SUBCHAPTER R. Withdrawal Plan Requirements and Procedures
28 TAC §§7.1801, 7.1802, 7.1804 - 7.1808, and 7.1809

INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §§7.1801, 7.1802, 7.1804 - 7.1808, and new 7.1809, relating to withdrawal and restriction plan requirements and procedures. The amendments and new section are adopted with changes to the proposed text published in the March 9, 2018, issue of the *Texas Register* (43 TexReg 1383). The department adopts §§7.1801, 7.1802, and 7.1806 - 7.1809 without changes to the proposed text. The department adopts §7.1804 and §7.1805 with changes to the proposed text.

The department revised §7.1804 and §7.1805 in response to public comments. In addition, the department adopts §7.1805 with nonsubstantive changes to the proposed text to remove a duplicate word in the paragraph. These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

A public hearing was held to consider the proposed rules on April 4, 2018, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St., Austin, Texas. The public comment period closed on April 9, 2018, and the department received written comments from five commenters.

Under Government Code §2001.033(a)(1), the department's reasoned justification for these amendments is set out in this order, which includes the preamble and rules.

REASONED JUSTIFICATION. The amendments and new section are necessary to implement Senate Bill 14, 78th Legislature, Regular Session (2003) and House Bill 1789, 75th Legislature, Regular Session (1997) and to modernize the rule. The amendments implement SB 14, extending approval deemer dates and reducing the threshold for total annual premium with respect to withdrawals from 75 percent to 50 percent. The new section implements HB 1789, regarding requirements and procedures for restriction plans under Insurance Code §827.008. The amendments are also necessary to implement HB 1789, to include personal automobile and residential property insurance lines and the reduction of an insurer's annual premium by 75 percent or more in a line to the withdrawal criteria under Insurance Code §827.003.

In addition, the amendments are necessary to update Insurance Code citations and the department's mailing address. The amendments remove provisions requiring Health Maintenance Organizations (HMOs) to file quarterly financial projections, and they remove provisions requiring insurers and HMOs to file actuarial opinions because the information is readily available to the department. The amendments also delete a 10-business-day notification requirement so that the department has sufficient time to review a withdrawal plan before responding to an insurer or HMO. The amendments clarify when the five-year ban for the resumption of writing new business begins, and they clarify that the five-year ban applies to all lines. The amendments are necessary to clarify the definition for rating territory under Insurance Code §827.001(2). The amendments add a provision stating that compliance with statutory and regulatory provisions relating to renewability, continuation, and discontinuance of coverage apply to insurers and HMOs writing guaranteed renewable or noncancelable coverage.

The department amends §§7.1801, 7.1802(5), 7.1802(8), 7.1802(13), 7.1804(b)(1) and (2), 7.1805(a)(6)(B) - (D), 7.1805(c), and 7.1808 to update old Insurance Code citations to reflect that Insurance Code Chapter 827 was re-codified in 2001.

The department amends §7.1802(15) to align the definition of "withdrawal" to statute with a reference to Insurance Code §827.003. HB 1789 added withdrawal criteria to when an insurer must file a withdrawal plan, including instances when an insurer proposes to reduce its total annual premium volume in a line of personal automobile or residential property insurance by 50 percent or more or reduces its annual premium in a line by 75 percent or more. SB 14 lowers the total annual premium threshold for withdrawal from 75 percent to 50 percent. Instead of changing the definition for withdrawal and reciting the statute verbatim in the amendments, the department references the statute directly and removes the definitions for "total" and "substantial."

The department amends §§7.1804, 7.1805, 7.1807, and 7.1808 to remove the words "total" and "substantial" and related explanatory language that appear throughout the withdrawal rules, to align the adopted text with the amended definition for "withdrawal" in §7.1802(15) and the amended withdrawal criteria under Insurance Code §827.003.

The department amends §7.1802(16) to add a definition for "rating territory." This establishes that in the rules "rating territory" means "a county in Texas."

The department amends §7.1804 to add the word "withdrawal" to the section heading, to clarify that the section addresses withdrawal plans and not restriction plans.

In response to comment, the department has changed §7.1804(a), (a)(1), and (2) as proposed to delete the words "from a line of insurance." The department agrees to this change, because the definition of withdrawal under §7.1802(15) includes the criteria that encompass a line or lines of business.

The department amends §7.1804(b) to remove the introductory catchline in the subsection for consistency with agency rule drafting style.

In response to comment, the department has changed §7.1804(b)(1) and (3) as proposed to delete these provisions, so that notification to the department is no longer required when an HMO or insurer is exempt from filing a withdrawal plan under Insurance Code §827.002 or an HMO is transferring business from the HMO to an affiliated HMO. The remaining two paragraphs under §7.1804(b) are renumbered to reflect the deletions.

The department amends §7.1805(a) and (b) to explain that an insurer or HMO that meets any criteria in §7.1804(b) does not have to file a withdrawal plan.

The department amends §7.1805(a)(6)(E) and §7.1805(b)(6)(B) to add language stating that insurers and HMOs writing guaranteed renewable or noncancelable coverage must affirm the insurer's or HMO's compliance with the Insurance Code and corresponding regulatory provisions relating to renewability, continuation, and discontinuance of coverage. In response to comment, the department, in §7.1805(b)(6)(B), has changed the word "insurer's" to "HMO's" because §7.1805(b)(6)(B) is specific to HMOs.

The department amends §7.1805(a)(8) and (b)(8) to remove the previous subparagraph (B) and combine the content from that subparagraph with subparagraph (A), to reflect that the definitions for "substantial" and "total" are no longer being used. The remaining subparagraphs in each paragraph are redesignated as appropriate.

The department amends §7.1805(a)(8)(A) and §7.1805(b)(8)(A) to add a requirement that the withdrawal plan include the total annual premium volume and the number of policies and certificates and covered persons in Texas "by county" for insurers, or contract holders and enrollees in Texas "by county in all services areas" for HMOs, respectively, for each line to be

withdrawn and the estimates after withdrawal. In response to comment, the department has changed §7.1805(a)(8)(A) and (b)(8)(A) as proposed by replacing the words by "rating territory" with "county" in subsection (a)(8)(A) and by "county in all service areas" in subsection (b)(8)(A). This change clarifies that rating territory only applies to an insurer proposing to withdraw from personal automobile or residential property insurance for purposes of whether an insurer has to file a withdrawal plan under Insurance Code §827.003(3).

The department amends redesignated §7.1805(a)(8)(B) to require that a plan contain the estimate of what percentage of the market for each affected line of insurance in each county the withdrawal impacts. In response to comment, the department changed the text of the subparagraph as proposed by replacing the term "rating territory" with "county." This change reflects the fact that "rating territory" applies only to an insurer proposing to withdraw from personal automobile or residential property insurance for purposes of determining whether an insurer has to file a withdrawal plan under Insurance Code §827.003(3).

The department amends redesignated §7.1805(a)(8)(C) to delete examples concerning location and geographic area and types of risk no longer being covered, because the examples no longer apply under the amended definition for "rating territory."

The department amends §7.1805(a)(12)(C) and (b)(12)(C) to remove the requirement that insurers and HMOs must file actuarial opinions certifying that adequate reserves are available to pay outstanding claims, because the information is readily available to the department.

The department amends §7.1805(a)(16) and (b)(14) to delete language requiring an affirmation that no new business will be solicited by the insurer or HMO in Texas during or after the withdrawal, because it is redundant in light of the existing reference to §7.1808 relating to requirements to resume writing insurance. The amendments add "as applicable" to clarify that the writing ban applies only when the conditions in the section are met.

The department amends redesignated §7.1805(b)(8)(B) to require that a withdrawal plan contain an estimate of what percentage of the market for each affected line of insurance by county in all service areas the withdrawal impacts as measured by enrollee. In response to comment, the department changed the text of the subparagraph as proposed by replacing the phrase "in each

service area county" with "by county in all service areas." This change provides clarification and consistency with the change in language in §7.1805(b)(8)(A).

The department amends redesignated §7.1805(b)(8)(C) to remove the requirement that an HMO provide information necessary to explain the extent of any specific market availability problem and what market assistance may be needed to alleviate the problem, because the HMO may not have the information to provide to the department.

The department deletes §7.1805(b)(8)(D) concerning the estimate of what percentage of the HMO's service area or service areas the withdrawal constitutes and the counties affected by the withdrawal, because the language is redundant in light of the amendments to §7.1805(b)(8)(B).

The department deletes §7.1805(b)(16) to remove the requirement in the provision, so that HMOs withdrawing from a line of business are no longer required to file quarterly financial projections, and to align the language of the subsection with the requirements for insurers in §7.1805(a).

The department amends §7.1806 to add the word "withdrawal" to the section heading to clarify that the plan submission and approval procedures apply to withdrawal plans and not restriction plans.

The department amends §7.1806(a) to update the department's mailing address, which contains an incorrect mail code. As amended, the subsection directs insurers and HMOs to the department website for the most recent address. In addition, the subsection notifies insurers and HMOs that the department will post forms and instructions on its website to assist filers with plan requirements.

The department amends §7.1806(b) to implement SB 14 by updating the time frame for when a withdrawal plan is deemed approved from 30 to 60 days.

The department deletes §7.1806(d) to remove the provision stating that the department will notify an insurer or HMO by letter within 10 business days of the Commissioner's receipt of the withdrawal plan that the plan is either sufficient or insufficient and stating what information must be provided for a complete plan. Removal of the subsection is necessary to give department staff adequate time to review withdrawal plans and respond to insurers or HMOs.

The department amends §7.1808 to provide clarification and align the language of the section with Insurance Code §827.006, so that the five-year ban on the resumption of writing after a withdrawal applies to any insurer or HMO withdrawing from writing "all premium in all lines of insurance," instead of "any line of insurance" in the state. In addition, the amendments clarify that the five-year ban takes effect the later of the date the insurer or HMO intends to begin its withdrawal as stated in the plan approved by the Commissioner or on discovery by the department of an insurer's or HMO's failure to file a withdrawal plan.

The department adds new §7.1809 to interpret restriction plans under Insurance Code §827.008. The heading for new §7.1809 is "Restriction Plan Contents and Submission Requirements."

New §7.1809(a) references Insurance Code §827.008, which requires that an insurer file a proposed restriction plan with the Commissioner for review and approval.

New §7.1809(b) lists the required content of a restriction plan and states that the plan must be signed by at least one officer of the insurer. Paragraph (1) of the subsection requires identification of the applicable personal automobile and residential property line of insurance restricted. Paragraph (2) of the subsection requires the dates the insurer intends to begin and complete its restriction. Paragraph (3) of the subsection requires an explanation of the reasons for restricting new business. Paragraph (4) of the subsection requires a list of the affected rating territories. Paragraph (5) of the subsection requires information necessary to assist the Commissioner in determining how market availability of the line of business proposed to be restricted may be affected, including: a description of how restricting the writing of new business in a rating territory may affect other related lines of business written by the insurer, such as the potential effect of discounts no longer provided to insureds; a list of other insurer products within the line the insurer will continue to offer in Texas; and any other information related to the restriction plan that the Commissioner deems necessary.

New §7.1809(c) explains where to send restriction plans. An insurer filing a restriction plan must submit the plan at the location specified on the department's website to prevent using outdated information. The department will post forms and instructions on its website to assist filers.

New §7.1809(d) makes clear that the Commissioner may modify, restrict, or limit a restriction plan as provided for under Insurance Code §827.008(b).

New §7.1809(e) states that an insurer may not revise its underwriting guidelines in response to a catastrophic natural event that occurred within the previous six months without receiving Commissioner approval of its restriction plan under Insurance Code §827.008.

New §7.1809(f) states that the insurer must file a withdrawal plan if a restriction plan results in a withdrawal under Insurance Code §827.003 and §827.004.

In addition, the amendments include nonsubstantive editorial and formatting changes to conform to the agency's current style and to improve the rule's clarity.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department received written comments from five commenters, two from the same firm. The department received no oral comments at the public hearing held on April 4, 2018. Commenters in support of the proposal with changes were: Insurance Council of Texas; Mitchell, Williams, Selig, Gates, & Woodyard, P.L.L.C.; Texas Association of Health Plans; and Texas Association of Life and Health Insurers.

Comments on §7.1802(16). A commenter commends the department's efforts to amend the rules, but has concerns about the definition of "rating territory." The commenter requests that the department consider an option to allow an insurer to file a written notice instead of a formal withdrawal plan if an insurer takes an action that reduces the insurer's total annual premium volume in a line of personal auto or residential property insurance by 50 percent or more in a rating territory that contains less than a specified minimum amount of the insurer's total annual premium. The commenter suggests another option to provide insurers the ability to combine whole single adjacent county rating territories to create a larger single rating territory to include a greater number of policyholders and increase the total amount of annual premium volume being considered. The commenter asserts that these options help assure that insurers only need to file a withdrawal plan when an action by the insurer is projected to impact a substantial number of policyholders and significantly reduce the insurer's total annual premium as provided in Insurance Code §827.003.

A second commenter requests the department add a qualifier to the definition of "rating area" to allow "rating area" to mean "zip code," if county information is unavailable. The commenter is not sure all insurers track their policyholders and certificate holders by county and some zip codes overlap more than one county.

A third commenter supports the proposed revised definition of "withdrawal" and proposed new definition of "rating territory" making it easier for insurers to comply under the file and use rating system allowing them more flexibility in defining rating territories for rating purposes. The commenter recommends specific language for a new definition of "residential property" to be included in the rule and requests that the term not include farm and ranch owners.

Agency Response to Comments on §7.1802(16). The department disagrees with and declines to adopt the first commenter's recommendations. In the original 1993 rule adoption, the department declined to apply a de minimus exclusion based on an arbitrary selected minimum premium amount, because a major purpose of the withdrawal plan statute and rule is protection of the interests of the policyholders of the withdrawing insurer and other persons affected by the withdrawal regardless of the size of the withdrawal. This reasoning still holds true today, and the department determines that filing a written notice instead of a formal withdrawal plan and combining whole single adjacent county rating territories to create a larger single rating territory are not sufficient to determine market availability and protect consumers.

In response to the second commenter, it appears the commenter meant "rating territory," which is defined, instead of "rating area," which is not. The department disagrees with and declines to make the requested change for both the first and second commenters, because Insurance Code §827.001(2) authorizes the department to establish a rating territory. The department, in an effort to use the best method to provide consistent standards for personal automobile and residential property insurance withdrawals, set rating territory by county. Although certain scenarios may trigger withdrawal plans, such method allows the Commissioner to determine market availability and protect consumers.

In response to the third commenter, the department appreciates the support on the "withdrawal" and "rating territory" definitions, but disagrees with and declines to include a definition for residential property because it is outside the scope of the amendments.

Comments on §7.1804(a). One commenter seeks clarification that when market forces beyond the reasonable control of an insurer or HMO result in a drop in annual premium, the affected insurer or HMO is not taking action on its own initiative.

A second commenter requests the words "from a line of insurance" be eliminated in §7.1804(a) and paragraphs (a)(1) and (2) to reflect that a withdrawal plan may be required in situations other than just a line of insurance.

Agency Response to Comments on §7.1804(a). The department disagrees with the first commenter and declines to make a change based on the comment. Market forces and a resulting drop in annual premium causing an insurer or HMO to file a withdrawal plan is considered taking action on its own initiative. An insurer or HMO does not act on its own initiative under §7.1804(a)(2) when acting under a Commissioner disciplinary or administrative directive or order, or when the insurer or HMO acts under a directive of a supervisor, conservator, or receiver.

In response to the second commenter, the department agrees and removes "line of insurance" from §7.1804(a) and the corresponding paragraphs, because the definition of "withdrawal" under 7.1802(15) includes the criteria that encompass a line and lines of business.

Comments on §7.1804(b). Two commenters ask why notice is still required when certain types of transactions are exempted from the requirements of Insurance Code §827.002.

Agency Response to Comments on §7.1804(b). The department agrees and deletes the exceptions under §7.1804(b)(1) and (3) so that notification to the department is no longer required when an HMO or insurer is exempt under Insurance Code §827.002. The remaining two paragraphs under §7.1804(b) are renumbered to reflect the deletions.

Comments on §7.1805(a)(8)(A). Two commenters state that information that may not be readily available or maintained by each rating territory should not be required if a total withdrawal or a withdrawal from a line of business is proposed, and should only be required if an insurer is proposing to withdraw from personal automobile or residential property insurance in a rating territory. Further, the commenter recommends that the requirement to show additional information for each rating territory not be adopted and continue to require aggregate premium and covered persons in Texas.

Agency Response to Comments on §7.1805(a)(8)(A). The department agrees that rating territory only applies to an insurer proposing to withdraw from personal automobile or residential property insurance for purposes of whether an insurer has to file a withdrawal plan under Insurance Code §827.003(3). Because the contents of a withdrawal plan apply to insurers other than personal automobile and residential property insurance lines, and HMOs, the department deletes "rating territory" and replaces it with "county" for clarification. The department requires the best available additional information from all insurers and HMOs so that the Commissioner can determine market availability and protect consumers.

Comments on §7.1805(a)(8)(B). Two commenters state that information requiring an estimate of percentage of the market by each rating territory should not be required unless an insurer is proposing to withdraw from a particular rating territory in personal automobile or residential property insurance. Further, the commenters state that individual insurers do not have market share data by rating territory and it is provided by the department through market analysis reports and generally shown on a statewide basis. The commenters assert that the Texas courts and the Attorney General have held that individual writings by county and zip code are confidential trade secrets or financial information and excepted from disclosure under the Texas Open Records Act.

Agency Response to Comments on §7.1805(a)(8)(B). The department agrees that rating territory only applies to an insurer proposing to withdraw from personal automobile or residential property insurance for purposes of whether an insurer has to file a withdrawal plan under Insurance Code §827.003(3). Because the contents of a withdrawal plan apply to insurers other than personal

automobile and residential property insurance lines, and HMOs, the department deletes "rating territory" and replaces it with "county" for clarification. The department requires the best available additional information so that the Commissioner can determine market availability and protect consumers. Further, if an insurer or HMO submits market share information to the department that is excepted from disclosure under the Texas Open Records Act, then the department would not release the information without a ruling from the Attorney General's Office.

Comment on §7.1805(b)(6)(B). One commenter recommends that "insurer" be replaced with "HMO" in one part of the sentence because §7.1805(b)(6)(B) is specific to HMOs. Further, the commenter requests that "applicable" be inserted so that HMOs must affirm compliance only with the appropriate referenced statutory provisions relating to guaranteed renewable and noncancelable coverage.

Agency Response to Comment on §7.1805(b)(6)(B). The department agrees to make the recommended change and replace "insurer's" with "HMO's" in part of the sentence. The department declines to add "applicable" because if one of the statutory citation references relating to guaranteed renewable and noncancelable coverage do not apply, then the respective affirmation is not required.

Comment on §7.1805(b)(8). One commenter seeks confirmation that under the revised rule, an HMO may withdraw from one or more counties in that its service area would be viewed on a county-by-county basis. The commenter further objects to the requirement that HMOs have to perform an analysis and file an estimate of what percentage of the market for each affected line of insurance is impacted in each service area county unless HMOs are allowed to withdraw on a county-by-county basis.

Agency Response to Comment on §7.1805(b)(8). An HMO may not withdraw on a county-by-county basis, only by service areas. For clarification, the department deletes references to "rating territory" in §7.1805(b)(8)(A) because rating territory only applies to whether an insurer needs to

file a withdrawal plan for personal automobile and residential property insurance lines. The department adds "by county in all service areas" for the purpose of providing information in a withdrawal plan. The department updates the service area language in §7.1805(b)(8)(B) to be consistent with §7.1805(b)(8)(A). The department requires the best available additional information on the estimate of what percentage of the market for each affected line of insurance is necessary to determine market availability and protect consumers.

Comments on §7.1805(b)(12)(C). Two commenters commend the department for deleting the requirement to file an actuarial opinion on reserve adequacy with a withdrawal plan.

Agency Response to Comments on §7.1805(b)(12)(C). The department appreciates the comments.

Comments on §7.1806(c). Two commenters recommend that §7.1806(c) be amended to delete the word "necessary" and add the language "required under Section 7.1805" to constitute a complete plan of withdrawal. The commenters suggest that the department has requested additional information not specifically required in the rule to avoid the 60-day review on the basis that all necessary information has not been "filed."

Agency Response to Comments on §7.1806(c). The department disagrees and declines to make the change because the recommendation is outside the scope of the amendments. There are instances where the Commissioner needs the information to determine the impact to the market and harm to consumers. Because of the complexity of the Texas insurance market, withdrawal plans are a priority of the department.

Comment on §7.1806(d). One commenter commends the Financial staff for providing excellent service to the industry on filings. The commenter requests that the 10 business days requirement for the department to notify an insurer or HMO whether its plan is complete and, if complete, starts the statutory 60-day deemer period, not be deleted. The commenter states that time constraints

imposed by law on the health industry necessitate reasonably prompt review of the withdrawal plan. The commenter further states that proposed revision to §7.1805(b)(8)(C) leaves open-ended the requirements for a "completed plan" such that the plan must contain "any other information necessary to assist the Commissioner in determining whether a market availability problem is created by the withdrawal."

Agency Response to Comment on §7.1806(d). The department appreciates the comment that Financial staff provide excellent service to the industry on filings. The department disagrees and declines to make a change, because the department does not send notification letters in response to other similarly complex filings received by the department. Because of the complexity of the Texas insurance market and the time frames, withdrawal plans are a priority of the department.

Comments on §7.1809. One commenter supports the new restriction plan rule and believes it adequately clarifies what is required by statute. A second commenter seeks confirmation that the new rule only applies to personal automobile or residential property insurance and does not apply to accident and health or HMO coverage.

Agency Response to Comments on §7.1809. The department appreciates the comment. Further, the department confirms that the new rule relating to restriction plans only applies to personal automobile or residential property insurance and does not apply to accident and health or HMO coverage.

STATUTORY AUTHORITY. The Commissioner adopts the amendments and new sections under Insurance Code §§827.001(2), 827.002, 827.003, 827.004, 827.005, 827.006, 827.008, 827.011, 843.051(b)(2) and 36.001.

Insurance Code §827.001(2) states that "rating territory" means a rating territory established by the department.

Insurance Code §827.002 provides that Chapter 827 does not apply to a transfer of business from an insurer to a company that is within the same insurance group as the insurer; is authorized

to engage in the business of insurance in this state; and is not a reciprocal or interinsurance exchange, a Lloyd's plan, a county mutual insurance company, or a farm mutual insurance company.

Insurance Code §827.003 requires that an insurer must file with the Commissioner a plan for orderly withdrawal if the insurer proposes to reduce the insurer's total annual premium volume by 50 percent or more; reduce the insurer's annual premium by 75 percent or more in a line of insurance in this state; or reduce in this state, or in any applicable rating territory, the insurer's total annual premium volume in a line of personal automobile or residential property insurance by 50 percent or more.

Insurance Code §827.004 requires that a withdrawal plan filed under §827.003 must be constructed to protect the interests of the people of this state; indicate the dates on which the insurer intends to begin and to complete the plan; and provide for meeting the insurer's contractual obligations, provide service to the insurer's policyholders and claimants in this state; and meet any applicable statutory obligations, such as payment of assessments to the guaranty fund and participation in an assigned risk plan or joint underwriting arrangement.

Insurance Code §827.005(a) states that except as provided by subsection (b) of the section, the Commissioner will approve a withdrawal plan that adequately provides for meeting the requirements in §827.004(3). Section 827.005(b) provides that the Commissioner may modify, restrict, or limit a withdrawal plan under this section as necessary if the Commissioner finds that a line of insurance subject to the withdrawal plan is not offered in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state. The Commissioner may by order set the date on which the insurer's withdrawal begins. Section 827.005(c) provides that a withdrawal plan is deemed approved if the Commissioner does not hold a hearing on the plan before the 61st day after the date the plan is filed with the Commissioner or does not deny approval before the 61st day after the date a hearing on the plan is held.

Insurance Code §827.006 requires that an insurer that withdraws from writing all lines of insurance in this state may not, without the approval of the Commissioner, resume writing insurance in this state before the fifth anniversary of the date of withdrawal.

Insurance Code §827.008(a) states that before an insurer, in response to a catastrophic natural event that occurred during the preceding six months, may restrict writing new business in a rating territory in a line of personal automobile or residential property insurance, the insurer must file a proposed restriction plan with the Commissioner for the Commissioner's review and approval. Section 827.008(b) provides that the Commissioner may modify, restrict, or limit a restriction plan under this section as necessary if the Commissioner finds that a line of insurance subject to the restriction plan is not offered in this state in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state in light of the impact of the catastrophic natural event. The Commissioner may by order set the date on which the insurer's restriction begins. Section 827.008(c) requires that a withdrawal plan must be filed and approved under §827.003 and §827.004 if an insurer's decision not to accept new business in a line of personal automobile or residential property insurance results in a reduction of the insurer's total annual premium volume by 50 percent or more.

Insurance Code §827.011 states that the Commissioner may adopt rules as necessary to enforce Chapter 827.

Insurance Code §843.051(b)(2) states that a health maintenance organization is subject to Chapter 827 and is an authorized insurer for purposes of that chapter.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

TEXT.

§7.1801. Purpose.

The purpose of this subchapter is to provide orderly and uniform procedures, as required by law and dictated by sound public policy, for any authorized insurer or HMO filing a plan of withdrawal with the Commissioner of Insurance under Insurance Code Chapter 827. Nothing in this subchapter authorizes or allows an insurer or HMO to withdraw from any coverage if such withdrawal would violate any federal or state law or any provisions contained in a contract or evidence of coverage or a policy or certificate of insurance itself.

§7.1802. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Annual Statement--Annual statement most recently filed by the insurer or HMO with the Texas Department of Insurance.

(2) Association coverage--Coverage under a health benefit plan issued to an association or bona fide association as those terms are defined in §21.2702 of this title (relating to Association Plans).

(3) Commissioner--Commissioner of Insurance.

(4) Department--Texas Department of Insurance.

(5) Individual coverage--Coverage issued by an HMO that provides an individual health care plan as defined in Insurance Code §1271.004.

(6) Large employer coverage--Coverage under a health benefit plan issued to a large employer as those terms are defined in §26.4 of this title (relating to Definitions).

(7) Line of insurance--Each line of business as specified in §7.1803 of this title (relating to What Constitutes a Line of Insurance).

(8) HMO--A health maintenance organization licensed under Insurance Code Chapter 843.

(9) Medicaid--The Medicaid program under Title XIX of the Social Security Act of 1965.

(10) Medicare--Has the same meaning as specified in §3.3303 of this title (relating to Definitions).

(11) Medicare+Choice plan--Has the same meaning as specified in §3.3303 of this title.

(12) Small employer coverage--Coverage under a health benefit plan issued to a small employer as those terms are defined in §26.4 of this title.

(13) Enrollees of special circumstances--As described in Insurance Code §§1301.152 – 1301.154 and §843.362.

(14) CHIP--The Texas Children's Health Insurance Program under Texas Health and Safety Code Chapter 62.

(15) Withdrawal--The event that occurs when the actions of an insurer or HMO meets the criteria under Insurance Code §827.003.

(16) Rating territory--A county in Texas.

§7.1804. When a Withdrawal Plan is Required.

(a) Any authorized insurer or HMO must file with the Commissioner of Insurance a plan of orderly withdrawal before the insurer or HMO undertakes a withdrawal.

(1) The insurer or HMO undertakes a withdrawal when it takes any action on its own initiative that will result in the insurer or HMO meeting the criteria under Insurance Code §827.003.

(2) An insurer or HMO will not be held to have acted on its own initiative in effecting a withdrawal when it acts under a Commissioner disciplinary or administrative directive or order, or when the insurer or HMO acts under a directive of a supervisor, conservator, or receiver. If an out-of-state directive or order is not provided to the Commissioner within 30 days of the issuance of such directive or order, the insurer or HMO will be held to have acted on its own initiative.

(b) An insurer or HMO is not required to file a plan of orderly withdrawal, but must instead notify the department, when:

(1) the line of business is written by a stipulated premium company unless such line is written under Insurance Code §884.303 and §884.307 or Chapter 884, Subchapter I; or

(2) the line of insurance from which the HMO is withdrawing is Medicare, a Medicare+Choice plan or a Medicaid contract as provided in §7.1803(a) of this title (relating to What Constitutes a Line of Insurance).

(c) If an insurer or HMO comes within an exception provided in subsection (b) of this section, such notification must be sent to the department simultaneously with any notification required to be provided to any other state or federal agency. The notification will be accepted for information only and must affirm that any appropriate state or federal agency has been notified of

the company's intent to withdraw, and must include the effective date of nonrenewal, the names of the Texas counties affected, and the number of insureds or enrollees affected.

(d) This subchapter does not modify or supercede any requirement under the Insurance Code or any other state or federal law to notify policyholders or enrollees that an insurer or HMO will not renew any coverage; however, before any such notice is given a withdrawal plan must be filed with the department and approved by the department under §7.1806 of this title (relating to Withdrawal Plan Submission and Approval Procedures) when a plan is required by this section.

§7.1805. Contents of Withdrawal Plan.

(a) Except for withdrawing HMOs, which are addressed under subsection (b) of this section and insurers meeting the criteria under §7.1804(b) of this title (relating to When a Plan is Required), a withdrawing insurer must file a plan of orderly withdrawal with the Commissioner that is constructed to protect the interests of the people of this state. The plan must be signed by at least one officer of the insurer and must contain the following:

(1) identification, in accordance with the line of insurance designations in §7.1803 of this title (relating to What Constitutes a Line of Insurance), of the line or lines of insurance being withdrawn;

(2) identification of the policy forms by number and type affected by the withdrawal;

(3) the dates the insurer intends to begin and complete its withdrawal;

(4) an explanation of the reasons for the withdrawal;

(5) provisions for notifying all of the affected Texas policyholders and certificate holders of the dates of the beginning and completion of the withdrawal and how the withdrawal will affect them, including, but not limited to:

(A) a copy of the notice and an explanation of the manner in which the notice will be provided to policyholders and certificate holders;

(B) either affirmation that such notice will be provided within 30 days of the approval of the withdrawal plan or a request to provide the notice at some other specified date or time, and such request must be approved by the Commissioner; and

(C) identification of any provision of the Insurance Code or Texas Administrative Code under which notice is mandated;

(6) provisions for meeting all of the insurer's contractual obligations, including, but not limited to:

(A) notification of all affected agents of the insurer of the date the insurer intends to begin and complete the withdrawal;

(B) for fire and casualty insurers, a statement affirming the insurer's compliance with the provisions of Insurance Code Chapter 4051, Subchapter H, relating to cancellation of agency contracts;

(C) for insurers writing liability coverage as specified in Insurance Code Chapter 551, Subchapter B, a statement affirming the insurer's compliance with the provisions of Insurance Code Chapter 551, Subchapter B, relating to cancellation and nonrenewal of certain liability insurance coverage;

(D) for insurers writing property and casualty coverage as specified in Insurance Code Chapter 551, Subchapter C, a statement affirming the insurer's compliance with the provisions of Insurance Code Chapter 551, Subchapter C, relating to cancellation and nonrenewal of certain property and casualty policies; and

(E) for insurers writing guaranteed renewable or noncancelable coverage, a statement affirming the insurer's compliance with the provisions of Insurance Code §1202.051, concerning renewability and continuation of individual health insurance policies, and Insurance Code §1501.109, concerning refusal to renew and discontinuation of coverage, and any corresponding regulations;

(7) provisions for providing service to the insurer's Texas policyholders and claimants;

(8) information on Texas business, including:

(A) the total annual premium volume and the number of policies and certificates and covered persons in Texas by county for each line to be withdrawn and the estimated total annual premium volume and number of policies and certificates and covered persons in Texas by county after withdrawal;

(B) an estimate of what percentage of the market for each affected line of insurance in each county the withdrawal impacts;

(C) any other information necessary to assist the Commissioner in determining whether a market availability problem is created by the withdrawal; and

(D) if an insurer is unable to provide the exact number of policies and certificates and covered persons, the insurer must provide estimates and explain how the estimates were determined;

(9) provisions for identifying policyholders or certificate holders of special circumstances;

(10) identification of any third party contracts which may provide for the continuity of care to enrollees of special circumstances;

(11) number of and estimated amount of all losses outstanding in Texas, including claims incurred but not reported;

(12) a plan to handle the losses specified in paragraph (11) of this subsection, including, but not limited to:

(A) identification of what assets will be available for paying outstanding incurred but not reported claims, claims in the course of settlement, and associated loss adjustment expenses; and

(B) identification of who specifically will administer the run off of the business;

(13) if Texas policyholders or certificate holders are to be reinsured, the filing of a reinsurance agreement under all statutory and regulatory requirements and, when applicable, the filing of an assumption certificate;

(14) provisions for meeting any applicable statutory obligations, including, but not limited to:

(A) payment of any guaranty fund assessments;

(B) participation in any assigned risk plan, pool, fund, facility, or joint underwriting arrangement; and

(C) payment of any taxes;

(15) a list of any other products the insurer will continue to offer in Texas; and

(16) affirmation that the insurer will comply with §7.1808 of this title (relating to Requirements to Resume Writing Insurance), as applicable.

(b) Unless it meets the criteria under §7.1804(b) of this title, a withdrawing HMO must file a plan of orderly withdrawal with the Commissioner that is constructed to protect the interests of the people of Texas. The plan must be signed by at least one officer of the HMO and must contain the following:

(1) identification, in accordance with the line of insurance designations in §7.1803 of this title, of the line or lines of insurance being withdrawn;

(2) identification by form number of the evidences of coverage affected by withdrawal;

(3) the dates the HMO intends to begin and complete its withdrawal;

(4) an explanation of the reasons for the withdrawal;

(5) provisions for notifying all of the affected Texas enrollees and contract holders of the dates of the beginning and completion of the withdrawal and how the withdrawal will affect them, including, but not limited to:

(A) a copy of the notice and an explanation of the manner in which the notice will be provided to enrollees or contract holders;

(B) either an affirmation that such notice will be provided within 30 days of the approval of the withdrawal plan or a request to provide the notice at some other specified date or time, and such request must be approved by the Commissioner; and

(C) identification of any provisions of the Insurance Code or the Texas Administrative Code under which notice is mandated;

(6) provisions for meeting all of the HMO's contractual obligations, including, but not limited to:

(A) notification to all affected agents of the HMO of the dates the HMO intends to begin and complete the withdrawal; and

(B) for HMOs writing guaranteed renewable or noncancelable coverage, a statement affirming the HMO's compliance with the provisions of Insurance Code §843.208,

concerning cancellation or nonrenewal of coverage; §1271.307, concerning renewability of coverage for individual health care plans and conversion contracts; and §1501.109, concerning refusal to renew and discontinuation of coverage, and any corresponding regulations;

(7) provisions for providing service to the HMO's Texas enrollees and providers;

(8) information on Texas business, including:

(A) the total annual premium volume and the number of affected contract holders and enrollees in Texas by county in all service areas for each line to be withdrawn and the estimated total annual premium volume and number of enrollees and contract holders in Texas by county in all service areas after withdrawal;

(B) an estimate of what percentage of the market for each affected line of insurance by county in all service areas the withdrawal impacts, as measured by enrollee; and

(C) any other information necessary to assist the Commissioner in determining whether a market availability problem is created by the withdrawal;

(9) provisions for identifying enrollees of special circumstance;

(10) identification of any third-party contracts that may provide for the continuity of care to enrollees of special circumstance;

(11) number of and estimated amount of all losses outstanding in Texas, including claims incurred but not reported;

(12) a plan to handle the losses specified in paragraph (11) of this subsection, including, but not limited to:

(A) identification of what assets will be available for paying outstanding incurred but not reported claims, claims in the course of settlement, and associated loss adjustment expenses; and

(B) identification of who specifically will administer the run off of the business, if any;

(13) provisions for meeting any applicable statutory obligations;

(14) affirmation that the HMO will comply with §7.1808 of this title, as applicable; and

(15) a list of any other products the HMO will continue to sell in Texas in each service area.

(c) The filing of a single consolidated withdrawal plan for all withdrawing insurance companies or HMOs in the same holding company system, as defined in Insurance Code §823.006, does not meet the requirements of this subchapter. A separate withdrawal plan must be filed for each insurance company or HMO intending to withdraw from a line or lines of insurance.

§7.1806. Withdrawal Plan Submission and Approval Procedures.

(a) The department will post forms and instructions on its website to assist persons in complying with the requirements of this subchapter. Any insurer or HMO filing a plan of orderly withdrawal must submit the plan at the location specified on the department website.

(b) The withdrawal plan will be deemed approved if the Commissioner has not held a hearing within 60 days after the complete plan is filed or has not been denied approval within 60 days after the hearing.

(c) No plan will be considered "filed" until such date as the withdrawing insurer or HMO has provided to the Commissioner all information and material necessary to constitute a completed plan of orderly withdrawal, as required under this subchapter.

§7.1807. Filing of Annual Financial Statement and Other Required Data and Information.

Any insurer or HMO filing a withdrawal plan must continue to file all annual financial statement data, other required statistical and data filings, other reporting, and any other department-requested information applicable to any withdrawn line until all policyholder obligations for such line in this state are fulfilled. This section does not exempt an insurer or HMO from any filings or information requests required by the department.

§7.1808. Requirements to Resume Writing Insurance.

Any insurer or HMO withdrawing from writing all premium in all lines of insurance in this state and required to file a plan of orderly withdrawal under Insurance Code Chapter 827, may not resume writing the withdrawn lines in this state before the fifth anniversary of the date of the

withdrawal without complying with all applicable statutory and regulatory provisions governing authorization to write such lines of insurance in this state and receiving the written approval of the Commissioner to resume such writing. The five-year ban under Insurance Code §827.006, for the resumption of writing insurance after a withdrawal, takes effect the later of the date the insurer or HMO intends to begin its withdrawal as stated in the plan approved by the Commissioner or discovery by the department of the insurer's or HMO's failure to file a withdrawal plan.

§7.1809. Restriction Plan Contents and Submission Requirements.

(a) An insurer that meets the criteria under Insurance Code §827.008 must file a proposed restriction plan with the Commissioner for review and approval.

(b) The plan must be signed by at least one officer of the insurer and must contain the following:

(1) identification, in accordance with the line of insurance designations in §7.1803 of this title (relating to What Constitutes a Line of Insurance), as applicable to personal automobile or residential property insurance being restricted;

(2) the dates the insurer intends to begin and complete its restriction;

(3) an explanation of the reasons for restricting the writing of new business;

(4) a list of the affected rating territories; and

(5) information on Texas business, including any information necessary to assist the Commissioner in determining how market availability of the line of business proposed to be restricted may be affected including, but not limited to, the following:

(A) a description of how restricting writing new business in a rating territory may affect other related residential property or personal automobile insurance lines of business written by the insurer, such as the potential effect of discounts no longer provided to insureds;

(B) a list of any other products within the line the insurer will continue to offer in Texas; and

(C) any other information related to the restriction plan that the Commissioner deems necessary.

(c) The department will post forms and instructions on its website to assist persons in compliance with the requirements of this subchapter. Any insurer filing a restriction plan must submit the plan at the location specified on the department website.

(d) The Commissioner may modify, restrict, or limit a restriction plan as provided for under Insurance Code §827.008(b).

(e) An insurer may not revise its underwriting guidelines in response to a catastrophic natural event that occurred within the previous six months without receiving Commissioner approval of its restriction plan under Insurance Code §827.008.

(f) If a restriction plan results in a withdrawal under Insurance Code §827.003 and §827.004, the insurer must file a withdrawal plan.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on May 29, 2018.

/s/ Norma Garcia
Norma Garcia
General Counsel
Texas Department of Insurance

The Commissioner adopts amendments to §§7.1801, 7.1802, 7.1804 - 7.1808, and new 7.1809.

/s/ Kent C. Sullivan
Kent C. Sullivan
Commissioner of Insurance

Commissioner's Order No. **2018-5534**