

HOUSE BILL 92

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2000 Regular Session
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ENROLLED BILL
-- Economic Matters/Finance --

Introduced by **Chairman, Economic Matters Committee (Departmental - Insurance Administration, Maryland)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Health Insurance - Risk Based Capital Standards for Insurers and Managed**
3 **Care Organizations**

4 FOR the purpose of requiring certain insurers to meet certain risk based capital
5 standards; requiring the Insurance Commissioner to take certain action against
6 certain insurers under certain circumstances; altering certain terms; defining
7 certain terms; requiring the Insurance Commissioner, in consultation with the
8 Secretary of Health and Mental Hygiene, to adopt regulations that apply risk
9 based capital standards to certain managed care organizations by a certain date;
10 requiring certain managed care organizations to comply with certain risk based
11 capital standards; making technical changes; and generally relating to risk
12 based capital standards for insurers and managed care organizations.

13 BY renumbering

14 Article - Health - General

15 Section 19-710(e) through (s), respectively

1 to be Section 19-710(f) through (t), respectively
 2 Annotated Code of Maryland
 3 (1996 Replacement Volume and 1999 Supplement)

4 BY repealing and reenacting, with amendments,

5 Article - Health - General
 6 Section 15-102.4
 7 Annotated Code of Maryland
 8 (1994 Replacement Volume and 1999 Supplement)

9 BY adding to

10 Article - Health - General
 11 Section 19-710(e)
 12 Annotated Code of Maryland
 13 (1996 Replacement Volume and 1999 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article - Insurance
 16 Section 4-301, 4-304, 4-308, and 4-311
 17 Annotated Code of Maryland
 18 (1997 Volume and 1999 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 20 MARYLAND, That Section(s) 19-710(e) through (s), respectively, of Article - Health -
 21 General of the Annotated Code of Maryland be renumbered to be Section(s) 19-710(f)
 22 through (t), respectively.

23 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 24 read as follows:

25 **Article - Health - General**

26 15-102.4.

27 (a) (1) Each managed care organization shall be actuarially sound.

28 (2) (i) Except as otherwise provided in this section, the surplus that a
 29 managed care organization is required to have shall be paid in full.

30 (ii) A managed care organization shall have an initial surplus that
 31 exceeds the liabilities of the managed care organization by at least \$1,500,000.

32 (b) (1) In consultation with the Secretary, the Insurance Commissioner may
 33 adjust the initial surplus requirement for a managed care organization that is not
 34 licensed as a health maintenance organization. In determining whether to make an
 35 adjustment under [paragraph (1) of this subsection] THIS PARAGRAPH, the
 36 Commissioner shall consider:

1 (i) The proposed capitation level that would be received by the
2 managed care organization under a contract with the Department under this subtitle;

3 (ii) The proposed range of benefits to be provided under a contract
4 with the Department under this subtitle;

5 (iii) The existence of any commitment by the Secretary to designate
6 funds over and above the proposed capitation where the designated funds;

7 1. Are equivalent to the difference between the requirements
8 of § 19-710 of this [subtitle] ARTICLE and any lower requirements determined by the
9 Commissioner under this subparagraph; and

10 2. Would be available in case of the impairment or insolvency
11 of the managed care organization; and

12 (iv) The availability of the money held in trust by the Secretary to
13 pay claims in case of impairment or insolvency of the managed care organization.

14 (2) Notwithstanding subsection (a)(2)(ii) of this section, a managed care
15 organization shall have an initial surplus that exceeds liabilities by at least
16 \$1,250,000. If a managed care organization has an initial surplus that is at least
17 \$1,250,000 but less than \$1,500,000, prior to approval, the Department shall
18 designate funds under paragraph (1)(iii) of this subsection sufficient to provide an
19 initial surplus of at least \$1,500,000.

20 (c) (1) (i) Each managed care organization shall maintain a surplus that
21 exceeds the liabilities of the managed care organization in the amount that is at least
22 equal to the greater of \$750,000 or 5 percent of the subscription charges earned
23 during the prior calendar year as recorded in the annual report filed by the managed
24 care organization with the Commissioner.

25 (ii) No managed care organization shall be required to maintain a
26 surplus in excess of a value of \$3,000,000.

27 (2) (i) For the protection of the managed care organization's enrollees
28 and creditors, the applicant shall deposit and maintain in trust with the State
29 Treasurer \$100,000 in cash or government securities of the type described in §
30 5-701(b) of the Insurance Article.

31 (ii) 1. The deposits shall be accepted and held in trust by the
32 State Treasurer in accordance with the provisions of Title 5, Subtitle 7 of the
33 Insurance Article.

34 2. For the purpose of applying this subparagraph, a managed
35 care organization shall be treated as an insurer.

36 (D) EACH MANAGED CARE ORGANIZATION SHALL COMPLY WITH RISK BASED
37 CAPITAL STANDARDS IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
38 INSURANCE COMMISSIONER UNDER § 4-311 OF THE INSURANCE ARTICLE.

1 [(d)] (E) On or before June 1 of each year, the Secretary shall submit to the
 2 General Assembly, in accordance with § 2-1246 of the State Government Article, a
 3 report on:

4 (1) The number of managed care organizations for which the Secretary
 5 has designated money to be held in trust under this [subsection] SECTION; and

6 (2) The amount of money held in trust by the Secretary that has been
 7 paid out in cases of insolvency or impairment of managed care organizations.

8 19-710.

9 (E) THE PROVISIONS OF TITLE 4, SUBTITLE 3 OF THE INSURANCE ARTICLE
 10 (RISK BASED CAPITAL STANDARDS FOR INSURERS) APPLY TO HEALTH MAINTENANCE
 11 ORGANIZATIONS IN THE SAME MANNER AS THEY APPLY TO INSURERS.

12 **Article - Insurance**

13 4-301.

14 (a) In this subtitle the following words have the meanings indicated.

15 (b) "Adjusted RBC report" means an RBC report that has been adjusted by the
 16 Commissioner in accordance with § 4-303(b) of this subtitle.

17 (c) "Corrective order" means an order issued by the Commissioner that
 18 specifies corrective actions that the Commissioner has determined are required.

19 (d) (1) "Domestic insurer" [has the meaning stated in § 1-101(o) of this
 20 article.] MEANS AN INSURER:

21 (I) AS DEFINED IN SUBSECTION (H) OF THIS SECTION; AND

22 (II) THAT IS FORMED UNDER THE LAWS OF THIS STATE.

23 (2) "Domestic insurer" does not include the Maryland Automobile
 24 Insurance Fund.

25 (e) "Filing date" means March 1 of any given year.

26 (f) "Foreign insurer" [has the meaning stated in § 1-101(p) of this article.]
 27 MEANS AN INSURER:

28 (1) AS DEFINED IN SUBSECTION (H) OF THIS SECTION; AND

29 (2) THAT IS FORMED UNDER THE LAWS OF A JURISDICTION OTHER
 30 THAN THIS STATE.

31 (G) (1) "HEALTH INSURER" MEANS AN INSURER THAT:

- 1 (I) IS AUTHORIZED TO WRITE HEALTH INSURANCE IN THE STATE;
2 AND
- 3 (II) RECEIVES THE MAJORITY OF ITS PREMIUM FROM THE SALE OF
4 HEALTH INSURANCE.
- 5 (2) "HEALTH INSURER" INCLUDES:
- 6 (I) A HEALTH MAINTENANCE ORGANIZATION OPERATING UNDER
7 A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER UNDER TITLE 19,
8 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;
- 9 (II) A NONPROFIT HEALTH SERVICE PLAN OPERATING UNDER
10 TITLE 14, SUBTITLE 1 OF THIS ARTICLE;
- 11 (III) A DENTAL PLAN OPERATING UNDER TITLE 14, SUBTITLE 4 OF
12 THIS ARTICLE; AND
- 13 (IV) A PROVIDER-SPONSORED ORGANIZATION OPERATING UNDER
14 TITLE 19, SUBTITLE 7A OF THE HEALTH - GENERAL ARTICLE.
- 15 (3) "HEALTH INSURER" DOES NOT INCLUDE A MANAGED CARE
16 ORGANIZATION OPERATING UNDER TITLE 15, SUBTITLE 1 OF THE HEALTH -
17 GENERAL ARTICLE.
- 18 (H) (1) "INSURER" MEANS AN INSURER OR OTHER ENTITY AUTHORIZED TO
19 ENGAGE IN THE INSURANCE BUSINESS IN THE STATE UNDER A CERTIFICATE OF
20 AUTHORITY ISSUED BY THE COMMISSIONER.
- 21 (2) "INSURER" INCLUDES:
- 22 (I) A HEALTH MAINTENANCE ORGANIZATION OPERATING UNDER
23 A CERTIFICATE OF AUTHORITY ISSUED BY THE COMMISSIONER UNDER TITLE 19,
24 SUBTITLE 7 OF THE HEALTH - GENERAL ARTICLE;
- 25 (II) A NONPROFIT HEALTH SERVICE PLAN OPERATING UNDER
26 TITLE 14, SUBTITLE 1 OF THIS ARTICLE;
- 27 (III) A DENTAL PLAN OPERATING UNDER TITLE 14, SUBTITLE 4 OF
28 THIS ARTICLE; AND
- 29 (IV) A PROVIDER-SPONSORED ORGANIZATION OPERATING UNDER
30 TITLE 19, SUBTITLE 7A OF THE HEALTH - GENERAL ARTICLE.
- 31 (3) "INSURER" DOES NOT INCLUDE:
- 32 (I) MONOLINE:
- 33 1. MORTGAGE GUARANTY INSURERS;
- 34 2. FINANCIAL GUARANTY INSURERS; OR

1 (III) A DENTAL PLAN OPERATING UNDER TITLE 14, SUBTITLE 4 OF
2 THIS ARTICLE;

3 (IV) A PROVIDER-SPONSORED ORGANIZATION OPERATING UNDER
4 TITLE 19, SUBTITLE 7A OF THE HEALTH - GENERAL ARTICLE; OR

5 (V) A MANAGED CARE ORGANIZATION OPERATING UNDER TITLE 15,
6 SUBTITLE 1 OF THE HEALTH - GENERAL ARTICLE.

7 [(j)] (L) "Negative trend" means, with respect to a life insurer or health
8 insurer, negative trend over a period of time, as determined in accordance with the
9 "trend test calculation" included in the RBC instructions.

10 [(k)] (M) "RBC instructions" means the risk based capital instructions
11 developed and adopted by the NAIC.

12 [(l)] (N) "RBC level" means an insurer's company action level RBC, regulatory
13 action level RBC, authorized control level RBC, or mandatory control level RBC if:

14 (1) "company action level RBC" means the product of 2.0 and the
15 authorized control level RBC;

16 (2) "regulatory action level RBC" means the product of 1.5 and the
17 authorized control level RBC;

18 (3) "authorized control level RBC" means the number determined under
19 the risk based capital formula in accordance with the RBC instructions; or

20 (4) "mandatory control level RBC" means the product of .70 and the
21 authorized control level RBC.

22 [(m)] (O) "RBC plan" means a comprehensive financial plan that contains the
23 elements specified in § 4-305(b) of this subtitle.

24 [(n)] (P) "RBC report" means a report prepared by a domestic insurer and
25 submitted to the Commissioner that details the domestic insurer's RBC levels as of
26 the end of the immediately preceding calendar year.

27 [(o)] (Q) "Revised RBC plan" means an RBC plan that has been:

28 (1) rejected by the Commissioner; and

29 (2) subsequently revised by the insurer, with or without the
30 Commissioner's recommendation.

31 [(p)] (R) "Total adjusted capital" means the sum of:

32 (1) an insurer's statutory capital and surplus as determined in
33 accordance with the statutory accounting principles applicable to the annual financial
34 statements required to be filed under [this article] STATE LAW AND REGULATIONS;
35 and

1 (2) any other items provided for in the RBC instructions.

2 4-304.

3 (a) (1) A life insurer's risk based capital shall be determined in accordance
4 with the formula set forth in the RBC instructions.

5 (2) By applying the factors in the manner set forth in the RBC
6 instructions, the formula shall take into account and may adjust for the covariance
7 between:

8 (i) the risk with respect to the life insurer's assets;

9 (ii) the risk of adverse insurance experience with respect to the life
10 insurer's liabilities and obligations;

11 (iii) the interest rate risk with respect to the life insurer's business;
12 and

13 (iv) all other business risks and other relevant risks as set forth in
14 the RBC instructions.

15 (b) (1) [A property and casualty] EXCEPT AS PROVIDED IN SUBSECTION (A)
16 OF THIS SECTION, AN insurer's risk based capital shall be determined in accordance
17 with the formula set forth in the RBC instructions.

18 (2) By applying the factors in the manner set forth in the RBC
19 instructions, the formula shall take into account and may adjust for the covariance
20 between:

21 (i) asset risk;

22 (ii) credit risk;

23 (iii) underwriting risk; and

24 (iv) all other business risks and other relevant risks as set forth in
25 the RBC instructions.

26 4-308.

27 (a) A mandatory control level event occurs when:

28 (1) an insurer files an RBC report that indicates that the insurer has
29 total adjusted capital that is less than its mandatory control level RBC;

30 (2) the Commissioner notifies the insurer of an adjusted RBC report that
31 indicates an event under item (1) of this subsection; or

32 (3) if an insurer requests a hearing to challenge an adjusted RBC report
33 that indicates the event under item (1) of this subsection, the Commissioner notifies

1 the insurer that the Commissioner, after a hearing, has rejected the insurer's
2 challenge.

3 (b) (1) In the case of a life insurer, if a mandatory control level event occurs
4 with respect to the life insurer, the Commissioner shall take any action that may be
5 necessary to place the life insurer under conservation, rehabilitation, or liquidation
6 under Title 9 of this article.

7 (2) In the case of a property and casualty insurer, if a mandatory control
8 level event occurs with respect to the property and casualty insurer, the
9 Commissioner:

10 (i) shall take any action that may be necessary to place the
11 property and casualty insurer under conservation, rehabilitation, or liquidation under
12 Title 9 of this article; or

13 (ii) in the case of a property and casualty insurer that is not writing
14 any new business and that is running off its existing business, may allow the property
15 and casualty insurer to continue its run-off under the supervision of the
16 Commissioner.

17 (3) ~~(H) EXCEPT AS PROVIDED IN SUBPARAGRAPH (H) OF THIS~~
18 ~~PARAGRAPH, IN THE CASE OF A HEALTH INSURER, IF A MANDATORY CONTROL LEVEL~~
19 ~~EVENT OCCURS WITH RESPECT TO THE HEALTH INSURER, THE COMMISSIONER~~
20 ~~SHALL TAKE ANY ACTION THAT MAY BE NECESSARY TO PLACE THE HEALTH~~
21 ~~INSURER UNDER CONSERVATION, REHABILITATION, OR LIQUIDATION UNDER TITLE~~
22 ~~9 OF THIS ARTICLE.~~

23 ~~(H) IN THE CASE OF A HEALTH MAINTENANCE ORGANIZATION, IF A~~
24 ~~MANDATORY CONTROL LEVEL EVENT OCCURS WITH RESPECT TO THE HEALTH~~
25 ~~MAINTENANCE ORGANIZATION, THE COMMISSIONER SHALL TAKE ACTION UNDER~~
26 ~~TITLE 19 OF THE HEALTH GENERAL ARTICLE.~~

27 (c) The Commissioner may delay action under subsection (b) of this section for
28 up to 90 days after the occurrence of the mandatory control level event if the
29 Commissioner finds there is a reasonable expectation that the mandatory control
30 level event may be eliminated within the 90-day period.

31 (d) (1) The Commissioner shall have the rights, powers, and duties under
32 Title 9 of this article needed to carry out the requirements of this section.

33 (2) If the Commissioner takes any action under Title 9 of this article
34 pursuant to an adjusted RBC report as provided in this section, the insurer shall be
35 entitled to the protections afforded to insurers under Title 9 of this article with regard
36 to summary proceedings.

37 4-311.

38 (a) The provisions of this Act are supplemental to other laws of the State, and
39 may not preclude or limit any other powers or duties of the Commissioner ~~under this~~

1 article], including Title 9 of this article AND TITLE 19 OF THE HEALTH - GENERAL
2 ARTICLE.

3 (b) (1) The Commissioner may adopt regulations to carry out this subtitle.

4 (2) THE COMMISSIONER, IN CONSULTATION WITH THE SECRETARY OF
5 HEALTH AND MENTAL HYGIENE, SHALL ADOPT REGULATIONS THAT APPLY
6 APPROPRIATE RISK BASED CAPITAL STANDARDS TO MANAGED CARE
7 ORGANIZATIONS AS DEFINED UNDER § 15-101(F) OF THE HEALTH - GENERAL
8 ARTICLE.

9 (c) The Commissioner may exempt from the application of this Act any
10 domestic property and casualty insurer that:

11 (1) writes direct business only in the State;

12 (2) writes direct annual premiums of \$2,000,000 or less; and

13 (3) assumes no reinsurance in excess of 5% of direct premiums written.

14 SECTION 3. AND BE IT FURTHER ENACTED, That the Insurance
15 Commissioner, in consultation with the Secretary of Health and Mental Hygiene, shall
16 adopt regulations that apply risk based capital standards to managed care
17 organizations no later than July 1, 2001.

18 ~~SECTION 3. 4.~~ AND BE IT FURTHER ENACTED, That this Act shall take
19 effect July 1, 2000.