Amended Regulation 3-1-11

RISK-BASED CAPITAL (RBC)

Section 1 Authority

This regulation is promulgated under the authority of §§ 10-1-109 and 10-3-201(1)(b), C.R.S.

Section 2 Background And Purpose

The purpose of this regulation is to establish standards for the minimum capital and surplus to be maintained by insurers, captive insurers, fraternal benefit societies and health organizations as provided by §§ 10-3-201 (1)(b), 10-6-116, 10-14-604, 10-16-310 and 10-16-411, C.R.S. These standards provide for the early detection of a potentially hazardous or otherwise dangerous condition of an insurer or health organization in order to protect its insureds, enrollees/members and the general public. This regulation additionally provides for reporting, corrective measures, and enforcement actions available to the Commissioner.

Section 3 Definitions

As used in this Regulation, these terms shall have the following meanings:

A. "Adjusted RBC Report" means an RBC report which has been adjusted by the Commissioner in accordance with Section 4.F. of this regulation.

B. "Corrective Order" means an order issued by the Commissioner pursuant to § 10-3-404, C.R.S., specifying corrective actions which are determined by the Commissioner as being necessary to abate a delinquency as defined in § 10-3-402(2), C.R.S.

C. "Domestic health organization" means a health organization domiciled in this state.

D. "Domestic insurer" means any life, health or property and casualty insurance company domiciled in this state.

E. "Foreign health organization" means a health organization that is licensed to do business in this state but is not domiciled in this state"

F. "Foreign insurer" means any insurance company or fraternal benefit society which is licensed to do business in this state but is not domiciled in this state.

G. "Health insurer" means any licensed property and casualty insurance company writing only sickness and accident insurance.

H. "Health organization" means a health maintenance organization, non-profit hospital medical-surgical and health service corporation, limited health service organization or other managed care organization. This definition does not include an organization that is licensed as either a life and health insurer or a property and casualty insurer or is otherwise subject to either the life or property and casualty RBC requirements.

I. "Life insurer" means any insurance company licensed as a life insurer, health insurer or as a fraternal benefit society.

J. "NAIC" means the National Association of Insurance Commissioners.

K. "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as determined in accordance with the "Trend Test Calculation" included in the RBC Instructions.

L. "Property and casualty insurer" means any licensed property and casualty insurance company, including a group captive insurance company organized pursuant to the provisions of Article 6 of Title 10, C.R.S., but shall not include monoline mortgage guaranty insurers, financial guaranty insurers, title insurers and county mutual protective associations organized on an assessment basis pursuant to the pursuant to § 10-12-101(2), C.R.S.

M. "RBC instructions" means the RBC Report, including risk-based capital instructions and procedures adopted by the NAIC, as part of the required annual filing on the NAIC convention blank.

N. "RBC Level" means an insurer's or 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 insurer or 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;

4. "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

O. "RBC Plan" means a comprehensive financial plan containing the elements specified in Section 5.B. of this regulation. If the Commissioner rejects the RBC Plan, and it is revised by the insurer or health organization, with or without the Commissioner's recommendation, the plan shall be called the "Revised RBC Plan "

P. "RBC Report" means the report required in Section 4 of this regulation.

Q. "Total Adjusted Capital" means the sum of:

1. an insurer's or health organization's statutory capital and surplus (i.e., net worth); and

2. such other items, if any, as the RBC Instructions may provide.

Section 4 RBC Reports

A. Every domestic insurer and 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 just ended, in a form and containing such information as is required by the RBC Instructions. In addition, every domestic insurer and domestic health organization shall file its RBC Report:

1. with the NAIC in accordance with the RBC Instructions; and

2. with the insurance commissioner or other regulatory official in any state in which the insurer or health organization is authorized to do business, if the insurance commissioner or other regulatory official has notified the insurer or health organization of its request in writing, in which case the insurer or health organization shall file its RBC Report not later than March 1 or fifteen (15) days from the receipt of the notice to file its RBC Report with that state.

B. A life and/or health insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account (and may adjust for the covariance between):

1. the risk with respect to the insurer's assets;

2. the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

3. the interest rate risk with respect to the insurer's business; and

4. all other business risks and such other relevant risks as are set forth in the RBC Instructions; determined in each case by applying the factors in the manner set forth in the RBC Instructions.

C. A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account (and may adjust for the covariance between):

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, determined in each case by applying the factors in the manner set forth in the RBC Instructions.

D. 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):

1. asset risk;

2. credit Risk;

3. underwriting risk; except domestic and foreign health organizations having contractual relations which may be subject to § 10-16-705 (5)(a), C.R.S. are not permitted to take managed care credit for the arrangement unless they have an approved alternative payment mechanism under § 10-16-705(5)(b), C.R.S. and

4. all other business risks and such other relevant risks as are set forth in the RBC instructions.

E. An excess of capital (i.e., net worth) over the amount produced by the risk based capital requirements contained in this regulation and the formulas, schedules and instructions referenced in this regulation is desirable in the business of insurance. Insurers and health organizations should seek to maintain capital above the RBC levels required by this regulation. Additional capital is used and useful in the insurance business and helps to secure an insurer or health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk based capital requirements contained herein.

F. If a domestic insurer or domestic health organization files an RBC Report which in the judgment of the Commissioner is inaccurate, then the Commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer or health organization in writing of the determination of a delinquency and 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."

Section 5 Company Action Level Event

A. "Company Action Level Event" means a delinquency caused by either of the following events:

1. the filing of an RBC Report by an insurer or health organization which indicates that:

a. the insurer's or 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

b. if a life and/or health insurer, the insurer has Total Adjusted Capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 2.5, and has a negative trend; or

2. the written notification by the Commissioner to the insurer or health organization of an Adjusted RBC Report that indicates an event in Paragraph (l) of this subsection.

B. In the event of a Company Action Level Event, the insurer or health organization shall prepare and submit to the Commissioner an RBC Plan which shall;

l. identify the conditions which contribute to the Company Action Level Event;

2. contain proposals of corrective actions which the insurer or health organization intends to take and would be expected to result in the elimination of the Company Action Level Event;

3. provide projections of financial results in the current year and at least the three (3) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and/or surplus (net worth). (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 projections and the sensitivity of the projections to the assumptions; and

5. identify the quality of, and problems associated with, the insurer's or 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 within forty-five (45) days of the Company Action Level Event; or if the insurer or health organization challenges an adjusted RBC report pursuant to Section 9, within forty-five (45) days after notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.

D. Within sixty (60) days after the submission by an insurer or health organization of an RBC Plan to the Commissioner, the Commissioner shall provide written notification to the insurer or 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 insurer or health organization shall set forth the reasons for the determination of delinquency, and may set forth proposed revisions which will render the RBC Plan satisfactory. Upon written notification from the Commissioner, the insurer or health organization shall prepare a Revised RBC Plan, which may incorporate any revisions proposed by the Commissioner, and shall submit the Revised RBC Plan to the Commissioner within forty-five (45) days after the notification.

E. In the event of a written notification by the Commissioner to an insurer or health organization of a delinquency that the insurer's or health organization's RBC Plan or Revised RBC Plan is unsatisfactory, the Commissioner may specify in the notification that the notification constitutes a Regulatory Action Level Event.

F. Every domestic insurer and 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 or other regulatory authority in any state in which the insurer or health organization is authorized to do business if:

1. such state has an RBC provision substantially similar to Section 10.A. of this regulation; and

2. the insurance commissioner or regulatory authority of that state has notified the insurer or health organization of its request for the filing in writing, in which case the insurer or health organization shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than:

a. fifteen (15) days after the receipt of the notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or

b. the date on which the RBC Plan or Revised RBC Plan is filed under Sections 5.C. and 5.D. of this regulation.

Section 6 Regulatory Action Level Event

A. "Regulatory Action Level Event" means, a delinquency with respect to any insurer or health organization, caused by any of the following events:

1. the filing of an RBC Report which indicates that the insurer's or 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 an insurer or health organization of an Adjusted RBC Report that indicates the event in Paragraph (1) of this subsection:

3. the failure to file an RBC Report by the filing date, unless the insurer or health organization has provided an explanation for such failure which is satisfactory to the Commissioner and has cured the failure within ten (10) days after the filing date;

4. the failure of the insurer or health organization to submit an RBC Plan to the Commissioner within the time period set forth in Section 5.C. of this regulation;

5. written notification by the Commissioner that the RBC Plan or Revised RBC Plan submitted by the insurer or health organization is, in the judgment of the Commissioner, unsatisfactory; and such notification constitutes a Regulatory Action Level Event with respect to the insurer or health organization; or

6. written notification by the Commissioner that the insurer or health organization has failed to adhere to its RBC Plan or Revised RBC Plan, but only if such failure has a substantial adverse effect on the ability of the insurer or 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.

B. In the event of a Regulatory Action Level Event the Commissioner shall:

1. require the insurer or health organization to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan within forty five (45) days after the occurrence of the regulatory action level event;

2. perform such examination or analysis as the Commissioner deems necessary of the assets, liabilities and operations of the insurer or 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 such factors as are deemed relevant with respect to the insurer or health organization based upon the Commissioner's examination or analysis of the assets, liabilities and operations of the insurer or 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 within forty-five (45) days after the occurrence of the Regulatory Action Level Event.

D. The Commissioner may require the insurer or health organization to retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Commissioner to review the RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities and operations of the insurer or health organization and formulate the Corrective Order with respect to the insurer or health organization. The fees, costs and expenses relating to consultants shall be borne by the affected insurer or health organization or such other party as directed by the Commissioner.

Section 7 Authorized Control Level Event

A. "Authorized Control Level Event" means a delinquency caused by any of the following events:

1. the filing of an RBC Report by the insurer or health organization which indicates that the insurer's or 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 insurer or health organization of an Adjusted RBC Report that indicates the event in Paragraph (1) of this subsection; or

3. the failure of the insurer or health organization to respond, in a manner satisfactory to the Commissioner, to a Corrective Order.

B. In the event of an Authorized Control Level Event with respect to an insurer or health organization, the Commissioner shall:

1. take such actions as are required under Section 6 of this regulation regarding an insurer or health organization with respect to which an Regulatory Action Level Event has occurred; or

2. take such actions as are necessary to cause the insurer or health organization to be placed under regulatory control pursuant to § 10-3-501 et seq., C.R.S., if the Commissioner deems it to be in the best interests of the policyholders and creditors of the insurer or health organization and of the public. In the event the Commissioner takes action under this subparagraph, the insurer or health organization shall be entitled to such protections as are afforded to insurers under the applicable provisions of Part 5, Article 3, Title 10, C.R.S.

Section 8 Mandatory Control Level Event

A. "Mandatory Control Level Event" means a delinquency caused by either of the following events:

1. the filing of an RBC Report which indicates that the insurer's or health organization's Total Adjusted Capital is less than its Mandatory Control Level RBC; or

2. written notification by the Commissioner to the insurer or health organization of an Adjusted RBC Report that indicates the event in Paragraph (1) of this subsection.

B. In the event of a Mandatory Control Level Event:

1. with respect to a life and/or health insurer, the Commissioner shall take such actions as are necessary to place the insurer under regulatory control pursuant to § 10-3-501 et seq., C.R.S. If the Commissioner takes action under this subparagraph, the insurer shall be entitled to the protections of the applicable provisions of Part 5, Article 3, Title 10, C.R.S. The Commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the Commissioner determines that there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period; or

2. with respect to a property and casualty insurer, the Commissioner shall take such actions as are necessary to place the insurer under regulatory control pursuant to 10-3-501 et seq., C.R.S., or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the Commissioner. In either event, the Mandatory Control Level Event shall be deemed sufficient grounds for the Commissioner to take action under § 10-3-501 et. seq., C.R.S. and the Commissioner shall have the rights, powers and duties with

respect to the insurer as are set forth in § 10-3-501 et. seq., C.R.S. If the Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of the applicable provisions of Part 5, Article 3, Title 10, C.R.S. The Commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the Commissioner determines that there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

3. with respect to a health organization, the Commissioner shall take such actions as are necessary to place the health organization under regulatory control pursuant to § 10-16-418 et. seq. C.R.S. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the Commissioner to take action under 10-16-418 et. seq. C.R.S. If the Commissioner takes actions pursuant to an adjusted RBC report, the health organization shall be entitled to the protections of the applicable provisions of Part 5, Article 3, Title 10, C.R.S. The Commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the Commissioner determines that there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

Section 9 Hearings

A. An insurer or health organization shall have the right to request a hearing pursuant to 24-4-105, C.R.S. upon:

1. written notification to the insurer or health organization by the Commissioner of an Adjusted RBC Report;

2. written notification to the insurer or health organization by the Commissioner that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, and such notification constitutes a Regulatory Action Level Event with respect to such insurer or health organization;

3. written notification to the insurer or health organization by the Commissioner that the insurer or health organization has failed to adhere to its RBC Plan or Revised RBC Plan and that such failure has a substantial adverse effect on the ability of the insurer or health organization to eliminate the Company Action Level Event with respect to the insurer or health organization in accordance with its RBC Plan or Revised RBC Plan;

4. written notification to the insurer or health organization by the Commissioner of a Corrective Order with respect to the insurer or health organization; or

5. written notification of any other final agency action taken by the Commissioner.

B. The insurer or health organization shall notify the Commissioner in writing of its request for a hearing within fifteen days after the receipt of the notification by the Commissioner. Upon receipt of the request for a hearing, the Commissioner shall set a date for the hearing pursuant to 24-4-105, C.R.S.

Section 10 Confidentiality, Prohibition On Announcements And Ratemaking

A. All RBC Reports (to the extent the information therein 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 an insurer or health organization performed pursuant hereto and any Corrective Order issued by the Commissioner pursuant to examination or analysis) with respect to any domestic insurer, foreign insurer, domestic health organization or foreign health organization which are filed with the Commissioner shall be confidential by law and privileged, pursuant to § 24-72-204(3)(a)(IV) and shall not be subject to § 24-72-201, et. seq. C.R.S., 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 information in the furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

B. The Commissioner or any person who received documents, materials or other information while acting under the authority of the commissioner shall not testify in any private civil action concerning any confidential documents, materials or information subject to Subsection A.

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 Subsection A, with other state, federal and international regulatory agencies, with the NAIC, and with state, federal and international law enforcement authorities, provided that the recipient agrees, and has the legal authority to, 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 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 an existing privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this Section 10 or as a result of sharing as authorized in Section 10.C.

E. The comparison of an insurer's or health organization's Total Adjusted Capital to any of its RBC Levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer or health organization, and is not intended as a means to rank insurers or health organizations generally. Therefore, except as otherwise required by statute or under this regulation, 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 any 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 insurer or health organization, or of any component derived in the calculation, by any insurer or health organization, agent, broker or other person engaged in any manner in the insurance business would be misleading and a violation of §§ 10-3-1104 & 10-1-120, C.R.S. If any materially false statement with respect to the comparison regarding an insurer's or health organization's Total Adjusted Capital to its RBC Levels or an inappropriate comparison of any other amount to the insurer's or health organization's RBC Levels is published in any written publication and the insurer or health organization is able to demonstrate to the Commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the insurer or 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. The 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 insurers and health organizations and the need for possible corrective action with respect to insurers or 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 any appropriate premium level or rate of return for any line of insurance which an insurer or health organization or any affiliate is authorized to write.

Section 11 Foreign Insurers Or Foreign Health Organizations

A. Any foreign insurer or 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 by the later of:

1. the date an RBC Report would be required to be filed by a domestic insurer or domestic health organization under this regulation; or

2. fifteen (15) days after the request is received by the foreign insurer or foreign health organization.

B. Any foreign insurer or 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 or other regulatory official 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 any foreign insurer or foreign health organization as determined under the RBC statute applicable in the state of domicile of the insurer or health organization (or, if no RBC provision is in force in that state, under the provisions of this regulation), if the insurance commissioner or other regulatory official of the state of domicile of the foreign insurer or foreign health organization fails to require the foreign insurer or foreign health organization to file an RBC Plan in the manner specified under the RBC authority (or, if no RBC provision is in force in the state, under Section 5 hereof), the Commissioner may require the foreign insurer or foreign health organization to file an RBC Plan with the Commissioner. In such event, the failure of the foreign insurer or foreign health organization to file an RBC Plan with the Commissioner shall be grounds to order the insurer or 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 any foreign insurer or foreign health organization, if no domiciliary receiver has been appointed with respect to the foreign insurer or foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer or foreign health organization, the Commissioner may make application to the Denver District Court permitted under § 10-3-501 et. seq., C.R.S. with respect to the liquidation of property of foreign insurers or 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 12 Severability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected thereby.

Section 13 Notices

All notices by the Commissioner to an insurer or health organization which may result in regulatory action there under 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 insurer's or health organization's receipt of such notice.

Section 14 Effective Date

This Regulation shall become effective on April 1, 2002.

Section 15 History

Originally effective March 31, 1994.
Amended effective August 31, 1997.
Amended effective November 1, 1999.
Amended effective April 1, 2002.