

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS
28 TAC §7.1001

INTRODUCTION. The Texas Department of Insurance 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. Under Insurance Code §843.156, the term "insurance company" as used in this proposal includes a health maintenance organization (HMO) as defined in Insurance Code §843.002.

EXPLANATION. The proposed amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2020 calendar year. The proposed amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurer, based on admitted assets and gross premium receipts for the 2019 calendar year, and from each foreign insurer examined during the 2019 calendar year using the same methodology.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment will be applicable. The department also proposes amendments in subsections (b)(1) and (2), (c)(1), (c)(2)(A) and (B), (c)(3), and (d) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsection (c)(2)(A) and (B) to update assessments to reflect the methodology the department has developed for 2020.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2020.

In general, the department's 2020 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) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2019.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1353 (House Bill 1), Acts of the 86th Legislature, Regular Session, (2019) (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the Commissioner of Insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses 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 2020 fiscal year until the next assessment collection period in 2020. From these combined costs, the department subtracted costs allocated to the Division of Workers' Compensation and the Workers' Compensation Research and Evaluation Group.

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

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the

premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the Commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2020 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2019 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 2019 to determine the proposed rate of assessment for admitted assets.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Robert Palm, program specialist for Financial Services, has determined that for each year of the first five

years the proposed amendments will be in effect, the expected fiscal impact on state government is estimated income of \$9,481,212 to the Texas Department of Insurance Examination Self-Directed Account in the Texas Treasury Safekeeping Trust Company. There will be no fiscal implications for local government as a result of enforcing or administering the section, because local governments are not involved in enforcing or complying with the proposed amendments, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT AND COST NOTE. Mr. Palm 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 of rates to defray the state's expenses of domestic and foreign insurer examinations and administration of the laws related to these examinations during the 2020 calendar year. Mr. Palm 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 2020 for every domestic insurer and those foreign insurers examined in 2019 will be .00141 of 1 percent of the company's admitted assets as of December 31, 2019, excluding pension assets specified in subsection (c)(2)(A), and .00441 of 1 percent of the company's gross premium receipts for 2019, excluding pension

related premiums specified in subsection (c)(2)(B), and premiums related to welfare benefits described in subsection (c)(6).

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. Typically, 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. The compensation is generally between \$26 and \$44 an hour. The department estimates that 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. For those domestic and foreign 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.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately 44 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 or 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 on the size of the business, but rather is dependent on: 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 and foreign 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 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) exempting small or micro businesses from the assessment requirements.

Not adopting the proposed rule. Without adopting the proposed rule the department would be unable 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 by the department to perform its examination functions could result in public harm if a company does not comply with the Insurance Code or becomes insolvent and this is not detected because of the lack of regular examinations. Not adopting the rule would also result in the department being out of compliance with Insurance Code §401.151(c) and §401.152(a-1), which direct the

department to impose an annual assessment on domestic and foreign insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the insurer examination laws of Texas. This option has been rejected.

Adopting 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 and foreign insurer small or micro businesses because the assessment is determined based on premium levels and admitted assets. The department anticipates that a domestic or foreign insurer that is a small or micro business most susceptible to economic harm would be one that writes fewer premiums and has fewer admitted assets. However, based on the proposed assessment requirements of the rule, that small or micro business would pay a smaller assessment, reducing its risk of economic harm. This option has been rejected.

Exempting 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 or foreign 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, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. This option has been rejected.

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.

The department has determined that the proposal will not have an adverse economic effect on rural communities because examinations are not conducted on rural

communities and rural communities do not pay assessments to cover examination expenses. As a result, and in accordance with Government Code §2006.002(c), it is not necessary for the department to address rural communities in its regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. The department has determined that the proposed amendments do impose a possible cost on regulated persons. However, no additional rule amendments or repeals are required under Government Code §2001.0045 because the proposed amendments are necessary to implement legislation. Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; and 843.156(h); and Labor Code §407A.252(b), direct the department to levy assessments on domestic and foreign insurers to cover examination expenses and the proposed amendments are necessary to comply with this requirement.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule would be in effect, the proposed rule or its 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 require increases 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, and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5:00 p.m. Central time on December 9, 2019, by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 112-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Separately, submit any request for a public hearing to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 112-2A, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amended section is proposed under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155, 401.156; 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 percent 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 §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs as defined by Insurance Code §401.251, to reimburse the Texas Department of Insurance operating account for administrative support costs, and for premium tax credits for examination costs and examination overhead assessments. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

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. Amendments in this proposal to §7.1001 affect Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155; 401.156; 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 [2019].

(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 participating in an examination of the insurance company allocable to an examination of the company. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the company the part of the annual salary attributable to each working day the examiner examines the company during 2020 [2019]. The expenses the

department assesses are those actually incurred by the examiner to the extent permitted by law.

(2) Under Insurance Code §401.152(a-1), a foreign insurance company examined in 2019 [~~2018~~] entirely, or an exam beginning in 2019 [~~2018~~] and completed in 2020 [~~2019~~], 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 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 2020 [~~2019~~]. The expenses assessed must be those actually incurred by the examiner to the extent permitted by law.

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

(A) .00141 [~~.00173~~] of 1 percent of the admitted assets of the company as of December 31, 2019 [~~2018~~], 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) .00441 [~~.00580~~] of 1 percent of the gross premium receipts of the company for the year 2019 [~~2018~~], 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 calendar year 2019 [~~2018~~] 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 calendar year 2019 [~~2018~~].

(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 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 allocable to an examination of the group. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The

department assesses the group the part of the annual salary attributable to each working day the examiner examines the company during 2020 [2019]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(e) A domestic insurance company must pay the overhead assessment required under subsection (c) of this section to the Texas Department of Insurance as provided in the invoice [~~at the address provided on 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 25, 2019.

/s/ James Person
James Person, General Counsel
Texas Department of Insurance