

Government of Puerto Rico
OFFICE OF THE INSURANCE COMMISSIONER OF PUERTO RICO
Guaynabo, Puerto Rico

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RULE 92

STANDARDS FOR IMPLEMENTING THE PROVISIONS RELATED TO RISK-
BASED CAPITAL

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RULE 92

**STANDARDS FOR IMPLEMENTING THE PROVISIONS RELATED TO
RISK-BASED CAPITAL**

ARTICLE 1. LEGAL BASIS

The Office of the Commissioner of Insurance of Puerto Rico adopts Rule No. 92 of the Regulations of the Puerto Rico Insurance Code, as provided in Articles 2.030 and 45.100 of Public Law No. 77, enacted on June 19, 1957, as amended, known as the Insurance Code of Puerto Rico, and the provisions of Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act.

ARTICLE 2. PURPOSE

This Rule is adopted for the purpose of establishing the standards for implementing the provisions related to the requirements for risk-based capital (RBC), included in the Puerto Rico Insurance Code by the approval of Chapter 45. Specifically, this Rule established phased compliance with the requirement and the standards for exempting an insurer or health services organization from the provisions of said Chapter 45.

ARTICLE 3. SCOPE

This Rule shall apply to all local insurers and health services organizations organized under the laws of the Commonwealth of Puerto Rico. The Rule shall also apply to foreign insurers, as provided in Article 45.110 of the Puerto Rico Insurance Code.

ARTICLE 4. DEFINITION OF TERMS

The following terms shall have the meanings set forth herein, except when a different meaning may clearly be derived from the text of an Article of this Rule.

(1) "Adjusted Capital" - means the sum of:

(a) The capital and surplus of the insurer or health services organization to be determined using accounting methods applied to the annual financial statements prepared according to Articles 3.310 and 19.090 of the Code; and

(b) Any other item, if any, as provided in the *Instructions Regarding Risk-Based Capital*.

(2) "Commissioner" - means the Puerto Rico Commissioner of Insurance

(3) "Code" - means Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code.

- (4) "Type 1 Event"- refers to an action level event incurred by the insurer as described in Article 45.040 of the Code.
- (5) "Type 2 Event"- refers to a regulatory level action event as described in Article 45.050 of the Code.
- (6) "Type 3 Event"- refers to an authorized control level event as described in Article 45.060 of the Code.
- (7) "Type 4 Event"- refers to a mandatory control level event as described in el Article 45.070 of the Code.
- (8) "RBC Report" - means the report required in Article 45.030 of the Code.
- (9) "Revised RBC Report" or "Revised Report"- means an RBC Report modified by the Commissioner under Article 45.030(2) of the Code.
- (10) "RBC Instructions" - means the RBC Report adopted by the NAIC that includes the instructions, as amended by the NAIC following the procedures of that association.
- (11) "NAIC" - means National Association of Insurance Commissioners.
- (12) "Authorized Control Level" or "ACL" - means the amount calculated using the formula in the instructions for calculating risk-based capital.
- (13) "RBC Level" - means the RBC level of the insurer or health services organization that could require any of the measures provided in Articles 45.040, 45.050, 45.060 and 45.070 of the Code.
- (14) "Corrective Order" - means an order issued by the Commissioner to an insurer or health services organization, specifying the corrective actions that said public official may have determined to be necessary for compliance with the requirements of Chapter 45 of the Code and of this Rule.
- (15) "RBC Plan" - means an exhaustive financial plan containing all of the elements specified in Article 45.040(2) of the Code.
- (16) "Revised RBC Plan" - means an RBC Plan submitted by the insurer, as required by the Commissioner. The plan may also be called the "Revised Risk-Based Capital Plan" or "Revised Plan".
- (17) "RBC" - means "Risk-Based Capital".

ARTICLE 5. TRANSITORY PROVISION - PHASED COMPLIANCE WITH THE RBC REQUIREMENT

(A) Insurers and health services organizations with an RBC ratio lower than the Authorized Control Level (ACL).

1) Any insurer or health services organization who at the time of the adoption of this Rule does no reach an RBC ratio at least equal to that defined in

Article 45.020(10) (c) of the Code (the Authorized Control Level or "ACL"), will be granted a transition period of up to three (3) years in which to reach said level. This transition period will be counted from the date this Rule enters into effect. Compliance will be reached as follows:

At the end of the first year	at least 80% of the ACL
At the end of the second year	at least 90% of the ACL
At the end of the third year	at least 100% of the ACL

2) During each of these three (3) years, the insurer or health services organization will be obligated to submit the report required in Article 45.030 of the Code. Nevertheless, the insurer or health services organization will not be subject to a Type 3 or a Type 4 Event, provided that the ACL percentages established above are maintained.

3) In any year that the insurer or health services organization fails to reach the above levels, the insurer or health services organization will be subject to a Type 3 Event, provided that the compliance level is not less than 70% of the ACL, in which case the insurer or health services organization would be subject to a Type 4 Event.

4) Once at least the ACL is reached, the insurer or health services organization will have an additional term of two (2) years to reach the Company Action Level, that is to say, 200% of the ACL.

(B) Insurers or health services organizations having an RBC ratio higher than the ACL but lower than the Regulatory Action Level (between 100% and 150% of the ACL).

1) Any insurer or health services organization that at the time of the adoption of this Rule equals or surpasses 100% of the ACL, but does not reach an RBC ratio at least equal to the level defined in Article 45.020(10) (b) (Regulatory Action Level), that is to say 150% of the ACL, shall have a transition period of three (3) in which to reach said level. The compliance level shall be reached as follows:

At the end of the first year	at least 115% of the ACL
At the end of the second year	at least 130% of the ACL
At the end of the third year	at least 150% of the ACL

2) During each of these three (3) years the insurer or health services organization shall be obligated to submit the report required in Article 45.030 of the Code. Nevertheless, the insurer or health services organization shall not be subject to a Type 2 Event, as provided by Article 45.050 of the Code, provided that the ACL levels provided herein are maintained.

3) When the insurer reaches at least the Regulatory Action Level, that is to say 150% of the ACL, the insurer or health services organization shall have an additional term of two (2) years to reach the Company Action Level, or 200% of the ACL.

4) In any given year that the insurer or health services organization fails to comply with the phased compliance provided for herein the insurer or health

services organization will be subject to a Type 2 Event, except that if at the time of the failure the insurer or health services organization has at least 100% compliance with regard to the ACL, in which case the insurer or health services organization will be subject to a Type 3 or Type 4 Event, according to the degree of insufficiency with regard to the level of compliance.

(C) Insurer and health services organizations with an RBC level above the Regulatory Action Level, but lower than the Company Action Level (between 150% of the ACL and 200% of the ACL).

1) All insurers, except life insurers, and all health services organization that at the time this Rule is adopted have not reached at least the Company Action Level, that is to say 200% of the ACL, but equal or surpass the Regulatory Action Level, shall have at least a five (5) year transition period in which to reach the level.

2) Any life insurer who at the time this Rule is adopted does not comply at least with the Company Action Level, that is to say, 250% of the ACL, shall have a transition period of five (5) years in which to reach the level. The compliance level shall be reached as follows:

At the end of the first year	at least 165% of the ACL
At the end of the second year	at least 180% of the ACL
At the end of the third year	at least 200% of the ACL
At the end of the fourth year	at least 225% of the ACL
At the end of the fifth year	at least 250% of the ACL

3) During each of these five (5) years the insurer or health services organization shall be obligated to submit the report required in Article 45.030 of the Code. However, the insurer or health services organization will not be subject to a Type 1 Event, as provided in Article 45.040 of the Code.

4) In any year in which the life insurer fails to comply with the phased compliance, as established herein, the insurer will be subject to a Type 1 Event, except that if at the time of the failure the life insurer is at less than 150% compliance with the ACL, in which case the insurer will be subject to a Type 2, Type 3, or Type 4 Event, according to the degree of the insufficiency of the compliance.

(D) Any insurer or health services organization that at the time this Rule is approved has RBC greater or equal to the Company Action Level, that is to say, 200% of the ACL, and subsequently reduces the RBC to levels that require Type 1, 2, 3 or 4 actions, will be subject to compliance with the provisions that are applicable to the corresponding action level.

ARTICLE 6. TRANSITORY PROVISION - PHASED COMPLIANCE WITH THE ALTERNATE RBC REQUIREMENT

Regardless of the provisions of Article 5 of this Rule, insurers or health services organizations may follow the provisions of this Article as an alternate way for phased compliance with the provisions of Chapter 45, as follows:

1) Insurers and health services organizations that as of December 31, 2009 reported a Net Annual Premium volume of no more than \$500 million may increase their RBC Level based on a uniform annual growth rate that would allow for surpassing the Regulatory Action Level (150% of the ACL) in a term of five (5) years, based on the 2009 Annual Report results. These insurers and health services organizations shall comply with all of the provisions of Chapter 45 of the Code from the date of the Annual Report until December 31, 2015.

2) Los Insurers and health services organizations with an Annual Net Premium volume of over \$500 million may increase their RBC ratio based on an annual growth rate that would allow for reaching at least the Company Action Level (200% of the ACL) within a term of five (5) years, based on the results of the Annual Report for 2009. Such insurers and health services organizations shall comply with all of the provisions of Chapter 45 of the Code, from the December 31, 2015 Annual Report.

ARTICLE 7. RESTRICTIONS ON THE PAYMENT OF DIVIDENDS

Any insurer or health services organization that follows the provisions of this Rule, with a view to benefitting from the phased compliance with the requirements of Chapter 45 of the Code, may not distribute dividends during the term provided for in this Rule for said phased compliance.

ARTICLE 8. EXEMPT ENTITIES

Further to written request by the insurer or health services organization, the Commissioner may grant a partial or total exemption with regard to the provisions of Chapter 45, provided that in a given calendar year the insurer or health services organization complies with the following criteria:

- 1) Underwriting direct premiums only in Puerto Rico.
- 2) Underwriting direct annual premiums less than \$2,000,000.
- 3) Not assuming reinsurance of more than five percent (5%) of the underwritten premiums.
- 4) Disability insurers that underwrite healthcare insurance and health services organizations, covering fewer than 2,000 lives.

The request for exemption shall include evidence that these criteria have been complied with and shall be submitted no later than March 20 of the year following the year for which exemption is requested and the exemption shall be in effect for one (1) year.

The Commissioner may deny a request for exemption if it is found that compliance with the provisions of the Chapter 45 of the Code is necessary for the proper performance of the functions and responsibilities of the requesting party.

ARTICLE 9. AUTHORITY OF THE COMMISSIONER OF INSURANCE

No provision of this Rule will have the effect of limiting or diminishing the authority of the Commissioner to intervene, examine, rehabilitate, liquidate or in any other manner monitor or supervise an insurer, health services organization or any other regulated party, as such authority was exercised before the inclusion of Chapter 45 in the Code.

ARTICLE 10. AUTHORITY TO ISSUE RULING LETTERS

The Commissioner may issue ruling letters to promulgate forms, reports, and other provisions that may be necessary for implementing this Rule, as well as to clarify the regulatory provisions set forth herein.

ARTICLE 11. PART OF RULE FOUND UNCONSTITUTIONAL OR ILLEGAL

If any part of this Rule is found to unconstitutional or illegal by a Court of Competent jurisdiction, the validity and constitutionality of the remaining provisions shall not be affected.

ARTICLE 12. EFFECT

The provisions of this Rule shall enter into effect thirty (30) days after filing at the Puerto Rico Department of State; according to the provisions of Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act.

SIGNED

RAMÓN L. CRUZ COLÓN
COMMISSIONER OF INSURANCE

Date Approved: