

**SUBCHAPTER A. Examination and Financial Analysis**  
**28 TAC §7.84**

**1. INTRODUCTION.** The Commissioner of Insurance (Commissioner) adopts new §7.84, concerning the frequency of carrier examinations conducted by the Department of Insurance under the Insurance Code §401.052. The new section is adopted without changes to the proposed text published in the June 25, 2010 issue of the *Texas Register* (35 TexReg 5478).

**2. REASONED JUSTIFICATION.** New §7.84 is necessary to implement Senate Bill (SB) 1253, 80th Legislature, Regular Session, which amended the Insurance Code §401.052. Section 401.052(a) permits the Department to examine carriers as often as the Department considers necessary, but not less frequently than once every five years. Section 401.052(b) directs the Commissioner to adopt rules governing the frequency of examinations of carriers that have been organized or incorporated for less than five years. Simultaneously with the adoption of this new section, the Department is adopting the repeal of existing §7.84, which is also published in this issue of the *Texas Register*.

Prior to the enactment of SB 1253, 80th Legislature, Regular Session, the Department was required by the Insurance Code §401.052 to examine newly licensed Texas domestic carriers each year for their first three years of existence and then once every three years thereafter. The repealed version of §7.84 only addresses the frequency of examinations applicable to carriers that have been organized for more than three years and does not apply to health maintenance organizations (HMOs). New §7.84 is necessary to state the exam frequency rule generally applicable to all carriers,

including HMOs, that have been organized for less than five years, in comportment with §401.052(b). The Insurance Code §401.052(a) will continue to apply to all carriers organized for more than five years.

Pursuant to the Insurance Code §843.156(h), the financial examination provisions of the Insurance Code §401.052 continue to apply to HMOs. Section 401.052, prior to its amendment by SB 1253, required a minimum examination frequency of three years for all carriers organized for more than three years and annually in their first, second, and third years. The purpose of repealed §7.84 is to implement a rule pursuant to §401.052(b) to provide a deferment of up to two years for regular examinations for carriers meeting certain requirements (i.e., some carriers would qualify for a five-year examination frequency). Repealed §7.84(d) specifically excluded HMOs because the Department determined that HMOs should not be eligible for the deferment of regular examination specified in §7.84(c). This was based on §401.052(a) which then as now includes authority for the Department to examine carriers as frequently as the Department considers necessary. As a result of SB 1253, §401.052 now requires a minimum examination frequency of five years for all carriers, but directs the Commissioner to adopt rules governing the frequency of examinations of carriers that have been organized or incorporated for less than five years. As the deferment provisions and the HMO exclusion from the deferment are no longer relevant, the purpose of new §7.84 is to adopt rules governing the frequency of examinations of all carriers that have been organized or incorporated for less than five years pursuant to §401.052(b). Based on modern insurance industry regulatory practices, the Department has determined that HMOs organized or incorporated for less than five years should be

examined on the same minimum frequency as other carriers. Under new §7.84, the Department is required to conduct financial examinations of all carriers organized for less than five years no less than in the carrier's first, third, and fifth years.

The Labor Code §407A.252 states the examination frequency for workers compensation self-insurance groups as once annually during the first three years of the group's operation and no more frequently than once every three years thereafter unless the Commissioner makes certain findings. New §7.84 specifies that its provisions do not apply to self-insurance groups governed by the Labor Code Chapter 407A.

**3. HOW THE SECTION WILL FUNCTION.** Adopted new §7.84 will govern the minimum frequency of carrier examinations conducted under the Insurance Code §401.052. New §7.84(a) states the purpose of the rule; new §7.84(b) addresses the applicability of the section, providing that the section applies only to examinations commenced after the effective date of this section; and new §7.84(c) defines certain terms used in the section, including "carrier" which is broadly defined to include any insurance entity subject to examination under the Insurance Code §401.051, and "self-insurance groups," which are subject to the exclusion stated in §7.84(g). New §7.84(d) cites the general carrier examination frequency requirement of the Insurance Code §401.052(a) governing carriers organized for five years or more, noting the exception for self-insurance groups and HMOs. New §7.84(e) states the general examination frequency requirement for carriers organized for less than five years, providing that the Department shall conduct such examinations in the carrier's first, third, and fifth years, and further provides that the first year examination for a domestic carrier that receives a

certificate of authority or other authorization from the Department on or before June 30, shall be the calendar year in which the carrier received the certificate of authority or other authorization from the Department. For a domestic carrier that receives a certificate of authority or other authorization after June 30, the first year to be examined shall be the calendar year immediately following the calendar year in which the carrier received the certificate of authority or other authorization from the Department and will include the first partial year. New §7.84(e) also provides that if a Texas domestic carrier organized for less than five years under the laws of this state is a member of an insurance holding company system with one or more affiliated Texas domestic carriers, the Department may, under certain circumstances, conduct an examination of the Texas domestic carrier at the same time it conducts the examination of the affiliated Texas domestic carrier or carriers. New §7.84(f) provides that the Department shall conduct an examination of a redomesticated carrier no later than five years from the carrier's last examination by a prior state of domicile or three years from the date the carrier redomesticates to Texas, whichever is less. New §7.84(g) notes that the Labor Code §407A.252 governs the frequency of examinations for self-insurance groups. New §7.84(h) reserves the Commissioner's broad examination authority, providing that the section does not in any way limit the Commissioner's authority under the Insurance Code Chapters 401 and 843, including the authority to visit or examine a carrier as often as the Commissioner considers necessary. New §7.84(i) provides that, in the event of a conflict between this section and the Insurance Code or the Labor Code, the provisions of the Insurance Code or the Labor Code prevail.

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

**5. STATUTORY AUTHORITY.** The new section is adopted under the Insurance Code §401.052 and §36.001. Section 401.052(a) permits the Department to examine carriers as often as the Department considers necessary, but not less frequently than once every five years, and §401.052(b) requires the Commissioner to adopt rules governing the frequency of examinations of carriers that have been organized or incorporated for less than five years. Several chapters of the Insurance Code continue to adopt by reference the examination authority of the Department. The following statutes specifically adopt by reference §401.052 for the noted carriers: the Insurance Code §842.209 adopts by reference §401.052 for group hospital service plans; the Insurance Code §843.156(h) specifies that Chapter 401, Subchapter B applies to health maintenance organizations except to the extent that the Commissioner determines the nature of the organization renders the applicability of those provisions clearly inappropriate; the Insurance Code §846.003 adopts by reference §401.052 for multiple employer welfare arrangements; the Insurance Code §861.257 adopts by reference §401.052 for general casualty companies; the Insurance Code §882.002 adopts by reference §401.052 for mutual life insurance companies; the Insurance Code §884.002 adopts by reference §401.052 for stipulated premium insurance companies; the Insurance Code §885.410 adopts by reference §401.052 for fraternal benefit societies; the Insurance Code §887.062 adopts by reference §401.052 for certain mutual assessment companies; the Insurance Code §911.001 adopts by reference, except to

the extent of any conflict with Chapter 911, §401.052 for farm mutual companies; the Insurance Code §912.002 adopts by reference §401.052 for county mutual insurance companies; the Insurance Code §942.003 adopts by reference §401.052 for reciprocal and interinsurance exchanges; the Insurance Code §961.002 adopts by reference §401.052 for nonprofit legal services corporations; the Insurance Code §982.255 adopts by reference §401.052 for foreign and alien insurance companies; the Insurance Code §2201.156 adopts by reference §401.052 for risk retention groups and purchasing groups; the Insurance Code §2203.004 adopts by reference §401.052 for medical liability insurance joint underwriters; and the Insurance Code §2551.001 adopts by reference Chapter 401 for title insurers. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

## **6. TEXT.**

### **§7.84. Examination Frequency.**

(a) Purpose. This section governs the frequency of examinations conducted under the Insurance Code §401.052. The section implements the Insurance Code §401.052(b) which directs the commissioner to adopt rules governing the frequency of examinations of carriers that have been organized or incorporated for less than five years.

(b) Applicability. This section applies only to examinations commenced after the effective date of this section.

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

(1) Carrier--For the purposes of this section, carrier includes any entity subject to examination under the Insurance Code §401.051. The term does not include a workers compensation self-insurance group as that term is defined by the Labor Code Chapter 407A.

(2) Commissioner--The Commissioner of Insurance.

(3) Department--The Texas Department of Insurance.

(4) Insurance Holding Company System--As described in the Insurance Code §823.006.

(5) Redomesticated Carrier--A carrier that redomesticates to this state from another state under the Insurance Code §983.051.

(6) Self-Insurance Group--An unincorporated association or business trust composed of five or more private employers holding a certificate of approval to act as a workers' compensation self-insurance group issued by the department under the Labor Code Chapter 407A.

(d) Examination of Texas Domestic Carriers Organized or Incorporated for Five Years or More Under the Laws of This State. Except as provided in subsections (f) and (g) of this section, the Insurance Code §401.052(a) governs the frequency of examinations for Texas domestic carriers organized or incorporated for five years or more under the laws of this state.

(e) Examination of Texas Domestic Carriers Incorporated or Organized for Less Than Five Years Under the Laws of This State.

(1) Except as provided in paragraph (2) of this subsection and subsections (f) and (g) of this section, the department shall conduct an examination of a Texas domestic carrier incorporated or organized for less than five years under the laws of this state in the carrier's first, third, and fifth years. For a Texas domestic carrier that receives a certificate of authority or other authorization from the department on or before June 30, the first year to be examined shall be the calendar year in which the carrier received the certificate of authority or other authorization from the department. For a Texas domestic carrier that receives a certificate of authority or other authorization from the department after June 30, the first year to be examined shall be the calendar year immediately following the calendar year in which the carrier received the certificate of authority or other authorization from the department and shall include the first partial year. Thereafter, the Insurance Code §401.052(a) shall govern the frequency of examination.

(2) If a Texas domestic carrier incorporated or organized for less than five years under the laws of this state is a member of an insurance holding company system with one or more affiliated Texas domestic carriers, the department may conduct an examination of the Texas domestic carrier at the same time it conducts the examination of the affiliated Texas domestic carrier or carriers, provided one or more of the Texas domestic affiliated carriers has conducted the business of insurance in Texas continuously for 10 or more consecutive calendar years. In making this determination, the department shall consider whether any affiliated carriers of the Texas domestic carrier are in a hazardous condition or conditions, including the conditions described in §8.3 of this title (relating to Hazardous Conditions); whether:



(A) any affiliated carriers of the Texas domestic carrier are in a hazardous condition or conditions, including the conditions described in §8.3 of this title;

(B) any affiliated carriers of the Texas domestic carrier are the subject of pending administrative action by a regulatory agency of this state, the United States, or another state; and

(C) the department has any financial or other regulatory concerns regarding any affiliated carriers of the Texas domestic carrier.

(f) Examination of Redomesticated Carriers. The department shall conduct an examination of a redomesticated carrier no later than five years from the carrier's last examination by a prior state of domicile or three years from the date the carrier redomesticates to Texas, whichever is less. The department shall conduct an examination of a redomesticated carrier as often as the department considers necessary.

(g) Examination of Self-Insurance Groups. This section does not apply to self-insurance groups governed by the Labor Code §407A.252.

(h) Commissioner's Authority. This section does not in any way limit the commissioner's authority to visit or examine a carrier as often as the commissioner considers necessary.

(i) Conflicts. In the event of a conflict between this section and the Insurance Code or the Labor Code, the provisions of the Insurance Code or the Labor Code prevail.

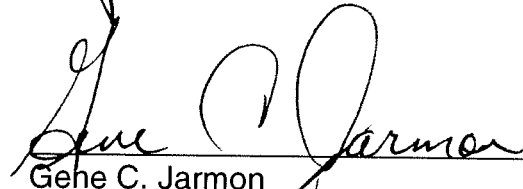
**10-0725**

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

Adopted Section  
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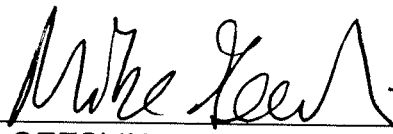
**CERTIFICATION.** This agency hereby certifies that the adopted new section has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on August 10, 2010.


  
Gene C. Jarmon  
General Counsel and Chief Clerk

**IT IS THEREFORE THE ORDER** of the Commissioner of Insurance that new §7.84 specified herein, concerning the frequency of carrier examinations conducted by the Department of Insurance, is adopted.

**AND IT IS SO ORDERED.**

  
MIKE GEESLIN  
COMMISSIONER OF INSURANCE

ATTEST:

  
Gene C. Jarmon  
General Counsel and Chief Clerk

COMMISSIONER'S ORDER NO. **10-0725**  
AUG 11 2010