

**PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R078-16

September 8, 2016

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

AUTHORITY: §1, NRS 679B.130; §2, NRS 679B.130 and 692C.120; §§3 and 8, NRS 679B.130, 692C.120, 692C.270, 692C.310 and 692C.320; §4, NRS 679B.130, 692C.120 and 692C.290; §5, NRS 679B.130, 692C.120 and 692C.360; §6, NRS 679B.130, 692C.120 and 692C.130; §7, NRS 679B.130, 692C.120 and 692C.180; §9, NRS 679B.130, 692C.120 and 692C.363; §10, NRS 679B.130, 692C.120 and 692C.254.

A REGULATION relating to insurance; requiring certain insurers to adopt a conflict of interest policy for certain persons; adopting, in substance, certain provisions of the National Association of Insurance Commissioners' Insurance Holding Company System Model Regulation which govern the filing of consolidated registration statements; prescribing the form and procedures for filing an annual report of enterprise risk; prescribing certain provisions to be included in an agreement between certain insurers and their affiliates for sharing the costs of certain services; revising previously adopted provisions of the Model Regulation governing the filing of certain required forms and the acquisition of control of certain insurers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Commissioner of Insurance to adopt reasonable regulations for the administration of the Nevada Insurance Code. (NRS 679B.130) **Section 1** of this regulation requires each licensed insurer that is domiciled in this State to adopt a conflict of interest policy for its attorneys-in-fact, trustees, managers, officers and directors. **Section 1** also prescribes certain provisions that must be included in such a policy.

This State has enacted certain provisions of the National Association of Insurance Commissioners' (NAIC) Insurance Holding Company System Regulatory Act. (Chapter 692C of NRS) The Commissioner has also adopted, in substance, certain provisions of the NAIC's Insurance Holding Company System Model Regulation. (Chapter 692C of NAC) **Sections 3-7 and 10** of this regulation adopt certain additional provisions of the NAIC Model Regulation.

An insurance company holding system consists of two or more persons or entities, at least one of which must be an insurer, that control, are controlled by or are under common control with another designated person or entity. Under existing law, with certain exceptions, each insurer

that is authorized to do business in this State and is a member of an insurance holding company system is required to register and file certain information with the Commissioner on an annual basis. (NRS 692C.260, 692C.270) Existing law authorizes the Commissioner to require or allow two or more affiliated insurers to file such information on a consolidated basis. (NRS 692C.310) Existing law also authorizes the Commissioner to allow an authorized insurer to register and file the required information on behalf of an affiliated insurer. (NRS 692C.320) Existing regulations prescribe the form and procedures for providing the required information. (NAC 692C.030) **Section 3** prescribes the conditions under which the Commissioner will: (1) allow an authorized insurer to file the required information on behalf of one or more of its affiliates using the existing forms and procedures; (2) allow the principal insurance company in an insurance holding company system to file copies of certain forms filed by the principal insurance company in its state of domicile in lieu of using the forms that would otherwise be required; and (3) allow an unauthorized insurer, with the approval of the Commissioner, to provide registration information using the forms and procedures available to an authorized insurer. **Section 8** of this regulation makes a conforming change.

Existing law requires the principal of a registered insurer to file an annual report of enterprise risk that describes any matters concerning an affiliate of the insurer that could have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole. (NRS 692C.290) **Section 4** prescribes the form and procedures for filing such a report.

Existing law authorizes the Commissioner to adopt regulations governing agreements for sharing the cost of services or management between a registered insurer and an affiliate. (NRS 692C.360) **Section 5** prescribes certain provisions that must be included in such an agreement.

Existing law authorizes a domestic insurer, either by itself or in cooperation with one or more persons, to organize or acquire one or more subsidiaries. (NRS 692C.130) **Section 6** clarifies that this grant of authority to invest in a subsidiary is in addition to any authority to invest in a subsidiary conferred on a domestic insurer by any other provision of the Nevada Insurance Code.

Existing law requires a person who wishes to acquire control of a domestic insurer to provide certain information to the Commissioner in the form of a pre-acquisition statement or report. (NRS 692C.180) Existing regulations prescribe the form and procedures for providing that information. (NAC 692C.020) **Section 7** prescribes certain additional information that must be provided on the form in cases where the party being acquired is deemed to be a domestic insurer under existing law only because the party controls such an insurer.

Existing regulations require an insurer to give advance notice to the Commissioner of the potential competitive impact of a proposed merger or acquisition. (NAC 692C.045) **Section 10** provides that the Commissioner may require the submission of the opinion of an expert concerning the potential anticompetitive impact of the proposed merger or acquisition.

Section 1. Chapter 679B of NAC is hereby amended by adding thereto a new section to read as follows:

1. A licensed insurer that is domiciled in this State shall adopt a conflict of interest policy for its attorneys-in-fact, trustees, managers, officers and directors. For any person governed by the policy, the policy must include:

(a) A requirement that the person annually disclose any outside commitment, personal or otherwise, that would conflict with his or her duty to further the interests of the insurer;

(b) A clear expression that the person has a duty of care to protect the interests of the insurer above anyone other than the insurer; and

(c) A requirement that the person provide a complete annual disclosure of each material relationship that he or she has with the insurer or a consultant or service provider to the insurer.

2. Each attorney-in-fact, trustee, manager, officer or director of a licensed insurer that is domiciled in this State shall annually file a disclosure of his or her conflicts of interest with the board of directors or subscribers' advisory committee of the insurer.

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

4. As used in this section:

(a) "Material relationship" means any relationship in which an attorney-in-fact, trustee, manager, officer or director of a licensed insurer that is domiciled in this State, 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 item of value from the insurer or a consultant

or service provider, as applicable, to the insurer of an amount greater than \$15,000 within any 12-month period.

(b) "Service provider" means any manager, auditor, accountant, actuary, investment adviser, attorney, managing general underwriter, managing general agent, attorney-in-fact or any other person responsible for underwriting, the determination of rates, the collection of premiums, adjusting and settling claims or the preparation of financial statements.

Sec. 2. Chapter 692C of NAC is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this regulation.

Sec. 3. 1. *Except as otherwise provided in subsection 4:*

(a) An authorized insurer may file a registration statement on behalf of any affiliated insurer that is required to register pursuant to NRS 692C.260 to 692C.350, inclusive. A registration statement may include information not required pursuant to chapter 692C of NRS regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this State. Except as otherwise provided in paragraph (b), the registration statement must be filed on Form B, as set forth in NAC 692C.030.

(b) In lieu of filing a registration statement on Form B, an authorized insurer may file a copy of the registration statement or similar report that it is required to file in its state of domicile if:

(1) The statement or report includes information that is substantially similar to the information required to be furnished on Form B; and

(2) The authorized insurer is the principal insurance company in the insurance holding company system.

2. The question of whether an authorized insurer is the principal insurance company in an insurance holding company system is a question of fact, and an authorized 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 substantiates the authorized insurer's claim that it is the principal insurer in the insurance holding company system.

3. After obtaining the approval of the Commissioner, an unauthorized insurer may file a registration statement or report in accordance with the provisions of subsections 1 and 2.

4. An affiliated insurer is not required to obtain the approval of the Commissioner before filing a consolidated statement or report or taking any other action that may be allowed by the Commissioner pursuant to NRS 692C.310 or 692C.320. The Commissioner may, however, require each affiliated insurer to provide any required information on an individual basis if the Commissioner determines it is necessary in the interest of clarity, ease of administration or the public good.

Sec. 4. *1. The principal of a registered insurer that is required to file an annual report of enterprise risk with the Commissioner pursuant to NRS 692C.290 shall furnish the required information on the form provided by the Commissioner entitled "Form F -- Enterprise Risk Report." The principal shall file Form F 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 end of 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. 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>.

5. For the purposes of this section and NRS 692C.290, the Commissioner interprets the term “principal of a registered insurer” to mean a person who controls a registered insurer and is not controlled by any other person.

Sec. 5. *Any agreement between a registered insurer and an affiliate for sharing the cost of services or for management services must, to the extent applicable:*

1. Identify the person providing the services and the nature of those services;

2. Set forth the methods to allocate each cost;

3. Require:

(a) Timely settlement, not less frequently than quarterly; and

(b) Compliance with the requirements set forth in the Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, as adopted by reference in NAC 679B.033;

4. Prohibit any advancement of money by the insurer to the affiliate, except to pay for services defined in the agreement;

5. State that the insurer will:

(a) Maintain oversight for any functions performed for the insurer by the affiliate; and

- (b) Monitor services at least annually for quality assurance;*
- 6. Define books and records of the insurer to include, without limitation, all books and records developed or maintained under or related to the agreement;*
- 7. Specify that all books and records of the insurer are and remain the property of the insurer and are subject to the control of the insurer;*
- 8. State that all money and invested assets of the insurer are the exclusive property of the insurer, are held for the benefit of the insurer and are subject to the control of the insurer;*
- 9. Include standards for the termination of the agreement with and without cause;*
- 10. Include provisions for the indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;*
- 11. Specify that, if the insurer is placed in receivership or seized by the Commissioner pursuant to chapter 696B of NRS:*
- (a) All of the rights of the insurer under the agreement extend to the receiver or Commissioner; and*
- (b) All relevant books and records will immediately be made available to the receiver or the Commissioner, and must be turned over to the receiver or Commissioner immediately upon the receiver's or Commissioner's request;*
- 12. Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to chapter 696B of NRS; and*
- 13. Specify that the affiliate will continue to maintain any systems, programs or other infrastructure related to the agreement, notwithstanding a seizure of the insurer by the Commissioner pursuant to chapter 696B of NRS, and will make them available to the receiver while the affiliate continues to receive timely payment for services rendered.*

Sec. 6. *Except as otherwise provided by specific statute, the authority to organize or acquire one or more subsidiaries conferred on a domestic insurer by NRS 692C.130 is in addition to any authority to invest in a subsidiary conferred on a domestic insurer by any other provision of title 57 of NRS.*

Sec. 7. NAC 692C.020 is hereby amended to read as follows:

692C.020 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 subject of the proposed acquisition is deemed to be a domestic insurer pursuant to subsection 5 of NRS 692C.180 solely because it controls a domestic insurer:*

(a) The names of the domestic insurers must be shown on the cover page of Form A in substantially the following form:

*....., a subsidiary of
(domestic insurer) (subject of proposed acquisition)*

(b) For the purposes of Form A, the term “insurer” means the subject of the proposed acquisition and its subsidiary.

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

~~3.4~~ 4. 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.

~~4.~~ 5. 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. 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>.

Sec. 8. NAC 692C.030 is hereby amended to read as follows:

692C.030 1. ~~An~~ *Except as otherwise provided in section 3 of this regulation, 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>.

Sec. 9. NAC 692C.040 is hereby amended to read as follows:

692C.040 1. An insurer required to give notice to the Commissioner of its intention to enter into any transaction set forth in NRS 692C.363 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. 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>.

Sec. 10. NAC 692C.045 is hereby amended to read as follows:

692C.045 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. 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. 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>.

3. In addition to the information required by Form E, the Commissioner may require an insurer to submit the opinion of an expert concerning the potential competitive impact of the proposed merger or acquisition.