

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF THE APPLICATION)
OF RISK BASED CAPITAL TO HEALTH) ORDER
ORGANIZATIONS LICENSED IN THIS)
STATE PURSUANT TO P.L. 2014, c. 81)

This matter having been opened by the Commissioner of the Department of Banking and Insurance (“the Commissioner”) pursuant to N.J.S.A. 17:1C-1 et seq., 17:48-12.1 et seq., 17:48A-19.1 et seq., 17:48C-28.1 et seq., 17:48D-11.1 et seq., 17:48E-37.1 et seq., 17:48F-17.1 et seq., 17:48H-22.1 et seq., and all powers expressed or implied therein; and

IT APPEARING that P.L. 2014, c. 81 enacted December 26, 2014, amends N.J.S.A. 17:48-1 et seq., 17:48A-1 et seq., 17:48C-1 et seq., 17:48D-1 et seq., 17:48E-1 et seq., 17:48F-1 et seq., and 17:48H-1 et seq., to authorize the Commissioner to increase the amount of capital and surplus required of a hospital service corporation, medical service corporation, dental service corporation, dental plan organization, health service corporation, prepaid prescription services organization, and licensed organized delivery system, respectively (collectively referred to as health organizations), or subsequently to revise or redetermine that increase, using appropriate methods and procedures established by rules and regulations adopted by the Commissioner, in order to provide adequate protection against risks affecting the health organization’s financial condition, based on various factors regarding the health organization’s risks; and

IT FURTHER APPEARING that these statutory changes are virtually verbatim to N.J.S.A. 17:17-6 et seq. and 17B:18-67 et seq., as well as 26:2J-1 et seq., which authorize the Commissioner to increase the minimum capital and surplus requirements for property/casualty and life/health insurers, and health maintenance organizations (“HMOs”), respectively, based

upon their business risks. The Department of Banking and Insurance (“the Department”) implements those statutes through N.J.A.C. 11:2-39, which provides for increases in capital and surplus requirements for insurers based on the risk-based capital (“RBC”) formulae and standards adopted by the National Association of Insurance Commissioners (“NAIC”); and

IT FURTHER APPEARING that the Department intends to propose new rules to implement P.L. 2014, c. 81 as it applies to health organizations, which will track the NAIC model risk-based capital requirements for health organizations; and

IT FURTHER APPEARING that the NAIC model for health organizations also applies to HMOs, which are currently required under N.J.A.C. 11:2-39 to file annual RBC reports, and that in order to maintain consistency with the application of these standards to the national standards adopted by the NAIC, the Department will propose to apply the new rules to HMOs and to delete references to HMOs in the existing N.J.A.C. 11:2-39. Until that time, HMOs must continue to comply with the provisions of N.J.A.C. 11:2-39; and

IT FURTHER APPEARING that adoption of the NAIC RBC requirements for health organizations is a requirement for a state insurance department to maintain NAIC accreditation beginning January 1, 2015; and

IT FURTHER APPEARING that given that the enabling statutes were enacted December 26, 2014, and the timeframes required for proposal and adoption of such rules, the required implementing rules of the above-referenced statutes will not be effective within the requisite timeframe; and

IT FURTHER APPEARING that in order to ensure compliance with NAIC accreditation standards and to provide required guidance and standards at this time to health organizations for compliance with the afore-referenced statutes with respect to determinations of required capital


and surplus for such entities consistent with the national standards adopted by the NAIC, pending the proposal and adoption of implementing rules, the Department believes that it is reasonable and appropriate to set forth by Order the required standards for RBC for health organizations reflecting the requirements established by the NAIC;

NOW, THEREFORE IT IS on this 25th day of February, 2015, ORDERED that:

1. All licensed health organizations shall comply with the capital and surplus standards and report filings set forth in the Appendix to this ORDER, attached hereto and made a part hereof; and

2. Failure to comply with the terms of the ORDER shall result in the imposition of penalties as authorized by law.

2-25-15
Date



Kenneth E. Kobylowski
Commissioner

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APPENDIX

INCREASE IN CAPITAL AND SURPLUS REQUIREMENTS FOR HEALTH ORGANIZATIONS

Section 1 Purpose and scope

(a) The purpose of this Order and Appendix is to provide, on an interim basis pending adoption of regulations, a framework for the establishment of uniform risk-based capital and surplus requirements for all health organizations licensed pursuant to Title 17 of the New Jersey Statutes, and to implement Sections 11 through 45 of P.L. 2014, c. 81 (enacted December 26, 2014), which authorize the Commissioner to increase capital and surplus requirements for health organizations based upon the organization's business risks.

(b) Except as set forth in (c) below, this Appendix shall apply to all health organizations licensed in this State pursuant to Title 17 of the New Jersey Statutes.

(c) These requirements shall not apply:

1. To a domestic health organization that:
 - i. Writes direct business only in this State;
 - ii. Assumes no reinsurance in excess of five percent of direct premium written; and
 - iii. Writes direct annual premiums for comprehensive medical business of \$2 million or less; or
2. To a limited health service organization that covers less than 2,000 lives.

Section 2 Definitions

The following words and terms, when used in this Order and Appendix, shall have the following meanings, unless the context clearly indicates otherwise.

“Adjusted RBC report” means an RBC report which has been adjusted by the Commissioner in accordance with Appendix Section 3(d).

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Corrective order” means an order issued by the Commissioner specifying corrective actions which the Commissioner has determined are required pursuant to Appendix Section 5(b).

“Department” means the New Jersey Department of Banking and Insurance.

“Domestic health organization” means a health organization formed under the laws of this State.

“Foreign health organization” means a health organization that is licensed to do business in this State but is not domiciled in this State.

“NAIC” means the National Association of Insurance Commissioners.

“Health organization” means a hospital service corporation licensed pursuant to N.J.S.A. 17:48-1 et seq., medical service corporation licensed pursuant to N.J.S.A. 17:48A-1 et seq., dental service corporation licensed pursuant to N.J.S.A. 17:48C-1 et seq., dental plan organization licensed pursuant to 17:48D-1 et seq., health service corporation licensed pursuant to N.J.S.A. 17:48E-1 et seq., prepaid prescription services organization licensed pursuant to 17:48F-1 et seq., and licensed organized delivery system authorized pursuant to N.J.S.A. 17:48H-1 et seq. This definition shall not include an organization that is licensed as either a life

and health insurer, a property and casualty insurer, or an HMO under Titles 17, 17B or 26 of the New Jersey Statutes and that is subject to the RBC requirements pursuant to N.J.A.C. 11:2-39.

“RBC instructions” means the RBC report including risk-based capital instructions adopted by the NAIC, as these RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

“RBC level” means a health organization’s Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

1. “Company Action Level RBC” means, with respect to any health organization, the product of 2.0 and its Authorized Control Level RBC;
2. “Regulatory Action Level RBC” means the product of 1.5 and its Authorized Control Level RBC;
3. “Authorized Control Level RBC” means the number determined under the risk-based capital formula in accordance with the RBC Instructions; and
4. “Mandatory Control Level RBC” means the product of .70 and the Authorized Control Level RBC.

“RBC plan” means a comprehensive financial plan containing the elements specified in Appendix Section 4(b). If the Commissioner rejects the RBC plan, and it is revised by the health organization, with or without the Commissioner’s recommendation, the plan shall be called the “Revised RBC Plan.”

“RBC report” means the report required in Appendix Section 3.

“Total adjusted capital” means the sum of:

1. A health organization’s statutory capital and surplus (i.e., net worth) as determined in accordance with the statutory accounting applicable to the annual financial

statements required to be filed under N.J.S.A. 17:48-1 et seq, 17:48A-1 et seq., 17:48C-1 et seq., 17:48D-1 et seq., 17:48E-1 et seq., 17:48F-1 et seq, 17:48H-1 et seq., and 26:2J-1 et seq.; and

2. Such other items, if any, as the RBC instructions may provide.

Section 3 RBC reports

(a) A domestic health organization shall, on or after March 1, 2015, but no later than June 1, 2015, prepare and submit to the Commissioner a report of its RBC levels as of the end of the calendar year ended the preceding December 31, in a form and containing such information as is required by the RBC instructions. The RBC Report shall be sent or delivered to:

New Jersey Department of Banking and Insurance
Office of Solvency Regulation, Health Organization RBC Reports
20 West State Street
PO Box 325
Trenton, NJ 08625-0325

In addition, a domestic health organization shall file its RBC report:

1. With the NAIC in accordance with the RBC instructions; and
2. With the insurance commissioner in any state in which the health organization is authorized to do business, if the insurance commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report not later than the later of:

- i. 15 days from the receipt of notice to file its RBC report with that state; or

- ii. The filing date.

(b) A health organization's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust for the covariance between) determined in each case by applying the factors in the manner set forth in the RBC instructions.

1. Asset risk;
2. Credit risk;
3. Underwriting risk; and
4. All other business risks and such other relevant risks as are set forth in the

RBC instructions.

(c) If a domestic health organization files an RBC report that in the judgment of the Commissioner is inaccurate, then the Commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an "Adjusted RBC Report."

(d) The calculation of a health organization's required capital and surplus as set forth in the RBC Report filed and accepted by the Commissioner pursuant to (a) or (b) above, or as adjusted by the Commissioner pursuant to (c) above, shall be deemed to be a redetermination of a health organization's minimum statutory capital and surplus requirements pursuant to applicable statutes.

1. If a health organization disagrees with the minimum capital and surplus as determined above, it may request a hearing as provided in Appendix Section 9.

2. A health organization requesting a hearing shall do so upon filing an RBC Report, or within 20 days of receipt of notice from the Commissioner of an adjustment.

3. Failure to request a hearing shall be deemed to be a waiver of the right to a hearing on the redetermined minimum capital and surplus requirements for the health organization.

Section 4 Company action level event

(a) “Company Action Level Event” means any of the following events:

1. The filing of an RBC Report by a health organization that indicates that:
 - i. The health organization’s total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or
 - ii. If a health organization 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. Notification by the Commissioner to the health organization of an adjusted RBC Report that indicates an event in (a)1 above, provided the health organization does not challenge the adjusted RBC report under Appendix Section 9; or
3. If the health organization, under Appendix Section 9 challenges an adjusted RBC Report that indicates the event in (a)1 above, the notification by the Commissioner to the health organization that the Commissioner has, after a hearing, rejected the health organization’s challenge.

(b) In the event of a Company Action Level Event, the health organization shall within 45 days prepare and submit to the Commissioner an RBC Plan that shall:

1. Identify the conditions that contribute to the Company Action Level Event;
2. Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the Company Action Level Event;
3. Provide projections of the health organization's financial results in the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component;
4. Identify the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and
5. Identify the quality of, and problems associated with, the health organization's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(c) The RBC Plan shall be submitted

1. Within 45 days of the Company Action Level Event; or
2. If the health organization challenges an adjusted RBC report pursuant to Appendix Section 9, within 45 days after notification to the health organization that the Commissioner has, after a hearing, rejected the health organization's challenge.

(d) Within 60 days after the submission by a health organization of an RBC Plan to the Commissioner, the Commissioner shall notify the health organization whether the RBC Plan shall be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines the RBC plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the Commissioner. Upon notification from the Commissioner, the health organization shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the Commissioner, and shall submit the revised RBC Plan to the Commissioner:

1. Within 45 days after the notification from the Commissioner; or
2. If the health organization challenges the notification from the Commissioner under Appendix Section 9, within 45 days after a notification to the health organization that the Commissioner has, after a hearing, rejected the health organization's challenge.

(e) In the event of a notification by the Commissioner to a health organization that the health organization's RBC Plan or revised RBC Plan is unsatisfactory, the Commissioner may, at his or her discretion, and subject to the health organization's right to a hearing under Appendix Section 9, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(f) Every domestic health organization that files an RBC Plan or revised RBC Plan with the Commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the health organization is authorized to do business if:

1. The state has confidentiality provision substantially similar to Appendix Section 10(a); and
2. The insurance commissioner of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:
 - i. Fifteen days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or
 - ii. The date on which the RBC Plan or Revised RBC Plan is filed under (c) and (d) above.

Section 5 Regulatory action level event

- (a) “Regulatory Action Level Event” means, with respect to a health organization, any of the following events:
1. The filing of an RBC Report by the health organization that indicates that the health organization’s total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;
 2. The notification by the Commissioner to a health organization of an adjusted RBC Report that indicates the event in (a)1 above, provided the health organization does not challenge the Adjusted RBC Report under Appendix Section 9;
 3. If the health organization, pursuant to Appendix Section 9, challenges an Adjusted RBC Report that indicates the event in (a)1 above, the notification by the Commissioner to the health organization that the Commissioner has, after a hearing, rejected the health organization’s challenge;

4. The failure of the health organization to file an RBC Report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the Commissioner and has cured the failure within 10 days after the filing date;

5. The failure of the health organization to submit an RBC plan to the Commissioner within the time period set forth in Appendix Sections 4(b) and (c);

6. The notification by the Commissioner to the health organization that:

i. The RBC Plan or Revised RBC Plan submitted by the health organization is, in the judgment of the Commissioner, unsatisfactory; and

ii. Such notification constitutes a Regulatory Action Level Event with respect to the health organization, provided the health organization has not challenged the determination under Appendix Section 9;

7. If the health organization, pursuant to Appendix Section 9, challenges a determination by the Commissioner under (a)6 above, the notification by the Commissioner to the health organization that the Commissioner has, after a hearing, rejected the challenge;

8. Notification by the Commissioner to the health organization that the health organization has failed to adhere to its RBC Plan or Revised RBC Plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the Company Action Level Event in accordance with its RBC Plan or Revised RBC Plan and the Commissioner has so stated in the notification, provided the health organization has not challenged the determination under Appendix Section 9; or

9. If the health organization, pursuant to Appendix Section 9, challenges a determination by the Commissioner under (a)8 above, the notification by the Commissioner to the health organization that the Commissioner has, after a hearing, rejected the challenge.

(b) In the event of a Regulatory Action Level Event the Commissioner shall:

1. Require the health organization to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;

2. Perform such examination or analysis as the Commissioner deems necessary of the assets, liabilities and operations of the health organization including a review of its RBC plan or Revised RBC Plan; and

3. Subsequent to the examination or analysis, issue an order specifying such corrective actions as the Commissioner shall determine are required (a “corrective order”).

(c) In determining corrective actions, the Commissioner may take into account factors the Commissioner deems relevant with respect to the health organization based upon the Commissioner’s examination or analysis of the assets, liabilities and operations of the health organization, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC Instructions. The RBC Plan or Revised RBC Plan shall be submitted:

1. Within 45 days after the occurrence of the Regulatory Action Level Event;

2. If the health organization challenges an Adjusted RBC Report pursuant to Appendix Section 9 and the challenge is not frivolous in the judgment of the Commissioner within 45 days after the notification to the health organization that the Commissioner has, after a hearing, rejected the health organization’s challenge; or

3. If the health organization challenges a Revised RBC Plan pursuant to Section 9 and the challenge is not frivolous in the judgment of the Commissioner, within 45 days after the notification to the health organization that the Commissioner has, after a hearing, rejected the health organization’s challenge.

(d) The Commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Commissioner to review the health organization's RBC plan or Revised RBC Plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the health organization and formulate the corrective order with respect to the health organization. The fees, costs and expenses relating to consultants shall be borne by the affected health organization or such other party as directed by the Commissioner.

Section 6 Authorized control level event

(a) "Authorized Control Level Event" means any of the following events:

1. The filing of an RBC report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;
2. The notification by the Commissioner to the health organization of an adjusted RBC report that indicates the event in (a)1 above, provided the health organization does not challenge the Adjusted RBC Report under Appendix Section 9;
3. If the health organization, pursuant to Appendix Section 9, challenges an Adjusted RBC Report that indicates the event in (a)1 above, notification by the Commissioner to the health organization that the Commissioner has, after a hearing, rejected the health organization's challenge;
4. The failure of the health organization to respond, in a manner satisfactory to the Commissioner, to a corrective order (provided the health organization has not challenged the corrective order under Appendix Section 9); or

5. If the health organization has challenged a corrective order under Appendix Section 9 and the Commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond, in a manner satisfactory to the Commissioner, to the corrective order subsequent to rejection or modification by the Commissioner.

(b) In the event of an Authorized Control Level Event with respect to a health organization, the Commissioner shall:

1. Take such actions as are required under Appendix Section 5 regarding a health organization with respect to which an Regulatory Action Level Event has occurred; or

2. If the Commissioner deems it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control under N.J.S.A. 17B:32-31 et seq. In the event the Commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the Commissioner to take action under the said Act, and the Commissioner shall have the rights, powers and duties with respect to the health organization as are set forth in said Act. In the event the Commissioner takes actions under this paragraph pursuant to an Adjusted RBC Report, the health organization shall be entitled to such protections as are afforded to health organizations under the provisions of said Act.

Section 7 Mandatory control level event

(a) “Mandatory Control Level Event” means any of the following events:

1. The filing of an RBC Report which indicates that the health organization's total adjusted capital is less than its Mandatory Control Level RBC;
2. Notification by the Commissioner to the health organization of an Adjusted RBC Report that indicates the event in (a)1 above, provided the health organization does not challenge the Adjusted RBC Report under Appendix Section 9; or
3. If the health organization, pursuant to Appendix Section 9, challenges an Adjusted RBC Report that indicates the event in (a)1 above, notification by the Commissioner to the health organization that the Commissioner has, after a hearing, rejected the health organization's challenge.

(b) In the event of a Mandatory Control Level Event, the Commissioner shall take such actions as are necessary to place the health organization under regulatory control under N.J.S.A. 17B:32-31 et seq. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the Commissioner to take action under said Act, and the Commissioner shall have the rights, powers and duties with respect to the health organization as are set forth in said Act. If the Commissioner takes actions pursuant to an Adjusted RBC Report, the health organization shall be entitled to the protections of said Act. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the Mandatory Control Level Event if the Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90-day period.

Section 8 Filings of RBC Plans

A filing of an RBC Plan pursuant to Appendix Sections 4(b) or 5(b) shall be sent to or delivered to:

New Jersey Department of Banking and Insurance

Office of Solvency Regulation

20 West State Street

PO Box 325

Trenton, NJ 08625-0325

Section 9 Hearings

(a) Upon the occurrence of any of the following events the health organization shall have the right to a confidential departmental hearing, on a record, at which the health organization may challenge any determination or action by the Commissioner.

(b) The health organization shall notify the Commissioner of its request for a hearing within five days upon:

1. Notification to a health organization by the Commissioner of an Adjusted RBC Report;

2. Notification to a health organization by the Commissioner that:

i. The health organization's RBC Plan or Revised RBC Plan is unsatisfactory; and

ii. Such notification constitutes a Regulatory Action Level Event with respect to the health organization;

3. Notification to a health organization by the Commissioner that the health organization has failed to adhere to its RBC plan or Revised RBC Plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the Company

Action Level Event with respect to the health organization in accordance with its RBC Plan or Revised RBC Plan; or

4. Notification to a health organization by the Commissioner of a corrective order with respect to the health organization.

Section 10 Confidentiality and prohibition on announcements, prohibition on use in ratemaking

(a) All RBC Reports (to the extent the information is not required to be set forth in a publicly available annual statement schedule) and RBC Plans (including the results or report of any examination or analysis of a health organization performed pursuant to these requirements and any corrective order issued by the Commissioner pursuant to examination or analysis) with respect to a domestic health organization or foreign health organization that are in the possession or control of the Department shall be confidential and privileged, shall not be subject to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(b) Neither the Commissioner nor any person who received documents, materials or other information while acting under the authority of the Commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to (a) above.

(c) In order to assist in the performance of the Commissioner's duties, the Commissioner:

1. May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to (a) above, with other state, Federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, Federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

2. May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

3. May enter into agreements governing sharing and use of information consistent with this subsection.

(d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in (c) above.

(e) The comparison of a health organization's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for corrective action with respect to the health organization, and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of this subchapter, the making,

publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over a radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of any health organization, or of any component derived in the calculation, by any health organization, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the health organizations' RBC levels is published in any written publication and the health organization is able to demonstrate to the Commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(f) RBC Instructions, RBC Reports, Adjusted RBC Reports, RBC Plans and Revised RBC Plans are intended solely for use by the Commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the Commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the Commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.

Section 11 Supplemental provisions; rules; exemption

(a) The provisions herein are supplemental to any other provisions of the laws of this State, and shall not preclude or limit any other powers or duties of the Commissioner under such laws, including, but not limited to, N.J.S.A. 17:51A-1 et seq., N.J.S.A. 17B:32-31 et seq. and N.J.A.C. 11:2-27.

Section 12 Foreign health organizations

(a) A foreign health organization shall, upon the written request of the Commissioner, submit to the Commissioner an RBC Report as of the end of the calendar year just ended the later of:

1. The date an RBC Report would be required to be filed by a domestic health organization under the standards set forth in this Appendix; or
2. Fifteen days after the request is received by the foreign health organization.

(b) A foreign health organization shall, at the written request of the Commissioner, promptly submit to the Commissioner a copy of any RBC Plan that is filed with the insurance commissioner of any other state.

(c) In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to a foreign health organization as determined under the RBC statute applicable in the state of domicile of the health organization (or, if no RBC statute is in force in that state, under the provisions of this Appendix), if the insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file an RBC plan in the manner specified under that state's RBC

statute (or, if no RBC statute is in force in that state, under Appendix Section 4), the Commissioner may require the foreign health organization to file an RBC Plan with the Commissioner. In such event, the failure of the foreign health organization to file an RBC Plan with the Commissioner shall be grounds to order the health organization to cease and desist from writing new insurance business in this State.

(d) In the event of a Mandatory Control Level Event with respect to a foreign health organization, if no domiciliary receiver has been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization, the Commissioner may make application to the Superior Court pursuant to N.J.S.A. 17B:32-31 et seq. with respect to the liquidation of property of foreign health organizations found in this State, and the occurrence of the Mandatory Control Level Event shall be considered adequate grounds for the application.

Section 13 Severability clause

If any provision of this Appendix, or its application to any person or circumstance, is held invalid, that determination shall not affect the provisions or applications of this Appendix that can be given effect without the invalid provision or application, and to that end the provisions of this Appendix are severable.

Section 14 Notices

All notices by the Commissioner to a health organization that may result in regulatory action under this Appendix shall be effective upon dispatch if transmitted by registered or

certified mail, or in the case of any other transmission shall be effective upon the health organization's receipt of notice.

Section 15 Phase-in provision

(a) The following requirements shall apply to the filing of the first RBC reports due on or before March 1, 2015, in lieu of the provisions of Appendix Sections 4 through 7:

1. In the event of a Company Action Level Event with respect to a domestic health organization, the Commissioner shall take no regulatory action under this Appendix.

2. In the event of a Regulatory Action Level Event under Appendix Section 5(a)1, 2 or 3, the Commissioner shall take the actions required under Appendix Section 4.

3. In the event of a Regulatory Action Level Event under Appendix Section 5(a)4, 5, 6, 7, 8 or 9 or an Authorized Control Level Event, the Commissioner shall take the actions required under Appendix Section 5 with respect to the health organization.

4. In the event of a Mandatory Control Level Event with respect to a health organization, the Commissioner shall take the actions required under Appendix Section 6 with respect to the health organization.

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