

211 CMR 25.00: RISK-BASED CAPITAL (RBC) FOR HEALTH ORGANIZATIONS

Section

- 25.01: Definitions
- 25.02: RBC Reports
- 25.03: Company Action Level Event
- 25.04: Regulatory Action Level Event
- 25.05: Authorized Control Level Event
- 25.06: Mandatory Control Level Event
- 25.07: Hearings
- 25.08: Confidentiality; Prohibition on Announcements; Prohibition on Use in Ratemaking
- 25.09: Supplemental Provisions; Exemption
- 25.10: Foreign Health Organization
- 25.11: Immunity
- 25.12: Severability Clause
- 25.13: Notices

25.01: Definitions

The following words as used in 211 CMR 25.00 shall, unless the context requires otherwise, have the following meanings:

Adjusted RBC Report, ~~means~~ an RBC Report which has been adjusted by the Commissioner in accordance with 211 CMR 25.02.

Commissioner, ~~means~~ the Commissioner of Insurance, appointed pursuant to M.G.L. c. 26, § 6 or his or her designee.

Corrective Order, ~~means~~ an order issued by the Commissioner pursuant to 211 CMR 25.04(2)(c), specifying corrective actions which the Commissioner has determined are required.

Domestic Health Organization, ~~means~~ a Hhealth Organization organized under the laws of the commonwealth and qualified to do business in the commonwealth.

Filing Date, ~~means~~ March 1st.

Foreign Health Organization, ~~means~~ a Hhealth Organization formed by authority of any state or government other than the commonwealth and qualified to conduct business in the commonwealth.

Health Organization, ~~means~~ a nonprofit hospital service corporation authorized under M.G.L. c. 176A, a nonprofit medical service corporation authorized under M.G.L. c. 176B, a dental service corporation authorized under M.G.L. c. 176E, an optometric service corporation authorized under M.G.L. c. 176F, or a health maintenance organization authorized under M.G.L. c. 176G. 211 CMR 25.01: Health Organization does not include an organization that is licensed as a life and/or health insurer under M.G.L. c. 175 or a property and casualty insurer under M.G.L. c. 175 and that is otherwise subject to 211 CMR 20.00, Risk-Based Capital (RBC) for Insurers.

NAIC, ~~means~~ the National Association of Insurance Commissioners.

~~RBC Instructions~~ RBC Instructions, ~~means~~ the RBC Report including risk-based capital instructions adopted by the NAIC, as such ~~RBC Instructions~~ 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 Hhealth Organization's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

Company Action Level RBC, ~~means~~, with respect to any Hhealth Organization, the product of 2.0 and its Authorized Control Level RBC;

25.01: continued

Regulatory Action Level RBC, ~~means~~ the product of 1.5 and its Authorized Control Level RBC;

Authorized Control Level RBC, ~~means~~ the number determined under the risk-based capital formula in accordance with the ~~RBC Instructions~~ RBC Instructions;

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 211 CMR 25.03(2). 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 211 CMR 25.02.

Total Adjusted Capital, ~~means~~ the sum of:

- (a) A Hhealth Oorganization's statutory capital and surplus (*i.e.* net worth) as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under M.G.L. c. 176A, §§ 3, 18, 24; M.G.L. c. 176B, §§ 8, 9, 10; M.G.L. c. 176E, §§ 8, 9, 10; M.G.L. c. 176F, §§ 8, 9, 10; and M.G.L. c. 176G, §§ 10, 25; and
- (b) Such other items, if any, as the ~~RBC instructions~~ RBC Instructions may provide.

25.02: RBC Reports

(1) Every Domestic Health Organization shall, on or prior to each March 1st, prepare and submit to the Commissioner a report of its RBC Levels as of the end of the most recent calendar year, in a form and containing such information as is required by the ~~RBC instructions~~ RBC Instructions. In addition, every Domestic Health Organization shall file its RBC Report:

- (a) With the NAIC in accordance with the ~~RBC instructions~~ RBC Instructions; and
- (b) With the insurance commissioner in any state in which the Hhealth Oorganization is authorized to do business, if the insurance commissioner has notified the Hhealth Oorganization of its request in writing, in which case the Hhealth Oorganization shall file its RBC Report not later than the later of:
 1. 15 days from the receipt of notice to file its RBC Report with that state; or
 2. The Ffiling Ddate.

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

- (a) Asset risk;
- (b) Credit risk;
- (c) Underwriting risk; and
- (d) All other business risks and such other relevant risks as are set forth in the ~~RBC instructions~~ RBC Instructions.

(3) An excess of capital (*i.e.* net worth) over the amount produced by the risk-based capital requirements contained in 211 CMR 25.00 and the formulas, schedules and instructions referenced in 211 CMR 25.00 is desirable in the business of health insurance. Accordingly, Hhealth Oorganizations should seek to maintain capital above the RBC Llevels required by 211 CMR 25.00. Additional capital is used and useful in the insurance business and helps to secure a Hhealth Oorganization 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 in 211 CMR 25.00.

(4) If a 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 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.”

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25.03: Company Action Level Event

- (1) “Company Action Level Event” means any of the following events:
- (a) The filing of an RBC Report by a Health Organization which indicates that 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.
 1. If a Health Organization has a 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 RBC Instructions;
 - (b) The notification by the Commissioner to the Health Organization of an Adjusted RBC Report that indicates an event in 211 CMR 25.03(1)(a), provided the Health Organization does not challenge the Adjusted RBC Report under 211 CMR 25.07; or
 - (c) If, pursuant to 211 CMR 25.07, a Health Organization challenges an Adjusted RBC Report that indicates the event in 211 CMR 25.03(1)(a), the notification by the Commissioner to the Health Organization that the Commissioner has, after a hearing, rejected the Health Organization’s challenge.
- (2) In the event of a Company Action Level Event, the Health Organization shall prepare and submit to the Commissioner an RBC Plan which shall:
- (a) Identify the conditions which contribute to the Company Action Level Event;
 - (b) Contain proposals of corrective actions which the Health Organization intends to take and would be expected to result in the elimination of the Company Action Level Event;
 - (c) 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;
 - (d) Identify the key assumptions impacting the Health Organization’s projections and the sensitivity of the projections to the assumptions; and
 - (e) 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.
- (3) The RBC Plan shall be submitted
- (a) Within 45 days of the Company Action Level Event; or
 - (b) If the Health Organization challenges an Adjusted RBC Report pursuant to 211 CMR 25.07, within 45 days after notification to the Health Organization that the Commissioner has, after a hearing, rejected the Health Organization’s challenge.
- (4) 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:
- (a) Within 45 days after the notification from the Commissioner; or
 - (b) If the Health Organization challenges the notification from the Commissioner under 211 CMR 25.07, within 45 days after a notification to the Health Organization that the Commissioner has, after a hearing, rejected the Health Organization’s challenge.
- (5) 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 the Commissioner’s discretion, subject to the Health Organization’s right to a hearing under 211 CMR 25.07, specify in the notification that the notification constitutes a Regulatory

Action Level Event.

(6) 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 Hhealth Organization is authorized to do business if:

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25.03: continued

- (a) Such state has an RBC provision substantially similar to 211 CMR 25.08(1); and
- (b) 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:
 1. 15 days after the receipt of notice to file a copy of its RBC Plan or Revised RBC Plan with the state; or
 2. The date on which the RBC Plan or Revised RBC Plan is filed under 211 CMR 25.03(3) and 211 CMR 25.03(4).

25.04: Regulatory Action Level Event

- (1) "Regulatory Action Level Event" means, with respect to any Health Organization, any of the following events:
 - (a) The filing of an RBC Report by the Health Organization which 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;
 - (b) The notification by the Commissioner to a Health Organization of an Adjusted RBC Report that indicates the event in 211 CMR 25.04(1)(a), provided the Health Organization does not challenge the Adjusted RBC Report under 211 CMR 25.07;
 - (c) If, pursuant to 211 CMR 25.07, the Health Organization challenges an Adjusted RBC Report that indicates the event in 211 CMR 25.04(1)(a), the notification by the Commissioner to the Health Organization that the Commissioner has, after a hearing, rejected the Health Organization's challenge;
 - (d) The failure of the Health Organization to file an RBC Report by the filing date, unless the Health Organization has provided an explanation for such failure which is satisfactory to the Commissioner and has cured the failure within ten days after the Filing Date;
 - (e) The failure of the Health Organization to submit an RBC Plan to the Commissioner within the time period set forth in 211 CMR 25.03(3);
 - (f) Notification by the Commissioner to the Health Organization that:
 1. The RBC Plan or Revised RBC Plan submitted by the Health Organization is, in the judgment of the Commissioner, unsatisfactory; and
 2. Such notification constitutes a Regulatory Action Level Event with respect to the ~~health organization~~Health Organization, provided the ~~health organization~~Health Organization has not challenged the determination under 211 CMR 25.07;
 - (g) If, pursuant to 211 CMR 25.07, the ~~health organization~~Health Organization challenges a determination by the Commissioner under 211 CMR 25.04(1)(f), the notification by the Commissioner to the ~~health organization~~Health Organization that the Commissioner has, after a hearing, rejected such challenge;
 - (h) Notification by the Commissioner to the ~~health organization~~Health Organization that the ~~health organization~~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 ~~health organization~~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~~Health Organization has not challenged the determination under 211 CMR 25.07; or
 - (i) If, pursuant to 211 CMR 25.07, the ~~health organization~~Health Organization challenges a determination by the Commissioner under 211 CMR 25.04(1)(h), the notification by the Commissioner to the ~~Health Organization~~Health Organization that the Commissioner has, after a hearing, rejected the challenge.
- (2) In the event of a Regulatory Action Level Event the Commissioner shall:
 - (a) Require the ~~health organization~~Health Organization to prepare and submit an RBC Plan or, if applicable, a Revised RBC Plan;
 - (b) Perform such examination or analysis as the Commissioner deems necessary of the assets, liabilities and operations of the ~~health organization~~Health Organization including a review of its RBC Plan or Revised RBC Plan; and
 - (c) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the Commissioner shall determine are required (a "Corrective Order").

25.04: continued

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

- (a) Within 45 days after the occurrence of the Regulatory Action Level Event;
- (b) If the ~~health-organization~~Health Organization challenges an Adjusted RBC Report pursuant to 211 CMR 25.07 and the challenge is not frivolous in the judgment of the Commissioner within 45 days after the notification to the ~~health-organization~~Health Organization that the Commissioner has, after a hearing, rejected the ~~health-organization~~Health Organization's challenge; or
- (c) If the ~~health-organization~~Health Organization challenges a Revised RBC Plan pursuant to 211 CMR 25.07 and the challenge is not frivolous in the judgment of the Commissioner, within 45 days after the notification to the ~~health-organization~~Health Organization that the Commissioner has, after a hearing, rejected the ~~health-organization~~Health Organization's challenge.

(4) 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~~Health Organization's RBC Plan or Revised RBC Plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the ~~health-organization~~Health Organization and formulate the ~~C~~corrective Oerder with respect to the ~~health-organization~~Health Organization. The fees, costs and expenses relating to consultants shall be borne by the affected ~~health-organization~~Health Organization or such other party as directed by the Commissioner.

25.05: Authorized Control Level Event

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

- (a) The filing of an RBC Report by the ~~health-organization~~Health Organization which indicates that the ~~health-organization~~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;
- (b) The notification by the Commissioner to the ~~health-organization~~Health Organization of an Adjusted RBC Report that indicates the event in 211 CMR 25.05(1)(a), provided the ~~health-organization~~Health Organization does not challenge the Adjusted RBC Report under 211 CMR 25.07;
- (c) If, pursuant to 211 CMR 25.07, the ~~health-organization~~Health Organization challenges an Adjusted RBC Report that indicates the event in 211 CMR 25.05(1)(a), notification by the Commissioner to the ~~health-organization~~Health Organization that the Commissioner has, after a hearing, rejected the ~~health-organization~~Health Organization's challenge;
- (d) The failure of the ~~health-organization~~Health Organization to respond, in a manner satisfactory to the Commissioner, to a ~~C~~corrective Oerder (provided the ~~health-organization~~Health Organization has not challenged the ~~C~~corrective Oerder under 211 CMR 25.07); or
- (e) If the ~~health-organization~~Health Organization has challenged a ~~C~~corrective Oerder under 211 CMR 25.07, and the Commissioner has, after a hearing, rejected the challenge or modified the ~~C~~corrective Oerder, the failure of the ~~health-organization~~Health Organization to respond, in a manner satisfactory to the Commissioner, to the ~~C~~corrective Oerder subsequent to rejection or modification by the Commissioner.

(2) In the event of an Authorized Control Level Event with respect to a ~~health-organization~~Health Organization, the Commissioner shall:

- (a) Take such actions as are required under 211 CMR 25.04 regarding a ~~health-organization~~Health Organization with respect to which an Regulatory Action Level Event has occurred; or

25.05: continued

(b) If the Commissioner deems it to be in the best interests of the policyholders and creditors of the ~~health-organization~~Health Organization and of the public, take such actions as are necessary to cause the ~~health-organization~~Health Organization to be placed under regulatory control under M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A. 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 M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A, and the Commissioner shall have the rights, powers and duties with respect to the ~~health-organization~~Health Organization as are set forth in M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A. In the event the Commissioner takes actions under 211 CMR 25.05(2)(b) pursuant to an Adjusted RBC Report, the ~~health-organization~~Health Organization shall be entitled to such protections as are afforded to ~~health-organization~~Health Organizations under the provisions of M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A, pertaining to summary proceedings.

25.06: Mandatory Control Level Event

- (1) “Mandatory Control Level Event” means any of the following events:
- (a) The filing of an RBC Report which indicates that the ~~health-organization~~Health Organization’s total adjusted capital is less than its Mandatory Control Level RBC;
 - (b) Notification by the Commissioner to the ~~health-organization~~Health Organization of an Adjusted RBC Report that indicates the event in 211 CMR 25.06(1)(a), provided the ~~health-organization~~Health Organization does not challenge the Adjusted RBC Report under 211 CMR 25.07; or
 - (c) If, pursuant to 211 CMR 25.07, the ~~health-organization~~Health Organization challenges an Adjusted RBC Report that indicates the event in 211 CMR 25.06(1)(a), notification by the Commissioner to the ~~health-organization~~Health Organization that the Commissioner has, after a hearing, rejected the ~~health-organization~~Health Organization’s challenge.
- (2) In the event of a Mandatory Control Level Event, the Commissioner shall take such actions as are necessary to place the ~~health-organization~~Health Organization under regulatory control under M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the Commissioner to take action under M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A, and the Commissioner shall have the rights, powers and duties with respect to the ~~health-organization~~Health Organization as are set forth in M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A. If the Commissioner takes actions pursuant to an Adjusted RBC Report, the ~~health-organization~~Health Organization shall be entitled to the protections of M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A, pertaining to summary proceedings. 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.

25.07: Hearings

Upon any of the following events the ~~health-organization~~Health Organization shall have the right to a confidential hearing, on a record, at which the ~~health-organization~~Health Organization may challenge any determination or action by the Commissioner. The ~~health-organization~~Health Organization shall notify the Commissioner of its request for a hearing within five days after the notification by the Commissioner under 211 CMR 25.07(1), (2), (3) or (4). Upon receipt of the ~~health-organization~~Health Organization’s request for a hearing, the Commissioner shall set a date for the hearing, which date shall be no less than ten nor more than 30 days after the date of the ~~health-organization~~Health Organization’s request.

25.07: continued

- (1) Notification to a ~~health organization~~Health Organization by the Commissioner of an Adjusted RBC Report; or
- (2) Notification to a ~~health organization~~Health Organization by the Commissioner that:
 - (a) The ~~health organization~~Health Organization's RBC Plan or Revised RBC Plan is unsatisfactory; and
 - (b) Such notification constitutes a Regulatory Action Level Event with respect to such ~~health organization~~Health Organization;
- (3) Notification to any ~~health organization~~Health Organization by the Commissioner that the ~~health organization~~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 ~~health organization~~Health Organization to eliminate the Company Action Level Event with respect to the ~~health organization~~Health Organization in accordance with its RBC Plan or Revised RBC Plan; or
- (4) Notification to a ~~health organization~~Health Organization by the Commissioner of a Corrective Order with respect to the ~~health organization~~Health Organization.

25.08: Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking

(1) 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 a ~~health organization~~Health Organization performed pursuant hereto and any Corrective Order issued by the Commissioner pursuant to examination or analysis) with respect to any Domestic ~~Health Organization~~Health Organization or Foreign Health Organization that are in the possession or control of the Commissioner shall be confidential by law and privileged, shall not be subject to M.G.L. c. 66 or the 26th clause of M.G.L. c. 4, § 7, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, which are filed with the Commissioner constitute information that might be damaging to the ~~health organization~~Health Organization if made available to its competitors, and therefore shall be kept confidential by the Commissioner. 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 211 CMR 25.00 or any other provision of the insurance laws of Massachusetts. However, the Commissioner is authorized to use the documents, materials or other information in furtherance of any regulatory or legal action brought as a part of the Commissioner's official duties.

(2) 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 211 CMR 25.08(1).

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

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to 211 CMR 25.08(1), 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;

(b) 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, materials or information; and

(c) May enter into agreements governing sharing and use of information consistent with 211 CMR 25.08(3).

(4) 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 211 CMR 25.08 or as a result of sharing as authorized in 211 CMR 25.08(3)(c).

(5) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this section shall be available and enforced in any proceeding in, and in any court of the Commonwealth.

~~(26)~~ The comparison of a ~~health organization~~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 ~~health organization~~Health Organization, and is not intended as a means to rank ~~health organization~~Health Organizations generally. Therefore, except as otherwise required under the provisions of 211 CMR 25.00, 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 ~~health organization~~Health Organization, or of any component derived in the calculation, by any ~~health organization~~Health Organization, ~~producer~~agent, ~~broker~~ or other person engaged in any manner in the insurance business would be misleading and is therefore considered to be an unfair method of competition and an unfair or deceptive act or practice under M.G.L. c. 176D, § 3; provided, however, that if any materially false statement with respect to the comparison regarding a ~~health organization~~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~~Health Organization's RBC Levels is published in any written publication and the ~~health organization~~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 ~~health organization~~Health Organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

~~(37)~~ The ~~RBC instructions~~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 organization~~Health Organizations and the need for possible corrective action with respect to ~~health organization~~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 which a ~~health organization~~Health Organization or any affiliate is authorized to write.

25.09: Supplemental Provisions; Exemption

- (1) The provisions of 211 CMR 25.00 are supplemental to any other provisions of the laws of Massachusetts, and shall not preclude or limit any other powers or duties of the Commissioner under such laws, including, but not limited to M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A.
- (2) The Commissioner may exempt from the application of 211 CMR 25.00, any Domestic Health Organization which;
 - (a) Writes direct business only in the Commonwealth ~~this state~~;
 - (b) Assumes no reinsurance in excess of 5% of direct premium written; and
 - (c) Writes direct annual premiums for comprehensive medical business of \$2,000,000 or less; and
 - (d) Is a limited health service organization that covers less than 10,000 lives.

25.10: Foreign Health Organizations

- (1) Any Foreign Health Organization shall, upon the written request of the Commissioner, submit to the Commissioner an RBC Report as of the end of the most recent calendar year not later than the later of:
 - (a) The date an RBC Report would be required to be filed by a Domestic Health Organization under 211 CMR 25.00; or
 - (b) 15 days after the request is received by the Foreign Health Organization.
- (2) Any 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.
- (3) In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to any Foreign Health Organization as determined under the RBC statute or regulation applicable in the state of domicile of the ~~health organization~~ Health Organization (or, if no RBC statute or regulation is in force in that state, under the provisions of 211 CMR 25.00), 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 regulation (or, if no RBC statute or regulation is in force in that state, under 211 CMR 25.03), 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~~ Health Organization to cease and desist from writing new insurance business in the Commonwealth ~~this state~~.
- (4) In the event of a Mandatory Control Level Event with respect to any 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 supreme judicial court permitted under M.G.L. c. 176A, §§ 23, 33; M.G.L. c. 176B, §§ 13, 17, 21; M.G.L. c. 176E, §§ 13, 16; M.G.L. c. 176F, § 13; and M.G.L. c. 176G, §§ 20 and 20A, 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.

25.11: Immunity

There shall be no liability on the part of, and no cause of action shall arise against, the Commissioner or the Division of Insurance or its employees or agents for any action taken by them in the performance of their powers and duties under 211 CMR 25.00.

25.12: Severability Clause

If any provision of 211 CMR 25.00, or the application thereof to any person or circumstance, is held invalid, such determination shall not affect the provisions or applications of 211 CMR 25.00 which can be given effect without the invalid provision or application, and to that end the provisions of 211 CMR 25.00 are severable.

25.13: Notices

All notices by the Commissioner to a ~~health organization~~Health Organization which may result in regulatory action hereunder 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~~Health Organization's receipt of such notice.

REGULATORY AUTHORITY

211 CMR 25.00: [M.G.L. c. 175, § 4](#); M.G.L. c. 175J; M.G.L. c. 176A, §§ 3, 18, 23, 24, 33; M.G.L. c. 176B, §§ 8, 9, 10, 13, 17, 21; M.G.L. c. 176E, §§ 8, 9, 10, 13, 16; M.G.L. c. 176F, §§ 8, 9, 10, 13; and M.G.L. c. 176G, §§ 10, 17, 20, 20A, 25, 29 and c. 176D, § 11.

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