



North Dakota
Insurance Department
Adam W. Hamm, Commissioner

M E M O R A N D U M

TO: Legislative Council's Administrative Rules Committee

FROM: Melissa Hauer, General Counsel, North Dakota Insurance Department *MAN*

DATE: December 10, 2009

SUBJECT: Study of Agency Application of Standards From Other Than State or Federal Law That Have Not Been Adopted as Administrative Rules (2009 House Bill No. 1280)

The Legislative Council's Administrative Rules Committee requested the Insurance Department to present information regarding whether the Department requires regulated individuals or entities to comply with any standards from other than state or federal law or rules. If so, the Department was asked to explain in detail and describe the source of standards applied and explain whether we think these standards should be incorporated in North Dakota statutory or rules provisions.

Whether the Department requires regulated individuals or entities to comply with any standards from other than state or federal law or rules.

The Department does not require regulated individuals or entities to comply with standards from other than state or federal law or rules. This could depend, however, on how broadly "standard" is defined. The following is a sample of some of the standards enforced by the Department that have been required by state or federal law or rule. Some of these standards were prepared by organizations or associations outside the Department, such as model laws or model regulations drafted by the National Association of Insurance Commissioners (NAIC), but they have been enacted in law or adopted by rule as described below.

1. For the Department's boiler inspection program, the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Construction Code and the National Board of Boiler and Pressure Vessel Inspectors Board Inspection Code are used in administering this program. They have been adopted in rule (see, for example, N.D. Admin. Code Article 45-12 and §§ 45-12-01-01(4), 45-12-02-18).

2. The Department is responsible for monitoring the financial condition of insurance companies. In order to do that, it uses several forms and procedure manuals that were developed by the NAIC and enacted in law or adopted in rule. For example:

NAIC Annual Statement Instructions and Blanks (N.D.C.C. §§ 26.1-03-07, 26.1-03-11.1, 26.1-31.2-01(4)(a), and N.D. Admin. Code §§ 45-03-07.1-04(1) and (2)(c), 45-03-13-02(2)(i), 45-03-15-01, 45-03-15-02, 45-03-20-04);

NAIC Financial Condition Examiners Handbook (N.D.C.C. §§ 26.1-03-19.2(1) and 26.1-03-19.3(1), and N.D. Admin. Code § 45-03-20-08);

NAIC Accounting Practices and Procedures Manual (N.D.C.C. § 26.1-02-26, and N.D. Admin. Code §§ 45-03-07.1-04(2)(c), 45-03-12-04(7), 45-03-15-01, 45-03-15-02, 45-03-20-04, and 45-03-22-03(2));

Purposes and Procedures Manual of the Securities Valuation Office (N.D.C.C. §§ 26.1-03-02.1, 26.1-31.2-02(2), 26.1-31.2-03(1), and N.D. Admin. Code §§ 45-03-07.1-04(5), 45-03-07.1-06); and

Risk Based Capital Reports and Instructions (N.D.C.C. §§ 26.1-03.1-01(7) and 26.1-03.2-01(6)).

3. Reserving Methodologies and Assumptions (N.D.C.C. §§ 26.1-35-02, 26.1-35-03, 26.1-35-04, and N.D. Admin. Code § 45-03-19-06).
4. Actuarial Standards Board and Standards of Practice (N.D.C.C. § 26.1-35-01.1(4), 26.1-36-37.2, and N.D. Admin. Code §§ 45-03-19-03(4), 45-06-08-02).
5. Generally Accepted Accounting Principles (N.D. Admin. Code § 45-03-22-03(2)).
6. Statement of Actuarial Opinion and an Actuarial Opinion Summary. (N.D.C.C. § 26.1-03-11.1).
7. County Mutual Insurer Annual Statement and Instructions. (N.D.C.C. § 26.1-13-35).
8. County Mutual Insurer Interim Statement (N.D.C.C. § 26.1-13-35).

Explain in detail and describe the source of standards applied and explain whether we think these standards should be incorporated in North Dakota statutory or rules provisions.

The Department is not aware that it imposes on the regulated community any standards that are not required by law or rule. The Department does refer to handbooks and other reference materials to guide it in its work and which do not directly affect the regulated community. Some of these materials are created to ensure a more uniform environment in which insurers can do business across states. We also must follow certain standards in order to be accredited so that the insurance regulators of other states and countries can feel comfortable in relying on our work product. The following are some examples of reference materials used by the Department to assist it in its work:

1. Actuarial Guidelines developed by NAIC Life and Health Actuarial Task Force and included in the Accounting Practices and Procedures Manual as appendices. The guidelines do not dictate any particular outcome but are intended to be a guide to be used in applying a statute to a specific circumstance.
2. Actuarial Standards of Practice promulgated by the Actuarial Standards Board and compliance required by various SSAPs in the Accounting Practices and Procedures Manual.
3. NAIC Health Reserves Guidance Manual outlines minimum guidance for individual and group accident and health reserves and is intended to be a general statement of reserving principles and not specific, detailed instructions.
4. Troubled Company Handbook. The guidance in this handbook is meant to be advisory, rather than to prescribe mandatory regulatory procedures; however, it should be noted that NAIC Financial Regulation Standards and Accreditation Program requires an accrediting state to generally follow and observe the procedures set forth in this handbook. This handbook suggests approaches and concepts to assist regulators in providing timely and effective administrative insurance regulation over troubled insurance companies.

I hope that this response provides the information sought by the Committee. I will be happy to try to answer any questions that you might have. Thank you.

MH/njb