

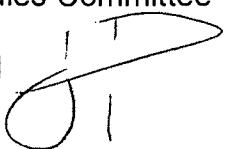


North Dakota Insurance Department

Adam Hamm, Commissioner

MEMORANDUM

TO: Legislative Council's Administrative Rules Committee

FROM: Johannes N. Palsgraaf, Legal Counsel 

DATE: June 14, 2012

SUBJECT: Adoption of Administrative Rules (July 2012 Supplement)

- Surplus Lines Insurance (45-09-01)
- Life and Health Insurance Guaranty Association (45-11-01)

Chairman Koppelman and members of the Administrative Rules Committee, I am Johannes Palsgraaf, Legal Counsel for the North Dakota Insurance Department.

As requested, the following addresses the Administrative Rules Committee's questions regarding recent amendments to Title 45 of the North Dakota Administrative Code adopted by the North Dakota Insurance Department.

The committee requested testimony concerning the following:

1. **Whether the rules resulted from statutory changes made by the Legislative Assembly.**

Answer: The rules related to surplus lines insurance were the result of changes made in 2011 House Bill No. 1123. The rules related to the Life and Health Insurance Guaranty Association were the result of changes made in 2011 Senate Bill No. 2111.

2. **Whether the rules are related to any federal statute or regulation.**

Answer: The rules related to surplus lines, including Appendix 1, are being amended as a result of changes made during the

North Dakota 2011 legislative session to align with the federal Nonadmitted and Reinsurance Reform Act of 2010.

The rules related to the Life and Health Insurance Guaranty Association are not related to any federal statute or regulation.

3. **A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

Answer: Notice of the rulemaking and the public hearing was published in all county newspapers as required by law. The Department of Insurance also uses a basic mailing list to provide notice of each of its rulemaking projects. Additionally, the Department constructs relevant mailing lists for specific rulemaking. A public hearing was held on January 10, 2012, at the State Capitol, Bismarck, North Dakota. Oral comments as well as any written comments that have been received are summarized along with any response to the comments that may seem appropriate and a redrafted rule incorporating any change occasioned by the comments.

4. **Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules.**

Answer: Comments received and action taken to address those comments are summarized in the Summary of Comments attached to Melissa Hauer's testimony.

5. **The approximate cost of giving public notice and holding any hearing on the rules, and the approximate cost (not including staff time) of developing and adopting the rules.**

Answer: The Notice of Hearing was published once in all North Dakota official county newspapers which cost approximately \$1,814 for all of the rules which are before the committee today. Approximately 1,400 notices were sent by email to

insurance companies and interested parties at no cost. Approximately 250 notices were sent by post office mail and the postage charge for this mailing was approximately \$103.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

Answer: N.D. Admin. Code Chapter 45-09-01 – Surplus Lines Insurance. This rule, including Appendix 1, is amended to incorporate changes made during the North Dakota 2011 legislative session to align with the federal Nonadmitted and Reinsurance Reform Act of 2010. Rule language was updated to clarify that state regulation of surplus lines insurance is regulated solely by the home state of the insured. An applicant for a North Dakota nonresident surplus lines license must hold a resident license in the home state of the applicant. The language addressing the diligent search of admitted insurance companies was clarified to specify a licensed surplus lines producer must conduct the search, unless the licensed surplus lines producer deems a search conducted by a licensed producer or the insured was sufficient. The diligent search affidavit and report of placement must be submitted to the Insurance Commissioner within 60 days of placement of the surplus lines policy. Rule sections were repealed that were redundant to current statutes. No comments were received regarding this chapter.

N.D. Admin. Code Chapter 45-11-01 – Life and Health Insurance Guaranty Association. The rule was amended to update the notice that insurers must give to policy owners regarding the limits of the North Dakota Life and Health Guaranty Association. Changes to the limits were made by 2011 Senate Bill No. 2111 which increased the benefit limits from \$100,000 to \$300,000 for long-term care and disability insurance; from \$100,000 to \$500,000 for basic hospital, medical, surgical, and major medical policies; and from \$100,000 to \$250,000 for annuities, government retirement benefit plans and structured settlement annuities. The Guaranty Association limits for life insurance were not changed. Also, 2011 Senate Bill No. 2111 clarifies that Medicare Part C and Part D policies are not covered by the Guaranty Association; it removed the annual \$150 per

member cap and the pro rata option for the Association's assessment of its administrative expenses and legal costs under the Class A assessment authority; it required the Guaranty Association to pay interest on a refund due to a member insurer at the rate earned by the Association; and it required the Guaranty Association's plan of operation to add policies and procedures for the removal of directors for cause and to address conflicts of interest.

Two comments were received on this chapter. One commentor requested that language from the Notice Concerning Coverage not be deleted as proposed.

The commentor stated that it had worked with the Department on the language of the notice prior to the hearing and did suggest that the language referring to variable products contained in the old notice be removed. The commentor's subsequent review suggested that the language should be retained in order to provide proper notice to policyholders that there are additional limits to what will be covered for variable products. The language was retained as suggested by the commentor.

One commentor suggested the Notice Concerning Coverage be replaced with the Notice template as approved by the National Association of Insurance Commissioners (NAIC). The Department discussed the replacement of the template with the North Dakota Life and Health Insurance Guaranty Association which supported using the NAIC approved template. After consideration of the commentor's suggestion and the discussion with the North Dakota Life and Health Guaranty Association, the Department agreed to use the NAIC approved template language.

7. Whether a regulatory analysis was required by N.D.C.C. § 28-32-08 and whether a regulatory analysis was issued.

Answer:

A Regulatory Analysis was prepared and a copy is attached to Melissa Hauer's testimony.

8. **Whether a regulatory analysis or economic impact statement for small entities was required by N.D.C.C. § 28-32-08.1 and whether that regulatory analysis or impact statement was issued.**

Answer: A Regulatory Analysis, Small Entity Economic Impact Statement, and Small Entity Regulatory Analysis were prepared and a copy is attached to Melissa Hauer's testimony.

9. **Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency.**

Answer: A Fiscal Note Regarding Proposed Rules was prepared and a copy is attached to Melissa Hauer's testimony.

10. **Whether a constitutional takings assessment was prepared as required by N.D.C.C. § 28-32-09.**

Answer: A Takings Assessment Concerning Proposed Rules was prepared and a copy is attached to Melissa Hauer's testimony.

11. **If these rules were adopted as emergency (interim final) rules under N.D.C.C. § 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules.**

Answer: The rules were not adopted as emergency rules.

I hope that this response adequately addresses the concerns of the committee. I will be happy to answer any questions that you might have.

JNP/njb

cc: Adam Hamm, Commissioner