

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

SENATE BILL 502

5 By: Senator Elliott
6 By: Representative M. Gray
7

For An Act To Be Entitled

9 AN ACT TO MODIFY THE STATUTES CONCERNING RISK-BASED
10 CAPITAL; AND FOR OTHER PURPOSES.
11

Subtitle

14 TO MODIFY THE STATUTES CONCERNING RISK-
15 BASED CAPITAL.
16

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 23-63-1303(d), concerning RBC reports under
21 the Risk-Based Capital Act, is amended to read as follows:

22 (d)(1) ~~At~~ A reasonable excess of capital over the amount produced by
23 the risk-based capital requirements contained in this subchapter and the
24 formulas, schedules, and instructions referenced in this subchapter are
25 desirable in the business of insurance.

26 (2) Insurers should seek to maintain capital at a reasonable
27 level above the RBC levels needed by this subchapter.

28 (3) Additional capital is used and useful in the insurance
29 business and helps to secure an insurer against various risks inherent in or
30 affecting the business of insurance and not accounted for or only partially
31 measured by the risk-based capital requirements contained in this subchapter.
32

33 SECTION 2. Arkansas Code § 23-63-1309 is amended to read as follows:
34 23-63-1309. Confidentiality – Prohibition on announcements –
35 ~~Prohibition on use~~ Use in ratemaking.

36 (a)(1) The RBC reports, to the extent the information in the RBC



1 reports is not needed to be stated in a publicly available annual statement
2 schedule, and RBC plans, including the results or report of an examination or
3 analysis of an insurer performed under a corrective order issued by the
4 Insurance Commissioner under examination or analysis, with respect to a
5 domestic insurer or foreign insurer that are filed with the commissioner,
6 constitute information that may be damaging to the insurer if made available
7 to its competitors and is kept confidential by the commissioner.

8 (2) This information shall not be made public or be subject to
9 subpoena, or both, other than by the commissioner and then only to enforce
10 actions taken by the commissioner under this subchapter or other insurance
11 laws of this state.

12 **(b)(1)(A)** It is the judgment of the General Assembly that the
13 comparison of an insurer's total adjusted capital to its RBC levels is a
14 regulatory tool that may show the need for possible corrective action with
15 respect to the insurer and is not intended as a means to rank insurers
16 generally.

17 **(B)** Except as otherwise required under this subchapter,
18 the making, publishing, disseminating, circulating, or placing before the
19 public or causing directly or indirectly to be made, published, distributed,
20 circulated, or placed before the public in a newspaper, magazine, or other
21 publication, or in the form of a notice, circular, pamphlet, letter, or
22 poster, or over a radio or television station, or in any other way, an
23 advertisement, announcement, or statement containing an assertion,
24 representation, or statement with regard to the RBC levels of an insurer or
25 of any component derived in the calculation by an insurer, agent, broker, or
26 other person engaged in any way in the insurance business would be misleading
27 and is prohibited.

28 **(2)** If a materially false statement with respect to the
29 comparison regarding an insurer's total adjusted capital to its RBC levels or
30 any of them or an inappropriate comparison of any other amount to the
31 insurer's RBC levels is published in a written publication and the insurer
32 may demonstrate to the commissioner with substantial proof the falsity of the
33 statement or the inappropriateness, as the case may be, then the insurer may
34 publish an announcement in a written publication if the sole purpose of the
35 announcement is to rebut the materially false statement.

36 **(c)** It is the further judgment of the General Assembly that although

1 the RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and
2 revised RBC plans+

3 ~~(1) Are~~ are intended ~~solely~~ primarily for use by the
4 commissioner in monitoring the solvency of insurers and the need for possible
5 corrective action with respect to insurers, ~~and~~

6 ~~(2) Shall not be used by the commissioner~~ the RBC instructions,
7 RBC reports, adjusted RBC reports, RBC plans and revised RBC plans, along
8 with total adjusted capital:

9 (1) For an insurer other than a health insurer, may be
10 considered by the commissioner in making determinations concerning
11 ratemaking, and may be:

12 (A) For ratemaking not considered Considered or introduced
13 as evidence in a rate proceeding; or

14 (B) To Used to compute or derive elements of an
15 appropriate premium level or rate of return for a line of insurance that an
16 insurer or affiliate may write; and

17 (2) For a health insurer, are considered by the commissioner in
18 making determinations concerning ratemaking, and may be:

19 (A) Considered or introduced as evidence in a rate
20 proceeding; or

21 (B) Used to compute or derive elements of an appropriate
22 premium level or rate of return for a line of health insurance that a health
23 insurer or affiliate may write.

24
25 SECTION 3. Arkansas Code § 23-63-1508(c), concerning the use of RBC
26 reports for health insurer solvency, is amended to read as follows:

27 (c) It is the further judgment of the General Assembly that although
28 the RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and
29 revised RBC plans are intended ~~solely~~ primarily for use by the commissioner
30 in monitoring the solvency of health organizations and the need for possible
31 corrective action with respect to health organizations, ~~and~~ the RBC
32 instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC
33 plans, along with total adjusted capital shall ~~not~~ be used by the
34 commissioner for ratemaking ~~not~~ and may be considered or introduced as
35 evidence in a rate proceeding ~~not~~ or used by the commissioner to calculate or
36 derive any elements of an appropriate premium level or rate of return for any

1 line of insurance that a health organization or an affiliate is authorized to
2 write.

3
4 SECTION 4. Arkansas Code Title 23, Chapter 63, is amended to add an
5 additional subchapter to read as follows:

6
7 Subchapter 20 – Excess Surplus for Health Insurers

8
9 23-63-2001. Definitions.

10 As used in this subchapter:

11 (1) "Authorized control level RBC" means the number determined
12 under the risk-based capital formula according to the RBC instructions;

13 (2) "Health insurer" means an entity that is:

14 (A) Required to file a report of RBC levels under this
15 subchapter; and

16 (B) Issues or delivers a health plan in this state;

17 (3) "Health plan" means an individual, blanket, or group plan,
18 policy, or contract for healthcare services issued or delivered in this state
19 by a health insurer;

20 (4) "Healthcare services" means services or goods provided for
21 the purpose of preventing, diagnosing, treating, alleviating, relieving,
22 curing, or healing human illness, disease, condition, disability, or injury;

23 (5) "RBC" means risk-based capital;

24 (6) "Risk and contingency factors" means factors used in a rate
25 calculation to build into the rate additional amounts for any unforeseen
26 events and fluctuations in medical claims;

27 (7) "Risk-based capital ratio" means the ratio of a health
28 insurer's total adjusted capital to its authorized control level RBC; and

29 (8) "Total adjusted capital" means the sum of:

30 (A) An insurer's statutory capital and surplus as
31 determined according to the statutory accounting applicable to the annual
32 financial statements required under § 23-63-216; and

33 (B) Other items, if any, that the RBC instructions may
34 provide.

35
36 23-63-2002. Maximum surplus levels.

1 (a)(1) Each health insurer shall calculate its risk-based capital
2 ratio as of December 31 of each year.

3 (2) The calculation shall be made by a date determined according
4 to a schedule established by the State Insurance Department but no later than
5 March 1 of the next calendar year.

6 (b) If the risk-based capital ratio calculated under subdivision
7 (a)(1) of this section is greater than six hundred fifty percent (650%):

8 (1) A health insurer shall not include risk and contingency
9 factors in its rate requests for the remainder of the calendar year;

10 (2) The Insurance Commissioner may require the health insurer to
11 file a plan to adjust its surplus to a level below six hundred percent
12 (600%); and

13 (3) For a period of one (1) year, the health insurer shall not:

14 (A) Increase premium rates for any policy or product sold
15 by the health insurer;

16 (B) Increase copayments or other cost-sharing amounts to
17 be paid by an enrollee under a policy or product sold by the health insurer;
18 or

19 (C) Decrease or otherwise reduce reimbursement for
20 healthcare services provided to an enrollee covered by a policy or product
21 sold by the health insurer.

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23 23-63-2003. RBC in ratemaking.

24 The Insurance Commissioner shall consider RBC, the risk-based capital
25 ratio, and total adjusted capital of a health insurer in ratemaking
26 determinations for a health plan.

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