

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
OFFICE OF SOLVENCY REGULATION

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

Proposed Amendments: N.J.A.C. 11:2-39.1, 39.2, 39.3, 39.7, and 39.8.

Proposed Repeal: N.J.A.C. 11:2-39.15

Authorized By: Donald Bryan, Acting Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17B:32-31 et seq. and 26:2J-18.2 et seq.

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

Proposal No.: PRN 2005-289

Submit written comments by October 14, 2005 to:

Douglas A. Wheeler, Assistant Commissioner
Department of Banking and Insurance
Legislative and Regulatory Affairs
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325
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The agency proposal follows.

Summary

N.J.S.A. 26:2J-18.2 et seq., enacted on April 7, 2005, authorizes the Commissioner of Banking and Insurance (Commissioner) to increase the amount of capital and surplus required of a health maintenance organization (HMO), 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 HMO's financial condition, based on various factors regarding the HMO's risk. This statute is virtually

verbatim to N.J.S.A. 17:17-6 et seq. and 17B:18-67 et seq., which authorize the Commissioner to increase the minimum capital and surplus requirements for property/casualty and life/health insurers based upon the insurer's business risks. The Department of Banking and Insurance (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).

The Department now proposes to amend various sections of N.J.A.C. 11:2-39 to specifically set forth the RBC reporting requirements and standards that also shall apply to HMOs. The Department notes that, pursuant to N.J.A.C. 8:38-11.6, HMOs are currently required to file financial reports based on the NAIC annual statement instructions for health maintenance organizations and in accordance with the NAIC Accounting Practices and Procedures Manual, effective January 1, 2001, as amended and supplemented. The NAIC annual statement reporting form and instructions essentially require that HMOs adhere to RBC standards and calculations for purposes of determining appropriate minimum levels of capital and surplus. Through these proposed amendments, the Department proposes to codify the existing requirements for HMOs and implement N.J.S.A. 26:2J-18.2 et seq. The Department also notes that these requirements are also based on a NAIC model RBC act applicable to HMOs. Currently, 28 states as well as the District of Columbia specifically apply the RBC reporting requirements and standards as set forth in the NAIC model to HMOs.

The Department is also proposing to repeal N.J.A.C. 11:2-39.15, which provides a phase-in period for the application of RBC requirements for life/health insurers and property/casualty insurers, and by its terms is no longer applicable.

The proposed amendments thus will specifically apply RBC reporting requirements and standards to HMOs, similar to those presently being applied, and which are specifically applied in over half of the United States jurisdictions. These standards are designed to require that HMOs will maintain appropriate levels of capital and surplus, commensurate with their business risks, to help ensure that these entities will be in a position to pay their obligations when they are due.

A summary of the amendments follows:

N.J.A.C. 11:2-39.1 is proposed to be amended to specifically provide that the subchapter implements N.J.S.A. 26:2J-18.2 et seq. and to specifically apply the subchapter to all HMOs licensed pursuant to N.J.S.A. 26:2J-1 et seq.

N.J.A.C. 11:2-39.2 is amended to provide definitions of “health maintenance organization” and “insurer.” The term “insurer,” which is utilized throughout the current rules, is proposed to include HMOs, thereby applying the rules to HMOs as well as insurers by reference.

N.J.A.C. 11:2-39.3(e) is proposed to be amended to refer to minimum capital and surplus requirement for HMOs set forth in N.J.A.C. 8:38-11.1.

N.J.A.C. 11:2-39.7(b) is proposed to be amended to specifically reference HMOs.

N.J.A.C. 11:2-39.36(a) and 39.8 is proposed to be amended to change the mailing address to reference the Office of Solvency Regulation, rather than Office of Financial Examinations, to reflect the current title of the unit within the Department as a matter of form.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments implement N.J.S.A. 26:2J-18.2 et seq. by applying existing RBC reporting requirements and standards to HMOs. The proposed amendments thus provide certainty to regulated entities regarding the manner by which the statute shall be implemented, and implement the statute in a manner consistent with existing requirements with respect to completing financial reports and with requirements imposed on insurers in all states and on HMOs in the majority of United States jurisdictions. The proposed amendments thus provide a mechanism by which the Department may help ensure that HMOs maintain appropriate levels of capital and surplus commensurate with their business risks. This, in turn, should help ensure that HMOs will be in a financial position to pay their obligations when due, thus minimizing the disruptions that affect subscribers and providers when an HMO fails to do so.

Economic Impact

As noted above, the proposed amendments apply RBC standards to HMOs to help ensure that HMOs maintain appropriate levels of capital and surplus commensurate with their business risks. HMOs will be required to continue to incur any costs associated with complying with the reporting requirements and maintaining requisite levels of capital and surplus consistent with the RBC standards. As noted above, HMOs presently are required to comply with RBC standards through the filing of the NAIC financial statement and compliance with the Accounting Practices and Procedures Manual adopted by the NAIC pursuant to N.J.A.C. 8:38-11.6. The Department believes that actuarial and accounting services will continue to be required by HMOs in order to comply with the requirements. As noted above, however, the Department does not believe that

any additional services should be required as HMOs presently are required to comply with RBC standards.

In addition, to the extent that the proposed amendments help ensure that HMOs will remain in a financial position to pay obligations to subscribers and providers when due, they will help avoid disruptions associated with the failure of HMOs to pay such obligations when due. This, in turn, will benefit subscribers, providers and the HMO market generally.

The Department will continue to be required to monitor HMOs and review RBC reports to determine whether action is necessary pursuant to the regulatory framework provided in N.J.A.C. 11:2-39.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments and repeal are 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 amendments and repeal. As noted above, the proposed amendments codify the standards by which the Department will implement N.J.S.A. 26:2J-18.2 et seq., which authorizes the Commissioner to increase minimum amounts of capital and surplus HMOs are required to maintain. The proposed repeal deletes a rule no longer applicable.

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

Agriculture Industry Impact

The proposed amendments and repeal will not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed amendments will impose reporting, recordkeeping and compliance requirements on “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 amendments apply to small businesses, they will apply to HMOs domiciled in this State licensed to transact business pursuant to N.J.S.A. 26:2J-1 et seq. HMOs will be required to incur any costs associated with filing the RBC reports required under N.J.A.C. 11:2-39, as well as with maintaining minimum capital and surplus requirements as determined pursuant to RBC standards. As noted above, however, HMOs presently must adhere to RBC standards through the filing of financial statements and reports in accordance with the NAIC instructions and Accounting Practices and Procedures Manual, pursuant to N.J.A.C. 8:38-11.6. Accordingly, the Department does not believe that the proposed amendments will impose any undue burdens on HMOs. Indeed, the Department believes that the proposed amendments will benefit HMOs by providing certainty as to the manner by which N.J.S.A. 26:2J-18.2 shall be implemented by the Department, consistent with national standards adopted by the NAIC with respect to RBC requirements, and which are currently utilized in the majority of jurisdictions in the United States. The Department does not believe that any additional professional services will be required to be utilized in order for HMOs to comply with the proposed amendments.

The proposed amendments do not provide any differentiation in reporting, recordkeeping or other compliance requirements specifically based on business size. As noted above, the proposed amendments implement N.J.S.A. 26:2J-18.2 et seq. to provide the manner by which the Commissioner shall determine appropriate levels of capital and surplus for HMOs based on their business risks. This approach utilizes the national standard adopted by the NAIC, applicable to insurers in all states, and HMOs in the majority of United States jurisdictions, to determine appropriate levels of capital and surplus for these entities. Differentiation in these standards would not be consistent with the intent of N.J.S.A. 26:2J-18.2 et seq. and would not be feasible. The goal of the statute is to ensure that HMOs maintain appropriate levels of capital and surplus commensurate with their business risks to help ensure that they are in a position to pay their obligations when due. These goals do not vary based on business size.

Smart Growth Impact

The proposed amendments and repeal will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:2-39.15.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 39. INCREASE IN CAPITAL AND SURPLUS REQUIREMENTS FOR INSURERS **AND HEALTH MAINTENANCE ORGANIZATIONS**

11:2-39.1 Purpose and scope

(a) The purpose of this subchapter is to provide a framework for the establishment of uniform risk-based capital and surplus requirements for all insurers authorized, admitted or eligible to transact business pursuant to Title 17 or Title 17B of the New Jersey Statutes, and to implement the provisions of N.J.S.A. 17:17-6 et seq., and 17B:18-67 et seq. (enacted August 9, 1993), which provide new minimum capital and surplus requirements and authorize the Commissioner to increase these requirements for individual insurers based upon the insurer's business risks. **This subchapter also implements N.J.S.A. 26:2J-18.2 et seq. (enacted April 7, 2005) which authorizes the Commissioner to increase minimum capital and surplus requirements for health maintenance organizations licensed pursuant to Title 26 of the New Jersey Statutes based upon the HMO's business risks.**

(b) This subchapter shall apply to all insurers authorized, admitted or eligible to transact business pursuant to Title 17 or Title 17B of the New Jersey Statutes, **and to all health maintenance organizations licensed pursuant to N.J.S.A. 26:2J-1 et seq.** This subchapter shall not apply to mortgage guaranty insurers, financial guaranty insurers, or title insurers.

(c) (No change.)

11:2-39.2 Definitions

[(a)] The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Health maintenance organization” or “HMO” means any individual or entity that undertakes to provide or arrange for basic comprehensive health care services through an organized system that combines the delivery and financing of health care to members, and is licensed pursuant to N.J.S.A. 26:2J-1 et seq.

“Insurer” includes a life/health insurer, property/casualty insurer, and health maintenance organization.

...

11:2-39.3 RBC reports

(a) Every domestic insurer shall, on or before each March 1 (the "filing date"), prepare and submit to the Commissioner an RBC Report as of the preceding December 31. The RBC Report shall be sent or delivered to:

New Jersey Department of Banking and Insurance

Office of [Financial Examinations] **Solvency Regulation**, RBC Reports

20 West State Street

PO Box 325

Trenton, New Jersey 08625-0325

(b) - (d) (No change.)

(e) The calculation of an insurer's Required Surplus as set forth in an RBC Report filed and accepted by the Commissioner pursuant to (a) or (b) above, or as adjusted by the Commissioner pursuant to (d) above, shall be deemed to be a redetermination of the insurer's

minimum statutory capital and surplus requirement pursuant to N.J.S.A. 17:17-16 and 17B:18-70, **and N.J.A.C. 8:38-11.1, as applicable.**

1. - 3. (No change.)

11:2-39.7 Mandatory control level event

(a) (No change.)

(b) In the event of a mandatory control level event as set forth in (a) above:

1. With respect to a life/health insurer **or HMO**, the Commissioner shall take actions necessary to cause a domestic insurer **or HMO** to be placed under regulatory control pursuant to 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 the said Act, and the Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in the said Act. In the event the Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to such protections as are afforded to insurers under provisions of the said Act. Notwithstanding any of the foregoing, the Commissioner may forego action for up to 90 days after the mandatory control level event if he or she finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

2. (No change.)

11:2-39.8 Filings of RBC Plans

A filing of an RBC Plan pursuant to N.J.A.C. 11:2-39.4(b) or 39.5(b) shall be sent or delivered to:

New Jersey Department of Banking and Insurance

Office of [Financial Examinations] **Solvency Regulation**

20 West State Street

[CN] **P.O. Box** 325

Trenton, New Jersey 08625-0325

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