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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1848 Session of  
2017

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INTRODUCED BY PICKETT, DeLUCA, CORR, MILLARD AND THOMAS,  
OCTOBER 3, 2017

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REFERRED TO COMMITTEE ON INSURANCE, OCTOBER 3, 2017

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AN ACT

1 Amending Title 40 (Insurance) of the Pennsylvania Consolidated  
2 Statutes, in regulation of insurers and related persons  
3 generally, providing for corporate governance annual  
4 disclosure.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 40 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 39

10 CORPORATE GOVERNANCE ANNUAL DISCLOSURE

11 Sec.

12 3901. Purposes and scope of chapter.

13 3902. Definitions.

14 3903. Submittal of CGAD.

15 3904. Contents of CGAD.

16 3905. Review of CGAD.

17 3906. Third-party consultants.

18 3907. Confidentiality.

19 3908. Penalties.

1 3909. Rules and regulations.

2 3910. Construction.

3 3911. Severability.

4 § 3901. Purposes and scope of chapter.

5 (a) Purposes.--The purposes of this chapter are to:

6 (1) Provide the commissioner a summary of an insurer or  
7 insurance group's corporate governance structure, policies  
8 and practices to permit the commissioner to gain and maintain  
9 an understanding of the insurer or insurance group's  
10 corporate governance framework.

11 (2) Outline the requirements for completing and filing a  
12 CGAD with the commissioner.

13 (3) Provide for the confidential treatment of the CGAD  
14 and related information containing confidential and sensitive  
15 information related to an insurer or insurance group's  
16 internal operations and proprietary and trade secret  
17 information which, if made public, could potentially cause  
18 the insurer or insurance group competitive harm or  
19 disadvantage.

20 (b) Scope.--The requirements of this chapter shall apply to  
21 an insurer that is:

22 (1) domiciled in this Commonwealth; or

23 (2) a member of an insurance group of which this  
24 Commonwealth is the lead state.

25 § 3902. Definitions.

26 The following words and phrases when used in this chapter  
27 shall have the meanings given to them in this section unless the  
28 context clearly indicates otherwise:

29 "CGAD-related information." The CGAD or any documents,  
30 materials or other information, including proprietary and trade

1 secret information or documents, related to an insurer or  
2 insurance group's CGAD.

3 "Commissioner." The Insurance Commissioner of the  
4 Commonwealth.

5 "Corporate governance annual disclosure" or "CGAD." The  
6 confidential report filed by the insurer or insurance group in  
7 accordance with the requirements of this chapter.

8 "Department." The Insurance Department of the Commonwealth.

9 "Insurance Company Law." The act of May 17, 1921 (P.L.682,  
10 No.284), known as The Insurance Company Law of 1921.

11 "Insurance group." The insurers and affiliates included  
12 within an insurance holding company system as defined in section  
13 1401 of the Insurance Company Law.

14 "Insurer." A fraternal benefit society, a health maintenance  
15 organization, a preferred provider organization, a company, an  
16 association, an exchange, a hospital plan corporation as defined  
17 in and subject to Chapter 61 (relating to hospital plan  
18 corporations) or a professional health services plan corporation  
19 subject to Chapter 63 (relating to professional health services  
20 plan corporations) authorized by the commissioner to transact  
21 the business of insurance in this Commonwealth.

22 "Lead state." The state responsible for primary regulatory  
23 oversight of an insurance group, as determined by the department  
24 in consultation with other regulators with domestic insurers in  
25 the insurance group.

26 "NAIC." The National Association of Insurance Commissioners  
27 or successor organization and its affiliates and subsidiaries.

28 § 3903. Submittal of CGAD.

29 (a) General rule.--

30 (1) Beginning January 1, 2018, a domestic insurer or an

1 insurer that is a member of an insurance group of which this  
2 Commonwealth is the lead state shall submit to the department  
3 a CGAD no later than June 1 of each calendar year.

4 (2) If a domestic insurer is a member of an insurance  
5 group of which this Commonwealth is not the lead state, the  
6 insurer shall submit the report required by this section to  
7 the commissioner of the lead state for the insurance group in  
8 accordance with the laws of the lead state.

9 (b) Exception.--An insurer or insurance group not required  
10 to submit a CGAD to the department under subsection (a) shall do  
11 so upon the commissioner's request.

12 § 3904. Contents of CGAD.

13 (a) Contents.--The CGAD must contain the material  
14 information necessary to permit the department to gain an  
15 understanding of the insurer's or insurance group's corporate  
16 governance structure, policies and practices.

17 (b) Discretion.--The insurer or insurance group shall have  
18 discretion over the contents of the CGAD if the CGAD includes  
19 all of the following information:

20 (1) A description of the insurer's or insurance group's  
21 corporate governance framework.

22 (2) Policies and practices of the board of directors or  
23 the most senior governing entity and significant committees  
24 of the board or entity.

25 (3) Policies and practices for directing senior  
26 management.

27 (4) A description of the processes by which the board,  
28 its committees and senior management ensure an appropriate  
29 amount of oversight over critical risk areas impacting the  
30 insurer or insurance group's business activities.

1           (5) Any other information as specified by regulation.

2           (c) Additional information.--The department may request  
3 additional information deemed material and necessary to provide  
4 a clear understanding of the corporate governance policies, the  
5 reporting or information system or the controls implementing  
6 those policies. An insurer or insurance group shall maintain and  
7 make available supporting information upon examination or upon  
8 the request of the department.

9           (d) Permissible levels of reporting.--

10           (1) For purposes of completing the CGAD, the insurer or  
11 insurance group may provide information regarding corporate  
12 governance at the ultimate controlling parent level, an  
13 intermediate holding company level or the individual legal  
14 entity level, depending upon how the insurer or insurance  
15 group has structured its system of corporate governance. When  
16 determining which level to choose, the insurer or insurance  
17 group shall consider the level at which any of the following  
18 occurs:

19           (i) The insurer's or insurance group's risk appetite  
20 is determined.

21           (ii) Earnings, capital, liquidity, operations and  
22 reputation of the insurer or insurance group are overseen  
23 collectively and at which the supervision of those  
24 factors are coordinated and exercised.

25           (iii) Legal liability for failure of general  
26 corporate governance duties would be placed.

27           (2) An insurer or insurance group that determines the  
28 level of reporting based on any of the criteria under  
29 paragraph (1) shall indicate which of the criteria was used  
30 to determine the level of reporting and explain any

1 subsequent changes in level of reporting.

2 (e) Attestation.--The CGAD must include a signature of the  
3 insurer or insurance group's chief executive officer or  
4 corporate secretary attesting to the best of that individual's  
5 belief and knowledge that the insurer or insurance group has  
6 implemented the corporate governance practices and that a copy  
7 of the disclosure has been provided to the insurer or insurance  
8 group's board of directors or the appropriate committee of the  
9 board.

10 § 3905. Review of CGAD.

11 (a) Procedures for review.--The review of the CGAD and any  
12 additional requests for information shall be made by or through  
13 the lead state.

14 (b) Duplicative filings.--An insurer or insurance group  
15 providing information substantially similar to the information  
16 required by this chapter in other documents provided to the  
17 department, including proxy statements filed in conjunction with  
18 registration requirements or other Federal or State filings  
19 provided to the department, is not required to duplicate that  
20 information in the CGAD but shall only be required to cross-  
21 reference the document in which the information is included.

22 § 3906. Third-party consultants.

23 (a) Assistance with review.--The department may retain, at  
24 the insurer or insurance group's expense, third-party  
25 consultants, including attorneys, actuaries, accountants and  
26 other experts not otherwise a part of the department's staff as  
27 may be reasonably necessary to assist the department in  
28 reviewing the CGAD, CGAD-related information or the insurer's or  
29 insurance group's compliance with this chapter.

30 (b) Advisory capacity.--A person retained under subsection

1 (a) shall be under the direction and control of the department  
2 and shall act in a purely advisory capacity.

3 (c) Confidentiality.--Each third-party consultant shall be  
4 subject to the same confidentiality standards and requirements  
5 as the department.

6 (d) Verification.--As part of the retention process, a  
7 third-party consultant shall verify to the department, with  
8 notice to the insurer or insurance group, that it:

9 (1) is free of a conflict of interest;

10 (2) will comply with the confidentiality standards and  
11 requirements of this chapter; and

12 (3) has internal procedures in place to monitor  
13 compliance with this section.

14 (e) Written consent.--A retention agreement with a third-  
15 party consultant shall expressly require the written consent of  
16 the insurer or insurance group prior to making information  
17 provided under this chapter public.

18 § 3907. Confidentiality.

19 (a) General rule.--The CGAD-related information in the  
20 possession or control of the department that is produced by,  
21 obtained by or disclosed to the department or any other person  
22 under this chapter shall be privileged and given confidential  
23 treatment and may not be:

24 (1) subject to discovery or admissible as evidence in a  
25 private civil action;

26 (2) subject to subpoena;

27 (3) subject to the act of February 14, 2008 (P.L.6,  
28 No.3), known as the Right-to-Know Law; or

29 (4) made public by the department or any other person  
30 without the prior written consent of the insurer or insurance

1 group to which it pertains, except as provided in subsection  
2 (c).

3 (b) Private civil actions.--The commissioner, the  
4 department, a person who receives CGAD-related information while  
5 acting under the authority of the commissioner or department or  
6 a person with whom the CGAD-related information is shared under  
7 this chapter may not be permitted or required to testify in a  
8 private civil action concerning confidential CGAD-related  
9 information.

10 (c) Use of CGAD-related information by department.--To  
11 assist in the performance of regulatory duties, the department  
12 may:

13 (1) Use CGAD-related information in furtherance of a  
14 regulatory or legal action brought pursuant to the  
15 department's official duties.

16 (2) Share CGAD-related information with the NAIC,  
17 regulatory or law enforcement officials of this Commonwealth  
18 or other jurisdictions, group supervisors, members of a  
19 supervisory college under section 1406.1 of the Insurance  
20 Company Law and third-party consultants under section 3906  
21 (relating to third-party consultants) if, prior to receiving  
22 the CGAD-related information, the recipient demonstrates by  
23 written statement the necessary authority and intent to give  
24 confidential treatment to the CGAD-related information as  
25 required by this chapter.

26 (3) Receive and maintain as confidential CGAD-related  
27 information from the NAIC, regulatory or law enforcement  
28 officials of this Commonwealth or other jurisdictions, group  
29 supervisors and members of a supervisory college under  
30 section 1406.1 of The Insurance Company Law if the CGAD-



1 related information is confidential by law in the  
2 jurisdiction from which it was received. CGAD-related  
3 information obtained under this paragraph shall be given  
4 confidential treatment, may not be subject to subpoena and  
5 may not be made public by the department, the commissioner or  
6 any other person.

7 (d) Written agreements.--The department shall enter into a  
8 written agreement with the NAIC or a third-party consultant  
9 governing the sharing and use of information provided under this  
10 chapter that includes all of the following:

11 (1) Specific procedures and protocols for maintaining  
12 the confidentiality and security of CGAD-related information.

13 (2) Procedures and protocols for sharing CGAD-related  
14 information only with regulators from other states in which  
15 the insurance group has domiciled insurers, including a  
16 written acknowledgment of the recipient's intent and legal  
17 authority to maintain the confidential and privileged status  
18 of the CGAD-related information.

19 (3) A provision specifying that ownership of the CGAD-  
20 related information shared remains with the department and  
21 that the use of the CGAD-related information is subject to  
22 the direction and approval of the department.

23 (4) A provision that prohibits storing CGAD-related  
24 information shared under this chapter in a permanent database  
25 after the underlying analysis is completed.

26 (5) A provision requiring prompt notice to the  
27 department and to the insurer or insurance group regarding a  
28 subpoena, request for disclosure or request for production of  
29 the insurer or insurance group's CGAD-related information in  
30 the possession of the NAIC or third-party consultant.

1           (6) A requirement to consent to intervention by an  
2 insurer or insurance group in a judicial or an administrative  
3 action in which the NAIC or third-party consultant may be  
4 required to disclose CGAD-related information or other  
5 confidential information about the insurer or insurance group  
6 that was shared under this chapter.

7           (e) No delegation.--The sharing of information by the  
8 department under this chapter does not constitute a delegation  
9 of regulatory authority or rulemaking. The department shall be  
10 solely responsible for the administration, execution and  
11 enforcement of this chapter.

12           (f) No waiver of privilege or confidentiality.--The sharing  
13 of CGAD-related information with, to or by the department as  
14 authorized by this chapter does not constitute a waiver of any  
15 applicable privilege or claim of confidentiality.

16           (g) Information with third parties.--CGAD-related  
17 information in the possession or control of the NAIC or a third-  
18 party consultant as provided under this chapter shall:

19           (1) be confidential and privileged;

20           (2) not be subject to the Right-to-Know Law;

21           (3) not be subject to subpoena; and

22           (4) not be subject to discovery or admissible as  
23 evidence in a private civil action.

24 § 3908. Penalties.

25           An insurer or insurance group that fails to timely file a  
26 CGAD as required under this chapter or by regulation shall be  
27 required, after notice and hearing, to pay a penalty of \$200 for  
28 each day's delay. The maximum penalty under this section shall  
29 be \$25,000 per year.

30 § 3909. Rules and regulations.

1 The department may promulgate rules and regulations and issue  
2 orders necessary to administer and enforce this chapter.

3 § 3910. Construction.

4 Nothing in this chapter shall be construed to prescribe or  
5 impose corporate governance standards and internal procedures in  
6 addition to those required under applicable State corporate law.  
7 Notwithstanding the foregoing, nothing in this chapter shall be  
8 construed to limit the commissioner's authority or the rights or  
9 obligations of third parties under Article IX of the act of May  
10 17, 1921 (P.L.789, No.285), known as The Insurance Department  
11 Act of 1921.

12 § 3911. Severability.

13 (a) General rule.--Except as provided in subsection (b):

14 (1) The provisions of this chapter are severable.

15 (2) If a provision of this chapter or its application to  
16 a person or circumstance is held invalid, the invalidity does  
17 not affect other provisions or applications of this chapter  
18 that can be given effect without the invalid provision or  
19 application.

20 (b) Exception.--If the addition of section 3907 (relating to  
21 confidentiality) is held invalid, independent of its application  
22 to a person or circumstance, the remaining provisions or  
23 applications of this chapter are void.

24 Section 2. This act shall take effect January 1, 2018.