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**SENATE BILL 6024**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senator Chase

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Every domestic carrier shall, on or prior to the filing date of March 1st, prepare and submit to the commissioner a report of its 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. In addition, every domestic carrier shall file its RBC report:

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

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

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

(ii) The filing date.

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

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

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

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

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

(3) ((~~An excess of capital over the amount produced by the risk-based capital requirements contained in RCW 48.43.300 through 48.43.370 and the formulas, schedules, and instructions referenced in RCW 48.43.300 through 48.43.370 is desirable in the business of insurance. Accordingly, carriers should seek to maintain capital above the RBC levels required by RCW 48.43.300 through 48.43.370. Additional capital is used and useful in the insurance business and helps to secure a carrier 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 RCW 48.43.300 through 48.43.370.~~

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

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

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