

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001

A Bill

HOUSE BILL 2368

4
5 By: Representatives R. Smith, Biggs, Bledsoe, Files, Napper, Glover

For An Act To Be Entitled

9 AN ACT TO CREATE A SMALL EMPLOYER REINSURANCE
10 PROGRAM; AND FOR OTHER PURPOSES.

Subtitle

13 SMALL EMPLOYER REINSURANCE PROGRAM ACT
14 OF 2001.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. This act shall be known and cited as the "Small Employer
20 Reinsurance Program Act of 2001."

22 SECTION 2. (a) Every small employer group carrier, as defined by
23 Arkansas Code 23-86-202(3), offering small employer health insurance in this
24 state under Arkansas Code 23-86-301 through 23-86-314 shall be subject to the
25 provisions of this act.

26 (b) There is hereby created a nonprofit entity to be known as the
27 Arkansas Small Employer Health Reinsurance Program.

29 SECTION 3. (a) There is created the Arkansas Small Employer Health
30 Reinsurance Program Board.

31 (b) The program shall operate subject to the supervision and control
32 of the board.

33 (c) The board shall consist of eight (8) members appointed by the
34 Insurance Commissioner in addition to the commissioner or the commissioner's
35 designated representative, who shall serve as an ex officio member of the
36 board.

1 (d)(1) In selecting the members of the board, the commissioner shall
2 include representatives of small employers and small employer carriers and
3 other individuals determined to be qualified by the commissioner.

4 (2) At least five (5) members of the board shall be
5 representatives of carriers and shall be selected from individuals nominated
6 in this state pursuant to procedures and guidelines developed by the
7 commissioner.

8 (e)(1) The initial board members shall be appointed as follows:

9 (A) Two (2) of the members to serve a term of two (2)
10 years;

11 (B) Three (3) of the members to serve a term of four (4)
12 years; and

13 (C) Three (3) of the members to serve a term of six (6)
14 years.

15 (2) Subsequent board members shall serve for a term of three (3)
16 years.

17 (f)(1) A board member's term shall continue until his or her successor
18 is appointed.

19 (2) A vacancy in the board shall be filled by the commissioner.

20 (g) A board member may be removed by the commissioner for cause.

21
22 SECTION 4. (a)(1) Within one hundred and eighty (180) days after the
23 appointment of the initial board, the board shall submit to the commissioner
24 a plan of operation and any amendments necessary or suitable to assure the
25 fair, reasonable and equitable administration of the program.

26 (2) The commissioner may, after notice and hearing, approve the
27 plan of operation if the commissioner determines it to be suitable to assure
28 the fair, reasonable and equitable administration of the program, and to
29 provide for the sharing of program gains or losses on an equitable and
30 proportionate basis in accordance with the provisions of this section.

31 (3) The plan of operation shall become effective upon written
32 approval by the commissioner.

33 (4) The plan may address what size employers will constitute a
34 small employer.

35 (b)(1) If the board fails to submit a suitable plan of operation
36 within one hundred and eighty (180) days after its appointment, the

1 commissioner shall, after notice and hearing, adopt and promulgate a
2 temporary plan of operation.

3 (2) The commissioner shall amend or rescind any plan adopted
4 under this subsection at the time a plan of operation is submitted by the
5 board and approved by the commissioner.

6 (c) The plan of operation shall:

7 (1) Establish procedures for handling and accounting of program
8 assets and moneys and for an annual fiscal reporting to the commissioner;

9 (2) Establish procedures for selecting an administering carrier,
10 giving preference to those carriers which are not competitors in the small
11 employer health marketplace in this state, and setting forth the powers and
12 duties of the administering carrier;

13 (3) Establish procedures for reinsuring risks in accordance with
14 the provisions of this act;

15 (4) Establish procedures for collecting assessments from
16 reinsuring carriers to fund claims and administrative expenses incurred or
17 estimated to be incurred by the program;

18 (5) Establish a methodology for applying the dollar thresholds
19 contained in this act in the case of carriers that pay or reimburse health
20 care providers through capitation or salary; and

21 (6) Provide for any additional matters necessary for the
22 implementation and administration of the program.

23
24 SECTION 5. (a)(1) The program shall have the general powers and
25 authority granted under the laws of this state to insurance companies and
26 health maintenance organizations licensed to transact business, except the
27 power to issue health benefit plans directly to either groups or individuals.

28 (2) In addition to the general powers of the program provided in
29 subdivision (a)(1) of this section, the program shall have the specific
30 authority to:

31 (A) Enter into contracts necessary or proper to carry out
32 the provisions and purposes of this act, including the authority, with the
33 approval of the commissioner, to enter into contracts with similar programs
34 of other states for the joint performance of common functions or with persons
35 or other organizations for the performance of administrative functions;

36 (B) Sue or be sued, including taking any legal actions

1 necessary or proper to recover any assessments and penalties for, on behalf
2 of, or against the program or any reinsuring carriers;

3 (C) Take any legal action necessary to avoid the payment
4 of improper claims against the program;

5 (D) Define the health benefit plans for which reinsurance
6 will be provided, and to issue reinsurance policies, in accordance with the
7 requirements of this act;

8 (E) Establish rules, conditions, and procedures for
9 reinsuring risks under the program;

10 (F) Establish actuarial functions as appropriate for the
11 operation of the program;

12 (G)(i) Assess reinsuring carriers in accordance with the
13 provisions of Section 9, and to make advance interim assessments as may be
14 reasonable and necessary for organizational and interim operating expenses.

15 (ii) Any interim assessments shall be credited as
16 offsets against any regular assessments due following the close of the fiscal
17 year;

18 (H) Appoint appropriate legal, actuarial, and other
19 committees as necessary to provide technical assistance in the operation of
20 the program, policy, and other contract design, and any other function within
21 the authority of the program; and

22 (I)(i) Borrow money to effect the purposes of the program.

23 (ii) Any notes or other evidence of indebtedness of
24 the program not in default shall be legal investments for carriers and may be
25 carried as admitted assets.

26 (b) A small employer carrier may reinsure an entire employer group
27 within thirty (30) days after the commencement of the group's coverage under
28 a health benefit plan;

29 (c)(1) The program shall not reimburse a reinsuring carrier with
30 respect to the claims of a reinsured employee or dependent until the carrier
31 has incurred an initial level of claims for such employee or dependent of ten
32 thousand dollars (\$10,000) in a calendar year for benefits covered by the
33 program.

34 (2) In addition, the reinsuring carrier shall be responsible for
35 ten percent (10%) of the next fifty thousand dollars (\$50,000) of benefit
36 payments during a calendar year and the program shall reinsure the remainder.

1 (3) A reinsuring carriers' liability under this subsection (b)
2 shall not exceed a maximum limit of fifteen thousand dollars (\$15,000) in any
3 one calendar year with respect to any reinsured individual.

4 (4) Adjustments may be made in amounts and methods of
5 reinsurance to accommodate operating the program if recommended by the board
6 and approved by the commissioner.

7 (d)(1) The board annually shall adjust the initial level of claims and
8 the maximum limit to be retained by the carrier to reflect increases in costs
9 and utilization within the standard market for health benefit plans within
10 the state.

11 (2) The adjustment shall not be less than the annual change in
12 the medical component of the Consumer Price Index for All Urban Consumers of
13 the Department of Labor, Bureau of Labor Statistics, existing on January 1,
14 2001, unless the board proposes and the commissioner approves a lower
15 adjustment factor.

16 (e) A small employer carrier may terminate reinsurance with the
17 program for an entire employer group on any anniversary of the health benefit
18 plan.

19 (f) Premium rates charged for reinsurance by the program to a health
20 maintenance organization that is federally qualified under 42 U.S.C.
21 300c(c)(2)(A), existing on January 1, 2001, and is subject to requirements
22 that limit the amount of risk that may be ceded to the program that is more
23 restrictive than those specified in subsection (e), shall be reduced to
24 reflect that portion of the risk above the amount set forth in subsection (e)
25 that may not be ceded to the program, if any.

26 (g) A small employer carrier shall apply all managed care and claims
27 handling techniques, including utilization review, individual case
28 management, preferred provider provisions, and other managed care provisions
29 or methods of operation consistently with respect to reinsured and
30 nonreinsured business.

31
32 SECTION 6. (a)(1) The board, as part of the plan of operation, shall
33 establish a methodology for determining premium rates to be charged by the
34 program for reinsuring small employers and individuals pursuant to this
35 section.

36 (2) The methodology shall include a system for classification of

1 small employers that reflects the types of case characteristics commonly used
2 by small employer carriers in the state.

3 (3) The methodology shall provide for the development of base
4 reinsurance premium rates which shall be multiplied by the factors set forth
5 in subsection (b) to determine the premium rates for the program.

6 (4) The base reinsurance premium rates shall be established by
7 the board, subject to the approval of the commissioner, and shall be set at
8 levels which reasonably expect the reinsurance program to break even over an
9 extended period of time.

10 (b)(1) The board shall periodically review the methodology established
11 under subsection (a), including the system of classification and any rating
12 factors, to assure that it reasonably reflects the claims experience of the
13 program.

14 (2) The board may propose changes to the methodology which shall
15 be subject to the approval of the commissioner.

16 (c) The board may consider adjustments to the premium rates charged by
17 the program to reflect the use of effective cost containment and managed care
18 arrangements.

19
20 SECTION 7. (a) Before March 1 of every year, the board shall
21 determine and report to the commissioner the program net loss for the
22 previous calendar year, including administrative expenses and incurred losses
23 for the year, taking into account investment income and other appropriate
24 gains and losses.

25 (b) Any net loss for the year shall be recouped by assessments
26 of small employer carriers.

27
28 SECTION 8. (a) The board shall establish, as part of the plan of
29 operation, a formula by which to make assessments against small employer
30 carriers.

31 (b) The assessment formula shall be based on:

32 (1) Each small employer carrier's share of the total premiums
33 earned in the preceding calendar year from health benefit plans delivered or
34 issued for delivery to small employers in this state by small employer
35 carriers; and

36 (2) Each small employer carrier's share of the premiums earned

1 in the preceding calendar year from newly issued health benefit plans
2 delivered or issued for delivery during the calendar year to small employers
3 in this state by small employer carriers.

4 (c)(1) The board may, with approval of the commissioner, change the
5 assessment formula established pursuant to subsection (b).

6 (2) The board may provide for the shares of the assessment base
7 attributable to total premium and to the previous year's premium to vary
8 during a transition period.

9 (d) Subject to the approval of the commissioner, the board shall make
10 an adjustment to the assessment formula for reinsuring carriers that are
11 approved health maintenance organizations, which are federally qualified
12 under 42 U.S.C. Sec. 300, existing on January 1, 2001, to the extent, if any,
13 that restrictions are placed on them that are not imposed on other small
14 employer carriers.

15 (e) Before March 1 of every year, the board shall determine and file
16 with the commissioner an estimate of the assessments needed to fund the
17 losses incurred by the program in the previous calendar year.

18 (f)(1) If assessments exceed net losses of the program, the excess
19 shall be held at interest and used by the board to offset future assessments.

20 (2) Future assessments includes reserves for incurred but not
21 reported claims.

22 (g) Each small employer carrier's proportion of the assessment shall
23 be determined annually by the board based on annual statements and other
24 reports deemed necessary by the board and filed by the small employer
25 carriers with the board.

26 (h) The plan of operation shall provide for the imposition of an
27 interest penalty for late payment of assessments.

28 (i)(1) A small employer carrier may seek from the commissioner a
29 deferment from all or part of an assessment imposed by the board.

30 (2) The commissioner may defer all or part of the assessment of
31 a small employer carrier if the commissioner determines that the payment of
32 the assessment would place the small employer carrier in a financially
33 impaired condition.

34 (3) If all or part of an assessment against a small employer
35 carrier is deferred, the amount deferred shall be assessed against the other
36 participating small employer carriers in a manner consistent with the basis

1 for assessment set forth in this subsection.

2 (4) The small employer carrier receiving the deferment shall
3 remain liable to the program for the amount deferred and shall be prohibited
4 from reinsuring any individuals or groups with the program until such time as
5 it pays the assessments.

6
7 SECTION 9. Neither the participation in the program as small employer
8 carriers, the establishment of rates, forms or procedures, nor any other
9 joint or collective action required by this act shall be the basis of any
10 legal action, criminal or civil liability, or penalty against the program or
11 any of its small employer carriers either jointly or separately.

12
13 SECTION 10. (a) Any gains in the reinsurance program will be first
14 used to cover incurred, but not reported claims, plus an actuarial calculated
15 margin for future losses.

16 (b) Refunds shall be made in proportion to assessments until the total
17 of all assessments are refunded.

18 (c) Any remaining gains shall be used to reduce premiums in the
19 reinsurance program.

20
21 SECTION 11. Within sixty (60) days after the effective date of this
22 act, each small employer carrier shall make a filing with the commissioner
23 containing the carrier's net health insurance premium derived from health
24 benefit plans delivered or issued for delivery to small employers in this
25 state in the previous calendar year.

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27 SECTION 12. This program shall be exempt from any and all taxes.

28
29 SECTION 13. (a) The board, in consultation with members of the
30 committee, shall study and report at least every three (3) years to the
31 commissioner on the effectiveness of this act.

32 (b) The report:

33 (1) Shall analyze the effectiveness of the act in promoting rate
34 stability, product availability, and coverage affordability;

35 (2) May contain recommendations for actions to improve the
36 overall effectiveness, efficiency, and fairness of the small group health

1 insurance marketplace;

2 (3) Shall address whether carriers and producers are fairly and
3 actively marketing or issuing health benefit plans to small employers in
4 fulfillment of the purposes of the act; and

5 (4) May contain recommendations for market conduct or other
6 regulatory standards or action.

7
8 SECTION 14. The commissioner may issue regulations for the
9 implementation and administration of the Small Employer Reinsurance Program.

10
11 SECTION 15. (a) Unless otherwise exempted in this act, each small
12 employer carrier shall actively market all health benefit plans sold by the
13 carrier to eligible small employers in the state except that a health
14 insurance purchasing group eligible small employer carrier may market
15 different health benefit plans in a health insurance purchasing group.

16 (b)(1) Except as provided in subdivision (b)(2), no small employer
17 carrier or producer shall, directly or indirectly, engage in the following
18 activities:

19 (A) Encouraging or directing small employers to refrain
20 from filing an application for coverage with the small employer carrier
21 because of any health status-related factor, industry, occupation or
22 geographic location of the small employer;

23 (B) Encouraging or directing small employers to seek
24 coverage from another carrier because of any health status-related factor,
25 industry, occupation or geographic location of the small employer.

26 (2) The subdivision (b)(1) shall not apply with respect to
27 information provided by a small employer carrier or producer to a small
28 employer regarding the established geographic service area or a restricted
29 network provision of a small employer carrier.

30 (c)(1) Except as provided in subdivision (c)(2), no small employer
31 carrier shall, directly or indirectly, enter into any contract, agreement or
32 arrangement with a producer that provides for or results in the compensation
33 paid to a producer for the sale of a health benefit plan to be varied because
34 of any initial or renewal health status-related factor of the small employer.

35 (2) Subdivision (c)(1) shall not apply with respect to a
36 compensation arrangement that provides compensation to a producer on the

1 basis of percentage of premium, provided that the percentage shall not vary
2 because of any health status-related factor of the small employer, except
3 that compensation paid to a producer on a separately identifiable substandard
4 premium, excluding the base premiums, may be whatever is agreed upon between
5 the carrier and the producer.

6 (d) No small employer carrier may terminate, fail to renew or limit
7 its contract or agreement of representation with a producer for any reason
8 related to any initial or renewal health status-related factor, occupation or
9 geographic location of the small employers placed by the producer with the
10 small employer carrier.

11 (e) A small employer carrier or producer may not induce or otherwise
12 encourage a small employer to separate or otherwise exclude an employee or
13 dependent from health coverage or benefits provided in connection with the
14 employee's employment.

15 (f) Denial by a small employer carrier of an application for coverage
16 from a small employer shall be in writing and shall state the reason or
17 reasons for the denial.

18 (g) The commissioner may establish regulations setting forth
19 additional standards to provide for the fair marketing and broad availability
20 of health benefit plans to small employers in this state.

21 (h)(1) A violation of this section by a small employer carrier or a
22 producer shall be an unfair trade practice under the Trade Practice Act.

23 (2) If a small employer carrier enters into a contract,
24 agreement or other arrangement with a third-party administrator to provide
25 administrative, marketing or other services related to the offering of health
26 benefit plans to small employers in this state, the third-party administrator
27 shall be subject to this section as if it were a small employer carrier.

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29 SECTION 16. The commissioner may promulgate regulations necessary to
30 implement the provisions of this act.

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