



# South Carolina Department of Insurance

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To: All Licensed Insurers and Health Maintenance Organizations in the State of South Carolina

From: Ernst N. Csiszar  
Director of Insurance

Subject: Interpretative Bulletin of South Carolina Code of Laws Section 38-5-80(k)

## **I. Purpose**

The purpose of this Bulletin is to outline the information required to be submitted by a licensed insurer or health maintenance organization ("the Applicant") in an application for approval to move or maintain all or a portion of the Applicant's business records or operations outside of the State pursuant to Section 38-5-80(k).

## **II. Major Provisions South Carolina Code of Laws Section 38-5-80(k)**

South Carolina Code of Laws Section 38-5-80(k) states, "The insurer's principal place of business and primary executive, administrative, and home offices and all original books and records of the insurer are located and maintained in this State. The provisions of this subsection apply to domestic health maintenance organizations. For purposes of this section, original books and records mean corporate bylaws, charters, articles of incorporation, and any other records deemed to constitute original records by the director or his designee. Insurers desiring to move business records or operations outside of the State shall apply to the director or his designee for approval. Approvals or denials of request to move records or operations fall within the discretion of the director or his designee. The director or his designee may also rescind approval of a request if in his discretion it is considered to be in the best interest of the consumers and citizens of the State. Insurers must comply with the records requirements of Section 38-5-190 and the requirements for domestic insurers set forth in this chapter. The director or his designee shall outline via bulletin or order the information required in such an application. Item (k) of this section does not apply to any domestic insurer whose primary executive, administrative, and home offices were located outside this State on July 1, 1987. If subsequently the director or his designee is of the opinion that a condition exists which would have prohibited him from issuing the original certificate of authority or license to

the insurer, then that condition also constitutes a ground for license revocation under Section 38-5-120."

### **III. Requirements for Applications for Approval to Move Business Records or Operations Outside of the State**

An Applicant currently domiciled in South Carolina desiring to move all or a portion of the Applicant's business records or operations outside of the State or an Applicant desiring to re-domesticate to South Carolina and desiring to keep all or a portion of the Applicant's business records or operations outside of the State must apply to the director or his designee for approval pursuant to Section 38-5-80(k). Information required in the application includes the following:

1. A description of the Applicant's business records or operations to be moved from the State (or to be maintained outside of the State for an Applicant re-domesticating to the State). (See the attached spreadsheet for an example of an acceptable format for the required listing.)
2. A description of the business need to move (or maintain) the business records or operations outside of the State, including a showing that the request will facilitate and make more economical the operations of the Applicant and will not unreasonably diminish the service or protection thereafter to be given to Applicant's policyholders or enrollees.
3. A description of the manner in which business records or operations to be moved (or maintained) outside of the State may be accessed to facilitate regulatory examinations or for other purposes necessary for the protection of the Applicant's policyholders or enrollees and the public.
4. A listing of the location of all of the Applicant's business records and operations as of the date of the application. (See the attached spreadsheet for an example of an acceptable format for the required listing.)
5. Any information required to be submitted pursuant to the Insurance Holding Company Regulatory Act (Chapter 21 of Title 38 of the South Carolina Code of Laws) as a result of this request, including but not limited to a description, that is fair in all material respects, of all new and existing agreements and any modifications to or cancellations of existing agreements.
6. For an Applicant making application to move all or a portion of the its business records or operations outside of the State, the information should include the expected economic impact of the requested move on South Carolina (e.g., the expected economic impact on its South Carolina premium taxes and other taxes, its South Carolina jobs and its South Carolina real estate and other investments.) For an Applicant re-domesticating to the State and making application to maintain all or a portion of its business records or operations outside of the State, the information should include the expected economic effect on South Carolina of the Applicant's re-domestication (e.g., the expected economic impact on its South Carolina premium taxes and other taxes, its South Carolina jobs and its South Carolina real estate and other investments.)

7. A description of any change in the Applicant's method of handling South Carolina policyholder or enrollee complaints if the application is approved.
8. A written acknowledgement from a duly authorized officer of the Applicant that the cost of the State's financial and market conduct examinations and desk audits may increase as a result of moving (or maintaining) business records or operations outside of the State due to increased personnel, travel and time spent upon analysis and examination.
9. Any other information which the director or his designee may deem necessary to adequately review the request.

An Applicant requesting to move or maintain all or a portion of its business records or operations outside of the State are reminded of the following statutory requirements among others:

1. The Applicant must comply with the requirements of Section 38-5-80(k).
2. Upon written request of the director or his designee and in accordance with applicable law, the Applicant shall promptly provide access to its records or copies thereof relative to a particular transaction or transactions of the Applicant as designated in the request by the director or his designee.
3. If at any time the director or his designee finds by order that the conditions justifying the maintenance of such business records or operations outside of this State no longer exist, or that the Applicant has willfully and knowingly violated any of the conditions set forth in this Bulletin or South Carolina law, the director or his designee may order and the Applicant shall return such business records and operations to the State as may be specified in such order.

The director or his designee, in the exercise of his or her discretion, may determine the type and quantity of the information required depending upon the nature of the request. Information shall be in such detail as the director or his designee may require to ascertain that the interests of the Applicant's policyholders and enrollees and the public are adequately protected. After the initial request, any subsequent move of operations or business moved (or maintained) outside of the State must be submitted to the director or his designee for approval in accordance with this Bulletin and applicable statutes and regulations. Any removal of business records or operations (or relocation of the same) except as defined in this Bulletin or South Carolina law is strictly prohibited. Failure to comply with the requirements of this Bulletin could result in a violation of South Carolina law and the suspension or revocation of the Applicant's Certificate of Authority.

