

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

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**Authority**

The provisions of this Chapter 160 issued under Article V of The Insurance Department Act of 1921 (40 P.S. §§ 221.1—221.63), unless otherwise noted.

**Source**

The provisions of this Chapter 160 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 171, unless otherwise noted.

**Cross References**

This chapter cited in 31 Pa. Code § 147.3a (relating to requirements for audit committees); and 31 Pa. Code § 147.9b (relating to management's report of internal control over financial reporting).

**§ 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, holders of their policies or certificates of insurance, or creditors.

**Authority**

The provisions of this § 160.1 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 5.1 and 10 of the Health Maintenance Organization Act (40 P.S. §§ 1555.1 and 1560); and sections 2456 and 2457 of The Insurance Company Law of 1921 (40 P.S. §§ 991.2456 and 991.2457).

**Source**

The provisions of this § 160.1 amended November 19, 2010, effective November 20, 2010, 40 Pa.B. 6661. Immediately preceding text appears at serial page (249807).

**§ 160.2. Definitions.**

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 1921 (40 P.S. §§ 1—326.7).

*Commissioner*—The Insurance Commissioner of the Commonwealth.

*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.

*Surplus*—The amount in excess of admitted assets over total liabilities.

**Authority**

The provisions of this § 160.2 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); sections 5.1 and 10 of the Health Maintenance Organization Act (40 P.S. §§ 1555.1 and 1560); and sections 2456 and 2457 of The Insurance Company Law of 1921 (40 P.S. §§ 991.2456 and 991.2457).

**Source**

The provisions of this § 160.2 amended November 19, 2010, effective November 20, 2010, 40 Pa.B. 6661. Immediately preceding text appears at serial page (249807).

**§ 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 general public, holders of policies or certificates of insurance, or creditors. The Commissioner may consider one or more of the following:

- (1) A failure by the insurer to maintain working capital, as required by law or regulation, based on the nature, type and volume of insurance being transacted by the insurer.
- (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) 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.
- (5) Whether the insurer's asset portfolio when viewed in light of current economic conditions with respect to value, liquidity or diversity is sufficient to assure the company's ability to meet its outstanding obligations as they mature.
- (6) The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.
- (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 unre-

alized 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.

(8) Whether 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.

(9) Contingent liabilities, pledges or guaranties in relationship to the insurer's surplus.

(10) Whether a controlling person, under the laws relating to insurance holding companies, of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer.

(11) The age and collectibility of receivables.

(12) Whether the management of an insurer, including officers, directors or another person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in that position.

(13) Whether management of an insurer has failed to respond to inquiries by the Commissioner or members of the Commissioner's staff relative to the condition of the insurer or has furnished false or misleading information concerning the inquiries.

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

(i) Filed a false or misleading sworn financial statement, or released a false or misleading financial statement to lending institutions or to the general public.

(ii) Made a false or misleading entry, or omitted an entry of material amount in the books of the insurer.

(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.

(15) Whether the insurer reports significant increases in premium writing either before or after reinsurance ceded to an extent that it lacks adequate financial and administrative capacity to meet its obligations as they fall due.

(16) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems, or both.

(17) Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.

(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.

#### Authority

The provisions of this § 160.3 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 5.1 and 10 of the Health Maintenance Organization Act (40 P. S. §§ 1555.1 and 1560); and sections 2456 and 2457 of The Insurance Company Law of 1921 (40 P. S. §§ 991.2456 and 991.2457).

#### Source

The provisions of this § 160.3 amended November 19, 2010, effective November 20, 2010, 40 Pa.B. 6661. Immediately preceding text appears at serial pages (249807) to (249809).

### § 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 statutory accounting practices, including the following:

- (1) Disregarding a credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding.
- (2) Making appropriate adjustments to asset values attributable to investments in or transactions with controlling persons, subsidiaries or affiliates.
- (3) Refusing to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor.
- (4) Increasing the insurer's liability in an amount equal to a contingent liability, pledge or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.
- (5) Making appropriate adjustments to liability values attributable to losses and loss adjustment expenses due to considerations, such as those elaborated in the "Statement of Principles Regarding Property and Casualty Loss and Loss Adjustment Expense Reserves" which is promulgated by the Casualty Actuarial Society.

(6) Making appropriate adjustments to liability values due to considerations elaborated in the accident and health reserve standards in sections 301.1 and 311.1 of the act (40 P. S. §§ 71.1 and 93).

(7) Making appropriate adjustments to liability values in accordance with the life insurance reserve standards in section 301 of the act.

#### Authority

The provisions of this § 160.4 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 5.1 and 10 of the Health Maintenance Organization Act (40 P. S. §§ 1555.1 and 1560); and sections 2456 and 2457 of The Insurance Company Law of 1921 (40 P. S. §§ 991.2456 and 991.2457).

#### Source

The provisions of this § 160.4 amended November 19, 2010, effective November 20, 2010, 40 Pa.B. 6661. Immediately preceding text appears at serial page (249809).

### § 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 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:

- (1) Reducing the total amount of present and potential liability for policy benefits by reinsurance.
- (2) Reducing, suspending or limiting the volume of business being accepted or renewed.
- (3) Reducing general insurance and commission expenses by specified methods.
- (4) Increasing the insurer's capital or surplus, or both.
- (5) Suspending or limiting the declaration and payment of dividends by an insurer to its stockholders or to its policyholders.
- (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.
- (7) Limiting or withdrawing from certain investments or discontinuing certain investment practices to the extent the Commissioner deems necessary.
- (8) Documenting the adequacy of premium rates in relation to the risks insured.
- (9) Documenting the adequacy of the return on invested assets in relation to the current interest credits in interest sensitive policies.

(10) Filing, in addition to regular annual statements, interim financial reports on a form approved by the Commissioner.

(11) Filing comprehensive business plans utilizing a format approved by the Commissioner and completed in accordance with instructions. Business plans filed under this paragraph will be given confidential treatment, will not be subject to subpoena and will not be made public by the Commissioner or another person without the prior written consent of the insurer to which it pertains.

(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) For insurers not incorporated or organized under the laws of the Commonwealth, the Commissioner's order or notice provided for under subsection (a) may be limited to the extent provided by 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 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).

#### Authority

The provisions of this § 160.5 amended under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412); sections 5.1 and 10 of the Health Maintenance Organization Act (40 P. S. §§ 1555.1 and 1560); and sections 2456 and 2457 of The Insurance Company Law of 1921 (40 P. S. §§ 991.2456 and 991.2457).

#### Source

The provisions of this § 160.5 adopted January 8, 1993, effective January 9, 1993, 23 Pa.B. 171; amended March 5, 1993, effective March 6, 1993, 23 Pa.B. 1040; amended November 19, 2010, effective November 20, 2010, 40 Pa.B. 6661. Immediately preceding text appears at serial pages (249809) to (249810).

### § 160.6. Judicial review.

An order or decision of the Commissioner will be subject to judicial review in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).

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