

TITLE 41
INSURANCE

CHAPTER 64
CORPORATE GOVERNANCE ANNUAL DISCLOSURE

41-6401. PURPOSE AND SCOPE. (1) The purpose and scope of this chapter are to:

(a) Provide the insurance director a summary of an insurer or insurance group's corporate governance structure, policies and practices to permit the director to gain and maintain an understanding of the insurer's corporate governance framework;

(b) Outline the requirements for completing a corporate governance annual disclosure with the insurance director; and

(c) Provide for the confidential treatment of the corporate governance annual disclosure and related information that will contain confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade secret information that, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(2) Nothing in this chapter shall be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law. Nothing in this chapter shall be construed to limit the director's authority, or the rights or obligations of third parties, under applicable examination authority including, but not limited to, sections [41-219](#) and [41-3814](#), Idaho Code.

(3) The requirements of this chapter shall apply to all insurers domiciled in this state.

[41-6401, added 2017, ch. 77, sec. 1, p. 209.]

41-6402. DEFINITIONS. As used in this chapter:

(1) "Corporate governance annual disclosure" or "CGAD" means a confidential report filed by the insurer or insurance group made in accordance with the requirements of this chapter.

(2) "Insurance group" means those insurers and affiliates included within an insurance holding company system as that term is defined in [chapter 38, title 41](#), Idaho Code.

(3) "Insurer" has the same meaning as set forth in section [41-103](#), Idaho Code, and it shall not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state. For purposes of this chapter, the term "insurer" includes, but is not limited to:

(a) An entity holding a certificate of authority under [chapter 3, title 41](#), Idaho Code;

(b) A service corporation holding a certificate of authority under [chapter 34, title 41](#), Idaho Code;

(c) A managed care organization holding a certificate of authority under [chapter 39, title 41](#), Idaho Code; and

(d) The state insurance fund, created under [chapter 9, title 72](#), Idaho Code.

[41-6402, added 2017, ch. 77, sec. 1, p. 209.]

41-6403. DISCLOSURE REQUIREMENT. (1) A domestic insurer, or the insurance group of which the domestic insurer is a member, shall, no later than June 1 of each calendar year, submit to the director a corporate governance annual disclosure (CGAD) that contains the information described in section [41-6404](#), Idaho Code. Absent a request from the director pursuant to subsection (3) of this section, an insurance group is not required to submit the CGAD if Idaho is not the lead state for the insurance group, as determined by the procedures outlined in the most recent national association of insurance commissioners' (NAIC) financial analysis handbook adopted by the director by rule, administrative order or bulletin.

(2) The CGAD must include a signature of the insurer or insurance group's chief executive officer or corporate secretary, attorney in fact, executive administrator, or other officer having responsibility for the insurer's or insurance group's compliance with governance structure, practices and policies attesting to the best of that individual's belief and knowledge that the insurer has implemented the corporate governance practices and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee thereof.

(3) An insurer or insurance group not required to submit a CGAD under subsection (1) of this section shall do so upon the director's request.

(4) For purposes of completing the CGAD, the insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level and/or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three (3) criteria was used to determine the level of reporting and explain any subsequent changes in the level of reporting.

(5) The review of the CGAD and any additional requests for information shall be made through the lead state as determined by the procedures within the most recent financial analysis handbook referenced in subsection (1) of this section.

(6) Insurers providing information substantially similar to the information required by this chapter in other documents provided to the director, including proxy statements filed in conjunction with form B requirements or other state or federal filings provided to the department, shall not be required to duplicate that information in the CGAD but shall only be required to cross-reference the document in which the information is included.

[41-6403, added 2017, ch. 77, sec. 1, p. 210.]

41-6404. CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE. (1) The insurer or insurance group shall have discretion over the responses to the CGAD inquiries, provided the CGAD shall contain the material information necessary to permit the director to gain an understanding of the insurer's or group's corporate governance structure, policies and practices including, without limitation, information concerning policies and practices of the

board of directors, the senior governing entity and significant committees thereof, the policies and practices for directing senior management, and the processes by which the board of directors, the senior governing entity, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's business activities. The director may request additional information that the director deems material and necessary to provide the director with a clear understanding of the corporate governance policies, the reporting or information system, or the controls implementing those policies.

(2) The CGAD shall be prepared consistent with any rules promulgated by the director. Documentation and supporting information shall be maintained and made available upon examination or upon request of the director.

(3) Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

[41-6404, added 2017, ch. 77, sec. 1, p. 210.]

41-6405. CONFIDENTIALITY. (1) Documents, materials or other information, including the CGAD, in the possession or control of the department of insurance that are obtained by, created by or disclosed to the director or any other person under this chapter are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials or other information shall be confidential by law and privileged, shall not be subject to disclosure pursuant to the provisions of [chapter 1, title 74](#), Idaho Code, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer. Nothing in this section shall be construed to require written consent of the insurer before the director may share or receive confidential documents, materials or other CGAD-related information pursuant to subsection (3) of this section to assist in the performance of the director's duties.

(2) Neither the director nor any person who received documents, materials or other CGAD-related information, through examination or otherwise, while acting under the authority of the director, or with whom such documents, materials or other information are shared pursuant to this chapter, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to subsection (1) of this section.

(3) In order to assist in the performance of the director's regulatory duties, the director may:

(a) Upon request, share documents, materials, or other CGAD-related information including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, including proprietary and trade secret documents and materials with other state, federal, and international financial regulatory agencies, including members of any supervisory college as discussed in section [41-3815](#), Idaho Code, with the NAIC, and with third-party consultants

pursuant to section [41-6406](#), Idaho Code, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality.

(b) Receive documents, materials, or other CGAD-related information, including otherwise confidential and privileged documents, materials or information, including proprietary and trade secret information or documents, from regulatory officials of other state, federal, and international financial regulatory agencies, including members of any supervisory college as discussed in section [41-3815](#), Idaho Code, and from the NAIC, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(4) The sharing of information and documents by the director pursuant to this chapter shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution and enforcement of the provisions of this chapter.

(5) No waiver of any applicable privilege or claim of confidentiality in the documents, proprietary and trade secret materials or other CGAD-related information shall occur as a result of disclosure of such CGAD-related information or documents to the director under this section or as a result of sharing as authorized in this chapter.

[41-6405, added 2017, ch. 77, sec. 1, p. 211.]

41-6406. NAIC AND THIRD-PARTY CONSULTANTS. (1) The director may retain third-party consultants not otherwise part of the director's staff as may be reasonably necessary to assist the director in reviewing the CGAD and related information or the insurer's compliance with this chapter.

(2) Any persons retained under subsection (1) of this section shall be under the direction and control of the director and shall act in a purely advisory capacity.

(3) The NAIC and third-party consultants shall be subject to the same confidentiality standards and requirements as the director.

(4) As part of the retention process, a third-party consultant shall verify to the director, with notice to the insurer, that it is free of a conflict of interest and that it has internal procedures in place to monitor compliance with a conflict and to comply with the confidentiality standards and requirements of this chapter.

(5) A written agreement with the NAIC and/or a third-party consultant governing sharing and use of information provided pursuant to this chapter shall contain the following provisions and expressly require the written consent of the insurer prior to making public information provided under this chapter:

(a) Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the NAIC or a third-party consultant pursuant to this chapter;

(b) Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the

CGAD-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality;

(c) A provision specifying that ownership of the CGAD-related information shared with the NAIC or a third-party consultant remains with the department of insurance and the NAIC's or third-party consultant's use of the information is subject to the direction of the director;

(d) A provision that prohibits the NAIC or a third-party consultant from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed;

(e) A provision requiring the NAIC or third-party consultant to provide prompt notice to the director and to the insurer or insurance group regarding any subpoena, request for disclosure or request for production of the insurer's CGAD-related information; and

(f) A requirement that the NAIC or a third-party consultant consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer shared with the NAIC or a third-party consultant pursuant to this chapter.

[41-6406, added 2017, ch. 77, sec. 1, p. 212.]