers Compensation Assigned Risk Plan (MWCARP) may be eligible to request that the *Waiver of Our Right To Recover From Others Endorsement – WC 00 03 13* (waiver of subrogation) be applied to a specific job only. The risk must provide the Servicing Carrier with the following information:

- Job Location;
- A Copy of the Construction Contract;
- Duration of the Job (including beginning date and ending date);
- A Description of the Work To Be Performed;
- The Estimated Payroll Dollars Expended on the Job;
- The Classification Code(s) of the Employees on the Job; and;
- The Number of Employees on the Job.

The inclusion of this endorsement will generate an additional premium charge of 5% of the payroll for the specific job times the appropriate classification rate(s), divided by 100; subject to a minimum premium charge of \$100. This change is effective for all new and renewal policies effective April 1, 2014 and thereafter.

e) ERM-6 Form. This form will be required to be completed when the employer was previously insured through a self-insurance mechanism approved by the State of Minnesota. The Minnesota Workers' Compensation Insurers Association (MWCIA) will promulgate an experience modification factor using this data to be applied to the MWCARP policy.

Section 14. Disputes. In cases involving premium, any undisputed premium must continue to be paid in order to continue coverage.

a) Informal Disputes. Informal complaints or disputes shall be handled by the Servicing Carrier in the ordinary course of business. However, should the MWCARP policyholder or the agent of record continue to disagree with the Servicing Carrier's attempt to resolve the issue, information must be provided to the complainant regarding the formal MWCARP Appeal Process as is described in Subsection (b) of Section 14.

b) Formal Written Disputes – Appeal Procedure. The purpose of this appeal procedure is to provide a system of recourse for MWCARP policyholders who may disagree with any action or ruling of a Servicing Carrier. In the event the policyholder chooses to challenge the Servicing Carrier for any reason, the following procedures shall apply:

- 1. MWCARP Plan Administrator Review.** The policyholder shall submit to the Plan Administrator, in writing, notification that they disagree with the Servicing Carrier action. The letter should specifically state the matter being questioned and provide all relevant facts supporting the insured's position. Once received, the Plan Administrator will contact the policyholder to acknowledge receipt of the letter and to detail how the appeal process works. Every attempt will be made to explain the workers compensation system and to gather additional information necessary to assist the policyholder and the Servicing Carrier in resolving the matter. The Plan Administrator's staff will review the matter, make an initial decision, and advise the insured.
- 2. Minnesota Department of Commerce Review.** In cases where the policyholder chooses to challenge the decision of the Plan Administrator, it may request that the Department conduct an additional review of the Plan Administrator's decision and take any action deemed appropriate to comply with applicable law.

Under this procedure, a request for review must be submitted in writing to the Department within thirty (30) days of receipt of notification and of the Plan

Administrator's decision. That request should outline the basis for the requested review and the claimed errors or omissions in the decision of the Plan Administrator. The Plan Administrator will forward copies of the documents related to the matter to the Department. The Department will review the facts and make a decision. This investigation may include making verbal or written requests for additional information to the insured and the Plan Administrator.

Following the completion of this investigation, the Department will issue a written decision on the matter.

Section 15. Cancellation. Cancellation and re-writing of the policy is not allowed, except in order to get concurrent dates with the policyholder's umbrella policy.

a) Cancellation Procedures. The Servicing Carrier will cancel policies only at the request of the policyholder or for non-payment of premium or refusal to permit the completion of a payroll audit, unless otherwise authorized herein or by the Commissioner and/or Plan Administrator. If cancellation is initiated by the Servicing Carrier for non-payment of premium, written notice of cancellation shall be sent to the policyholder with proof of mailing, permitting thirty (30) days for payment to be made. If cancellation is initiated by the Servicing Carrier for refusal to permit the completion of a payroll audit or for other reasons approved by the Commissioner and/or Plan Administrator, written notice of cancellation shall be sent to the policyholder, with proof of mailing, sixty (60) days prior to the scheduled date of cancellation.

The Servicing Carrier shall act on written requests for cancellation from the policyholder as soon as reasonably possible, and no later than three (3) business days after receipt of the request. The Servicing Carrier shall not honor requests to cancel policies retroactively beyond the date of request, except in cases of duplicate coverage. A copy of the notice of cancellation shall be sent to the agent of record, if any, by regular mail. Notice of cancellation shall also be sent to the Commissioner's designee for assignments and data collection, with an indication of the reason for cancellation. Unearned premium shall be returned according to the provisions of Subsection (c) below.

b) Third Party Requests for Cancellation. If the written request for cancellation originates from a party making payments on the policyholder's behalf, such as an agent or premium finance company, the Servicing Carrier shall initiate cancellation according to the procedures provided in subsection (a) above only after receiving (1) notice that the policyholder has defaulted on its obligations to the paying party; and (2) evidence that the paying party has obtained any required delegations of authority from the policyholder, such as power of attorney, permitting the paying party to request cancellation.

c) Return of Unearned Premium. Unless the policy was financed by a premium finance company, unearned premium shall be returned to the policyholder, and final earned premium shall be calculated (1) on the basis of a final audit; or (2) if the final audit cannot be conducted within seventy-five (75) days after the effective date of cancellation, on a pro rata basis determined by the Servicing Carrier's best estimate, provided that the policyholder shall pay no less than the minimum premium applicable to the governing classification. If the policy was financed by a premium finance company, unearned premiums shall be returned in accordance with Minn. Stat., Sect. 59A. 12.

d) Non-Payment of Premium For the purposes of this section, the Servicing Carrier shall initiate cancellation for non-payment of premium: (1) for installment basis Policies, if premium due is not received by the installment due date, or received by mail postmarked on or before the installment due date, and not received within ten (10) days after the due date; or (2) for failure of the policyholder to repay a debt owed to the Plan for a previous policy in accordance with terms established by the Servicing Carrier.

e) Reinstatement. The Servicing Carrier shall **reinstate** a policy without lapse of coverage if the basis for cancellation is removed (in most cases, payment is received) **before** the cancellation is to take effect. If the basis for cancellation is removed **after** the cancellation has taken effect, the Servicing Carrier shall instruct the employer to re-apply to the Plan for coverage and shall indicate that the employer will not be accepted if it has an outstanding debt to the Plan. Any exceptions to this must be approved by the Plan Administrator prior to execution.

f) Prior Policy Debts. Unless otherwise instructed by the Commissioner or Plan Administrator, the Servicing Carrier shall not issue a new policy when there is outstanding premium due the Plan for coverage under a prior policy. The Servicing Carrier shall not issue a renewal policy when there is outstanding premium due the Plan for coverage under a prior policy unless the policyholder has agreed with the Servicing Carrier to repayment terms and is meeting such terms.

g) Non-Premium Cancellation. Minnesota statutes 60A.36 and 79.252 provide several non-premium reasons for cancellation where the policy has been in force for ninety (90) days or more. Such grounds may include but are not limited to the following:

1. Repeated submission by the employer of misleading or erroneous payroll information;
2. Flagrant disregard by the employer of the safety or loss control recommendations of the Servicing Carrier to the significant detriment of the Plan;
3. Refusal to provide information or otherwise cooperate with the Servicing Carrier to the significant detriment of the Plan;
4. Failure to complete the ERM-14 form (if there is an ownership change);
5. Failure to provide a complete business description, ownership information, and/or legal status verification.

SPECIAL NOTE: The Servicing Carrier should aggressively pursue the acquisition of the FEIN number and/or SSN number within the first 89 days of the policy term. Cancellation should be initiated if this information is not provided within the first 89 days of the policy term. Cancellation for failure to provide this information 90 days or more into the policy term is prohibited.

6. Failure to allow a loss control inspection.
7. Failure to complete an adequate payroll audit, as stated in Minnesota statute 79.252 subd. 3a "...persistently refuses to permit completion of an adequate payroll audit". We define this to mean the policyholder has failed to respond to two consecutive written requests for audit.

8. Failure to receive the Premium Finance Agreement is NOT sufficient grounds for initiating cancellation.

Section 16. Electronic Document Request and Delivery. Servicing Carriers may make available, through electronic means, to MWCARP policyholders, agents and others the request and delivery of various MWCARP documents, including policies, endorsements, contact information, Welcome Kits (information required in “Part B – Policy Issuance Services, Section 10 – Initial Information” of this document), Certificates of Insurance documents, and other miscellaneous documents. However, any documents regarding premium billing and payment and/or cancellation (including renewal quotes) must be delivered via statutorily appropriate means in a hard copy format.

While the design and development of any technological system that allows for the delivery of any approved documents is solely at the discretion of the Servicing Carrier, however, each such system must meet the following minimum conditions:

a) Access. At a minimum, any data request system developed by Servicing Carriers must be accessible to the policyholder and the agent of record. At a minimum, requests for any information must require a unique userid and password in order to gain access to the data system. Servicing Carriers will need to incorporate moderate levels of security into their technological system to ensure a reasonable assurance that confidential information is only shared with the parties that have a right to receive such information. The same level of care, custody, and control that is currently required when sending this information via hard copy from a telephone/fax request.

b) Delivery Options/Changes. Any data request system developed by a Servicing Carrier must allow policyholders to select one of the following options for information delivery:

1. Regular U.S. mail; or
2. Electronic portal.

Any data request system shall allow the policyholder to change their choice of delivery method at any time, however, agents should be required to utilize the portal, if available.

c) **Confirmation of Electronic Delivery.** The delivery of electronic policy information to the “portal” will be deemed as delivered and no further confirmation is needed.

d) **Legal Requirements.** Each Servicing Carrier is responsible for ensuring compliance with any legal requirements associated with the electronic transmission of insurance documents. Such legal requirements that Servicing Carriers should review may include the following:

1. Terms of Use/Privacy Statements
2. Secure Environment for the portal
3. Secure Documents; Encryptions
4. Authentication
5. Authorization
6. E-Signature

e) **Timeliness Requirements.** Any of the Servicing Carrier’s time-sensitive service activities that are delivered via their data request system must be in compliance with any respective timeliness requirements that may be established in the Servicing Carrier Minimum Performance Standards or in this Agent Guide.

f) **Voluntary Participation.** At the present time, the policyholder shall not be compelled to use the Servicing Carrier’s data request system. However, the Servicing Carrier may require the agent of record to use their data request system for the retrieval of available data.

Part C. – Premium Audits

Section 1. General. The Servicing Carrier will audit Policies in conformance with the requirements and standards provided in the Workers’ Compensation and Employers’ Liability Manuals, any other guidelines and rules established by the Commissioner and/or Plan Administrator, including the Servicing Carrier Minimum Performance Standards and the following provisions:

Section 2. Physical Audits. The Servicing Carrier shall conduct physical audits according to the requirements below.

a) **Preliminary Audits** - Physical audits must be completed on all accounts with an estimated annual premium in excess of \$50,000; and all construction, masonry, and carpentry accounts above \$25,000.

b) **Regular Audits** - Payroll audits shall be completed and recorded on the Servicing Carrier's records, and the final billing or return premium mailed no later than seventy-five (75) days after the cancellation or expiration of a policy issued through the Plan.

1. On **Non-Construction Policies** the Servicing Carrier shall conduct physical audits; (1) annually on Policies producing an estimated annual net premium of more than \$10,000; (2) at least once every 3 years on Policies producing an estimated annual net premium of \$3,000 - \$10,000.
2. On **Construction Policies** the Servicing Carrier shall conduct physical audits annually on Policies producing an estimated annual net premium of more than \$3,000.
3. On **All Policies less than \$3,000** (1) annually 20% of all policies producing an estimated annual net premium of less than \$3,000 must receive a physical audit, (a) half of the 20% must be **Construction** and (b) half of the 20% must be **Non-Construction**. Physical audits need not be performed on the other 80% of policies, producing an estimated annual net premium of less than \$3,000.
4. Whenever otherwise warranted in the Servicing Carrier's judgment by the type of business, questions concerning the amount of exposure or the accuracy of classifications, or the reliability of previous mail or physical audits.
5. Whenever requested by the policyholder on reasonable grounds.
6. Whenever requested by the Commissioner and/or Plan Administrator.
7. Physical audits may not be performed if there is consistent resistance by the policyholder or other obstacles erected by the policyholder. However, when such situations occur, the Servicing Carrier shall notify the policyholder that it will be in violation of the rules governing the Plan and shall effect cancellation of such policy.
8. If there is reason to doubt the accuracy of the exposure base as reported by the policyholder and a physical audit is

resisted, the Servicing Carrier shall cancel the policy as provided in Part B. – Section 15.

9. The Servicing Carrier shall audit by mail all policyholders not audited physically.

Section 3. Division of Payroll. The Servicing Carrier will divide the payroll of individual employees into more than one classification, or divide total payroll into multiple classifications where the Basic Workers' Compensation and Employers' Liability Manual allows such action in accordance with Minnesota Stat., Sect. 79.211, Subd. 2 and guidelines and rules governing such division of payroll.

Section 4. Employee Status. The Servicing Carrier will include in its audits the payments made by the employer to persons who, in the Servicing Carrier's judgment, would probably be considered employees for workers' compensation purposes pursuant to the guidelines for distinguishing between employees and independent contractors, or as determined by the Minnesota Department of Labor and Industry or a court. Such payments shall be included notwithstanding that the employer maintains the persons are not employees. The Servicing Carrier shall base its judgment on the statutes, rules, and court decisions which apply to employee and independent contractor status.

Section 5. Audit Noncompliance Charge (ANC). Audit Noncompliance Charge (ANC). Effective January 1, 2017, the Servicing Carriers will apply an Audit Noncompliance Charge (ANC) to employers that do not allow the Servicing Carrier to examine and audit its records. The Audit Noncompliance rule, endorsement, and statistical code have been approved by the Minnesota Department of Commerce. The ANC was created to provide a uniform approach as well as consequences to employers that do not allow the Servicing Carrier to examine and audit their records. When the Servicing Carrier is not allowed to examine and audit the employers records the Servicing Carrier is unable to properly determine the final earned premium.

The ANC includes the following features:

- The Audit Noncompliance Charge endorsement is ***MANDATORY*** on all policies in Minnesota.
- A requirement that the Servicing Carrier make two attempts to obtain the audit information prior to applying the ANC.

- The ANC will equal two times the estimated annual premium.
- For MWCARP policies, if an employer is noncompliant with a MWCARP audit, and pays the ANC, that employer is ineligible for MWCARP coverage until the employer allows the audit to be performed and/or provides the required records.
- For an employer that has paid the ANC, but later allows an audit to be performed or provides the required records to the Servicing Carrier, the ANC would be refunded to the employer, or applied to any outstanding balance on the policy. The employer would then be eligible for coverage in the MWCARP if no additional premiums are due.

Section 6. Disputes. As deemed appropriate by the Servicing Carrier, or as requested by the Commissioner and/or Plan Administrator, the Servicing Carrier shall review with the Commissioner and/or Plan Administrator any complaint or dispute of a policyholder relating to a premium audit.

Part D. – Loss Control and Safety

Section 1. General. The Servicing Carrier will provide policyholders with loss control, safety and industrial hygiene surveys, consultations, and related services in conformance with generally accepted insurance industry practices, and according to the specifications contained in this section. Providing such services does not warrant or promise, expressly or otherwise, to the Plan, Commissioner, the Plan Administrator, policyholder, or other persons, that any employer's place of business is free of risk either as to those items specifically surveyed or in general. Each policyholder shall retain and exercise sole responsibility for the institution and administration of its safety and health programs.

a) Mandated Surveys. In accordance with the Servicing Carrier Minimum Performance Standards, the Servicing Carrier will perform loss control and safety surveys in the following manner:

- At least twice annually, spaced no more than six (6) months apart, for policyholders with estimated annual net premium of over \$75,000;
- At least once annually, spaced no more than eighteen (18) months since the most recent inspection, for

policyholders with estimated annual net premium of \$15,000 - \$75,000;

- Whenever otherwise warranted by the circumstances, experience or claims of a policyholder, according to the judgment of the Servicing Carrier; and
- Whenever reasonably requested by a policyholder, the Commissioner and/or Plan Administrator. In conducting loss control surveys for purposes of the safety rating program, the Servicing Carrier shall use procedures established and forms developed by the Commissioner and/or Plan Administrator.

b) Recommendations. The Servicing Carrier shall promptly transmit its recommendations and findings to the policyholder as required in the Servicing Carrier Minimum Performance Standards.

c) Review of Claims Records. The Servicing Carrier shall review a policyholder's claims records to facilitate analysis of accident causes and to identify accident trends.

d) Small Employers. The Servicing Carrier shall develop, promote, and make available literature, seminars, or other methods for educating employers with estimated annual net premium of less than \$15,000 concerning loss control and safety.

Part E. – Claims Administration

Section 1. It is critical for employers that are insured in the MWCARP to immediately report to the Servicing Carrier when they have knowledge of accidents, injuries, or illnesses that are work-related. Many studies have been conducted that clearly demonstrate the relationship between the timeliness of claims reporting and the ultimate cost of those claims. The timely reporting of claims can positively impact total claims costs by as much as 40%.

The Servicing Carriers are obligated to provide a 24-hour, "1-800" number claims reporting system. Not only does this service help facilitate the prompt reporting of claims by making it a toll-free call, but also by providing this service around the clock. For instance, accidents that occur

during the second-shift or third-shift or “after hours” can be quickly reported to the insurance carrier and acted upon in an expeditious manner.

The Servicing Carriers are obligated to at least make the **“three-point contact”** on all claims within **one (1) business day** from the date the notice of a claim is received. They must contact the injured worker, the policyholder (plus any witnesses) and the treating physician within **one (1) business day** after receiving notice of the claim.