CHAPTER 45-03-07.2
LIFE AND HEALTH REINSURANCE AGREEMENTS

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45-03-07.2-01. Scope.

This chapter applies to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers that are not subject to a substantially similar rule in their domiciliary state. This chapter applies to licensed property and casualty insurers with respect to their accident and health business. This chapter does not apply to assumption reinsurance, yearly renewable term reinsurance, or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

History: Effective October 1, 1995.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26.1-02-20

45-03-07.2-02. Accounting requirements.

1. An insurer subject to this chapter, for reinsurance ceded, does not reduce any liability or establish any asset in any financial statement filed with the insurance department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

   a. Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer, in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall, using assumptions equal to the applicable statutory reserve basis on the business reinsured. Those expenses include commissions, premium taxes, and direct expenses including billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured.

   b. The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, may not be considered to be such a deprivation of surplus or assets.

   c. The ceding insurer shall reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in-force reinsurance by the ceding insurer must be considered a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations when termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.

d. At specific points in time scheduled in the agreement, the ceding insurer must terminate or automatically recapture all or part of the reinsurance ceded.

e. The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company.

f. The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies for a representative sampling of products or type of business the risks that are considered to be significant. For products not specifically included, the risks determined to be significant must be consistent with this table.

Risk categories:

(a) Morbidity.

(b) Mortality.

(c) Lapse. This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

(d) Credit quality. This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

(e) Reinvestment. This is the risk that interest rates will fall and funds reinvested, coupon payments or moneys received upon asset maturity or call, will, therefore, earn less than expected. If asset durations are less than liability durations, the mismatch will increase.

(f) Disintermediation. This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

+ - Significant 0 - Insignificant

RISK CATEGORY	a	b	c	d	e	f
Health insurance - other than long-term care or long-term disability	+	0	+	0	0	0
Health insurance - long-term care insurance and long-term disability insurance	+	0	+	+	+	0
Immediate annuities	0	+	0	+	+	0
Single premium deferred annuities	0	0	+	+	+	+

Flexible premium deferred annuities	0	0	+	+	+	+
Guaranteed interest contracts	0	0	0	+	+	+
Other annuity deposit business	0	0	+	+	+	+
Single premium whole life	0	+	+	+	+	+
Traditional non-par permanent	0	+	+	+	+	+
Traditional non-par term	0	+	+	0	0	0
Traditional par permanent	0	+	+	+	+	+
Traditional par term	0	+	+	0	0	0
Adjustable premium permanent	0	+	+	+	+	+
Indeterminate premium permanent	0	+	+	+	+	+
Universal life flexible premium	0	+	+	+	+	+
Universal life fixed premium	0	+	+	+	+	+
Universal life fixed premium, dump-in premiums allowed	0	+	+	+	+	+

g. (1) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not, other than for the classes of business excepted in paragraph 2, either transfer the underlying assets to the reinsurer or legally segregate the assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

(2) Notwithstanding the requirements of paragraph 1, the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment, or disintermediation risk may be held by the ceding company without segregation of the assets:

(a) Health insurance - Long-term care insurance and long-term disability insurance.

(b) Traditional non-par permanent.

(c) Traditional par permanent.

(d) Adjustable premium permanent.

(e) Indeterminate premium permanent.

(f) Universal life fixed premium, no dump-in premiums allowed.

The associated formula for determining the reserve interest rate adjustment must use a formula that reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2\,(I + CG)}{X + Y - I - CG}$$

Where: I is the net investment income.

CG is capital gains less capital losses.

X is the current year cash and invested assets plus investment income due and accrued less borrowed money.

Y is the same as X but for the prior year.

h. Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within ninety days of the settlement date.

i. The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

j. The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

k. The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

2. Notwithstanding subsection 1, an insurer subject to this rule, with the prior approval of the commissioner, may take the reserve credit or establish the asset as the commissioner may deem consistent with North Dakota Century Code title 26.1 or the North Dakota Administrative Code, including actuarial interpretations or standards adopted by the insurance department.

3. a. Agreements entered into after October 1, 1995, which involve the reinsurance of business issued prior to October 1, 1995, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within thirty days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this chapter and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this department. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that the work conforms to this chapter.

b. Any increase in surplus net of federal income tax resulting from arrangements described in subdivision a must be identified separately on the insurer's statutory financial statement as a surplus item, aggregate write-ins for gains and losses in surplus in the capital and surplus account, page 4 of the annual statement, and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "reinsurance ceded" line, page 4 of the annual statement as earnings emerge from the business reinsured.

[For example, on the last day of calendar year N, company XYZ pays a $20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34 percent tax rate, the net increase in surplus at inception is $13.2 million ($20 million - $6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus account. $6.8 million (34 percent of $20 million) is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations.

At the end of year N+1 the business has earned $4 million. ABC has paid $.5 million in profit and risk charges in arrears for the year and has received a $1 million experience refund. Company ABC's annual statement would report $1.65 million (66 percent of ($4 million - $1 million - $.5 million) up to a maximum of $13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and -$1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations.]

History: Effective October 1, 1995; amended effective December 1, 2001.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26.1-02-20

45-03-07.2-03. Written agreements.

1. A reinsurance agreement or amendment to any agreement may not be used to reduce any liability or to establish any asset in any financial statement filed with the department, unless the agreement, amendment, or a binding letter of intent has been duly executed by both parties no later than the as of date of the financial statement.

2. In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding ninety days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

3. The reinsurance agreement must contain provisions that provide that:

   a. The agreement constitutes the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

   b. Any change or modification to the agreement is null and void unless made by amendment to the agreement and signed by both parties.

History: Effective October 1, 1995.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26.1-02-20

45-03-07.2-04. Existing agreements.

Insurers subject to this chapter shall reduce to zero by December 31, 1995, any reserve credits or assets established with respect to reinsurance agreements entered into prior to October 1, 1995, which, under this chapter would not be entitled to recognition of the reserve credits or assets; provided,

however, that the reinsurance agreements must have been in compliance with laws or rules in existence immediately preceding October 1, 1995.

History: Effective October 1, 1995.
General Authority: NDCC 26.1-01-08
Law Implemented: NDCC 26.1-02-20