
SENATE BILL 6024

State of Washington

64th Legislature

2015 Regular Session

By Senator Chase

Read first time 02/18/15. Referred to Committee on Health Care.

1 AN ACT Relating to maximum capital and reserves accumulations by
2 health care service contractors and health maintenance organizations;
3 amending RCW 48.31C.060 and 48.43.305; adding a new section to
4 chapter 48.43 RCW; and repealing RCW 48.32.145.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.43
7 RCW to read as follows:

8 (1) When annual premiums are in excess of two hundred fifty
9 million dollars, a health care service contractor under chapter 48.44
10 RCW or a health maintenance organization under chapter 48.46 RCW may
11 not accumulate capital and reserves, including risk-based capital
12 (RBC), in excess of four months of claims expense as reported on line
13 18 of the quarterly statement of revenue and expenses, as existing on
14 the effective date of this section, filed with the insurance
15 commissioner's office.

16 (a) The excess shall be returned to the policyholders by their
17 choice of one of three methods: Electronic transfer; check; or
18 reduction of next year's premium. If the refund will be less than ten
19 dollars per subscriber, the excess shall be retained by the health
20 care service contractor or health maintenance organization for
21 distribution when the per subscriber refund is ten dollars or more.

1 (b) Transfers of assets by a health care service contractor or
2 health maintenance organization to any for-profit or not-for-profit
3 subsidiary, foundation, or business venture which does not directly
4 provide health insurance services shall be included in reserve
5 calculations by the commissioner.

6 (c) The commissioner shall not approve any premium rate increase
7 filing or filing to reduce services for subscribers by a health care
8 service contractor or health maintenance organization that does not
9 use excess reserves to reduce premiums as required by this section.

10 (d) This section does not prohibit a health care service
11 contractor or health maintenance organization from maintaining
12 reserves above minimum requirements but below the maximum limit, or
13 from returning moneys to or reducing moneys payable by subscribers,
14 prior to reaching the maximum limit.

15 (e) The commissioner may waive the requirements of (d) of this
16 subsection if, in the commissioner's sole discretion, the
17 commissioner determines that the health care service contractor or
18 health maintenance organization shall use the reserves to make new
19 capital investments within the next fiscal year.

20 (2)(a) The initial refund shall be distributed to the
21 policyholders of record on January 1, 2011, through December 31,
22 2014. The refund will be a percentage of premiums paid during this
23 time frame. The calculations shall be approved by the commissioner's
24 office.

25 (b) Refunds shall be declared at the time of filing of the
26 quarterly report. Refunds shall pertain to all policy owners of
27 record during the quarter. The refund shall be distributed as a
28 percentage of premiums paid.

29 (c) If the refund lowers surplus below the RBC company action
30 level, the action level shall be the overriding factor.

31 **Sec. 2.** RCW 48.31C.060 and 2001 c 179 s 6 are each amended to
32 read as follows:

33 (1)(a) Subject to subsection (2) of this section, each registered
34 health carrier shall report to the commissioner all dividends and
35 other distributions to shareholders or members not within the
36 ordinary course of business within five business days after their
37 declaration and at least fifteen business days before payment and
38 shall provide the commissioner such other information as may be
39 required by rule.

1 (b) Any payment of a dividend or other distribution to
2 shareholders or members which would reduce the net worth of the
3 health carrier below the greater of (i) the minimum required by RCW
4 48.44.037 for a health care service contractor or RCW 48.46.235 for a
5 health maintenance organization or (ii) the company action level RBC
6 under RCW 48.43.300(9)(a) is prohibited.

7 (2)(a) No domestic health carrier may pay an extraordinary
8 dividend or make any other extraordinary distribution to its
9 shareholders or members until: (i) Thirty days after the commissioner
10 has received sufficient notice of the declaration, unless the
11 commissioner declares the notice to be incomplete and requests
12 additional information in which event the thirty days shall be tolled
13 until fifteen days after receipt by the commissioner of the
14 additional information or thirty days after the original receipt of
15 the notice by the commissioner, whichever is later, and the
16 commissioner has not within that period disapproved the payment; or
17 (ii) the commissioner has approved the payment within the thirty-day
18 period.

19 (b) For purposes of this section, an extraordinary dividend or
20 distribution is a dividend or distribution of cash or other property
21 whose fair market value, together with that of other dividends or
22 distributions not within the ordinary course of business made within
23 the period of twelve consecutive months ending on the date on which
24 the proposed dividend is scheduled for payment or distribution,
25 exceeds the lesser of: (i) Ten percent of the health carrier's net
26 worth as of the 31st day of the previous December; or (ii) the net
27 income of the health carrier for the twelve-month period ending the
28 31st day of the previous December, but does not include pro rata
29 distributions of any class of the company's own securities.

30 (c) Notwithstanding any other provision of law, a health carrier
31 ~~((may))~~ shall declare ~~((an extraordinary))~~ a dividend or distribution
32 ~~((that is conditional upon the commissioner's approval))~~ to
33 policyholders when their capital and reserves exceed four months'
34 expenses. The declaration confers no rights upon shareholders or
35 members until: (i) The commissioner has approved the payment of the
36 dividend or distribution; or (ii) the commissioner has not
37 disapproved the payment within the thirty-day period referred to in
38 (a) of this subsection.

1 (3) No domestic carrier, nor the board of directors, may
2 distribute or move the risk based capital or reserves outside the
3 state of Washington.

4 (4) For the purpose of this section, "distribution" means a
5 direct or indirect transfer of money or other property, except its
6 own shares, or incurrence of indebtedness by a health carrier to or
7 for the benefit of its members or shareholders in respect to any of
8 its shares. A distribution may be in the form of a declaration or
9 payment of a dividend; a distribution in partial or complete
10 liquidation, or upon voluntary or involuntary dissolution; a
11 purchase, redemption, or other acquisition of shares; or a
12 distribution of indebtedness in respect to any of its shares. It does
13 not include any remuneration to a shareholder or member made as
14 consideration for services or items provided by such shareholder or
15 member, including but not limited to remuneration in exchange for
16 health care services, equipment or supplies, or administrative
17 support services or equipment.

18 **Sec. 3.** RCW 48.43.305 and 1998 c 241 s 2 are each amended to
19 read as follows:

20 (1) Every domestic carrier shall, on or prior to the filing date
21 of March 1st, prepare and submit to the commissioner a report of its
22 RBC levels as of the end of the calendar year just ended, in a form
23 and containing such information as is required by the RBC
24 instructions. In addition, every domestic carrier shall file its RBC
25 report:

26 (a) With the NAIC in accordance with the RBC instructions; and

27 (b) With the insurance commissioner in any state in which the
28 carrier is authorized to do business, if the insurance commissioner
29 has notified the carrier of its request in writing, in which case the
30 carrier shall file its RBC report not later than the later of:

31 (i) Fifteen days from the receipt of notice to file its RBC
32 report with that state; or

33 (ii) The filing date.

34 (2) A carrier's RBC shall be determined in accordance with the
35 formula set forth in the RBC instructions. The formula shall take
36 into account (and may adjust for the covariance between):

37 (a) The risk with respect to the carrier's assets;

38 (b) The risk of adverse insurance experience with respect to the
39 carrier's liabilities and obligations;

1 (c) The interest rate risk with respect to the carrier's
2 business; and

3 (d) All other business risks and such other relevant risks as are
4 set forth in the RBC instructions; determined in each case by
5 applying the factors in the manner set forth in the RBC instructions.

6 ~~(3) ((An excess of capital over the amount produced by the risk-~~
7 ~~based capital requirements contained in RCW 48.43.300 through~~
8 ~~48.43.370 and the formulas, schedules, and instructions referenced in~~
9 ~~RCW 48.43.300 through 48.43.370 is desirable in the business of~~
10 ~~insurance. Accordingly, carriers should seek to maintain capital~~
11 ~~above the RBC levels required by RCW 48.43.300 through 48.43.370.~~
12 ~~Additional capital is used and useful in the insurance business and~~
13 ~~helps to secure a carrier against various risks inherent in, or~~
14 ~~affecting, the business of insurance and not accounted for or only~~
15 ~~partially measured by the risk based capital requirements contained~~
16 ~~in RCW 48.43.300 through 48.43.370.~~

17 ~~(4))~~ If a domestic carrier files an RBC report that in the
18 judgment of the commissioner is inaccurate, then the commissioner
19 shall adjust the RBC report to correct the inaccuracy and shall
20 notify the carrier of the adjustment. The notice shall contain a
21 statement of the reason for the adjustment.

22 NEW SECTION. **Sec. 4.** RCW 48.32.145 (Credit against premium tax
23 for assessments paid pursuant to RCW 48.32.060(1)(c)) and 1997 c 300
24 s 1, 1993 sp.s. c 25 s 901, 1977 ex.s. c 183 s 1, & 1975-'76 2nd
25 ex.s. c 109 s 11 are each repealed.

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