

SUBCHAPTER D. Risk-Based Capital and Surplus 28 TAC §7.401

1. INTRODUCTION. The Commissioner of Insurance adopts the repeal of §7.401, concerning the minimum risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs) for year-end 2006. The repeal is adopted without changes to the proposal published in the July 24, 2009 issue of the *Texas Register* (34 TexReg 4825).

2. REASONED JUSTIFICATION. The repeal of §7.401 is necessary because the due dates for filing the year-end 2006 risk-based capital reports and other filings required under the section have passed. Moreover, the Department is concurrently adopting amendments to §7.402 that prescribe year-end 2008 risk-based capital reports and required functions. Therefore, the need for this section no longer exists.

Simultaneously with the adoption of this repeal, the Department is adopting (i) the repeal of §11.809, concerning the risk-based capital requirements for health maintenance organizations (HMOs) and insurers filing the National Association of Insurance Commissioners (NAIC) Health Blank for year-end 2006, which is obsolete; and (ii) amendments to §7.202(b), concerning insurance holding company systems, and §7.402(d), concerning risk-based capital and surplus requirements for insurers and HMOs for year-end 2007. The adoption of the repeal of §11.809 and the adoption of amendments to §7.202(b) and §7.402(d) are also published in this issue of the *Texas Register*.

3. HOW THE SECTIONS WILL FUNCTION. The adoption of the repeal will result in the updating of the Texas Administrative Code with the removal of an obsolete section.

4. SUMMARY OF COMMENTS. The Department did not receive any comments on the proposed repeal.

5. STATUTORY AUTHORITY. The repeal is adopted pursuant to the Insurance Code Chapters 404 and 441 and §§441.051, 822.210, 841.205, 843.404, 884.206, 885.401, 982.105, 982.106, and 36.001. Chapters 404 and 441 address the duties of the Department when an insurer's solvency is impaired. Chapter 404 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Chapter 441 addresses the prevention of insurer delinquencies, and in §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. Under §441.005, the Commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441. Sections 822.210, 841.205, and 884.206 authorize the Commissioner to adopt rules 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 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 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 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 provides that the Commissioner of Insurance 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 this state.

6. TEXT.

§7.401. Risk-Based Capital and Surplus Requirements for Year-End 2006.

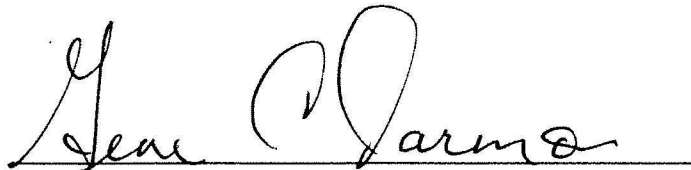
CERTIFICATION. This agency hereby certifies that the adopted repeal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on October 5, 2009.

09-0820

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

Adopted Section
Page 4 of 4



Gene C. Jarmon
General Counsel and Chief Clerk

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the repeal of §7.401 specified herein, concerning the minimum risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs) for year-end 2006, 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. 09-0820