

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

SUBCHAPTER 15. CAPTIVE INSURANCE COMPANIES REGULATION

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 or an individual who has demonstrated competence in loss reserve evaluation to the satisfaction of the insurance commissioner. Upon request by the company and for good cause shown, the Commissioner may grant an exemption from the annual actuarial opinion requirement for any company having direct written and assumed premiums of Two Million Dollars (\$2,000,000.00) or less in the preceding year.

(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.

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 five percent (5%) 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.

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

(a) Every company shall report to the Insurance Commissioner within thirty (30) 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.

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.

(c) All business plan changes, both in the nature of the captive business or otherwise, shall be filed with the Insurance Commissioner thirty (30) days in advance of the effective date of the change.

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) ceased transacting the business of insurance, including the issuance of insurance policies;
- (2) no remaining liabilities associated with insurance business transactions; and
- (3) no unpaid premium taxes.

(b) A 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. If, after a period of five (5) years from the date of the written notice being sent to the Commissioner, a dormant captive insurance company has not resumed transacting the business of insurance by assuming risk through the issuance of insurance policies, reinsurance contracts, or both, and accepting premium, whether direct, assumed via reinsurance, or both, the nonrefundable license renewal fee payable under § 6470.3 (D) of this title and the minimum Five Thousand Dollars (\$5,000.00) payable under § 6470.19 (D) shall become applicable for the sixth year of dormancy and for every year of dormancy thereafter.

(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 Twenty-five thousand dollars (\$25,000.00);
- (2) prior to March 1 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.

SUBCHAPTER 29. PHARMACY BENEFIT MANAGERS

365:25-29-10. Penalty for noncompliance

- (a) After notice and opportunity for hearing, and upon determining that the PBM has violated any of the provisions of 59 O.S. §§ 357-360 of the Oklahoma Statutes, or this Subchapter as it relates to 59 O.S. §§ 357-360, or upon finding the existence of grounds to refuse the issuance or renewal of such license, the Commissioner may suspend or revoke a PBM's license or assess a civil penalty of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each instance of violation, or both. Each day that a pharmacy benefits manager conducts business in the State of Oklahoma without a license shall be deemed to be an instance of violation. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced.
- (b) After notice and opportunity for hearing, and upon determining that the PBM has violated any of the provisions of 36 O.S. §§ 6958-6968 of the Oklahoma Statutes, or this Subchapter as it relates to 36 O.S. §§ 6958-6968, the Commissioner may suspend or revoke a PBM's license and/or levy fines not to exceed Ten Thousand Dollars (\$10,000.00) for each count for which any PBM has violated the provisions of 36 O.S. §§ 6958-6968. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced.
- (c) After notice and opportunity for hearing, and upon determining that the health insurer has violated any of the provisions of 36 O.S. §§ 6958-6968 of the Oklahoma Statutes, the Commissioner may suspend or revoke a health insurer's certificate of authority license or assess a civil penalty of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each instance of violation, or both. The payment of the penalty may be enforced in the same manner as civil judgments may be enforced.
- (d) Every health insurer and PBM upon receipt of any inquiry from the Commissioner or the Commissioner's representative shall, within twenty (20) days from the date of inquiry, furnish the Commissioner or the Commissioner's representative with an adequate response to the inquiry.