

1 AN ACT
2 RELATING TO INSURANCE; AMENDING THE INSURANCE HOLDING COMPANY
3 LAW; ADDING DEFINITIONS; PROVIDING FOR GROUP CAPITAL
4 CALCULATION REPORTS AND LIQUIDITY STRESS TESTS; AMENDING THE
5 HEALTH MAINTENANCE ORGANIZATION LAW TO MODIFY THE TIME LINE
6 FOR EXAMINATIONS OF HEALTH MAINTENANCE ORGANIZATIONS AND
7 CONTRACT PROVIDERS.

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

12 "59A-37-2. DEFINITIONS.--As used in the Insurance
13 Holding Company Law:

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

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

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

25 D. "commissioner" means an insurance regulation

1 department of another state or the chief regulator or the
2 regulator's deputy of another state;

3 E. "control" means the possession of the power to
4 direct or cause the direction of the management and policies
5 of a person, whether directly or indirectly, through the
6 ownership of voting securities, through licensing or
7 franchise agreements, by contract other than a commercial
8 contract for goods or nonmanagement services, or otherwise,
9 unless the power is the result of an official position with
10 or corporate office held by an individual. Control shall be
11 presumed to exist if any person, directly or indirectly,
12 owns, controls, holds with the power to vote or holds proxies
13 representing ten or more percent of the voting securities of
14 any other person. This presumption may be rebutted by a
15 showing, in the manner provided by Section 59A-37-19 NMSA
16 1978, that control does not in fact exist. The
17 superintendent may determine, after furnishing all persons in
18 interest notice and an opportunity to be heard, that control
19 exists in fact, notwithstanding the absence of a presumption
20 to that effect; provided that the determination is based on
21 specific findings of fact in its support;

22 F. "enterprise risk" means an activity, a
23 circumstance, an event or a series of events involving one or
24 more affiliates of an insurer that, if not remedied promptly,
25 is likely to have a material adverse effect upon the

1 financial condition or liquidity of the insurer or its whole
2 insurance holding company system and includes a situation
3 that would cause a company action level event as defined in
4 Section 59A-5A-4 NMSA 1978 or would cause the insurer to be
5 in a hazardous financial condition as defined in Section 59A-
6 41-24 NMSA 1978;

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

14 H. "health maintenance organization" means a
15 person that undertakes to provide or arrange for the delivery
16 of basic health care services to enrollees on a prepaid
17 basis; provided that "prepaid basis" may include the payment
18 of copayments and deductibles by enrollees;

19 I. "insurance holding company" is a person that
20 controls an insurer; "insurance holding company system" means
21 a combination of two or more affiliated persons, at least one
22 of which is an insurer;

23 J. "insurer" means a person that undertakes, under
24 contract, to indemnify a person against loss, damage or
25 liability arising from an unknown or contingent future event.

1 The term does not include agencies, authorities or
2 instrumentalities of the United States, its possessions or
3 territories, the commonwealth of Puerto Rico, the District of
4 Columbia, a state or any of its political subdivisions or a
5 fraternal benefit society;

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

9 (1) writes premiums in at least three
10 counties;

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

14 (3) has total assets of at least fifty
15 billion dollars (\$50,000,000,000) based on a three-year
16 rolling average or has total gross written premiums of at
17 least ten billion dollars (\$10,000,000,000);

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

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

1 for a specific data year;

2 N. "person" means an individual, corporation,
3 association, partnership, joint stock company, trust,
4 unincorporated organization or any similar entity or
5 combination of entities;

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

11 P. "securityholder" means the owner of any
12 security of a person, including common stock, preferred
13 stock, debt obligations and any other security convertible
14 into or evidencing the right to acquire any of the foregoing;

15 Q. "subsidiary" means an affiliate of a person
16 controlled by the person either directly or indirectly
17 through one or more intermediaries; and

18 R. "voting security" means a certificate
19 evidencing the ownership or indebtedness of a person, to
20 which is attached a right to vote on the management or
21 policymaking of that person and includes any security
22 convertible into or evidencing a right to acquire such a
23 voting security."

24 SECTION 2. Section 59A-37-30 NMSA 1978 (being Laws
25 2014, Chapter 59, Section 44) is amended to read:

1 "59A-37-30. ENTERPRISE RISK FILING.--The ultimate
2 controlling person of every insurer that is subject to
3 registration shall file an enterprise risk report each year.
4 The report shall reflect that person's knowledge and belief
5 of the material risks within the insurance holding company
6 system that pose enterprise risk to the insurer. The report
7 shall be filed with the lead state insurance supervisory
8 official of the insurance holding company system and in
9 compliance with the relevant procedures outlined in the
10 financial analysis handbook adopted by the association."

11 **SECTION 3.** Section 59A-37-32 NMSA 1978 (being Laws
12 2014, Chapter 59, Section 46) is amended to read:

13 "59A-37-32. SUPERVISORY COLLEGES.--

14 A. In order to determine compliance with the
15 Insurance Holding Company Law by an insurer registered
16 pursuant to Section 59A-37-11 NMSA 1978, the superintendent
17 may participate in a supervisory college for a domestic
18 insurer that is part of an insurance holding company system
19 with international operations. Concerning a supervisory
20 college, the superintendent may:

- 21 (1) initiate its establishment;
- 22 (2) clarify its membership and the
23 participation of other supervisors;
- 24 (3) clarify its functions and the role of
25 other regulators, including the establishment of a group-wide

1 supervisor;

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

5 (5) establish a crisis management plan.

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

15 C. In order to assess the business strategy,
16 financial position, legal and regulatory position, risk
17 exposure, risk management and governance processes of an
18 insurer, and as part of the examination of individual
19 insurers pursuant to Section 59A-37-23 NMSA 1978, the
20 superintendent may participate in a supervisory college with
21 other regulators charged with the supervision of the insurer
22 or its affiliates, including other state, federal and
23 international regulatory agencies. The superintendent may
24 enter into agreements in accordance with Subsection C of
25 Section 59A-37-24 NMSA 1978 that provide the basis for

1 cooperation between the superintendent and the other
2 regulatory agencies and the activities of the supervisory
3 college. Nothing in this section shall delegate to the
4 supervisory college the authority of the superintendent to
5 regulate or supervise the insurer or its affiliates within
6 its jurisdiction.

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

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

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

15 (3) has substantial operations in the United
16 States, including in New Mexico, but the superintendent has
17 determined that another commissioner is the appropriate
18 group-wide supervisor.

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

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

1 international regulatory agencies.

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

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

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

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

17 (3) the location of the executive offices or
18 largest operational offices of the internationally active
19 insurance group;

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

1 other regulatory officials; and

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

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

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

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

22 "GROUP CAPITAL CALCULATION.--

23 A. Except as provided below, the ultimate
24 controlling person of an insurer subject to registration
25 pursuant to the provisions of the Insurance Code shall also

1 file an annual group capital calculation report in accordance
2 with the group capital calculation instructions in the
3 financial analysis handbook adopted by the association as
4 directed by the superintendent.

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

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

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

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

20 (4) an insurance holding company system:

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

24 (b) whose non-United States group-wide
25 supervisor recognizes and accepts the world-wide capital

1 assessment for United States insurance groups that operate in
2 that jurisdiction.

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

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

19 E. Notwithstanding the filing exemptions provided
20 in this section, the superintendent may exempt the ultimate
21 controlling person from filing that annual group capital
22 calculation and accept a limited group capital calculation
23 report in accordance with criteria specified by the
24 superintendent in regulation.

25 F. If the superintendent determines that an

1 insurance holding company system no longer meets the
2 requirements for an exemption, the insurance holding company
3 system shall file the group capital calculation at the next
4 annual filing date unless given an extension by the
5 superintendent based on reasonable grounds shown."

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

8 "LIQUIDITY STRESS TEST.--

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

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

20 C. A large life insurance company that meets the
21 requirements of the scope criteria is considered scoped into
22 the association's liquidity stress test framework for that
23 data year. A large life insurance company that does not meet
24 the requirements of the scope criteria is considered scoped
25 out of the association's liquidity stress test framework for

1 that data year, unless the superintendent, in consultation
2 with the association's financial stability task force or its
3 successor, determines that the large life insurance company
4 should be scoped into the liquidity stress test framework for
5 that year.

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

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

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

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

1 SECTION 6. Section 59A-46-19 NMSA 1978 (being Laws
2 1993, Chapter 266, Section 19) is amended to read:

3 "59A-46-19. EXAMINATIONS.--

4 A. The superintendent may make an examination of
5 the affairs of any health maintenance organization and
6 providers with whom the health maintenance organization has
7 contracts, agreements or other arrangements as often as is
8 reasonably necessary for the protection of the interests of
9 the people of this state, but not less frequently than once
10 every five years.

11 B. The superintendent may make or request the
12 secretary of health to make an examination concerning the
13 quality assurance program of the health maintenance
14 organization and of any providers with whom the health
15 maintenance organization has contracts, agreements or other
16 arrangements as often as is reasonably necessary for the
17 protection of the interests of the people of this state.

18 C. Every health maintenance organization and
19 provider shall submit its books and records for examinations
20 and in every way facilitate the completion of the
21 examination. Medical records of individuals and contract
22 providers shall not be subject to examination. For the
23 purpose of examinations, the superintendent and the secretary
24 of health may administer oaths to and examine the officers
25 and agents of the health maintenance organization and the

1 principals of the providers concerning their business.

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

5 E. In lieu of examination, the superintendent may
6 accept the report of an examination made by the
7 superintendent or secretary of health of another state.

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

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