

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 160]

Standards to Define Insurers Deemed to be in Hazardous Financial Condition

The Insurance Department (Department) proposes to amend Chapter 160 (relating to standards to define insurers deemed to be in hazardous financial condition) to read as set forth in Annex A. This proposed rulemaking is under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412) regarding the general rulemaking authority of the Department; Article V of The Insurance Department Act of 1921 (40 P. S. §§ 221.1—221.63) regarding the suspension of business; sections 5.1 and 10 of the Health Maintenance Organization Act (40 P. S. §§ 1555.1 and 1560) regarding the authority and supervision of health maintenance organizations; and sections 2456 and 2457 of The Insurance Company Law of 1921 (40 P. S. §§ 991.2456 and 991.2457) regarding notice of deficiencies and sanctions of fraternal benefit societies.

Purpose

The purpose of this proposed rulemaking is to amend Chapter 160, adopted in 1993, to update and clarify standards used to identify insurers in hazardous financial condition and specify corrective actions to be taken to minimize the number and impact of insurer insolvencies. It is based on a model regulation developed by the National Association of Insurance Commissioners (NAIC) entitled "Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition" (Model Regulation 385) and included in the NAIC's Financial Regulation Standards and Accreditation Program.

The amendments in this proposed rulemaking are based upon updates made in 2009 to the NAIC model, which was updated to provide timely and effective guidance for financial regulation. Because of the regulation's significance in efforts to prevent insolvencies, the Department expects that the amendments to the NAIC model will be incorporated into the financial regulation standards the Department must meet to maintain its accreditation by the NAIC.

Explanation of Regulatory Requirements

The following is a description of the amendments in the proposed rulemaking:

Section 160.1 (relating to purpose) is being amended consistent with updates to the NAIC model and language in the authorizing statutes.

Section 160.2 (relating to definitions) is being amended to update the citation within the definition of "act" and to add definitions for "Department," "NAIC" and "statutory accounting practices" consistent with use of these terms in state financial regulations, including Chapter 147 (relating to annual financial reporting requirements).

Section 160.3 (relating to standards) is being amended to make the introductory paragraph consistent with proposed amendments to § 160.1; add language in paragraphs (2) and (3) and to add paragraph (19) regarding current financial reporting requirements and analytical tools; clarify terminology in paragraphs (4) and (7) regarding minimum financial requirements; and strengthen

or add standards in paragraphs (8) and (14) and to add paragraph (18) consistent with updates to the NAIC model.

Section 160.4 (relating to commissioner's authority) is being amended to replace the reference to "insurance law of the Commonwealth" with "statutory accounting practices," a more specific and newly defined term.

Section 160.5 (relating to commissioner's summary orders) is being amended to include a reference to current law regarding to fraternal benefit societies in subsections (a) and (c); recognize the consideration of a need to increase an insurer's capitalization in subsection (a)(4); and add corrective actions regarding deficiencies in corporate governance and premium rates in subsection (a)(12) and (13) consistent with current statutory and regulatory requirements in this Commonwealth and updates to the NAIC model.

Affected Parties

The chapter applies to all types of insurers doing or purporting to do business in this Commonwealth, as provided under the scope and definitions of the authorizing statutes.

Fiscal Impact

State Government

The proposed rulemaking will strengthen, clarify and update existing regulatory requirements. There will be no material increase in cost to the Department as a result of this proposed rulemaking.

General Public

The public will benefit to the extent the proposed rulemaking strengthens financial solvency regulatory requirements for insurers, thereby promoting the ability of the insurance industry to meet obligations under insurance policies and the Department's ability to minimize the number and impact of insurer insolvencies.

Political Subdivisions

The proposed rulemaking will not impose additional costs on political subdivisions.

Private Sector

The strengthened requirements in the proposed rulemaking should not impose additional costs on insurers currently subject to State financial reporting and solvency requirements.

Paperwork

The proposed rulemaking updates and strengthens existing standards and authority used by the Department in financial regulation of insurers and would impose no additional paperwork requirements.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking should be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120,

psalvatore@state.pa.us, or faxed to (717) 705-3873 within 30 days following the publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 25, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Banking and Insurance Committee and the House Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

JOEL SCOTT ARIO,
Insurance Commissioner

Fiscal Note: 11-243. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 160. STANDARDS TO DEFINE INSURERS DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

§ 160.1. Purpose.

This chapter sets forth the standards which the Commissioner may use for identifying insurers found to be in a condition that renders the continuance of their business financially hazardous to the **general public [or to]**, holders of their policies or certificates of insurance, **or creditors**.

§ 160.2. Definitions.

[The] In addition to the terms defined in section 503 of the act (40 P.S. § 221.3), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Insurance Department Act of **[one thousand nine hundred and twenty one] 1921** (40 P.S. §§ 1—[297.4] 326.7).

* * * * *

Department—The Insurance Department of the Commonwealth.

NAIC—The National Association of Insurance Commissioners or successor organization.

Statutory accounting practices—Practices and procedures prescribed by the Accounting Practices and Procedures Manuals published by the NAIC, or as otherwise prescribed or provided by specific statutes, regulations, orders or rulings of the Commonwealth or the Department.

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§ 160.3. Standards.

The following standards, either singly or a combination of two or more, may be considered by the Commissioner to determine whether the continued operation of an insurer transacting an insurance business in this Commonwealth might be deemed to be financially hazardous to the **[policyholders, creditors or the] general public, holders of policies or certificates of insurance, or creditors**. The Commissioner may consider one or more of the following:

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(2) Material adverse findings relating to an insurer's financial condition reported in financial condition or market conduct examination reports; **audit reports and other communications required under Chapter 147 (relating to annual financial reporting requirements); or actuarial opinions, reports, work papers or summaries.**

(3) **[The financial ratios and related reports generated by the National Association of Insurance Commissioners Insurance Regulatory Information System] Financial analysis ratios, analyst team reports and other financial analytical results produced by the NAIC.**

(4) Whether the insurer's net loss from operations in the last 12-month period or shorter period of time, excluding net realized capital gains, is greater than 20% of the insurer's surplus **in excess of the statutorily required minimum capital and surplus.**

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(7) Whether the insurer's net loss in the last 12-month period or a shorter period of time, including, change in nonadmitted assets, net realized and unrealized capital gain or loss, cash dividends paid to shareholders, and other direct charges against surplus is greater than 50% of the insurer's surplus in excess of the **statutorily required minimum capital and surplus [required]**.

(8) Whether **[an affiliate, subsidiary or] a reinsurer, obligor or any entity within the insurer's insurance holding company system** is insolvent, threatened with insolvency or delinquent in payment of monetary or other obligations.

* * * * *

(14) Whether management of an insurer has done one of the following:

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(iii) **Established reserves that do not comply with minimum standards as required by law, regulation, statutory accounting practices and accepted actuarial standards and principles.**

(iv) **Engaged in material under-reserving that resulted in continued adverse development reported in financial statements filed with the Department.**

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(18) Whether the insurer has made adequate provision, in accordance with accepted actuarial standards and principles, for the anticipated cash flows required to meet its contractual obligations and related expenses, considering the value, liquidity, diversity and investment earnings of assets held as reserves to meet those obligations and expenses,

and other actuarial items, including considerations anticipated to be received and retained under policies and contracts.

(19) The insurer has failed to file financial statements as required by law or regulation or to make filings required under Article XIV of The Insurance Company Law (40 P. S. §§ 991.1401—991.1413) within the time allowed by law and, after written demand by the Commissioner, has failed to provide a satisfactory explanation for that failure.

§ 160.4. Commissioner’s authority.

For the purpose of making a determination of an insurer’s financial condition under this chapter, the Commissioner may restate the value of assets and liabilities to conform to [insurance law of the Commonwealth] statutory accounting practices, including the following:

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§ 160.5. Commissioner’s summary orders.

(a) If the Commissioner has reasonable cause to believe that the continued operation of an insurer transacting insurance business in this Commonwealth is financially hazardous to the [policyholders or the] general public, holders of policies or certificates of insurance, or creditors, the Commissioner may, upon the Commissioner’s determination, issue an order under Article V of the act (40 P. S. §§ 211 and 221.1—221.63) or notice of deficiency under sections 2456 and 2457 of The Insurance Company Law of 1921 (40 P. S. §§ 991.2456 and 991.2457). The order or notice may list the requirements for the insurer to abate the determination, including the following:

* * * * *

(4) Increasing the insurer’s capital or surplus, or both.

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(6) Filing reports in a form acceptable to the Commissioner concerning the market value of an insurer’s assets and the value of its loss reserves or policy reserves, or both[, reserves].

* * * * *

(12) Correcting deficiencies in corporate governance practices and adopting and utilizing governance practice acceptable to the Commissioner.

(13) Adjusting premium rates for non-life insurance products written by the insurer as the Commissioner deems necessary to improve the insurer’s financial condition, notwithstanding other provisions of law that limit the frequency or amount of premium rate adjustments.

(b) [If the insurer is a foreign insurer] For insurers not incorporated or organized under the laws of the Commonwealth, the Commissioner’s order or notice provided for [in] under subsection (a) may be limited to the extent provided by [statute] law.

(c) An insurer subject to an order or notice under subsection (a) is entitled to a hearing to review that order in accordance with [Article V] section 510 of the act (40 P. S. § 221.10) or section 2456(c) of The Insurance Company Law of 1921 (40 P. S. § 991.2456(c)), 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to the general rules of administrative practice and procedure).

[Pa.B. Doc. No. 10-1040. Filed for public inspection June 4, 2010, 9:00 a.m.]
