

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S3/14/19
A Bill

SENATE BILL 502

By: Senator Elliott
By: Representative M. Gray

For An Act To Be Entitled

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

Subtitle

TO MODIFY THE STATUTES CONCERNING RISK-
BASED CAPITAL.

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

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

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

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

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

SECTION 2. Arkansas Code § 23-63-1309 is amended to read as follows:

23-63-1309. Confidentiality – Prohibition on announcements –
~~Prohibition on use~~ Use in ratemaking.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter 20 – Excess Surplus for Health Insurers

23-63-2001. Definitions.

As used in this subchapter:

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

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

(A) Is required to file a report of RBC levels under this subchapter; and

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

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

(B) "Health plan" does not include:

(i) A disability income plan;

(ii) A credit insurance plan;

(iii) Insurance coverage issued as a supplement to liability insurance;

(iv) A medical payment under an automobile or homeowners insurance plan;

(v) A health plan provided under Arkansas Constitution, Article 5, § 32, the Workers' Compensation Law, § 11-9-101 et seq., or the Public Employee Workers' Compensation Act, § 21-5-601 et seq.;

(vi) A plan that provides only indemnity for hospital confinement;

(vii) An accident-only plan;

(viii) A dental-only plan;

(ix) A vision-only plan;

(x) A specified disease plan; or

(xi) A long-term-care-only plan;

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

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

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

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

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

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

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

23-63-2002. Maximum surplus levels.

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

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

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

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

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

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

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

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

(C) Decrease or otherwise reduce reimbursement for

healthcare services provided to an enrollee covered by a policy or product sold by the health insurer.

23-63-2003. RBC in ratemaking.

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

/s/Elliott