F I S C A L I M P A C T R E P O R T

SPONSOR Leavell **ORIGINAL DATE** 01/22/14 **LAST UPDATED** **HB**

SHORT TITLE Risk-Based Capital Act Insurer Provisions **SB** 7

ANALYST Clark

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates and Relates to SB 56

SOURCES OF INFORMATION
LFC Files

Responses Received From
Office of Superintendent of Insurance (OSI)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

The Office of Superintendent of Insurance (OSI) reports Senate Bill 7 amends the Insurance Code to incorporate updates to model laws promulgated by the National Association of Insurance Commissioners (NAIC) pertaining to risk-based capital requirements -- the minimum amounts of capital insurers must possess to avoid triggering regulatory intervention.

The Attorney General's Office (AGO) provides the following summary of amendments made by SB 7 to existing statute.

1. SB 7 amends the Risk-Based Capital Act, NMSA 1978, §§ 59A-5A-1 through 59A-5A-13 (1995) (the "Act") to bring health organizations and fraternal benefit societies within its purview and make these entities subject to its requirements. It adds definitions for "domestic insurer or health organization"; "foreign insurer or health organization"; "fraternal benefit society", as that term is defined in NMSA 1978, § 59A-44-1 through 59A-44-46, relating to the organization, governance, rights and responsibilities of fraternal benefit societies; and "health organization."

2. SB 7 amends Section 59A-5A-3 of the Act, relating to risk-based capital reports, to require health organizations and fraternal benefit societies annually, like property or casualty insurers and life or health insurers currently, to prepare and submit risk-based capital reports to the state superintendent of insurance, with the national association of insurance commissioners and with the insurance commissioner of each state in which they are authorized to do business, if requested to do so. The risk-based capital of health organizations and fraternal organizations shall be calculated in accordance with the appropriate formula in the risk-based capital instructions currently required of property or casualty insurers and life or health insurers.

3. SB 7 amends Section 59-5A-4 of the Act, relating to company action level events, to include health organizations and broaden the range of a "company action level event" from less than 250 percent of certain insurer's authorized control level risk-based capital to less than 300 percent of certain insurer's authorized control level risk-based capital and triggers the trend test determined in accordance with the trend test calculation for inclusion in its applicable risk-based capital instructions.

4. Health organizations are also included in amendments to Sections 59-5A-5, relating to regulatory action level events; Section 59-5A-6, relating to authorized control level events; Section 59-5A-7, relating to mandatory control level events; Section 59-A-8, relating to challenge hearings; Section 59-5A-11, relating to foreign insurers; and Section 59-5A-10, relating to notices by the superintendent.

5. SB 7 amends Section 59-5A-9 of the Act, relating to the confidentiality of all information and reports submitted by insurers to the superintendent of insurance, to include health organizations. It also includes new provisions dictating how and with whom the superintendent may share documents, materials, or other information, including confidential and privileged documents, materials or information, and how and from whom the superintendent may receive documents, materials, or other information, including confidential and privileged documents, materials, or information.

FISCAL IMPLICATIONS

There are no significant fiscal implications.

SIGNIFICANT ISSUES

OSI reports NAIC requires all states to amend their Insurance Codes to incorporate these updates, and states that fail to do so in 2014 face the risk of losing their accreditation with NAIC. If this were to happen, the state's domestic insurers that are licensed to do business in other states (such as New Mexico Mutual and Mountain States Mutual Insurance Companies) would have their books and operations periodically examined, at the companies' expense, by the insurance regulators in each state where they are licensed, rather than continue to be examined solely by the New Mexico Insurance Division.

OSI analysis also points out SB 7 clarifies that health insurers are subject to risk-based capital requirements and that property/casualty insurers and health insurers are also subject to "trend tests" that increase capital requirements for insurers that are operating unprofitably.

SB 7 is comprised of Sections 2 through 12 of SB 56, containing the NAIC model law updates related to risk-based capital requirements.

TECHNICAL ISSUES

AGO reports it is not clear whether in all instances the term “insurer” when used alone, as opposed to “domestic insurer” as defined in Section 1 of SB 7, includes fraternal benefit societies. Some clauses refer to an or the “insurer or health organization” while other clauses refer to “every domestic insurer and health organization.” See, e.g., page 5, lines 19-20; page 8, lines 14-15; page 12, lines 6-7, 12-13, 18-19. SB 7, at page 20, for example makes reference to “insurer or health organization”, see lines 6, 11-4, and to “a life or health insurer, fraternal benefit society or health organization”, see lines 17-20.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

OSI reports if neither SB 56 nor SB 7 is enacted during 2014, New Mexico will be at immediate risk of losing its accreditation with NAIC. If SB 7 is enacted but SB 56 is not, the remaining components of SB 56 would need to be introduced during the 2015 legislative session in order to avoid future accreditation problems with NAIC.

JC/svb:jl