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Risk-Based Capital Requirements For Health Care Centers

Sec. 38a-193-1. Definitions

As used in sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Adjusted RBC report" means an RBC report which has been adjusted by the commissioner in accordance with section 38a-193-2(c) of the Regulations of Connecticut State Agencies;

(2) "Commissioner" means the Insurance Commissioner of the State of Connecticut;

(3) "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required;

(4) "Health care center" means a "health care center" as defined in section 38a-175 of the Connecticut General Statutes. This definition does not include an organization that is licensed as an insurance company under section 38a-41 of the Connecticut General Statutes and that is otherwise subject to the financial requirements of section 38a-72 of the Connecticut General Statutes;

(5) "NAIC" means the National Association of Insurance Commissioners;

(6) "RBC" means risk-based capital;

(7) "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;

(8) "RBC level" means a health care center's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

(A) "Company Action Level RBC" means, with respect to any health care center, the product of 2.0 and its Authorized Control Level RBC;

(B) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;

(C) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions; and

(D) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC;

(9) "RBC plan" means a comprehensive financial plan containing the elements specified in section 38a-193-3(b) of the Regulations of Connecticut State Agencies. If the commissioner rejects the RBC plan, and it is revised by the health care center, with or without the commissioner's recommendation, the plan shall be called the "revised RBC plan;"

(10) "RBC report" means the report required in section 38a-193-2 of the Regulations of Connecticut State Agencies; and

(11) "Total adjusted capital" means the sum of: a health care center's statutory capital and surplus and such other items, if any, as the RBC instructions may provide.

(Adopted effective January 31, 2000; amended August 30, 2004)

Sec. 38a-193-2. RBC reports

(a) Every health care center 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, a health care center shall file its RBC report with the NAIC in accordance with the RBC instructions.

(b) A health care center's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula may be adjusted for the covariance between the risks set forth in subdivisions (1) to (4), inclusive, of this subsection. The formula shall take the following into account, 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 health care center files a 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 care center of the adjustment. The notice shall contain a statement of the reason for the adjustment. A RBC report as so adjusted is referred to as an ''adjusted RBC report.''

(Adopted effective January 31, 2000; amended August 30, 2004)

Sec. 38a-193-3. Company action level event

(a) As used in sections 38a-193-1 to 38a-198-13, inclusive, of the Regulations of Connecticut State Agencies, ''Company Action Level Event'' means any of the following events:

(1) The filing of an RBC report by a health care center that indicates that the health care center's total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC;

(2) notification by the commissioner to the health care center of an adjusted RBC report that indicates an event in subdivision (1) of this subsection, provided the health care center does not challenge the adjusted RBC report under section 38a-193-7 of the Regulations of Connecticut State Agencies; or

(3) if, pursuant to section 38a-193-7 of the Regulations of Connecticut State Agencies, a health care center challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, the notification by the commissioner to the health care center that the commissioner has, after a hearing, rejected the health care center's challenge.

(b) In the event of a Company Action Level Event, the health care center shall prepare and submit to the commissioner a 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 care center 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 care center's financial results in the current year and at least the two (2) 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 care center's projections and the sensitivity of the projections to the assumptions; and

(5) identify the quality of, and problems associated with, the health care center'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 not later than forty-five (45) days after the Company Action Level Event; or if the health care center challenges an adjusted RBC report pursuant to section 38a-193-7 of the Regulations of Connecticut State Agencies, not later than forty-five (45) days after notification to the health care center that the commissioner has, after a hearing, rejected the health care center's challenge.

(d) Not later than sixty (60) days after the submission by a health care center of an RBC plan to the commissioner, the commissioner shall notify the health care center 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 care center 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 care center 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 not later than forty-five (45) days after the notification from the commissioner; or if the health care center challenges the notification from the commissioner under section 38a-193-7 of the Regulations of Connecticut State Agencies, not later than forty-five (45) days after a notification to the health care center that the commissioner has, after a hearing, rejected the health care center's challenge.

(e) In the event of a notification by the commissioner to a health care center that the health care center's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the health care center's right to a hearing under section 38a-193-7 of the Regulations of Connecticut State Agencies, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(Adopted effective January 31, 2000; amended August 30, 2004)

Sec. 38a-193-4. Regulatory action level event

(a) As used in Sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies, "Regulatory Action Level Event" means, with respect to a health care center, any of the following events:

(1) The filing of a RBC report by the health care center that indicates that the health care center's total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(2) notification by the commissioner to a health care center of an adjusted RBC report that indicates the event in subdivision (1) of this subsection, provided the health care center does not challenge the adjusted RBC report under section 38a-193-7 of the Regulations of Connecticut State Agencies;

(3) if, pursuant to section 38a-193-7 of the Regulations of Connecticut State Agencies, the health care center challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, the notification by the commissioner to the health care center that the commissioner has, after a hearing, rejected the health care center's challenge;

(4) the failure of the health care center to file a RBC report by the filing date, unless the health care center has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure not later than ten (10) days after the filing date;

(5) the failure of the health care center to submit a RBC plan to the commissioner within the time period set forth in section 38a-193-3(c) of the Regulations of Connecticut State Agencies;

(6) notification by the commissioner to the health care center that the RBC plan or revised RBC plan submitted by the health care center is, in the judgment of the commissioner, unsatisfactory; Notification constitutes a Regulatory Action Level Event with respect to the health care center, provided the health care center has not challenged the determination under section 38a-193-7 of the Regulations of Connecticut State Agencies;

(7) if, pursuant to section 38a-193-7 of the Regulations of Connecticut State Agencies, the health care center challenges a determination by the commissioner under subdivision (6) of this subsection, the notification by the commissioner to the health care center that the commissioner has, after a hearing, rejected the challenge;

(8) notification by the commissioner to the health care center that the health care center 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 care center 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 care center has not challenged the determination under section 38a-193-7 of the Regulations of Connecticut State Agencies; or

(9) if, pursuant to section 38a-193-7 of the Regulations of Connecticut State Agencies, the health care center challenges a determination by the commissioner under subdivision (8) of this subsection, the notification by the commissioner to the health care center 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 care center to prepare and submit a 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 care center 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 care center based upon the commissioner's examination or analysis of the assets, liabilities and operations of the health care center, 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) Not later than forty-five (45) days after the occurrence of the Regulatory Action Level Event;

(2) if the health care center challenges an adjusted RBC report pursuant to section 38a-193-7 of the Regulations of Connecticut State Agencies and the challenge is not frivolous in the judgment of the commissioner, not later than forty-five (45) days after the notification to the health care center that the commissioner has, after a hearing, rejected the health care center's challenge; or

(3) if the health care center challenges a revised RBC plan pursuant to section 38a-193-7 of the Regulations of Connecticut State Agencies and the challenge is not frivolous in the judgment of the commissioner, not later than forty-five (45)

days after the notification to the health care center that the commissioner has, after a hearing, rejected the health care center'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 care center's RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the health care center and formulate the corrective order with respect to the health care center. The fees, costs and expenses relating to consultants shall be borne by the affected health care center or such other party as directed by the commissioner.

(Adopted effective January 31, 2000)

Sec. 38a-193-5. Authorized control level event

(a) As used in Sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies, "Authorized Control Level Event" means any of the following events:

(1) The filing of a RBC report by the health care center that indicates that the health care center'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 care center of an adjusted RBC report that indicates the event in subdivision (1) of this subsection, provided the health care center does not challenge the adjusted RBC report under section 38a-193-7 of the Regulations of Connecticut State Agencies;

(3) if, pursuant to section 38a-193-7 of the Regulations of Connecticut State Agencies, the health care center challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification by the commissioner to the health care center that the commissioner has, after a hearing, rejected the health care center's challenge;

(4) the failure of the health care center to respond, in a manner satisfactory to the commissioner, to a corrective order (provided the health care center has not challenged the corrective order under section 38a-193-7 of the Regulations of Connecticut State Agencies); or

(5) if the health care center has challenged a corrective order under section 38a-193-7 of the Regulations of Connecticut State Agencies and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health care center 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 care center, the commissioner shall:

(1) Take such actions as are required under section 38a-193-4 of the Regulations of Connecticut State Agencies regarding a health care center with respect to which a 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 care center and of the public, take such actions as are necessary to cause the health care center to be placed under regulatory control under Chapter 704c of the Connecticut General Statutes. 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 Chapter 704c of the Connecticut General Statutes, and the commissioner shall have the rights, powers and duties with respect to the health care center as are set forth in Chapter 704c of the Connecticut General Statutes. In the event the commissioner takes actions under this paragraph pursuant to an adjusted RBC report, the health care center shall be

entitled to such protections as are afforded to health care centers under the provisions Chapter 704c of the Connecticut General Statutes pertaining to summary proceedings.

(Adopted effective January 31, 2000)

Sec. 38b-193-6. Mandatory control level event

(a) As used in Sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies, "Mandatory Control Level Event" means any of the following events:

(1) The filing of a RBC report which indicates that the health care center's total adjusted capital is less than its Mandatory Control Level RBC;

(2) notification by the commissioner to the health care center of an adjusted RBC report that indicates the event in subdivision (1) of this subsection, provided the health care center does not challenge the adjusted RBC report under section 38a-193-7 of the Regulations of Connecticut State Agencies; or

(3) if, pursuant to section 38a-193-7 of the Regulations of Connecticut State Agencies, the health care center challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification by the commissioner to the health care center that the commissioner has, after a hearing, rejected the health care center'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 care center under regulatory control under Chapter 704c of the Connecticut General Statutes. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under Chapter 704c of the Connecticut General Statutes, and the commissioner shall have the rights, powers and duties with respect to the health care center as are set forth in Chapter 704c of the Connecticut General Statutes. In the event the commissioner takes actions pursuant to an adjusted RBC report, the health care center shall be entitled to the protections of Chapter 704c of the Connecticut General Statutes pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (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 ninety-day period.

(Adopted effective January 31, 2000)

Sec. 38a-193-7. Hearings

The health care center shall have the right to a departmental hearing, on a record, at which the health care center may challenge any determination or action by the commissioner upon:

(1) Notification to a health care center by the commissioner of an adjusted RBC report;

(2) notification to a health care center by the commissioner that the health care center's RBC plan or revised RBC plan is unsatisfactory; and Notification constitutes a Regulatory Action Level Event with respect to the health care center;

(3) notification to a health care center by the commissioner that the health care center 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 care center to eliminate the Company Action Level Event with respect to the health care center in accordance with its RBC plan or revised RBC plan; or

(4) notification to a health care center by the commissioner of a corrective order with respect to the health care center.

(Adopted effective January 31, 2000)

Sec. 38a-193-8. Confidentiality and prohibition on announcements

(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 care center performed pursuant to sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies and any corrective order issued by the commissioner pursuant to examination or analysis) with respect to a health care center that are filed with the commissioner constitute information that might be damaging to the health care center if made available to its competitors, and therefore shall be kept confidential by the commissioner pursuant to the authority of sections 38a-14, 38a-69a, 38a-913 and 38a-962c of the Connecticut General Statutes. All RBC reports and RBC plans shall be construed as "commercial or financial information given in confidence" as provided under section 1-210(b)(5) of the Connecticut General Statutes. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner pursuant to sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies or any other provision of the insurance laws or regulations of this state or as provided by law.

(b) The comparison of a health care center's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for corrective action with respect to the health care center, and is not intended as a means to rank health care centers generally. Therefore, except as otherwise required under the provisions of sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies the making, publishing, disseminating, circulating or placing 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 care center, or of any component derived in the calculation, by any health care center, 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 care center's total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the health care centers' RBC levels is published in any written publication and the health care center 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 care center may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(c) 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 health care centers and the need for possible corrective action with respect to health care centers 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 care center or any affiliate is authorized to write.

(Adopted effective January 31, 2000; amended August 30, 2004)

Sec. 38a-193-9. Supplemental provisions; exemption

(a) The provisions of sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies are supplemental to any other provisions of the laws and regulations 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, Chapter 704c of the Connecticut General Statutes and sections 38a-8-101 to 38a-8-104, inclusive, of the Regulations of Connecticut State Agencies.

(b) The commissioner may exempt from the application of sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies a health care center that: (1) assumes no reinsurance in excess of five percent (5%) of direct premium written; and (2) writes direct annual premiums for comprehensive medical business of $2,000,000 or less.

(Adopted effective January 31, 2000; amended August 30, 2004)

Sec. 38a-193-10.

Repealed, August 30, 2004.

Sec. 38a-193-11. Notices

All notices by the commissioner to a health care center that may result in regulatory action under sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies 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 care center's receipt of notice.

(Adopted effective January 31, 2000)

Sec. 38a-193-12.

Repealed, August 30, 2004.

Sec. 38a-193-13. Severability

If any provision of sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies or its application to any person or circumstance, is held invalid by a court of competent jurisdiction, that determination shall not affect the provisions or applications of sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies that can be given effect without the invalid provision or application, and to that end the provisions of sections 38a-193-1 to 38a-193-13, inclusive, of the Regulations of Connecticut State Agencies are severable.

(Adopted effective January 31, 2000)