

LIFE AND HEALTH REINSURANCE AGREEMENTS MODEL REGULATION

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Section 1. Authority [Optional]

This regulation is adopted and promulgated by the commissioner pursuant to Section [applicable section] of the [name of state] Insurance Law [or Code].

Drafting Note: Insert the title of the chief insurance regulatory official wherever the word "commissioner" appears.

Section 2. Preamble

- A. The [name of state] Insurance Department recognizes that licensed insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus.
- B. However, it is improper for a licensed insurer, in the capacity of ceding insurer, to enter into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival. The terms of such agreements referred to herein and described in Section 4 violate:
 - (1) Section [insert applicable section] relating to financial statements which do not properly reflect the financial condition of the ceding insurer;
 - (2) Section [insert applicable section] relating to reinsurance reserve credits, thus resulting in a ceding insurer improperly reducing liabilities or establishing assets for reinsurance ceded; and
 - (3) Section [insert applicable section] relating to creating a situation that may be hazardous to policyholders and the people of this State.

Section 3. Scope

This regulation shall apply to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers which are not subject to a substantially similar regulation in their domiciliary state. This regulation shall also similarly apply to licensed property and casualty insurers with respect to their accident and health business. This regulation shall not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

Section 4. Accounting Requirements

- A. No insurer subject to this regulation shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

- (1) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured;
- (2) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets;
- (3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty;
- (4) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded;
- (5) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company;
- (6) The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identifies for a representative sampling of products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Risk categories:

- (a) Morbidity
- (b) Mortality
- (c) Lapse

This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy.

- (d) Credit Quality (C1)

This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate.

(e) Reinvestment (C3)

This is the risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase.

(f) Disintermediation (C3)

This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

+ - Significant 0 - Insignificant

RISK CATEGORY

	a	b	c	d	e	f
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium dump-in premiums allowed	0	+	+	+	+	+

*LTC = Long Term Care Insurance

LTD = Long Term Disability Insurance

- (7) (a) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in Paragraph (7)(b)) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.
- (b) Notwithstanding the requirements of Paragraph (7)(a), the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:
- Health Insurance - LTC/LTD
 - Traditional Non-Par Permanent
 - Traditional Par Permanent
 - Adjustable Premium Permanent
 - Indeterminate Premium Permanent
 - Universal Life Fixed Premium
(no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where: I is the net investment income (Exhibit 2, Line 16, Column 7)

CG is capital gains less capital losses (Exhibit 4, Line 10, Column 6)

X is the current year cash and invested assets (Page 2, Line 10A, Column 1) plus investment income due and accrued (Page 2, Line 16, Column 1) less borrowed money (Page 3, Line 22, Column 1)

Y is the same as X but for the prior year

Drafting Note: Line references are for the 1992 annual statement. Line references may be deleted or should be updated if regulation is adopted after calendar year 1992. Be aware that annual statement line references may change from year to year.

- (8) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within ninety (90) days of the settlement date.
- (9) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.
- (10) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

- (11) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.
- B. Notwithstanding Subsection A, an insurer subject to this regulation may, with the prior approval of the commissioner, take such reserve credit or establish such asset as the commissioner may deem consistent with the Insurance Law [or Code], Rules or Regulations, including actuarial interpretations or standards adopted by the Department.
- C. (1) Agreements entered into after the effective date of this regulation which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within thirty (30) days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this regulation and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this department. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this regulation.
- (2) Any increase in surplus net of federal income tax resulting from arrangements described in Subsection C(1) shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account, page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance ceded" line, page 4 of the Annual Statement as earnings emerge from the business reinsured.

{For example, on the last day of calendar year N, company XYZ pays a \$20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is \$13.2 million (\$20 million - \$6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus account. \$6.8 million (34% of \$20 million) is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations.

At the end of year N+1 the business has earned \$4 million. ABC has paid \$.5 million in profit and risk charges in arrears for the year and has received a \$1 million experience refund. Company ABC's annual statement would report \$1.65 million (66% of (\$4 million - \$1 million - \$.5 million) up to a maximum of \$13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and -\$1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations. }

Section 5. Written Agreements

- A. No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the Department, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.
- B. In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding ninety (90) days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.
- C. The reinsurance agreement shall contain provisions which provide that:

- (1) The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and
- (2) Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by both parties.

Section 6. Existing Agreements

Insurers subject to this regulation shall reduce to zero by December 31, 19[] any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this regulation which, under the provisions of this regulation would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements shall have been in compliance with laws or regulations in existence immediately preceding the effective date of this regulation.

Drafting Note: While each jurisdiction has short time period discretion, the latest date to be inserted must be no later than three (3) years from the date this amended model regulation was adopted by the NAIC.

Section 7. Effective Date

This regulation shall become effective [date].

Chronological Summary of Actions (All references are to the Proceedings of the NAIC).

1986 Proc. I 9-10, 22, 149, 240, 243-245 (adopted).

1992 Proc. II 8, 11-12, 159, 162-167 (amended and reprinted).

LIFE AND HEALTH REINSURANCE AGREEMENTS MODEL REGULATION

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

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KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	ALA. ADMIN. CODE r. 85 (1988/1997).	
Alaska	ALASKA ADMIN. CODE tit. 3, §§ 21.600 to 21.695 (1992/1997).	
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. ADMIN. CODE § 20-6-307 (1993/1996).	
Arkansas	ARK. CODE R. 51 (1991/1996).	
California	BULLETIN 92-9 (1992).	
Colorado	NO CURRENT ACTIVITY	
Connecticut	CONN. AGENCIES REGS. §§ 38a-72a-1 to 38a-72a-5 (1993/2014).	
Delaware	18 DEL. CODE REGS. § 1002 (1995/2003).	
District of Columbia	D.C. MUN. REGS. tit. 26, §§ 2300 to 2304 (1995).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Florida	FLA. ADMIN. CODE ANN. r. 69O-144.010 (1991/1996).	
Georgia	GA. COMP. R. & REGS. 120-2-61 (1993).	
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. CODE R. §§ 16-20-1 to 16-20-5 (1994).	
Idaho	IDAHO ADMIN. CODE 67.18.01.67 (1993).	
Illinois	ILL. ADMIN. CODE tit. 50, §§ 1103.10 to 1103.50 (1994/2011).	
Indiana	760 IND. ADMIN. CODE 1-55-1 to 1-55-6 (2007/2013).	
Iowa	IOWA ADMIN. CODE r. 191-17.1 to 191-17.5 (1989/1993).	
Kansas	KAN. ADMIN. REGS. § 40-2-24 (1997) (Model adopted by reference with modification).	
Kentucky	806 KY. ADMIN. REGS. 3:160 (1991/1996).	
Louisiana	LA. ADMIN. CODE tit. 37, §§ XIII.3701 to XIII.3711 (Regulation 57) (1995).	
Maine	760 ME. CODE R. §§ 1 to 7 (1993).	
Maryland	MD. CODE REGS. 31.05.07.01 to 31.05.07.05 (1993).	
Massachusetts	211 MASS. CODE REGS. 129.01 to 129.05 (1993/2015).	
Michigan	MICH. ADMIN. CODE r. 500.1121 to 500.1127 (1994).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Minnesota	MINN. STAT. §§ 60A.803 (1994).	
Mississippi	MISS. CODE R. 92-102 (1992/1996).	
Missouri	MO. CODE REGS. ANN. tit. 20, § 200-2.300 (1990/1993).	
Montana	MONT. ADMIN. R. 6.6.3601 to 6.6.3604 (1993).	
Nebraska	210 NEB. ADMIN. CODE § 57 (1991/2000).	
Nevada	NEV. ADMIN. CODE §§ 681A.150 to 681A.190 (1996).	
New Hampshire	N.H. CODE ADMIN. R. ANN. INS. 308.01 to 308.05 (1992/2012).	
New Jersey	N.J. ADMIN. CODE §§ 11:2-40.1 to 11:2-40.8 (1993/2001).	
New Mexico	NO CURRENT ACTIVITY	
New York	N.Y. COMP. CODES R. & REGS. tit. 11, §§ 127.1 to 127.4 (Regulation 102) (1993).	Circular Letter No. 20 (2008).
North Carolina	N.C. GEN. STAT. § 58-7-31 (1993).	
North Dakota	N.D. ADMIN. CODE 45-3-07.2-01 to 45-3-07.2-04 (1995/2001).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO ADMIN. CODE 3901:3-07 (1991/1995).	
Oklahoma	OKLA. ADMIN. CODE §§ 365:25-7-50 to 365:25-7-53 (1992/1994).	
Oregon	OR. ADMIN. R. 836-012-0300 to 836-012-0330 (1993/2010).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Pennsylvania	31 PA. CODE §§ 162.1 to 162.9 (1993).	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	R.I. GEN. LAWS §§ 27-4.2-1 to 27-4.2-5 (1992/2011); 27-88 R.I. CODE R. §§ 001 to 005 (1996).	
South Carolina	S.C. CODE ANN. REGS. 69-48 (1991/1994).	
South Dakota	S.D. ADMIN. R. 20:06:30 (1995/2003).	
Tennessee	TENN. COMP. R. & REGS. 0780-1-62 (1994).	
Texas	7 TEX. ADMIN. CODE § 28 (1996).	
Utah	UTAH ADMIN. CODE r. 590-143 (1991/2012).	
Vermont	93 VT. CODE R. § 1 (1993/1994).	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	14 VA. ADMIN. CODE §§ 5-280-10 to 5-280-70 (1991/2013).	
Washington	WASH. ADMIN. CODE 284-13-850 to 284-13-863 (1995).	
West Virginia	W. VA. CODE § 33-4-15b (1992/1995) (Also applies to P/C insurers); W. VA. CODE R. §§ 114-48-1 to 114-48-6 (1996).	
Wisconsin	WIS. ADMIN. CODE INS. §§ 55.01 to 55.05 (1993).	
Wyoming	WYO. STAT. ANN. §§ 26-5-118 to 26-5-119 (1992/1993).	

**LIFE & HEALTH REINSURANCE AGREEMENTS
MODEL REGULATION**

Proceeding Citations

Cited to the Proceedings of the NAIC

In 1984, a working group was formed to review problems relating to companies writing annuity business. At its meeting in December 1984, the group discussed generally the problem of “surplus relief reinsurance” and the New York regulation proposed to regulate such contracts. **1985 Proc. I 364-365.**

The advisory committee reported that New York Regulation 102 was “generally acceptable” as a basis for a model NAIC regulation on insurance but that the group would suggest possible language changes to remove ambiguities. The advisory committee suggested that a proposed model regulation should not be limited to single premium deferred annuities and that other NAIC groups were already addressing the issue but the working group disagreed. The working group, after considerable discussion, decided to develop as soon as possible a model regulation that would prohibit reinsurance surplus aid abuses. This was accomplished by basing the model heavily on New York’s Regulation 102. **1985 Proc. II 440-442.**

The initial exposure draft is reproduced at **1985 Proc. II 438-440.**

In 1991, a subgroup was formed under the Sale of Future Revenue/Securitization on Nonadmitted or Unrecorded Assets Working Group to study financial reinsurance. As part of its work, the subgroup undertook an extensive revision of this model. **1992 Proc. IA 280.**

The intent of this revision was to provide more information to regulators on risk transfer, liability transfer and other considerations in regard to “surplus aid” reinsurance contracts in order to promote more uniformity in their treatment. **1992 Proc. IA 274-275.**

Included as part of the revision was a name change from “Model Regulation—Life Reinsurance Agreements” to “Life and Health Reinsurance Agreements Model Regulation” **1992 Proc. IIA 162.**

The model and the revisions adopted in 1992 can be found at **1992 Proc. IIA 162-167.**

Section 1. Authority

Section 2. Preamble

Concern was expressed regarding possible “onerous filing requirements” that could occur if the regulation was written to apply to all licensed insurers. However, such applicability was defended because related statutes regarding life reserve valuations apply to all licensed insurers and this model cannot be separated from those statutes. **1985 Proc. II 437.**

The working group rejected alternative language specifying the nature of the transactions and voted to retain the original language in this section. **1986 Proc. I 284.**

In a major revision of the model in 1992, this section was amended to more strongly denounce use of “surplus aid” reinsurance agreements. Additional language clarified what is meant by “surplus aid” reinsurance by defining the effect of such agreements. **1992 Proc. IA 259.**

One regulator commented that it appeared the states were relying chiefly on the “preamble” section of the model. Another noted that he had been in attendance when the original model was adopted and the listed items were an attempt at that time to set guidelines; however, as time went by contracts were drafted which avoided those guidelines. That was the reason many states relied on the preamble. **1992 Proc. IA 275.**

**LIFE & HEALTH REINSURANCE AGREEMENTS
MODEL REGULATION**

Proceeding Citations

Cited to the Proceedings of the NAIC

Section 3. Scope

This section was added so that the model applies to all domestic life insurers and those foreign life insurers not subject to substantially similar regulation in their domiciliary states. **1986 Proc. I 284.**

In the major revision of the model in 1992, this section was amended to include any insurers writing accident and health policies as well as life insurance. It also specifically excluded certain types of non-proportional reinsurance and assumption reinsurance. **1992 Proc. IA 259, 271.**

Section 4. Accounting Requirements

In 1992 this section was revised extensively. **1992 Proc. II 163-166.**

A. The subgroup discussed on several occasions partial versus total disallowance of reserve credit for agreements that violate the provisions of Subsection 4A(1). **1992 Proc. IA 270, 272, 275; 1992 Proc. IIA 161, 167.** The group voted to allow companies to set up a liability for the present value of any shortfall in renewal expense allowances but rejected a similar provision for Subsection 4A(5). **1992 Proc. IIA 161.**

As suggested by the advisory committee, the exception in Subsection 4A(2) was expanded to include non-payment of other amounts due from the reinsured in addition to reinsurance premiums **1992 Proc. IA 272.**

The drafters included, as a violation under Subsection 4A(2), the deprivation of ceding company assets at the reinsurer's option. The drafters were concerned that funds withheld by the ceding company or modified coinsurance reserves could be required to be paid over to the reinsurer at a time when this was least desirable. **1992 Proc. IIA 161.**

The advisory committee recommended the deletion of the drafting note following Subsection 4A(3). However, the drafters instead made the language of the drafting note part of the text of the subsection. The group also amended the language of the last sentence from "beyond reason" to "to excessive levels" to describe increases in premiums or risk and expense charges. **1992 Proc. IA 270-272.**

The group briefly discussed Subsection 4A(4) but made no changes to the language of what had been Paragraph (6) in the earlier model. **1992 Proc. IA 275.**

Although the advisory group suggested that legitimate reasons may sometimes exist for reinsurance premiums to exceed direct premiums (**1992 Proc. IA 272**) the group added language in Subsection 4A(5) making such practice improper under the regulation. **1992 Proc. IA 260.**

In conjunction with similar discussions regarding Subsection 4A(1), the group considered but rejected allowing companies to set up a liability when faced with a violation of Subsection 4A(5). **1992 Proc. IA 275; 1992 Proc. IA 161, 167.**

The subgroup held extensive discussions on Subsection 4A(6), which was entirely new in the 1992 revision. Of specific concern was the description of the types of risk included in the chart. The group explicitly noted that the list was not all-inclusive and was provided for example, leaving companies to determine the type of risk applicable to their products. **1992 Proc. IA 267, 275-276.**

The subgroup discussed the formula necessary for determining the reserve interest rate adjustment in Subsection 4A(7). The model was amended to include an example of an acceptable formula proposed by one of the members. **1992 Proc. IA 275, 279.**

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Cited to the Proceedings of the NAIC

Section 4A (cont.)

To ensure comment on the language contained in Subsection 4A(7) regarding segregation of assets, the subgroup decided to expose its draft with optional language. **1992 Proc. IA 270**. The group decided to allow different methods of segregation if acceptable to the commissioner, (**1992 Proc. IIA 167**) but added language to indicate that something more than a mere accounting was necessary. **1992 Proc. IIA 161**.

The subgroup reiterated its support for the provisions of Subsection 4A(8) but noted that Section 4B allowed the commissioner to waive this requirement where expecting compliance would be unreasonable. **1992 Proc. IIA 167**.

Subsections 4A(9) and 4A(10) were added to prevent representations by the ceding company from negating the contract, particularly in liquidation situations. **1992 Proc. IA 269**.

Subsection 4A(11) was added to prevent companies from structuring agreements which do not contain any of the restrictions in Section 4 but which violate the spirit of the model. **1992 Proc. IA 269**. The language was later revised to more clearly reflect the language of the Preamble (Section 2B) **1992 Proc. IIA 167**.

B. No language was added to Subsection B to specify that credit is allowed to the extent of funds withheld by the ceding company even where the treaty is not in compliance with the regulation. The subgroup felt this was reasonable, but did not see a need for additional language to address this issue. **1992 Proc. IIA 167**.

C. To reflect the concerns of the advisory committee which the subgroup found to have merit, Subsection 4C(1) was amended to exempt from the filing requirements inforce coverages and to provide that the ceding company should bear the responsibility of filing the agreement with the commissioner. **1992 Proc. IA 270, 273**.

Despite concerns expressed and reiterated by the advisory committee, the subgroup discussed and rejected proposals to amend the accounting requirements found in Subsection 4C(2). **1992 Proc. I 273; 1992 Proc. IIA 161, 167**. The subsection was amended, however, to indicate that the described accounting treatment should be net of federal income taxes. An example illustrating the impact was added. **1992 Proc. IA 270**.

The group agreed that the requirement in Subsection 4C(2) for showing the transactions separate on the insured's financial statement was to have surplus relief reported as a direct credit to surplus when it arises and a charge to surplus and income as it is earned. **1992 Proc. IA 276**.

Section 5. Written Agreements

In the major revision of the model in 1992, Section 5C was added requiring that every agreement contain provisions stipulating that the reinsurance agreement represents the entire agreement with no undisclosed "side agreements" and that no changes be made to the agreement without written amendment signed by both parties. **1992 Proc. IIA 166**.

Section 6. Existing Agreements

The section originally included an optional approach ("the California approach") for this section which required immediate write-off of reserve credits, but that was deleted by agreement of the working group. **1986 Proc. I 284**.

The first draft of the section provided a period of 60 days for the insurers to notify the department of existing agreements in violation of the regulation. This requirement was amended to allow 90 days. **1986 Proc. I 284**.

When the model was revamped in 1992, this section was extensively revised to shorten the time during which companies would be allowed to bring existing agreements into compliance with the regulation. **1992 Proc. IIA 166**.

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Proceeding Citations

Cited to the Proceedings of the NAIC

Section 7. Effective Date

Chronological Summary of Action

December 1985: Model adopted.

June 1992: Extensive amendments to model to clarify and add examples. Also applied to health insurance.