

TYPES NOT MAPPED YET June 08, 2015 | TTR not mapped yet | Joy Harris Hennessy

# Insurance Holding Company Laws: What providers need to know as they dive into insurance market waters

As providers continue to develop innovative ways to deliver coordinated care while controlling costs, many are looking to develop their own managed care plans or purchase an existing plan as part of these new care models. When adding an insurance company to their health systems, providers should be aware of the applicable state's insurance holding company laws. Many states have patterned these laws on the model Insurance Holding Company System Regulatory Act and its Insurance Holding Company System Model Regulation (collectively, the "Model Laws"), as adopted and revised by the National Association of Insurance Commissioners.

The Model Laws are generally designed to ensure the solvency of an insurance company that is part of an "Insurance Holding Company System." An Insurance Holding Company System is made up of two or more affiliated persons, at least one of which is an insurance company (*i.e.*, a provider entity which wholly owns an entity licensed as an insurance company would meet the definition of an Insurance Holding Company System). This goal of ensuring solvency is achieved, in part, through a series of forms required to be filed with the applicable insurance commissioner which address a number of arrangements involving an insurance company in an Insurance Holding Company System:

- **Form A: *Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer.*** Except in limited circumstances, no person may acquire, merge with or otherwise take control of a domestic insurer unless such person has filed a Form A Statement with, and obtained the approval of, the applicable insurance commissioner. Control is generally presumed to exist if a person directly or indirectly owns, controls or has the power to vote 10% or more of the domestic insurer's voting securities. The Form A Statement requires information about the proposed transaction and the acquiring party's business operations, officers and directors, financial statements and plans for the domestic insurer.
- **Form B: *Insurance Holding Company System Annual Registration Statement.*** Every insurer authorized to do business in a state, other than a foreign insurer from a state with similar filing requirements, must file an annual registration statement (Form B Statement) containing the following information:
  - Ownership, management and financial condition of the insurer **and** any person controlling the insurer, including the insurer's ultimate controlling person (UCP).
  - Organizational chart of the Insurance Holding Company System.
  - Summaries of material agreements and transactions between the insurer and its affiliates (*e.g.*, asset sales and purchases, loans, management and service contracts, cost-sharing arrangements, reinsurance agreements, tax allocation agreements, dividends and other distributions to shareholders, pledge of insurer's stock).
  - Description of litigation or administrative proceedings involving the UCP that are criminal in nature or may have a material effect upon solvency. Financial statements of the UCP and if requested, the Insurance Holding Company System, including all affiliates.
- **Form C: *Summary of Changes to Registration Statement.*** The Form C Statement, filed in connection with the current annual Form B Statement, provides a summary of the changes from the prior year's Form B Statement.

- **Form D: *Prior Notice of a Transaction*.** Prior to a domestic insurer entering into a material agreement or transaction with any person in its Insurance Holding Company System, such insurer must provide at least 30 days' advance notice to the applicable insurance commissioner using a Form D.
- **Form E: *Pre-Acquisition Notification Form*.** A pre-acquisition notification (Form E) is required to be filed with the insurance commissioner prior to certain mergers and acquisitions. Recent amendments to the Model Laws require a Form E to be filed with the insurance commissioner with any Form A Statement.
- **Form F: *Enterprise Risk Report*.** Recent amendments to the Model Laws require the UCP of an insurer subject to the registration requirements of an applicable state to file an annual enterprise risk report. The information requested in this report is intended to identify certain activities or events within the Insurance Holding Company System that could have a material adverse effect upon an insurer's financial condition or liquidity or the financial condition or liquidity of the entire Insurance Holding Company System.

As a provider contemplates the move into the insurance market, it is important to consider the impact the reporting requirements set forth in the applicable states' insurance holding company laws may have on the provider's operations. For example, intercompany arrangements between the insurance company and its provider owner may be subject to non-disapproval by the insurance commissioner. Further, with the addition of the Form F filing requirement (which some States are still in the process of adopting), the financial condition and obligations of the provider's lines of business outside the insurance company may need to be disclosed to the insurance commissioner. Finally, the ability to make distributions from the insurance company to its owners may be regulated and subject to approval. Thoughtful consideration of these requirements in the beginning can help prevent regulatory surprises later.

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