

RULE

Department of Insurance Office of the Commissioner

Regulation 31—Holding Company (LAC 37:XIII.Chapter 1)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended Regulation 31—Holding Company. The purpose of the amendment to Regulation 31 is to add provisions for the continuity of essential services and functions provided by affiliates when an insurer is placed into receivership as provided in Act 713 of the 2022 Regular Legislative Session and to implement the revisions to the NAIC Insurance Holding Company System Model Regulation (#450) related to transactions subject to notice regarding agreements for cost sharing services and management services and group capital calculations. This Rule is hereby adopted on the day of promulgation.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 1. Regulation Number 31—Holding Company

§128. Group Capital Calculation

A. The lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

1. has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000;

2. has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

3. has no banking, depository or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

4. the holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and

5. the non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

B. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if:

1. the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than

\$1,000,000,000; and all of the following additional criteria are met:

a. has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

b. does not include a banking, depository or other financial entity that is subject to an identified regulatory capital framework; and

c. the holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

C. For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to Subsection A and B, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

1. any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in R.S. 22:611 et seq. and R.S. 22:631 et seq. or a similar standard for a non-U.S. insurer; or

2. any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in §1305 and §1307 of Regulation 43; or

3. any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

D. A non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation if it satisfies the following criteria:

1. with respect to an insurance holding company system described in R.S. 22:691.6(M)(2)(d):

a. the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

b. where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international

capital standard. This will serve as the documentation otherwise required in Subsection D.1.a.

2. the non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

E. A list of non-U.S. jurisdictions that “recognize and accept” the group capital calculation will be published through the NAIC Committee Process:

1. a list of jurisdictions that “recognize and accept” the group capital calculation pursuant to R.S. 22:691.6(M)(2)(d), is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under R.S. 22:691.6(M)(2)(d). To assist with a determination under R.S. 22:691.6(M)(3), the list will also identify whether a jurisdiction that is exempted under either R.S. 22:691.6(M)(2)(c) or (d) requires a group capital filing for any U.S. based insurance group’s operations in that non-U.S. jurisdiction.

2. for a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of Subsection D.1.b will serve as support for recommendation to be published as a jurisdiction that “recognizes and accepts” the group capital calculation through the NAIC Committee Process.

3. if the lead state commissioner makes a determination pursuant to R.S. 22:691.6(M)(2)(d) that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

4. upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to “recognize and accept” the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that “recognize and accepts” the group capital calculation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:611 et seq., R.S. 22:631 et seq., and R.S. 22:691.1-691.27.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 49:488 (March 2023).

§129. Transactions Subject to Prior Notice—Notice Filing

A. ...

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

1. identify the person providing services and the nature of such services;

2. set forth the methods to allocate costs;

3. require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;

4. prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

5. 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;

6. define records and data of the insurer to include all records and data developed or maintained under or related to the agreement that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate;

7. specify that all records and data of the insurer are and remain the property of the insurer and;

a. are subject to control of the insurer;

b. are identifiable; and

c. are segregated from all other persons’ records and data or are readily capable of segregation at no additional cost to the insurer;

8. 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;

9. include standards for termination of the agreement with and without cause;

10. 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 and for any actions by the affiliate that violate provisions of the agreement required in §129.B.11 through §129.B.15 of this regulation;

11. specify that, if the insurer is placed in supervision, seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737:

a. all of the rights of the insurer under the agreement extend to the receiver or commissioner to the extent permitted by R.S. 22:691.7; and

b. all records and data of the insurer shall be identifiable and segregated from all other persons’ records and data or readily capable of segregation at no additional cost to the receiver or the commissioner;

c. a complete set of records and data of the insurer will immediately be made available to the receiver or the commissioner, shall be made available in a usable format and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner’s request, and the cost to transfer data to the receiver or the commissioner shall be fair and reasonable; and

d. the affiliated person(s) will make available all employees essential to the operations of the insurer and the services associated therewith for the immediate continued performance of the essential services ordered or directed by the receiver or commissioner;

12. specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737;

13. specify that the affiliate will provide the essential services for a minimum period of time after termination of the agreement, if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737, as ordered or directed by the receiver or commissioner. Performance of the essential services will continue to be provided without regard to pre-receivership unpaid fees, so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, commissioner or supervising court;

14. specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding supervision, a seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737, and will make them available to the receiver or commissioner as ordered or directed by the receiver or commissioner for so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, commissioner, or supervising court; and

15. specify that, in furtherance of the cooperation between the receiver and the affected guaranty association(s) and subject to the receiver's authority over the insurer, if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737, and portions of the insurer's policies or contracts are eligible for coverage by one or more guaranty associations, the affiliate's commitments under §129.B.11 through §129.B.14 of this regulation will extend to such guaranty association(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:691.1-691.27, R.S. 22:731-737, and R.S. 22:2001-2044.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992), amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1298 (July 2015), amended LR 49:489 (March 2023).

James J. Donelon
Commissioner

2303#020

RULE

Department of Insurance Office of the Commissioner

Regulation 42—Group Self-Insurance Funds (LAC 37:XIII.Chapter 11)

Editor's Note: This Rule is being repromulgated to correct a submission error. The original Rule may be viewed on pages 267-270 of the February 20, 2023 Louisiana Register.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and through the authority granted under R.S. 22:1 et seq., and specifically R.S. 22:11, the Department of Insurance has amended Regulation 42—Group Self-Insurance Funds. The Department of Insurance has amended Regulation 42 to update statutory references and revise language to align with current law.

The purpose of the amendment of Regulation 42 is to make changes to bring Regulation 42 into alignment with

current law. Definitions have been updated. The requirements for an application to create a group self-insurance fund have been revised. The language regarding filing and use of rates has been updated. The procedure for addressing fund insolvencies has been updated. Language regarding required examinations of group self-insurance funds has been added. This Rule is hereby adopted on the day of promulgation.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 11. Regulation Number 42—Group Self-Insurance Funds

§1109. Excess Insurance Requirements for Group Self-Insurance Funds

A. All funds shall maintain specific excess insurance or reinsurance in the amount of at least \$2,000,000 per occurrence and aggregate excess insurance or reinsurance of at least \$2,000,000.

B. ...

C. - E. Repealed.

F. The commissioner shall deny the use of a retention requested by a fund if he finds:

F.1. - G.2. ...

H. Repealed.

I. - L.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1200.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 18:1403 (December 1992), LR 49:269 (February 2023), LR 49:490 (March 2023).

James J. Donelon
Commissioner

2303#023

RULE

Department of Insurance Office of the Commissioner

Regulation 53—Basic Health Insurance Plan Pilot Program (LAC 37:XIII.Chapter 31)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended Regulation 53—Basic Health Insurance Plan Pilot Program. The purpose of the amendment to Regulation 53 is to modify terminology relative to accident and health insurance and insurance producers and to update statutory references that have been redesignated. This Rule is hereby adopted on the day of promulgation.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 31. Regulation 53—Basic Health Insurance Plan Pilot Program

§3105. Definitions

A. For the purposes of this regulation: