

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF SOLVENCY REGULATION

**Increase in Capital and Surplus Requirements for Insurers and Health Maintenance
Organizations**

Company Action Level Event

Proposed Amendment: N.J.A.C. 11:2-39.4

Authorized By: Kenneth E. Kobylowski, Acting Commissioner, Department of Banking and
Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 26:2J-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2012-121.

Submit written comments by November 3, 2012 to:

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The agency proposal follows:

Summary

N.J.S.A. 17:17-6 et seq., 17B:18-67 et seq., and 26:2J-18.2 et seq. authorize the Commissioner of Banking and Insurance (Commissioner) to increase the minimum capital and surplus requirements for property/casualty insurers, life/health insurers, and health maintenance organizations (HMOs), respectively, based upon the insurer's or HMO's business risks. The Department of Banking and Insurance (Department) implements these statutes through N.J.A.C. 11:2-39, which provides for increases in capital and surplus for insurers and HMOs based on the risk based capital (RBC) formulae and standards adopted by the National Association of Insurance Commissioners (NAIC). The rules are based on the model adopted by the NAIC. The rules require that insurers and HMOs file RBC reports in accordance with the RBC instructions adopted by the NAIC. The rules also provide different actions that insurers and HMOs or the Department may or shall take depending on the RBC level determined to exist. There are four RBC levels, at which point different actions may or shall be taken: (1) Company Action Level RBC; (2) Regulatory Action Level RBC; (3) Authorized Control Level RBC; and (4) Mandatory Control Level RBC.

N.J.A.C. 11:2-39.4 defines a "company action level event" to mean, among other things, the filing of an RBC report by an insurer which indicates that: (1) the insurer's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or (2) if a life/health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC multiplied by 2.5 and has a negative trend.

The NAIC model which governs HMOs was amended in 2009 to add an additional circumstance that can trigger a company action level event with respect to such entities. The

new circumstance is where the HMO has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC multiplied by 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Health RBC instructions. This provides an additional ground upon which an HMO is required to take action by utilizing trend results, similar to the standards currently applicable to life/health insurers and property/casualty insurers.

The Department now proposes to amend N.J.A.C. 11:2-39.4(a)1 to include in new subparagraph (a)1iv the standards set forth above as an additional circumstance that can trigger a company action level event so as to have the rule reflect the current NAIC model and national standard for HMOs.

The proposed amendment thus will reflect the national standard and provide additional safeguards with regard to the maintenance by HMOs of adequate capital and surplus based on the risks that they carry.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendment provides an additional measure as to whether the financial condition of an HMO is at a “company action level event” under the RBC rules. The proposed amendment reflects the national standard adopted by the NAIC and provides additional measures of an HMO’s risk to determine whether the insurer is required to undertake additional action in order to achieve its required RBC levels. Through the adoption of this amendment, the

Department will be in better position to properly evaluate an HMO's financial condition to determine whether its RBC level is appropriate to the level of risk it has incurred. Accordingly, this will help avoid an HMO falling into a hazardous financial condition, and thus will help avoid attendant disruptions to subscribers, providers, the market, and the general public resulting from such an occurrence.

Economic Impact

HMOs will be required to analyze their RBC levels in accordance with the proposed amendment and take appropriate action to the extent a company action level event is triggered under the proposed amendment. As noted above, the proposed amendment reflects the national standard adopted by the NAIC. Based on the Department's analysis of the financial condition of HMOs in this State, all HMOs authorized to transact business in this State currently meet the proposed standard. Thus, there should not be any additional costs to HMOs and any potential future costs should be minimal. Moreover, as noted above, the proposed amendment will enable the Department to better evaluate and monitor an HMO's financial condition and, by requiring that the HMO maintain appropriate capital and surplus levels commensurate to its risks, help ensure that an HMO does not fall into a hazardous financial condition. This will help to prevent the HMO descending into a hazardous financial condition and the attendant costs to the HMO's subscribers, network providers, the public, and the market that generally result from such an occurrence. Accordingly, any costs that may be imposed are far outweighed by the benefits to be achieved.

The professional services required to comply with the proposed amendment are the same as those required to comply with the existing rules, and would include accounting and actuarial

services. No additional professional services should be required to comply with the proposed amendment.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment is not subject to any Federal requirements or standards.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed amendment.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed amendment together with their comments on other aspects of the proposal.

Agriculture Industry Impact

The proposed amendment will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendment will apply to few, if any, “small businesses” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed amendment applies to small businesses, it will apply to domestic HMOs. As noted in the Economic Impact above, HMOs will be required to analyze their RBC levels in accordance with the proposed amendment and to take actions as required by N.J.A.C. 11:2-39.4 if a

company action level event is triggered in accordance with the proposed amendment. The financial impact on small businesses is set forth in the Economic Impact above. Also, as noted above, the professional services required to comply with the proposed amendment are the same as those required to comply with the existing rules, and include accounting and actuarial services. The Department does not believe that any new professional services will be required in order for HMOs to comply with the proposed amendment.

The proposed amendment provides no differentiation in compliance requirements based on business size. As noted above, the proposed amendment sets forth an additional ground upon which a company action level event may be triggered, requiring HMOs to take appropriate action pursuant to N.J.A.C. 11:2-39.4 to ensure that their capital and surplus levels are sufficient to meet the RBC levels that are appropriate and commensurate with the risks they have incurred. These goals do not vary based on business size.

Housing Affordability Impact Analysis

The proposed amendment will not have an impact on housing affordability in this State in that the proposed amendment relate to RBC standards for HMOs.

Smart Growth Development Impact Analysis

The proposed amendment will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey in that the proposed amendment relates to RBC standards for HMOs.

Full text of the proposal follows (additions indicated in boldface **thus**; deletion indicated in brackets [thus]):

11:2-39.4 Company action level event

(a) “Company action level event” means any of the following events:

1. The filing of an RBC Report by an insurer which indicates that:

i. (No change.)

ii. If a life/health insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5 and has a negative trend; [or]

iii. If a property and casualty insurer, the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC instructions; **or**

iv. If an HMO, the HMO has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Health RBC instructions;

2. – 3. (No change.)

(b) – (d) (No change.)