

Note from the Codifier: The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days.
For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.1(a3) that the Department of Insurance intends to amend the rule cited as 11 NCAC 12 .0332.

Codifier of Rules received for publication the following notice and proposed temporary rule(s) on: October 26, 2023.

Public Hearing:

Date: November 14, 2023

Time: 10:00 a.m.

Location: 1st Floor Hearing Room, Room 131 (Albemarle Building) located at 325 N. Salisbury Street, Raleigh, NC 27603

Reason for Proposed Temporary Action: The reason the change is needed is because of recently enacted legislation, S.L. 2023-133, Section 8 of the bill amends the on-site audit requirements for TPAs and this would make conforming amendments to 11 NCAC 12 .0332.

Comment Procedures: Comments from the public shall be directed to: Loretta Peace-Bunch, 325 N. Salisbury Street, Raleigh, NC 27603; phone (919) 807-6004; email ncdoirulescomments@ncdoi.gov. The comment period begins November 8, 2023 and ends December 1, 2023.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0300 - GENERAL PROVISIONS

11 NCAC 12 .0332 REVIEW/AUDIT OF THIRD PARTY ADMINISTRATORS

(a) Definitions. As used in this rule:

- (1) "Certification" means the certification required by G.S. 58-56-26(c).
- (2) "Insurer" has the same meaning as in G.S. 58-56-2(4).
- (3) "Third party administrator" or "TPA" has the same meaning as in G.S. 58-56-2(5).

(b) For the certification submitted on July 1, 2010, the insurer shall submit a certification signed by an officer of the insurer, which identifies the name and federal tax identification number of the TPA that is the subject of the certification. The certification shall contain the following language:

"I, (name and title of the officer of the insurer), am familiar with the requirements of G.S. 58-56-26(c), and hereby certify that (insurance company full licensed name and federal tax identification number) performed a ~~review, an on-site audit,~~ review, an audit or both in accordance with G.S. 58-56-26(c) for every third party administrator identified in or attached to this certification for calendar year 2009." The certification shall contain the names of TPAs to which G.S. 58-56-26(c) does not apply and the reasons for the exception of each TPA.

(c) For certifications submitted on July 1, 2011 and each subsequent year, each insurer shall certify that the insurer's review and ~~on-site~~ audit include:

- (1) An assessment of the TPA's business practices and procedures and evaluations of all of the following:
 - (A) The TPA's compliance with provisions of the written agreement with the insurer;
 - (B) The TPA's compliance and adherence to the TPA's internal policies and procedures for contract management, claims administration, and general administration, if applicable;
 - (C) The TPA's performance of claims adjudication and payment, if applicable;
 - (D) The TPA's performance of underwriting services, if applicable; and
 - (E) The TPA's performance of collecting premiums or other monies; and
- (2) A written summary of the objectives and scope of the review or ~~on-site~~ audit and the results of the review or ~~on-site~~ audit, including a corrective action plan addressing any deficiencies found during the review or ~~on-site~~ audit.

(d) An ~~on-site~~ audit may be conducted either on-site or virtually and shall include an inspection of the TPA's place of business and shall verify the accuracy, integrity, and completeness of the information received during a review conducted by the insurer under G.S. 58-56-26(c). An on-site audit shall also include an inspection of the TPA's place of business.

(e) In addition to a statement certifying compliance with the requirements of Paragraphs (c) and (d) of this Rule, a certification submitted on or after July 1, 2011 and each subsequent year shall be dated and include:

- (1) The insurer's name as it appears on the insurer's license or certificate of authority and the insurer's federal tax identification number;
- (2) The name and federal tax identification number of every TPA with which the insurer has a written administrative agreement under G.S. 58-56-6;
- (3) Any exceptions to the certification identifying each excepted TPA by name and federal tax identification number and an explanation for the exception of the TPA;
- (4) The year for which the certification is made; and
- (5) The name, title and signature of an officer of the insurer making the certification.

(f) A sample format for the certification is available free of charge from the Life and Health Division at the Department of Insurance Web site at www.ncdoi.com.

(g) An insurer that did not have any written administrative agreements with TPAs during the reporting year for which the certification is required shall submit a report instead of a certification. This report shall include the information required under Paragraph (e) of this Rule; except the information required by Subparagraphs (e)(2) and (e)(3) of this Rule need not be included.

(h) A review may be conducted on the premises of the insurer or at another location designated by the insurer and may be conducted by electronic means. A review or ~~on-site~~ audit may be performed by either the insurer or the insurer's designated representative. The insurer's designated representative shall not be an employee of or independent contractor with the TPA and shall be an independent, disinterested person or entity.

(i) The certification shall be submitted annually to the Life and Health Division through the NAIC system for electronic rate and form filings ("SERFF" or its successor system or program). If an insurer is unable to use the NAIC system or program, the insurer shall submit the certification by way of the U.S. Postal Service or other mail delivery service or by way of electronic mail, compressed in Adobe Acrobat (PDF).

Authority G.S. 58-2-40; 58-56-26.