

**CHAPTER 147. ANNUAL FINANCIAL
REPORTING REQUIREMENTS**

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Authority

The provisions of this Chapter 147 issued and amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320 and 321 of The Insurance Company Law of 1921 (40 P.S. §§ 443 and 444); section 1605(a)(3)(ii) of The Insurance Company Law of 1921 (40 P.S. § 991.1605(a)(3)(ii)); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225); (40 P.S. §§ 443, 764a, 967, 991.2452); and section 602 of the Fraternal Benefit Societies Code (40 P.S. § 1142-602) (Repealed), unless otherwise noted.

Source

The provisions of this Chapter 147 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164, unless otherwise noted.

Cross References

This chapter cited in 31 Pa. Code § 151.7 (relating to disclosure statements); and 31 Pa. Code § 160.3 (relating to standards).

§ 147.1. Purpose.

The purpose of this chapter is to improve the Department's surveillance of the financial condition of insurers by requiring an annual audit by independent certi-

fied public accountants of the financial statements reporting the financial condition and the results of operations of insurers, a written communication detailing internal control related matters noted in the audit, and a written report by management of internal control over financial reporting.

Authority

The provisions of this § 147.1 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205—1600.206); section 731 of the Medical Care Availability and Reduction of Error Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225.)

Source

The provisions of this § 147.1 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; corrected January 11, 1980, effective December 22, 1979, 10 Pa.B. 129; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (305319) to (305320).

Notes of Decisions

Applicability

Section 809 of The Insurance Company Law of 1921 (40 P.S. § 919), giving the Department authority over loan agreements, does not apply to loans to professional health service corporation and is limited to surveillance of the financial condition of the insurers as set forth in this section. *Pennsylvania Dental Association v. Insurance Department*, 560 A.2d 870 (Pa. Cmwlth. 1989).

§ 147.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Affiliate—As defined in section 1401 of The Insurance Company Law of 1921 (40 P.S. § 991.1401).

Assumed premiums—Total premiums assumed by an insurer from nonaffiliated insurers.

Audit committee—

(i) A committee or equivalent body established by the board of directors or equivalent body of an entity for the purpose of overseeing the following functions of an insurer or insurer group:

- (A) Accounting and financial reporting processes.
- (B) Internal audit function.
- (C) External audits of financial statements.
- (D) Internal control structure.

(ii) The term includes a committee established under section 1405(c)(4) or (5) of The Insurance Company Law of 1921 (40 P.S. § 991.1405(c)(4) and (5)).

Audited financial report—The term includes those items specified in § 147.7 (relating to contents of annual audited financial report).

Commissioner—The Insurance Commissioner of the Commonwealth.

Control, controlling, controlled by and under common control with—As defined in section 1401 of The Insurance Company Law of 1921.

Department—The Insurance Department of the Commonwealth.

Direct written premiums—Total premiums directly written by an insurer.

Domestic insurer—An insurer incorporated or organized under the laws of the Commonwealth.

Foreign insurer—An insurer not incorporated or organized under the laws of the Commonwealth.

Independent certified public accountant—

(i) A certified public accountant licensed, or an accounting firm registered, to practice in this Commonwealth under The CPA Law (63 P.S. §§ 9.1—9.16b) or in another state with similar licensing requirements, in good standing with the American Institute of Certified Public Accountants, Inc., and in good standing in the states in which the certified public accountant is licensed or the accounting firm is registered to practice; who conforms to the standards of the profession as contained in the “Code of Professional Ethics of the American Institute of Certified Public Accountants, Inc.” and The CPA Law or similar laws.

(ii) For insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, a chartered accountant.

Insurer—

(i) The term includes any of the following licensed to transact business in this Commonwealth:

(A) An insurance company, association or exchange.

(B) A reciprocal or interinsurance exchange.

(C) The Inspection Bureau, the Industry Placement Facility and the Fair Plan coming under the Pennsylvania Fair Plan Act (40 P.S. §§ 1600.101—1600.502).

(D) A nonprofit health plan corporation, whether operating a hospital plan or a professional health services plan, or both.

(E) An employers' mutual liability insurance association.

(F) A health maintenance organization.

(G) A fraternal benefit society or beneficial association.

(H) A preferred provider organization.

(I) A joint underwriting association under section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731).

(ii) Except as otherwise noted, the term also includes a continuing care provider licensed to transact business in this Commonwealth under the Continuing Care Provider Registration and Disclosure Act (40 P.S. §§ 3201—3255)).

Insurer group—Two or more affiliated insurers identified by a controlling entity for the purpose of evaluating the effectiveness of internal control over financial reporting.

Internal audit function—The role of a person or persons in providing independent, objective and reasonable assurances that add value to and improve upon the organization’s operations and assist the organization in accomplishing its objectives by employing a systematic, disciplined approach to evaluate and improve the effectiveness of the risk management, control and governance processes.

Internal control over financial reporting—The process effected by the board of directors, management and other personnel of an insurer or insurer group, which provides reasonable assurances regarding the reliability of the financial statements in accordance with § 147.9a (relating to establishment and communication of internal control over financial reporting).

NAIC—The National Association of Insurance Commissioners or successor organization.

NAIC Implementation Guide—The “Implementation Guide for the Annual Financial Reporting Model Regulation” published in the *NAIC Accounting Practices and Procedures Manual*, or successor publication, prescribed for financial reporting under section 320(a)(2) of The Insurance Company law of 1921 (40 P.S. § 443(a)(2)).

Person—As defined in section 1401 of The Insurance Company Law of 1921.

Sarbanes-Oxley Act—The Sarbanes-Oxley Act of 2002, also known as the Public Company Accounting Reform and Investor Protection Act of 2002 (15 U.S.C.A. §§ 7201—7266).

Sarbanes-Oxley Act compliant entity—An entity that is either required to be or is voluntarily compliant with the following:

(i) The preapproval requirements of section 201 of the Sarbanes-Oxley Act (15 U.S.C.A. § 78j-1).

(ii) The audit committee independence requirements of section 301 of the Sarbanes-Oxley Act (15 U.S.C.A. § 78f).

(iii) The internal control over financial reporting requirements of section 404 of the Sarbanes-Oxley Act (15 U.S.C.A. § 7262) and 17 CFR 229.308.

Section 404 Report—The annual report on internal control over financial reporting and the related attestation report of the independent certified public accountant filed under section 404 of the Sarbanes-Oxley Act (15 U.S.C.A. § 7262) and 17 CFR 229.308 (relating to Item 308 internal control over financial reporting).

Securities Exchange Act—The Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78mm).

Ultimate controlling person—A person which is not controlled by another person. The term may include one or more of the following: individual, corporation, limited liability company, partnership, association, joint stock company, trust, unincorporated organization, or any similar entity or combination of the foregoing who controls another person.

Authority

The provisions of this § 147.2 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.2 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; corrected January 11, 1980, effective December 22, 1979, 10 Pa.B. 129; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730; amended December 16, 2016, effective January 17, 2017, 46 Pa.B. 7819. Immediately preceding text appears at serial pages (380046) and (345517) to (345519).

§ 147.3. Filing and extensions for filing required reports and communications.

(a) Every insurer, unless exempted by the Commissioner under § 147.13 (relating to effective date and exemption), shall have an annual audit performed by an independent certified public accountant and shall file as instructed by the Commissioner an audited financial report for that year on or before June 1 for the year ending December 31 immediately preceding unless an extension is granted under subsection (b). The Commissioner may require an insurer to file an audited financial report earlier than June 1 by providing 90 days' advance notice to the insurer. The Commissioner may require audited financial reports and related information required under this chapter to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner. Supplement information related to reporting required under this chapter is published in the *NAIC Implementation Guide*.

(b) Extensions of the filing date may be granted by the Commissioner for 15-day periods upon showing, by the insurer and its independent certified public accountant, the reasons for requesting an extension by the Commissioner. The request for extension shall be submitted in writing at least 10 days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension. A 15-day extension of the filing date granted by the Commissioner for an audited financial report must provide for 15-day extensions of the filing dates for communication of internal control related matters noted in an audit under § 147.9a (relating to establishment and commu-

nication of internal control over financial reporting) and for management's report of internal control over financial reporting under § 147.9b (relating to management's report of internal control over financial reporting).

(c) Subsections (a) and (b) do not apply to continuing care providers. In accordance with the law and regulations relating to continuing care providers, each continuing care provider shall have an annual audit performed by an independent certified public accountant and shall file with the Commissioner an audited financial report for that year within 4 months following the end of the provider's fiscal year.

(d) Audited financial reports filed as instructed by the Commissioner will be open to the public for examination and inspection.

Authority

The provisions of this § 147.3 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.3 amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (305321) to (305322).

Cross References

This section cited in 31 Pa. Code § 147.6 (relating to recognition, qualification and responsibilities of an independent certified public accountant); and 31 Pa. Code § 147.13 (relating to effective date and exemption).

§ 147.3a. Requirements for audit committees.

(a) Every insurer required to file an annual audited financial report under this chapter shall establish an audit committee.

(b) An ultimate controlling person may designate an audit committee of a controlling person to be the audit committee for one or more controlled insurers. The designation must:

(1) Be in writing.

(2) Identify the ultimate controlling person.

(3) Explain the basis for the designation in sufficient detail for the Department to determine compliance with this chapter.

(4) Be provided by the ultimate controlling person or the insurer to the Department and the chief insurance regulatory official of each other state in which the controlled insurers are domiciled no later than April 1 of the year in which the insurer's audited financial report is required to be filed under this chapter.

(5) Be effective upon receipt by the Department and remain in effect unless modified or rescinded by subsequent notice provided by the ultimate controlling person or the insurer as required under paragraph (4).

(c) Each member of the audit committee shall be a natural person who is either a member of the board of directors of the insurer or a member of the board of directors of a controlling person whose audit committee has been designated as the insurer's audit committee under subsection (b).

(d) If an audit committee other than the entire board of directors of the insurer has not been established by the insurer or designated by an ultimate controlling person under subsection (b), the insurer's entire board of directors shall constitute the audit committee.

(e) A proportion of an audit committee's members shall be independent in accordance with the following requirements:

(1) The proportion of an audit committee's members who shall be independent shall be calculated as follows:

(i) When an insurer's direct written and assumed premiums are less than or equal to \$300,000,000 at the end of the most recent calendar year, 0% of the members are required to be independent.

(ii) When an insurer's direct written and assumed premiums exceed \$300,000,000 but are not more than \$500,000,000 at the end of the most recent calendar year, at least 50% of members are required to be independent.

(iii) When an insurer's direct written and assumed premiums exceed \$500,000,000 at the end of the most recent calendar year, at least 75% of members of the audit committee are required to be independent.

(2) If an audit committee of a controlling person has been designated to be the audit committee for one or more controlled insurers, the proportion of audit committee members who shall be independent shall be based on the insurer in the group with the greatest direct written and assumed premium.

(3) If an insurer's direct written and assumed premiums meet or exceed the direct written and assumed premiums threshold in paragraph (1)(ii) or (iii) as of the end of a calendar year, the insurer shall comply with the required minimum proportion of independent audit committee members by January 1 following the next full calendar year, as described in the NAIC Implementation Guide.

(4) To be considered independent for purposes of this subsection, an audit committee member may not:

(i) Be an affiliate of the insurer.

(ii) Accept any consulting, advisory or other compensatory fee from the insurer or an affiliate of the insurer other than in the member's capacity as a member of the audit committee, board of directors or any other board committee.

(5) If an audit committee member ceases to be independent under this chapter, the person may remain an audit committee member until the earlier of the next annual meeting of the insurer or controlling person or 1 year from the occurrence of the event that caused the member to be no longer independent, if the insurer or ultimate controlling person provides the Department with written notice within 15 days of the occurrence of the event.

(f) The audit committee shall retain an independent certified public accountant to conduct the annual audit and issue an audited financial report under this chapter in accordance with the following requirements:

(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of the independent certified public accountant and resolve disagreements between management and the independent certified public accountant relating to financial reporting for the purpose of preparing or issuing the audited financial report or related work under this chapter.

(2) The independent certified public accountant retained to conduct the annual audit under this chapter shall report directly to the audit committee. The audit committee shall require the independent certified public accountant to report to the audit committee in sufficient time to enable the committee to take appropriate action as required by Statement on Auditing Standards 114 (SAS 114), *The Auditor's Communication with Those Charged With Governance*, or successor publication and all of the following requirements:

(i) All significant accounting policies and material permitted practices.

(ii) All material alternative treatments of financial information within statutory accounting principles that have been discussed with the management of the insurer, ramifications of the use of alternative disclosures and treatments, and the treatment preferred by the independent certified public accountant.

(iii) Other material written communications between the independent certified public accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(3) The report required under paragraph (2) may be provided to the audit committee on an aggregate basis for insurers in an insurer group, if the report identifies any substantial differences in reported items among the insurers in the group.

(g) The audit committee is responsible for overseeing the insurer's internal audit function and granting the person or persons performing the function suitable authority and resources to fulfill their responsibilities as required under § 147.8a (relating to internal audit function requirements).

(h) Exemptions are as follows.

(1) The requirements of subsections (b), (c), (e) and (f) do not apply to an insurer with direct written and assumed premiums less than \$500,000,000, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, which has been granted an exemption by the Department on the basis of financial or organizational hardship under § 147.13(g) (relating to effective date and exemption).

(2) This section does not apply to continuing care providers.

(3) The requirements of subsections (b)—(e) do not apply to insurers subject to section 1405(c)(4) and (5) of The Insurance Company Law of 1921 (40 P.S. § 991.1405(c)(4) and (5)), Sarbanes Oxley compliant entities or direct or indirect wholly owned subsidiaries of Sarbanes Oxley compliant entities.

(i) This section may not be interpreted to limit the Department's authority to require an insurer to take specific corrective action relating to the independence of audit committee members under sections 501—563, 501-A—515-A and 501-B—515-B of The Insurance Department Act of 1921 (40 P.S. §§ 221.1—221.63, 221.1-A—221.15-A and 221.1-B—221.15-B), regarding suspension of business and risk-based capital requirements, Chapter 160 (relating to standards to define insurers deemed to be in hazardous financial condition) or other provisions of law.

Authority

The provisions of this § 147.3a issued and amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205—1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.3a adopted October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730; amended December 16, 2016, effective January 17, 2017, 46 Pa.B. 7819. Immediately preceding text appears at serial pages (345520) to (345523).

§ 147.4. Contents of annual audited financial report.

(a) The annual audited financial report shall reflect the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department. Statutory accounting practices are those practices and procedures prescribed by the Accounting Practices and Procedures Manuals published by the National Association of Insurance Commissioners, or as otherwise prescribed or provided by specific statutes, regulations, orders or rulings of the Commonwealth or the Department.

(b) The annual audited financial report must, at a minimum, include the following:

(1) Financial statements that present in a comparable manner, as of the end of the current and the preceding calendar year, the financial condition of the insurer, including the following:

- (i) Statement of admitted assets, liabilities, capital and surplus.
- (ii) Statement of operations.
- (iii) Statement of cash flows.
- (iv) Statement of changes in capital and surplus.

(2) Notes to financial statements. These notes shall be those required by the appropriate National Association of Insurance Commissioners Annual Statement Instructions and Accounting Practices and Procedures Manual. The notes must include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statements filed with the Department, with a written description of the nature of these differences, particularly with respect to surplus or stockholder equity and the results of operations. The

Commissioner may require the insurer to file an amendment to its annual statement with the Department, the NAIC and other states in which the insurer is licensed, to reflect differences between the audited statutory financial statement and the annual statement filed with the Department within 60 days of the filing date of the audited financial report. The Commissioner may require amendments to financial statements to be filed with the Department and the NAIC in a form of electronic transmission acceptable to the Commissioner.

(3) The report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, communication of internal control related matters noted in the audit in accordance with AU section 325 of the Professional Standards of the American Institute of Certified Public Accountants (SAS 112) Communicating Internal Control Related Matters Identified in an Audit, or its replacement, and letter of qualifications of the independent certified public accountant.

(c) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Department, and the financial statements shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted if sufficient detail is made available to the Department upon request. An account which represents less than 5% of the insurer's admitted assets may be aggregated for reporting purposes, except that all invested asset accounts shall be separately reported.

(d) If an error is discovered after a report is filed, the independent certified public accountant shall withdraw the report and issue a corrected report to the insurer and to the Department within 30 days of the date the independent certified public accountant becomes aware of the discovery of the error. To the extent that the error requires an amendment to the insurer's annual financial statement filed with the Department, the insurer shall file, within 60 days of the date the corrected report is issued, an amendment to its annual statement with the Department, the National Association of Insurance Commissioners and other states in which the insurer is licensed, to reflect differences between the corrected audited statutory financial statement and the annual statement filed with the Department and including reconciling notes as required by the appropriate National Association of Insurance Commissioners *Annual Statement Instructions and Accounting Practices and Procedures Manual*. The Commissioner may require amendments to financial statements to be filed with the Department and the National Association of Insurance Commissioners in a form of electronic transmission acceptable to the Commissioner.

(e) Subsections (a)—(d) do not apply to continuing care providers. The annual audited financial report for a continuing care provider shall comply with the following:

(1) The annual audited financial report for a nonprofit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its activities, cash flows and changes in net assets for

the fiscal year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet, statements of activities, cash flows, changes in net assets and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(2) The annual audited financial report for a for-profit continuing care provider shall reflect its financial condition as of the end of its most recent fiscal year and the results of its operations, cash flows and changes in shareholder's equity for the year then ended in conformity with generally accepted accounting principles. The annual audited financial report shall, at a minimum, include the following:

(i) Financial statements that present in a comparable manner, as of the end of the current and the preceding fiscal year, or the period of time that the continuing care provider has been in existence, whichever is shorter, the financial condition of the continuing care provider, including balance sheet, statements of net income, cash flows, shareholder's equity and comprehensive income, and notes to financial statements.

(ii) Report of an independent certified public accountant prepared in compliance with this chapter, including notification of adverse financial condition, report on significant deficiencies in internal controls and letter of qualifications of the independent certified public accountant.

(3) If an error is discovered after an annual audited financial report is filed, the independent certified public accountant shall withdraw the report and issue a corrected report within 30 days of the date the independent certified public accountant becomes aware of the discovery of the error.

Authority

The provisions of this § 147.4 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007, 1605(a)(3)(ii) and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967, 1605(a)(3)(ii) and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); section 630 of the act of May 17, 1921 (P.L. 682, No. 284) (40 P.S. § 764a); sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225); section 602 of the Fraternal Benefit Societies Code (40 P.S. § 1142.602) (Repealed); and section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731).

Source

The provisions of this § 147.4 amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended April 13, 2001, effective April 14, 2001, 31 Pa.B. 2002; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (305322) to (305325).

Cross References

This section cited in 31 Pa. Code § 147.2 (relating to definitions); 31 Pa. Code § 147.7 (relating to consolidated or combined audits); 31 Pa. Code § 147.9a (relating to establishment and communication of internal control over financial reporting); and 31 Pa. Code § 147.9b (relating to management's report of internal control over financial reporting).

§ 147.5. Designation of independent certified public accountant.

(a) Each insurer required by this chapter to file an annual audited financial report shall, within 60 days after becoming subject to the requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this chapter.

(b) The insurer shall obtain a letter from its independent certified public accountant and file a copy with the Commissioner, in accordance with the Department's instructions, stating that the independent certified public accountant is aware of the provisions of the insurance statutes and regulations that relate to accounting and financial matters of the State in accordance with whose regulation the audited financial report is made and affirming that the independent certified public accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department, specifying the exceptions the independent certified public accountant may believe appropriate.

(c) If an independent certified public accountant who was the independent certified public accountant for the immediately preceding filed audited financial report is dismissed, resigns or is otherwise replaced, the insurer shall within 5 business days notify the Department of the dismissal, resignation or replacement.

(1) Within 10 business days of submitting a notification of dismissal, resignation or replacement, the insurer shall also furnish the Commissioner with a separate letter stating whether, in the 24 months preceding the dismissal, resignation or replacement, there were disagreements with the former independent certified public accountant on a matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former independent certified public accountant, would have caused the independent certified public accountant to make reference to the subject matter of the disagreement in connection with the independent certified public accountant's opinion.

(2) The disagreements required to be reported include both those resolved to the former independent certified public accountant's satisfaction and those not resolved to the former independent certified public accountant's satisfaction. For purposes of this subsection, disagreements are those that occur at the decision making level—that is, between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering the report. The insurer shall also in writing request

the former independent certified public accountant to furnish it a letter addressed to the insurer stating whether the independent certified public accountant agrees with the statements contained in the letter of the insurer and, if not, stating the reasons for which the independent certified public accountant does not agree. The insurer shall furnish the responsive letter from the former independent certified public accountant to the Commissioner together with its own.

(3) Within 60 business days of submitting a notification of dismissal, resignation or replacement, the insurer shall register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit required under this chapter and shall obtain and file an awareness letter from the independent certified public accountants as required under subsection (b).

(d) Subsection (b) does not apply to continuing care providers. A continuing care provider shall obtain a letter from its independent certified public accountant and file a copy with the Commissioner, stating that the independent certified public accountant is aware of the provisions of the Commonwealth's statutes and regulations that relate to accounting and financial matters applicable to continuing care providers and affirming that the independent certified public accountant will express an opinion on the financial statements in terms of their conformity with generally acceptable accounting principles.

Authority

The provisions of this § 147.5 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.5 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended March 21, 1980, effective March 22, 1980, 10 Pa.B. 1303; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (305325) to (305326) and (331427).

§ 147.6. Recognition, qualification and responsibilities of an independent certified public accountant.

(a) An annual audited financial report must be prepared by a qualified independent certified public accountant recognized by the Commissioner.

(b) Except for insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the Commissioner will not recognize a person or firm as a qualified independent certified public accountant nor accept an annual audited financial report prepared in whole or in part by the person or firm under any of the following conditions:

- (1) The person is not licensed, or the firm is not registered, to practice and is not in good standing under the laws of the Commonwealth or of a state with licensing requirements similar to the Commonwealth.
- (2) The person or firm is not in good standing with the American Institute of Certified Public Accountants, Inc. and, if applicable, the Public Company Accounting Oversight Board.
- (3) The person or firm is not in good standing in all states in which the person is licensed, or the firm is registered, to practice.
- (4) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in whole or in part from misrepresentations made by the insurer or its representatives.
- (5) The person or firm employed a partner or senior manager who was involved in an audit of the insurer during the 1 year period preceding the date that the most current annual audited financial report is due and who currently serves as a member of the board of directors, president, chief executive officer, controller, chief financial officer, chief accounting officer, or in any equivalent position for the insurer.
- (6) The person or firm provides to the insurer contemporaneously with the audit any of the following non-audit services:
 - (i) Bookkeeping or other services relating to the insurer's accounting records or financial statements.
 - (ii) Financial information systems design and implementation.
 - (iii) Appraisal or valuation services, fairness opinions or contribution-in-kind reports.
 - (iv) Actuarial advisory services.
 - (v) Internal audit outsourcing services.
 - (vi) Management functions or human resource services.
 - (vii) Broker or dealer, investment adviser or investment banking services.
 - (viii) Legal or expert services unrelated to the audit.
- (c) For an insurer organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the Commissioner will not recognize a person or firm as a qualified independent public accountant nor accept an annual audited financial report prepared in whole or in part by the person or firm under any of the following conditions:
 - (1) The person or firm is not a chartered accountant.
 - (2) The person or firm has entered into an agreement of indemnity, or other release from liability, that would shift, transfer, or limit in any manner the potential liability of the person or firm for failure, whether by omission or commission, to adhere to applicable auditing or professional standards, whether or not the failure would result in whole or in part from misrepresentations made by the insurer or its representatives.
 - (3) The person or firm meets the criteria of subsection (b)(5) or provides to the insurer contemporaneously with the audit any of the nonaudit services

prohibited under subsection (b)(6) and the insurer has not been granted an exemption under subsection (h).

(d) The qualified independent certified public accountant's lead partner or other person primarily responsible for an insurer's audit may not act in that capacity for more than 5 consecutive years. Following a 5-year period of service, the person will be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for 5 consecutive years.

(e) A qualified independent certified public accountant who performs an audit for an insurer may only engage in nonaudit services, including tax services, for the insurer if all of the following requirements are met:

(1) The services are not prohibited under subsection (b)(6).

(2) The independent certified public accountant does not function in the role of management, audit his own work or serve in an advocacy role for the insurer.

(3) The services have been approved in advance by the insurer's audit committee under subsection (f).

(f) Auditing and nonaudit services provided to an insurer by the insurer's qualified independent certified public accountant shall be preapproved in writing by the insurer's audit committee, except that preapproval of nonaudit services is not required if any of the following criteria are met:

(1) The insurer is a Sarbanes-Oxley compliant entity.

(2) The insurer is a direct or indirect wholly-owned subsidiary of a Sarbanes-Oxley compliant entity.

(3) During the fiscal year in which nonaudited services are provided, the aggregate amount of the nonaudit services constitute 5% or less of the total amount of fees paid or owed by the insurer to the qualified independent certified public accountant.

(g) An insurer's audit committee may delegate the authority to grant the preapprovals required under subsection (f) to one or more designated members of the audit committee. A decision of any member to whom this authority is delegated shall be presented to the full audit committee at the next scheduled meeting.

(h) The following provisions apply to applications for relief and exemptions.

(1) An insurer may apply to the Commissioner for relief from subsection (b)(5) or subsection (d), or both, on the basis of unusual circumstances. In determining whether relief should be granted, the Commissioner may consider the following factors:

(i) The number of partners, the expertise of the partners or the number of insurance or continuing care provider clients in the currently registered firm.

(ii) The premium volume of the insurer or revenue volume of the continuing care provider.

(iii) The number of jurisdictions in which the insurer transacts business.

(2) If relief is granted, the insurer shall include a copy of the granted relief with its audited financial report filed under § 147.3(a) (relating to filing and extensions for filing required reports and communications).

(3) An insurer with direct written and assumed premium less than \$100,000,000 in a calendar year may apply for exemption from subsection (b)(6) on the basis of financial or organizational hardship under § 147.13(g) (relating to effective date and exemption).

(4) The requirements of subsection (b)(5) and (6) and subsections (e), (f) and (g) do not apply to continuing care providers.

(i) The Commissioner will not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report prepared in whole or in part by a natural person who meets one of the following conditions:

(1) The person has been convicted of fraud, bribery, a violation of 18 U.S.C.A. Chapter 96 (relating to the Racketeer Influenced and Corrupt Organizations) or any dishonest conduct or practice under Federal or state law.

(2) The person has been found to have violated the insurance laws of the Commonwealth with respect to previous reports submitted under this chapter.

(3) The person has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(j) The Commissioner may hold a hearing in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and Chapters 56 and 57 (relating to special rules of administrative practice and procedure; and publication of citations and notice of hearings) to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not independent or qualified, or both, for purposes of expressing an opinion on the financial statements in the audited financial report made under this chapter and may require the insurer to replace the certified public accountant.

(k) A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a receivership proceeding commenced against the insurer under Article V of The Insurance Department Act (40 P.S. §§ 221.1—221.63), the mediation or arbitration agreement may be disavowed by the statutory receiver.

(l) If the Commissioner has reason to believe that an audit performed contains a material departure from generally accepted auditing standards, the Commissioner may refer the matter to the State Board of Accountancy and the American Institute of Certified Public Accountants, Inc., for review and determination. Upon the finding by the State Board of Accountancy or the American Institute of Certified Public Accountants, Inc., that a certified public accountant violated applicable standards relating to competence, the performance of audits, accounting principles or other professional conduct, the Commissioner will not accept the audited financial report for that audit and will no longer accept audited financial statements certified by that certified public accountant.

(m) Within 60 days of receipt of notice from the Commissioner of a finding under subsection (l) that an audit contains a material departure from generally accepted auditing standards, the insurer for which the audit was performed shall register with the Commissioner the name and address of a qualified independent

certified public accountant retained by the insurer to perform an audit in compliance with this chapter for the year for which the finding was made. The audited financial report for the year for which the finding was made shall be filed within a time period to be determined by the Commissioner.

Authority

The provisions of this § 147.6 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.6 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (331427) to (331428) and (305329).

Cross References

This section cited in 31 Pa. Code § 147.6a (relating to letter of qualifications of independent certified public accountant); 31 Pa. Code § 147.13 (relating to effective date and exemption); and 31 Pa. Code § 147.15 (relating to letter of qualifications of independent certified public accountant).

§ 147.6a. Letter of qualifications of independent certified public accountant.

The independent certified public accountant shall furnish the insurer for inclusion in the filing of the annual audited financial report a letter of qualifications that includes the following:

- (1) A statement that the certified public accountant is independent from the insurer and conforms to the standards of the profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants, Inc. and The C.P.A. Law (63 P.S. §§ 9.1—9.16(b)) or similar laws.
- (2) A general description of the independent certified public accountant's background and experience.
- (3) A specific description of the insurer auditing experience of partners, senior managers, in-charge auditors or other key staff persons assigned to the engagement and a statement as to whether each staff person is an independent certified public accountant. This provision does not prohibit the independent certified public accountant from utilizing staff as the independent certified public accountant deems appropriate when consistent with the standards prescribed by generally accepted auditing standards.
- (4) A statement that the independent certified public accountant understands that the annual audited financial report that the independent certified public accountant's opinion thereon will be filed in compliance with this chapter and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

(5) A statement that the independent certified public accountant consents to the requirements of § 147.11 (relating to definitions, availability and maintenance of independent certified public accountant workpapers) and that the independent certified public accountant consents and agrees to make available for review by the Commissioner, the Commissioner's designee or Department examiners, the workpapers, as defined in § 147.11.

(6) Representation that the independent certified public accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants, Inc.

(7) Representation that the independent certified public accountant is in compliance with § 147.6 (relating to recognition, qualification and responsibilities of an independent certified public accountant).

Source

The provisions of this § 147.6a adopted October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730.

Cross References

The section cited in 31 Pa. Code § 147.6 (relating to recognition, qualification and responsibilities of an independent certified public accountant).

§ 147.6b. Conduct of insurer relating to audits.

(a) When communicating with any accountant relating to an audit, review or communication required under this chapter, an officer or director of an insurer may not directly or indirectly:

- (1) Make or cause to be made a materially false or misleading statement.
- (2) Omit or cause another person to omit any material fact necessary to make statements made, in light of the circumstances under which the statements are made, not misleading.

(b) An officer or director of an insurer or any other person acting under the direction thereof, may not, directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence an accountant performing an audit under this chapter if he knows or should have known that the action, if successful, could render the insurer's financial statements materially misleading.

(c) For purposes of subsection (b), actions that could render an insurer's financial statements materially misleading include, but are not limited to, actions which would result in the accountant:

- (1) Issuing or reissuing a report on an insurer's financial statements that materially violates statutory accounting principles prescribed by the Commissioner, generally accepted auditing standards, or other professional or regulatory standards.
- (2) Failing to perform an audit, review or other procedures required by generally accepted auditing standards or other professional standards.
- (3) Failing to comply with § 147.9(d) (relating to notification of adverse financial condition).
- (4) Failing to communicate matters to an insurer's audit committee.
- (5) Violating any provision of this chapter.

Authority

The provisions of this § 147.6b issued under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205—1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.6b adopted October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730.

§ 147.7. Consolidated or combined audits.

(a) An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial reports in lieu of separate annual audited financial reports if the insurer is part of a group of insurance companies which utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. A columnar consolidating or combining worksheet, setting forth the amounts shown on the consolidated or combined audited financial report with a reconciliation of differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurer, shall be filed with the report. The reconciliation shall include explanations of consolidating and eliminating entries. Noninsurance operations may be shown on the worksheet on a combined or individual basis. Consolidated or combined audited financial reports shall be prepared in conformity with statutory accounting practices as set forth in § 147.4(a) (relating to contents of annual audited financial report).

(b) The Commissioner may require an insurer to file separate annual audited financial reports.

(c) Subsection (a) does not apply to continuing care providers. A continuing care provider may make written application to the Commissioner for approval to file consolidated or combined financial reports in lieu of separate annual audited financial reports if the continuing care provider is part of a group of affiliated entities. A columnar consolidating or combining worksheet, setting forth the amounts shown for each individual entity on the consolidated or combined audited financial report and including explanations of consolidating and eliminating entries, shall be filed with the report. Consolidated or combined audited financial reports shall be prepared as set forth in § 147.4(e).

Authority

The provisions of this § 147.7 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.7 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591. Immediately preceding text appears at serial page (203416).

§ 147.8. Scope of audit and report of independent certified public accountant.

(a) The annual financial statements filed by an insurer with the Department shall be audited by an independent certified public accountant. The audit of the financial statements of the insurer shall be conducted in accordance with generally accepted auditing standards.

(b) The scope of the audit and data testing procedures shall be conducted as required by the appropriate *Annual Statement Instructions* adopted by the NAIC. Consideration shall also be given to other procedures in the *Financial Condition Examiner's Handbook* adopted by the NAIC. The independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit in accordance with AU Section 319 of the Professional Standards of the American Institute of Certified Public Accountants, *Consideration of Internal Control in a Financial Statement Audit* (AU 319). To the extent required by AU 319 and as part of the independent certified public accountant's professional requirements defined in Statement on Auditing Standards (SAS) No. 102, *Defining Professional Requirements in Statements on Auditing Standards* or its replacement, the independent certified public accountant shall consider the most recently available Management's Report of Internal Control over Financial Reporting, as required under § 147.9b, in planning and performing the audit of an insurer's statutory financial statements.

(c) Subsection (b) does not apply to continuing care providers.

(d) The Commissioner may prescribe that additional auditing procedures be observed by the independent certified public accountant in the audit of the financial statements of insurers under this chapter.

Authority

The provisions of this § 147.8 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.8 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (305330) to (305331).

Cross References

This section cited in 31 Pa. Code § 147.12 (relating to examinations).

§ 147.8a. Internal audit function requirements.

(a) *Exemption.* An insurer is exempt from the requirements of this section if:

(1) The insurer meets the following requirements:

(i) Has annual direct written and unaffiliated assumed premium, including international direct and assumed premium excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million.

(ii) If the insurer is a member of a group of insurers, the group has annual direct written and unaffiliated assumed premium including international direct and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$1 billion.

(2) It is a continuing care provider licensed to transact business in this Commonwealth under the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3201—3225).

(b) *Function.* The insurer or group of insurers shall establish an internal audit function that provides independent, objective and reasonable assurance to the audit committee and the insurer's management regarding the insurer's governance, risk management and internal controls. This function includes the performance of general and specific audits, reviews and tests and employ other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.

(c) *Independence.* To ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function may not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.

(d) *Reporting.* The head of the internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

(e) *Additional requirements.* If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements in this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

Authority

The provisions of this § 147.8a issued under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.8a adopted December 16, 2016, effective January 17, 2017, 46 Pa.B. 7819.

Cross References

This section cited in 31 Pa. Code § 147.3a (relating to requirements for audit committees); and 31 Pa. Code § 147.13 (relating to effective date and exemption).

§ 147.9. Notification of adverse financial condition.

(a) An insurer required by this chapter to file an annual audited financial report shall require the independent certified public accountant to report, in writing, within 5 business days to the board of directors or audit committee of the insurer, any of the following:

(1) A determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently being audited.

(2) A determination by the independent certified public accountant that the insurer does not meet its capital and surplus requirement, or that the continuing care provider does not meet its liquid reserve requirement, under laws and regulations relating to the insurer or continuing care provider as of the balance sheet date currently being audited.

(b) An insurer required by this chapter to file an annual audited financial report who receives any report from the independent certified public accountant, as required by this section, shall forward a copy of the report to the Commissioner within 5 business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If within the required 5 business day period, the independent certified public accountant does not receive evidence from the insurer of the report being furnished to the Commissioner, the independent certified public accountant shall directly furnish to the Commissioner a copy of the report within the next 5 business days.

(c) The engagement letter executed by the insurer and the independent certified public accountant shall expressly provide that the independent certified public accountant is not liable in any manner to the insurer for a statement made under subsection (b) if the statement is made in good faith in compliance with subsection (b).

(d) If the independent certified public accountant, subsequent to the date of the annual audited financial report filed under this chapter, becomes aware of facts which might have affected the independent certified public accountant's report, the independent certified public accountant is required to take action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, Inc. If, pursuant to the auditing standards for subsequent discovery of facts, the independent certified public accountant advises the insurer to make appropriate disclosure of newly discovered facts, the insurer shall provide the Department with written notice of the independent certified public accountant's advice within 5 business days of receipt of that advice.

Authority

The provisions of this § 147.9 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.9 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (305331) to (305332).

Cross References

This section cited in 31 Pa. Code § 147.6b (relating to conduct of insurer relating to audits); 31 Pa. Code § 147.12 (relating to examinations); and 31 Pa. Code § 147.13 (relating to effective date and exemption).

§ 147.9a. Establishment and communication of internal control over financial reporting.

(a) An insurer or insurer group shall establish internal control over financial reporting policies and procedures designed to provide reasonable assurance that:

(1) The financial statements of the insurer or insurer group as required under § 147.4(b) and (c) (relating to contents of annual audited financial report) are reliable.

(2) Records are created and maintained to accurately and fairly reflect dispositions of assets and other transactions.

(3) Transactions are recorded as needed to prepare financial statements.

(4) Receipts and expenditures are made only as authorized by the management or board of directors of the insurer or insurer group.

(5) Unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements of the insurer or insurer group are prevented or detected in a timely manner.

(b) An insurer required under this chapter to file an annual audited financial report shall provide the Department with a written communication prepared by the independent certified public accountant describing internal control related matters identified in the audit. The written communication shall be filed with the Department within 60 days after the filing of the annual audited financial report.

(c) The communication must include a description of any unremediated material weakness in the insurer's internal control over financial reporting as of the immediately preceding December 31 or a statement that no unremediated material weaknesses were identified in the audit. For purposes of this subsection, the term "material weakness" is as defined by AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants, (SAS 112) *Communicating Internal Control Related Matters Identified in an Audit*, or its replacement.

(d) If a communication of internal control related matters filed under subsection (b) includes a description of unremediated material weaknesses, either the independent certified public accountant or the insurer shall provide the Department, within 60 days after the filing of the annual audited financial report, a written description of actions taken or proposed to eliminate the unremediated material weaknesses.

Source

The provisions of this § 147.9a adopted October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730.

Cross References

This section cited in 31 Pa. Code § 147.2 (relating to definitions); 31 Pa. Code § 147.3 (relating to filing and extensions for filing required reports and communications); and 31 Pa. Code § 147.9b (relating to management's report of internal control over financial reporting).

§ 147.9b. Management's report of internal control over financial reporting.

(a) An insurer that is required to file an audited financial report and that has annual direct written and assumed premiums equal to or greater than \$500,000,000, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, shall file with the Department a management's report of internal control over financial reporting of the insurer or insurer group. A management's report of internal control over financial reporting shall be filed for an insurer group if the annual direct written and assumed premiums of any one insurer in the group is equal to or greater than \$500,000,000, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program. However, the Commissioner may require an insurer that has less than \$500,000,000 in annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, to file a management's report of internal control over financial reporting under sections 501—563, 501-A—515-A, and 501-B—515-B of The Insurance Department Act of 1921 (40 P.S. §§ 221.1—221.63, 221.1-A—221.15-A and 221.1-B—221.15-B) regarding suspension of business and risk-based capital requirements, Chapter 160 (relating to standards to define insurers deemed to be in hazardous financial condition) or other provisions of law. If an insurer previously not required to file a management's report of internal control over financial reporting because it did not meet the \$500,000,000 threshold is subsequently required to file the report because its premiums equal or exceed the threshold, the insurer or the insurer group shall have 2 years following the year the threshold is exceeded to file the report.

(b) The management's report of internal control over financial reporting shall be prepared by management as of the immediately preceding December 31, filed with the report of internal control related matters required under § 147.9a (relating to establishment and communication of internal control over financial reporting) and include:

- (1) Statement that management is responsible for establishing and maintaining adequate internal control over financial reporting.

(2) Statement that management has established internal control over financial reporting.

(3) Brief description of the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting.

(4) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of the immediately preceding December 31.

(5) Assertion to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles.

(A) Management may base its assertion, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(B) Management may not assert that internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if one or more unremediated material weaknesses in internal control over financial reporting are disclosed as required by paragraph (4).

(C) Management shall create and maintain documentation relating to the basis upon which its assertion in management's report of internal control over financial reporting is made. Management shall have discretion as to the nature and extent of documentation to make its assertion in a cost-effective manner, including assembly of or reference to existing documentation. The documentation shall be made available to Department examiners and given confidential treatment under the authority of sections 901—908 of The Insurance Department Act of 1921 (40 P.S. §§ 323.1—323.8).

(6) Statement regarding the inherent limitations of internal control systems.

(7) Signatures of chief executive officer and chief financial officer or individuals holding equivalent positions. A management's report of internal control over financial reporting filed for an insurer group must include a statement identifying the officers or individuals in equivalent positions who have been authorized by management to sign the report on behalf of the affiliated insurers in the group.

(c) An insurer may satisfy the requirements of subsection (a) by filing a Section 404 report of the insurer or insurer group if:

(1) The insurer or insurer group is at least one of the following:

(i) Directly subject to Section 404.

(ii) A Sarbanes-Oxley compliant entity not directly subject to Section 404.

(iii) A member of a holding company system whose parent is directly subject to Section 404.

(iv) A member of a holding company system whose parent is not directly subject to Section 404 and is a Sarbanes-Oxley compliant entity.

(2) The scope of the Section 404 report includes internal controls of the insurer or insurer group that have a material impact on the preparation of the

audited statutory financial statements of the insurer or insurer group as required under § 147.4(b) and (c) (relating to contents of annual audited financial report).

(3) The Section 404 report includes an addendum consisting of a positive statement by management that no material processes relating to the preparation of the audited statutory financial statements of the insurer or insurer group, as required under § 147.4 (b) and (c) are excluded from the Section 404 report.

(d) An insurer or insurer group that satisfies the requirements of subsection (c)(1) and (3) but the scope of its Section 404 report does not satisfy the requirements of subsection (c)(2) may satisfy the requirements of subsection (a) by filing one of the following:

(1) A management's report of internal control over financial reporting as required under subsection (b).

(2) A Section 404 report and a management's report of internal control over financial reporting for those internal controls that have a material impact on the preparation of the audited statutory financial statements of the insurer or insurer group and that are not included within the scope of the Section 404 report.

(e) This section does not apply to continuing care providers.

Source

The provisions of this § 147.9b adopted October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730.

Cross References

This section cited in 31 Pa. Code § 147.3 (relating to filing extensions for filing required reports and communications).

§ 147.10. [Reserved].

Source

The provisions of this § 147.10 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591; reserved October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (305332) to (305333).

§ 147.11. Definitions, availability and maintenance of independent certified public accountant workpapers.

(a) Workpapers are the records kept by an independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to audit of the financial statements of an insurer. For purposes of this chapter, workpapers include audit planning documentation, audit programs, permanent files, internal control and electronic data processing questionnaires, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries which are prepared or obtained by the independent certified public accountant in the course of the independent certified public accountant's audit of the financial statements of an insurer and which support the opinion thereon.

(b) Every insurer required to file an annual audited financial report under this chapter shall require the independent certified public accountant to make avail-

able, through the insurer, for review by Department examiners workpapers prepared in the conduct of the audit, as well as communications related to the audit between the independent certified public accountant and the insurer, including the engagement letter, at the offices of the insurer, at the offices of the independent certified public accountant, at the offices of the Department or at another reasonable place designated by the Commissioner. The insurer shall require that the independent certified public accountant retain the audit workpapers and communications for at least 7 years after the period reported on and agree to make a partner or manager available to the Department upon reasonable request.

(c) In the conduct of the periodic review by Department examiners described in subsection (b), electronic copies or photocopies of pertinent audit workpapers may be made and retained by the Department.

(d) Copies of audit workpapers so obtained in the course of review will be considered part of the record of examination of the Commissioner and will be held as confidential records.

Authority

The provisions of this § 147.11 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701); sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.11 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591. Immediately preceding text appears at serial pages (305333) to (305334).

Cross References

This section cited in 31 Pa. Code § 147.6a (relating to letter of qualifications of independent certified public accountant); 31 Pa. Code § 147.12 (relating to examinations); 31 Pa. Code § 147.14 (relating to penalties); and 31 Pa. Code § 147.15 (relating to letter of qualifications of independent certified public accountant).

§ 147.12. [Reserved].

Source

The provisions of this § 147.12 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; reserved October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (305334) to (305335).

§ 147.13. Effective date and exemption.

- (a) This chapter applies to all insurers doing business in this Commonwealth.
- (b) Insurers shall comply with this chapter for annual audited financial reports beginning January 1, 2010.
- (c) Foreign insurers having direct premiums written in this Commonwealth less than \$1 million in a calendar year and having fewer than 1,000 policyholders

or certificateholders of directly written policies in this Commonwealth at the end of that calendar year shall be exempt from this chapter for that year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Foreign insurers having assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1 million or more are not exempt.

(d) Domestic insurers having total admitted assets less than \$10 million, direct premium written Nationwide less than \$1 million in a calendar year and having fewer than 1,000 policyholders or certificateholders of directly written policies Nationwide at the end of that calendar year are exempt from this chapter for that year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Domestic insurers having total admitted assets greater than \$10 million or assumed premiums pursuant to contracts or treaties, or both, of reinsurance of \$1 million or more are not exempt.

(e) Domestic insurers not insuring or reinsuring risks located outside of this Commonwealth having total admitted assets less than \$10 million and either direct premium written of less than \$1 million in a calendar year or fewer than 1,000 policyholders or certificateholders of directly written policies at the end of that calendar year are exempt from this chapter for that year, unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Insurers having total admitted assets greater than \$10 million or assumed premiums pursuant to contracts or treaties of reinsurance, or both, of \$1 million or more are not exempt.

(f) Foreign insurers filing annual audited financial reports in another state, pursuant to that state's requirements for annual audited financial reports whose requirements are substantially similar to the requirements of this chapter, are exempt from this chapter.

(g) Upon written application of an insurer, the Commissioner may grant an exemption from compliance with all or part of this chapter if the Commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for specified periods. If an exemption is granted, the insurer shall file a copy of the exemption with the NAIC and as required by the chief insurance regulatory official in all states where the insurer is licensed or is doing business. Within 10 days from a denial of the written application of an insurer for an exemption from this chapter, the insurer may request in writing a hearing on its application for an exemption. Hearings will be held in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and Chapters 56 and 57 (relating to special rules of administrative practice and procedure; publication of citations and notice of hearings).

(h) Subsections (c)—(g) do not apply to continuing care providers.

(i) In the case of insurers organized in Canada or the United Kingdom of Great Britain and Northern Ireland, the annual audited financial report is defined as the annual statement of total business on the form filed by the insurers with

their domiciliary supervision authority, audited by an independent chartered accountant. For these insurers, the letter required in § 147.6a (relating to letter of qualifications of independent certified public accountant) must state that the independent certified public accountant is aware of the requirements relating to the annual audited financial report filed with the Commissioner under § 147.3 (relating to filing and extensions for filing required reports and communications) and affirm that the opinion expressed is in conformity with those requirements.

(j) If an insurer or group of insurers exempt from the requirements of § 147.8a (relating to internal audit function requirements) no longer qualifies for that exemption, it shall have until December 31 of the year in which the annual statement was filed showing the threshold is exceeded to comply with the requirements of § 147.8a.

Authority

The provisions of this § 147.13 amended under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 320, 630, 1007 and 2452 of The Insurance Company Law of 1921 (40 P.S. §§ 443, 764a, 967 and 991.2452); sections 205 and 206 of The Pennsylvania Fair Plan Act (40 P.S. §§ 1600.205 and 1600.206); section 731 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.731); 40 Pa.C.S. §§ 6125, 6331 and 6701; sections 11 and 14 of the Health Maintenance Organization Act (40 P.S. §§ 1561 and 1564); and sections 7 and 25 of the Continuing-Care Provider Registration and Disclosure Act (40 P.S. §§ 3207 and 3225).

Source

The provisions of this § 147.13 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; amended August 20, 2004, effective August 21, 2004, 34 Pa.B. 4591; amended October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730; amended December 16, 2016, effective January 17, 2017, 46 Pa.B. 7819. Immediately preceding text appears at serial pages (345540) to (345542).

Cross References

This section cited in 31 Pa. Code § 147.3 (relating to filing and extensions for filing of annual audited financial reports); 31 Pa. Code § 147.3a (relating to requirements for audit committees); and 31 Pa. Code § 147.6 (relating to recognition, qualification and responsibilities of an independent certified public accountant).

§ 147.14. Penalties.

Failure to file the annual audited financial report and additional statements, letters or reports required by this chapter or failure to comply with § 147.11 (relating to definition, availability and maintenance of independent certified public accountant workpapers) will subject the insurer to the penalties provided by law.

Source

The provisions of this § 147.14 adopted December 21, 1979, effective December 22, 1979, 9 Pa.B. 4164; amended November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785. Immediately preceding text appears at serial pages (143800) to (143801).

§ 147.15. [Reserved].**Source**

The provisions of this § 147.15 adopted November 10, 1995, effective November 11, 1995, 25 Pa.B. 4785; deleted October 2, 2009, effective October 3, 2009, 39 Pa.B. 5730. Immediately preceding text appears at serial pages (331430) and (305339).

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