SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS
28 TAC §7.1001

INTRODUCTION. The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies, and self-insurance groups providing workers' compensation insurance.

EXPLANATION. The proposed amendments to §7.1001 provide for 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 each calendar year. The proposed amendments also provide for the rates of assessment to be levied against and collected from each domestic insurer, based on admitted assets and gross premium receipts for the calendar year prior to the assessment, and from each foreign insurer examined during the calendar year prior to the assessment using the same method.

The department proposes to adopt a standing rule which would allow for the rates to be specified by order annually. This would allow the Commissioner to maintain transparency on how the rates are calculated in the rule, but also help avoid delays that can result from the rulemaking process. The Commissioner will be able to set the rates by order sooner than can be done by rule, which benefits stakeholders and preserves agency resources.

The proposed amendments to the section are described in the following paragraphs.

Section 7.1001 Heading. The amendment to the section heading reflects that the proposed examination assessments no longer apply to a specific year.

Section 7.1001(b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d). Amendments to §7.1001(b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d) reflect that the proposed examination assessments apply each year instead of to a specific year.

Section 7.1001(b)(1), (c)(1), and (d). Amendments to §7.1001(b)(1), (c)(1), and (d) provide that an examiner's and other department employee's salary will be based on an average annual examiner's and other department employee's salary instead of an individual examiner's and other department employee's salary. The amendments to §7.1001(c)(1) and (d) remove the word "actual" for the same reason. It is cumbersome for the department to determine each examiner's and other department employee's actual salary when an examiner's and other department employee's salary may change during the year. The department believes using an average annual examiner's and other department employee's salary, as applicable, and to the extent permitted by law, is just and reasonable. Also, the department will calculate the assessment on the number of working hours in a year instead of days in a year to reflect the process the department will use.

Section 7.1001(b)(2). The amendments to §7.1001(b)(2) provide that a foreign insurance company examined beginning in one year and completed the next year will be assessed using the rate for the year the exam began.

Section 7.1001(c)(1). For consistency with agency style, amendments to §7.1001(c)(1) reflect the active rather than the passive voice. The language "divides" replaces "is to be divided" and "is to be assessed" becomes "assesses."

Section 7.1001(c)(2)(A) and (B). Amendments to §7.1001(c)(2)(A) and (B) reflect that the Commissioner will set the examination assessment rates by order each relevant year, instead of by rule amendment. The rates will reflect the method the department sets out in this rule.

Section 7.1001(c)(3). The amendment to §7.1001(c)(3) removes language about redomestication to allow proportional assessments in situations where an insurance company comes to Texas or leaves Texas during a year. This results in cost savings to companies that are only domesticated in Texas for a portion of a year. The proportional assessment does not apply to a foreign insurance company that merges with a Texas domestic insurance company.

Section 7.1001(c)(5). The amendments to §7.1001(c)(5) clarify that gross premiums receipts, for §7.1001 only, include direct written and assumed premiums, as reported in the annual statements.

Section 7.1001(e) and (g). The amendments to §7.1001(e) remove language about payment; this language is inserted as new §7.1001(g) so that it is at the end of the text. New language added to §7.1001(e) states that the Commissioner will set the average annual examiner's and other department employee's salary rate and overhead assessment rates by order each year.

Section 7.1001(f). New §7.1001(f) explains the method the department will use to calculate the overhead assessment revenue need and rates set each year in the Commissioner order.

The following paragraphs provide an explanation of the method the department uses to determine examination overhead assessments.

In general, the department determines its 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 under Insurance Code §401.252) by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from the previous fiscal year.

To determine total cost need, the department combines costs from the following: (i) appropriations set out in the current 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 Insurance Code Subchapters D and F of Chapter 401 as approved by the Commissioner of Insurance for the self-directed budget account in the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (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 current fiscal year until the assessment collection period in the next fiscal year. From these combined costs, the department subtracts costs allocated to the Division of Workers' Compensation, including the Office of Injured Employee Counsel, and the Workers' Compensation Research and Evaluation Group.

The department determines 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 allocates 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 Insurance Code §401.252, or another funding source. The department applies these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculates 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 uses 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 calculates the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combines the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracts the current fiscal year 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 allocates 50% of the revenue need to admitted assets and 50% to gross premium receipts. The department divides the revenue need for gross premium receipts by the total estimated gross premium receipts for the previous calendar year to determine the proposed rate of assessment for gross premium receipts. The department divides the revenue need for admitted assets by the total estimated admitted assets for the previous calendar year to determine the proposed rate of assessment for admitted assets.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Robert Palm, program specialist in the Financial Services Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections imposed by statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Palm does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each of the first five years the proposed amendments are in effect, Mr. Palm expects that administering and enforcing the proposed amendments will have the public benefit of ensuring that the department's rules properly implement 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). Additionally, the amendments will allow for the rates to be set by order sooner than can be done by rule, which benefits stakeholders, and preserves agency resources.

Mr. Palm expects that the proposed amendments will not increase the cost of compliance with 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), because they do not impose requirements beyond those in statute. 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), require that the Commissioner annually determine the rate of assessment of examination expenses. Any cost associated with the department collecting examination expenses, including the requirement that the department examine insurers and allocate the cost among entities regulated by the department, results from enforcing and administering statute, not from the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department has determined the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed rule is designed to implement 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), and any economic impact results from these statutes. The proposed amendments do not impose requirements beyond those in statute and will not create an increase in cost of compliance with statute. As a result, and in accordance with Government Code §2006.002(c), the department is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that this proposal does not impose a possible cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule would be in effect, the proposed amendments, or their implementation:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create new regulation;

- will not expand, limit, or repeal existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. The department will consider any written comments on the proposal that are received by the department no later than 5:00 p.m., central time, December 7, 2002. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on December 7, 2020. If the department holds a public hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to §7.1001 under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 843.156(h); and 36.001; and Labor Code §407A.252(b).

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 administers 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.

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. Insurance Code §401.151 also provides that the department 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 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, §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% of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

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(a-1) requires that the department also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by the section in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers, and the amount imposed must be computed in the same manner as the amount imposed under §401.151(c) for domestic insurers. 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, §401.152 provides that the Commissioner 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.

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 Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §843.156(h) provides that 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.

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.

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 Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

CROSS-REFERENCE TO STATUTE. Section 7.1001 implements 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).

TEXT.

§7.1001. Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance[~~, 2020~~].

(a) Under Insurance Code §843.156 and for purposes of this section, the term "insurance company" includes a health maintenance organization as defined in 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) Under Insurance Code §401.152, a foreign insurance company must reimburse the department for the salary and examination expenses of each examiner and other department employee participating in an examination of the insurance company allocable to an examination of the company. To determine the allocable salary for each examiner and other department employee, the department divides the average annual examiner's and other department employee's salary [~~of each examiner~~] by the [~~total~~] number of working hours [~~days~~] in a year. The department assesses the company the part of the annual salary attributable to each working hour [~~day~~] the examiner and other department employee examines the company during a year [~~2020~~]. The expenses the department assesses are those actually incurred by the examiner and other department employee to the extent permitted by law.

(2) Under Insurance Code §401.152(a-1), a foreign insurance company examined [~~in 2019~~] entirely in a single year, or an exam beginning in one year [~~2019~~] and completed in the next year will be assessed using the rate for the year the exam began [~~2020~~], and must pay an annual assessment in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers. The amount imposed must be computed in the same manner as the amount imposed for domestic insurers as applicable under subsection (c) of this section.

(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) Under 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 and other department employees allocable to an examination of the company. The department divides the average annual examiner's and other department employee's salary [~~of each examiner is to be divided~~] by the [~~total~~] number of working hours [~~days~~] in a year, and assesses the company [~~is to be assessed~~] the part of the annual salary attributable to each working hour [~~day~~] the examiner and other department employee examines the company during a year [~~2020~~]. The expenses assessed must be those actually incurred by the examiner and other department employee 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) a percentage, as specified in the Commissioner order addressed in subsection (e) of this section, [~~.00141 of 1 percent~~] of the admitted assets of the company as of December 31 each relevant year, [~~2019,~~] taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §818(a)); and

(B) a percentage, as specified in the Commissioner order addressed in subsection (e) of this section, [~~.00441 of 1 percent~~] of the gross premium receipts of the company for each relevant [~~the~~] year [~~2019~~], taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. §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 a calendar year [~~2019 because of a redomestication~~], the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of this subsection divided by 365 and

multiplied by the number of days the company was a domestic insurance company during that calendar year [~~2019~~].

(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 $25, a domestic insurance company must pay a minimum overhead assessment of $25.

(5) The department will base the overhead assessments on the assets and premium receipts, including direct written and assumed premiums, 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 accordance with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §§301 et seq.).

(d) Under Labor Code §407A.252, a workers' compensation self-insurance group must pay the [~~actual~~] salaries and expenses of the examiners and other department employees allocable to an examination of the group. To determine the allocable salary for each examiner and other department employee, the department divides the average annual examiner's and other department employee's salary [~~of each examiner~~] by the [~~total~~] number of working hours [~~days~~] in a year. The department assesses the group the part of the annual salary attributable to each working hour [~~day~~] the examiner and other department employee examines the company during a year [~~2020~~]. The expenses the department assesses are those actually incurred by the examiner and other department employee to the extent permitted by law.

(e) The Commissioner will set the average annual examiner's and other department employee's salary rate and overhead assessment rates for each year by Commissioner order. [~~A domestic insurance company must pay the overhead assessment required under~~

~~subsection (c) of this section to the Texas Department of Insurance as provided in the invoice not later than 30 days from the invoice date.~~]

(f) The overhead assessment rates set in the Commissioner order addressed in subsection (e) of this section are calculated as described in paragraphs (1) and (2) of this subsection.

(1) Overhead assessment revenue need is calculated as the amount of revenue needed to reach the targeted year-end fund balance, taking into account the beginning balance, expected direct billing revenues, and estimated expenditures.

(2) To calculate the assessment rates, the department allocates a percentage of the revenue need to admitted assets and a percentage to gross premium receipts, the assessment bases. Then the department divides the revenue need allocated to each assessment base by the assessment base.

(g) A domestic insurance company must pay the overhead assessment required under subsection (c) of this section to the Texas Department of Insurance as provided in the invoice not later than 30 days from the invoice date.

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

Issued in Austin, Texas, on October 22, 2020.

DocuSigned by:
James Person
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James Person, General Counsel
Texas Department of Insurance