

INSURANCE CODE

TITLE 4. REGULATION OF SOLVENCY

SUBTITLE B. RESERVES AND INVESTMENTS

CHAPTER 427. SUBORDINATED INDEBTEDNESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 427.001. APPLICABILITY OF CHAPTER. This chapter applies to an insurer or health maintenance organization as defined by Section 401.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.002. RULES. The commissioner shall adopt rules necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. LOAN, ADVANCE, AND OTHER INDEBTEDNESS

Sec. 427.051. LOAN OR ADVANCE PERMITTED. An insurer or health maintenance organization may obtain a loan or an advance, repayable with interest, of:

- (1) cash;
- (2) cash equivalents; or
- (3) other assets that have a readily determinable

value and are satisfactory to the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.052. SUBORDINATED LIABILITY PERMITTED. (a) An insurer or health maintenance organization may assume a subordinated liability for repayment of a loan or advance described by Section 427.051 and payment of interest on the loan or advance if the insurer or health maintenance organization and the creditor execute a written agreement stating that the creditor may be paid only out of that portion of the insurer's or health maintenance

organization's surplus that exceeds the greater of:

- (1) a minimum surplus amount set in the agreement; or
- (2) a minimum surplus amount of \$500,000.

(b) The department or commissioner may not require the agreement to provide a minimum surplus amount that is different from the amount described by this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.053. APPROVAL OF AGREEMENT REQUIRED. (a) An insurer or health maintenance organization must submit the written agreement under Section 427.052 to the commissioner for approval of the form and content of the agreement.

(b) The commissioner must approve or disapprove the agreement not later than the 30th day after the date the insurer or health maintenance organization submits the agreement. If the commissioner fails to act as required by this subsection, the agreement is considered approved.

(c) An insurer or health maintenance organization may assume a subordinated liability only after the commissioner has approved the agreement under this chapter or Subchapter C, Chapter 823.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.054. LIABILITY. (a) A loan or advance made under this chapter, including any interest accruing on the loan or advance, is a legal liability of the insurer or health maintenance organization, and a liability with respect to the insurer's or health maintenance organization's financial statement, only to the extent provided by the terms of the loan or advance agreement.

(b) Notwithstanding Subsection (a), if the loan or advance agreement provides for a sinking fund out of which the loan or advance is to be repaid, the loan or advance is a legal liability of the insurer or health maintenance organization, and a liability with respect to the insurer's or health maintenance organization's financial statement, only to the extent of the amounts accumulated

and held in the sinking fund. By agreement of the parties, any portion of the amounts accumulated in the sinking fund may be returned to the surplus of the insurer or health maintenance organization at any time and any amount returned may not be a legal liability of the insurer or health maintenance organization or a liability with respect to the insurer's or health maintenance organization's financial statement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.055. PAYMENT OF PRINCIPAL OR INTEREST ON CERTAIN LIABILITIES. (a) An insurer or health maintenance organization may not pay principal or interest on a subordinated liability assumed under Section 427.052 or Subchapter C, Chapter 823, on or after September 1, 1995, unless:

(1) the payment complies with a schedule of payments contained in the agreement approved by the commissioner in accordance with Section 427.052 or Subchapter C, Chapter 823; or

(2) if the payment does not comply with the schedule of payments contained in the agreement or the agreement does not contain a payment schedule, the insurer or health maintenance organization provides written notice to the commissioner not later than the 15th day before the scheduled payment date.

(b) A loan, debenture, revenue bond, or advance agreement issued to an insurer or health maintenance organization before September 1, 1995, and any subsequent payment of principal or interest on the indebtedness are governed by the law in effect on the date of issuance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.