

SUBCHAPTER I. Financial Requirements 28 TAC §11.809

1. INTRODUCTION. The Commissioner of Insurance adopts the repeal of §11.809, concerning the risk-based capital requirements for health maintenance organizations (HMOs) and insurers filing the National Association of Insurance Commissioners (NAIC) Health Blank. The repeal is adopted without changes to the proposal published in the July 24, 2009 issue of the *Texas Register* (34 TexReg 4826).

2. REASONED JUSTIFICATION. The repeal of §11.809 is necessary because the Department is, simultaneously with this repeal, amending §7.402 to consolidate the risk-based capital requirements for all insurers and HMOs for year-end 2008 into §7.402. Specifically, §7.402, as amended, includes the risk-based capital requirements for insurers and HMOs filing the NAIC Health Blank requirements contained in existing §11.809. In addition, the need for §11.809 no longer exists because the sole purpose of §11.809 is to direct HMOs and insurers filing the NAIC Health Blank to comply with the requirements of §7.401. Section 7.401 specifies the risk-based capital and surplus requirements for all insurers and HMOs for year-end 2006, and is therefore obsolete and simultaneously repealed with the repeal of §11.809. Also, simultaneously with the repeal of §11.809 and §7.401, the Department is adopting amendments to §7.202(b), addressing the procedures for exemption from the provisions of Insurance Code Chapter 823, stated in §823.015, pertaining to certain qualifying insurance holding company systems; and amendments to §7.402(d), concerning the risk-based capital

and surplus requirements for all insurers and HMOs for year-end 2008. Insurers and health maintenance organizations will use the NAIC risk-based capital formulas to comply with the Department's regulatory requirements pertaining to minimum amounts of capital and policyholder surplus appropriate for carriers to support their overall business operations in consideration of their size and risk exposure. The NAIC formulas provide the insurance industry and the Department with a widely used regulatory standard for this purpose. The adoption of the repeal of §7.401 and the adoption of amendments to §7.202(b) and §7.402(d) are also published in this issue of the *Texas Register*.

3. HOW THE SECTIONS WILL FUNCTION. The adoption of the repeal will result in the updating of the Texas Administrative Code with the removal of an obsolete section.

4. SUMMARY OF COMMENTS. The Department did not receive any comments on the proposed repeal.

5. STATUTORY AUTHORITY. The repeal is adopted pursuant to the Insurance Code Chapters 404 and 441 and §§441.005, 441.051, 541.401, 822.210, 841.205, 884.206, 823.012, 843.404, 885.401, 982.105, 982.106, and 36.001. Chapters 404 and 441 address the duties of the Department when an insurer's solvency is impaired. Chapter 404 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies. Under

§441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Section 441.051 specifies “the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency” and includes certain statutorily specified conditions, including if an insurer’s required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 541.401 authorizes the Commissioner to adopt reasonable rules necessary to accomplish the purposes of trade practices regulation in Chapter 541. Section 822.210, §841.205, and §884.206 authorize the Commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers.

6. TEXT.

§11.809. Risk-Based Capital for HMOs and Insurers Filing the NAIC Health Blank.

CERTIFICATION. This agency hereby certifies that the adopted repeal has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Issued at Austin, Texas on October 5, 2009.

09-0821

TITLE 28. INSURANCE
Part 1. Texas Department of Insurance
Chapter 11. Health Maintenance Organizations

Adopted Section
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Gene C. Jarmon
General Counsel and Chief Clerk

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the repeal of §11.809 specified herein, concerning the risk-based capital requirements for health maintenance organizations (HMOs) and insurers filing the National Association of Insurance Commissioners (NAIC) Health Blank, is adopted.

AND IT IS SO ORDERED.


MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:


Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. 09-0821