Maryland General Assembly
Department of Legislative Services

Proposed Regulation
Maryland Insurance Administration

(DLS Control No. 15-428)

Overview and Legal and Fiscal Impact

The regulations substantially revise current regulations under COMAR 31.04.02 – Examination of Promoters or Controllers of Insurers – which establish requirements for the submission to the Maryland Insurance Commissioner of specified information about any person who exercises control over a substantial portion of the general business of an insurer or the promoter of an insurer.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Insurance Administration:

Insurers: Examination of Promoters or Controllers of Insurers: COMAR 31.04.02.01-.08

Legal Analysis

Background

COMAR 31.04.02, currently entitled "Examination of Promoters or Controllers of Insurers," requires each domestic insurer to submit to the Commissioner, at the time it files its articles of incorporation for approval by the Commissioner, a biographical affidavit and disclosure authorization for each of its "principal management," which is defined to mean any person exercising effective control of any substantial portion of the general business of the insurer or its promoter, and includes the officers, directors, and major shareholders of the entity. Current regulations under Chapter .02 also require the domestic insurer to submit specified documents relating to the insurer, including a proposed plan of operation, require reporting of any changes in principal management, and specify the format and contents of the biographical affidavit and disclosure authorization. The purpose of Chapter .02, as stated in current Regulation .01, is to ensure protection of the public interest "in the promotion of insurance companies proposed to be operated in Maryland." According to the Maryland Insurance Administration, its staff members currently are responsible for reviewing the information contained in each of the approximately 160 biographical affidavit and disclosure authorizations received each year, with each review taking approximately one and a half hours.

Summary of Regulations

The regulations make extensive changes to current regulations under Chapter .02 and the administration's review process. Specifically, as originally submitted, the regulations:

- eliminate references to promoters of insurers throughout the current regulations, including in the definition of "principal management," so that the examination requirements under Chapter .02 no longer apply to these entities;

- restate the purpose of Chapter .02 as ensuring protection of the public interest "by providing for the evaluation of the suitability of certain individuals who exercise control of any substantial portion of insurance companies that do business in the State" (Regulation .01);

- make stylistic changes to the definition of "principal management" (in addition to the substantive change discussed above), substitute a new definition of "person" for the current definition, and add a number of definitions of terms used in Chapter .02, including "affiant," "approved independent third party," biographical affidavit," and "background report" (Regulation .02);

- repeal current requirements relating to the submission by a domestic insurer of a biographical affidavit and disclosure authorization and the reporting of changes in principal management and instead (1) require biographical affidavits to be submitted at specified times, including when an insurer files an application for a certificate of qualification; (2) establish the circumstances under which a foreign insurer must provide a biographical affidavit if the foreign insurer had a change in principal management; and (3) require a domestic insurer to submit a biographical affidavit for any change in principal management within 30 days of the change (Regulation .03);

- repeal the current requirement to furnish a biographical affidavit and disclosure authorization in the format set forth in Regulation .08 and instead (1) require a biographical affidavit to be submitted to the Commissioner and the approved independent third party selected under Regulation .05; (2) specify the contents of the biographical affidavit; (3) provide for the certification, notarization, and dating of the biographical affidavit; (4) establish the manner in which consent is given by the affiant to the release of specified information and the conduct of a background report; and (5) establish the manner in which the affiant may revoke consent (Regulation .04);

- repeal the current requirement to submit a proposed plan of operation of the proposed insurer (Regulation .05);

- establish the responsibility of the person filing the biographical affidavit to (1) select an approved independent third party to verify the information contained in the biographical affidavit and (2) pay for the services provided by the approved independent third party for

the preparation and submission of the background report to the Commissioner (Regulation .05);

- establish requirements for the contents of the background report prepared by the approved independent third party and its submission to the Commissioner (Regulation .06); and

- establish the criteria by which the information contained in the biographical affidavit, the background report, and any other information deemed relevant by the Commissioner will be reviewed (Regulation .07).

The regulations also repeal current Regulation .08, which specifies the form for the biographical affidavit and disclosure authorization, since the requirement to submit this form is repealed.

According to the administration, the regulations implement procedures recommended by the National Association of Insurance Commissioners in its 2014 Company Licensing Best Practices Handbook. The administration also notes that, since most of the review process under the revised regulations will be conducted by an approved independent third party, staff review time will be reduced to a few minutes for each biographical affidavit submitted.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The administration cites §§ 2-109, 2-205(c), 4-108, 4-113(a)(7) through (9), 7-303, 7-603, 8-412, 8-417, 14-109(3), 14-405, and 26-203 of the Insurance Article, and §§ 15-102.6, 19-705, 19-708, and 19-7A-04 of the Health – General Article as statutory authority for the regulations as originally submitted to the committee. However, the administration made changes to the cited authority after submission of the regulations to (1) correct the reference to § 7-303 to be § 7-304; (2) delete § 26-203 since the regulations, as revised by the administration after submission to the committee, do not apply to motor clubs; and (3) add § 19-7A-03 of the Health – General Article as additional authority. The regulations, as revised after submission to the committee, are authorized by §§ 2-109(a)(1), 2-205(c)(1), 4-108(3)(viii), 4-113(a)(7) and (8), 8-417(a), 14-109(3)(vi) and (ix), and 14-405(b)(4) and (14) of the Insurance Article and §§ 15-102.6(a), 19-705(a)(2), 19-708(a) and (b)(3), and 19-7A-03 of the Health – General Article. The remaining cited authority is not relevant to these regulations.

The following authority is provided under the Insurance Article:

- Section 2-109(a)(1) establishes the general authority of the Commissioner to adopt regulations to carry out the Insurance Article;

- Section 2-205(c)(1) requires the Commissioner to examine the affairs, transactions, accounts, records, and assets of each insurer and each health maintenance organization that applies for an original certificate of authority to do business in the State;

- Section 4-108(3)(viii) requires an applicant for an initial certificate of authority to file with the Commissioner "any other information and documents that the Commissioner considers necessary to protect policyholders or ensure compliance with this article";

- Section 4-113(a)(7) and (8) require the Commissioner to deny a certificate of authority to an applicant if (1) the issuance is contrary to the public interest (item (7)) or (2) the Commissioner finds that the principal management of the insurer is untrustworthy or not of good character or so lacking in managerial experience as to make the proposed operation hazardous to the public or the insurer's stockholders (item (8));

- Section 8-417(a) provides that before the Commissioner issues a certificate of authority to a fraternal benefit organization, the Commissioner may make any examination and require any additional information that the Commissioner considers necessary;

- Section 14-109(3)(vi) and (ix) require a nonprofit health service plan that applies for a certificate of authority to file with the Commissioner (1) a list of the names and addresses of and biographical information about the members of its board of directors (item (vi)) and (2) any other information or documents the Commissioner considers necessary to ensure compliance with specified provisions of law (item (ix)); and

- Section 14-405(b)(4) and (14) require an application for a certificate of authority filed by a dental plan organization to include (1) specified information about the individuals who are responsible for the conduct or internal affairs of the dental plan organization (item (4)) and (2) any other information that the Commissioner requires (item (14)).

The following authority is provided under the Health – General Article:

- Section 15-102.6(a) and (c)(2) provide that Title 7 of the Insurance Article applies to managed care organizations (subsection (a)) and authorize the Commissioner to adopt regulations necessary to carry out § 15-102.6 (subsection (c)(2));

- Section 19-702(a)(2) requires the Commissioner, with the advice of the Department of Health and Mental Hygiene, to adopt reasonable rules and regulations to carry out specified provisions of law governing health maintenance organizations (HMOs);

- Section 19-708(a) and (b)(3) and (6) require (1) an applicant for a certificate to operate as an HMO to submit an application on the form the Commissioner requires (subsection (a)) and (2) the application to include or be accompanied by a list of individuals who are to be responsible for the conduct and affairs of the HMO (subsection (b)(3)) and a resume of the qualifications of the HMO's administrator, medical director, and other specified individuals (subsection (b)(6)); and

- Section 19-7A-03 requires a provider-sponsored organization to obtain a license from the Commissioner before operating as a provider-sponsored organization and to meet requirements applicable to an HMO under Title 19, Subtitle 7 of the Health – General Article to the extent the requirements are not preempted by federal law.

The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the administration, in addition to numerous stylistic and technical changes, has agreed to:

- revise Regulation .01 to clarify that Chapter .02 applies to "certain entities" instead of "insurance companies," and to specify that the entities include insurers, health maintenance organizations, managed care organizations, fraternal benefit societies, nonprofit health service plans, and dental plan organizations;

- revise Regulation .02 to add a definition of "entities," which tracks the scope under Regulation .01, and of each kind of entity included in that defined term;

- revise the definition of "independent third party" in Regulation .02 to clarify (1) that it is a consumer reporting agency that meets certain criteria, instead of listing being a consumer reporting agency as a criteria; (2) the limit on stock ownership that must be met to be an independent third party; and (3) that a background report is submitted to the "Commissioner" and not the "State";

- revise Regulation .03 to clarify its application to various "entities" instead of "insurers";

- add references to an "approved" independent third party in Regulations .04A and D, .05C, and .06A and B(2); and

- revise Regulation .07 to clarify that it is the Maryland Insurance Commissioner who reviews certain information.

It should also be noted that as originally submitted, the administration proposed amending Regulations .03 and .05 through .07 but, as revised, these regulations are repealed and added.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The administration advises that the regulations result in minimal workload efficiencies due to staff being required to spend less time reviewing biographic affidavits, but otherwise they have no impact on State or local governments. The Department of Legislative Services concurs and notes that any savings are likely to be negligible.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The administration advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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