

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF SOLVENCY REGULATION

Increase in Capital and Surplus Requirements for Health Organizations

Proposed New Rules: N.J.A.C. 11:2-39A

Proposed Amendments: N.J.A.C. 11:2-39.1, 39.2, 39.3, 39.4, and 39.7

Authorized By: Richard J. Badolato, Acting Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and P.L. 2014, c. 81.

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

Proposal Number: PRN 2016-049.

Submit comments by June 3, 2016, to:

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The agency proposal follows:

Summary

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 of Banking and Insurance (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. 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 N.J.S.A. 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 the insurer's or HMO'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 new rules, N.J.A.C. 11:2-39A, to implement P.L. 2014, c. 81 as it applies to health organizations. These rules are virtually identical to N.J.A.C. 11:2-39, with respect to RBC for insurers and HMOs, and these proposed new rules track the NAIC model risk based capital requirements for health organizations. The NAIC model for health organizations also applies to HMOs, which are currently covered under N.J.A.C. 11:2-39. In

order to maintain consistency with the application of these standards to the national standards adopted by the NAIC, the Department proposes to apply the proposed new rules to HMOs and to delete references to HMOs in the existing N.J.A.C. 11:2-39. 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.

The proposed new rules and amendments thus will apply RBC reporting requirements and standards to health organizations, which was required for all states beginning in 2015. These standards are designed to require that health organizations 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 proposed new rules follows.

Proposed N.J.A.C. 11:2-39A.1 sets forth the purpose and scope of the proposed new rules. The proposed new rules will apply to any health organization, except that they will not apply to a domestic health organization that: (1) writes direct business only in this State; (2) assumes no reinsurance in excess of five percent of direct premium written; and (3) writes direct annual premiums for comprehensive medical business of \$2 million or less; or (4) is a dental plan organization, prepaid prescription services organization, or licensed organized delivery system that covers less than 2,000 lives.

Proposed N.J.A.C. 11:2-39A.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:2-39A.3 sets forth the requirements regarding the RBC reports. Specifically, a domestic health organization must, on or before each March 1, prepare and submit to the Commissioner an RBC report as required by the RBC instructions. RBC reports must be

filed also with the insurance commissioner in any state in which the health organization is authorized to do business, if that insurance commissioner requests such filing.

A health organization's RBC shall be determined in accordance with the formula set forth in the RBC instructions that takes into account the following factors: asset risks; credit risks, underwriting risks; and all other business risks and such other relevant risks as are set forth in the RBC instructions.

The Commissioner shall adjust the RBC report to correct any inaccuracies that the Commissioner finds. The Commissioner shall notify the health organization of any such adjustment.

A health organization may request a hearing under N.J.A.C. 11:2-39A.9 if it disagrees with adjustments made by the Commissioner.

Proposed N.J.A.C. 11:2-39A.4 sets forth actions that are required to be taken by the health organization in the case of a "company action level event" as determined in the filing of an RBC report. Such actions include the filing of an RBC Plan, which must contain proposals of corrective actions that the health organization intends to take to eliminate the company action level event. If the Commissioner notifies the health organization that its RBC plan or revised RBC plan is unsatisfactory, the Commissioner may, subject to the health organization's right to a hearing, specify in the notification that the notification constitutes a "regulatory action level event."

Proposed N.J.A.C. 11:2-39A.5 sets forth the requirements and actions to be taken in the case of a "regulatory action level event." In the case of a regulatory action level event, the Commissioner shall require the health organization to prepare and submit an RBC plan or revised RBC plan. In addition, the Commissioner shall perform such examination or analysis as

he or she deems necessary of the assets, liabilities and operations of the health organization, and, subsequent to such examination or analysis, issue an order specifying such corrective actions that the Commissioner has determined are required. In determining corrective actions, the Commissioner may take into account factors the Commissioner deems relevant with respect to the health organization based upon the 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.

Proposed N.J.A.C. 11:2-39A.6 sets forth requirements in the event of an “authorized control level event.” In the case of an authorized control level event, the Commissioner shall either take actions as required under proposed N.J.A.C. 11:2-39A.5 regarding a regulatory action level event; or, if the Commissioner deems it to be in the best interest 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.

Proposed N.J.A.C. 11:2-39A.7 sets forth requirements in the case of a “mandatory control level event.” In the case 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.

Proposed N.J.A.C. 11:2-39A.8 sets forth the mailing address for filings of RBC plans.

Proposed N.J.A.C. 11:2-39A.9 sets forth the requirements for hearings at which a health organization may challenge any determination or action by the Commissioner under the proposed new rules.

Proposed N.J.A.C. 11:2-39A.10 sets forth provisions regarding confidentiality of RBC reports and other documents obtained under the proposed new rules.

Proposed N.J.A.C. 11:2-39A.11 provides that the provisions of the proposed new rules 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.

Proposed N.J.A.C. 11:2-39A.12 sets forth requirements for foreign health organizations.

Proposed N.J.A.C. 11:2-39A.13 sets forth a severability clause.

Proposed N.J.A.C. 11:2-39A.14 provides that all notices by the Commissioner to a health organization that may result in regulatory action under the subchapter 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.

Proposed N.J.A.C. 11:2-39A.15 provides for a phase-in of the requirements with respect to company action level events, regulatory action level events, and mandatory control level events based on reports filed in 2015 for all health organizations other than HMOs. HMOs are excepted from this phase-in because, as noted above, those entities have been required to comply with RBC reporting since 2005.

In addition, the Department proposes to amend N.J.A.C. 11:2-39.1, 39.2, 39.3, 39.4, and 39.7 to delete references to HMOs, as HMOs will now be covered under the proposed new rules, consistent with the framework of the applicable NAIC models.

The Department is also proposing to amend N.J.A.C. 11:2-39.4(a)1ii to revise the rule to reflect the 2011 revision to the NAIC Model related to the change to the life trend test. The "trigger point" for the RBC trend test for life/health insurers has been revised from 2.5 to 3.0, thus making it more conservative and consistent with the number currently used for

property/casualty insurers and health organizations (and currently used for HMOs). This change will be required for states to maintain NAIC accreditation beginning in 2017.

The Department is also proposing to amend N.J.A.C. 11:2-39.11, which provides that the provisions of the subchapter 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. 17B:32-31 et seq. and N.J.A.C. 11:2-27, to add a reference to N.J.S.A. 17:51A-1 et seq., relating to the administrative supervision of insurers. This proposed amendment reflects the language in proposed N.J.A.C. 11:2-39A.11 and merely reflects and confirms the Commissioner's existing authority to take independent action under that statute.

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 new rules implement P.L. 2014, c. 81 by applying NAIC RBC reporting requirements and standards to health organizations. The proposed new rules 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 the national standard as adopted by the NAIC, required for state insurance departments to maintain accreditation beginning January 1, 2015. The proposed new rules also provide a mechanism by which the Department may help ensure that health organizations maintain appropriate levels of capital and surplus commensurate with their business risks. This, in turn, should help ensure that health organizations will be in a

financial position to pay their obligations when due, thus minimizing the likelihood of disruptions that may affect subscribers and providers if a health organization fails to do so. Overall, the proposed new rules have a positive social impact. In addition, the proposed amendments merely delete references to HMOs in the existing RBC rules at N.J.A.C. 11:2-39 as they will now be covered under proposed N.J.A.C. 11:2-39A, which tracks N.J.A.C. 11:2-39 virtually verbatim. No changes to the requirements applicable to HMOs should result from the proposed amendments and new rules. Similarly, the proposed change to the trend test number for life/health insurers should have a positive social impact by requiring life/health insurers to be more financially conservative. Most - if not all - domestic life/health insurers currently meet or exceed the newly proposed standard. The change reflects the national standard as set forth in the 2011 revisions to the NAIC model, and reflects the current number used for P/C insurers and HMOs, as well as to health organizations in the proposed new rules. As noted above, the proposed change is required for NAIC accreditation beginning in 2017.

Economic Impact

As noted above, the proposed new rules and amendments apply RBC standards to health organizations to help ensure that health organizations maintain appropriate levels of capital and surplus commensurate with their business risks. Health organizations will be required to comply with the reporting requirements and maintenance of requisite levels of capital and surplus consistent with the RBC standards. As noted above, health insurers and HMOs are presently required to comply with RBC standards under N.J.A.C. 11:2-39. This merely requires other similar risk-bearing health organizations to also comply. As noted above, these requirements implement P.L. 2014, c. 81 and reflect the national standard adopted by the NAIC, which all

states must have in place by January 1, 2015, in order for a state insurance department to maintain its NAIC accreditation.

Similarly, the proposed change to the trend test number for life/health insurers may result in some administrative expense associated with regulatory compliance. The change reflects the national standard as set forth in the 2011 revisions to the NAIC model, reflects the current number used for P/C insurers and HMOs as well as to health organizations in the proposed new rules. As noted above, the proposed change is required for NAIC accreditation beginning in 2017.

The professional services that will be required to comply with the proposed new rules will be actuarial and accounting services. The Department believes that health organizations and life/health insurers that are subject to the proposed new rules either have such services in-house or already contract for such services as part of their normal business operations. The Department also notes that, consistent with the NAIC model, domestic health organizations that engage in a limited amount of business only in this State are exempt from application of the proposed new rules.

As noted above, all states must have these standards in place to maintain accreditation by the NAIC beginning in 2015 and 2017, as applicable. As also noted above, the proposed new rules and amendments provide certainty to regulated entities as to the implementation of applicable statutory requirements and will help ensure that health organizations maintain requisite levels of capital and surplus commensurate with their business risks to help ensure that they are in a position to be able to pay claims when they are due. Accordingly, any costs to be imposed are outweighed by the benefits to be achieved.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules and amendments 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 new rules and amendments.

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

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The proposed new rules and 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 new rules and amendments will apply to small businesses, they will apply to health organizations, as referenced in the proposal Summary and the proposed new rules, domiciled and licensed to transact business in this State. Health organizations will be required to incur some costs associated with filing the RBC reports under N.J.A.C. 11:2-39A, as well as with maintaining minimum capital

and surplus requirements as determined pursuant to RBC standards. As noted above in the Summary, the proposed requirements reflect the national standard adopted by the NAIC, which are required for all states to implement beginning in 2015 to maintain NAIC accreditation. HMOs have been required to comply with RBC standards under N.J.A.C. 11:2-39 since 2005. The proposed amendments transfer regulation of RBC for HMOs from N.J.A.C. 11:2-39 to proposed N.J.A.C. 11:2-39A, which tracks those rules verbatim. No change to the impact on HMOs is expected as a result of the proposed amendments and new rules. Similarly, the proposed change to the trend test number for life/health insurers should have no negative impact. The change reflects the national standard as set forth in the 2011 revisions to the NAIC model, and reflects the RBC standard used for P/C insurers and HMOs, as well as its application to health organizations in the proposed new rules. As noted above, the proposed change is required for NAIC accreditation beginning in 2017.

While the proposed new rules do not provide any differentiation in compliance requirements specifically based on business size as that term is defined in the Administrative Procedure Act, they reflect the NAIC model exemptions for health organizations that do limited business solely in this State. Such limitations are to some degree indicative of business size. Accordingly, the proposed new rules take into account the size of the amount of business transacted by the entity.

Housing Affordability Impact Analysis

The proposed new rules and amendments will not have an impact on housing affordability in this State in that the proposed new rules and amendments relate to RBC standards for health organizations and life/health insurers.

Smart Growth Development Impact Analysis

The proposed new rules and amendments will not have an impact on smart growth in this State and there is an extreme unlikelihood that the proposed new rules and amendments 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 new rules and amendments relate to RBC standards for health organizations and life/health insurers.

Full text of the proposal 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

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 [,] **and a** property/casualty insurer[, and a health maintenance organization].

...

11:2-39.3 RBC reports

(a) – (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.)

11:2-39.4 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] **3.0** 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.)

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.)

11:2-39.11 Supplemental provisions

The provisions of this subchapter 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.

SUBCHAPTER 39A. INCREASE IN CAPITAL AND SURPLUS REQUIREMENTS FOR HEALTH ORGANIZATIONS

11:2-39A.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 health organizations licensed pursuant to Titles 17 and 26 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 subchapter shall apply to all health organizations licensed in this State pursuant to Titles 17 and 26 of the New Jersey Statutes.

(c) This subchapter 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 dental plan organization, prepaid prescription services organization, or licensed organized delivery system that covers less than 2,000 lives.

11:2-39A.2 Definitions

The following words and terms, when used in this subchapter, 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 N.J.A.C. 11:2-39A.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 that the Commissioner has determined are required pursuant to N.J.A.C. 11:2-39A.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.

“Health organization” means a health maintenance organization licensed pursuant to N.J.S.A. 26:2J-1 et seq., 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 N.J.S.A. 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 N.J.S.A. 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 or a property and casualty insurer under Titles 17 or 17B of the New Jersey Statutes and that is otherwise subject to either the life and health or property and casualty RBC requirements pursuant to N.J.A.C. 11:2-39.

“NAIC” means the National Association of Insurance Commissioners.

“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 N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.3.

“Total adjusted capital” means the sum of:

- 1. A health organization’s statutory capital and surplus (that is, 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.**

11:2-39A.3 RBC reports

(a) A domestic health organization shall, on or prior to each March 1 (the “filing date”), 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. Fifteen 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 N.J.A.C. 11:2-39A.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.

11:2-39A.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 that 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 N.J.A.C. 11:2-39A.9; or

3. If the health organization, under N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.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 a confidentiality provision substantially similar to N.J.A.C. 11:2-39A.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.

11:2-39A.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 N.J.A.C. 11:2-39A.9;

3. If the health organization, pursuant to N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.9;

7. If the health organization, pursuant to N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.9; or

9. If the health organization, pursuant to N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.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.

11:2-39A.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 N.J.A.C. 11:2-39A.9;

3. If the health organization, pursuant to N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.9); or

5. If the health organization has challenged a corrective order under N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.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.

11:2-39A.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 N.J.A.C. 11:2-39A.9; or

3. If the health organization, pursuant to N.J.A.C. 11:2-39A.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.

11:2-39A.8 Filings of RBC plans

A filing of an RBC plan pursuant to N.J.A.C. 11:2-39A.4(b) or 39A.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

11:2-39A.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.

11:2-39A.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 this subchapter 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 that 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 organization's 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.

11:2-39A.11 Supplemental provisions; rules; exemption

The provisions of this subchapter 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.

11:2-39A.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 this subchapter; 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 subchapter), 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 N.J.A.C. 11:2-39A.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.

11:2-39A.13 Severability clause

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

11:2-39A.14 Notices

All notices by the Commissioner to a health organization that may result in regulatory action under this subchapter 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.

11:2-39A.15 Phase-in provision

(a) Except for HMOs, 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 N.J.A.C. 11:2-39A.4 through 39A.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 subchapter.

2. In the event of a regulatory action level event under N.J.A.C. 11:2-39A.5(a)1, 2, or 3, the Commissioner shall take the actions required under N.J.A.C. 11:2-39A.4.

3. In the event of a regulatory action level event under N.J.A.C. 11:2-39A.5(a)4, 5, 6, 7, 8, or 9 or an authorized control level event, the Commissioner shall take the actions required under N.J.A.C. 11:2-39A.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 N.J.A.C. 11:2-39A.6 with respect to the health organization.