

SUBCHAPTER J. Examination Expenses and Assessments
28 TAC §7.1001

1. INTRODUCTION. The Texas Department of Insurance proposes new Subchapter J, concerning examination expenses and assessments and new §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. Pursuant to the Insurance Code §843.156, the term "insurance company" as used in this proposal includes a health maintenance organization (HMO) as defined in the Insurance Code §843.002. The new subchapter and section 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 2012 calendar year. The new subchapter and section are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurance company examined during the 2012 calendar year, based on admitted assets and gross premium receipts for the 2011 calendar year, and from each foreign insurance company examined during the 2012 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.

Proposed §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.

Proposed §7.1001(b) establishes the examination expenses and assessments applicable to an insurer not organized under the laws of Texas (foreign insurance company). Proposed §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 assessed shall be those actually incurred by the examiner to the extent permitted by law. Proposed §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. Proposed §7.1001(b)(3) provides that a foreign insurance company shall 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.

Proposed §7.1001(c) establishes the examination expenses and assessments applicable to a domestic insurance company. Proposed §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. Proposed §7.1012(c)(2) establishes the rates for the overhead assessment applicable to a domestic insurance company. Proposed §7.1001(c)(2)(A) provides that the overhead assessment applicable to a domestic insurance company includes .00561 of 1.0 percent of the admitted assets of the company as of December 31, 2011, 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)). Proposed §7.1001(c)(2)(B) provides that the overhead assessment applicable to a domestic insurance company includes .02064 of 1.0 percent of the gross premium receipts of the company for the year 2011, 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)). Proposed §7.1001(c)(3) provides that if the overhead assessment required under proposed §7.1001(c)(2)(A) and (B) produces an overhead assessment of less than a \$25 total, a domestic insurance company shall pay a minimum overhead assessment of \$25.

Proposed §7.1001(c)(4) provides that the Department will base the overhead assessments on the assets and premium receipts reported in a domestic insurance company's annual statement. Proposed §7.1001(c)(5) 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.)

Proposed §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, and 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.

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

Explanation of methodology used to determine exam overhead assessments for 2012

In general, the Department's 2012 revenue need (the amount that must be funded by maintenance taxes or fees, examination overhead assessments, and premium finance exam assessments) is determined by calculating the Department's total cost need, and subtracting from that number funds resulting from fee revenue and remaining from fiscal year 2011.

To determine its 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) an estimate of other costs statutorily required to be paid from those two funds, such as fringe benefits and statewide allocated costs; (iii) an estimate of the cash amount necessary to finance both funds from the end of the 2012 fiscal year until the next assessment collection period in 2013; and (iv) costs associated with implementation of Senate Bill 1291, 82nd

Legislature, Regular Session, effective September 1, 2011 (SB 1291), which requires the creation of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses.

To complete the calculation of revenue need, the Department reduced the total cost need by subtracting the estimated ending fund balance for fiscal year 2011 (August 31, 2011) and estimated fee revenue to be collected in fiscal year 2012. The resulting balance is the estimated revenue need that must be supported during the 2012 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance exam assessments.

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. 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.

The Department then subtracted the fiscal year 2012 estimated amount of examination direct billing revenue from the amount of the total costs for the examination funding source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

For 2012, it was also necessary for the Department to add to the revenue need the costs associated with implementing Rider 19, page I-26, Chapter 1355 (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act). This rider authorized the Comptroller of Public Accounts to reimburse the General Revenue Fund from Account No. 0036 for up to \$10,000,000 for the cost of insurance premium tax credits for examination fees and overhead assessments.

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 2011 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 2011 to determine the proposed rate of assessment for admitted assets.

2. FISCAL NOTE. Joe Meyer, Assistant Chief Financial Officer, has determined that for the first five-year period the proposed amendments are in effect, the expected fiscal impact on state government is estimated income of \$23,588,460 to the state's general revenue fund. There will be no fiscal implications for local government as a result of

enforcing or administering the section, and there will be no effect on local employment or the local economy.

3. PUBLIC BENEFIT/COST NOTE. Mr. Meyer also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the section will be adequate and reasonable assessment rates to defray the state's expenses of domestic and foreign insurer examinations and administration of the laws related to these examinations during the 2012 calendar year. Mr. Meyer has determined that the direct economic cost to entities required to comply with the proposed amendments will vary.

The examination expense will consist of the actual salary of the examiner directly attributable to the examination and the actual expenses of the examiner directly attributable to the examination, including transportation, lodging, meals, subsistence expenses, and parking fees. The actual salary of an examiner is to be determined by dividing the annual salary of the examiner by the total number of working days in a year, and a company or group is to be assessed the part of the annual salary attributable to each working day the examiner examines the company or group.

The amount of the assessment in 2012 for domestic companies will be .00561 of 1.0 percent of the company's admitted assets as of December 31, 2011 (excluding pension assets specified in subsection (c)(2)(A)) and .02064 of 1.0 percent of the company's gross premium receipts for 2011 (excluding pension related premiums specified in subsection (c)(2)(B) and premiums related to welfare benefits described in subsection (c)(5)). The amount of the assessment in 2012 for foreign companies

examined in 2012 will be 34 percent of the gross salary paid 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.

There are two components of costs for entities required to comply with the assessment requirements in the proposal: the cost to gather the information, calculate the assessment and complete the required forms; and the cost of the assessment. Based on information obtained by the Department, the actual cost of gathering the information required to fill out the form, calculate the assessment and complete the form will be the same for micro, small and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between \$23 – \$34 an hour. The Department estimates that, regardless of whether the company is micro, small, or large, the required form can be completed in two hours. The requirement to pay the assessment necessary to cover the expenses of company examination is the result of legislative enactment and is not a result of the adoption or enforcement of this proposal. There is no difference in proposed rates of assessment for micro, small and large businesses, except that for those domestic companies with an overhead assessment of less than \$25 as computed under §7.1001(c)(2)(A) and (B), a minimum overhead assessment of \$25 will be assessed.

The Department after considering the purpose of the authorizing statutes does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic effect on approximately 12 – 41 domestic insurance companies that are small or micro businesses required to comply with the proposed rules. It is not possible to anticipate the number or size of foreign insurance companies that may be required to comply with the proposed rule, because of the limited number of examinations the Department conducts on foreign insurance companies. The Department has determined that none of the workers' compensation self-insurance groups that must comply with the proposed rule would qualify as a small or micro business.

Adverse economic impact may result from costs associated with examination fees and the amount of the required assessment resulting from this proposal. The cost of compliance will not vary between large businesses and small or micro businesses, and the Department's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses is not dependent upon the size of the business, but rather is dependent upon: for foreign insurers and for workers' compensation self-insurance groups, the length of time it takes to conduct an examination, the annual salary of the examiner, and

expenses associated with the examination; and for domestic insurers, the length of time it takes to conduct an examination, expenses associated with the examination, and the admitted assets and gross premium receipts of the company.

In accordance with the Government Code §2006.002(c-1), the Department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to propose a rule addressing examination fees and assessments for domestic and foreign insurance companies and workers' compensation self-insurance groups.

The other regulatory methods considered by the Department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting a different assessment requirement for small and micro businesses, and (iii) exempt small or micro businesses from the assessment requirements.

Not adopting the proposed rule. The impact of not adopting the proposed rule would be that the Department would not be able to collect the necessary funds to cover the examination functions of the Department. The purpose of conducting examinations is to monitor the activities and solvency of insurance companies. Failure of the Department to perform its examination functions could result in public harm if a company was to cease compliance with the Insurance Code or become insolvent and this was not detected because of the lack of regular examinations. Not adopting the rule would also result in the Department being out of compliance with the Insurance Code §401.151(c), which directs the Department to 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 related to the examination of insurers. For these reasons, this option has been rejected.

Adopt a different assessment requirement for small and micro businesses. The proposed assessment is already based on the most equitable methodology the Department can develop. The Department applies an assessment methodology that results in a smaller assessment, down to a minimum assessment of \$25, for domestic insurer small or micro businesses because the assessment is determined based on premium levels and admitted assets. The Department anticipates that a domestic insurer that is a small or micro business that would be most susceptible to economic harm would be one that writes fewer premiums and has fewer admitted assets. However, based upon the proposed assessment requirements of the rule, such a small or micro business would pay a smaller assessment, thereby reducing its risk of economic harm. For these reasons, this option has been rejected.

Exempt small or micro businesses from the assessment requirements. As previously noted, the current methodology used to develop the proposed rule is already the most equitable that the Department can develop. The Department applies a methodology that contemplates a domestic insurer that is a small or micro business paying less of an assessment if it writes fewer premiums or has less admitted assets. However, if the assessment were completely eliminated for small or micro businesses, TDI would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. For these reasons, this option has been rejected.

5. TAKINGS IMPACT ASSESSMENT. The Department 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, and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 3, 2012 to Sara Waitt, Acting General Counsel, 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 Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The new section is proposed under 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 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 shall 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 shall 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 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 shall 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 shall 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 comply with the Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

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, and 401.156 by HB 2017, 79th Leg. R.S. (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 Texas.

8. CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal:

Rule	Statute
28 TAC §7.1001	Insurance Code §§201.001(a)(1),(b), and (c); 401.151; 401.152; 401.155; and 843.156(h); and Labor Code §407A.252(b)

9. TEXT.

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

§7.1001. Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance, 2012.

(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) shall pay the costs of an examination as specified in this subsection.

(1) Pursuant to the Insurance Code §401.152, a foreign insurance company shall 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. 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 2012. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) Pursuant to the Insurance Code §401.155, a foreign insurance company shall 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 shall 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 shall pay examination expenses and rates of overhead assessment in accordance with this subsection.

(1) A domestic insurance company shall 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 2012. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

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

(A) .00561 of 1.0 percent of the admitted assets of the company as of December 31, 2011, 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)); and

(B) .02064 of 1.0 percent of the gross premium receipts of the company for the year 2011, 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)).

(3) If the overhead assessment required under paragraph (2)(A) and (B) 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.

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

(5) 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 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.)

(d) Pursuant to the Labor Code §407A.252, a workers' compensation self-insurance group shall pay the actual salaries and expenses of the examiners allocable to an examination of the group. The annual salary of each examiner is to be divided by the total number of working days in a year, and the group is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2012. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(e) A domestic insurance company shall 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.