

TITLE 365. INSURANCE DEPARTMENT
SUBCHAPTER 7. COMPANIES
PART 5. OKLAHOMA INSURANCE HOLDING
COMPANY SYSTEM REGULATORY ACT

365:25-7-20. Purpose

The purpose of this Part is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of the Oklahoma Insurance Holding Company System Regulatory Act, 36 O.S. §1631, et seq. ("The Act"). The information called for by this Part is hereby declared to be necessary and appropriate in the public interest and for the protection of policyholders and shareholders in this state.

[Source: Amended at 11 Ok Reg 1861, eff 5-15-94; Amended at 19 Ok Reg 1310, eff 7-14-02; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-7-21. Severability provision

If any provision of this Part, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or applications of this Part which can be given effect without the invalid provision or application, and to that end the provisions of this Part are severable.

[Source: Amended at 11 Ok Reg 1861, eff 5-15-94]

365:25-7-22. Definitions

Unless the context otherwise requires, terms found in this section and in Section 1631 of the Act are used as defined in the said Section 1631. Other nomenclature or terminology is according to the Insurance Code, or industry usage if not defined by the Code. In addition, the following words or terms, when used in this part, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Insurance Holding Company System Regulatory Act, 36 O.S. § 1631, et seq.

"Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

"Foreign insurer" means an alien insurer except where clearly noted otherwise.

"Ultimate controlling person" means that person which is not controlled by any other person.

[Source: Amended at 9 Ok Reg 2885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Amended at 19 Ok Reg 1310, eff 7-14-02; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-7-23. Forms: general requirements

(a) **Forms A, B, C, D, E, and F.** Forms A, B, C, D, E, and F as set forth in Appendices A, B, N, O, Q, and AA of this Chapter, are intended to be guides in the preparation of the statements required by Sections 1633, 1635 and 1636 of the Act. They are not intended to be blank forms

which are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable, or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b) **Filing statements.** Two (2) complete copies of each statement, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commissioner by personal delivery to the Office of the Insurance Commissioner in Oklahoma City, Oklahoma, or by mail addressed to the Insurance Commissioner of the State of Oklahoma, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112. A copy of a Form C shall be filed in each state in which an insurer is authorized to do business, if the Commissioner of that state has notified the insurer of its request in writing, in which case the insurer has thirty (30) days from receipt of the notice to file such form. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(c) **Format of statements.** Statements should be prepared on paper 8 1/2" x 11" in size and preferably bound at the top or the top left hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language, and monetary values shall be stated in United States Currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States Currency.

[**Source:** Amended at 9 Ok Reg 3885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Amended at 11 Ok Reg 1861, eff 5-15-94; Amended at 12 Ok Reg 3155, eff 7-31-95; Amended at 14 Ok Reg 2964, eff 7-14-97; Amended at 19 Ok Reg 1310, eff 7-14-02; Amended at 30 Ok Reg 1797, eff 7-14-13; Amended at 33 Ok Reg 1720, eff 9-15-16; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-7-24. Forms: incorporation by reference, summaries and omissions

(a) **Incorporated by reference.** Information required by an item of Form A or Form B or Form D or Form E or Form F, as set forth in Appendices A, B, O, Q, and AA of this Chapter may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A or Form B or Form D or Form E or Form F provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Commissioner which were filed

within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(b) **Summary or outline of document.** Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Commissioner which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of such documents need to be filed with a schedule identifying the omitted documents and setting forth the material details in which the omitted documents differ from the documents filed.

[Source: Amended at 9 Ok Reg 3885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Amended at 11 Ok Reg 1861, eff 5-15-94; Amended at 33 Ok Reg 1721, eff 9-15-16]

365:25-7-25. Forms: information unknown or unavailable and extension of time to furnish

(a) **Information unknown or unavailable.** Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

- (1) The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and
- (2) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

(b) **Extension of time to furnish.** If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Commissioner as a separate document:

- (1) identifying the information, document or report in question;
- (2) stating why the filing thereof at the time required is impractical; and
- (3) requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the Commissioner within 60 days after receipt thereof enters an order denying the request.

[Source: Amended at 9 Ok Reg 3885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Amended at 11 Ok Reg 1861, eff 5-15-94]

365:25-7-26. Forms: additional information and exhibits

In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E, and Form F as set forth in Appendices A, B, N, O, Q, and AA of this Chapter, the Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as he/she may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, D, E, or F, as set forth in Appendices A, B, N, O, Q, and AA of this Chapter, shall include on the top of the cover page the phrase: "Change No. [insert number] to" and shall indicate the date of the change and not the date of the original filing.

[Source: Amended at 9 Ok Reg 3885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Amended at 11 Ok Reg 1861, eff 5-15-94; Amended at 33 Ok Reg 1721, eff 9-15-16]

365:25-7-27. Forms: amendments [REVOKED]

[Source: Amended at 9 Ok Reg 3885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Revoked at 11 Ok Reg 1861, eff 5-15-94]

365:25-7-27.1. Subsidiaries of domestic insurers

The authority to invest in subsidiaries under Section 1632 of the Act is in addition to any authority to invest in subsidiaries which may be contained in any other provision of the Insurance Code.

[Source: Added at 9 Ok Reg 2885, eff 8-24-92 (emergency); Added at 10 Ok Reg 1487, eff 5-1-93; Amended at 25 Ok Reg 1660, eff 7-14-2008; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-7-28. Acquisition of control; statement filing (Form A)

(a) **Form A.** A person required to file a statement pursuant to Section 1633 of the Act shall furnish the required information on Form A, hereby made a part of this section, as set forth in Appendix A of this Chapter. Such person shall also furnish the required information on Form E, as set forth in Appendix Q of this Chapter.

(b) **Amendments to applications.** The applicant shall promptly advise the Commissioner of any changes in the information so furnished on Form A arising subsequent to the date upon which such information was furnished, but prior to the Commissioner's disposition of the application.

(c) **Identification of section 1633(A) insurers.**

(1) **Domestic insurer name.** If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of Section 1633(A) of the Act, the name of the domestic insurer on the cover page should be indicated as follows: "ABC Insurance Company, a subsidiary of XYZ Holding Company."

(2) **Section 1633(A).** Where a Section 1633(A) insurer is being acquired, references to "the insurer" contained in Form A (Appendix A of this Chapter) shall refer to both the domestic subsidiary insurer and the person being acquired.

(d) **Hearing on Acquisition of Control.** Section 1633(D)(2) requires a public hearing to be held within thirty (30) days after the statement required by subsection A of section 1633 is filed. The statement required by subsection A of section 1633 is considered filed with the Insurance Commissioner once the Insurance Commissioner has provided notification to the applicant the statement required by subsection A of section 1633 is complete.

[Source: Amended at 9 Ok Reg 3885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Amended at 11 Ok Reg 1861, eff 5-15-94; Amended at Ok Reg 1744, eff 9-14-18]

365:25-7-28.1. Pre-acquisition notification

If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Section 1633(A) of the Act, that person shall file a preacquisition notification form, Form E, as set forth in Appendix Q of this Chapter. In addition to the information required by Form E, the Commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

[Source: Added at 11 Ok Reg 1861, eff 5-15-94; Amended at 12 Ok Reg 3155, eff 7-31-95; Amended at 17 Ok Reg 1690, eff 7-14-00; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-7-29. Annual registration of insurers; statement filing (Form B)

(a) **Form B.** An insurer required to file an annual registration statement pursuant to Section 1635 of the Act shall furnish the required information on Form B, hereby made a part of this section, as set forth in Appendix B of this Chapter.

(b) **Summary registration.** An insurer required to file an annual registration statement pursuant to Section 1635 of the Act is also required to furnish information required on Form C, as set forth in Appendix N of this Chapter. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the Commissioner of that state.

(c) Amendments to Form B.

(1) **15 day amendments.** An amendment to Form B (Appendix B of this Chapter) shall be filed within 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement.

(2) **Filing date amendments.** Amendments shall be filed in the Form B format, as set forth in Appendix B of this Chapter, with only those items which are being amended reported. Each amendment shall include at the top of the coverage "Amendment No. [insert number] to Form B for [insert year]" and shall indicate the date of the change and not the date of the original filing.

(d) Alternative and consolidated registrations

(1) **Registration statement for affiliates.** Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Section 1635 of the Act. A registration statement may include information not required by

the Act regarding any insurer in the insurance holding company system even if such insurer is not authorized to do business in this State. In lieu of filing a registration statement on Form B (Appendix B of this Chapter), the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided:

- (A) the statement or report contains substantially similar information required to be furnished on Form B; and
- (B) the filing insurer is the principal insurance company in the insurance holding company system.

(2) **Principal insurance company in holding company.** The question of whether the filing insurer is the principal insurance company in the insurance holding system is a question of fact and an insurer filing a registration statement or reporting in lieu of Form B (Appendix B of this Chapter) on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

(3) **Unauthorized insurers.** With the prior approval of the Commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under (1) of this subsection.

(4) **Section 1635(H) or (I).** Any insurer may take advantage of the provisions of Section 1635(H) or (I) of the Act without obtaining the prior approval of the Commissioner. The Commissioner, however, reserves the right to require individual filings if he/she deems such filings necessary in the interest of clarity, ease of administration or the public good.

(e) **Disclaimers and termination of registration**

(1) **Disclaimer of affiliation.** A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information:

- (A) the number of authorized, issued and outstanding voting securities of the subject.
- (B) with respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly.
- (C) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person.
- (D) a statement explaining why such person should not be considered to control the subject.

(2) **Termination of registration.** A request for termination of registration shall be deemed to have been granted unless the Commissioner, within 30 days after receipt of the request, notifies the registrant otherwise.

[Source: Amended at 9 Ok Reg 2097, eff 6-15-92; Amended at 9 Ok Reg 3885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Amended at 11 Ok Reg 1861, eff 5-15-94; Amended at 12 Ok Reg 3155, eff 7-31-95; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-7-29.1. Transactions subject to prior notice - notice filing (Form D)

An insurer required to give notice of a proposed transaction pursuant to Section 1636 of the Act shall furnish the required information on Form D, hereby made a part of this section, as set forth in Appendix O of this Chapter.

[Source: Added at 9 Ok Reg 3885, eff 8-24-92 (emergency); Added at 10 Ok Reg 1487, eff 5-1-93; Amended at 11 Ok Reg 1861, eff 5-15-94; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-7-29.2. Enterprise risk report

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Section 1635(L) of Title 36 of the Oklahoma Statutes shall furnish the required information on Form F, as set forth in Appendix AA, hereby made a part of these regulations.

[Source: Added at 33 Ok Reg 1721, eff 9-15-16; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-7-30. Extraordinary dividends and other distributions

(a) **Request for approval of extraordinary dividends.** Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

- (1) the amount of the proposed dividend;
- (2) the date established for payment of the dividend;
- (3) a statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
- (4) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
 - (A) the amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurers own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
 - (B) surplus as regards policyholders (total capital and surplus) as of the 31st day of the December next preceding;
 - (C) if the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;
 - (D) if the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-months periods; and
 - (E) if the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two (2) calendar years.

(5) a balance sheet and statement of income for the period intervening from the last annual statement filed with the Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(6) a brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(b) **Report of dividends and distributions.** Subject to subsection (B) of Section 1636 of the Act, each registered insurer shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by Section 1636(A) and (B).

[Source: Amended at 9 Ok Reg 3885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Amended at 11 Ok Reg 1861, eff 5-15-94; Amended at 25 Ok Reg 1660, eff 7-14-2008; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-7-31. Adequacy of surplus

The factors set forth in Section 1636(D) of the Act are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The Commissioner, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

[Source: Amended at 9 Ok Reg 2885, eff 8-24-92 (emergency); Amended at 10 Ok Reg 1487, eff 5-1-93; Amended at 21 Ok Reg 1668, eff 7-14-04; Amended at 35 Ok Reg 1744, eff 9-14-18]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 25. OTHER LICENSEES SUBCHAPTER 9. PREPAID FUNERAL BENEFITS

365:25-9-1. Purpose

The purpose of this subchapter is to set forth rules and procedural requirements which the Commissioner deems necessary to carry out the provisions of "The Act". The information called for by the regulations of this subchapter is hereby declared to be necessary and appropriate in the public interest.

365:25-9-2. Contract approval

No organization shall in any way use any sales Contract without having received prior written approval from the Insurance Commissioner to do so. The original and two copies of any such Contract, including any amendments thereto, shall be submitted to the Insurance Commissioner for approval.

[Source: Amended at 10 Ok Reg 1507, eff 5-1-93]

365:25-9-3. Forms

(a) General requirements.

(1) **Application for prepaid funeral benefits permit form.** An application for Prepaid Funeral Benefits form shall be filed using the Prepaid Funeral Benefits Permit Original Application as set forth in Appendix C of this chapter. The application must be filed with and approved by the Insurance Commissioner before any contracts covered by this act may be marketed. The statutory fee of \$50.00 must accompany this application. An NAIC UCAA Biographical Affidavit must be submitted for each owner(s) of the organization and each designated agent as defined by Section 6126 of the Act.

(2) **Bond form requirements.** Appendix D of this chapter is a sample bond to be used in connection with "The Act". Any variance from this form must have the prior written approval of the Insurance Commissioner. If any bond required by "The Act" is canceled for any reason, a thirty (30) day written notice must be given by the insurer to the Insurance Commissioner.

(3) **Conversion Forms.** Applications for Conversion from a trust funded prepaid funeral benefit to an insurance-funded prepaid funeral benefit shall be filed with and approved by the Insurance Commissioner before any contracts covered by "The Act" may be converted. Applications for Conversion shall be filed using the Application for Conversion form as set forth in Appendix R of this chapter. Any variance from this form must have prior written approval by the Insurance Commissioner.

(4) **Notice of Sale.** The seller of a prepaid funeral benefits permit holding funeral home must make application forty-five (45) days prior to the transfer of ownership using the Sellers Notice to the Insurance Commissioner (PFSN 2009) form as set forth in Appendix X of this chapter. In addition to the notice, the seller must also submit a listing of unrealized prepaid funeral contracts. Insurance funded contracts should be listed independently from trust funded contracts. The listing will, at minimum, reflect the contract holder's name, contract number, contract value, the name of the insurer and the policy's face value (when applicable), and the trust value at the time of notice (when applicable).

(5) **Assumption Affidavit.** The buyer of a prepaid funeral benefits permit holding funeral home must notify the Commissioner of their intent to purchase thirty (30) days prior to transfer of ownership using the Assumption Affidavit (PFAA 2009) form as set forth in Appendix Y of this chapter.

(6) **Application for Renewal.** The application for renewal of a prepaid funeral benefits permit must be filed with the Commissioner no later than December 31 of each year, using the Application for Renewal (PFBR 2009) form as set forth in Appendix M of this chapter, in order to renew the permit for the succeeding calendar year. The statutory fee of \$50.00 must accompany the application.

(b) Additional general requirements.

Annual reports.

(A) Annual reports must be filed in accordance with Section 6128 of "The Act". Such reports should be submitted in columnar form in alphabetical order according to the last name of the contract holder. A complete annual report shall be composed of the following items arranged in the order shown below:

- (i) PF-1-a
- (ii) PF-1-b
- (iii) PF-1-c
- (iv) PF-1-d
- (v) PF-2-a
- (vi) PF-2-b
- (vii) PF-2-c
- (viii) PF-3

(B) Computer print-outs may be submitted in lieu of the reports listed above so long as each legibly provides no less information than shown in the Insurance Commissioner's sample forms. Not less than one page of each annual report form shown above, other than the PF-2-b, shall be submitted. However, where a particular form is not relevant to the operations of a given permitholder, it may be submitted clearly marked, "Not Applicable".

(2) **Annual statement of financial condition.** An Annual Statement of Financial Condition-Reconciliation of Trust Accounts (form PF-3) must be filed in accordance with Section 6129 of "The Act".

[Source: Amended at 10 Ok Reg 1507, eff 5-1-93; Amended at 17 Ok Reg 1701, eff 7-14-00; Amended at 25 Ok Reg 1660, eff 7-14-2008; Amended at 26 Ok Reg 1654, eff 7-14-09; Amended at 27 Ok Reg 1551, eff 7-14-10]

365:25-9-4. Deposit reports and conversion reports

(a) **Deposit Reports.** In addition to any other requirements of this subchapter, the seller shall upon written request provide a report reflecting the funds deposited and all related details to the Insurance Commissioner, trust account depository and to any buyer requesting same, so far as the requested information relates to the individual buyer's contract.

(b) **Conversions.** A permit holder subject to this section shall maintain a file copy of the original trust-funded prepaid funeral contracts that have been converted to insurance funded and the payment history records for each converted contract prior to conversion.

[Source: Amended at 17 Ok Reg 1701, eff 7-14-00]

365:25-9-5. Prohibited acts

(a) **Assignment not to exceed the maximum amount allowed by statute.** Any officer, director, agent or employee of any organization subject to the terms of 36 O.S. §6121 (1981), as amended, or any licensed funeral director, personally or through the act of a representative or employee, may receive an assignment, not to exceed the statutory limits, of the benefits from any life or

accident insurance policy, or from any other lawful contract of insurance, for the direct or indirect payment of funeral costs, subject to the following conditions:

- (1) The assignor shall retain the right to revoke the assignment at any time prior to the date the assignee furnishes or causes to be furnished the funeral merchandise and/or services contracted for, unless the assignment has been made irrevocable.
- (2) The assignor shall retain the right to designate and change the beneficiary of any lawful contract of insurance, unless the assignment has been made irrevocable.
- (3) The assignee shall not exercise its right to surrender the contract of insurance prior to such time as it furnishes the funeral merchandise and/or services contracted for.
- (4) Any such assignment not made irrevocable shall provide that in the event the assignor should desire to cancel the assignment prior to performance thereunder by the assignee, such cancellation may be accomplished by the assignor giving prior notice in writing to the assignee. Upon receipt of such cancellation notice by the assignee, assignee shall promptly execute an assignment release relinquishing its interest in the contract of insurance.

(b) **Prohibited acts.** In connection with any such assignment contemplated by (a) of this section, no officer, director, agent or employee of any organization subject to the terms of 36 O.S. §6121 et seq. (1981), as amended, or any licensed funeral director, personally or through the act of a representative or employee, may:

- (1) Take possession from any person of a policy of life or accident insurance, or any other lawful contract of insurance, or any evidence of insurability under any such policy or contract while, directly or indirectly, furnishing funeral merchandise or services.
- (2) Make a claim on said policy or contract, or forward any claim on any such policy or contract to the insurer involved, unless the merchandise or services have been furnished prior to the making of any such claim.

[Source: Amended at 10 Ok Reg 1507, eff 5-1-93]

365:25-9-6. Amendments

Amendments to any filing(s) required under "The Act" shall be submitted to the Insurance Commissioner in the same manner as the original filing.

[Source: Amended at 10 Ok Reg 1507, eff 5-1-93]

365:25-9-7. Severability provision

If any provisions of this subchapter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or application of this subchapter which can be given effect without the invalid provision or application, and to that end the provisions of this subchapter are severable.

365:25-9-8. Conversion from trust to insurance funded contracts

(a) Conversion permitted only on forms approved by Oklahoma Insurance Department. Pursuant to Title 36 Okla. Stat. § 6136.18 existing prepaid funeral contracts that utilize trust funded

benefits may be converted to insurance funded prepaid funeral benefits provided the application for such conversion is made on forms approved by the Oklahoma Insurance Department which meet the requirements of the Oklahoma Insurance Code and this subchapter.

(b) Definitions. The words and terms used in this section shall be defined according to this title, unless otherwise defined herein or unless the context clearly indicates otherwise.

(1) "Applicant" means a permit holder who files an application with the Oklahoma Insurance Department to convert its trust-funded prepaid funeral benefit contract(s) under existing contracts to insurance funded prepaid funeral benefit contract(s).

(2) "Cash Surrender Value" means the net amount due the policy owner from the insurer upon surrender of an insurance policy, which will never be less than the amount of the trust funds transferred from the trust to the insurance policy as of transfer date.

(3) "Death Benefit" means the total of all contract principal payments collected and accumulated earnings that are transferred at conversion, together with all future gross premiums paid and all accumulated interest earned annually on accumulated interest thereon. Interest must be compounded annually and calculated on gross premiums paid. The post-conversion death benefit can never be less than the pre-conversion death benefit.

(4) "Insurance policy" means either:

(A) A standard life or accident insurance policy; or

(B) An individual or group fixed annuity contract relating to an insurance conversion application.

(5) "Load" means any commission, allowance, surrender charge or other compensation, expense load, premium expense, administrative charge or expense, policy fees, or other fee or expense paid to an Oklahoma Insurance Department licensed agent associated with or occurring by reason of sale, issuance, lapse, surrender, or redemption of an insurance policy in connection with the conversion of any trust-funded prepaid funeral contract to insurance funded prepaid funeral contract.

(6) "Post-conversion Administrator" means the administrator, who shall be the funeral home requesting conversion or an administrator selected by the funeral home requesting conversion, of the prepaid funeral benefits contracts who holds and administers the prepaid funeral contracts after conversion and assumes responsibility for receiving the proceeds of the insurance policy upon maturity of a contract and processing payment to the funeral provider after verifying that the funeral service and merchandise under the prepaid funeral contract have been delivered.

(7) "Required reserves" means the reserve liabilities for all outstanding insurance contracts valued or calculated pursuant to actuarial standards and statutory accounting standards not inconsistent with the Oklahoma Insurance Code.

(c) Applications. When applying for permission to convert trust funded benefits under existing prepaid funeral contracts to insurance funded benefits, an applicant shall:

(1) Hold a valid permit issued by the Oklahoma Insurance Department;

(2) Be in good standing with the Oklahoma Insurance Department;

(3) Submit a completed conversion application to the Oklahoma Insurance Department;
and

- (4) Not have been found to be in violation of any applicable laws or regulations relating to the Oklahoma Insurance Code or not have any other deficiencies of any significance that have not been remedied or corrected to the satisfaction of the Oklahoma Insurance Department.
- (d) Included in application. Each application for conversion must include:
- (1) A copy of a letter to the applicant from an insurer authorized to do business in Oklahoma evidencing the policy form number and setting out the insurer's agreement to issue insurance policies to convert the prepaid funeral contracts from trust-funded benefits to insurance funded benefits; and
 - (2) A copy of the written commitment to the Commissioner containing the agreement between or among the insurer, the applicant, and the post-conversion administrator regarding the transfer, receipt, and the application of the trust funds upon conversion, which commitment must require that a copy of each insurance policy issued be furnished to the owner of the insurance policy and that a copy be made available to the respective prepaid funeral contract purchasers upon request, in the event they are not the owners of the policies;
 - (3) A pre-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of a date within thirty (30) days of the date of the application), as well as aggregated totals for each category of information, if appropriate:
 - (A) Individual prepaid funeral benefits contract purchaser's name;
 - (B) Individual prepaid funeral benefits contract owner's name if other than the purchaser;
 - (C) Date of execution of pre-converted prepaid funeral contract;
 - (D) Face amount of the contract;
 - (E) Amount paid in and the unpaid balance;
 - (F) Accumulated earnings;
 - (G) Amount due the prepaid funeral contract purchaser upon cancellation and the amount due the applicant upon death of the prepaid funeral contract owner, assuming death or cancellation were to occur on or about the date of the application;
 - (H) Amount retained by the applicant under the Okla. Stat. tit. 36, § 6125; and
 - (I) Whether the pre-converted contract is or was a contract pursuant to Okla. Stat. tit. 36, § 6125(B)(1) or § 6125 (B)(2).
 - (4) A post-conversion summary of the individual prepaid funeral contracts, which must include, at a minimum, the following information (as of the same date as the pre-conversion summary), as well as aggregated totals for each category of information, if appropriate:
 - (A) Name of insured or annuitant;
 - (B) Owner of insurance policy or annuity if other than the insured or annuitant;
 - (C) Original prepaid funeral contract amount;
 - (D) Amount paid in and the unpaid balance;
 - (E) Amount applied to the purchase of the insurance policy;

- (F) Initial cash surrender value and initial death benefit under the insurance policy; and
 - (G) Amount retained by the applicant under the Okla. Stat. tit. 36, § 6125
- ~~(5) A copy of the proposed negative response notification letter, as required in Okla. Stat. tit. 36, § 6136.18(C)(2), to the prepaid funeral contract purchasers from the applicant containing a statement explaining the purchaser has sixty (60) days to file a written request with the Department to have the contract converted back to trust fund benefits;~~
- ~~(56)~~ An actuarial certification certifying that the reserves to be held by the insurance company with respect to the conversion will be adequate to pay claims as they become due (dated no more than six (6) months prior to the date of the application);
 - ~~(76)~~ A copy of the form of assignment, if any, to be used in assigning insurance policy rights or proceeds to the post-conversion administrator.
- (e) Standards for approval of application. An application for conversion will be approved by the Commissioner if, in the Commissioner's opinion, the rights and interests of the prepaid funeral contract purchasers under the insurance funded contract arrangement will be safeguarded to at least the same degree as provided under the trust-funded benefits contract. An application may be approved without the necessity of a hearing.
- (1) In order for insurance funded contracts under an application for conversion to be considered to safeguard the rights and interests of the prepaid funeral contract purchasers to at least the same degree as the trust-funded benefits, insurance benefits must comply with this subsection.
 - (A) The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal by the applicant pursuant to the Insurance Code under the trust-funded prepaid funeral contract proposed for conversion, plus all net earnings accumulated with respect thereto, as of the transfer date. No load may be deducted from the trust funds transferred pursuant to the conversion application.
 - (B) No provision in the insurance policy may allow for contesting coverage, limit death benefits in the case of suicide, refer to physical examination, or otherwise operate as an exclusion, limitation or condition other than requiring submission of proof of death or surrender of the policy at the time the prepaid funeral contract is funded, matures, or cancels, as the case may be.
 - (C) The insurance company must demonstrate that, in the previous seven years, the average death benefit growth under the same or substantially similar insurance policies issued by the insurance company to fund prepaid funeral contract has been at least 3.0% of accumulated premiums based on gross premiums paid. If the insurance company cannot so demonstrate, then the insurance policy must provide for guaranteed growth of the death benefit of no less than 2.0% annum compounded annually on gross premiums paid beginning in the first year of the policy.
 - (D) The post-conversion administrator is responsible for payment of all death and cancellation claims pursuant to the terms of the prepaid funeral benefits contract and in accordance with Okla. Stat. tit. 36, § 6125.

(E) Any insurance policy issued on any individual must be for an amount not less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental insurance policy issued to cover the unfunded portion of the contract must have a face amount that is at least as great as the unfunded principal balance. No credit or reduction may be made for interest earned or accrued on the paid-in principal balance.

(F) The insurance policy must provide each prepaid funeral contract purchaser with a cash surrender value or cancellation benefit that is at least the same the amount of the trust funds transferred from the trust to the insurance policy as of transfer date and for the duration of the prepaid funeral contract less any amount due to the purchaser from the funeral home, if any, as set forth in Okla. Stat. tit. 36, § 6125. If a prepaid funeral contract is canceled at the initiative of the purchaser after the 60-day initial conversion cancellation period or the purchaser requests withdrawal of monies prior to death and in accordance with Okla. Stat. tit. 36, § 6125, the Funeral Home/Applicant or post conversion administrator must remit at least the applicable cancellation benefit directly to the purchaser in accordance with the provision of the prepaid funeral contract and in accordance with Okla. Stat. tit. 36, § 6125(B)(1).

(G) The post-conversion administrator must submit to the department, within 90 days of the date of transfer of the trust funds as authorized by the Commissioner's order, a post-conversion summary of the individual prepaid funeral contracts as of the conversion date, which must include, at a minimum, the following information, as well as aggregated totals for each category of information, if appropriate:

- (i) Insured's name;
- (ii) Insured's policy number;
- (iii) The original prepaid funeral contract amount;
- (iv) Amount paid in;
- (v) Unpaid balance of the prepaid funeral contract;
- (vi) Amount retained by the applicant under Okla. Stat. tit. 36, § 6125;
- (vii) Amount applied to the purchase of the insurance policy; and
- (viii) Initial cash surrender value and initial death benefit under the insurance policy.

(H) The applicant shall relinquish to the post-conversion administrator the individual prepaid funeral contract ledgers reflecting the amount paid and the amount left owing on the prepaid funeral contract, if any. The post-conversion administrator shall be responsible for maintaining such ledgers to reflect the principal balance of the converted contract as well as any outstanding balances.

(I) Within 90 days of the execution of the conversion order, the post-conversion administrator must submit a notarized statement to the department attesting that the insurance policies have been issued and funded on behalf of the contract purchasers listed in the original post-conversion summary included in the conversion application and that all notices required under subsection (c)(3)(I) of

this section have been given. Within 120 days of the execution of the conversion order, all requirements under this section for completion of a conversion must be met, if they are not, the conversion order is void without further action of the department. (J) If for any reason the Commissioner deems it necessary before final approval of the conversion order, the Commissioner may order a financial examination of the trust. The cost of said financial examination shall be paid by the applicant and conducted in accordance with Section 6129.1 of Title 36 of the Oklahoma Statutes, as the Commissioner deems warranted. The applicant shall demonstrate compliance with the Oklahoma Insurance Code, and if the applicant fails to do so, the Commissioner may request an examination of the trust as set forth in Section 6129.1 of Title 36 of the Oklahoma Statutes.

(K) The Commissioner may hold a hearing on an application. Hearings shall be conducted pursuant to the Oklahoma Insurance Code, Insurance Department rules and regulations, and the laws of the State of Oklahoma. The applicant shall have the burden to demonstrate by a preponderance of the evidence the existence of all factors necessary to entitle the applicant to convert to insurance funded benefits from trust-funded benefits.

[Source: Added at 17 Ok Reg 1701, eff 07-14-00; Amended at 17 Ok Reg 3281, eff 07-14-00 (emergency); Amended at 18 Ok Reg 1302, eff 07-14-01; Amended at 26 Ok Reg 1654, eff 7-14-09]

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES**

SUBCHAPTER 15. CAPTIVE INSURANCE COMPANIES REGULATION

365:25-15-1. Purpose and authority

This subchapter provides rules for administering the Oklahoma Captive Insurance Company Act, 36 O.S. §§ 6470.1, et seq., and applicable provisions of the Oklahoma Insurance Code. This subchapter sets forth the financial, reporting, and other requirements which the Insurance Commissioner deems necessary for the regulation of captive insurance companies, as authorized by the Oklahoma Insurance Code and the Oklahoma Captive Insurance Company Act. References to "company" in this subchapter shall mean captive insurance company or companies, unless otherwise specified.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1902, eff 9-15-14]

365:25-15-1.1. Definitions

(a) “Feasibility study” means an analysis of the owner/insured’s risk profile and financial condition.

(1) The analysis must include and consider the following issues, but is not limited to:

(A) a detailed analysis as to how the captive will effect risk management and loss control;

(B) risks to be insured;

(C) recommendations and projections by a qualified independent actuary recommended premiums, losses, expenses and retentions;

(D) tax projections;

(E) domicile options that address the impact on operating costs and tax issues;

(F) comparison of a captive program with other viable risk financing alternatives;

(G) five-year pro forma financial statements and projections, analysis of the financial impact of establishing a captive, of any form; and

(I) identification of management procedures, underwriting procedures, managerial oversight methods, investment policies, and reinsurance agreements.

(b) "Business plan" means the business activity of the company designed to accomplish its stated purpose. At a minimum, it must include the following:

(1) identity of the ownership and management;

(2) the type and expected volume of business to be written;

(3) details of any reinsurance agreements to be entered into;

(4) details of any management services or tax allocation agreements; and

(5) financial projections as required per subsection (a)(1)(G) above.

365:25-15-2. Annual reporting requirements

(a) Except as provided in 36 O.S. § 6470.11, a captive insurance company doing business in this State shall annually, prior to March 1, submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that prescribed by the Insurance Commissioner as "Oklahoma Captive Insurance Company Annual Report."

(b) A company that elects to file its annual report on a fiscal year basis pursuant to 36 O.S. § 6470.11(C), shall file such report no later than 60 days following the close of such fiscal year.

(c) A company that elects to file its annual report on a fiscal year basis shall submit, concurrently with each premium tax return required in connection with premium taxes due under 36 O.S. § 6470.19 pages 1 through 7 of the "Captive Annual Statement: Pure or Industrial Insured," verified by oath of two of its executive officers.

(d) In order to verify results reported in the company's annual report, each company shall cause its books and records to be audited annually by an independent certified public accounting firm approved in accordance with Section 4 of this Subchapter.

(e) In order to further verify results reported in the company's annual report each company shall cause to be prepared an actuarial opinion by a qualified actuary certifying the accuracy of the company's life, health, or annuity insurance reserves, or its loss reserves and loss expense reserves, as reported in the annual report. "Qualified actuary" means an individual who is a member of the American Academy of Actuaries or the Casualty Actuarial Society and who has met the Qualification Standards for Actuaries Issuing Statements of Actuarial Opinions in the United States.

(f) A risk retention group doing business in this State shall annually submit to the Insurance Commissioner a report of its financial condition, verified by oath of two of its executive officers. The report shall be that required by Section 311 of Title 36 of the Oklahoma Statutes.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1902, eff 9-15-14; Amended at 32 Ok Reg 1964, eff 9-15-15; Amended at 35 Ok Reg 1744, eff 9-14-18]

365:25-15-3. Annual Audit

(a) All companies shall have an annual audit by an independent certified public accountant, authorized by the Insurance Commissioner, and shall file such annual audited financial report with the Insurance Commissioner on or before June 30 for the year ending December 31 immediately preceding.

(b) A pure captive insurance company may make written application to file its annual report on a fiscal year basis and, if approved by the Commissioner, shall file such report no later than one hundred eighty (180) days following the close of the fiscal year.

(c) A company that elects to file its annual report on a fiscal year basis shall submit, concurrently with each premium tax return required, a schedule detailing the net direct written premium and assumed premium for the fiscal year in question.

(d) The annual audited financial report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the Insurance Commissioner.

(e) The annual audited financial report shall consist of the following:

(1) Opinion of Independent Certified Public Accountant

(A) Financial statements furnished pursuant to this section shall be examined by independent certified public accountants in accordance with generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner.

(B) The opinion of the independent certified public accountant shall cover all years presented.

(C) The opinion shall be addressed to the company on stationery of the accountant showing the address of issuance, shall bear original manual signatures and shall be dated.

(2) Report of Evaluation of Internal Controls

(A) In addition to the annual audit, each company shall furnish the Commissioner with a written report, prepared in accordance with SAS No. 112, or any successor thereto, by the independent certified public accounting firm describing significant deficiencies and material weaknesses in the company's internal control structure.

(B) The review shall be conducted in accordance with generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and the report shall be filed with the Insurance Commissioner.

(C) The company is required to provide a description of remedial actions taken or proposed to correct material weaknesses and, at the Commissioner's discretion, significant deficiencies, if such actions are not described in the independent certified public accounting firm's report.

(3) **Accountant's Letter.** The independent certified public accountant shall furnish the company, for inclusion on the filing of the annual audited financial report, a letter stating:

(A) That he or she is independent with respect to the company and conforms to the standards of his/her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board.

(B) The general background and experience of the staff engaged in audit including the experience in auditing captives or other insurance companies.

(C) That the accountant understands that the audited annual report and his opinions thereon will be filed in compliance with this regulation with the Department, and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of the company.

(D) That the accountant consents to the requirements of 365:25-15-4(c) of this regulation and that the accountant consents and agrees to make available for review by the Insurance Commissioner, or his appointed agent, the work papers as defined in 365:25-15-4(c).

(E) That the accountant is properly licensed by an appropriate state licensing authority and that he or she is a member in good standing in the American Institute of Certified Public Accountants.

(4) **Financial Statements.** Statements required shall be as follows:

(A) Balance sheet,

(B) Statement of gain or loss from operations,

(C) Statement of changes in financial position,

(D) Statement of changes in capital paid up, gross paid in and contributed surplus and unassigned funds (surplus), and

(E) Notes to financial statements. The notes to financial statements shall be those required by generally accepted accounting principles, or as required by any other comprehensive basis of accounting in use by the company and approved by the Insurance Commissioner, and shall include:

(i) A reconciliation of differences, if any, between the audited financial report and the statement or form filed with the Insurance Commissioner.

(ii) A summary of ownership and relationship of the company and all affiliated corporations or companies insured by the captive.

(iii) A narrative explanation of all material transactions and balances with the company. "Material transactions" means sales, guarantees, purchases, exchanges, loans or extensions of credit or investments which, based upon an annual aggregate, involve more than three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of the insurer's surplus as regards policyholders, whichever is less, as of the latest annual financial statement filed with the Commissioner.

(5) **Certification of Loss Reserves and Loss Expense Reserves**

(A) The annual audit shall include an opinion as to the adequacy of the company's life, health, or annuity reserves, or its loss reserves and loss expense reserves.

(B) Certification shall be in such form as the Insurance Commissioner deems appropriate.

(f) Upon request by the company and for good cause shown, the Commissioner may grant an exemption from the annual audit requirement for any company having direct written and assumed premiums of Two Million Dollars (\$2,000,000.00) or less in the preceding year.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1902, eff 9-15-14; Amended at 32 Ok Reg 1964, eff 9-15-15]

365:25-15-4. Independent Certified Public Accountant

(a) **Designation of Independent Certified Public Accountant.** Each company shall provide to the Commissioner the name and address of the independent certified public accounting firm retained to conduct the annual audit required under this regulation not less than six months before the date on which the first annual audit conducted by such firm is to be filed with the Commissioner in accordance with Section 3 of this Subchapter. The certified public accountant that is retained to conduct the annual audit must be selected from the list of approved certified public accounting firms or individual certified public accountants maintained by the Insurance Commissioner.

(b) **Notification of Adverse Financial Condition.** A company shall require the independent certified public accountant conducting its annual audit to immediately notify in writing an officer and all members of the Board of Directors of the company of any determination by the independent certified public accountant that the company has materially misstated its financial condition in its report to the Insurance Commissioner as required in Sections 311 or 6470.11 of Title 36 of the Oklahoma Statutes. The company, or its designated captive insurance manager, shall furnish such notification to the Insurance Commissioner within five working days of receipt thereof.

(c) **Availability and Maintenance of Working Papers of the Independent Certified Public Accountant.**

(1) Each company shall require the independent certified public accountant to make available for review by the Insurance Commissioner, or his appointed agent or examiner, the work papers prepared in the conduct of the audit of the company. The company shall require that the accountant retain the audit work papers for a period of not less than seven (7) years after the period reported upon.

(2) The aforementioned review by the Insurance Commissioner shall be considered investigations and/or examination and all working papers obtained during the course of such investigations and/or examination shall be confidential pursuant to 36 O.S. § 6470.13(B). The company shall require that the independent certified public accountant provide copies of any of the working papers which the Insurance Commissioner considers relevant. Such working papers may be retained by the Insurance Commissioner.

(3) "Working Papers" as referred to in this section means procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to its audit of the financial statements of a company, including but not necessarily limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of

company records or other documents prepared or obtained by the accountant and his employees in the conduct of their examination of the company.

(d) **Rotation of Audit Partners.** A company shall not file an annual audit in which a partner or other person responsible for rendering such annual audit has acted in that capacity for more than seven (7) consecutive years. Each company filing an annual audit shall disqualify such person from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two (2) years. A company may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05, Amended at 31 Ok Reg 1903, eff 9-15-14; Amended at 32 Ok Reg 1965, eff 9-15-15]

365:25-15-5. Deposit Requirement

Whenever the Insurance Commissioner determines, pursuant to 36 O.S. § 6470.6, that the financial condition of a company warrants additional capital and surplus based upon the type, volume, and nature of insurance business transacted, he may require such additional capital in the form of a deposit with the Department. Such additional capital shall consist of cash, securities approved by the Insurance Commissioner, or a clean irrevocable letter of credit issued by a bank chartered by the State of Oklahoma or a member bank of the Federal Reserve System and approved by the Insurance Commissioner. The company may receive interest or dividends from said deposit or exchange the deposits for others of equal value with the approval of the Insurance Commissioner. If such company discontinues business, the Insurance Commissioner shall return such deposit only after being satisfied that all obligations of the company have been discharged.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1903, eff 9-15-14; Amended at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-6. Organizational examination

In addition to the processing of the application, an organizational investigation or examination may be performed before or after an applicant is licensed. Such investigation or examination may consist of a general survey of the company's corporate records, including charter, bylaws and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; biographical affidavits; and a review of such other factors as the Insurance Commissioner deems necessary.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-7. Reinsurance [REVOKED]

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Revoked at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-8. Insurance managers and intermediaries

No person shall, in or from within this State, act as an insurance manager, broker, producer, salesman, or reinsurance intermediary for captive business without the authorization of the Insurance Commissioner. Application for such authorization must be on a form prescribed by the Insurance Commissioner.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05]

365:25-15-9. Executive officers and directors

(a) Every company shall report to the Insurance Commissioner within thirty days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. Every executive officer or director shall provide a biographical affidavit to the Insurance Commissioner within forty-five (45) days of his/her appointment as an executive officer or to the board of directors of the company.

(b) Except as otherwise permitted under the company's plan of operation approved by the Commissioner, no director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment or exchange made by or for the company, but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional or business capacity.

(c) Any profit or gain received by or on behalf of any person in violation of this section shall inure to and be recoverable by the company.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-10. Conflict of interest

Each company chartered in this State shall adopt a conflict of interest statement for its executive officers and directors. Such policy shall require that each such person disclose to the company's governing body, at least annually, any outside commitments that have the potential to create a conflict of interest with respect to the duty of such person to further the interests of the company.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 32 Ok Reg 1966, eff 9-15-15]

365:25-15-11. Rescission of captive license [REVOKED]

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Revoked at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-12. Acquisition of control of or merger with domestic company

(a) All persons shall comply with Sections 1651-1653 of Title 36 and associated regulations when seeking to acquire control of or merge with a domestic captive insurer, notwithstanding

that the Insurance Commissioner may waive or modify the requirements for public notice and hearing when the Insurance Commissioner concludes the public hearing is not necessary due to the limited public interest in the change of control.

(b) Definitions of terms found in Section 1651 of Title 36 shall apply when a captive insurance company seeks to acquire control of or merge with a domestic company. For purposes of this section, the definition of the term insurer as set out in Section 1651 of Title 36 shall include captive insurance companies.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-13. Change of business

(a) Except as otherwise provided, any change in the nature of the captive business from that stated in the company's plan of operation filed with the Insurance Commissioner upon application requires prior approval from the Insurance Commissioner.

(b) For purposes of this Section, "nature of the captive business" includes, but is not limited to, nonrecurring transactions such as loans or extensions of credit, reinsurance agreements or modifications thereto, management agreements, service contracts and all cost-sharing arrangements and changes in certificate of incorporation or bylaws.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-14. Prior approval

Requests for the prior approval of the Insurance Commissioner of mergers, consolidations, conversions, mutualizations, redomestications or any other matter for which prior approval is required shall be made on the appropriate forms as set out in this Chapter for use by insurers or on forms as prescribed by the Insurance Commissioner.

[Source: Added at 22 Ok Reg 2045, eff 7-14-05; Amended at 31 Ok Reg 1904, eff 9-15-14; Amended at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-15. Severability Provision [REVOKED]

[Source: Added at 31 Ok Reg 1904, eff 9-15-14; Revoked at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-16. Consolidated or combined audits

A company may make written application to the Commissioner for approval to submit a consolidated annual audit in lieu of separate annual audits if the company is part of a group of entities that consolidates its annual audit. In such cases, a consolidating or combining worksheet shall be prepared with the annual audit as follows:

(1) Amounts for each company subject to this section shall be stated separately.

(2) Non-insurance operations may be shown on the worksheet on a combined or individual basis.

- (3) Explanations of consolidating and eliminating entries shall be included.
- (4) A reconciliation shall be included of any differences between the amounts shown in the individual company columns of the worksheet and comparable amounts shown on the annual reports of such companies.

[Source: Added at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-17. Sponsored captive shares and dividends

- (a) A sponsored captive insurer shall be a single legal entity and each protected cell of or within a sponsored captive insurer may be established as a separate legal entity, which shall constitute a legal entity separate from the sponsored captive insurer. Each protected cell shall be separately identified or designated as being a part of the sponsored captive insurer.
- (b) A sponsored captive insurer may create and issue shares in one or more classes or series for one or more protected cells. The proceeds of the issue shall be included in the assets of the protected cell that issued the shares.
- (c) The proceeds of the issue of shares, other than protected cell shares, shall be included in the sponsored captive insurer's general assets.
- (d) Subject to prior approval by the Commissioner, a sponsored captive insurer may pay a dividend on protected cell shares of any class or series whether or not a dividend is declared on any other class or series of protected cell shares, or any other shares.
- (e) Protected cell dividends may be paid on the protected cell shares from the protected cell assets. The dividends shall only be paid to the shareholders of the protected cell from which the protected cell shares were issued and otherwise in accordance with the rights of the shares.
- (f) Any act, matter, deed, agreement, contract, instrument under seal, or other instrument or arrangement, which is to be binding on or to inure to the benefit of a protected cell, shall be executed by the sponsored captive insurer for and on behalf of such protected cell, and shall indicate that the execution is in the name of, by or for the account of, the protected cell.

[Source: Added at 32 Ok Reg 1967, eff 9-15-15]

365:25-15-18. Variable contracts

Any captive company that issues variable life or annuity contracts shall establish separate accounts subject to the requirements of 36 O.S. § 6061.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-19. Qualification of sponsors

A sponsor of a sponsored captive insurance company may be any person approved by the Commissioner in the exercise of his or her discretion, based on a determination that the approval of such person as a sponsor is consistent with the purposes of this Subchapter. In evaluating the qualifications of a proposed sponsor, the Commissioner shall consider the type and structure of the proposed sponsor entity, its experience in financial operations, financial stability and

strength, business reputation, and such other facts deemed relevant by the Commissioner. A risk retention group shall not be a sponsor of a sponsored captive insurance company.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-20. Sponsored captive and cell assets

(a) The assets of a sponsored captive insurer shall be either protected cell assets or general assets. The protected cell assets shall comprise the assets of the sponsored captive insurer held within or on behalf of the protected cells of the sponsored captive insurer. The general assets of a sponsored captive insurer shall comprise the assets of the sponsored captive insurer which are not protected cell assets.

(b) The assets of a protected cell are comprised of assets representing the capital stock and reserves attributable to the protected cell or all other assets attributable to or held within the protected cell. For the purposes of this Section, "reserves" includes retained earnings, capital surplus, and paid-in capital.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-21. Delinquency of sponsored captive insurance companies

(a) Upon any order of supervision, rehabilitation, or liquidation of a sponsored captive insurance company, the receiver shall manage the assets and liabilities of the sponsored captive insurance company pursuant to the provisions of this Subchapter.

(b) Notwithstanding any provision to the contrary:

(1) the assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell; and

(2) a sponsored captive insurance company's capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company; and

(3) in the event of an insolvency of a sponsored captive insurance company where the Commissioner determines that one or more protected cells remain solvent, the Commissioner may separate such cells from the sponsored captive insurance company, and may allow, on application of the sponsor, for the conversion of such protected cells into one or more new or existing sponsored captive insurance companies with a sponsor or sponsors, or one or more other captive insurance companies, pursuant to such plan or plans of operation as the Commissioner deems acceptable.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-22. Reinsurance of life insurance policies

(a) This Section establishes reserve requirements and the form of the annual report required of a captive insurance company that reinsures life insurance policies, including term, universal, and variable life policies, and related guarantees and riders (collectively, "Life Insurance Policies").

(b) A captive insurance company described in Section 20 of this Subchapter shall maintain reserves that are actuarially sufficient to support the liabilities incurred by the captive insurance company in reinsuring life insurance policies.

(c) For purposes of the annual report required by 36 O.S. § 6470.11:

(1) a captive insurance company described in Section 20 of this Subchapter that uses statutory accounting shall submit the annual report in the form of the annual statement approved by the National Association of Insurance Commissioners for life insurers, as modified or supplemented by the Commissioner, unless the Commissioner requires or approves a different form of annual report; and

(2) a captive insurance company described in Section 20 of this Subchapter that uses generally accepted accounting principles, including any appropriate or necessary modifications or adaptations thereto approved by the Commissioner, shall submit the annual report in the form approved by the Commissioner.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-23. Dormant captive insurance companies

(a) As used in this Section, unless the context requires otherwise, "dormant captive insurance company" means a pure captive insurance company which has:

- (1) at no time insured controlled unaffiliated business;
- (2) ceased transacting the business of insurance, including the issuance of insurance policies;
- (3) no remaining liabilities associated with insurance business transactions; and
- (4) no unpaid premium taxes.

(b) A pure captive insurance company domiciled in Oklahoma which meets the criteria of paragraph (a) of this Section may apply to the Commissioner for a certificate of dormancy. The certificate of dormancy shall be subject to renewal every five years and shall be forfeited if not renewed within such time.

(c) A dormant captive insurance company which has been issued a certificate of dormancy shall:

- (1) possess and thereafter maintain unimpaired, paid-in capital and surplus of not less than \$25,000.00;
- (2) prior to March 15 of each year, submit to the Commissioner a report of its financial condition, verified by oath of two of its executive officers, in a form as may be prescribed by the Commissioner; and
- (3) pay a license renewal fee as provided in 36 O.S. § 6470.3.

(d) A dormant captive insurance company shall not be subject to or liable for the payment of any premium tax.

(e) A dormant captive insurance company shall apply to the Commissioner for approval to surrender its certificate of dormancy and resume conducting the business of insurance prior to issuing any insurance policies.

(f) A certificate of dormancy shall be revoked if a dormant captive insurance company no longer meets the criteria of paragraph (a) of this Section.

(g) The Commissioner may establish guidelines and procedures as necessary to carry out the provisions of this section.

[Source: Added at 32 Ok Reg 1968, eff 9-15-15]

365:25-15-24. Severability

If any provision of this Subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provisions to other persons or circumstances shall not be affected thereby.

[Source: Added at 32 Ok Reg 1969, eff 9-15-15]

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES**

**SUBCHAPTER 21. REGULATION ON THE USE OF SENIOR-SPECIFIC
CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS IN THE SALE OF LIFE
INSURANCE AND ANNUITIES**

365:25-21-1. Purpose

The purpose of this regulation is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, ~~a life insurance, or annuity products~~ or other senior-specific products such as Medicare Supplement plans, Medicare Advantage plans, and Medicare Part D Prescription Drug plans.

[Source: Added at 26 Ok Reg 1654, eff 7-14-09]

365:25-21-2. Scope

This regulation shall apply to any solicitation, sale or purchase of, or advice made in connection with, ~~a life insurance, or annuity products, or other senior-specific products such as Medicare Supplement plans, Medicare Advantage plans, and Medicare Part D Prescription Drug plans~~ by an insurance producer.

[Source: Added at 26 Ok Reg 1654, eff 7-14-09]

365:25-21-3. Authority

- (a) This regulation is issued under the authority of Article 12 of Title 36 of the laws of this State.
- (b) Nothing in this regulation shall limit the commissioner's authority to enforce existing provisions of law.

[Source: Added at 26 Ok Reg 1654, eff 7-14-09]

365:25-21-4. Definition

For purposes of this regulation, “insurance producer“ means a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance, including annuities.

[Source: Added at 26 Ok Reg 1654, eff 7-14-09]

365:25-21-5. Prohibited uses of senior-specific certifications and professional designations**(a) Unfair and deceptive acts or practices.**

(1) It is an unfair and deceptive act or practice in the business of insurance within the meaning of Article 12 of Title 36 of the laws of this State for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance, ~~or annuity products,~~ or other senior-specific products such as Medicare Supplement plans, Medicare Advantage plans, and Medicare Part D Prescription Drug plans, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance, or annuity product, or other senior-specific products such as Medicare Supplement plans, Medicare Advantage plans, and Medicare Part D Prescription Drug plans.

(2) The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

(A) Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;

(B) Use of a nonexistent or self-conferred certification or professional designation;

(C) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and

(D) Use of a certification or professional designation that was obtained from a certifying or designating organization that:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(iv) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(b) **Rebuttable presumption.** There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subsection (a)(2)(D) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

- (1) The American National Standards Institute (ANSI);
- (2) The National Commission for Certifying Agencies; or
- (3) Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(c) **Words or acronyms.** In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

- (1) Use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and
- (2) The manner in which those words are combined.

(d) **Organizations licensed by or registered by a State of federal services regulatory agency**

- (1) For purposes of this regulation, a job title within an organization that is licensed or registered by a State or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:
 - (A) Indicates seniority or standing within the organization; or
 - (B) Specifies an individual's area of specialization within the organization.
- (2) For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

[Source: Added at 26 Ok Reg 1654, eff 7-14-09]

365:25-21-6. Effective Date

This regulation shall become effective July 14, 2009.

[Source: Added at 26 Ok Reg 1654, eff 7-14-09]

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES**

SUBCHAPTER 25. OKLAHOMA EMPLOYEE INJURY BENEFIT ACT

365:25-25-1. Purpose

~~The purpose of this Subchapter is to set forth the regulations and procedures for employers to secure compensation for their covered employees for work related injuries under the Oklahoma Employee Injury Benefit Act, 85A O.S. §§ 200 et seq.~~

~~[Source: Added at 31 Ok Reg 461, eff 2-18-14 (emergency); Added at 32 Ok Reg 1969, eff 9-15-15]~~

365:25-25-2. Scope

~~This Subchapter shall apply to all Oklahoma employers who voluntarily elect to be exempt from the Administrative Workers' Compensation Act and become a Qualified Employer under the Oklahoma Employee Injury Benefit Act. Employers seeking to self insure under the Administrative Workers' Compensation Act are subject to the rules of the Oklahoma Workers' Compensation Commission in Title 810, Chapter 5 of the Oklahoma Administrative Code.~~

~~[Source: Added at 31 Ok Reg 462, eff 2-18-14 (emergency); Added at 32 Ok Reg 1969, eff 9-15-15]~~

365:25-25-3. Authority

~~This Subchapter is promulgated under the authority granted to the Insurance Commissioner under the Administrative Workers' Compensation Act, 85A O.S. §§ 1 et seq., and the Oklahoma Employee Injury Benefit Act, 85A O.S. §§ 200 et seq.~~

~~[Source: Added at 31 Ok Reg 462, eff 2-18-14 (emergency); Added at 32 Ok Reg 1969, eff 9-15-15]~~

365:25-25-4. Definitions

~~Unless otherwise specified in this Subchapter, defined terms in the Administrative Workers' Compensation Act shall have the same meaning herein. The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:~~

~~"Benefit plan" means a plan established by a Qualified Employer under the requirements of 85A O.S. § 203.~~

~~"Commission" means the Workers' Compensation Commission under the Administrative Workers' Compensation Act.~~

~~"Commissioner" means the Insurance Commissioner of the State of Oklahoma.~~

~~"Covered employee" means the employee whose employment with a Qualified Employer is principally located within the state.~~

~~"Employer," except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, limited liability company, corporation, department, instrumentality or institution of this state and divisions thereof and other political subdivisions of this state and public trusts employing a person included within the term employee as defined herein.~~

~~"Financial Statement" means an employer's audited financial statement or financial statement signed by two (2) company executives that includes a balance sheet and income statement.~~

~~"Occupational Injury" means an injury, including death, or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment.~~

~~"Qualified Employer" means an employer otherwise subject to the Administrative Workers' Compensation Act that voluntarily elects to be exempt from such act by satisfying the requirements under the Oklahoma Employee Injury Benefit Act.~~

~~"Statutory Limits" means an insurer's amount of liability under a specific excess insurance policy, capped at the maximum amount allowed by statute.~~

~~{Source: Added at 31 Ok Reg 462, eff 2-18-14 (emergency); Added at 32 Ok Reg 1969, eff 9-15-15}~~

~~365:25-25-5. Election notification to the Oklahoma Insurance Department~~

~~(a) Each employer that elects to become a Qualified Employer shall electronically complete the Qualified Employer Election Form and provide all information requested at least sixty (60) days prior to the desired effective date of its election to become a Qualified Employer.~~

~~(b) If a Qualified Employer elects to renew its status as a Qualified Employer after the expiration of its initial one (1) year term as a Qualified Employer, or for any renewal thereafter, the Qualified Employer shall electronically complete the Qualified Employer Election Form and provide all information requested at least sixty (60) days prior to the expiration as a Qualified Employer.~~

~~(c) The Qualified Employer Election Form shall include complete answers to all questions therein and shall include satisfactory proof of the employer's ability to secure compensation for its covered employees for work-related injuries prior to being confirmed as a Qualified Employer by the Oklahoma Insurance Department.~~

~~(d) Upon written confirmation by the Oklahoma Insurance Department that the employer has satisfied all the requirements to be recognized as a Qualified Employer, the employer may proceed with its written benefit plan and notification of employees as provided in 365:25-25-8.~~

~~(e) Upon request by the Oklahoma Insurance Department, a Qualified Employer shall submit documentation to affirm its continued compliance with the Oklahoma Employee Injury Benefit Act and this Subchapter. In addition, a Qualified Employer shall notify the Oklahoma Insurance Department of any change in information required to be submitted to the Commissioner under this Subchapter within fourteen (14) days after the change. Upon a finding that a Qualified Employer is no longer in compliance with the Oklahoma Employee Injury Benefit Act or this~~

Subchapter, the Oklahoma Insurance Department may withdraw its confirmation of the employer as a Qualified Employer.

~~[Source: Added at 31 Ok Reg 462, eff 2-18-14 (emergency); Added at 32 Ok Reg 1970, eff 9-15-15]~~

365:25-25-6. Election fee

~~A nonrefundable fee of One Thousand Five Hundred Dollars (\$1,500.00) is payable, via electronic funds transfer, upon filing an employer's initial Qualified Employer Election Form and upon filing a Qualified Employer Election Form for any annual renewal thereafter.~~

~~[Source: Added at 31 Ok Reg 462, eff 2-18-14 (emergency); Added at 32 Ok Reg 1970, eff 9-15-15]~~

365:25-25-7. Written benefit plan

~~In addition to the Qualified Employer Election Form, the employer shall provide the following documents and information to the Oklahoma Insurance Department:~~

- ~~(1) A copy of the employer's written benefit plan;~~
- ~~(2) A written statement explaining the procedure used to notify the employer's covered employees that the employer has elected to become a Qualified Employer;~~
- ~~(3) The name, title, address, and telephone number for a covered employee to contact for injury benefit claims administration, and whether that party is in-house, a third-party administrator, or an insurance carrier; and~~
- ~~(4) A copy of the employer's Employee Notice.~~

~~[Source: Added at 31 Ok Reg 462, eff 2-18-14 (emergency); Added at 32 Ok Reg 1970, eff 9-15-15]~~

365:25-25-8. Employee notice

~~No employer shall act as a Qualified Employer in this state until such employer provides written notification to its covered employees in substantially the same form as the "Notice To Employees Concerning Qualified Employer" notice as set forth in Appendix Z of this Chapter. Such notice shall be provided to all employees upon the employer's confirmation as a Qualified Employer by the Oklahoma Insurance Department. Subsequent newly hired employees shall receive the written notification upon the employees' date of hire. Such notice shall be necessarily posted at conspicuous locations at the Qualified Employer's places of business to provide reasonable notice to all employees that the employer is a Qualified Employer, that the employer does not carry workers' compensation insurance coverage, and that the employer's workers' compensation coverage has been terminated or cancelled.~~

~~[Source: Added at 31 Ok Reg 463, eff 2-18-14 (emergency); Added at 32 Ok Reg 1970, eff 9-15-15]~~

~~365:25-25-9. Funding of Qualified Employer's benefit plan, liability, and other insurable risk~~

~~A Qualified Employer may self fund or insure benefits payable under the benefit plan (which are in the nature of workers' compensation), the employer's liability under the Oklahoma Employee Injury Benefit Act, and any other insurable risk related to its status as a Qualified Employer.~~

~~[Source: Added at 31 Ok Reg 463, eff 2-18-14 (emergency); Added at 32 Ok Reg 1971, eff 9-15-15]~~

~~365:25-25-10. Insuring Qualified Employer's benefit plan, liability, and other insurable risk~~

~~(a) A Qualified Employer that elects to insure benefits payable under the benefit plan, the employer's liability under the Oklahoma Employee Injury Benefit Act, and any other insurable risk related to its status as a Qualified Employer, shall obtain insurance coverage in an amount equal to the compensation obligation with an admitted insurance carrier, including property and casualty insurance carrier; life, health and accident insurance carrier; or surplus lines insurer; provided, however, that such admitted or surplus lines insurer has an AM Best Rating of B+ or better. The Oklahoma Insurance Department does not approve insurance rates for any type of coverage under the Oklahoma Employee Injury Benefit Act.~~

~~(b) Such insurance coverage pertains to Oklahoma covered employees only. Employers with employees working in state(s) other than Oklahoma shall arrange separate insurance coverage in compliance with that state(s)'s laws.~~

~~[Source: Added at 31 Ok Reg 463, eff 2-18-14 (emergency); Added at 32 Ok Reg 1971, eff 9-15-15]~~

~~365:25-25-11. Self Funding Qualified Employer's benefit plan, liability, and other insurable risk~~

~~A Qualified Employer that elects to self fund the benefits payable under the benefit plan, the employer's liability under the Oklahoma Employee Injury Benefit Act, and any other insurable risk related to its status as a Qualified Employer, shall secure compensation to covered employees by furnishing satisfactory proof to the Oklahoma Insurance Department of the employer's financial ability to pay the compensation and must meet the following requirements:~~

- ~~(1) Provide the dollar amount and documentation to support its average of the yearly claims for the last three (3) calendar or fiscal years. Such documentation shall include the total incurred claims cost for the prior three (3) calendar or fiscal years and an attachment of the loss runs that include the total incurred amounts (all paid and reserved medical and indemnity) for Oklahoma occupational injury claims incurred during a three (3) calendar or fiscal year period ending not more than one hundred twenty (120) days prior to the employer's notification to the Oklahoma Insurance Department of its election to become a Qualified Employer;~~

- ~~(2) Attach employer's most recent financial statement which shall include a balance sheet and income statement;~~
- ~~(3) Furnish satisfactory proof to the Oklahoma Insurance Department of the employer's financial ability to pay the compensation as follows:~~
- ~~(A) An employer must have been continuously engaged in business for not less than three (3) years immediately preceding the employer's notification to the Oklahoma Insurance Department of its election to become a Qualified Employer, have at least one hundred (100) employees (all states included) and at least One Million Dollars (\$1,000,000.00) in net assets, and must secure a surety bond payable to the Oklahoma Insurance Department or an irrevocable letter of credit, in an amount determined by the Commissioner equal to at least the greater of: (1) One Hundred Thousand Dollars (\$100,000.00); or (2) the employer's average of its yearly incurred occupational injury claims for the last three (3) calendar or fiscal years ending not more than one hundred twenty (120) days prior to the employer's notification to the Oklahoma Insurance Department of its election to become a Qualified Employer; or (3) if the employer is renewing its status as a Qualified Employer, the amount of outstanding occupational injury claims reserves for the employer, as determined by an approved third party administrator or benefits administrator; or~~
- ~~(B) An employer provides proof of excess coverage with such terms and conditions as is commensurate with the employer's ability to pay the benefits required by the provisions of the Oklahoma Employee Injury Benefit Act, as determined by the Oklahoma Insurance Department. Such excess insurance must be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The self insured retention must be approved by the Oklahoma Insurance Department, and the excess carrier's limits of liability must be statutory. An amount less than Statutory Limits must be approved in advance by the Oklahoma Insurance Department. Aggregate excess insurance may be required by the Oklahoma Insurance Department if necessary; or~~
- ~~(C) An employer that does not satisfy the requirements of Subsection 3(A) of this Section, may petition the Oklahoma Insurance Department for a waiver of the requirements. The Oklahoma Insurance Department may waive some or all of the requirements for good cause, subject to such security deposit and/or excess insurance requirements in an amount, determined by the Oklahoma Insurance Department, to be commensurate with the ability of the employer to pay the benefits required by the provisions of the Oklahoma Employee Injury Benefit Act.~~

[Source: Added at 31 Ok Reg 463, eff 2-18-14 (emergency); Added at 32 Ok Reg 1971, eff 9-15-15]

365:25-25-12. Surety bond and irrevocable letter of credit

~~Surety bonds must be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better, and on a form prescribed by the Oklahoma Insurance Department. Irrevocable~~

~~letters of credit shall contain such terms as may be prescribed by the Oklahoma Insurance Department, include an automatic renewal clause, and cannot be non-renewed without at least sixty (60) days' prior written notice to the Oklahoma Insurance Department, and shall be issued for the benefit of the Oklahoma Insurance Department by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The financial institution must be approved in advance by the Oklahoma Insurance Department. The Oklahoma Insurance Department may make demand and collect on the posted letter of credit in whole or in part, in the case of actual or imminent default of the employer to pay compensation liabilities, or the cancellation of the letter of credit without an adequate replacement.~~

~~[Source: Added at 31 Ok Reg 464, eff 2-18-14 (emergency); Added at 32 Ok Reg 1971, eff 9-15-15]~~

~~365:25-25-13. Release of security deposit~~

~~(a) A security deposit posted with the Oklahoma Insurance Department as required by 365:25-25-11 must remain in place, at its existing amount, for two (2) years after a Qualified Employer ceases to self-insure its benefit plan. The Oklahoma Insurance Department may review the adequacy or excess of the security deposit in advance of the cessation date and require modifications to the security deposit amount as necessary.~~

~~(b) A security deposit may be reduced at the Oklahoma Insurance Department's discretion after the two (2) year waiting period upon application by the employer and submission of current financial statements and occupational injury loss runs.~~

~~(c) A security deposit may be released at the Oklahoma Insurance Department's discretion upon application by the employer and submission of current financial statements and a signed and notarized affidavit, from a duly authorized officer of the employer, affirming that all occupational injury claims incurred as a Qualified Employer have been permanently closed, and the statute of repose for reopening the claims has passed.~~

~~(d) The security deposit shall be released in full by the Oklahoma Insurance Department within a reasonable period following receipt of proof of an assumption agreement or equivalent, from a licensed insurance carrier, whereby the claims liability of the employer as a Qualified Employer is transferred to and assumed by the insurance company. The assumption agreement or equivalent may be entered into before expiration of the two (2) year period provided in Subsection (A) of this Section.~~

~~[Source: Added at 31 Ok Reg 464, eff 2-18-14 (emergency); Added at 32 Ok Reg 1972, eff 9-15-15]~~

~~365:25-25-14. Oklahoma Option Self-Insured Guaranty Fund~~

~~Upon declaration by the Insurance Commissioner that a self-insurer has become an impaired insurer, the Insurance Commissioner shall petition the Commission for its approval that the Insurance Commissioner release the Qualified Employer's required security from the Office of State Treasurer and shall advise the Oklahoma Property and Casualty Insurance Guaranty Association of the impairment.~~

~~[Source: Added at 31 Ok Reg 464, eff 2-18-14 (emergency); Added at 32 Ok Reg 1972, eff 9-15-15]~~

~~**365:25-25-15. Severability**~~

~~If any provisions of this Subchapter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or application of this Subchapter which shall be given effect without the invalid provision or application, and to that end the provisions of the Subchapter are severable.~~

~~[Source: Added at 31 Ok Reg 464, eff 2-18-14 (emergency); Added at 32 Ok Reg 1972, eff 9-15-15]~~

**TITLE 365. INSURANCE DEPARTMENT
CHAPTER 25. OTHER LICENSEES**

SUBCHAPTER 30. PROFESSIONAL EMPLOYER ORGANIZATIONS

365:25-30-1. Purpose

The purpose of this Subchapter is to set forth the regulations and procedures relating to the registration and oversight of professional employer organizations under the Oklahoma Professional Employer Organization Recognition and Registration Act, 40 O.S. §§ 600.1-600.9.

365:25-30-2. Scope

This Subchapter shall apply to all professional employer organizations which must be registered pursuant to 40 O.S. § 600.4.

365:25-30-3. Authority

This Subchapter is promulgated under the authority granted to the Insurance Commissioner in 40 O.S. § 600.4(J).

365:25-30-4. Refusal to register

The Insurance Commissioner may refuse to register any person, suspend or revoke the registration of any professional employer organization in accordance with 40 O.S. § 600.9. In addition to or in lieu of any applicable denial, suspension or revocation, the applicant or professional employer organization may be subject to an administrative fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each violation of the Oklahoma Professional Employer Organization Recognition and Registration Act.