

**SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS AND OTHER
REQUIREMENTS
28 TAC §7.402**

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs). The proposed amendments to §7.402 establish the sources of information insurers and HMOs will use in determining risk-based capital requirements, including requiring use of the most current version of risk-based capital formulas and instructions adopted by the National Association of Insurance Commissioners (NAIC) except as provided by statute or TDI rule.

The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas and instructions provide TDI with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations considering its size and risk exposure.

Amended § 7.402(d) lists the sources of information that insurers and HMOs must use to determine an insurer's or HMO's (collectively referred to as *carriers*) risk-based capital requirement. The sources of information are, in order of priority: Texas statutes; TDI rules, directives, instructions, and commissioner orders; and the NAIC's risk-based capital formulas and instructions for carriers. The amendment does not

change the current priority of the sources of information as stated in the conflict provision in existing §7.402(f). The effect of making these sources continuous provides carriers greater certainty of information for planning their risk-based capital needs, and enables them to timely complete and file their reports with TDI.

This differs from TDI's historical process of periodically adopting the current version of the NAIC's risk-based capital formulas and instructions by reference. TDI considers the adoption by reference process unnecessary because, under existing rules and this proposal, the commissioner reserves all authority and discretion to resolve any issues in Texas concerning risk-based capital requirements.

In establishing these sources, the commissioner has not delegated authority to others. The commissioner is subject to statutory requirements and within those requirements may by rule amend the NAIC's risk-based capital formulas and instructions for filings with TDI. Even without direct amendments in this section or other TDI rule, the authority to establish sources and determine their priority remains vested in statute and the commissioner.

The procedure for amending a source will depend on the circumstance, provision involved, and timing. The commissioner may propose rules or issue orders. Under existing law, interested persons may petition the commissioner for rules or otherwise bring to the commissioner's attention the need for action to address a problem.

The NAIC's risk-based capital formulas and instructions are developed by regulators with input from the insurance industry. The NAIC's risk-based capital formulas and instructions provide a uniform national standard for evaluating a carrier's

capital needs. The NAIC's risk-based capital formulas and instructions are adopted by regulators through a deliberative process, which includes a series of open meetings that offer the public the opportunity to comment on the proposed risk-based capital formulas and instructions. The NAIC's risk-based capital formulas and instructions are published annually by the NAIC to reflect any changes to the prior year's NAIC's risk-based capital formulas and instructions made through this process.

TDI uses the NAIC's risk-based capital formulas and instructions as a source for evaluating a Texas carrier's capital needs, unless a TDI rule or other state law provides otherwise. Copies of the NAIC risk-based capital formulas and instructions for 2014 are available for inspection in the Financial Analysis Section, Financial Regulation Division, Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas 78701. Interested persons may comment on the NAIC risk-based capital formulas and instructions for 2014 under this proposal.

Proposed changes to §7.402 are discussed in the following paragraphs. TDI proposes changing the designation of §7.402(b)(3) to reflect that the existing paragraph includes insurers that file the NAIC Health Annual Statement in addition to health maintenance organizations.

TDI proposes adding the definition of "carrier" in §7.402(c) for clarification of usage because the existing requirements of §7.402 apply to a variety of regulated entities. This change has been applied in conforming changes to terms throughout §7.402. The conforming change to the term "carriers" is not a substantive change in

requirements because it does not affect the current application of §7.402. TDI also proposes changes to other definitions to conform to other proposed changes in §7.402 and to better identify references, including §7.68 of this title relating to annual statements. TDI has removed references to an annual statement “blank” to be consistent with §7.68.

For reasons previously discussed in this proposal, TDI proposes changing §7.402(d) to list in order of priority the sources of information that carriers must use when determining risk-based capital. TDI proposes changing §7.402(g)(5) - (8) to directly link these requirements with those entities listed in §7.402(b). The proposed changes to §7.402(g) are not a substantive change in requirements because they do not affect the current application of §7.402. TDI has also proposed nonsubstantive changes in the text to reflect TDI style guidelines.

2. FISCAL NOTE. Danny Saenz, deputy commissioner, Financial Regulation Division, has determined that, for each year of the first five years the proposed amended section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. The amended section will have no effect on local employment or local economy.

3. PUBLIC BENEFIT/COST NOTE. Mr. Saenz also has determined that for each year of the first five years the proposed amended section is in effect, the anticipated public benefit will be that adopting the sources of information on a continuous basis

will provide greater certainty concerning the applicable risk-based capital requirement, especially for carriers that are required to comply with the requirements in multiple states. The continuous nature of the amended section will also enhance TDI's ability to continue efficient financial solvency regulation of insurance in general and avoid the use of its resources in unnecessary rulemaking.

The risk-based capital requirement ensures that a carrier has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas provide TDI with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations considering its size and risk exposure.

Under the proposed section, TDI will be able to more effectively utilize existing resources in reviewing operations and financial condition of carriers, more efficiently monitor solvency of carriers subject to the proposal, and implement the most current risk-based capital requirements. Monitoring risk-based capital enables TDI to administer appropriate and proactive regulatory actions to protect the interests of the public against carriers whose financial condition may potentially be hazardous.

TDI anticipates that amending §7.402 to establish a continuous priority of sources for determining the risk-based capital requirement for a carrier will not result in additional costs or sources of costs to carriers.

Carriers previously subject to the requirements will incur the same types of costs in each year to comply with the risk-based capital requirement. Costs will vary

based the carrier's size, organization, and ability to adapt available information to the reporting purpose. The costs will include gathering, analyzing, and reporting the data. TDI anticipates that these functions will require the services of actuaries, accountants, systems software developers, and a chief financial officer or other similar officer responsible for preparing the financial reports. While it is not feasible to determine the actual cost of any employees needed to comply with the new requirement, the United States Department of Labor, Bureau of Labor Statistics' *May 2013, Occupational Employment Statistics* report indicates that the average hourly wages for these professions in Texas are: \$55.16 for actuaries (see: <http://www.bls.gov/oes/current/oes152011.htm#st>), \$35.39 for accountants and auditors (see: <http://www.bls.gov/oes/current/oes132011.htm#nat>), and \$47.85 for systems software developers (see: <http://www.bls.gov/oes/current/oes151133.htm#st>). Consistent with the 2010, 2011, and 2013 proposals implementing risk-based capital requirements under §7.4012, TDI has determined that the hourly rate of compensation for a chief financial officer or other similar officer responsible for preparing the financial reports ranges from \$40 per hour to approximately \$300 per hour. The method of compliance is a business decision, including a decision to employ staff or contract for some of these services.

The function of the risk-based capital formula is to protect policyholders from the effects of insolvency, which may require some carriers to increase their capital or surplus, or otherwise reduce the amount of risk the carriers assume to ensure they have an adequate amount of capital. To the extent any carrier must increase its

capital and surplus, or take other action as a result of the risk-based capital requirements, that cost is the amount of capital and surplus or other action required and is a result of the statutory requirements in the Insurance Code Chapter 404 and §§441.001, 441.005, 441.051, 441.052, 822.210, 822.211, 841.205, 841.206, 841.410(b) and (c), 841.414(c), 843.404, 884.206, 885.401, 982.105, and 982.106. To the extent that additional capital or surplus or other action may be required, the exact cost of compliance will vary significantly between carriers based on a number of factors, which include: 1) the amount of capital or surplus currently maintained by the carrier, 2) the amount of capital or surplus required based on the application of the risk-based capital requirements under the proposed new section, 3) the size and complexity of the carrier, and 4) the amount and complexity of the underwriting, financial, and investment risks assumed by the carrier.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY

ANALYSIS FOR SMALL AND MICRO-BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an adverse economic impact on small and micro-businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

TDI has determined that approximately 50 to 100 small or micro-business carriers will need to comply with the requirements in §7.402.

The function of the risk-based capital formulas in §7.402(d) is to protect policyholders, enrollees, and carriers from the effects of carrier insolvency. Carriers, regardless of size, that are required to submit comprehensive financial plans may also be required to increase their capital. To the extent any carrier must increase its capital as a result of the risk-based capital requirements, that cost is the amount of capital required and is a result of the statutory requirements in the Insurance Code Chapter 404 and §§441.051, 822.210, 822.211, 841.205, 841.206, 843.404, 884.206, 885.401, 982.105, and 982.106. These statutes authorize or require the commissioner to order carriers that are operating in a potentially hazardous manner to take action to remedy the hazardous condition, which may include requiring the carriers to increase their capital and surplus or take other remedial action.

In accord with Government Code §2006.002(c-1), TDI has determined that although costs associated with §7.402 may have an adverse economic effect on small or micro-businesses that are required to comply with these proposed requirements, TDI is not required to prepare a regulatory flexibility analysis under Government Code §2006.002(c)(2). Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Government Code §2006.002(c-1) requires that the regulatory flexibility analysis, ". . . consider, if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while

minimizing adverse impacts on small businesses.” An agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro-businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

Section 7.402 is authorized by Insurance Code Chapters 404 and 441 and §§822.210, 841.205, 843.404, 884.206, 885.401, 982.105, and 982.106. The primary purpose of §§822.210, 841.205, 843.404, 884.206, 885.401, 982.105, and 982.106 is to require a carrier to maintain capital and surplus in amounts that exceed the minimum amounts required by statute because of: 1) the nature and kind of risks the carrier underwrites or reinsures; 2) the premium volume of risks the carrier underwrites or reinsures; 3) the composition, quality, duration, or liquidity of the carrier’s investments; 4) fluctuations in the market value of securities the carrier holds; 5) or the adequacy of the carrier’s reserves. These statutes further require the commissioner to adopt rules to ensure the financial solvency of a carrier for the protection of policyholders, enrollees, creditors, or the general public from the harmful effects of carrier insolvency.

The primary purpose of Chapters 404 and 441 is to protect insureds, enrollees, creditors, and the public against an insurer or HMO becoming insolvent, delinquent, or in a condition that renders the continuance of its business hazardous to its insureds, enrollees or creditors, or to the public. Chapter 404 permits the commissioner to take various actions against an insurer on a finding of impairment or hazardous condition, including requiring that the insurer’s capital and surplus be increased. Section 441.001(g) provides that, for the reasons stated in §441.001, the substance and

procedures relating to insurer delinquencies and insolvencies in Insurance Code Chapter 441 reflect the public policy of the state of Texas and are necessary to the public welfare.

Section 441.001(a) states that insurer delinquencies destroy public confidence in the state's ability to regulate insurers, and an insurer delinquency affects other insurers by creating a lack of public confidence in insurance and insurers. Section 441.001(b) states that placing an insurer in receivership often destroys or diminishes, or is likely to destroy or diminish, the value of the insurer's assets. In addition, the purpose of Insurance Code §§441.051, 822.211, and 841.206 is to prohibit the impairment of a carrier's minimum required capital or surplus, and these statutes require that the commissioner take action to remedy the impairment. Sections 441.051, 822.211, and 841.206 also provide that the failure of a carrier to maintain its required capital or surplus at levels required by the commissioner by rule is considered a prohibited impairment.

The purpose of §7.402 is to protect the economic welfare of: 1) carriers; 2) consumers that purchase insurance policies, annuities, and other contracts; 3) other persons and entities that would be adversely affected by a carrier insolvency; and 4) the public and the state of Texas generally. The requirements in §7.402 that carriers maintain capital and surplus at acceptable levels or prepare a comprehensive financial plan to restore their capital and surplus to acceptable levels are consistent with and necessary to implement the legislative intent of Chapters 404 and 441 and §§822.210, 841.205, 843.464, 884.206, 885.401, 982.105, and 982.106 of the Insurance Code.

This legislative intent ensures the financial solvency of a carrier, regardless of size, for the protection of the economic interests of all policyholders and not just the economic interests of policyholders insured by large carriers. TDI has determined, in accord with Government Code §2006.002(c-1), that because the purpose of §7.402 and the authorizing statutes of the Insurance Code is to protect carrier and consumer economic interests and the state's economic welfare, there are no additional regulatory alternatives to the comprehensive financial plans and increased capital required as a result of the risk-based capital requirements, that will sufficiently protect the economic interests of carriers and consumers and the economic welfare of the state.

5. TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, so this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, submit written comments on the proposal to TDI no later than 5:00 p.m., Central time, on February 2, 2015. All comments should be submitted to the chief clerk by email at chiefclerk@tdi.texas.gov, or by mail to Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of your comments by email to Danny Saenz at

danny.saenz@tdi.texas.gov, or by mail to Danny Saenz, Deputy Commissioner, Financial Regulation Division, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104.

If you want to request a public hearing on the proposal, you must submit the request separately to the chief clerk before the close of the public comment period. If a hearing is held, attendees may present written comments and public testimony at the hearing.

7. STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§404.004, 404.005, 441.005, 441.051, 822.210, 822.211, 841.205, 841.206, 841.410, 841.414, 843.404, 884.054, 884.206, 885.401, 982.105, 982.106, and 36.001. Section 404.004 provides that the commissioner's authority to increase any capital and surplus requirements prevails over the general provisions of the Insurance Code relating to specific companies, and §404.005 authorizes the commissioner to set standards for evaluating the financial condition of an insurer. 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 822.210 authorizes the commissioner to adopt rules or guidelines to require an insurer to maintain capital

and surplus levels in excess of statutory minimum levels to ensure financial solvency of insurers for the protection of policyholders and insurers. Section 822.211 specifies the actions the commissioner may take if an insurance company does not comply with the capital and surplus requirements of Chapter 822.

Section 841.205 authorizes the commissioner to adopt rules or guidelines to require an insurer that writes life or annuity contracts or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or a combination of these policies, in an amount that exceeds \$10,000, 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. Section 841.206 authorizes the commissioner to take regulatory action if the commissioner determines that a life, accident, or health insurance company's capital or surplus is impaired in violation of §841.206.

Section 841.410(b) and (c) require a limited purpose subsidiary life insurance company to comply with the risk-based capital requirements adopted by the commissioner by rule, and maintain risk-based capital in an amount that is at least equal to 300 percent of the authorized control level of risk-based capital adopted by the commissioner. Section 841.414(c) requires a limited purpose subsidiary life insurance company to file annually with the commissioner a report of the limited purpose subsidiary life insurance company's risk-based capital level as of the end of the preceding calendar year containing the information required by the risk-based capital instructions adopted by the commissioner.

Section 843.404 authorizes the commissioner to adopt rules to require an HMO to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of HMOs for the protection of enrollees. Section 884.054 specifies the capital stock and surplus requirements for stipulated premium insurance companies. Section 884.206 authorizes the commissioner to adopt rules to require an insurer that writes or assumes life insurance, annuity contracts, or accident and health insurance for a risk to one person in an amount that exceeds \$10,000 to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of insurers for the protection of policyholders and insurers.

Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes TDI to use the annual report in determining a society's financial solvency.

Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTE. The proposed amendments to §7.402 affect the following statutes: Insurance Code §§404.004, 404.005, 441.005, 441.051, 822.210, 822.211, 841.205, 841.206, 841.410, 841.414, 843.404, 884.054, 884.206, 885.401, 982.105, and 982.106

9. TEXT.

§7.402. Risk-Based Capital and Surplus Requirements for Insurers and HMOs.

(a) Purpose. The purpose of implementing a risk-based capital and surplus provision is to require a minimum level of capital and surplus to absorb the financial, underwriting, and investment risks assumed by a carrier [~~an insurer or a health maintenance organization~~].

(b) Scope.

(1) Life companies. This section applies to any carrier [~~insurer~~] authorized to do business in Texas as an insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that exceeds \$10,000 including: capital stock companies, mutual life companies, limited purpose subsidiary life insurance companies, and stipulated premium insurance companies.

(2) Property and casualty companies. This section applies to all domestic, foreign, and alien property and casualty companies subject to the provisions of Insurance Code §822.210 and §982.106, including county mutual insurance

companies that do not meet the express criteria contained in Insurance Code §912.056(f), but excluding monoline financial guaranty insurers, monoline mortgage guaranty insurers, title insurers, and those insurers subject to Insurance Code §822.205.

(3) Health maintenance organizations [~~Maintenance Organizations~~] and certain health carriers. This section applies to all domestic and foreign health maintenance organizations subject to the provisions of Insurance Code Chapter 843 and carriers [~~insurers~~] that file the NAIC Health Annual Statement [~~Blank~~] with TDI [~~the department~~] under TDI [~~department~~] filing requirements.

(4) Fraternal benefit societies. This section applies to all domestic and foreign fraternal benefit societies.

(c) Definitions. The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Annual financial statement--The annual statement [~~blank~~] to be used by carriers under §7.68 of this title [~~insurance companies, as promulgated by the NAIC and as adopted by the commissioner~~].

(2) Authorized control level--The result determined using the sources of information under subsection (d) of this section, including the RBC formula in accord with the RBC instructions.

(3) Carrier--An insurer, health maintenance organization, or fraternal benefit society included within the scope of subsection (b) of this section.

(4) [(3)] NAIC--National Association of Insurance Commissioners.

(5) ~~[(4)]~~ RBC--Risk-based capital.

(6) ~~[(5)]~~ RBC formula--NAIC risk-based capital formula.

(7) ~~[(6)]~~ RBC instructions--NAIC Risk-Based Capital Report Including Overview and Instructions for Companies.

(8) ~~[(7)]~~ Total adjusted capital--A carrier's ~~[An insurer's]~~ adjusted statutory capital and surplus as determined using the sources of information under subsection (d) of this section, including the RBC formula in accord with the RBC instructions.

(d) Sources of Information for Determining RBC ~~[Adoption of RBC formula by reference].~~ The commissioner reserves all authority and discretion to resolve any issues in Texas concerning RBC. The commissioner and carriers will refer to the sources in paragraphs (1) - (4) of this subsection in the respective order of priority listed to determine RBC ~~[adopts by reference the following]:~~

(1) Texas statutes;

(2) TDI rules;

(3) directives, instructions, and commissioner orders; and

(4) except as provided in this section, as applicable to the carrier:

(A) ~~[(1)]~~ the ~~[The 2013]~~ NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula, for the period being reported.

(B) ~~[(2)]~~ the ~~[The 2013]~~ NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula, for the period being reported.

(C) ~~[(3)]~~ the ~~[The 2013]~~ NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula, for the period being reported.

(D) ~~[(4)]~~ the ~~[The 2013]~~ NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula, for the period being reported.

(e) Filing requirements. All carriers ~~[companies subject to this section]~~ must file electronic versions of the ~~[2013]~~ RBC reports and any supplemental RBC forms and reports with the NAIC in accord with and by the due dates specified in sources of information for determining RBC listed in subsection (d) of this section, including the RBC instructions.

(f) Conflicts. In the event of a conflict between the Insurance Code, any TDI rule ~~[of the department]~~, any specific requirement of this section, and the RBC formula or the RBC instructions, the Insurance Code, rule, or specific requirement of this section takes precedence and in all respects controls. The requirements ~~[It is the intent]~~ of this section do ~~[that the adoption by reference of the NAIC Risk-Based Capital Reports Including Overview and Instructions for Companies]~~ not repeal, ~~[or]~~ modify, or amend any TDI rule ~~[of the department]~~ or any Insurance Code provision ~~[of the Insurance Code]~~.

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital requires the following actions related to a carrier [~~an insurer~~] within the specified ranges:

(1) A carrier [~~An insurer~~] reporting total adjusted capital of 150 percent to 200 percent of authorized control level risk-based capital institutes a company action level under which the insurer must prepare a comprehensive financial plan that identifies the conditions that contribute to the carrier's [~~company's~~] financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the carrier's [~~company's~~] financial condition, both with and without the proposed corrections. The plan must list the key assumptions underlying the projections and identify the concerns associated with the carrier's [~~insurer's~~] business. The RBC plan must be submitted within 45 days of filing the RBC report with the NAIC. After review, the commissioner will notify the carrier [~~company~~] if the plan is satisfactory or not satisfactory. If the commissioner notifies the carrier [~~company~~] that the plan is not satisfactory, the carrier [~~company~~] must prepare a revised plan and submit it to the commissioner. Failure to file this comprehensive financial plan triggers the regulatory action level described in this subsection.

(2) A carrier [~~An insurer~~] reporting total adjusted capital of 100 percent to 150 percent of authorized control level risk-based capital triggers a regulatory

action level initiative. At this action level, a carrier [~~an insurance company~~] must file an RBC plan or revised RBC plan within 45 days of filing the RBC report with the NAIC, and the commissioner must perform any examinations or analyses to the carrier's [~~insurer's~~] business and operations that are deemed necessary. The commissioner may issue orders specifying corrective actions to be taken or may require other appropriate action.

(3) A carrier [~~An insurer~~] reporting total adjusted capital of 70 percent to 100 percent of authorized control level risk-based capital triggers an authorized control level. In addition to the remedies available at the carrier [~~company~~] and regulatory action levels described in this subsection, the commissioner may take other action deemed necessary, including initiating a regulatory intervention to place a carrier [~~an insurer~~] under regulatory control.

(4) A carrier [~~An insurer~~] reporting total adjusted capital of less than 70 percent of authorized control level triggers a mandatory control level that subjects the carrier [~~insurer~~] to one of the following actions:

- (A) being placed in supervision or conservation;
- (B) being determined to be in hazardous financial condition as provided by Insurance Code Chapter 404 and §8.3 of this title (relating to Hazardous Conditions) regardless of percentage of assets in excess of liabilities;
- (C) being determined to be impaired as provided by Insurance Code §§404.051 and 404.052 or 841.206; or
- (D) any other applicable sanctions under the Insurance Code.

(5) A life company described in subsection (b)(1) of [insurer subject to] this section is subject to a trend test described in the RBC formula, if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. Any life insurer that trends below 190 percent of total adjusted capital to authorized control level risk-based capital triggers the company action level.

(6) A property and casualty company described in subsection (b)(2) of [insurer subject to] this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. If the result of the trend test as determined by the formula is "YES," the insurer triggers regulatory attention at the company action level.

(7) A health maintenance organization or health carrier described in subsection (b)(3) of [insurer subject to] this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent and triggers the trend test determined in accord with the trend test calculation included in the Health RBC instructions. If the result of the trend test as determined by the formula is "YES," the insurer triggers regulatory attention at the company action level.

(8) A fraternal benefit society described in subsection (b)(4) of [insurer subject to] this section is subject to a trend test described in the RBC formula if its total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. Any fraternal benefit society that trends below 190 percent of total

adjusted capital to authorized control level risk-based capital triggers the company action level.

(h) Prohibition on announcements. Except as ~~[otherwise]~~ required under ~~[the provisions of]~~ this section, a carrier, agent, or other person engaged in the business of insurance under the Insurance Code is prohibited from making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, poster, over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to any component derived in the calculation ~~[, by any insurer, agent, broker, or the person engaged in any manner in the insurance business would be misleading and is prohibited]~~. Any violation of this subsection may be considered a violation of Insurance Code Chapter 541, regulating unfair methods of competition and unfair or deceptive acts or practices.

(i) Prohibition on use in ratemaking. The RBC instructions and any related filings are intended solely for use by the commissioner in monitoring the solvency of carriers ~~[insurers subject to this section]~~ and in taking corrective action with respect to carriers. The RBC instructions and any related filings may not be: ~~[insurers, and must not be]~~

(1) used by the commissioner for ratemaking; ~~[not]~~

(2) considered or introduced as evidence in any rate proceeding; or ~~[not]~~

(3) used by the commissioner to calculate or derive any elements of an

appropriate premium level or rate of return for any line of insurance that a carrier [~~an insurer~~] or any affiliate is authorized to write.

(j) Limitations. The requirements of this section do not reduce the amount of capital and surplus otherwise required by the Insurance Code, TDI [~~department~~] rules, or by authority of the commissioner [~~of insurance~~] as provided by law.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued at Austin, Texas on _____.

Sara Waitt
General Counsel
Texas Department of Insurance