

**SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS
AND OTHER REQUIREMENTS
28 TAC §§7.402, 7.403, and 7.404**

1. INTRODUCTION. The Commissioner of Insurance (Commissioner) adopts amendments to §7.402, concerning risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs); new §7.403, concerning a transition period for certain county mutual insurance companies to comply with new minimum surplus requirements; and new §7.404, concerning a transition period for stipulated premium insurance companies to comply with new minimum capital and surplus requirements. The amendments and new sections are adopted without changes to the proposed text published in the October 8, 2010 issue of the *Texas Register* (35 TexReg 9045).

2. REASONED JUSTIFICATION. The amendments to §7.402 are necessary to implement and update the risk-based capital and surplus requirements for year-end 2009 and for year-end 2010 for property and casualty insurers, life insurance companies, fraternal benefit societies, stipulated premium insurance companies, HMOs, and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank by (i) adopting the 2009 NAIC risk-based capital formulas and instructions to be used for year-end 2009; (ii) adopting the 2010 NAIC risk-based capital formulas and instructions to be used for year-end 2010; (iii) adding stipulated premium insurance companies only doing business in Texas and certain county mutual insurance

companies to the list of defined “carriers” which must comply with the section; and (iv) specifying the filing requirements for the 2009 and 2010 risk-based capital reports and supplemental reports and forms. Insurers and HMOs subject to §7.402 are referred to collectively as “carriers” in this adoption. New §7.403 is necessary to implement the Insurance Code §912.056(f), as added by House Bill (HB) 2449, 81st Legislature, Regular Session, which provides a transition period for certain county mutual insurance companies to comply with the new minimum surplus requirements. New §7.404 is necessary to implement the Insurance Code §884.054(a) and (c), as amended by House Bill (HB) 2570, 81st Legislature, Regular Session, which provides a transition period for stipulated premium insurance companies to comply with the new minimum capital and surplus requirements.

The amendments to §7.402 are necessary to regulate risk-based capital and surplus requirements for carriers. 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 updated NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and/or surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure. The amendments are necessary to adopt by reference the 2009 NAIC risk-based capital formulas to be used for year-end 2009. These formulas include the 2009 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2009 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for

Companies, the 2009 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2009 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. Specifically, the amendments to §7.402(d), in paragraphs 1 – 4, replace the date “2008” with “2009.” The amendments also are necessary to adopt by reference the 2010 NAIC risk-based capital formulas to be used for year-end 2010. These formulas include the 2010 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2010 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2010 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2010 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. Specifically, the amendments to §7.402(d) add new paragraphs 5 – 8.

The amendments to §7.402 are also necessary to add stipulated premium insurance companies only doing business in Texas to the list of defined “carriers” which must comply with the section. Under the amendments to §7.402(b)(1) and (e)(3), stipulated premium insurance companies only doing business in Texas will be subject to the section’s risk-based capital requirements for life insurance companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. Specifically, the amendments to §7.402(b)(1): (i) add the word “insurance” after the phrase “stipulated premium” and before the word “companies;” (ii) delete the phrase “doing business in other states;” and (iii) delete the

sentence specifying “This section does not apply to stipulated premium companies only doing business in Texas.” New §7.402(e)(3) requires stipulated premium insurance companies only doing business in Texas to file the 2010 risk-based capital report and any supplemental forms and reports. However, new §7.402(e)(3) does not require these type of carriers to file the 2009 risk-based capital report.

The amendments to §7.402 are also necessary to add certain county mutual insurance companies to the list of defined “carriers” which must comply with the section. Under the amendments to §7.402(b)(2) and (e)(4), county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) will be subject to the section’s risk-based capital requirements for property and casualty companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. Specifically, the amendments to §7.402(b)(2) clarify the scope of the rule’s application to property and casualty companies by adding the phrase “including county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f), but...” and at the end of the sentence adds the phrase “subject to the Insurance Code §822.205.” The amendments to §7.402(b)(2) also delete the phrase “that write business only in this state and are not required to have capital stock”. New §7.402(e)(4) requires county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) to file the 2010 risk-based capital report and any

supplemental forms or reports. However, new §7.402(e)(4) explicitly provides that these type of carriers are not required to file the 2009 risk-based capital report.

Also, the amendments to §7.402(e)(1) and (2) clarify the filings requirements for all other types of carriers subject to the section. Specifically, the amendments to §7.402(e)(1) clarify that all companies subject to this section, except fraternal benefit societies, stipulated premium companies doing business only in Texas, and county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f), are required to file electronic versions of the 2009 and the 2010 RBC reports and any supplemental RBC forms and reports with the NAIC in accordance with and by the due dates specified in the RBC instructions. The amendments to §7.402(e)(2) clarify that fraternal benefit societies are required to (i) prepare, maintain, and file a paper copy of the 2009 RBC report and any supplemental RBC forms and reports with the Department whenever requested by the Department; and (ii) to prepare and maintain a paper copy of the 2010 RBC report and any supplemental RBC forms and reports by March 1, 2011, and make the reports and forms available for review whenever requested by the Department. Additionally, the amendments to §7.402 include new subsection (g)(7) which imposes a new substantive requirement for year-end 2009, and each calendar year thereafter, that subjects health insurers to a trend test if their total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent. In that case, and if the result of the trend test as determined by the formula is "YES", the health insurer will be subject to the company action level requirements and will need to file additional reporting with the

Department as a result of the trend test. This new requirement is necessary because it will allow for early identification of insurers that are likely to reach a company action level in the following year. This is based on research by the NAIC's Health Risk-Based Capital (E) Working Group that showed a strong correlation between the trend test's criteria and the triggering of at least the company action level in the following year. By triggering a company action level sooner, insurers can plan better for their capital needs and the Department will receive information related to its solvency regulatory duties which is necessary to protect the interests of the public. Specifically, the amendments to §7.402(g) add new paragraph (7) containing the new testing requirement that subjects health insurers to a trend test if their total adjusted capital to authorized control level risk-based capital is between 200 percent and 300 percent.

Copies of the documents adopted in §7.402 are available for inspection in the Financial Analysis Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas.

The Department also adopts new §7.403 to provide a transition period for certain county mutual insurance companies to comply with the new surplus minimums required by the Insurance Code §912.056(f), as amended by HB 2449, 81st Legislature, Regular Session. In part, HB 2449 amended the Insurance Code §912.056 by adopting new §912.056(f), which requires that certain specified county mutual insurance companies maintain a higher minimum unencumbered surplus. HB 2449 also enacted new Insurance Code §912.056(g), which requires the Commissioner to adopt a transition

period for these specified county mutual insurance companies to meet the requirements of §912.056(f) and for the pro rata elimination of any deficiencies in the amounts required under §912.056(f) over a period of not less than five years. Specifically, new §7.403(a) states that the new section applies to county mutual insurance companies that cede 85 percent or more of their direct and assumed risks to one or more nonaffiliated reinsurers, and further provides that such companies are otherwise required to comply with the Insurance Code §912.056(f) relating to the new surplus minimums required by the Insurance Code §912.056(f), as amended by HB 2449. New §7.403(b) provides that a county mutual insurance company shall comply with §7.402 unless the company meets the express criteria contained in the Insurance Code §912.056(f). In accordance with the prescriptive requirements of the Insurance Code §912.056(g), new §7.403 requires the pro rata elimination of any deficiencies in the amounts required under §912.056(f) over a period of not less than five years. Specifically, new §7.403(c) sets out a five-year graduated transition period for the county mutual insurance companies subject to the section.

The Department further adopts new §7.404 to provide a transition period for stipulated premium insurance companies to comply with the new minimum capital stock and surplus rules required by the Insurance Code §884.054 as amended by HB 2570, 81st Legislature, Regular Session. In part, HB 2570 amended the Insurance Code §884.054, which specifies the minimum capital and surplus requirements for stipulated premium insurance companies. SECTION 12 of HB 2570 requires that a stipulated premium insurance company shall increase its capital stock and surplus as required

under the Insurance Code Chapter 884, as amended, not later than a date prescribed by rule by the Commissioner in connection with a schedule of intermediate increases adopted by the Commissioner to provide for a 10-year phase-in of the requirements. In accordance with the prescriptive requirements of SECTION 12 of HB 2570, new §7.404 requires a stipulated premium insurance company to increase its capital stock and surplus as required under the Insurance Code Chapter 884, as amended, in connection with a reasonable schedule of intermediate increases adopted by the Commissioner to provide for a 10-year phase-in of the requirements. New §7.404(a) provides that a stipulated premium insurance company shall comply with §7.402. New §7.404(b) sets out a 10-year graduated transition period for stipulated premium insurance companies to comply with the new minimum capital stock and surplus rules required by the Insurance Code §884.054 as amended by HB 2570.

Additionally, the new amendment to the title of Subchapter D that adds the phrase “and other” after the phrase “Risk-based Capital and Surplus” is necessary to reflect the expanded scope of Subchapter D as a consequence of the new amendments to §7.402 and new §7.403 and §7.404.

3. HOW THE SECTIONS WILL FUNCTION.

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

The amendments to §7.402(b) expand the scope of the section to include stipulated premium insurance companies only doing business in Texas and certain county mutual insurance companies. Under the amendments to §7.402(b)(1) and (e)(3), stipulated

premium insurance companies only doing business in Texas will be subject to the section's risk-based capital requirements for life insurance companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. Under the amendments to §7.402(b)(2) and (e)(4), county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) will be subject to the section's risk-based capital requirements for property and casualty companies and will be required to file an electronic version of the 2010 risk-based capital report and any supplemental forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions. The amendments to §7.402(d) adopt by reference the 2009 and 2010 NAIC risk-based capital formulas, replacing the year-end 2008 formulas. Insurers and health maintenance organizations will use the 2009 and 2010 formulas to comply with the Department's regulatory requirements pertaining to minimum amounts of capital and policyholder surplus appropriate for carriers to support their overall business operations in consideration of their size and risk exposure. The NAIC formulas provide the insurance industry and the Department with a widely used regulatory standard for this purpose. The amendments to §7.402(e) update the risk-based capital filing requirements for the various types of carriers. The amendment to §7.402(g) updates the remedial actions that the Commissioner of Insurance may take depending on the results computed by the risk-based capital formula by adding the new subsection (g)(7) requirement that subjects health insurers to a trend test if their total adjusted capital to

authorized control level risk-based capital is between 200 percent and 300 percent. In that case, and if the result of the trend test as determined by the formula is "YES", the health insurer will be subject to the company action level requirements and will need to file additional reporting with the Department as a result of the trend test. .

§7.403. Transition Period for Certain County Mutual Insurance Companies. New §7.403(a) states that the new section applies to county mutual insurance companies that cede 85 percent or more of the their direct and assumed risks to one or more nonaffiliated reinsurers, and further provides that such companies are otherwise required to comply with the Insurance Code §912.056(f) relating to the new surplus minimums required by the Insurance Code §912.056(f), as amended by HB 2449. New §7.403(b) provides that a county mutual insurance company shall comply with §7.402 unless the company meets the express criteria contained in the Insurance Code §912.056(f). New §7.403(c) sets out a five-year graduated transition period for the county mutual insurance companies subject to the section.

§7.404. Transition Period for Stipulated Premium Insurance Companies. New §7.404(a) provides that a stipulated premium insurance company shall comply with §7.402. New §7.404(b) sets out a 10-year graduated transition period for stipulated premium insurance companies to comply with the new minimum capital stock and surplus rules required by the Insurance Code §884.054 as amended by HB 2570.

4. SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

5. STATUTORY AUTHORITY. The amendments and new sections are adopted under SECTION 12 of HB 2570, as enacted by the 81st Legislature, Regular Session, effective September 1, 2009, and the Insurance Code Chapters 404 and 441 and §§822.210, 841.205, 884.054, 884.206, 843.404, 885.401, 912.056, 982.105, 982.106, and 36.001. SECTION 12 of HB 2570 requires that a stipulated premium insurance company shall increase its capital stock and surplus as required under the Insurance Code Chapter 884, as amended, not later than a date prescribed by rule by the Commissioner in connection with a schedule of intermediate increases adopted by the Commissioner to provide for a 10-year phase-in of the requirements. Chapter 404 addresses the duties of the Department when an insurer's solvency is impaired. 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. Chapter 441 addresses the prevention of insurer delinquencies and insolvencies. 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 assure financial solvency of insurers for the protection of policyholders and insurers. 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 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 assure financial solvency of insurers for the protection of policyholders and insurers. 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 ensure financial solvency of health maintenance organizations for the protection of enrollees. Section 884.054 specifies the capital stock and surplus requirements for stipulated premium insurance companies. 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 the Department to use the annual report in determining a society's financial solvency. Section 912.056 authorizes the Commissioner to adopt rules to provide a transition

period for certain county mutual insurance companies to comply with the new surplus minimums required by the Insurance Code §912.056(f). 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 the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. TEXT.

SUBCHAPTER D. Risk-based Capital and Surplus and Other Requirements

§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 an insurer or a health maintenance organization.

(b) Scope.

(1) Life companies. This section applies to any 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, and

stipulated premium insurance companies. Fraternal benefit societies are subject to their own separate risk-based capital instructions as provided in subsection (d)(2) of this section.

(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 the Insurance Code §912.056(f), but excluding monoline financial guaranty insurers, monoline mortgage guaranty insurers, title insurers and those insurers subject to the Insurance Code §822.205.

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

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

(1) Annual financial statement--The annual statement blank to be used by insurance companies, as promulgated by the NAIC and as adopted by the commissioner.

(2) Authorized control level--The result determined under the RBC formula in accordance with the RBC instructions.

(3) NAIC--National Association of Insurance Commissioners.

(4) RBC--Risk-based capital.

(5) RBC formula--NAIC risk-based capital formula.

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

(7) Total adjusted capital--An insurer's adjusted statutory capital and surplus as determined under the RBC formula in accordance with the RBC instructions.

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following, which are available for inspection in the Financial Analysis Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas:

(1) The 2009 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(2) The 2009 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(3) The 2009 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(4) The 2009 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(5) The 2010 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(6) The 2010 NAIC Fraternal Benefit Societies Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(7) The 2010 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(8) The 2010 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(e) Filing requirements.

(1) All companies subject to this section, except fraternal benefit societies, stipulated premium companies doing business only in Texas, and county mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f), are required to file electronic versions of the 2009 and the 2010 RBC reports and any supplemental RBC forms and reports with the NAIC in accordance with and by the due dates specified in the RBC instructions.

(2) Fraternal benefit societies shall prepare, maintain, and file a paper copy of the 2009 RBC report and any supplemental RBC forms and reports with the department whenever requested by the department. Fraternal benefit societies shall prepare and maintain a paper copy of the 2010 RBC report and any supplemental RBC forms and reports by March 1, 2011, and make the reports and forms available for review whenever requested by the department. The 2009 and 2010 RBC reports and any supplemental RBC forms and reports shall be completed in accordance with the respective calendar-year RBC instructions.

(3) Stipulated premium insurance companies only doing business in Texas are not required to file the 2009 RBC report, but shall file an electronic version of the 2010 RBC report and any supplemental RBC forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions.

(4) County mutual insurance companies that do not meet the express criteria contained in the Insurance Code §912.056(f) are not required to file the 2009 RBC report but shall file an electronic version of the 2010 RBC report and any supplemental RBC forms and reports with the NAIC in accordance with and by the due date specified in the RBC instructions.

(f) Conflicts. In the event of a conflict between the Insurance Code, any 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 NAIC Risk-Based Capital Reports Including Overview and Instructions for Companies does not repeal or modify or amend any rule of the department or any 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 an insurer within the specified ranges:

(1) 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 company's financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the 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 insurer's business. The RBC plan is to be submitted within 45 days of filing the RBC report with the NAIC. After review, the commissioner will notify the company if the plan is satisfactory or not satisfactory. In the event the commissioner notifies the company that the plan is not satisfactory, the company shall prepare a revised plan and submit it to the commissioner. Failure to file this comprehensive financial plan triggers the next lower action level described in this subsection.

(2) 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, an insurance company is also required to file an RBC plan or revised RBC plan within 45 days of filing the RBC report with the NAIC, and the commissioner is required to perform any examinations or analyses to the insurer's business and operations that is deemed necessary. The commissioner may issue orders specifying corrective actions to be taken or may require other appropriate action.

(3) 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 higher action levels, the commissioner may take other action deemed necessary, including initiating a regulatory intervention to place an insurer under regulatory control.

(4) An insurer reporting total adjusted capital of less than 70 percent of authorized control level triggers a mandatory control level which subjects the 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 the 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 the Insurance Code §§404.051 and 404.052 or 841.206; or

(D) any other applicable sanctions under the Texas Insurance Code.

(5) A life 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 250 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 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 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 accordance 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.

(h) Prohibition on announcements. Except as otherwise required under the provisions of this section, 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 insurer, agent, broker or the person engaged in any manner in the insurance business would be misleading and is, therefore, 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 insurers subject to this section and in taking corrective action with respect to insurers

and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor 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 an insurer or any affiliate is authorized to write.

(j) Limitations. In no event shall the requirements of this section reduce the amount of capital and surplus otherwise required by the Insurance Code, Department rules, or by authority of the commissioner of insurance as provided by law.

§7.403. Transition Period for Certain County Mutual Insurance Companies.

(a) This section applies to a county mutual insurance company that cedes 85 percent or more of the company's direct and assumed risks to one or more nonaffiliated reinsurers and the company is otherwise required to comply with the Insurance Code §912.056(f).

(b) A county mutual insurance company shall comply with §7.402 of this subchapter (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs) unless the company meets the express criteria contained in the Insurance Code §912.056(f).

(c) A county mutual insurance company subject to the Insurance Code §912.056(f) that on December 31, 2009, had less than the minimum unencumbered surplus required by §912.056(f) must:

(1) not later than December 31, 2010, have increased the amount of its unencumbered surplus by at least 20 percent of the difference between the minimum

amount required by §912.056(f) and the amount held by the company on December 31, 2009;

(2) not later than December 31, 2011, have increased the amount of its unencumbered surplus by at least 40 percent of the difference between the minimum amount required by §912.056(f) and the amount held by the company on December 31, 2009;

(3) not later than December 31, 2012, have increased the amount of its unencumbered surplus by at least 60 percent of the difference between the minimum amount required by §912.056(f) and the amount held by the company on December 31, 2009;

(4) not later than December 31, 2013, have increased the amount of its unencumbered surplus by at least 80 percent of the difference between the minimum amount required by §912.056(f) and the amount held by the company on December 31, 2009; and

(5) not later than December 31, 2014, have increased the amount of its unencumbered surplus by at least 100 percent of the difference between the minimum amount required by §912.056(f) and the amount held by the company on December 31, 2009.

§7.404. Transition Period for Stipulated Premium Insurance Companies.

(a) A stipulated premium insurance company shall comply with §7.402 of this subchapter (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs).

(b) A stipulated premium insurance company that on December 31, 2009, had less than the minimum amount of capital and surplus required for a newly incorporated company under the Insurance Code §884.054 must:

(1) not later than December 31, 2010, have increased the amount of its capital and surplus by at least 10 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under the Insurance Code §884.054(a) and (c) and the amount of the company's capital and surplus on December 31, 2009;

(2) not later than December 31, 2011, have increased the amount of its capital and surplus by at least 20 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054(a) and (c) and the amount of the company's capital and surplus on December 31, 2009;

(3) not later than December 31, 2012, have increased the amount of its capital and surplus by at least 30 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(4) not later than December 31, 2013, have increased the amount of its capital and surplus by at least 40 percent of the difference between the amount of

minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(5) not later than December 31, 2014, have increased the amount of its capital and surplus by at least 50 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(6) not later than December 31, 2015, have increased the amount of its capital and surplus by at least 60 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(7) not later than December 31, 2016, have increased the amount of its capital and surplus by at least 70 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(8) not later than December 31, 2017, have increased the amount of its capital and surplus by at least 80 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under §884.054 and the amount of the company's capital and surplus on December 31, 2009;

(9) not later than December 31, 2018, have increased the amount of its capital and surplus by at least 90 percent of the difference between the amount of minimum capital and surplus required for a newly incorporated company under

§884.054 and the amount of the company's capital and surplus on December 31, 2009;
and

(10) not later than December 31, 2019, have at least the minimum amount of capital and surplus required under §884.054 for a newly incorporated company.

CERTIFICATION. This agency hereby certifies that the adopted amendments and new sections have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on November 19, 2010.


Gene C. Jarmon
General Counsel and Chief Clerk

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to §7.402 specified herein, concerning risk-based capital and surplus for insurers and health maintenance organizations; new §7.403 specified herein, concerning a transition period for certain county mutual insurance companies to comply with new minimum surplus requirements; and new §7.404 specified herein, concerning a transition period for stipulated premium insurance companies to comply with new minimum capital and surplus requirements, are adopted.

10-1015

TITLE 28. INSURANCE
Part 1. Texas Department of Insurance
Chapter 7. Corporate and Financial Regulation

Adopted Sections
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AND IT IS SO ORDERED.



MIKE GEESLIN
COMMISSIONER OF INSURANCE

ATTEST:



Gene C. Jarmon
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. **10-1015**

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