

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.

INTERIM STUDY PROPOSAL 2007-133

State of Arkansas
86th General Assembly
Regular Session, 2007

A Bill

SENATE BILL 769

By: Senator T. Smith

Referred to
Insurance & Commerce - Senate
by the Arkansas Senate
on 02/28/2007

For An Act To Be Entitled

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

Subtitle

TO CREATE A SMALL EMPLOYER HEALTH
REINSURANCE PROGRAM.

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

SECTION 1. Arkansas Code Title 23, Chapter 62, is amended to add an additional subchapter to read as follows:

23-62-501. Title.

This subchapter shall be known and may be cited as the "Small Employer Health Reinsurance Program Act of 2007".

23-62-502. Applicability.

Every small employer group carrier that offers small employer health insurance in this state under the Arkansas Health Insurance Portability and Accountability Act of 1997, § 23-86-301 et seq., is subject to this subchapter.

23-62-503. Definitions.

1 As used in this subchapter:

2 (1) "Carrier" has the meaning provided in § 23-86-202; and

3 (2) "Small employer" has the meaning provided in § 23-86-202

4 unless otherwise provided by the plan of operation under § 23-62-506.

5
6 23-62-504. Small Employer Health Reinsurance Program.

7 (a) The Arkansas Small Employer Health Reinsurance Program is created
8 as a nonprofit entity.

9 (b) The program shall operate subject to the supervision and control
10 of the Arkansas Small Employer Health Reinsurance Program Board.

11 (c)(1) The program shall have the general powers and authority granted
12 under the laws of this state to insurance companies and health maintenance
13 organizations licensed to transact business, except the power to issue health
14 benefit plans directly to either groups or individuals.

15 (2) In addition to the general powers of the program provided in
16 subdivision (c)(1) of this section, the program may:

17 (A) Enter into contracts necessary or proper to carry out
18 this subchapter, including the authority, with the approval of the Insurance
19 Commissioner, to enter into contracts with similar programs of other states
20 for the joint performance of common functions or with persons or other
21 organizations for the performance of administrative functions;

22 (B) Sue or be sued, including taking any legal actions
23 necessary or proper to recover any assessments and penalties for, on behalf
24 of, or against the program or any reinsuring carriers;

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

27 (D) Define the health benefit plans for which reinsurance
28 will be provided and issue reinsurance policies in accordance with this
29 subchapter;

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

32 (F) Establish actuarial functions as appropriate for the
33 operation of the program;

34 (G)(i) Assess carriers in accordance with § 23-62-509 and
35 make advance interim assessments as may be reasonable and necessary for
36 organizational and interim operating expenses.

1 (ii) Any interim assessments shall be credited as
2 offsets against any regular assessments due following the close of the fiscal
3 year;

4 (H) Appoint appropriate legal, actuarial, and other
5 committees as necessary to provide technical assistance in the operation of
6 the program, policy, and other contract design and any other function within
7 the authority of the program; and

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

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

12 (d) A small employer carrier may reinsure an entire employer group
13 within thirty (30) days after the commencement of the group's coverage under
14 a health benefit plan.

15 (e)(1) The program shall not reimburse a reinsuring carrier with
16 respect to the claims of a reinsured employee or dependent until the
17 reinsuring carrier has incurred an initial level of claims for the employee
18 or dependent of ten thousand dollars (\$10,000) in a calendar year for
19 benefits covered by the program.

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

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

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

30 (f)(1) The board annually shall adjust the initial level of claims and
31 the maximum limit to be retained by the reinsuring carrier to reflect
32 increases in costs and utilization within the standard market for health
33 benefit plans within the state.

34 (2) The adjustment shall not be less than the annual change in
35 the medical component of the Consumer Price Index for All Urban Consumers of
36 the Bureau of Labor Statistics of the United States Department of Labor,

1 existing on January 1, 2007, unless the board proposes and the commissioner
2 approves a lower adjustment factor.

3 (g) A small employer carrier may terminate reinsurance with the
4 program for an entire employer group on any anniversary of the health benefit
5 plan.

6 (h) If a federally qualified health maintenance organization is
7 subject to more restrictive requirements than those specified in this section
8 that limit the amount of risk that may be ceded to the program, the premium
9 rates charged for reinsurance by the program shall be reduced to reflect the
10 portion of the risk, if any, that may not be ceded to the program.

11 (i) A small employer carrier shall apply consistently all managed care
12 and claims-handling techniques, including utilization review, individual case
13 management, preferred provider provisions, and other managed care provisions
14 or methods of operation with respect to reinsured and nonreinsured business.

15 (j) The program is exempt from all taxes.

16
17 23-62-505. Arkansas Small Employer Health Reinsurance Program Board.

18 (a) The Arkansas Small Employer Health Reinsurance Program Board is
19 created.

20 (b)(1) The board shall consist of eight (8) members appointed by the
21 Insurance Commissioner.

22 (2) The commissioner or the commissioner's designated
23 representative shall serve as an ex officio member.

24 (c)(1) In selecting the members, the commissioner shall include
25 representatives of small employers and small employer carriers and other
26 individuals determined to be qualified by the commissioner.

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

31 (d)(1) Each member shall serve for a term of three (3) years and until
32 his or her successor is appointed as provided in this section.

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

34 (e) A member may be removed by the commissioner for cause.

35
36 23-62-506. Plan of operation.

1 (a)(1) Within one hundred eighty (180) days after the appointment of
2 the initial members of the Arkansas Small Employer Health Reinsurance Program
3 Board, the board shall submit to the Insurance Commissioner a plan of
4 operation and any amendments necessary or suitable to assure the fair,
5 reasonable, and equitable administration of the Arkansas Small Employer
6 Health Reinsurance Program.

7 (2) After notice and hearing, the commissioner may approve the
8 plan of operation if the commissioner determines that the plan of operation:

9 (A) Complies with subsection (c) of this section;

10 (B) Is suitable to assure the fair, reasonable, and
11 equitable administration of the program; and

12 (C) Provides for the sharing of program gains or losses on
13 an equitable and proportionate basis.

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

16 (4) The plan of operation may address what size employers will
17 constitute a small employer.

18 (b)(1) If the board fails to submit a suitable plan of operation
19 within one hundred eighty (180) days after the appointment of its initial
20 members, the commissioner, after notice and hearing, shall adopt and
21 promulgate a temporary plan of operation.

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

25 (c) The plan of operation shall:

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

28 (2) Establish procedures for selecting an administering carrier,
29 giving preference to those carriers that are not competitors in the small
30 employer health marketplace in this state, and set forth the powers and
31 duties of the administering carrier;

32 (3) Establish procedures for reinsuring risks in accordance with
33 this subchapter;

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

1 (5) Establish a methodology for applying the dollar thresholds
2 contained in this subchapter in the case of carriers that pay or reimburse
3 health care providers through capitation or salary; and

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

6
7 23-62-507. Methodology.

8 (a)(1) As part of the plan of operation for the Arkansas Small
9 Employer Health Reinsurance Program, the Arkansas Small Employer Health
10 Reinsurance Program Board shall establish a methodology for determining
11 premium rates to be charged by the program for reinsuring small employers and
12 individuals pursuant to this section.

13 (2) The methodology shall include a system for classification of
14 small employers that reflects the types of case characteristics commonly used
15 by small employer carriers in the state.

16 (3) The methodology shall provide for the development of base
17 reinsurance premium rates that shall be multiplied by the factors set forth
18 in subsection (b) of this section to determine the premium rates for the
19 program.

20 (4) The base reinsurance premium rates shall be established by
21 the board subject to the approval of the Insurance Commissioner and shall be
22 set at levels that reasonably expect the program to break even over an
23 extended period of time.

24 (b)(1) The board shall periodically review the methodology established
25 under subsection (a) of this section, including the system of classification
26 and any rating factors, to assure that the methodology reasonably reflects
27 the claims experience of the program.

28 (2) The board may propose changes to the methodology that shall
29 be subject to the approval of the commissioner.

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

33
34 23-62-508. Annual report – Net losses.

35 (a) Before March 1 of every year, the Arkansas Small Employer Health
36 Reinsurance Program Board shall determine and report to the Insurance

1 Commissioner the Arkansas Small Employer Health Reinsurance Program net loss
2 for the previous calendar year, including administrative expenses and
3 incurred losses for the year, taking into account investment income and other
4 appropriate gains and losses.

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

7
8 23-62-509. Assessments.

9 (a) As part of the plan of operation for the Arkansas Small Employer
10 Health Reinsurance Program, the Arkansas Small Employer Health Reinsurance
11 Program Board shall establish a formula by which to make assessments against
12 small employer carriers.

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

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

18 (2) Each small employer carrier's share of the premiums earned
19 in the preceding calendar year from newly issued health benefit plans
20 delivered or issued for delivery during the calendar year to small employers
21 in this state by small employer carriers.

22 (c)(1) With the approval of the Insurance Commissioner, the board may
23 change the assessment formula established pursuant to subsection (b) of this
24 section.

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

28 (d) Subject to the approval of the commissioner, the board shall make
29 an adjustment to the assessment formula for reinsuring carriers that are
30 federally qualified, approved health maintenance organizations to the extent,
31 if any, that restrictions are placed on them that are not imposed on other
32 small employer carriers.

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

36 (f)(1) If assessments exceed net losses of the program, the excess

1 shall be held at interest and used by the board to offset future assessments.

2 (2) Future assessments include reserves for incurred but not
3 reported claims.

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

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

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

12 (2) The commissioner may defer all or part of the assessment of
13 a small employer carrier if the commissioner determines that the payment of
14 the assessment would place the small employer carrier in a financially
15 impaired condition.

16 (3) If all or part of an assessment against a small employer
17 carrier is deferred, the amount deferred shall be assessed against the other
18 participating small employer carriers in a manner consistent with the basis
19 for assessment set forth in this subsection.

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

24
25 23-62-510. Limitation of liability.

26 Neither the participation in the Arkansas Small Employer Health
27 Reinsurance Program as a small employer carrier, the establishment of rates,
28 forms, or procedures, nor any other joint or collective action required by
29 this subchapter shall be the basis of any legal action, criminal or civil
30 liability, or penalty against the program or any of its small employer
31 carriers either jointly or separately.

32
33 23-62-511. Program gains.

34 (a) Any gains in the Arkansas Small Employer Health Reinsurance
35 Program shall be used first to cover incurred but not reported claims, plus
36 an actuarial calculated margin for future losses.

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

3 (c) Any remaining gains shall be used to reduce premiums in the
4 program.

5
6 23-62-512. Reporting of net health premiums.

7 Within sixty (60) days after the effective date of this subchapter,
8 each small employer carrier shall file with the Insurance Commissioner a
9 report containing the carrier's net health insurance premium derived from
10 health benefit plans delivered or issued for delivery to small employers in
11 this state in the previous calendar year.

12
13 23-62-513. Additional reporting.

14 (a) The Arkansas Small Employer Health Reinsurance Program Board shall
15 study and report at least every three (3) years to the Insurance Commissioner
16 on the effectiveness of this subchapter.

17 (b) The report:

18 (1) Shall analyze the effectiveness of this subchapter in
19 promoting rate stability, product availability, and coverage affordability;

20 (2) May contain recommendations for actions to improve the
21 overall effectiveness, efficiency, and fairness of the small employer group
22 health insurance marketplace;

23 (3) Shall address whether carriers and producers are fairly and
24 actively marketing or issuing health benefit plans to small employers in
25 fulfillment of the purposes of this subchapter; and

26 (4) May contain recommendations for market conduct or other
27 regulatory standards or action.

28
29 23-62-514. Marketing of health plans.

30 (a) Unless otherwise exempted in this subchapter, each small employer
31 carrier shall actively market all health benefit plans sold by the carrier to
32 eligible small employers in the state, except that a small employer carrier
33 that is eligible as a health insurance purchasing group may market different
34 health benefit plans in a health insurance purchasing group.

35 (b)(1) Except as provided in subdivision (b)(2) of this section, no
36 small employer carrier or producer shall, directly or indirectly, encourage

1 or direct a small employer to:

2 (A) Refrain from filing an application for coverage with
3 the small employer carrier because of the geographic location of the small
4 employer or any health-status-related industry or occupational factor of the
5 small employer; or

6 (B) Seek coverage from another carrier because of the
7 geographic location of the small employer or any health-status-related
8 industry or occupational factor of the small employer.

9 (2) Subdivision (b)(1) of this section does not apply with
10 respect to information provided by a small employer carrier or producer to a
11 small employer regarding the established geographic service area or a
12 restricted network provision of a small employer carrier.

13 (c)(1) Except as provided in subdivision (c)(2) of this section, no
14 small employer carrier shall enter into, directly or indirectly, any
15 contract, agreement, or arrangement with a producer that provides for or
16 results in the compensation paid to the producer for the sale of a health
17 benefit plan to be varied because of a health-status-related factor of the
18 small employer at the inception or renewal of the health benefit plan.

19 (2) Subdivision (c)(1) of this section does not apply with
20 respect to a compensation arrangement that provides compensation to a
21 producer on the basis of percentage of premium, provided that the percentage
22 shall not vary because of any health-status-related factor of the small
23 employer, except that compensation paid to a producer on a separately
24 identifiable substandard premium, excluding the base premiums, may be
25 whatever is agreed upon between the carrier and the producer.

26 (d) No small employer carrier may terminate, fail to renew, or limit
27 its contract or agreement of representation with a producer because of the
28 geographic location of a small employer or a health-status-related industry
29 or occupational factor of the small employer at the inception or renewal of
30 the health benefit plan placed by the producer with the small employer
31 carrier.

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

36 (f) Denial by a small employer carrier of an application for coverage

1 from a small employer shall be in writing and shall state the reason or
2 reasons for the denial.

3 (g) The Insurance Commissioner may establish regulations setting forth
4 additional standards to provide for the fair marketing and broad availability
5 of health benefit plans to small employers in this state.

6 (h)(1) A violation of this section by a small employer carrier or a
7 producer is an unfair trade practice under the Trade Practices Act, § 23-66-
8 201 et seq.

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

15
16 23-62-515. Rules and regulations.

17 The Insurance Commissioner may promulgate rules and regulations deemed
18 necessary or desirable to implement this subchapter.

19
20 SECTION 2. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS
21 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL, AND TEMPORARY LAW.

22 The terms of the initial members of the Arkansas Small Employer Health
23 Reinsurance Program Board shall be as follows:

24 (1) Two (2) of the members to serve a term of two (2) years;

25 (2) Three (3) of the members to serve a term of four (4) years;

26 and

27 (3) Three (3) of the members to serve a term of six (6) years.

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