

CHAPTER 45-03-25
CORPORATE GOVERNANCE ANNUAL DISCLOSURE MODEL REGULATION

Section

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45-03-25-01. Authority.

This chapter is adopted pursuant to the authority granted by North Dakota Century Code chapter 26.1-10.3.

History: Effective October 1, 2019.

General Authority: NDCC 26.1-10.3

Law Implemented: NDCC 26.1-10.3

45-03-25-02. Purpose.

The purpose of this chapter is to set forth the procedures for filing and the required contents of the corporate governance annual disclosure, deemed necessary by the commissioner to carry out the provisions of North Dakota Century Code chapter 26.1-10.3.

History: Effective October 1, 2019.

General Authority: NDCC 26.1-10.3

Law Implemented: NDCC 26.1-10.3

45-03-25-03. Definitions.

1. "Board" means an insurer's or insurance group's board of directors.
2. "Commissioner" means the North Dakota insurance commissioner.
3. "Insurance group" for the purpose of this chapter means those insurers and affiliates included within an insurance holding company system as defined in North Dakota Century Code section 26.1-10-01.
4. "Insurer" has the same meaning as set forth in North Dakota Century Code section 26.1-29-02, except that it does not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.
5. "Senior management" means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing this information to shareholders or regulators and includes the chief executive officer, chief financial officer, chief operations officer, chief procurement officer, chief legal officer, chief information officer, chief technology officer, chief revenue officer, chief visionary officer, or any other "C" level executive.

History: Effective October 1, 2019.

General Authority: NDCC 26.1-10.3

Law Implemented: NDCC 26.1-10.3

45-03-25-04. Filing procedures.

1. An insurer, or the insurance group of which the insurer is a member, required to file a corporate governance annual disclosure pursuant to North Dakota Century Code chapter 26.1-10.3, no later than June first of each calendar year, shall submit to the commissioner a corporate governance annual disclosure that contains the information described in section 45-03-25-05.
2. The corporate governance annual disclosure must include a signature of the insurer's or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer or insurance group has implemented the corporate governance practices and that a copy of the corporate governance annual disclosure has been provided to the board or the appropriate committee thereof.
3. The insurer or insurance group has discretion regarding the appropriate format for providing the information required by these regulations and may customize the corporate governance annual disclosure to provide the most relevant information necessary to permit the commissioner to gain an understanding of the corporate governance structure, policies, and practices utilized by the insurer or insurance group.
4. For purposes of completing the corporate governance annual disclosure, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, or both, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the corporate governance annual disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.
5. Notwithstanding subsection 1, and as outlined in North Dakota Century Code section 26.1-10.3-02, if the corporate governance annual disclosure is completed at the insurance group level, it must be filed with the lead state of the group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the national association of insurance commissioners. In these instances, a copy of the corporate governance annual disclosure also must be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.
6. An insurer or insurance group may comply with this section by referencing other existing documents (e.g., own risk and solvency assessment summary report, holding company form B or F filings, securities and exchange commission proxy statements, or foreign regulatory reporting requirements) if the documents provide information comparable to the information described in subsection 5. The insurer or insurance group clearly shall reference the location of the relevant information within the corporate governance annual disclosure and attach the referenced document if it is not already filed or available to the regulator.
7. Each year following the initial filing of the corporate governance annual disclosure, the insurer or insurance group shall file an amended version of the previously filed corporate governance annual disclosure indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

History: Effective October 1, 2019.

General Authority: NDCC 26.1-10.3

Law Implemented: NDCC 26.1-10.3

45-03-25-05. Contents of corporate governance annual disclosure.

1. The insurer or insurance group shall be as descriptive as possible in completing the corporate governance annual disclosure, with inclusion of attachments or example documents used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.
2. The corporate governance annual disclosure must describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following:
 - a. The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level at which that oversight occurs (e.g., ultimate control level, intermediate holding company, or legal entity). The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and
 - b. The duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, and informal mandates), as well as how the board's leadership is structured, including a discussion of the roles of chief executive officer and chairman of the board within the organization.
3. The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:
 - a. How the qualifications, expertise, and experience of each board member meet the needs of the insurer or insurance group.
 - b. How an appropriate amount of independence is maintained on the board and its significant committees.
 - c. The number of meetings held by the board and its significant committees over the past year as well as information on director attendance.
 - d. How the insurer or insurance group identifies, nominates, and elects members to the board and its committees. The discussion should include, for example:
 - (1) Whether a nomination committee is in place to identify and select individuals for consideration.
 - (2) Whether term limits are placed on directors.
 - (3) How the election and re-election processes function.
 - (4) Whether a board diversity policy is in place and if so, how it functions.
 - e. The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance, including any board or committee training programs that have been put in place.
4. The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

- a. Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience, and integrity to fulfill their prospective roles, including:
 - (1) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed.
 - (2) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.
 - b. The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:
 - (1) Compliance with laws, rules, and regulations; and
 - (2) Proactive reporting of any illegal or unethical behavior.
 - c. The insurer's or insurance group's processes for performance evaluation, compensation, and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description must include sufficient detail to allow the commissioner to understand how the organization ensures that compensation programs do not encourage and reward excessive risk taking. Elements to be discussed may include, for example:
 - (1) The board's role in overseeing management compensation programs and practices.
 - (2) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;
 - (3) How compensation programs are related to both company and individual performance over time;
 - (4) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;
 - (5) Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted; and
 - (6) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.
 - d. The insurer's or insurance group's plans for chief executive officer and senior management succession.
5. The insurer or insurance group shall describe the processes by which the board, its committees, and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities, including a discussion of:
- a. How oversight and management responsibilities are delegated between the board, its committees, and senior management;
 - b. How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks; and

- c. How reporting responsibilities are organized for each critical risk area. The description should allow the commissioner to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:
- (1) Risk management processes. An own risk and solvency assessment summary report filer may refer to its own risk and solvency assessment summary report pursuant to North Dakota Century Code chapter 26.1-10.2;
 - (2) Actuarial function;
 - (3) Investment decisionmaking processes;
 - (4) Reinsurance decisionmaking processes;
 - (5) Business strategy/finance decisionmaking processes;
 - (6) Compliance function;
 - (7) Financial reporting/internal auditing; and
 - (8) Market conduct decisionmaking processes.

History: Effective October 1, 2019.

General Authority: NDCC 26.1-10.3

Law Implemented: NDCC 26.1-10.3

45-03-25-06. Severability clause.

If any provision of this chapter, or the application of this chapter to any person or circumstance, is held invalid, the validity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

History: Effective October 1, 2019.

General Authority: NDCC 26.1-10.3

Law Implemented: NDCC 26.1-10.3