HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR HOUSE BILL 398

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO INSURANCE; AMENDING THE INSURANCE HOLDING COMPANY LAW; ADDING DEFINITIONS; PROVIDING FOR GROUP CAPITAL CALCULATION REPORTS AND LIQUIDITY STRESS TESTS; AMENDING THE HEALTH MAINTENANCE ORGANIZATION LAW TO MODIFY THE TIME LINE FOR EXAMINATIONS OF HEALTH MAINTENANCE ORGANIZATIONS AND CONTRACT PROVIDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 59A-37-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 617, as amended) is amended to read:

"59A-37-2. DEFINITIONS.--As used in the Insurance Holding Company Law:

A. "acquire" means to come into possession or control of, and "acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes the acquisition of voting securities or assets, bulk reinsurance and mergers;

B. "affiliate" means a person that directly or indirectly is controlled by, is under common control with or controls another person;

C. "association" means the national association of insurance commissioners;

D. "commissioner" means an insurance regulation department of another state or the chief regulator or the regulator's deputy of another state;

[~~C.~~] E. "control" means the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership of voting securities, through licensing or franchise agreements, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by an individual. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten or more percent of the voting securities of any other person. This presumption may be rebutted by a showing, in the manner provided by Section 59A-37-19 NMSA 1978, that control does not in fact exist. The superintendent may determine, after

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furnishing all persons in interest notice and an opportunity to be heard, that control exists in fact, notwithstanding the absence of a presumption to that effect; provided that the determination is based on specific findings of fact in its support;

[~~D.~~] F. "enterprise risk" means an activity, a circumstance, an event or a series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its whole insurance holding company system and includes a situation that would cause a company action level event as defined in Section 59A-5A-4 NMSA 1978 or would cause the insurer to be in a hazardous financial condition as defined in Section 59A-41-24 NMSA 1978;

G. "group-wide supervisor" means the regulatory official authorized to conduct and coordinate group-wide supervision activities who is determined or acknowledged by the superintendent to have sufficient significant contacts with the internationally active insurance group as described in the *National Association of Insurance Commissioners Model Laws, Regulations, Guidelines and Other Resources* 440-1;

[~~E.~~] H. "health maintenance organization" means a person that undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis;

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provided that "prepaid basis" may include the payment of copayments and deductibles by enrollees;

[~~F.~~] I. "insurance holding company" is a person that controls an insurer; "insurance holding company system" means a combination of two or more affiliated persons, at least one of which is an insurer;

[~~G.~~] J. "insurer" means a person that undertakes, under contract, to indemnify a person against loss, damage or liability arising from an unknown or contingent future event. The term does not include agencies, authorities or instrumentalities of the United States, its possessions or territories, the commonwealth of Puerto Rico, the District of Columbia, a state or any of its political subdivisions or a fraternal benefit society;

K. "internationally active insurance group" means an insurance holding company system that includes an insurer registered pursuant to Section 59A-37-12 NMSA 1978 that:

(1) writes premiums in at least three counties;

(2) produces gross premiums written outside of the United States of at least ten percent of the insurance holding company system's gross written premiums; and

(3) has total assets of at least fifty billion dollars ($50,000,000,000) based on a three-year rolling average or has total gross written premiums of at least ten billion

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dollars ($10,000,000,000);

L. "large life insurance company" means a person, as defined by the association, that contracts with a policy owner to guarantee to pay a sum of money to one or more named beneficiaries when an insured person dies;

M. "liquidity stress test framework" means the publication adopted or amended by the association that includes the scope criteria for a specific data year and the liquidity stress test instructions and reporting templates for a specific data year;

[~~H.~~] N. "person" means an individual, corporation, association, partnership, joint stock company, trust, unincorporated organization or any similar entity or combination of entities;

O. "scope criteria" means the designated exposure bases and minimum magnitudes for a specified data year as detailed by the association used to establish a preliminary list of insurers scoped into the liquidity stress test framework for a data year;

[~~I.~~] P. "securityholder" means the owner of any security of a person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing;

[~~J.~~] Q. "subsidiary" means an affiliate of a person controlled by the person either directly or indirectly through

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one or more intermediaries; and

[~~K.~~] R. "voting security" means a certificate evidencing the ownership or indebtedness of a person, to which is attached a right to vote on the management or policymaking of that person and includes any security convertible into or evidencing a right to acquire such a voting security."

SECTION 2. Section 59A-37-30 NMSA 1978 (being Laws 2014, Chapter 59, Section 44) is amended to read:

"59A-37-30. ENTERPRISE RISK FILING.--The [~~person who predominantly controls an~~] ultimate controlling person of every insurer that is subject to registration shall file an enterprise risk report each year. The report shall reflect that person's knowledge and belief of the material risks within the insurance holding company system that pose enterprise risk to the insurer. The report shall be filed with the lead state insurance supervisory official of the insurance holding company system and in compliance with the relevant procedures outlined in the financial analysis handbook adopted by the [~~national~~] association [~~of insurance commissioners~~]."

SECTION 3. Section 59A-37-32 NMSA 1978 (being Laws 2014, Chapter 59, Section 46) is amended to read:

"59A-37-32. SUPERVISORY COLLEGES.--

A. In order to determine compliance with the Insurance Holding Company Law by an insurer registered pursuant to Section 59A-37-11 NMSA 1978, the superintendent may

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participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations. Concerning a supervisory college, the superintendent may:

(1) initiate its establishment;

(2) clarify its membership and the participation of other supervisors;

(3) clarify its functions and the role of other regulators, including the establishment of a group-wide supervisor;

(4) coordinate its ongoing activities, including planning meetings, supervision and processes for information sharing; and

(5) establish a crisis management plan.

B. A registered insurer subject to this section shall pay the reasonable expenses, including for travel, associated with the superintendent's participation in a supervisory college pursuant to Subsection C of this section. A supervisory college may be convened as a temporary or permanent forum for communication and cooperation between the regulators charged with the supervision of the insurer or its affiliates. The superintendent may establish a regular assessment to the insurer for the payment of these expenses.

C. In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes of an insurer, and as part of the examination of individual insurers pursuant to Section 59A-37-23 NMSA 1978, the superintendent may participate in a supervisory college with other regulators charged with the supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The superintendent may enter into agreements in accordance with Subsection C of Section 59A-37-24 NMSA 1978 that provide the basis for cooperation between the superintendent and the other regulatory agencies and the activities of the supervisory college. Nothing in this section shall delegate to the supervisory college the authority of the superintendent to regulate or supervise the insurer or its affiliates within its jurisdiction.

D. The superintendent may act as the group-wide supervisor for an internationally active insurance group and may also acknowledge another commissioner as the group-wide supervisor when the internationally active insurance group:

(1) does not have substantial insurance operations in the United States;

(2) has substantial insurance operations in the United States, but not in New Mexico; or

(3) has substantial operations in the United States, including in New Mexico, but the superintendent has determined that another commissioner is the appropriate group-

wide supervisor.

E. An insurance holding company system that does not qualify as an internationally active insurance group may request that the superintendent make a determination as to a group-wide supervisor.

F. The superintendent shall identify a single group-wide supervisor for an internationally active insurance group in cooperation with other state, federal and international regulatory agencies.

G. The superintendent may determine that the superintendent is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations conducted in New Mexico.

H. The superintendent may acknowledge that a commissioner from another jurisdiction is the appropriate group-wide supervisor. In making this determination, the superintendent shall consider the following factors:

(1) the place of domicile of the insurers within the internationally active insurance group that holds the largest share of the group's written premiums, assets or liabilities;

(2) the place of domicile of the top-tiered insurers in the insurance holding company's system of the internationally active insurance group;

(3) the location of the executive offices or

largest operational offices of the internationally active insurance group;

(4) whether another commissioner is acting or seeking to act as the group-wide supervisor under a regulatory system that the superintendent determines to be substantially similar to New Mexico's system of regulation or otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis and cooperation with other regulatory officials; and

(5) whether the commissioner acting or seeking to act as the group-wide supervisor provides the superintendent with reasonably reciprocal recognition and cooperation.

I. Another commissioner identified as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor after considering the factors in Subsection H of this section. Such acknowledgment shall be made in cooperation with the subject of the acknowledgment, the internationally active insurance group and other commissioners involved with supervision of members of the internationally active insurance group.

J. Notwithstanding any other provision of law, when another commissioner is acting as the group-wide supervisor of an internationally active insurance group, the superintendent shall acknowledge that commissioner as the group-wide supervisor."

SECTION 4. A new section of the Insurance Holding Company Law is enacted to read:

"[NEW MATERIAL] GROUP CAPITAL CALCULATION.--

A. Except as provided below, the ultimate controlling person of an insurer subject to registration pursuant to the provisions of the Insurance Code shall also file an annual group capital calculation report in accordance with the group capital calculation instructions in the financial analysis handbook adopted by the association as directed by the superintendent.

B. The following insurance holding company systems shall be exempt from filing the group capital calculation report:

(1) an insurance holding company system that has only one insurer within its holding company structure, only writes business and is licensed in its domestic state and assumes no business from any other insurer;

(2) an insurance holding company system that is required to perform a group capital calculation as specified by the United States federal reserve board;

(3) an insurance holding company system whose non-United States group-wide supervisor is located in a reciprocal jurisdiction that recognizes the United States regulatory approach to group supervision and group capital; and

(4) an insurance holding company system:

(a) that provides information to a lead state that meets the association's accreditation requirements and financial standards; and

(b) whose non-United States group-wide supervisor recognizes and accepts the world-wide capital assessment for United States insurance groups that operate in that jurisdiction.

C. If an insurance holding company system is required to perform a group capital calculation with the United States federal reserve board, the superintendent shall request the calculation from the United States federal reserve board. If the United States federal reserve board cannot share the calculation, the insurance holding company system is not exempt from the group capital calculation report.

D. Notwithstanding any other provisions of this section, a lead state regulator shall require a group capital calculation for United States operation of any non-United States-based insurance holding company system where, after any necessary consultation with other commissioners, it is deemed appropriate by the lead state regulator for prudential oversight and solvency monitoring purposes or for ensuring a competitive insurance marketplace.

E. Notwithstanding the filing exemptions provided in this section, the superintendent may exempt the ultimate

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controlling person from filing that annual group capital calculation and accept a limited group capital calculation report in accordance with criteria specified by the superintendent in regulation.

F. If the superintendent determines that an insurance holding company system no longer meets the requirements for an exemption, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the superintendent based on reasonable grounds shown."

SECTION 5. A new section of the Insurance Holding Company Law is enacted to read:

"[NEW MATERIAL] LIQUIDITY STRESS TEST.--

A. A large life insurance company subject to registration pursuant to the provisions of the Insurance Code shall file the results of a specific year's liquidity stress test in accordance with the instructions in the financial analysis handbook adopted by the association as directed by the superintendent.

B. A change to the association's liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when the change was adopted.

C. A large life insurance company that meets the requirements of the scope criteria is considered scoped into

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the association's liquidity stress test framework for that data year. A large life insurance company that does not meet the requirements of the scope criteria is considered scoped out of the association's liquidity stress test framework for that data year, unless the superintendent, in consultation with the association's financial stability task force or its successor, determines that the large life insurance company should be scoped into the liquidity stress test framework for that year.

D. The superintendent shall, in consultation with the association's financial stability task force or its successor, assess the concerns of the superintendent's wishes to avoid having insurers scoped in and out of the association's liquidity stress test framework.

E. The superintendent shall comply with the association's liquidity stress test framework instruction and reporting templates and shall file the results of a specific year's determinations.

F. A large life insurance company subject to registration pursuant to the provisions of the Insurance Code shall file the results of a specific year's liquidity stress test in accordance with the instructions in the financial analysis handbook adopted by the association as directed by the superintendent.

G. A change to the association's liquidity stress test framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 of the year following the calendar year when the change was adopted."

SECTION 6. Section 59A-46-19 NMSA 1978 (being Laws 1993, Chapter 266, Section 19) is amended to read:

"59A-46-19. EXAMINATIONS.--

A. The superintendent may make an examination of the affairs of any health maintenance organization and providers with whom [~~such~~] the health maintenance organization has contracts, agreements or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state, but not less frequently than once every [~~three~~] five years.

B. The superintendent may make or request the secretary of health to make an examination concerning the quality assurance program of the health maintenance organization and of any providers with whom [~~such~~] the health maintenance organization has contracts, agreements or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state.

C. Every health maintenance organization and provider shall submit its books and records for [~~such~~] examinations and in every way facilitate the completion of the examination. Medical records of individuals and contract providers shall not be subject to [~~such~~] examination. For the purpose of examinations, the superintendent and the secretary

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of health may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of [~~such~~] the providers concerning their business.

D. The expenses of examinations under this section shall be assessed against the health maintenance organization being examined and remitted to the superintendent.

E. In lieu of [~~such~~] examination, the superintendent may accept the report of an examination made by the superintendent or secretary of health of another state.

F. Examination procedures shall be governed by the applicable provisions of Chapter 59A, Article 4 NMSA 1978."

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