Greg Schwab *Legislative Service Commission*

Am. H.B. 714*

123rd General Assembly
(As Reported by H. Insurance)

Reps. Evans, Netzley, Goodman, Britton, Jones, Smith, Bender, Schuring, Jolivette, Willamowski, Clancy, Gardner, Hollister, Winkler, Tiberi

BILL SUMMARY

- Applies, with modifications, the National Association of Insurance Commissioners' Risk-Based Capital for Insurers Model Act to health insuring corporations, as follows:

  --Requires domestic health insuring corporations to provide an annual report to the Superintendent of Insurance on their risk-based capital (RBC) levels, using a standardized formula to determine these RBC levels;

  --Specifies a range of actions to be taken by a health insuring corporation and the Superintendent based upon the health insuring corporation's status within a range of RBC levels;

  --Provides health insuring corporations with a hearing process to challenge determinations and actions of the Superintendent;

  --Provides confidentiality for reports, plans, information, and orders arising from the administration of the RBC law, with exceptions for information made public pursuant to other reporting requirements;

  --Prohibits the use of RBC levels to rank health insuring corporations, prohibits the publication or dissemination of representations about the RBC levels of a health insuring

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* *This analysis was prepared before the report of the House Insurance Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

corporation, and prohibits the Superintendent from using certain RBC information in the ratemaking process;

--Permits the Superintendent to exempt any domestic health insuring corporation from the bill's provisions, if the health insuring corporation writes direct business only in Ohio, limits its assumption of reinsurance, and either writes direct annual premiums of $2 million or less for basic health care services or covers less than 2,000 enrollees for supplemental health care services.

--Requires foreign health insuring corporations to provide an RBC report or plan to the Superintendent, if requested by the Superintendent;

--Grants rule-making authority to the Superintendent related to the implementation and operation of the bill;

--Provides immunity to the Superintendent, and to the Department of Insurance, its employees, and its agents, for actions taken in the performance of their powers and duties under the bill.

TABLE OF CONTENTS

Reporting requirement....3
Company action level events....4
Regulatory action level events....6
Authorized control level events....8
Mandatory control level events....9
Hearings and challenges....10
When notice to a health insuring corporation is effective....11
Confidentiality; use of information....11
Foreign health insuring corporations....12
Exemptions; immunity of Superintendent; rule-making authority....13
Statement of findings of the General Assembly....14
Temporary adjustment to the authorized control level RBC....14

CONTENT AND OPERATION

The bill applies, with modifications, the National Association of Insurance Commissioners' Risk-Based Capital for Insurers Model Act to health insuring corporations--managed health care corporations regulated under Chapters 1751. and

1753. of the Revised Code. Similar provisions are currently applicable to life, health, and property and casualty insurance companies (see sections 3903.81 to 3903.93, not in the bill).

Reporting requirement

(secs. 1753.31(E), (H), (J), (K), (L), and (N) and 1753.32(A) to (C))

The bill requires each domestic health insuring corporation to prepare and submit to the Superintendent of Insurance, on or prior to the first day of March of every year, a report on its risk-based capital (RBC) levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. "**RBC level**" means a health insuring corporation's action level RBC, regulatory action level RBC, authorized control level RBC, or mandatory control level RBC. "**RBC instructions**" means the RBC report, including risk-based capital instructions, as adopted by the National Association of Insurance Commissioners (NAIC) and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC. "RBC instructions" also includes any modifications adopted by the Superintendent, as the Superintendent considers to be necessary.

In addition to filing the RBC report with the Superintendent, the report must be filed with:

(1) The NAIC, in accordance with the RBC instructions;

(2) The insurance regulatory authority of any other state in which the health insuring corporation is authorized to do business, if that authority has sent a written request to the health insuring corporation for the report. An RBC report must be filed with a requesting state no later than the later of (a) 15 days after the health insuring corporation's receipt of the request or (b) prior to the first day of March.

If a domestic health insuring corporation files an RBC report that is inaccurate in the judgment of the Superintendent, the Superintendent must adjust the RBC report to correct the inaccuracy and then provide a copy of the adjusted RBC report to the health insuring corporation. The Superintendent also is required to provide the health insuring corporation with a statement of the reasons for any adjustment.

A health insuring corporation is required to determine its RBC levels in accordance with the formula set forth in the RBC instructions, which formula takes the following risks into account:

(1) Asset risk;

(2) Credit risk;

(3) Underwriting risk.

The formula also must take into account all other business risks and such other relevant risks as are set forth in the RBC instructions. The formula may adjust for the covariance between the above risks.

Company action level events

(secs. 1753.31(A), (B), (C), (M), (O), and (Q) and 1753.33)

Health insuring corporations are required to prepare and submit an RBC plan to the Superintendent of Insurance if a company action level event occurs. A "**company action level event**" is any of the following events:

(1) A health insuring corporation's filing of an RBC report that indicates that the health insuring corporation's total adjusted capital is greater than or equal to its regulatory action level RBC but less than its company action level RBC;

(2) The notification by the Superintendent to a health insuring corporation of an adjustment to the health insuring corporation's RBC report, which adjusted RBC report shows the health insuring corporation's total adjusted capital within the range described in paragraph (1), above, provided that the health insuring corporation does not challenge the adjusted RBC report (see "***Hearings and challenges***," below, for all references to hearings and challenges);

(3) The notification by the Superintendent to a health insuring corporation, following a hearing requested by the health insuring corporation, that the Superintendent has rejected the health insuring corporation's challenge to an adjusted RBC report, provided for in paragraph (2), above.

"**Company action level RBC**" means the product of 2.0 and a health insuring corporation's authorized control level RBC. "**Regulatory action level RBC**" means the product of 1.5 and a health insuring corporation's authorized control level RBC. "**Authorized control level RBC**" means the number determined under the RBC formula in accordance with the RBC instructions. "**Total adjusted capital**" means the sum of a health insuring corporation's net worth as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under the Health Insuring Corporations Law and such other items, if any, as the RBC instructions may provide.

Under the bill, the "**RBC plan**" is a comprehensive financial plan that:

(1) Identifies the conditions that contributed to the company action level event;

(2) Contains proposals of corrective actions that the health insuring corporation intends to take to eliminate the conditions contributing to the company action level event;

(3) Provides projections of the health insuring corporation's financial results in the current year and at least the two succeeding years, both in the absence of the proposed corrective actions and giving effect to the proposed corrective actions. These projections must include projections of statutory balance sheets, operating income, net income, capital, surplus, and RBC levels. Projections for both new and renewal business may include separate projections for each major line of business, and may separately identify each significant income, expense, and benefit component of the projection.

(4) Identifies the key assumptions impacting the health insuring corporation's projections made pursuant to paragraph (3), above, and describes the sensitivity of the projections to the assumptions;

(5) Identifies the quality of, and problems associated with, the health insuring corporation's business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and the use of reinsurance, if any, in each case.

The RBC plan must be submitted within 45 days after a company action level event. However, if a health insuring corporation has challenged an adjusted RBC report, the RBC plan need not be submitted unless the Superintendent rejects the challenge following the required hearing on the challenge. If the Superintendent rejects the health insuring corporation's challenge, the RBC plan must be submitted within 45 days after the Superintendent's notification to the health insuring corporation of the Superintendent's rejection of the challenge.

Within 60 days after a health insuring corporation submits an RBC plan, the Superintendent must either require the health insuring corporation to implement the RBC plan or notify the health insuring corporation that the RBC plan is unsatisfactory in the judgment of the Superintendent. If the Superintendent has determined that the RBC plan is unsatisfactory, the notification to the health insuring corporation shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory in the judgment of the Superintendent. Upon its receipt of the notification, the health insuring corporation is required to prepare and submit a revised RBC plan, which may incorporate by reference any revisions proposed by the Superintendent.

In the event that the health insuring corporation challenges a notification from the Superintendent that its RBC plan or a revised RBC plan is unsatisfactory, submission of a revised RBC plan need not be made unless the Superintendent rejects the health insuring corporation's challenge and notifies the health insuring corporation of this rejection. A health insuring corporation must submit a revised RBC plan to the Superintendent within 45 days after receiving notification from the Superintendent that its RBC plan is unsatisfactory, or that its challenge has been rejected, as applicable.

Notwithstanding the above provisions, if the Superintendent notifies a health insuring corporation that its RBC plan or revised RBC plan is unsatisfactory, the Superintendent may, at the Superintendent's discretion but subject to the health insuring corporation's right to a hearing, specify in the notification that the notification constitutes a "regulatory action level event" (see below).

Every domestic health insuring corporation that submits an RBC plan or a revised RBC plan to the Superintendent is required to file a copy of the plan with the insurance regulatory authority of every state in which the health insuring corporation is authorized to do business upon receiving a written request from the that authority for a copy of the plan, contingent upon the state having a confidentiality law substantially similar to the confidentiality provisions of the bill (see "***Confidentiality***," below). The health insuring corporation must file the copy no later than the later of 15 days after receiving the request, or the date on which the RBC plan or revised RBC plan is filed with the Superintendent.

Regulatory action level events

(sec. 1753.34)

A "**regulatory action level event**" is any of the following events:

(1) The filing of an RBC report by a health insuring corporation that indicates that the health insuring corporation's total adjusted capital is greater than or equal to its authorized control level RBC but less than its regulatory action level RBC;

(2) The notification by the Superintendent of Insurance to a health insuring corporation of an adjustment to the health insuring corporation's RBC report, which adjusted RBC report shows the health insuring corporation's total adjusted capital within the range described in paragraph (1), above, provided that the health insuring corporation does not challenge the adjusted RBC report;

(3) The Superintendent's notification to a health insuring corporation, following a hearing requested by the health insuring corporation, that the

Superintendent has rejected the health insuring corporation's challenge to an adjusted RBC report, provided for in paragraph (2), above;

(4) The failure of a health insuring corporation to file an RBC report by the first day of March of every year, unless the health insuring corporation has provided an explanation for the failure that is satisfactory to the Superintendent and has cured the failure within 10 days after the filing date;

(5) The failure of a health insuring corporation to submit an RBC plan to the Superintendent within the time period specified for filing after a company action level event (see "***Company action level events***," above);

(6) The Superintendent's notification to a health insuring corporation that the RBC plan or revised RBC plan it submitted is unsatisfactory in the judgment of the Superintendent, and that the Superintendent's notification constitutes a regulatory action level event with respect to the health insuring corporation, provided that the health insuring corporation does not challenge the determination;

(7) The Superintendent's notification to a health insuring corporation, following a hearing requested by the health insuring corporation, that the Superintendent has rejected the health insuring corporation's challenge to the Superintendent's determination under paragraph (6), above;

(8) The Superintendent's notification to a health insuring corporation of the Superintendent's determination that the health insuring corporation has failed to adhere to its RBC plan or revised RBC plan, and this failure has had a substantial adverse effect on the ability of the health insuring corporation to eliminate the conditions leading to the company action level event in accordance with its RBC plan or revised RBC plan, provided that the health insuring corporation does not challenge this determination;

(9) The Superintendent's notification to a health insuring corporation, following a hearing requested by the health insuring corporation, that the Superintendent has rejected the health insuring corporation's challenge to the Superintendent's determination under paragraph (8), above.

When a regulatory action level event occurs, the Superintendent must:

(1) Require the health insuring corporation to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(2) Perform such examinations and analyses as the Superintendent considers necessary of the assets, liabilities, and operations of the health insuring corporation,

including a review of the health insuring corporation's RBC plan or revised RBC plan and the results of any sensitivity tests undertaken pursuant to the RBC instructions;

(3) Issue a corrective order, based upon the examinations and analyses performed.

The RBC plan or revised RBC plan required by a regulatory action level event must be submitted to the Superintendent within 45 days after the regulatory action level event, unless the health insuring corporation files a challenge to an adjusted RBC report or a revised RBC plan. However, if the Superintendent determines the challenge is frivolous, the time limit for the submission of the RBC plan or revised RBC plan is not altered by the filing of the challenge.

If the challenge to an adjusted RBC report or a revised RBC plan is not frivolous, the required RBC plan or revised RBC plan need not be submitted to the Superintendent *unless* the Superintendent rejects the challenge following a hearing requested by the health insuring corporation. In that event, the RBC plan or revised RBC plan must be submitted within 45 days after the Superintendent's notification to the health insuring corporation of the Superintendent's rejection of the challenge.

The bill permits the Superintendent to retain actuaries, investment experts, and such other consultants, as may be necessary in the Superintendent's judgment, to review a health insuring corporation's RBC plan or revised RBC plan, to examine or analyze the assets, liabilities, and operation of the health insuring corporation, and to formulate a corrective order for the health insuring corporation. The fees, costs, and expenses relating to the consultants retained by the Superintendent are to be borne by the affected health insuring corporation.

Authorized control level events

(secs. 1753.31(G) and 1753.35)

An "**authorized control level event**" means any of the following events:

(1) The filing of an RBC report by a health insuring corporation that indicates that the health insuring corporation's total adjusted capital is greater than or equal to its mandatory control level RBC but less than its authorized control level RBC. "**Mandatory control level RBC**" means the product of .70 and a health insuring corporation's authorized control level RBC.

(2) The notification by the Superintendent of Insurance to a health insuring corporation of an adjustment to the health insuring corporation's RBC report, which adjusted RBC report shows the health insuring corporation's total adjusted capital

within the range described in paragraph (1), above, provided that the health insuring corporation does not challenge the adjusted RBC report;

(3) The notification by the Superintendent to a health insuring corporation, following a hearing requested by the health insuring corporation, that the Superintendent has rejected the health insuring corporation's challenge to an adjusted RBC report, provided for in paragraph (2), above;

(4) The failure of a health insuring corporation to respond, in a manner satisfactory to the Superintendent, to a corrective order issued by the Superintendent after a regulatory action level event, provided that the health insuring corporation does not challenge the corrective order;

(5) The failure of a health insuring corporation to respond, in a manner satisfactory to the Superintendent, to a corrective order issued by the Superintendent after a regulatory action level event, subsequent to the Superintendent's modification of an earlier order or the Superintendent's rejection of the health insuring corporation's challenge of the order.

When an authorized control level event occurs, the Superintendent must take the same actions required for regulatory action level events (see "***Regulatory action level events***," above), and, if the Superintendent considers it to be in the best interests of the subscribers and creditors of the health insuring corporation and of the public, take such other actions as are necessary to place the health insuring corporation under regulatory control under the Insurers Supervision, Rehabilitation, and Liquidation Act. The bill specifies that the authorized control level event is sufficient grounds for the Superintendent to take action under that Act; nothing in the bill's provisions impairs or restricts the rights, powers, and protections afforded to the Superintendent and to health insuring corporations under that Act.

Mandatory control level events

(sec. 1753.36)

A "**mandatory control level event**" is any of the following events:

(1) The filing of an RBC report by a health insuring corporation that indicates that the health insuring corporation's total adjusted capital is less than its mandatory control level RBC;

(2) The notification by the Superintendent of Insurance to a health insuring corporation of an adjustment to the health insuring corporation's RBC report, which adjusted RBC report shows the health insuring corporation's total adjusted capital at

less than its mandatory control level RBC, provided the health insuring corporation does not challenge the adjusted RBC report;

(3) The notification by the Superintendent to a health insuring corporation, following a hearing requested by the health insuring corporation, that the Superintendent has rejected the health insuring corporation's challenge to an adjusted RBC report, provided for in paragraph (2), above.

When a mandatory control level event occurs, the Superintendent is required to take such actions as are necessary to place the health insuring corporation under regulatory control under the Insurers Supervision, Rehabilitation, and Liquidation Act. The bill specifies that the mandatory control level event is sufficient grounds for the Superintendent to take action under that Act; nothing in the bill's provisions impairs or restricts the rights, powers, and protections afforded to the Superintendent and to health insuring corporations under that Act.

The Superintendent is permitted to defer action for up to 90 days after a mandatory control level event if the Superintendent finds that there is a reasonable expectation the health insuring corporation may be able to eliminate the conditions leading to the mandatory control level event within the 90-day period.

Hearings and challenges

(sec. 1753.37)

The bill provides that a health insuring corporation has the right to a confidential hearing upon its receipt of any of the following from the Superintendent of Insurance:

(1) An adjusted RBC report;

(2) Notification that the health insuring corporation's RBC plan or revised RBC plan is unsatisfactory, and a statement that the notification constitutes a regulatory action level event for the health insuring corporation;

(3) Notification that the Superintendent has determined that the health insuring corporation has failed to adhere to its RBC plan or revised RBC plan, which failure has a substantial adverse effect on the ability of the health insuring corporation to eliminate the conditions leading to a company action level event in accordance with its RBC plan or revised RBC plan;

(4) A corrective order issued in the case of a regulatory action level event.

A health insuring corporation is required to notify the Superintendent of its request for a hearing within five days after its receipt of any report, notification, or

order listed in paragraphs (1) through (4), above. Upon the Superintendent's receipt of such a request, the Superintendent must set a date for a hearing, which date may be no less than 10 days and no more than 30 days after the Superintendent's receipt of the health insuring corporation's request. At the hearing, a health insuring corporation may challenge any determination or action taken by the Superintendent under the bill.

When notice to a health insuring corporation is effective

(sec. 1753.41)

Unless otherwise provided, all notices sent to a health insuring corporation by the Superintendent of Insurance that may result in regulatory action under the bill are effective upon dispatch if transmitted by registered or certified mail. Any other notice transmitted is effective upon the health insuring corporation's receipt of the notice.

Confidentiality; use of information

(sec. 1753.38)

The Superintendent of Insurance is required to keep all of the following confidential:

(1) An RBC report, to the extent that information contained in the report is not required to be included in an annual statement available to the public;

(2) An RBC plan;

(3) The results of, or reports on, examinations or analyses conducted after a regulatory action level event, and any corrective order issued based upon the examinations and analyses.

The bill provides that a disclosure to the Superintendent of these reports, plans, information, and orders does not constitute a waiver of any applicable privilege or claim of confidentiality. The bill also provides that these reports, plans, information, and orders are not public records; these items are not subject to subpoena, are not subject to discovery, and are not admissible in evidence in any private civil action. Neither the Superintendent nor any person who receives these reports, plans, information, and orders while acting under the authority of the Superintendent shall be permitted or required to testify in any private civil action concerning these items. Notwithstanding the above restrictions, however, these reports, plans, information, and orders may be used by the Superintendent in accordance with the insurance laws of Ohio. Further, the Superintendent, in the performance of the Superintendent's duties, may share the reports, plans,

information, and orders with state, federal, and international regulatory agencies and law enforcement authorities, and with the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to maintain the confidentiality of the items.

The bill prohibits the use of a comparison of a health insuring corporation's total adjusted capital to any of its RBC levels to rank health insuring corporations. Also, the bill prohibits the Superintendent from using RBC instructions, RBC reports, adjusted RBC reports, RBC plans, and revised RBC plans, for ratemaking, as evidence in any rate proceeding, or to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health insuring corporation or affiliate is authorized to write.

Certain acts are defined by the bill as unfair trade practices under the insurance Unfair and Deceptive Practices Act (sections 3901.19 to 3901.26), unless the acts are otherwise required under the Health Insuring Corporations Law. It is an unfair trade practice for any person to make, publish, disseminate, circulate, or place before the public, or to cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other manner, in an advertisement, announcement, or statement, written or oral, that contains an assertion, representation, or statement, regarding the RBC levels of a health insuring corporation, or any component derived in the calculation of the RBC levels. Further, if any materially false statement is published comparing a health insuring corporation's total adjusted capital to its RBC levels, or any inappropriate comparison of any other amount to any of the health insuring corporation's RBC levels is published, and the health insuring corporation is able to demonstrate to the Superintendent with substantial proof the falsity of the statement or the inappropriateness of the comparison, then the health insuring corporation may publish, with the Superintendent's approval, an announcement in a written publication to rebut the materially false statement or inappropriate comparison.

Foreign health insuring corporations

(secs. 1753.31(F) and 1753.39)

Foreign health insuring corporations, those health insuring corporations holding an Ohio certificate of authority but domiciled outside Ohio, are required to submit to the Superintendent of Insurance, upon receiving the Superintendent's written request, an RBC report for the calendar year just ended. The RBC report must be submitted no later than the later of (1) 15 days after receiving the Superintendent's request or (2) the date a domestic health insuring corporation would be required to file an RBC report. A foreign health insuring corporation is also required to promptly submit to the Superintendent, upon receiving the

Superintendent's written request, a copy of any RBC plan or revised RBC plan filed with the insurance regulatory authority of any other state.

The Superintendent may require a foreign health insuring corporation to file an RBC plan with the Superintendent after a company action level event, regulatory action level event, or authorized control level event involving the health insuring corporation, if the insurance regulatory authority of the state of domicile of the health insuring corporation fails to require the health insuring corporation to file an RBC plan in the manner specified under that state's RBC laws, if any. The failure of a foreign health insuring corporation to file an RBC plan or revised RBC plan with the Superintendent as required is grounds for the Superintendent to order the health insuring corporation to cease and desist from writing new business in Ohio.

In the case of a mandatory control level event involving a foreign health insuring corporation, if no domiciliary receiver has been appointed for the health insuring corporation under the rehabilitation and liquidation laws applicable in its state of domicile, the Superintendent may make application to the Court of Common Pleas, as permitted under the law pertaining to the appointment of a domiciliary liquidator, conservator, or ancillary receiver, for an order directing the Superintendent to liquidate the property of the health insuring corporation found in Ohio. The occurrence of the mandatory control level event is deemed sufficient grounds for the Superintendent to make such application to the court.

Exemptions; immunity of Superintendent; rule-making authority

(secs. 1753.40, 1753.42, and 1753.43)

The Superintendent of Insurance is permitted to exempt a domestic health insuring corporation from the application of the bill's provisions *if* the health insuring corporation meets all of the following requirements:

(1) The health insuring corporation writes direct business only in Ohio;

(2) The health insuring corporation either writes direct annual premiums of $2,000,000 or less for basic health care services or covers less than 2,000 enrollees under policies, contracts, certificates, or agreements for supplemental health care services;

(3) The health insuring corporation assumes no reinsurance in excess of 5% of direct premium written.

The bill provides that there is no liability on the part of, and no cause of action can arise against, the Superintendent, or the Department of Insurance, its

employees, or its agents, for any action taken in their performance of the powers and duties set forth in the bill.

The Superintendent may adopt rules in accordance with the Administrative Procedure Act as are reasonably necessary for the implementation and operation of the bill.

Statement of findings of the General Assembly

(sec. 1753.32(D))

The bill states the following findings of the General Assembly:

(1) An excess of capital over the amount produced by the risk-based capital requirements of the bill, and the formulas, schedules, and instructions referenced in the bill, is desirable in the business of insurance.

(2) Health insuring corporations, accordingly, should seek to maintain capital above the RBC levels required by the bill.

(3) Additional capital is used and is useful in the business of insurance, helping to secure a health insuring corporation against various risks inherent in, or affecting, the business of insurance, which risks are not accounted for or are only partially measured by the risk-based capital requirements of the bill.

Temporary adjustment to the authorized control level RBC

(Section 3)

The authorized control level RBC, as defined by the bill, is to be adjusted for use in reports filed for periods through December 31, 2001. The authorized control level RBC is to be the product of .90 and the number determined under the risk-based capital formula in accordance with the RBC instructions. Thereafter, the authorized control level RBC is to be determined in accordance with the bill without this adjustment.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	05-22-00	pp.	2014-2015
Reported, H. Insurance	---	p.	---

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