

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R078-16

May 6, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: NRS 679B.130, [692C.120](#)

A REGULATION relating to insurance; amending filing requirements to holding companies to comply with the National Association of Insurance Commissioners (NAIC) holding company model regulation #450.

Section 1. Chapter 692C of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Executive officer” means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, or any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.*

Sec. 3. *“Ultimate controlling person” means that person which is not controlled by any other person.*

Sec. 4. *“Authorized insurer” has the meaning ascribed in subsection 1 of NRS 679A.030.*

Sec. 5. *“Unauthorized insurer” has the meaning ascribed in subsection 2 of NRS 679A.030.*

Sec. 6. *“Material relationship” means any relationship in which an attorney-in-fact, trustee, manager, officer or director of an insurer, any member of such a person’s immediate family or any business with which such a person is affiliated receives compensation or payment of*

any other items of value from the insurer or a consultant or service provider to the insurer of an amount greater than \$15,000 within any one 12-month period.

Sec. 7. “Service provider” means a manager, auditor, accountant, actuary, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or any other party responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.

Sec. 8. Unless the context otherwise requires, other terms found in these regulations and in NRS chapter 692C, sections .25 through .110, inclusive, are used as defined in Title 57. Other nomenclature or terminology is according to the Title 57 usage.

Sec. 9. The authority to invest in subsidiaries under NRS 692C.130 is in addition to sections 43 to 230, inclusive, of SB 67.

Sec. 10. 1. The ultimate controlling person of an insurer required to file an enterprise risk report with the Commissioner pursuant to subsection 2 of NRS 692C.290 shall furnish the required information on the forms provided by the Commissioner entitled “Form F – Enterprise Risk Report” or “Form F.” The Form F shall be filed with the Commissioner not later than June 30 of each year.

2. The insurer may attach any exhibit to the form if the exhibit is clearly marked to indicate the matter to which it refers.

3. If there is any change in the information provided on Form F, the insurer shall file an amendment to that form within 15 days after the month in which the change occurred. The insurer shall file the amendment on that form by completing only those items which were affected by the change and by including, at the top of the first page of the form, “Amendment

No. (number of amendment) to Form F for (year)” and the day and month on which the change occurred.

4. The Form F must be completed in accordance with the current version of the Insurance Holding Company System Reporting Instructions of the National Association of Insurance Commissioners, and the instructions provided by the Commissioner. A copy of Form F and the general instructions for Form F may be obtained at <http://doi.nv.gov/Insurers/Company-Admissions/Holding-Company-Forms/>.

Sec. 11. 1. *An insurer licensed in this State shall adopt a conflict of interest policy for its attorneys-in-fact, trustees, managers, officers and directors. The policy must contain:*

(a) A requirement that the attorney-in-fact, trustee, manager, officer or director must annually disclose that he or she has no outside commitments, personal or otherwise, that would divert him or her from the duty to further the interests of the insurer that he or she represents;

(b) A clear expression that the attorney-in-fact, trustee, manager, officer or director has a duty of care to protect the interests of the insurer above those of any person including, but not limited to, the attorney-in-fact, trustee, manager, officer or director or any service provider; and

(c) A requirement that each attorney-in-fact, trustee, manager, officer or director must provide a complete annual disclosure of each material relationship that he or she has with the insurer.

2. Each attorney-in-fact, trustee, manager, officer or director of an insurer shall file a disclosure of his or her conflicts of interest with the board of directors or subscribers’ advisory committee of the insurer annually.

3. Nothing in this section shall be construed to prevent an attorney-in-fact, trustee, manager, officer or director of an insurer from being a director or officer in more than one insurance company.

Sec. 12. NAC 692C.020 is hereby amended to read as follows:

1. A person required to file a statement with the Commissioner pursuant to NRS 692C.180 shall furnish the required information on the form provided by the Commissioner entitled “Form A - Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer.”

2. If the person being acquired is deemed to be a “domestic insurer” solely because of the provisions of NRS 692C.180, the name of the domestic insurer on the cover page of the Form A should be formatted as follows referencing the actual name of the domestic insurer: “ABC Insurance Company, a subsidiary of XYZ Holding Company.”

3. Where a domestic insurer is being acquired, references to “the insurer” contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

~~4~~ 4. The person may attach any exhibit to the form if the exhibit is clearly marked to indicate the matter to which it refers.

~~5~~ 5. If there is any change in the information provided on the form filed with the Commissioner before the Commissioner approves or disapproves the merger or other acquisition of control, the person shall immediately notify the Commissioner of that change.

~~6~~ 6. Form A must be completed in accordance with the current version of the Insurance Holding Company System Reporting Instructions of the National Association of Insurance Commissioners and the instructions provided by the Commissioner. *The Form A must be filed with the Commissioner at least 60 days before the proposed date of the acquisition.* A copy of Form A and the general instructions for Form A may be obtained at ~~http://www.doi.state.nv.us/~~

<http://doi.nv.gov/Insurers/Company-Admissions/Holding-Company-Forms/>.

Sec. 13. NAC 692C.030 is hereby amended to read as follows:

1. An insurer required to file a registration statement with the Commissioner pursuant to NRS 692C.270 shall furnish the required information on the forms provided by the Commissioner entitled “Form B - Insurance Holding Company System Annual Registration Statement” and “Form C - Summary of Registration Statement.” A domestic insurer shall file Form B and Form C with the Commissioner not later than June 30 of each year. An insurer shall file Form C with the agency that regulates insurance in each state in which the insurer is authorized to do business, if the information is requested by that agency.
2. The insurer may attach any exhibit to the form if the exhibit is clearly marked to indicate the matter to which it refers.
3. If there is any change in the information provided on Form B, the insurer shall file an amendment to that form within 15 days after the month in which the change occurred. The insurer shall file the amendment on that form by completing only those items which were affected by the change and by including, at the top of the first page of the form, “Amendment No. (number of amendment) to Form B for (year)” and the day and month on which the change occurred.
4. Form B and Form C must be completed in accordance with the current version of the Insurance Holding Company System Reporting Instructions of the National Association of Insurance Commissioners and the instructions provided by the Commissioner. A copy of Form B and Form C and the general instructions for Form B and Form C may be obtained at <http://www.doi.state.nv.us/>

<http://doi.nv.gov/Insurers/Company-Admissions/Holding-Company-Forms/>.

5. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under NRS 692C.260 through .350, inclusive. A registration statement may include information not required pursuant to NRS 692C regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this State. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:

(a) The statement or report contains substantially similar information required to be furnished on Form B; and

(b) The filing insurer is the principal insurance company in the insurance holding company system.

6. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact, and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

7. With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under paragraph (a) of subsection 5 above.

8. Any insurer may take advantage of the provisions of NRS 692C.310 or .320 without obtaining the prior approval of the Commissioner. The Commissioner, however, reserves the right to require individual filings if he or she deems such filings necessary in the interest of clarity, ease of administration, or the public good.

Sec 14. NAC 692C.040 is hereby amended to read as follows:

1. An insurer required to give notice to the Commissioner of its intention to enter into any transaction set forth in ~~NRS 692C.363~~ *NRS 692C.360 to .400, inclusive*, shall furnish the required information on the form provided by the Commissioner entitled “Form D - Prior Notice of a Transaction.” The insurer may attach any exhibit to the form if the exhibit is clearly marked to indicate the matter to which it refers.

2. Agreements for cost sharing services and management services shall at a minimum and as applicable:

(a) Identify the person providing services and the nature of such services;

(b) Set forth the methods to allocate costs;

(c) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;

(d) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(e) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(f) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(g) Specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(h) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(i) Include standards for termination of the agreement with and without cause;

(j) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(k) Specify that, if the insurer is placed in receivership or seized by the commissioner under NRS 696B:

(1) All of the rights of the insurer under the agreement extend to the receiver or commissioner; and,

(2) All books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(l) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to NRS 696B; and

(m) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under NRS 696B, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

~~2~~3. Form D must be completed in accordance with the current version of the Insurance Holding Company System Reporting Instructions of the National Association of Insurance Commissioners and the instructions provided by the Commissioner. A copy of Form D and the general instructions for Form D may be obtained at ~~<http://www.doi.state.nv.us/>~~ <http://doi.nv.gov/Insurers/Company-Admissions/Holding-Company-Forms/>.

Sec. 15. NAC 692C.045 is hereby amended to read as follows:

1. An insurer shall give notice to the Commissioner of the potential competitive impact of a proposed merger or acquisition by a non-domiciliary insurer doing business in this state or by a

domestic insurer on the form provided by the Commissioner entitled “Form E - Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this State or by a Domestic Insurer.”

2. In addition to the information required by Form E, the Commissioner may require an expert opinion as to the competitive impact of the proposed acquisition.

~~2~~3. Form E must be completed in accordance with the current version of the Insurance Holding Company System Reporting Instructions of the National Association of Insurance Commissioners and the instructions provided by the Commissioner. *The Form E must be filed with the Commissioner at least 60 days before the proposed date of the acquisition.* A copy of Form E and the general instructions for Form E may be obtained at ~~<http://www.doi.state.nv.us/>~~ <http://doi.nv.gov/Insurers/Company-Admissions/Holding-Company-Forms/>.