

Subchapter I. Financial Requirements
28 TAC §11.809

1. INTRODUCTION. The Texas Department of Insurance proposes an amendment to §11.809 concerning financial requirements for health maintenance organizations (HMOs) and certain insurers. The current §11.809 provides for the adoption by reference of the NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies and other rules regarding risk-based capital. The proposed amendment to §11.809 directs HMOs and other insurers to the new risk-based capital rules and deletes the risk-based capital requirements in this section. Elsewhere in this issue of the Texas Register the department is proposing §7.401 to consolidate the risk-based capital rules for all insurers and HMOs into one section. The proposed amendment to §11.809 will facilitate the adoption of the new rule by providing clarification that the risk-based capital rules for HMOs and certain other insurers are now in the new section.

2. FISCAL NOTE. Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal implications for state or government as a result of enforcing and administering the section. There is no anticipated effect on local employment or local economy.

3. PUBLIC BENEFIT / COST NOTE. Ms. Patterson also has determined that for the each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the adoption of the proposal will be the facilitation of the consolidation of the risk-based capital rules into one section while assuring awareness that the risk-based capital rules for HMOs and certain other insurers have not be eliminated. There is no cost of compliance to persons as a result of this proposed amendment. There is no difference in cost of compliance between large, small and micro businesses.

4. REQUEST FOR PUBLIC COMMENT. To be considered, all comments on the proposal must be received in writing no later than 5:00 p.m. on January 24, 2005. All comments should be submitted to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, P. O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

5. STATUTORY AUTHORITY. The amendment is proposed under the Insurance Code §§36.001 and 843.404. Section 843.404 authorizes the commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to

assure financial solvency of health maintenance organizations for the protection of enrollees. Section 36.001 authorizes the commissioner to 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 this state.

6. CROSS-REFERENCE TO STATUTE. Insurance Code §843.404 is affected by this section.

7. TEXT.

§11.809. Risk-Based Capital for HMOs and Insurers Filing the NAIC Health Blank. All HMOs and insurers filing the NAIC Health Blank shall comply with the requirements of §7.401 of this title (relating to Risk-Based Capital and Surplus Requirements).

~~[(a) Health Maintenance Organizations. This section applies to all domestic and foreign HMOs subject to the provisions of the Insurance Code, Chapter 20A.]~~

~~[(b) Health insurers. Insurers that file the NAIC Health Blank with the department under §7.65 of this title (relating to Requirements for Filing the 2002 Quarterly and 2002 Annual Statements, Other Reporting Forms, and Electronic Data Filings with the NAIC) are required to file the RBC Report adopted by reference in this section.]~~

~~[(c) Adoption of RBC formula by reference and filing requirements. The commissioner adopts by reference the 2002 NAIC Health Risk-Based Capital~~

~~Report including Overview and Instructions for Companies which includes the RBC formula and the required diskettes. All HMOs and health insurers subject to this section are required to file the diskettes with the NAIC in accordance with and by the due date specified in the RBC instructions. The printed RBC Report should be available to the department on request.]~~

~~[(d) Conflicts. In the event of a conflict between the Insurance Code, any currently existing rule of the department or any specific requirement of this section, and the RBC formula and/or the RBC instructions, the Insurance Code, rule or specific requirement of this section shall take precedence and in all respects control. It is the express intent of this section that the adoption by reference of the RBC instructions does not repeal or modify or amend any rule of the department or the Insurance Code.]~~

~~[(e) Actions of commissioner. The commissioner may take the following actions against an HMO that fails to maintain, at a minimum, 70% of the authorized control level risk-based capital in the RBC Report as calculated in accordance with the RBC instructions:-]~~

~~[(1) order the HMO to cease writing new business;]~~

~~[(2) place the HMO in supervision or conservation;]~~

~~[(3) find the HMO to be in hazardous financial condition as provided by the Insurance Code Article 20.19 and §11.810 of this title (relating to Hazardous Conditions for HMOs);]~~

~~[(4) find the HMO to be in violation of the minimum net worth requirements of Insurance Code Article 20A.13C and take action as provided by Insurance Code Article 20A.31, or]~~

~~[(5) apply any sanctions provided by the Insurance Code or Title 28 of the Texas Administrative Code.]~~

~~[(f) Prohibition on Announcements. Except as otherwise required under the provisions of this section, the department believes that the comparison of an HMO's total adjusted capital to its risk-based capital is a regulatory tool which may indicate the need for corrective action with respect to the HMO and such a comparison is not intended as a means to rank HMOs generally; therefore, the 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 or poster, or 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 HMO, insurer, agent, broker or person engaged in any manner in the insurance business would be misleading and is, therefore, prohibited.]~~

~~[(g) Limitations. In no event, shall the requirements of this section reduce the amount of net worth, capital and/or surplus otherwise required by provisions of the Insurance Code or Texas Administrative Code, or by order of the commissioner.]~~

8. CERTIFICATION. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on _____, 2004.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance