SUBCHAPTER J. Examination Expenses and Assessments
28 TAC §7.1001

1. **INTRODUCTION.** The Texas Department of Insurance adopts amendments to §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. The amendments are adopted without changes to the proposed text published in the November 30, 2012, issue of the *Texas Register* (37 TexReg 9459).

2. **REASONED JUSTIFICATION.** The amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2013 calendar year. The amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurance company examined during the 2013 calendar year, based on admitted assets and gross premium receipts for the 2012 calendar year, and from each foreign insurance company examined during the 2013 calendar year, based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made.

The amendments are based on requirements in the Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 843.156(h); and 36.001; and the Labor Code §407A.252(b).

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2013.

In general, the department's 2013 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established pursuant to the Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2012.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1355 (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by the Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner of insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2013 fiscal year until the next assessment collection period in 2014. From these combined costs,

the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by the Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2013 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account

source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2012 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2012 to determine the proposed rate of assessment for admitted assets.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted section.

The amendment to the section heading reflects the year for which the proposed assessment will be applicable. The amendments in subsections (b)(1), (c)(1), (c)(2)(A), (c)(2)(B), and (d) reflect the appropriate year for accurate application of the section.

The amendments in subsection (c)(2)(A) and (B) update assessments to reflect the methodology the department has developed for 2013, which is previously addressed.

New paragraph (3) in subsection (c) provides the overhead assessment for a company that was a domestic insurance company for less than a full year during calendar year 2012. Previous paragraphs (3), (4), and (5) of subsection (c) are redesignated to address the addition of new paragraph (3), and conforming changes are made in subsection (c)(2) and redesignated (4).

Finally, amendments in subsections (b), (b)(1), (b)(2), (b)(3), (c), (c)(1), (c)(2)(A), (c)(2)(B), redesignated (c)(6), (d), and (e) are grammatical in nature, for consistency with current department rule drafting style. In subsections (b), (b)(1), (b)(2), (b)(3), (c), (c)(1), (d), and (e), the department changes the word "shall" to "must" in each place that it appears. In subsections (b)(1) and (d) the department changes passively-phrased language to active voice. In (c)(2)(A) and (c)(2)(B) the department deletes the word "upon." And in redesignated (c)(6) the department replaces the word "accordance" with the word "accord."

3. HOW THE SECTION WILL FUNCTION. Section 7.1001(a) provides that, for purposes of the section, the term "insurance company" includes an HMO as defined in the Insurance Code §843.002.

Section 7.1001(b) establishes the examination expenses and assessments applicable to an insurer not organized under the laws of Texas (foreign insurance company). Section 7.1001(b)(1) requires a foreign insurance company to reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company, describes how to calculate the part of an examiner's salary included in the examination fee, and provides that expenses the department assesses are those actually incurred by the examiner to the extent permitted by law. Section 7.1001(b)(2) requires a foreign insurance company to pay an additional assessment of 34 percent of the gross salary the department pays to each examiner for each month or partial month of the examination to cover the examiner's

longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals, pursuant to the Insurance Code §401.155. Section 7.1001(b)(3) provides that a foreign insurance company must pay the reimbursements and payments required by the subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

Section 7.1001(c) establishes the examination expenses and assessments applicable to a domestic insurance company.

Section 7.1001(c)(1) requires a domestic insurance company to pay the actual salaries and expenses of the examiners allocable to an examination of the company, it describes how to calculate the part of an examiner's salary included in the examination fee, and it provides that expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

Section 7.1012(c)(2) establishes the rates for the overhead assessment applicable to a domestic insurance company. Section 7.1001(c)(2)(A) provides that the overhead assessment applicable to a domestic insurance company includes .00237 of 1.0 percent of the admitted assets of the company as of December 31, 2012, upon taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)). Section 7.1001(c)(2)(B) provides that the overhead assessment applicable to a domestic insurance company includes .00839 of 1.0 percent of the gross premium receipts of the company for the year 2012, upon

taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)).

Section 7.1001(c)(3) provides that, except as provided by paragraph (4), if a company was a domestic insurance company for less than a full year during calendar year 2012, the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of the subsection divided by 366 and multiplied by the number of days the company was a domestic insurance company during calendar year 2012.

Section 7.1001(c)(4) provides that if the overhead assessment required under §7.1001(c)(2)(A) and (B) or paragraph (3) produces an overhead assessment of less than a $25 total, a domestic insurance company shall pay a minimum overhead assessment of $25.

Section 7.1001(c)(5) provides that the department will base the overhead assessments on the assets and premium receipts reported in a domestic insurance company's annual statement.

Section 7.1001(c)(6) provides that for the purpose of applying paragraph (2)(B) of the subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. Section 301 et seq.)

Section 7.1001(d) establishes the examination expenses applicable to a workers' compensation self-insurance group. The subsection requires a workers' compensation self-insurance group to pay the actual salaries and expenses of the examiners allocable to an examination of the company, it describes how to calculate the part of an examiner's salary included in the examination fee, and it provides that expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

Section 7.1001(e) requires a domestic insurance company to pay the overhead assessment required under §7.1001(c) to the Texas Department of Insurance not later than 30 days from the invoice date.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE. The department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments are adopted under the Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155, 401.156; 843.156(h); and 36.001; and the Labor Code §407A.252(b).

The Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner shall administer money in the Texas

Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

The Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority must pay the expenses of the examination in an amount the commissioner certifies as just and reasonable.

The Insurance Code §401.151 also provides that the department must collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by the Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, Section 401.151 states that in determining the amount of assessment, the department will consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by Section 818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

The Insurance Code §401.152 provides that an insurer not organized under the laws of Texas must reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department

expenses that are properly allocable to the department's participation in the examination. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the commissioner. Additionally, section 401.152 provides that the commissioner must determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

The Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with the Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

The Insurance Code §401.156 requires the department to deposit any assessments or fees collected under the Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by the Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs, as defined by the Insurance Code §401.251. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

The Insurance Code §843.156(h) provides that the Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

The Labor Code §407A.252(b) provides that the commissioner of insurance may recover the expenses of an examination of a workers' compensation self-insurance group under the Insurance Code Article 1.16, which was recodified as the Insurance Code §§401.151, 401.152, 401.155,401.156, and 401.156 by HB 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under the Labor Code §407A.302 does not cover those expenses.

The 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 this state.

6. TEXT.

§7.1001. Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance, 2013.

(a) Pursuant to the Insurance Code §843.156 and for purposes of this section, the term "insurance company" includes a health maintenance organization as defined in the Insurance Code §843.002.

(b) An insurer not organized under the laws of Texas (foreign insurance company) must pay the costs of an examination as specified in this subsection.

(1) Pursuant to the Insurance Code §401.152, a foreign insurance company must reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company allocable to an examination of the company. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the company the part of the annual salary attributable to each working day the examiner examines the company during 2013. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(2) Pursuant to the Insurance Code §401.155, a foreign insurance company must pay an additional assessment of 34 percent of the gross salary the department pays to each examiner for each month or partial month of the examination to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals.

(3) A foreign insurance company must pay the reimbursements and payments required by this subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

(c) Pursuant to the Insurance Code §401.151, §401.155, and Chapter 803, a domestic insurance company must pay examination expenses and rates of overhead assessment in accordance with this subsection.

(1) A domestic insurance company must pay the actual salaries and expenses of the examiners allocable to an examination of the company. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2013. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) Except as provided in paragraphs (3) and (4) of this subsection, the overhead assessment to cover administrative departmental expenses attributable to examination of companies is:

(A) .00237 of 1.0 percent of the admitted assets of the company as of December 31, 2012, taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)); and

(B) .00839 of 1.0 percent of the gross premium receipts of the company for the year 2012, taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)).

(3) Except as provided in paragraph (4) of this subsection, if a company was a domestic insurance company for less than a full year during calendar year 2012, the overhead assessment for the company is the overhead assessment required under

paragraph (2)(A) and (B) of this subsection divided by 366 and multiplied by the number of days the company was a domestic insurance company during calendar year 2012.

(4) If the overhead assessment required under paragraph (2)(A) and (B) of this subsection or paragraph (3) of this subsection produces an overhead assessment of less than a $25 total, a domestic insurance company shall pay a minimum overhead assessment of $25.

(5) The department will base the overhead assessments on the assets and premium receipts reported in the annual statements.

(6) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accord with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. Section 301 et seq.).

(d) Pursuant to the Labor Code §407A.252, a workers' compensation self-insurance group must pay the actual salaries and expenses of the examiners allocable to an examination of the group. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the group the part of the annual salary attributable to each working day the examiner examines the company during 2013. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(e) A domestic insurance company must pay the overhead assessment required under subsection (c) of this section to the Texas Department of Insurance, P.O. Box 149104, MC 999, Austin, Texas 78714-9104 not later than 30 days from the invoice date.

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

Issued at Austin, Texas, on January 7, 2013.

Sara Waitt
General Counsel
Texas Department of Insurance

The commissioner adopts amendments to §7.1001.

Eleanor Kitzman
Commissioner of Insurance

Commissioner's Order No. 2178
JAN 09 2013