

**INSURANCE DEPARTMENT ACT OF 1921, THE - AMEND HEALTH
ORGANIZATIONS**

Act of Jun. 22, 2000, P.L. 457, No. 62

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No. 2000-62

SB 1003

AN ACT

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

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

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

ARTICLE V-B.

RISK-BASED CAPITAL REQUIREMENTS - HEALTH ORGANIZATIONS.

Section 501-B. Definitions.--The following words and phrases when used in this article shall have, unless the context clearly 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.

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

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

"Department" means the Insurance Department of the Commonwealth.

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

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

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

"Mandatory control 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 less than its mandatory 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).

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

"RBC" means risk-based capital.

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

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

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

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

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

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

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

"RBC report" means a report of RBC levels.

"Regulatory 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 authorized control level RBC but less than its regulatory action 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 file an RBC report by the required date unless the Insurance Department determines that the health organization has provided an adequate explanation for the failure to file and the health organization has filed the report within ten days of the filing date under this article.

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

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

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

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

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

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

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

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

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

(c) If the department determines that an RBC report is inaccurate, the department shall correct the inaccuracy and notify the health organization of the amount of the recalculation and the reason for the recalculation. If, within thirty days of the notification under this subsection, the health organization fails to submit an adjusted RBC report to the department and the NAIC that corrects the inaccuracy in accordance with the department's notification, the commissioner may order an investigatory hearing. The department shall provide notice to the health organization at least twenty days prior to the hearing. Following the hearing, the commissioner shall

issue a final order accepting the original RBC report or an adjusted 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.

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

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

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

- (1) Asset risk.
- (2) Credit risk.
- (3) Underwriting risk.
- (4) All business and other risks set forth in the RBC instructions.

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

- (1) Identification of the conditions that contributed to the company action level event.
- (2) Proposed corrective actions to eliminate the company action level event.
- (3) Projections of the health organization's financial results for the current year and at least the four succeeding 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 the alternative, the department may take any other action necessary to place the health organization under regulatory control pursuant to Article V.

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

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

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

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

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

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

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

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

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

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

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

(3) formulate corrective actions.

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

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

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

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

Section 508-B. Mandatory Control Level Event.--(a) In the event of a mandatory control level event, the department shall take action necessary to place the health organization under regulatory control under sections 512 through 563. If the health organization is writing no business, the department may allow the health organization to run off its existing business under the supervision of the commissioner.

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

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

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

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

(2) Notification of a corrective order.

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

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

(b) Notices under this article transmitted other than as provided in subsection (a) shall be effective upon the receipt of the notice.

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

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

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

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

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

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

(1) Except as required by this article, the publication, dissemination, circulation or placement before the public, or directly or indirectly causing the publication, dissemination, circulation or placement before the public, of an assertion, 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 responsibilities.

Section 513-B. Supplemental Provisions; Rules.--(a) The provisions of this article are supplemental to any other

provisions of the laws of this Commonwealth and shall not preclude or limit any other powers or duties of the commissioner under those laws, including, but not limited to, Article V and 31 Pa. Code Ch. 160 (relating to standards to define insurers deemed to be in hazardous financial condition).

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

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

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

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

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

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

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

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

Section 2. This act shall take effect immediately.

APPROVED--The 22nd day of June, A. D. 2000.

THOMAS J. RIDGE