

SUBCHAPTER J. Examination Expenses and Assessments
28 TAC §7.1001

INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. The amendments are adopted without changes to the proposed text published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7964).

Under Government Code §2001.033(a)(1), the department's reasoned justification for these amendments is set out in this order, which includes the preamble and rules.

REASONED JUSTIFICATION. The 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 2016 calendar year. The amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurance company, based on admitted assets and gross premium receipts for the 2015 calendar year, and from each foreign insurance company examined during the 2015 calendar year using the same methodology.

The amendments are based on requirements in 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).

The following paragraphs explain the methodology used to determine examination overhead assessments for 2016.

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In general, the department's 2016 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 2015.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1281 (HB 1), Acts of the 84th Legislature, Regular Session, 2015 (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 2016 fiscal year until the next assessment collection period in 2017. 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 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 2016 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 needed to calculate 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

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calendar year 2015 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 2015 to determine the proposed rate of assessment for admitted assets.

The 2015 General Appropriations Act does not contain a rider directing the department to reimburse the General Revenue Fund from the Texas Department of Insurance Operating Fund Account for the costs of insurance premium tax credits for examination fees and overhead assessments, which will result in the reduction of the revenue need and rates. Although Insurance Code §401.156(a) allows the department to use dollars received from the examination overhead assessment to pay for the reimbursement of premium tax credits for examination costs, the reimbursement is no longer necessary.

The following paragraphs provide a brief summary and analysis of the reasons for the adopted section.

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

The amendment in subsection (b)(2) deletes the language in that subsection stating that a foreign insurer must pay the department an additional assessment of 35 percent under Insurance Code §401.155. The language in subsection (b)(2) is no longer necessary because the amendment adds language to subsection (b)(2) that will implement HB 2163, 83rd Legislature, Regular Session (2013) (Insurance Code §401.152(a-1)), and impose an annual assessment on foreign insurers that were examined by the department in 2015. The assessment will be sufficient

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to meet expenses necessary for examinations in an amount computed in the same manner as the amount imposed for domestic insurers.

The amendments in subsection (c)(2)(A) and (c)(2)(B) update assessments to reflect the methodology the department has developed for 2016, which is previously addressed.

The amendment to subsection (c)(3) adds the language “because of a redomestication” to clarify that the proportional assessment for a company that was a domestic insurance company for less than a full calendar year applies only to a foreign insurance company that redomesticates to Texas and not to a foreign insurance company that merges with a Texas domestic insurance company.

Nonsubstantive changes have been made to conform with the department’s writing style guides.

Section 7.1001(a) provides that, for purposes of the section, the term “insurance company” includes a health maintenance organization (HMO) as defined in Insurance Code §843.002.

Section 7.1001(b) establishes the examination expenses and assessments applicable to an insurer not organized under the laws of Texas (foreign insurance company). Section 7.1001(b)(1) requires a foreign insurance company to reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company, describes how to calculate the part of an examiner’s salary included in the examination fee, and provides that expenses the department assesses are those actually incurred by the examiner to the extent permitted by law. Section 7.1001(b)(2) requires a foreign insurance company examined in 2015, or an exam beginning in 2015 and completed in 2016, to pay an annual assessment in an amount

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sufficient to meet all other expenses and disbursements necessary to comply with the law in an amount computed in the same manner as the amount imposed for domestic insurers under subsection (c). Section 7.1001(b)(3) provides that a foreign insurance company must pay the reimbursements and payments required by the subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

Section 7.1001(c) establishes the examination expenses and assessments applicable to a domestic insurance company. Section 7.1001(c)(1) requires a domestic insurance company to pay the actual salaries and expenses of the examiners allocable to an examination of the company, describes how to calculate the part of an examiner's salary included in the examination fee, and provides that expenses assessed must be those actually incurred by the examiner to the extent permitted by law.

Section 7.1001(c)(2) establishes the rates for the overhead assessment applicable to a domestic insurance company. Section 7.1001(c)(2)(A) provides that the overhead assessment applicable to a domestic insurance company includes .00133 of 1 percent of the admitted assets of the company as of December 31, 2015, 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)). Section 7.1001(c)(2)(B) provides that the overhead assessment applicable to a domestic insurance company includes .00415 of 1 percent of the gross premium receipts of the company for the year 2015, 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)).

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Section 7.1001(c)(3) provides that, except as provided by paragraph (4) of the subsection, if a company was a domestic insurance company for less than a full year during calendar year 2015 because of a redomestication, the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of the subsection divided by 365 and multiplied by the number of days the company was a domestic insurance company during calendar year 2015.

Section 7.1001(c)(4) provides that if the overhead assessment required under paragraph (2)(A) and (B) or paragraph (3) of the subsection produces an overhead assessment of less than \$25, a domestic insurance company must pay a minimum overhead assessment of \$25.

Section 7.1001(c)(5) provides that the department will base the overhead assessments on the assets and premium receipts reported in a domestic insurance company's annual statement.

Section 7.1001(c)(6) provides that for the purpose of applying paragraph (2)(B) of the 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 accord with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. §§301 et seq.)

Section 7.1001(d) establishes the examination expenses applicable to a workers' compensation self-insurance group. The subsection requires a workers' compensation self-insurance group to pay the actual salaries and expenses of the examiners allocable to an examination of the company, it describes how to calculate the part of an examiner's salary included in the examination fee, and it provides that expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

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Section 7.1001(e) requires a domestic insurance company to pay the overhead assessment required under §7.1001(c) to the department not later than 30 days from the invoice date.

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

STATUTORY AUTHORITY. The amendments are adopted 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 must administer 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 must 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 will 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) states that the department must also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by this 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 must determine the salary of an examiner participating in an examination of an

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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 - 401.106.

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.

Labor Code §407A.252(b) provides that the commissioner may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article

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

Insurance Code §36.001 provides that the commissioner may 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.

TEXT.

§7.1001. Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance, 2016.

(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 2016. 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 2015, or an exam beginning in 2015 and completed in 2016, 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 accord 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 2016. 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:

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(A) .00133 of 1 percent of the admitted assets of the company as of December 31, 2015, 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) .00415 of 1 percent of the gross premium receipts of the company for the year 2015, 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 2015 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 2015.

(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 accord 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 2016. 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 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 adopted section and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on December 15, 2015.



Norma Garcia
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The commissioner adopts amendments to §7.1001.

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David C. Mattax
Commissioner of Insurance

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