

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1003 Session of  
1999

INTRODUCED BY HOLL, MOWERY, COSTA, WHITE, TARTAGLIONE, WENGER,  
LEMMOND, HART AND THOMPSON, JUNE 14, 1999

REFERRED TO BANKING AND INSURANCE, JUNE 14, 1999

AN ACT

1 Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as  
2 amended, "An act relating to insurance; establishing an  
3 insurance department; and amending, revising, and  
4 consolidating the law relating to the licensing,  
5 qualification, regulation, examination, suspension, and  
6 dissolution of insurance companies, Lloyds associations,  
7 reciprocal and inter-insurance exchanges, and certain  
8 societies and orders, the examination and regulation of fire  
9 insurance rating bureaus, and the licensing and regulation of  
10 insurance agents and brokers; the service of legal process  
11 upon foreign insurance companies, associations or exchanges;  
12 providing penalties, and repealing existing laws," providing  
13 capital requirements for health organizations.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. The act of May 17, 1921 (P.L.789, No.285), known  
17 as The Insurance Department Act of 1921, is amended by adding an  
18 article to read:

19 ARTICLE V-B

20 RISK-BASED CAPITAL REQUIREMENTS - HEALTH ORGANIZATIONS

21 Section 501-B. Definitions.--The following words and phrases  
22 when used in this article shall have, unless the context clearly  
23 indicates otherwise, the meanings given to them in this section:

"Adjusted RBC report" means an RBC report that has been recalculated by the Insurance Department in accordance with section 502-B(c).

"Authorized control event" means any of the following events:

(1) Filing of an RBC report that indicates that the 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.

(2) Notification by the Insurance Department to a health organization of an adjusted RBC report that indicates an event under paragraph (1).

(3) Failure to respond, in a manner satisfactory to the Insurance Commissioner, to a corrective order, provided the health organization has not challenged the corrective order under section 509-B.

(4) If the health organization has challenged a corrective order under section 509-B and the Insurance Commissioner has, after a hearing, rejected the challenge or modified the corrective order, failure to respond, in a manner satisfactory to the Insurance Commissioner, to the corrective order subsequent to rejection or modification by the Insurance Commissioner.

"Commissioner" means the Insurance Commissioner of the Commonwealth.

"Company action level event" means any of the following events:

(1) Filing of an RBC report that 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       (2) Notification by the Insurance Department to a health  
2       organization of an adjusted RBC report that indicates an event  
3       under paragraph (1).

4       "Corrective order" means an order issued by the Insurance  
5       Commissioner specifying corrective actions that the Insurance  
6       Commissioner has determined are required under section 506-B(b).

7       "Department" means the Insurance Department of the  
8       Commonwealth.

9       "Domestic health organization" means a health organization  
10       incorporated or organized under the laws of this Commonwealth.

11       "Foreign health organization" means a health organization  
12       that is licensed by the Insurance Department to do business in  
13       this Commonwealth and incorporated or organized under the laws  
14       of a jurisdiction other than this Commonwealth.

15       "Health organization" means a health maintenance organization  
16       as defined in the act of December 29, 1972 (P.L.1701, No.364),  
17       known as the "Health Maintenance Organization Act," a hospital  
18       plan corporation as defined in 40 Pa.C.S. Ch. 61 (relating to  
19       hospital plan corporations), a professional health services plan  
20       corporation as defined in 40 Pa.C.S. Ch. 63 (relating to  
21       professional health services plan corporations), a preferred  
22       provider organization as defined in the act of May 17, 1921  
23       (P.L.682, No.284), known as "The Insurance Company Law of 1921,"  
24       except that the term does not include a life or health insurer  
25       or a property or casualty insurer subject to Article V-A.

26       "Mandatory control level event" means any of the following  
27       events:

28       (1) Filing of an RBC report that indicates that the health  
29       organization's total adjusted capital is less than its mandatory  
30       control level RBC.

1     (2) Notification by the Insurance Department to a health  
2     organization of an adjusted RBC report that indicates an event  
3     under paragraph (1).

4     "NAIC" means the National Association of Insurance  
5     Commissioners, or successor organization.

6     "RBC" means risk-based capital.

7     "RBC instructions" means the RBC report including RBC  
8     instructions adopted by the NAIC for health organizations as  
9     required by the Insurance Commissioner under section 11 of the  
10    act of December 29, 1972 (P.L.1701, No.364), known as the  
11    "Health Maintenance Organization Act," 40 Pa.C.S. §§ 6125  
12    (relating to reports and examinations) and 6331 (relating to  
13    reports and examinations) and the act of May 17, 1921 (P.L.682,  
14    No.284), known as "The Insurance Company Law of 1921."

15    "RBC level" means a health organization's company action  
16    level RBC, regulatory action level RBC, authorized control level  
17    RBC or mandatory control level RBC where:

18    (1) "Company action level RBC" means the product of 2.0 and  
19    the authorized control level RBC.

20    (2) "Regulatory action level RBC" means the product of 1.5  
21    and the authorized control level RBC.

22    (3) "Authorized control level RBC" means the amount of a  
23    health organization's authorized control level RBC calculated  
24    under the RBC formula in accordance with the RBC instructions.

25    (4) "Mandatory control level RBC" means the product of .70  
26    and the authorized control level RBC.

27    "RBC plan" means a comprehensive financial plan filed in  
28    accordance with section 505-B(a).

29    "RBC report" means a report of RBC levels.

30    "Regulatory action level event" means any of the following

1 events:

2 (1) Filing of an RBC report that indicates that the health  
3 organization's total adjusted capital is greater than or equal  
4 to its authorized control level RBC but less than its regulatory  
5 action level RBC.

6 (2) Notification by the Insurance Department to a health  
7 organization of an adjusted RBC report that indicates an event  
8 under paragraph (1).

9 (3) Failure to file an RBC report by the required date  
10 unless the Insurance Department determines that the health  
11 organization has provided an adequate explanation for the  
12 failure to file and the health organization has filed the report  
13 within ten days of the filing date under this article.

14 (4) Failure to submit an RBC plan or revised RBC plan within  
15 the time set forth under this article.

16 (5) Notification by the Insurance Department to the health  
17 organization that:

18 (i) the RBC plan or revised RBC plan is unsatisfactory under  
19 section 506-B; and

20 (ii) the notification constitutes a regulatory action level  
21 event.

22 (6) Notification by the Insurance Department that the health  
23 organization has failed to comply with its RBC plan or revised  
24 RBC plan if the failure has a substantial adverse effect on the  
25 ability of the health organization to eliminate the company  
26 action level event in accordance with its RBC plan or revised  
27 RBC plan.

28 "Revised RBC plan" means an RBC plan that has been rejected  
29 by the Insurance Department and revised by the health  
30 organization.

1 "Total adjusted capital" means the sum of the total assets  
2 less total liabilities as calculated and reported in accordance  
3 with required NAIC annual statement instructions and accounting  
4 practices and procedures manual for annual financial statements  
5 and any other items required by the RBC instructions.

6 Section 502-B. RBC Reports Required; Domestic Health  
7 Organizations.--(a) Every domestic health organization shall,  
8 on or before March 1 of every year, submit a report of its RBC  
9 levels as of the end of the preceding calendar year to the  
10 department and the NAIC as prescribed by the RBC instructions.

11 (b) Every domestic health organization shall, upon the  
12 written request of the chief insurance regulatory official of  
13 any jurisdiction in which the health organization is authorized  
14 to do business, file its RBC report with that jurisdiction by  
15 the date required by the requesting chief insurance regulatory  
16 official or March 1 of the year following the calendar year for  
17 which the report is requested, whichever is later.

18 (c) If the department determines that an RBC report is  
19 inaccurate, the department shall correct the inaccuracy and  
20 notify the health organization of the amount of the  
21 recalculation and the reason for the recalculation. If, within  
22 thirty days of the notification under this subsection, the  
23 health organization fails to submit an adjusted RBC report to  
24 the department and the NAIC that corrects the inaccuracy in  
25 accordance with the department's notification, the commissioner  
26 may order an investigatory hearing. The department shall provide  
27 notice to the health organization at least twenty days prior to  
28 the hearing. Following the hearing, the commissioner shall issue  
29 a final order accepting the original RBC report or an adjusted  
30 RBC report.

Section 503-B. RBC Reports Required; Foreign Health

Organizations.--(a) A foreign health organization shall, upon the written request of the department, submit an RBC report for the immediate preceding calendar year within fifteen days of the receipt of the request or by the date an RBC report would be required to be filed by a domestic health organization under this article, whichever is later.

(b) A foreign health organization shall, upon the written request of the department, submit to the department a copy of an RBC plan that is filed with the chief insurance regulatory official of any other jurisdiction within fifteen days of receipt of the request.

(c) If a foreign health organization experiences a company action level event, regulatory action level event or authorized control level event under the RBC statute in effect in the jurisdiction of domicile, or, if no RBC statute is in effect in the jurisdiction of domicile, under this article, and the chief insurance regulatory official of the jurisdiction of domicile fails to require an RBC plan under the RBC statute in effect or this act, the department may require the foreign health organization to file an RBC plan with the department. The commissioner may order a foreign health organization to cease and desist from writing new insurance business in the Commonwealth if the foreign health organization fails to file the RBC plan with the department under this subsection. The commissioner shall provide written notice of the order, including the specific reasons for the order and the date and time of a hearing on the order, to the foreign health organization. The hearing shall be held at least ten days following the issuance of the notice.

1     (d) If a foreign health organization experiences a mandatory  
2 control level event and no receiver has been appointed under the  
3 rehabilitation and liquidation statute of the jurisdiction of  
4 domicile of the foreign health organization, the commissioner  
5 may apply to the Commonwealth Court for a receiver under  
6 sections 553 and 554. The occurrence of the mandatory control  
7 level event shall be adequate grounds for the application under  
8 sections 553(a) and 554(a).

9     Section 504-B. Calculation of RBC.--(a) A health  
10 organization's RBC shall be determined in accordance with the  
11 formula set forth in the RBC instructions.

12     (b) The formula shall use and may adjust for the covariance  
13 between the following risks determined in each case by applying  
14 the factors in the RBC instructions:

15         (1) Asset risk.

16         (2) Credit risk.

17         (3) Underwriting risk.

18         (4) All business and other risks set forth in the RBC  
19 instructions.

20     Section 505-B. Company Action Level Event.--(a) In the  
21 event of a company action level event, a health organization  
22 shall submit an RBC plan to the department to include, at a  
23 minimum, all of the following:

24         (1) Identification of the conditions that contributed to the  
25 company action level event.

26         (2) Proposed corrective actions to eliminate the company  
27 action level event.

28         (3) Projections of the health organization's financial  
29 results for the current year and at least the four succeeding  
30 years, with and without the proposed corrective actions, to



include projections of statutory balance sheets, operating income, net income, capital, surplus and RBC levels. Projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component.

(4) The key assumptions impacting the projections under paragraph (3) and the sensitivity of the projections to the assumptions.

(5) The quality of, and problems associated with, the health organization's business, including assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance.

(b) An RBC plan under subsection (a) shall be submitted within forty-five days after the occurrence of the company action level event.

(c) Within sixty days of the submission of an RBC plan under subsection (a), the department shall notify the health organization whether the RBC plan should be implemented or that the plan is unsatisfactory. The notification shall set forth the specific reasons for a determination that the plan is unsatisfactory and may include revisions that will make the RBC plan satisfactory to the department.

(d) Upon notification under subsection (c) that the RBC plan is unsatisfactory, the health organization shall prepare a revised RBC plan which may include revisions proposed by the department. Except as provided in subsection (e), the revised RBC plan shall be submitted within forty-five days after notification that the plan is unsatisfactory.

(e) The department may specify that the notification under subsection (c) constitutes a regulatory action level event. In

1 the alternative, the department may take any other action  
2 necessary to place the health organization under regulatory  
3 control pursuant to Article V.

4 (f) Every domestic health organization that files an RBC  
5 plan or revised RBC plan under this section shall file a copy  
6 with the chief insurance regulatory official of any jurisdiction  
7 in which the health organization is authorized to do business  
8 if:

9 (1) The jurisdiction has an RBC provision substantially  
10 similar to section 511-B(a) and (b).

11 (2) The chief insurance regulatory official of the  
12 jurisdiction has provided a written request to the health  
13 organization for a copy of the RBC plan or revised RBC plan.  
14 Upon receipt of the written request, the health organization  
15 shall file a copy of the RBC plan or revised RBC plan within  
16 fifteen days of the receipt of notice or by the date the RBC  
17 plan or revised RBC plan is filed under this section, whichever  
18 is later.

19 Section 506-B. Regulatory Action Level Event.--(a) In the  
20 event of a regulatory action level event, the department:

21 (1) may require the health organization to submit an RBC  
22 plan or, if applicable, a revised RBC plan; and

23 (2) shall perform an examination under Article IX or an  
24 analysis as necessary of assets, liabilities and operations of  
25 the health organization, including, if applicable, a review of  
26 the RBC plan or revised RBC plan, and issue an order specifying  
27 any corrective actions deemed appropriate.

28 (b) In order to determine appropriate corrective actions  
29 under subsection (a)(2), the department may consider the results  
30 of any sensitivity test undertaken pursuant to the RBC

1 instructions.

2 (c) The RBC plan or revised RBC plan required under  
3 subsection (a) shall be submitted within forty-five days after  
4 the occurrence of the regulatory action level event.

5 (d) The department may retain actuaries, investment experts,  
6 attorneys, appraisers, certified public accountants and other  
7 individuals as the department deems necessary to:

8 (1) review the health organization's RBC plan or revised RBC  
9 plan;

10 (2) examine or analyze the assets, liabilities and  
11 operations of the health organization, including contractual  
12 relationships; and

13 (3) formulate corrective actions.

14 (e) Fees, costs and expenses related to individuals retained  
15 under subsection (d) shall be charged to and paid by the health  
16 organization or other party as directed by the commissioner.

17 Section 507-B. Authorized Control Level Event.--In the event  
18 of an authorized control level event, the department shall:

19 (1) Take all action required under section 506-B for a  
20 regulatory action level event.

21 (2) If the commissioner deems it to be in the best interest  
22 of the policyholders and creditors of the health organization  
23 and the public, take action necessary to place the health  
24 organization under regulatory control under Article V. The  
25 authorized control level event shall be sufficient grounds to  
26 place the health organization under regulatory control under  
27 Article V.

28 Section 508-B. Mandatory Control Level Event.--(a) In the  
29 event of a mandatory control level event, the department shall  
30 take action necessary to place the health organization under

1 regulatory control under sections 512 through 563. If the health  
2 organization is writing no business, the department may allow  
3 the health organization to run off its existing business under  
4 the supervision of the commissioner.

5 (b) The mandatory control level event shall be sufficient  
6 grounds for an order of rehabilitation under section 514.

7 (c) The commissioner may forego action to place the health  
8 organization under regulatory control under subsection (a) for  
9 up to ninety days after the mandatory control level event if the  
10 commissioner finds there is a reasonable expectation that the  
11 mandatory control level event may be eliminated within the  
12 ninety-day period.

13 Section 509-B Hearings.--(a) A health organization shall  
14 have the right to a confidential departmental hearing to  
15 challenge a determination or action regarding any of the  
16 following events:

17 (1) A final order accepting an adjusted RBC report under  
18 section 502-B(c).

19 (2) Notification of a corrective order.

20 (b) A health organization shall notify the department of its  
21 request for a hearing within five days after the receipt of an  
22 order or notification under subsection (a). Upon receipt of the  
23 request, the department shall set a date for the hearing, which  
24 shall be no sooner than ten days nor later than thirty days  
25 after the date of the health organization's request.

26 Section 510-B. Notices.--(a) Notices under this article  
27 which may result in regulatory action shall be effective on the  
28 date of transmission by certified mail or other form of delivery  
29 that requires signature upon receipt.

30 (b) Notices under this article transmitted other than as

1 provided in subsection (a) shall be effective upon the receipt  
2 of the notice.

3 Section 511-B. Confidentiality; Prohibition on  
4 Announcements, Prohibition on Use in Ratemaking.--(a) The  
5 following information filed with the department shall constitute  
6 information that may be damaging to a health organization if  
7 made available to its competitors and shall be confidential:

8 (1) RBC reports to the extent the information in the report  
9 is not required to be included in a publicly available annual  
10 statement schedule.

11 (2) RBC plans, including the results of reports of any  
12 examination or analysis of a health organization performed under  
13 this article.

14 (3) A corrective order issued pursuant to examination or  
15 analysis with respect to a domestic health organization or  
16 foreign health organization.

17 (b) Except for insurance or other regulatory officials of  
18 the Commonwealth or other jurisdictions, information under  
19 subsection (a) shall be confidential and may not be subject to  
20 subpoena by any Federal, State or other jurisdiction or made  
21 public by the department or any other person without the prior  
22 written consent of the health organization unless the  
23 commissioner makes the information public for purposes of  
24 Article V.

25 (c) the following shall apply to publication of RBC levels:

26 (1) Except as required by this article, the publication,  
27 dissemination, circulation or placement before the public, or  
28 directly or indirectly causing the publication, dissemination,  
29 circulation or placement before the public, of an assertion,  
30 representation or statement, with regard to the RBC levels or

component derived in the calculation of RBC levels of a health organization, including assertions, representations or statements intended or used to rank health organizations, by an insurer, agent, broker or other person in a newspaper, magazine or other publication, notice, pamphlet, letter or other printed matter or by broadcast or electronic transmission, is prohibited.

(2) Notwithstanding the provisions of paragraph (1), if a health organization is able to demonstrate to the commissioner with substantial proof that a materially false statement regarding the comparison of a health organization's total adjusted capital to its RBC levels or an inappropriate comparison of any other amount to the health organization's RBC levels has been published in writing, the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false or inappropriate statement.

(d) The RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the department to monitor the solvency of health organizations and to determine the need for corrective action and shall not be used for ratemaking nor used as evidence in any rate proceeding nor to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which a health organization or any affiliate is authorized to write.

Section 512-B. Exemptions.--The department may exempt a domestic health organization that has been transacting business for less than three years from this article upon making a specific finding that application of this article is not necessary for the department to carry out statutory

1 responsibilities.

2 Section 513-B. Supplemental Provisions; Rules.--(a) The  
3 provisions of this article are supplemental to any other  
4 provisions of the laws of this Commonwealth and shall not  
5 preclude or limit any other powers or duties of the commissioner  
6 under those laws, including, but not limited to, Article V and  
7 31 Pa. Code Ch. 160 (relating to standards to define insurers  
8 deemed to be in hazardous financial condition).

9 (b) The department may adopt regulations necessary for the  
10 implementation of this article.

11 Section 514-B. Additional Penalties.--A health organization  
12 that fails to file an RBC report or adjusted RBC report within  
13 the time required under this article shall, in addition to any  
14 other penalties provided by law, forfeit a sum not to exceed two  
15 hundred dollars (\$200) for each day during which the health  
16 organization fails to file.

17 Section 515-B. Phase-In Provisions.--(a) This article shall  
18 apply to RBC reports required for the year ending December 31,  
19 1999, and each year thereafter.

20 (b) Notwithstanding the provisions of sections 505-B, 506-B,  
21 507-B and 508-B, the following provisions shall apply to  
22 domestic health organizations with respect to RBC reports filed  
23 with the department for the year ending December 31, 1999:

24 (1) In the event of a company action level event, the  
25 commissioner shall take no regulatory action under this article.

26 (2) In the event of a regulatory action level event as  
27 defined in paragraphs (1) and (2) of the definition of  
28 regulatory action level event in section 501-B, the department  
29 and the health organization shall take the actions required  
30 under section 505-B.

1     (3) In the event of a regulatory action level event as  
2 defined in paragraphs (3), (4), (5) or (6) of the definition of  
3 "regulatory action level event" in section 501-B, the department  
4 shall take the actions required under section 506-B.

5     (4) In the event of a mandatory control level event, the  
6 department shall take the actions required under section 507-B.

7     Section 2. This act shall take effect immediately.