

**THE INSURANCE CODE OF 1956 (EXCERPT)**  
**Act 218 of 1956**

**500.436a Continuing operation of insurer transacting insurance in state or nonprofit dental corporation operating under MCL 550.351 to 550.373; standards; subscription to private rating organization not required; determination of financial condition; issuance of order by director; hearing requested by insurer.**

Sec. 436a.

(1) In addition to any other relevant standards, the director may consider 1 or more of the following to determine whether the continued operation of an insurer transacting an insurance business in this state or a nonprofit dental care corporation operating under 1963 PA 125, MCL 550.351 to 550.373, is safe, reliable, and entitled to public confidence or is considered hazardous to policyholders, creditors, or the public:

- (a) Affirmative or adverse findings reported in financial condition and market conduct examination reports.
- (b) The National Association of Insurance Commissioners' insurance regulatory information system and its related reports.
- (c) Whether the ratios of commission expense, general insurance expense, policy benefits, and reserve increases as to annual premium and net investment income could likely lead to an impairment of capital and surplus.
- (d) Whether the insurer's asset portfolio, when viewed in light of current economic conditions, is of sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature.
- (e) Whether the ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow, the classes of business written, and the financial condition of the assuming reinsurer.
- (f) The insurer's operating loss in the last 12-month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in assets, and cash dividends paid to shareholders, in relation to the insurer's remaining capital and surplus in excess of the amount required to comply with section 403.
- (g) Whether any affiliate, subsidiary, or reinsurer is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligation.
- (h) Contingent liabilities, pledges, or guaranties that either individually or collectively involve a total amount that in the director's opinion may affect the insurer's solvency.
- (i) Whether any controlling person of an insurer is delinquent in transmitting or the payment of net premiums to the insurer or has caused the insurer to divert assets, make investments, or assume liabilities with respect to the affiliates of the insurer that have had a material adverse effect on the insurer's financial solidity.
- (j) The age and collectibility of receivables.
- (k) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, possesses and demonstrates the competence, fitness, and character considered necessary to serve the insurer in such a position.
- (l) Whether management of an insurer has failed to respond to inquiries relative to the insurer's condition or has furnished false and misleading information concerning an inquiry.
- (m) Whether management of an insurer has filed a materially false or misleading financial statement, has released a materially false or misleading financial statement to lending institutions or to the general public, or has made a materially false or misleading entry or has omitted an entry of material amount in the insurer's books.
- (n) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to timely meet its obligations.
- (o) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems.
- (p) Subject to subsection (3), ratings and rating reports concerning the insurer from rating organizations that meet all of the following requirements:
  - (i) Are registered under the investment advisors act of 1940, 15 USC 80b-1 to 80b-21.
  - (ii) Have adequate training, supervision, and continuing education for its analysts.
  - (iii) Make a determination as to whether the company being rated has the ability to service and repay its debts.
  - (iv) Assign a credit committee to each rated company, members of which are changed annually.
  - (v) Give rated companies a right of appeal as to the rating received prior to publication.
  - (vi) Maintain continuous monitoring as to the rating in the event of significant developments.
  - (vii) Maintain an employee code of ethics and an internal procedure to prevent misuse of information, such as a prohibition against conflict of interest.
- (q) Whether the insurer demonstrates material adverse deviations from industry averages with respect to significant indicators of financial solidity such as leverage, liquidity, profitability, reinsurance, investment risk, and reserve adequacy.
- (r) The extent to which the insurer meets standards of financial solidity such as risk based capital requirements as

developed by organizations with recognized expertise in evaluating the financial condition of insurers such as the National Association of Insurance Commissioners.

(s) The size of the insurer as measured by its assets, capital and surplus reserves, premium writings, insurance in force, and other appropriate criteria.

(t) The extent to which the insurer's business is diversified among the several lines of insurance, the number and size of risks insured in each line of business, and the extent of the geographical dispersion of the insurer's insured risks.

(u) The nature and extent of the insurer's reinsurance program.

(v) The quality, diversification, and liquidity of the insurer's investment portfolio.

(w) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders and the surplus as regards policyholders maintained by other comparable insurers.

(x) The adequacy of the insurer's reserves.

(y) The quality and liquidity of investments in affiliates.

(z) Compliance by the insurer with section 901.

(2) For purposes of the standards set forth in subsection (1), the director may consider a nonprofit dental care corporation in the same manner as an insurer.

(3) The director shall not require an insurer to subscribe to a private rating organization.

(4) The director may do any of the following in making a determination of an insurer's financial condition under this section:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer that has totally ceased writing new business or that is insolvent, impaired, or otherwise subject to a delinquency proceeding.

(b) Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates.

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the account's age or the debtor's financial condition.

(d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken.

(5) If the director determines that an insurer authorized to transact business in this state has ceased to be safe, reliable, and entitled to public confidence or that the insurer's continued operation may be hazardous to policyholders, creditors, or the public, the director, in addition to his or her authority under section 437 and chapter 81, may issue an order requiring the insurer to do any of the following:

(a) Reduce the total amount of present and potential liability for policy benefits by sound reinsurance transactions approved by the director.

(b) Reduce, suspend, or limit the volume of business being accepted or renewed.

(c) Reduce general insurance and commission expenses by specified methods.

(d) Increase the insurer's capital and surplus.

(e) Suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders.

(f) File reports in a form acceptable to the director concerning the market value of an insurer's assets.

(g) Limit or withdraw from certain investments or discontinue certain investment practices.

(h) Document the adequacy of premium rates in relation to the risks insured.

(i) File, in addition to regular annual statements, interim financial reports on the form or in the format promulgated by the director.

(j) Correct corporate governance practice deficiencies and adopt and use governance practices that are acceptable to the director.

(6) An insurer subject to an order under subsection (5) may request a hearing as in a contested case pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to review the order. The notice of hearing must be served on the insurer and state the time and place of hearing and the conduct, conditions, or grounds on which the director based the order. Unless mutually agreed between the director and the insurer, the hearing must occur not less than 10 days or more than 30 days after notice is served. The director shall hold all hearings under this subsection privately unless the insurer requests a public hearing, in which case the hearing must be public.

**History:** Add. 1992, Act 182, Imd. Eff. Oct. 1, 1992 ;-- Am. 2016, Act 276, Imd. Eff. July 1, 2016

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