

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Insurance-corporate governance annual disclosure.

Sponsored by: Joint Corporations, Elections & Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to insurance; requiring insurance
2 companies, fraternal benefit societies and health
3 maintenance organizations to submit a governance report as
4 specified; providing filing requirements; providing for the
5 confidentiality of information reported; specifying
6 applicability; requiring the promulgation of rules;
7 providing sanctions for failure to submit a report; and
8 providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

1 internal procedures beyond that which is required under
2 applicable state corporate law.

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6 **STAFF COMMENT**

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8 **Committee may wish to consider revising "applicable state**
9 **corporate law" to "under the corporate law of this state".**

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12 *****

13

14 (d) Nothing in this chapter shall be construed to
15 limit the commissioner's authority, or the rights or
16 obligations of third parties, pursuant to the Wyoming
17 Insurance Code.

18

19 (e) No insurer or insurance group shall be required
20 to file the disclosure required by this chapter until 2019.

21

22 **26-54-102. Definitions.**

23

24 (a) As used in this chapter:

25

26 (i) "Corporate governance annual disclosure" or
27 "CGAD" means a confidential report filed by an insurer or

1 insurance group in accordance with the requirements of this
2 chapter;

3
4 (ii) "Insurance group" means those insurers and
5 affiliates included within an insurance holding company
6 system as defined under W.S. 26-44-101(a) (iv);

7
8 (iii) "Insurer" shall have the same meaning as
9 set forth under W.S. 26-1-102(a) (xvi) and include domestic
10 fraternal benefit societies and health maintenance
11 organizations. This term shall not include agencies,
12 authorities or instrumentalities of the United States, its
13 possessions and territories, the Commonwealth of Puerto
14 Rico, the District of Columbia, or a state or political
15 subdivision of a state.

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17 *****

18 *****
19 STAFF COMMENT

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21 Definition of "insurer" clarified to include domestic
22 fraternal benefit societies and health maintenance
23 organizations. See pg. 2, lines 7-9 and section 2.

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26 *****

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28 26-54-103. Disclosure requirement.

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1 (a) An insurer, or the insurance group of which the
2 insurer is a member, shall, no later than June 1 of each
3 calendar year, submit to the commissioner a corporate
4 governance annual disclosure that contains the information
5 described in W.S. 26-54-105. Notwithstanding any request
6 from the commissioner made pursuant to subsection (c) of
7 this section, if the insurer is a member of an insurance
8 group, the insurer shall submit the report required by this
9 section to the commissioner of insurance of the lead state
10 for the insurance group, in accordance with the laws of the
11 lead state and under the guidance of the procedures
12 outlined in the most recent financial analysis handbook
13 adopted by the National Association of Insurance
14 Commissioners.

15

16 (b) The CGAD shall include a signature of the
17 insurer's or insurance group's chief executive officer
18 or corporate secretary attesting to the best of that
19 individual's belief and knowledge that the insurer has
20 implemented the corporate governance practices disclosed
21 pursuant to subsection (a) of this section and that a copy
22 of the disclosure has been provided to the insurer's board
23 of directors or the appropriate committee thereof.

1

2 (c) An insurer not required to submit a CGAD under
3 this section shall do so upon the commissioner's request.

4

5 (d) For purposes of completing the CGAD, the insurer
6 or insurance group may provide information regarding
7 corporate governance at the ultimate controlling parent
8 level, an intermediate holding company level or the
9 individual legal entity level, depending upon how the
10 insurer or insurance group has structured its system of
11 corporate governance. The insurer or insurance group is
12 encouraged to make the CGAD disclosures at the level at
13 which the insurer's or insurance group's risk appetite is
14 determined, or at which the earnings, capital, liquidity,
15 operations, and reputation of the insurer are overseen
16 collectively and at which the supervision of those factors
17 are coordinated and exercised, or the level at which legal
18 liability for failure of general corporate governance
19 duties would be placed. If the insurer or insurance group
20 determines the level of reporting based on these criteria,
21 it shall indicate which of the three (3) criteria was used
22 to determine the level of reporting and explain any
23 subsequent changes in the level of reporting.

1

2 (e) The review of the CGAD and any additional
3 requests for information shall be made through the lead
4 state under the guidance of the procedures contained in the
5 most recent financial analysis handbook referenced in
6 subsection (a) of this section.

7

8 (f) Insurers providing information substantially
9 similar to the information required by this act in other
10 documents provided to the commissioner, including any
11 statements filed pursuant to W.S. 26-44-104, or other state
12 or federal filings provided to the department, shall not be
13 required to duplicate that information in the CGAD, but
14 shall be required to cross reference and identify where the
15 document may be located by the commissioner.

16

17 **26-54-104. Rules and regulations.**

18

19 The commissioner shall promulgate rules, regulations and
20 orders necessary to carry out the provisions of this act.

21

22 **26-54-105. Contents of corporate governance annual**
23 **disclosure.**

1

2 (a) An insurer or insurance group shall have
3 discretion over the manner in which a CGAD is submitted,
4 provided the CGAD shall contain the material information
5 necessary to permit the commissioner to gain an
6 understanding of the insurer's or insurance group's
7 corporate governance structure, policies and practices. The
8 commissioner may request additional information deemed
9 material and necessary to provide the commissioner with a
10 clear understanding of corporate governance policies and
11 the reporting, information systems or controls used to
12 implement those policies.

13

14 (b) Notwithstanding subsection (a) of this section,
15 the CGAD shall be prepared consistent with corporate
16 governance annual disclosure model regulations adopted in
17 the department's rules. Pursuant to the guidance in the
18 model regulation, the CGAD shall describe the insurer's or
19 insurance group's corporate governance framework, the
20 policies and practices of the most senior governing entity
21 and significant committees thereof, policies and practices
22 for directing senior management and the processes by which
23 the board and senior management ensure an appropriate

1 amount of oversight to the critical risk areas impacting
2 the insurer's business activities. Documentation and
3 supporting information shall be maintained and made
4 available for examination or upon request of the
5 commissioner.

6

7 **26-54-106. Confidentiality.**

8

9 (a) Documents, materials or other information,
10 including the CGAD, in the possession or control of the
11 department that are obtained by, created by or disclosed to
12 the commissioner or any other person under this chapter,
13 are recognized by this state as being proprietary and to
14 contain trade secrets. All such documents, materials or
15 other information shall be confidential by law and
16 privileged, shall not be considered public records pursuant
17 to W.S. 16-4-201 through 16-4-205, shall not be subject to
18 subpoena and shall not be subject to discovery or
19 admissible as evidence in any private civil action. The
20 commissioner is authorized to use the documents, materials
21 or other information in the furtherance of any regulatory
22 or legal action brought as a part of the commissioner's
23 official duties. The commissioner shall not otherwise make

1 the documents, materials or other information public
2 without the prior written consent of the insurer. Nothing
3 in this section shall be construed to require written
4 consent of the insurer before the commissioner may share or
5 receive documents, materials or other information pursuant
6 to subsection (c) of this section and as necessary to
7 assist in the performance of the commissioner's regular
8 duties.

9

10 (b) Neither the commissioner nor any other person who
11 receives documents, materials or other information subject
12 to subsection (a) of this section, through examination or
13 otherwise, while acting under the authority of the
14 commissioner, or with whom such documents, materials or
15 other information are shared pursuant to this chapter,
16 shall testify in any private civil action concerning the
17 documents, materials or other information.

18

19 (c) In order to assist in the performance of the
20 commissioner's regulatory duties, the commissioner may:

21

22 (i) Upon request, share documents, materials or
23 other information, including confidential and privileged

1 documents, materials or other information, which may
2 include proprietary or trade secret information, with other
3 state, federal and international financial regulatory
4 agencies, including members of any supervisory college as
5 defined under W.S. 26-44-118, with the National Association
6 of Insurance Commissioners and with third party consultants
7 pursuant to W.S. 26-54-107, provided that the recipient
8 agrees in writing to maintain the confidentiality and
9 privileged status of the documents, materials or other
10 information and has verified in writing the legal authority
11 to maintain confidentiality;

12

13 (ii) Receive documents, materials or other
14 information, including confidential and privileged
15 documents, materials or other information, which may
16 include proprietary or trade secret information, from
17 regulatory officials of other state, federal and
18 international financial regulatory agencies, including
19 members of any supervisory college as defined under W.S.
20 26-44-118 and from the National Association of Insurance
21 Commissioners. The Commissioner shall maintain as
22 confidential and privileged any documents, materials or
23 other information received under this paragraph with notice

1 or the understanding that it is confidential and privileged
2 under the law of the jurisdiction that is the source of the
3 document, materials or other information.

4

5 (d) The sharing of documents, materials or other
6 information by the commissioner pursuant to this chapter
7 shall not constitute a delegation of regulatory authority
8 or rulemaking, and the commissioner is solely responsible
9 for the administration, execution and enforcement of the
10 provisions of this chapter.

11

12 (e) No waiver of any applicable privilege or claim of
13 confidentiality in the documents, materials or other
14 information shall occur as a result of disclosure of such
15 information to the commissioner under this section or as a
16 result of any sharing authorized by this chapter.

17

18 **26-54-107. NAIC and third party consultants.**

19

20 (a) The commissioner may retain, at the insurer's
21 expense, third party consultants, including attorneys,
22 actuaries, accountants and other experts not otherwise a
23 part of the commissioner's staff, as may be reasonably

1 necessary to assist the commissioner in reviewing the CGAD
2 and related information submitted by an insurer or to
3 determine an insurer's compliance with this chapter.

4

5 (b) Any consultant retained under subsection (a) of
6 this section shall act only as an independent contractor
7 within the scope of duties established by the commissioner.

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STAFF COMMENT

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13 **Subsection (b) revised to remove language relating to the**
14 **consultant being under the "direction and control" of the**
15 **commissioner. This language would in effect make the**
16 **consultant an employee of the State of Wyoming, which would**
17 **potentially expose the State to greater legal liability**
18 **than if the consultant was an independent contractor.**

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21

22

23 (c) The National Association of Insurance
24 Commissioners and any person retained pursuant to
25 subsection (a) of this section shall be subject to the same
26 confidentiality standards and requirements as the
27 commissioner.

28

1 (d) Any person retained pursuant to subsection (a) of
2 this section shall verify to the commissioner, with notice
3 to the insurer, that he is free of a conflict of interest
4 and that it has internal procedures in place to monitor
5 compliance with a conflict and to comply with the
6 confidentiality standards and requirements of this chapter.

7

8 (e) The commissioner shall enter into a written
9 agreement with the National Association of Insurance
10 Commissioners and any person hired pursuant to subsection
11 (a) of this section concerning the sharing and use of
12 information provided under this chapter. Consistent with
13 W.S. 26-2-113, the agreement shall contain the following
14 provisions and expressly require the written consent of the
15 insurer prior to making public any information provided
16 under this chapter:

17

18 (i) Specific procedures and protocols for
19 maintaining the confidentiality and security of CGAD
20 related information shared with the National Association of
21 Insurance Commissioners or any person retained pursuant to
22 subsection (a) of this section;

23

1 (ii) Procedures and protocols for the National
2 Association of Insurance Commissioners, or other persons
3 retained pursuant to subsection (a) of this section, to
4 disclose CGAD related information to other state regulators
5 from states in which an insurance group has domiciled
6 insurers. The agreement shall provide that the recipient
7 agrees in writing to maintain the confidentiality and
8 privileged status of the CGAD related documents, materials
9 or other information and has verified in writing the legal
10 authority to maintain confidentiality;

11

12 (iii) A provision specifying that ownership of
13 CGAD related information shared with the National
14 Association of Insurance Commissioners or a person retained
15 pursuant to subsection (a) of this section remains with the
16 department and use of the information by the National
17 Association of Insurance Commissioners or a person retained
18 pursuant to subsection (a) of this section is subject to
19 the direction of the commissioner;

20

21 (iv) A provision that prohibits the National
22 Association of Insurance Commissioners or any person
23 retained pursuant to subsection (a) of this section from

1 storing the information shared pursuant to this chapter in
2 a permanent database after the underlying analysis is
3 completed;

4

5 (v) A provision requiring the National
6 Association of Insurance Commissioners or any person
7 retained pursuant to subsection (a) of this section to
8 provide prompt notice to the commissioner and to the
9 insurer or insurance group upon the receipt of any
10 subpoena, request for disclosure, or request for production
11 of the insurer's or insurance group's CGAD related
12 information; and

13

14 (vi) A requirement that the National Association
15 of Insurance Commissioners or any person retained pursuant
16 to subsection (a) of this section shall consent to
17 intervention by an insurer in any judicial or
18 administrative action in which the National Association of
19 Insurance Commissioners or the person retained pursuant to
20 subsection (a) of this section may be required to disclose
21 confidential information about the insurer shared with the
22 National Association of Insurance Commissioners or a person
23 retained pursuant to subsection (a) of this section.

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2 **26-54-108. Sanctions.**

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4 Any insurer failing, without just cause, to timely file the
5 CGAD required by this chapter shall be required, after
6 notice and hearing, to pay a penalty of one hundred dollars
7 (\$100.00) for each day that the CGAD is not filed, to be
8 recovered by the commissioner. The maximum penalty due
9 under this section shall be five thousand dollars
10 (\$5,000.00). The commissioner may reduce the penalty if the
11 insurer demonstrates to the commissioner that the
12 imposition of the penalty would constitute a financial
13 hardship to the insurer.

14

15 **Section 2.** W.S. 26-34-135 is amended to read:

16

17 **26-34-135. Application of other laws.**

18

19 (d) The Wyoming Corporate Governance Annual
20 Disclosure Act, title 26, chapter 54, shall apply to
21 domestic health maintenance organizations licensed under
22 this chapter.

23

1 **Section 3.** This act is effective July 1, 2018.

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(END)