

Hoffman
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SENATE/HOUSE FILE SF / HF
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE DIVISION
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of health organizations for
2 purposes of solvency and establishing a measure for the risk-
3 based capital of a health organization.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 521F.1 PURPOSE.

2 The purpose of this chapter is to establish minimum capital
3 requirements for health organizations that will provide
4 protection related to the risks to which an individual health
5 organization may be subject including, but not limited to, the
6 health organization's asset risk, underwriting risk, credit
7 risk, and other business risk.

8 Sec. 2. NEW SECTION. 521F.2 DEFINITIONS.

9 As used in this chapter, unless the context otherwise
10 requires:

11 1. "Adjusted risk-based capital report" means a risk-based
12 capital report adjusted by the commissioner pursuant to
13 section 521F.3, subsection 4.

14 2. "Commissioner" means the commissioner of insurance.

15 3. "Corrective order" means an order issued by the
16 commissioner specifying corrective actions which the
17 commissioner has determined are required.

18 4. "Domestic health organization" means a health
19 organization domiciled in this state.

20 5. "Filing date" means March 1 of each year.

21 6. "Foreign health organization" means a health
22 organization that is not domiciled in this state.

23 7. "Health organization" means a health maintenance
24 organization, limited service organization, dental or vision
25 plan, hospital, medical and dental indemnity or service
26 corporation or other managed care organization licensed under
27 chapter 514, 514B, or 1993 Iowa Acts, chapter 158, or any
28 other entity engaged in the business of insurance, risk
29 transfer, or risk retention, that is subject to the
30 jurisdiction of the commissioner of insurance or the director
31 of public health. "Health organization" does not include an
32 insurance company licensed to transact the business of
33 insurance under chapter 508, 515, or 520, and which is
34 otherwise subject to chapter 521E.

35 8. "Revised risk-based capital plan" means a risk-based

1 capital plan that has been rejected by the commissioner and
2 has been revised by the health organization, with or without
3 the commissioner's recommendation.

4 9. "Risk-based capital instructions" means the
5 instructions included in the risk-based capital report as
6 adopted by the national association of insurance
7 commissioners, as such risk-based capital instructions may be
8 amended by the national association of insurance commissioners
9 from time to time in accordance with the procedures adopted by
10 the national association of insurance commissioners.

11 10. "Risk-based capital level" means a health
12 organization's company-action-level risk-based capital,
13 regulatory-action-level risk-based capital, authorized-
14 control-level risk-based capital, or mandatory-control-level
15 risk-based capital as follows:

16 a. "Company-action-level risk-based capital" means the
17 product of two and the health organization's authorized-
18 control-level risk-based capital.

19 b. "Regulatory-action-level risk-based capital" means the
20 product of one and one-half and the health organization's
21 authorized-control-level risk-based capital.

22 c. "Authorized-control-level risk-based capital" means the
23 number determined under the risk-based capital formula in
24 accordance with the risk-based capital instructions.

25 d. "Mandatory-control-level risk-based capital" means the
26 product of seven-tenths and the health organization's
27 authorized-control-level risk-based capital.

28 11. "Risk-based capital plan" means a comprehensive
29 financial plan containing the elements identified in section
30 521F.4, subsection 2.

31 12. "Risk-based capital report" means the report required
32 in section 521F.3.

33 13. "Total adjusted capital" means the sum of the
34 following:

35 a. A health organization's statutory capital and surplus.

1 b. Such other items, if any, as identified in the risk-
2 based capital instructions.

3 Sec. 3. NEW SECTION. 521F.3 RISK-BASED CAPITAL REPORTS.

4 1. A domestic health organization, on or prior to the
5 filing date, shall prepare and submit to the commissioner a
6 report of the health organization's risk-based capital levels
7 as of the end of the calendar year immediately preceding the
8 filing date, in a form and containing the information required
9 by the risk-based capital instructions. A domestic health
10 organization shall also file its risk-based capital report
11 with the insurance commissioner in each state in which the
12 health organization is authorized to do business, if such
13 insurance commissioner has notified the health organization of
14 its request in writing. Upon receipt of the written request,
15 the health organization shall file its risk-based capital
16 report with the requesting commissioner by no later than the
17 later of the following:

18 a. Fifteen days from the receipt of the written request.

19 b. The filing date.

20 2. a. A health organization's risk-based capital shall be
21 determined pursuant to the formula set forth in the risk-based
22 capital instructions. The formula shall take into account all
23 of the following, and may be adjusted, as deemed appropriate
24 by the commissioner, for the covariance between the following:

25 (1) Assets risk.

26 (2) Credit risk.

27 (3) Underwriting risk.

28 (4) All other business risks and other relevant risks as
29 identified in the risk-based capital instructions.

30 b. The risk factors shall be applied in the manner set
31 forth in the risk-based capital instructions.

32 3. A health organization shall seek to maintain capital
33 above the risk-based capital levels required by this chapter.

34 4. A risk-based capital report filed by a domestic health
35 organization which in the judgment of the commissioner is

1 inaccurate, shall be adjusted by the commissioner to correct
2 the inaccuracy. The commissioner shall notify the health
3 organization of the adjustment. The notice shall contain a
4 statement of the reason for the adjustment.

5 Sec. 4. NEW SECTION. 521F.4 COMPANY-ACTION-LEVEL EVENT.

6 1. "Company-action-level event" means any of the
7 following:

8 a. The filing of a risk-based capital report by a health
9 organization which indicates that the health organization's
10 total adjusted capital is greater than or equal to its
11 regulatory-action-level risk-based capital but less than its
12 company-action-level risk-based capital.

13 b. Notification by the commissioner to a health
14 organization of an adjusted risk-based capital report that
15 indicates an event in paragraph "a", provided the health
16 organization does not challenge the adjusted risk-based
17 capital report and request a hearing pursuant to section
18 521F.8.

19 c. If a hearing is requested pursuant to section 521F.8,
20 notification by the commissioner to the health organization
21 after the hearing that the commissioner has rejected the
22 health organization's challenge of the adjusted risk-based
23 capital report indicating the event in paragraph "a".

24 2. Upon the occurrence of a company-action-level event,
25 the health organization shall prepare and submit to the
26 commissioner a risk-based capital plan that includes all of
27 the following:

28 a. Identification of the conditions which contributed to
29 the company-action-level event.

30 b. Proposed corrective actions which the health
31 organization intends to implement and which are expected to
32 result in the elimination of the company-action-level event.

33 c. Projections of the health organization's financial
34 results for the current year and at least the two succeeding
35 years, including projections of statutory balance sheets,

1 operating income, net income, capital and surplus, and risk-
2 based capital levels. Projections shall be provided assuming
3 the absence of the proposed corrective actions and assuming
4 the implementation of the proposed corrective actions.
5 Projections shall be provided for each major line of business
6 and separately identify each significant income, expense, and
7 benefit component.

8 d. Identification of the primary assumptions impacting the
9 health organization's projections and the sensitivity of the
10 projections to the assumptions.

11 e. Identification of the quality of, and problems
12 associated with, the health organization's business, including
13 but not limited to its assets, anticipated business growth and
14 associated surplus strain, extraordinary exposure to risk, mix
15 of business, and use of reinsurance, if any, in each case.

16 3. The risk-based capital plan shall be filed within
17 forty-five days of the company-action-level event, or, if the
18 health organization requests a hearing pursuant to section
19 521F.8 for the purpose of challenging the adjusted risk-based
20 capital report, within forty-five days after notification to
21 the insurer that the commissioner, after hearing, has rejected
22 the insurer's challenge.

23 4. Within sixty days after the submission by a health
24 organization of a risk-based capital plan to the commissioner,
25 the commissioner shall notify the health organization whether
26 the risk-based capital plan shall be implemented or, in the
27 judgment of the commissioner, is unsatisfactory. If the
28 commissioner determines the risk-based capital plan is
29 unsatisfactory, the notification to the health organization
30 shall set forth the reasons for the determination, and may set
31 forth proposed revisions which in the judgment of the
32 commissioner will render the risk-based capital plan
33 satisfactory. Upon the receipt of the notification from the
34 commissioner, the health organization shall prepare a revised
35 risk-based capital plan, which may incorporate by reference

1 any revisions proposed by the commissioner, and file the
2 revised risk-based capital plan with the commissioner.

3 5. The revised risk-based capital plan shall be filed
4 within forty-five days of the receipt of notification from the
5 commissioner of the commissioner's determination that the
6 risk-based capital plan is unsatisfactory, or, if the health
7 organization requests a hearing pursuant to section 521F.8 for
8 the purpose of challenging the commissioner's determination,
9 within forty-five days after notification to the health
10 organization that the commissioner, after hearing, has
11 rejected the health organization's challenge.

12 6. After notification of the health organization by the
13 commissioner that the health organization's risk-based capital
14 plan or revised risk-based capital plan is unsatisfactory, the
15 commissioner, pursuant to section 521F.8, may specify in the
16 notification that the notification constitutes a regulatory-
17 action-level event.

18 7. a. A domestic health organization that files a risk-
19 based capital plan or revised risk-based capital plan with the
20 commissioner shall file a copy of the risk-based capital plan
21 or revised risk-based capital plan with the insurance
22 commissioner in a state in which the health organization is
23 authorized to do business if both of the following apply:

24 (1) The other state has a risk-based capital provision
25 substantially similar to section 521F.9, with respect to the
26 confidentiality and availability of such plans.

27 (2) The insurance commissioner of that state has notified
28 the health organization in writing of its request to receive a
29 copy of the risk-based capital plan or revised risk-based
30 capital plan.

31 b. Upon receipt of the written request under paragraph
32 "a", subparagraph (2), the health organization shall file a
33 copy of the risk-based capital plan or revised risk-based
34 capital plan with the requesting commissioner by no later than
35 the later of the following:

1 (1) Fifteen days after the receipt of the written request.

2 (2) The date on which the risk-based capital plan or
3 revised risk-based capital plan is filed under subsection 3 or
4 5, as applicable.

5 Sec. 5. NEW SECTION. 521F.5 REGULATORY-ACTION-LEVEL
6 EVENT.

7 1. "Regulatory-action-level event" means any of the
8 following:

9 a. The filing of a risk-based capital report by the health
10 organization that indicates that the health organization's
11 total adjusted capital is greater than or equal to its
12 authorized-control-level risk-based capital but less than its
13 regulatory-action-level risk-based capital.

14 b. Notification by the commissioner to a health
15 organization of an adjusted risk-based capital report that
16 indicates the event in paragraph "a", provided the health
17 organization does not challenge the adjusted risk-based
18 capital report and request a hearing pursuant to section
19 521F.8.

20 c. After a hearing pursuant to section 521F.8,
21 notification by the commissioner to the health organization
22 that the commissioner has rejected the health organization's
23 challenge of the adjusted risk-based capital report indicating
24 the event in paragraph "a".

25 d. Failure of the health organization to file a risk-based
26 capital report by the filing date, unless the health
27 organization has provided an explanation for the failure which
28 is satisfactory to the commissioner and has cured the failure
29 within ten days after the filing date.

30 e. Failure of the health organization to submit a risk-
31 based capital plan to the commissioner within the time period
32 set forth in section 521F.4, subsection 3.

33 f. Notification by the commissioner to the health
34 organization of both of the following:

35 (1) The risk-based capital plan or revised risk-based

1 capital plan filed by the health organization, in the judgment
2 of the commissioner, is unsatisfactory.

3 (2) Notification pursuant to this paragraph constitutes a
4 regulatory-action-level event with respect to the health
5 organization, provided the health organization has not
6 challenged the determination pursuant to section 521F.8.

7 g. After a hearing pursuant to section 521F.8,
8 notification by the commissioner to the health organization
9 that the commissioner has rejected the health organization's
10 challenge of the determination made by the commissioner
11 pursuant to paragraph "f".

12 h. Notification by the commissioner to the health
13 organization that the health organization has failed to adhere
14 to its risk-based capital plan or revised risk-based capital
15 plan, but only if the failure has a substantial adverse effect
16 on the ability of the health organization to eliminate the
17 company-action-level event pursuant to the health
18 organization's risk-based capital plan or revised risk-based
19 capital plan and the commissioner has so stated in the
20 notification. However, notification by the commissioner
21 pursuant to this paragraph does not constitute a company-
22 action-level event if the health organization has challenged
23 the determination of the commissioner pursuant to section
24 521F.8.

25 i. After a hearing pursuant to section 521F.8,
26 notification by the commissioner to the health organization
27 that the commissioner rejected the health organization's
28 challenge of the commissioner's determination pursuant to
29 paragraph "h".

30 2. Upon the occurrence of a regulatory-action-level event,
31 the commissioner shall do all of the following:

32 a. Require the health organization to prepare and submit a
33 risk-based capital plan or revised risk-based capital plan, as
34 applicable.

35 b. Perform an examination or analysis of the assets,

1 liabilities, and operations of the health organization,
2 including a review of its risk-based capital plan or revised
3 risk-based capital plan.

4 c. Subsequent to the examination or analysis pursuant to
5 paragraph "b", issue a corrective order.

6 3. The commissioner, in determining the corrective actions
7 to be ordered, may take into account factors the commissioner
8 deems relevant with respect to the health organization based
9 upon the commissioner's examination or analysis of the assets,
10 liabilities, and operations of the health organization,
11 including, but not limited to, the results of any sensitivity
12 tests undertaken pursuant to the risk-based capital
13 instructions. The risk-based capital plan or revised risk-
14 based capital plan shall be submitted within forty-five days
15 after the occurrence of the regulatory-action-level event,
16 except as follows:

17 a. If the health organization challenges a risk-based
18 capital report pursuant to section 521F.8, and in the judgment
19 of the commissioner the challenge is not frivolous, within
20 forty-five days after the notification to the health
21 organization that the commissioner, after a hearing pursuant
22 to section 521F.8, has rejected the health organization's
23 challenge.

24 b. If the health organization challenges a revised risk-
25 based capital plan pursuant to section 521F.8, and in the
26 judgment of the commissioner the challenge is not frivolous,
27 within forty-five days after the notification to the health
28 organization that the commissioner, after a hearing pursuant
29 to section 521F.8, has rejected the health organization's
30 challenge.

31 4. The commissioner may retain actuaries, investment
32 experts, and other consultants as deemed necessary by the
33 commissioner to review the health organization's risk-based
34 capital plan or revised risk-based capital plan; examine or
35 analyze the assets, liabilities, and operations of the health

1 organization; and assist in the formulation of the corrective
2 order with respect to the health organization. Fees of the
3 actuaries, investment experts, or other consultants retained
4 by the commissioner shall be paid by the health organization
5 subject to the review or examination.

6 Sec. 6. NEW SECTION. 521F.6 AUTHORIZED-CONTROL-LEVEL
7 EVENT.

8 1. "Authorized-control-level event" means any of the
9 following:

10 a. The filing of a risk-based capital report by the health
11 organization which indicates that the health organization's
12 total adjusted capital is greater than or equal to its
13 mandatory-control-level risk-based capital but less than its
14 authorized-control-level risk-based capital.

15 b. Notification by the commissioner to a health
16 organization of an adjusted risk-based capital report that
17 indicates the event in paragraph "a", provided the health
18 organization does not challenge the adjusted risk-based
19 capital report and request a hearing pursuant to section
20 521F.8.

21 c. After a hearing pursuant to section 521F.8,
22 notification by the commissioner to the health organization
23 that the commissioner has rejected the health organization's
24 challenge of the adjusted risk-based capital report indicating
25 the event in paragraph "a".

26 d. Failure of the health organization to respond to a
27 corrective order in a manner satisfactory to the commissioner,
28 unless the health organization has challenged the corrective
29 order pursuant to section 521F.8.

30 e. Failure of the health organization to respond to a
31 corrective order in a manner satisfactory to the commissioner
32 after the health organization has challenged the corrective
33 order pursuant to section 521F.8, and the commissioner, after
34 a hearing pursuant to section 521F.8, has rejected the
35 challenge or modified the corrective order.

1 2. In the event of an authorized-control-level event, the
2 commissioner shall do either of the following:

3 a. Take action as required pursuant to section 521F.5 in
4 the same manner as if a regulatory-action-level event has
5 occurred.

6 b. Take action as necessary to cause the health
7 organization to be placed under supervision or other
8 regulatory control under chapter 507C, if the commissioner
9 deems such action to be in the best interests of the
10 policyholders and creditors of the health organization and of
11 the public. If the commissioner takes such action pursuant to
12 this paragraph, the authorized-control-level event is deemed
13 sufficient grounds for the commissioner to take action
14 pursuant to chapter 507C and the commissioner has the rights,
15 powers, and duties with respect to the health organization as
16 set forth in chapter 507C. If the commissioner takes action
17 under this paragraph pursuant to an adjusted risk-based
18 capital report, the health organization is entitled to the
19 protections of chapter 17A pertaining to summary proceedings.

20 Sec. 7. NEW SECTION. 521F.7 MANDATORY-CONTROL-LEVEL
21 EVENT.

22 1. "Mandatory-control-level event" means any of the
23 following:

24 a. The filing of a risk-based capital report which
25 indicates that a health organization's total adjusted capital
26 is less than its mandatory-control-level risk-based capital.

27 b. Notification by the commissioner to a health
28 organization of an adjusted risk-based capital report that
29 indicates the event in paragraph "a", provided the health
30 organization does not challenge the adjusted risk-based
31 capital report and request a hearing pursuant to section
32 521F.8.

33 c. After a hearing pursuant to section 521F.8,
34 notification by the commissioner to the health organization
35 that the commissioner has rejected the health organization's

1 challenge of the adjusted risk-based capital report indicating
2 the event in paragraph "a".

3 2. In the event of a mandatory-control-level event, the
4 commissioner shall take action as necessary to place the
5 health organization under supervision or other regulatory
6 control pursuant to chapter 507C. If the commissioner takes
7 action pursuant to this subsection, the mandatory-control-
8 level event is deemed sufficient grounds for the commissioner
9 to take action pursuant to chapter 507C, and the commissioner
10 has the rights, powers, and duties with respect to the health
11 organization as are set forth in chapter 507C. If the
12 commissioner takes action pursuant to an adjusted risk-based
13 capital report, the health organization is entitled to the
14 protections of chapter 17A pertaining to summary proceedings.
15 Notwithstanding this subsection, the commissioner may forego
16 action for up to ninety days after the mandatory-control-level
17 event if the commissioner finds a reasonable expectation
18 exists that the mandatory-control-level event may be
19 eliminated within the ninety-day period.

20 Sec. 8. NEW SECTION. 521F.8 CONFIDENTIAL HEARINGS.

21 1. A health organization receiving a notification pursuant
22 to subsection 2 is entitled to a confidential hearing before
23 the insurance division, at which the health organization may
24 challenge a determination or action by the commissioner. Upon
25 receipt of the health organization's request for a hearing,
26 the commissioner shall set a date for the hearing, which shall
27 be not less than ten and not more than thirty days after the
28 date of the health organization's request.

29 2. A health organization shall notify the commissioner of
30 the health organization's request for a confidential hearing
31 within five days after the occurrence of any of the following:

32 a. Notification to a health organization by the
33 commissioner of an adjusted risk-based capital report.

34 b. Notification to a health organization by the
35 commissioner of both of the following:

1 (1) The health organization's risk-based capital plan or
2 revised risk-based capital plan is unsatisfactory.

3 (2) That the notification pursuant to this paragraph
4 constitutes a regulatory-action-level event with respect to
5 the health organization.

6 c. Notification to a health organization by the
7 commissioner that the health organization has failed to adhere
8 to its risk-based capital plan or revised risk-based capital
9 plan and that the failure has a substantial adverse effect on
10 the ability of the health organization to eliminate the
11 company-action-level event in accordance with its risk-based
12 capital plan or revised risk-based capital plan.

13 d. Notification to a health organization by the
14 commissioner of a corrective order with respect to the health
15 organization.

16 Sec. 9. NEW SECTION. 521F.9 CONFIDENTIALITY -- USE OF
17 REPORTS AND INFORMATION -- PROHIBITION ON ANNOUNCEMENTS --
18 PROHIBITION ON USE IN RATEMAKING.

19 1. A risk-based capital report, to the extent the
20 information in the report is not required to be set forth in a
21 publicly available annual statement schedule, a risk-based
22 capital plan, including the results or report of any
23 examination or analysis of a health organization performed
24 pursuant to this chapter, and any corrective order issued by
25 the commissioner pursuant to an examination or analysis, which
26 are filed with the commissioner, are deemed not to be public
27 records under chapter 22 and are privileged and confidential.
28 This information shall not be made public and is not subject
29 to subpoena, other than by the commissioner, and then only for
30 the purpose of enforcement actions taken by the commissioner
31 pursuant to this chapter or any other provision of the
32 insurance laws of this state.

33 2. The comparison of a health organization's total
34 adjusted capital to any of its risk-based capital levels is a
35 regulatory tool which may indicate the need for possible

1 corrective action with respect to the health organization, and
2 is not to be used as a means to rank health organizations
3 generally.

4 3. Except as otherwise required under this chapter, the
5 publication or dissemination in any manner of an announcement
6 or statement which contains an assertion, representation, or
7 statement with regard to the risk-based capital levels of a
8 health organization, or of a component derived in the
9 calculation, by a health organization, agent, broker, or other
10 person engaged in any manner in the business of insurance, is
11 prohibited. However, if a materially false statement
12 comparing a health organization's total adjusted capital to
13 its risk-based capital levels or a misleading comparison of
14 any other amount to the health organization's risk-based
15 capital levels is published or disseminated in any manner and
16 if the health organization is able to demonstrate to the
17 commissioner with substantial proof that the statement is
18 false, misleading, or inappropriate, as the case may be, the
19 health organization may publish an announcement in a written
20 publication for the sole purpose of rebutting the materially
21 false, misleading, or inappropriate statement.

22 4. The risk-based capital instructions, risk-based capital
23 reports, adjusted risk-based capital reports, risk-based
24 capital plans, and revised risk-based capital plans shall be
25 solely used by the commissioner in monitoring the solvency of
26 health organizations and the need for possible corrective
27 action with respect to health organizations. The risk-based
28 capital instructions, risk-based capital reports, adjusted
29 risk-based capital reports, risk-based capital plans, and
30 revised risk-based capital plans shall not be used by the
31 commissioner for ratemaking and shall not be considered or
32 introduced as evidence in any rate proceeding or used by the
33 commissioner to calculate or derive any elements of an
34 appropriate premium level or rate of return for any line of
35 insurance which a health organization or any affiliate is

1 authorized to write.

2 Sec. 10. NEW SECTION. 521F.10 SUPPLEMENTAL PROVISIONS --
3 RULES -- EXEMPTION.

4 1. This chapter shall not preclude or limit any other
5 powers or duties of the commissioner under insurance laws
6 including but not limited to chapter 507C.

7 2. The commissioner may adopt rules pursuant to chapter
8 17A as are necessary for the administration of this chapter.

9 3. The commissioner may exempt from filing a risk-based
10 capital report a domestic health organization which writes
11 direct business only in this state and satisfies any of the
12 following:

13 a. Writes direct annual premiums of one hundred thousand
14 dollars or less, and does not assume reinsurance in excess of
15 five percent of direct annual premiums written.

16 b. Is authorized to do business pursuant to chapter 514
17 and writes direct annual premiums of one hundred thousand
18 dollars or less.

19 c. Is a limited health service organization that covers
20 fewer than five hundred lives.

21 Sec. 11. NEW SECTION. 521F.11 FOREIGN HEALTH
22 ORGANIZATIONS.

23 1. A foreign health organization, upon the written request
24 of the commissioner, shall submit to the commissioner a risk-
25 based capital report for the previous calendar year just ended
26 by the later of the following:

27 a. The filing date.

28 b. Fifteen days after the request is received by the
29 foreign health organization.

30 2. A foreign health organization, upon the written request
31 of the commissioner, shall promptly submit to the commissioner
32 a copy of any risk-based capital plan that is filed with the
33 insurance commissioner of any other state.

34 3. The commissioner may require a foreign health
35 organization to file a risk-based capital plan under either of

1 the following circumstances:

2 a. In the event of a company-action-level event,
3 regulatory-action-level event, or authorized-control-level
4 event as determined under the risk-based capital statute
5 applicable in the state of domicile of the foreign health
6 organization, or, if no risk-based capital statute is in force
7 in that state, under this chapter.

8 b. The insurance commissioner of the state of domicile of
9 the foreign health organization fails to require the foreign
10 health organization to file a risk-based capital plan in the
11 manner specified under that state's risk-based capital
12 statute, or if no risk-based capital statute is in force in
13 that state, pursuant to this chapter.

14 4. The failure of the foreign health organization to file
15 a risk-based capital plan is sufficient grounds to order the
16 health organization to cease and desist from writing new
17 insurance business in this state.

18 5. In the event of a mandatory-control-level event with
19 respect to a foreign health organization, if a domiciliary
20 receiver has not been appointed with respect to the foreign
21 health organization under the rehabilitation and liquidation
22 statute applicable in the state of domicile of the foreign
23 health organization, the commissioner may make application to
24 the district court as permitted under chapter 507C with
25 respect to the liquidation of property of foreign health
26 organizations found in this state, and the occurrence of the
27 mandatory-control-level event shall be considered adequate
28 grounds for the application.

29 Sec. 12. NEW SECTION. 521F.12 IMMUNITY.

30 Liability shall not arise on the part of and a cause of
31 action shall not arise against the commissioner or the
32 insurance division or its employees or agents for an action
33 taken in the exercise of powers or performance of duties under
34 this chapter.

35 Sec. 13. NEW SECTION. 521F.13 NOTICES.

1 Notice by the commissioner to a health organization which
2 may result in regulatory action under this chapter is
3 effective upon being sent if transmitted by certified mail,
4 or, in the case of any other transmission, is effective upon
5 the health organization's receipt of the notice.

6 EXPLANATION

7 This bill relates to measures of risk-based capital for
8 purposes of regulating health organizations in this state.
9 The bill establishes a new Code chapter 521F.

10 New Code section 521F.1 states the purpose of the chapter
11 and new Code section 521F.2 establishes the definitions of
12 terms used in the bill.

13 New Code section 521F.3 requires a domestic health
14 organization to annually file with the commissioner a report
15 of the health organization's risk-based capital levels as of
16 the end of a calendar year. In addition to the insurance
17 commissioner, the report is to be filed with the insurance
18 commissioner in each state in which the insurance company is
19 authorized to do business. The section defines how the risk-
20 based capital is determined for a health organization.

21 New Code section 521F.4 establishes and defines a company-
22 action-level event and the steps which the health organization
23 must take as a result of the event.

24 New Code section 521F.5 establishes and defines a
25 regulatory-action-level event and steps which the health
26 organization must take as a result of the event.

27 New Code section 521F.6 establishes and defines an
28 authorized-control-level event. Upon the occurrence of an
29 authorized-control-level event, the commissioner may take
30 action in the same manner as if a regulatory-action-level
31 event has occurred, or may take action to place the health
32 organization under supervision or other regulatory control.

33 New Code section 521F.7 establishes and defines a
34 mandatory-control-level event. Upon the occurrence of a
35 mandatory-control-level event, the commissioner is required to

1 take the necessary action to place the health organization
2 under supervision or other regulatory control.

3 New Code section 521F.8 establishes the right of a health
4 organization to request a hearing upon receipt of the health
5 organization of notification by the commissioner of an
6 adjusted risk-based capital report, or notification by the
7 commissioner that a health organization's risk-based capital
8 plan or revised risk-based capital plan is unsatisfactory and
9 that the notification constitutes a regulatory-action-level
10 event with respect to the health organization.

11 New Code section 521F.9 provides that all risk-based
12 capital reports are confidential and provides that such
13 reports are not to be used or introduced as evidence with
14 regard to any rate proceeding.

15 New Code section 521F.10 provides that the commissioner may
16 exempt from filing a risk-based capital report a domestic
17 health organization which writes direct business only in this
18 state, writes direct annual premiums of \$100,000 or less, and
19 does not assume reinsurance in excess of 5 percent of direct
20 annual premiums written; is authorized to do business pursuant
21 to Code chapter 514 and writes direct annual premiums of
22 \$100,000 or less; or is a limited health service organization
23 that covers fewer than 500 lives.

24 New Code section 521F.11 establishes the manner in which
25 the chapter applies to foreign health organizations.

26 New Code section 521F.12 provides that the commissioner,
27 insurance division, and employees and agents of the division
28 do not incur liability as the result of any action taken in
29 the exercise of powers or performance of duties under new Code
30 chapter 521F.

31 New Code section 521F.13 provides that notice by the
32 commissioner to a health organization which may result in
33 regulatory action under new Code chapter 521F is effective
4 upon being sent if transmitted by certified mail, or in the
5 case of any other transmission is effective upon the health

S.F. _____ H.F. _____

1 organization's receipt of the notice.

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5-3/9/00 Commerce
5-3/5/00 Do Pass

FEB 16 2000

Place On Calendar

HOUSE FILE 2316
BY COMMITTEE ON COMMERCE
AND REGULATION

(SUCCESSOR TO HSB 580)

Passed House, (P.664) Date 3/9/00 Passed Senate, Date (P.782) 3-21-00
Vote: Ayes 94 Nays 0 Vote: Ayes 47 Nays 0
Approved 4/5/00

A BILL FOR

1 An Act relating to the regulation of health organizations for
2 purposes of solvency and establishing a measure for the risk-
3 based capital of a health organization.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2316

1 Section 1. NEW SECTION. 521F.1 PURPOSE.

2 The purpose of this chapter is to establish minimum capital
3 requirements for health organizations that will provide
4 protection related to the risks to which an individual health
5 organization may be subject including, but not limited to, the
6 health organization's asset risk, underwriting risk, credit
7 risk, and other business risk.

8 Sec. 2. NEW SECTION. 521F.2 DEFINITIONS.

9 As used in this chapter, unless the context otherwise
10 requires:

11 1. "Adjusted risk-based capital report" means a risk-based
12 capital report adjusted by the commissioner pursuant to
13 section 521F.3, subsection 4.

14 2. "Commissioner" means the commissioner of insurance.

15 3. "Corrective order" means an order issued by the
16 commissioner specifying corrective actions which the
17 commissioner has determined are required.

18 4. "Domestic health organization" means a health
19 organization domiciled in this state.

20 5. "Filing date" means March 1 of each year.

21 6. "Foreign health organization" means a health
22 organization that is not domiciled in this state.

23 7. "Health organization" means a health maintenance
24 organization, limited service organization, dental or vision
25 plan, hospital, medical and dental indemnity or service
26 corporation or other managed care organization licensed under
27 chapter 514, 514B, or 1993 Iowa Acts, chapter 158, or any
28 other entity engaged in the business of insurance, risk
29 transfer, or risk retention, that is subject to the
30 jurisdiction of the commissioner of insurance or the director
31 of public health. "Health organization" does not include an
32 insurance company licensed to transact the business of
33 insurance under chapter 508, 515, or 520, and which is
34 otherwise subject to chapter 521E.

35 8. "Revised risk-based capital plan" means a risk-based

1 capital plan that has been rejected by the commissioner and
2 has been revised by the health organization, with or without
3 the commissioner's recommendation.

4 9. "Risk-based capital instructions" means the
5 instructions included in the risk-based capital report as
6 adopted by the national association of insurance
7 commissioners, as such risk-based capital instructions may be
8 amended by the national association of insurance commissioners
9 from time to time in accordance with the procedures adopted by
10 the national association of insurance commissioners.

11 10. "Risk-based capital level" means a health
12 organization's company-action-level risk-based capital,
13 regulatory-action-level risk-based capital, authorized-
14 control-level risk-based capital, or mandatory-control-level
15 risk-based capital as follows:

16 a. "Company-action-level risk-based capital" means the
17 product of two and the health organization's authorized-
18 control-level risk-based capital.

19 b. "Regulatory-action-level risk-based capital" means the
20 product of one and one-half and the health organization's
21 authorized-control-level risk-based capital.

22 c. "Authorized-control-level risk-based capital" means the
23 number determined under the risk-based capital formula in
24 accordance with the risk-based capital instructions.

25 d. "Mandatory-control-level risk-based capital" means the
26 product of seven-tenths and the health organization's
27 authorized-control-level risk-based capital.

28 11. "Risk-based capital plan" means a comprehensive
29 financial plan containing the elements identified in section
30 521F.4, subsection 2.

31 12. "Risk-based capital report" means the report required
32 in section 521F.3.

33 13. "Total adjusted capital" means the sum of the
34 following:

35 a. A health organization's statutory capital and surplus.

1 b. Such other items, if any, as identified in the risk-
2 based capital instructions.

3 Sec. 3. NEW SECTION. 521F.3 RISK-BASED CAPITAL REPORTS.

4 1. A domestic health organization, on or prior to the
5 filing date, shall prepare and submit to the commissioner a
6 report of the health organization's risk-based capital levels
7 as of the end of the calendar year immediately preceding the
8 filing date, in a form and containing the information required
9 by the risk-based capital instructions. A domestic health
10 organization shall also file its risk-based capital report
11 with the insurance commissioner in each state in which the
12 health organization is authorized to do business, if such
13 insurance commissioner has notified the health organization of
14 its request in writing. Upon receipt of the written request,
15 the health organization shall file its risk-based capital
16 report with the requesting commissioner by no later than the
17 later of the following:

18 a. Fifteen days from the receipt of the written request.

19 b. The filing date.

20 2. a. A health organization's risk-based capital shall be
21 determined pursuant to the formula set forth in the risk-based
22 capital instructions. The formula shall take into account all
23 of the following, and may be adjusted, as deemed appropriate
24 by the commissioner, for the covariance between the following:

25 (1) Assets risk.

26 (2) Credit risk.

27 (3) Underwriting risk.

28 (4) All other business risks and other relevant risks as
29 identified in the risk-based capital instructions.

30 b. The risk factors shall be applied in the manner set
31 forth in the risk-based capital instructions.

32 3. A health organization shall seek to maintain capital
33 above the risk-based capital levels required by this chapter.

34 4. A risk-based capital report filed by a domestic health
35 organization which in the judgment of the commissioner is

1 inaccurate, shall be adjusted by the commissioner to correct
2 the inaccuracy. The commissioner shall notify the health
3 organization of the adjustment. The notice shall contain a
4 statement of the reason for the adjustment.

5 Sec. 4. NEW SECTION. 521F.4 COMPANY-ACTION-LEVEL EVENT.

6 1. "Company-action-level event" means any of the
7 following:

8 a. The filing of a risk-based capital report by a health
9 organization which indicates that the health organization's
10 total adjusted capital is greater than or equal to its
11 regulatory-action-level risk-based capital but less than its
12 company-action-level risk-based capital.

13 b. Notification by the commissioner to a health
14 organization of an adjusted risk-based capital report that
15 indicates an event in paragraph "a", provided the health
16 organization does not challenge the adjusted risk-based
17 capital report and request a hearing pursuant to section
18 521F.8.

19 c. If a hearing is requested pursuant to section 521F.8,
20 notification by the commissioner to the health organization
21 after the hearing that the commissioner has rejected the
22 health organization's challenge of the adjusted risk-based
23 capital report indicating the event in paragraph "a".

24 2. Upon the occurrence of a company-action-level event,
25 the health organization shall prepare and submit to the
26 commissioner a risk-based capital plan that includes all of
27 the following:

28 a. Identification of the conditions which contributed to
29 the company-action-level event.

30 b. Proposed corrective actions which the health
31 organization intends to implement and which are expected to
32 result in the elimination of the company-action-level event.

33 c. Projections of the health organization's financial
34 results for the current year and at least the two succeeding
35 years, including projections of statutory balance sheets,

1 operating income, net income, capital and surplus, and risk-
2 based capital levels. Projections shall be provided assuming
3 the absence of the proposed corrective actions and assuming
4 the implementation of the proposed corrective actions.
5 Projections shall be provided for each major line of business
6 and separately identify each significant income, expense, and
7 benefit component.

8 d. Identification of the primary assumptions impacting the
9 health organization's projections and the sensitivity of the
10 projections to the assumptions.

11 e. Identification of the quality of, and problems
12 associated with, the health organization's business, including
13 but not limited to its assets, anticipated business growth and
14 associated surplus strain, extraordinary exposure to risk, mix
15 of business, and use of reinsurance, if any, in each case.

16 3. The risk-based capital plan shall be filed within
17 forty-five days of the company-action-level event, or, if the
18 health organization requests a hearing pursuant to section
19 521F.8 for the purpose of challenging the adjusted risk-based
20 capital report, within forty-five days after notification to
21 the insurer that the commissioner, after hearing, has rejected
22 the insurer's challenge.

23 4. Within sixty days after the submission by a health
24 organization of a risk-based capital plan to the commissioner,
25 the commissioner shall notify the health organization whether
26 the risk-based capital plan shall be implemented or, in the
27 judgment of the commissioner, is unsatisfactory. If the
28 commissioner determines the risk-based capital plan is
29 unsatisfactory, the notification to the health organization
30 shall set forth the reasons for the determination, and may set
31 forth proposed revisions which in the judgment of the
32 commissioner will render the risk-based capital plan
33 satisfactory. Upon the receipt of the notification from the
34 commissioner, the health organization shall prepare a revised
35 risk-based capital plan, which may incorporate by reference

1 any revisions proposed by the commissioner, and file the
2 revised risk-based capital plan with the commissioner.

3 5. The revised risk-based capital plan shall be filed
4 within forty-five days of the receipt of notification from the
5 commissioner of the commissioner's determination that the
6 risk-based capital plan is unsatisfactory, or, if the health
7 organization requests a hearing pursuant to section 521F.8 for
8 the purpose of challenging the commissioner's determination,
9 within forty-five days after notification to the health
10 organization that the commissioner, after hearing, has
11 rejected the health organization's challenge.

12 6. After notification of the health organization by the
13 commissioner that the health organization's risk-based capital
14 plan or revised risk-based capital plan is unsatisfactory, the
15 commissioner, pursuant to section 521F.8, may specify in the
16 notification that the notification constitutes a regulatory-
17 action-level event.

18 7. a. A domestic health organization that files a risk-
19 based capital plan or revised risk-based capital plan with the
20 commissioner shall file a copy of the risk-based capital plan
21 or revised risk-based capital plan with the insurance
22 commissioner in a state in which the health organization is
23 authorized to do business if both of the following apply:

24 (1) The other state has a risk-based capital provision
25 substantially similar to section 521F.9, with respect to the
26 confidentiality and availability of such plans.

27 (2) The insurance commissioner of that state has notified
28 the health organization in writing of its request to receive a
29 copy of the risk-based capital plan or revised risk-based
30 capital plan.

31 b. Upon receipt of the written request under paragraph
32 "a", subparagraph (2), the health organization shall file a
33 copy of the risk-based capital plan or revised risk-based
34 capital plan with the requesting commissioner by no later than
35 the later of the following:

1 (1) Fifteen days after the receipt of the written request.

2 (2) The date on which the risk-based capital plan or
3 revised risk-based capital plan is filed under subsection 3 or
4 5, as applicable.

5 Sec. 5. NEW SECTION. 521F.5. REGULATORY-ACTION-LEVEL
6 EVENT.

7 1. "Regulatory-action-level event" means any of the
8 following:

9 a. The filing of a risk-based capital report by the health
10 organization that indicates that the health organization's
11 total adjusted capital is greater than or equal to its
12 authorized-control-level risk-based capital but less than its
13 regulatory-action-level risk-based capital.

14 b. Notification by the commissioner to a health
15 organization of an adjusted risk-based capital report that
16 indicates the event in paragraph "a", provided the health
17 organization does not challenge the adjusted risk-based
18 capital report and request a hearing pursuant to section
19 521F.8.

20 c. After a hearing pursuant to section 521F.8,
21 notification by the commissioner to the health organization
22 that the commissioner has rejected the health organization's
23 challenge of the adjusted risk-based capital report indicating
24 the event in paragraph "a".

25 d. Failure of the health organization to file a risk-based
26 capital report by the filing date, unless the health
27 organization has provided an explanation for the failure which
28 is satisfactory to the commissioner and has cured the failure
29 within ten days after the filing date.

30 e. Failure of the health organization to submit a risk-
31 based capital plan to the commissioner within the time period
32 set forth in section 521F.4, subsection 3.

33 f. Notification by the commissioner to the health
34 organization of both of the following:

35 (1) The risk-based capital plan or revised risk-based

1 capital plan filed by the health organization, in the judgment
2 of the commissioner, is unsatisfactory.

3 (2) Notification pursuant to this paragraph constitutes a
4 regulatory-action-level event with respect to the health
5 organization, provided the health organization has not
6 challenged the determination pursuant to section 521F.8.

7 g. After a hearing pursuant to section 521F.8,
8 notification by the commissioner to the health organization
9 that the commissioner has rejected the health organization's
10 challenge of the determination made by the commissioner
11 pursuant to paragraph "f".

12 h. Notification by the commissioner to the health
13 organization that the health organization has failed to adhere
14 to its risk-based capital plan or revised risk-based capital
15 plan, but only if the failure has a substantial adverse effect
16 on the ability of the health organization to eliminate the
17 company-action-level event pursuant to the health
18 organization's risk-based capital plan or revised risk-based
19 capital plan and the commissioner has so stated in the
20 notification. However, notification by the commissioner
21 pursuant to this paragraph does not constitute a company-
22 action-level event if the health organization has challenged
23 the determination of the commissioner pursuant to section
24 521F.8.

25 i. After a hearing pursuant to section 521F.8,
26 notification by the commissioner to the health organization
27 that the commissioner rejected the health organization's
28 challenge of the commissioner's determination pursuant to
29 paragraph "h".

30 2. Upon the occurrence of a regulatory-action-level event,
31 the commissioner shall do all of the following:

32 a. Require the health organization to prepare and submit a
33 risk-based capital plan or revised risk-based capital plan, as
34 applicable.

35 b. Perform an examination or analysis of the assets,

1 liabilities, and operations of the health organization,
2 including a review of its risk-based capital plan or revised
3 risk-based capital plan.

4 c. Subsequent to the examination or analysis pursuant to
5 paragraph "b", issue a corrective order.

6 3. The commissioner, in determining the corrective actions
7 to be ordered, may take into account factors the commissioner
8 deems relevant with respect to the health organization based
9 upon the commissioner's examination or analysis of the assets,
10 liabilities, and operations of the health organization,
11 including, but not limited to, the results of any sensitivity
12 tests undertaken pursuant to the risk-based capital
13 instructions. The risk-based capital plan or revised risk-
14 based capital plan shall be submitted within forty-five days
15 after the occurrence of the regulatory-action-level event,
16 except as follows:

17 a. If the health organization challenges a risk-based
18 capital report pursuant to section 521F.8, and in the judgment
19 of the commissioner the challenge is not frivolous, within
20 forty-five days after the notification to the health
21 organization that the commissioner, after a hearing pursuant
22 to section 521F.8, has rejected the health organization's
23 challenge.

24 b. If the health organization challenges a revised risk-
25 based capital plan pursuant to section 521F.8, and in the
26 judgment of the commissioner the challenge is not frivolous,
27 within forty-five days after the notification to the health
28 organization that the commissioner, after a hearing pursuant
29 to section 521F.8, has rejected the health organization's
30 challenge.

31 4. The commissioner may retain actuaries, investment
32 experts, and other consultants as deemed necessary by the
33 commissioner to review the health organization's risk-based
34 capital plan or revised risk-based capital plan; examine or
35 analyze the assets, liabilities, and operations of the health

1 organization; and assist in the formulation of the corrective
2 order with respect to the health organization. Fees of the
3 actuaries, investment experts, or other consultants retained
4 by the commissioner shall be paid by the health organization
5 subject to the review or examination.

6 Sec. 6. NEW SECTION. 521F.6 AUTHORIZED-CONTROL-LEVEL
7 EVENT.

8 1. "Authorized-control-level event" means any of the
9 following:

10 a. The filing of a risk-based capital report by the health
11 organization which indicates that the health organization's
12 total adjusted capital is greater than or equal to its
13 mandatory-control-level risk-based capital but less than its
14 authorized-control-level risk-based capital.

15 b. Notification by the commissioner to a health
16 organization of an adjusted risk-based capital report that
17 indicates the event in paragraph "a", provided the health
18 organization does not challenge the adjusted risk-based
19 capital report and request a hearing pursuant to section
20 521F.8.

21 c. After a hearing pursuant to section 521F.8,
22 notification by the commissioner to the health organization
23 that the commissioner has rejected the health organization's
24 challenge of the adjusted risk-based capital report indicating
25 the event in paragraph "a".

26 d. Failure of the health organization to respond to a
27 corrective order in a manner satisfactory to the commissioner,
28 unless the health organization has challenged the corrective
29 order pursuant to section 521F.8.

30 e. Failure of the health organization to respond to a
31 corrective order in a manner satisfactory to the commissioner
32 after the health organization has challenged the corrective
33 order pursuant to section 521F.8, and the commissioner, after
34 a hearing pursuant to section 521F.8, has rejected the
35 challenge or modified the corrective order.

1 2. In the event of an authorized-control-level event, the
2 commissioner shall do either of the following:

3 a. Take action as required pursuant to section 521F.5 in
4 the same manner as if a regulatory-action-level event has
5 occurred.

6 b. Take action as necessary to cause the health
7 organization to be placed under supervision or other
8 regulatory control under chapter 507C, if the commissioner
9 deems such action to be in the best interests of the
10 policyholders and creditors of the health organization and of
11 the public. If the commissioner takes such action pursuant to
12 this paragraph, the authorized-control-level event is deemed
13 sufficient grounds for the commissioner to take action
14 pursuant to chapter 507C and the commissioner has the rights,
15 powers, and duties with respect to the health organization as
16 set forth in chapter 507C. If the commissioner takes action
17 under this paragraph pursuant to an adjusted risk-based
18 capital report, the health organization is entitled to the
19 protections of chapter 17A pertaining to summary proceedings.

20 Sec. 7. NEW SECTION. 521F.7 MANDATORY-CONTROL-LEVEL
21 EVENT.

22 1. "Mandatory-control-level event" means any of the
23 following:

24 a. The filing of a risk-based capital report which
25 indicates that a health organization's total adjusted capital
26 is less than its mandatory-control-level risk-based capital.

27 b. Notification by the commissioner to a health
28 organization of an adjusted risk-based capital report that
29 indicates the event in paragraph "a", provided the health
30 organization does not challenge the adjusted risk-based
31 capital report and request a hearing pursuant to section
32 521F.8.

33 c. After a hearing pursuant to section 521F.8,
34 notification by the commissioner to the health organization
35 that the commissioner has rejected the health organization's

1 challenge of the adjusted risk-based capital report indicating
2 the event in paragraph "a".

3 2. In the event of a mandatory-control-level event, the
4 commissioner shall take action as necessary to place the
5 health organization under supervision or other regulatory
6 control pursuant to chapter 507C. If the commissioner takes
7 action pursuant to this subsection, the mandatory-control-
8 level event is deemed sufficient grounds for the commissioner
9 to take action pursuant to chapter 507C, and the commissioner
10 has the rights, powers, and duties with respect to the health
11 organization as are set forth in chapter 507C. If the
12 commissioner takes action pursuant to an adjusted risk-based
13 capital report, the health organization is entitled to the
14 protections of chapter 17A pertaining to summary proceedings.
15 Notwithstanding this subsection, the commissioner may forego
16 action for up to ninety days after the mandatory-control-level
17 event if the commissioner finds a reasonable expectation
18 exists that the mandatory-control-level event may be
19 eliminated within the ninety-day period.

20 Sec. 8. NEW SECTION. 521F.8 CONFIDENTIAL HEARINGS.

21 1. A health organization receiving a notification pursuant
22 to subsection 2 is entitled to a confidential hearing before
23 the insurance division, at which the health organization may
24 challenge a determination or action by the commissioner. Upon
25 receipt of the health organization's request for a hearing,
26 the commissioner shall set a date for the hearing, which shall
27 be not less than ten and not more than thirty days after the
28 date of the health organization's request.

29 2. A health organization shall notify the commissioner of
30 the health organization's request for a confidential hearing
31 within five days after the occurrence of any of the following:

32 a. Notification to a health organization by the
33 commissioner of an adjusted risk-based capital report.

34 b. Notification to a health organization by the
35 commissioner of both of the following:

1 (1) The health organization's risk-based capital plan or
2 revised risk-based capital plan is unsatisfactory.

3 (2) That the notification pursuant to this paragraph
4 constitutes a regulatory-action-level event with respect to
5 the health organization.

6 c. Notification to a health organization by the
7 commissioner that the health organization has failed to adhere
8 to its risk-based capital plan or revised risk-based capital
9 plan and that the failure has a substantial adverse effect on
10 the ability of the health organization to eliminate the
11 company-action-level event in accordance with its risk-based
12 capital plan or revised risk-based capital plan.

13 d. Notification to a health organization by the
14 commissioner of a corrective order with respect to the health
15 organization.

16 Sec. 9. NEW SECTION. 521F.9 CONFIDENTIALITY -- USE OF
17 REPORTS AND INFORMATION -- PROHIBITION ON ANNOUNCEMENTS --
18 PROHIBITION ON USE IN RATEMAKING.

19 1. A risk-based capital report, to the extent the
20 information in the report is not required to be set forth in a
21 publicly available annual statement schedule, a risk-based
22 capital plan, including the results or report of any
23 examination or analysis of a health organization performed
24 pursuant to this chapter, and any corrective order issued by
25 the commissioner pursuant to an examination or analysis, which
26 are filed with the commissioner, are deemed not to be public
27 records under chapter 22 and are privileged and confidential.
28 This information shall not be made public and is not subject
29 to subpoena, other than by the commissioner, and then only for
30 the purpose of enforcement actions taken by the commissioner
31 pursuant to this chapter or any other provision of the
32 insurance laws of this state.

33 2. The comparison of a health organization's total
34 adjusted capital to any of its risk-based capital levels is a
35 regulatory tool which may indicate the need for possible

1 corrective action with respect to the health organization, and
2 is not to be used as a means to rank health organizations
3 generally.

4 3. Except as otherwise required under this chapter, the
5 publication or dissemination in any manner of an announcement
6 or statement which contains an assertion, representation, or
7 statement with regard to the risk-based capital levels of a
8 health organization, or of a component derived in the
9 calculation, by a health organization, agent, broker, or other
10 person engaged in any manner in the business of insurance, is
11 prohibited. However, if a materially false statement
12 comparing a health organization's total adjusted capital to
13 its risk-based capital levels or a misleading comparison of
14 any other amount to the health organization's risk-based
15 capital levels is published or disseminated in any manner and
16 if the health organization is able to demonstrate to the
17 commissioner with substantial proof that the statement is
18 false, misleading, or inappropriate, as the case may be, the
19 health organization may publish an announcement in a written
20 publication for the sole purpose of rebutting the materially
21 false, misleading, or inappropriate statement.

22 4. The risk-based capital instructions, risk-based capital
23 reports, adjusted risk-based capital reports, risk-based
24 capital plans, and revised risk-based capital plans shall be
25 solely used by the commissioner in monitoring the solvency of
26 health organizations and the need for possible corrective
27 action with respect to health organizations. The risk-based
28 capital instructions, risk-based capital reports, adjusted
29 risk-based capital reports, risk-based capital plans, and
30 revised risk-based capital plans shall not be used by the
31 commissioner for ratemaking and shall not be considered or
32 introduced as evidence in any rate proceeding or used by the
33 commissioner to calculate or derive any elements of an
34 appropriate premium level or rate of return for any line of
35 insurance which a health organization or any affiliate is

1 authorized to write.

2 Sec. 10. NEW SECTION. 521F.10 SUPPLEMENTAL PROVISIONS --
3 RULES -- EXEMPTION.

4 1. This chapter shall not preclude or limit any other
5 powers or duties of the commissioner under insurance laws
6 including but not limited to chapter 507C.

7 2. The commissioner may adopt rules pursuant to chapter
8 17A as are necessary for the administration of this chapter.

9 3. The commissioner may exempt from filing a risk-based
10 capital report a domestic health organization which writes
11 direct business only in this state and satisfies any of the
12 following:

13 a. Writes direct annual premiums of one hundred thousand
14 dollars or less, and does not assume reinsurance in excess of
15 five percent of direct annual premiums written.

16 b. Is authorized to do business pursuant to chapter 514
17 and writes direct annual premiums of one hundred thousand
18 dollars or less.

19 c. Is a limited health service organization that covers
20 fewer than five hundred lives.

21 Sec. 11. NEW SECTION. 521F.11 FOREIGN HEALTH
22 ORGANIZATIONS.

23 1. A foreign health organization, upon the written request
24 of the commissioner, shall submit to the commissioner a risk-
25 based capital report for the previous calendar year just ended
26 by the later of the following:

27 a. The filing date.

28 b. Fifteen days after the request is received by the
29 foreign health organization.

30 2. A foreign health organization, upon the written request
31 of the commissioner, shall promptly submit to the commissioner
32 a copy of any risk-based capital plan that is filed with the
33 insurance commissioner of any other state.

34 3. The commissioner may require a foreign health
35 organization to file a risk-based capital plan under either of

1 the following circumstances:

2 a. In the event of a company-action-level event,
3 regulatory-action-level event, or authorized-control-level
4 event as determined under the risk-based capital statute
5 applicable in the state of domicile of the foreign health
6 organization, or, if no risk-based capital statute is in force
7 in that state, under this chapter.

8 b. The insurance commissioner of the state of domicile of
9 the foreign health organization fails to require the foreign
10 health organization to file a risk-based capital plan in the
11 manner specified under that state's risk-based capital
12 statute, or if no risk-based capital statute is in force in
13 that state, pursuant to this chapter.

14 4. The failure of the foreign health organization to file
15 a risk-based capital plan is sufficient grounds to order the
16 health organization to cease and desist from writing new
17 insurance business in this state.

18 5. In the event of a mandatory-control-level event with
19 respect to a foreign health organization, if a domiciliary
20 receiver has not been appointed with respect to the foreign
21 health organization under the rehabilitation and liquidation
22 statute applicable in the state of domicile of the foreign
23 health organization, the commissioner may make application to
24 the district court as permitted under chapter 507C with
25 respect to the liquidation of property of foreign health
26 organizations found in this state, and the occurrence of the
27 mandatory-control-level event shall be considered adequate
28 grounds for the application.

29 Sec. 12. NEW SECTION. 521F.12 IMMUNITY.

30 Liability shall not arise on the part of and a cause of
31 action shall not arise against the commissioner or the
32 insurance division or its employees or agents for an action
33 taken in the exercise of powers or performance of duties under
34 this chapter.

35 Sec. 13. NEW SECTION. 521F.13 NOTICES.

1 Notice by the commissioner to a health organization which
2 may result in regulatory action under this chapter is
3 effective upon being sent if transmitted by certified mail,
4 or, in the case of any other transmission, is effective upon
5 the health organization's receipt of the notice.

6 EXPLANATION

7 This bill relates to measures of risk-based capital for
8 purposes of regulating health organizations in this state.
9 The bill establishes a new Code chapter 521F.

10 New Code section 521F.1 states the purpose of the chapter
11 and new Code section 521F.2 establishes the definitions of
12 terms used in the bill.

13 New Code section 521F.3 requires a domestic health
14 organization to annually file with the commissioner a report
15 of the health organization's risk-based capital levels as of
16 the end of a calendar year. In addition to the insurance
17 commissioner, the report is to be filed with the insurance
18 commissioner in each state in which the insurance company is
19 authorized to do business. The section defines how the risk-
20 based capital is determined for a health organization.

21 New Code section 521F.4 establishes and defines a company-
22 action-level event and the steps which the health organization
23 must take as a result of the event.

24 New Code section 521F.5 establishes and defines a
25 regulatory-action-level event and steps which the health
26 organization must take as a result of the event.

27 New Code section 521F.6 establishes and defines an
28 authorized-control-level event. Upon the occurrence of an
29 authorized-control-level event, the commissioner may take
30 action in the same manner as if a regulatory-action-level
31 event has occurred, or may take action to place the health
32 organization under supervision or other regulatory control.

33 New Code section 521F.7 establishes and defines a
34 mandatory-control-level event. Upon the occurrence of a
35 mandatory-control-level event, the commissioner is required to

1 take the necessary action to place the health organization
2 under supervision or other regulatory control.

3 New Code section 521F.8 establishes the right of a health
4 organization to request a hearing upon receipt of the health
5 organization of notification by the commissioner of an
6 adjusted risk-based capital report, or notification by the
7 commissioner that a health organization's risk-based capital
8 plan or revised risk-based capital plan is unsatisfactory and
9 that the notification constitutes a regulatory-action-level
10 event with respect to the health organization.

11 New Code section 521F.9 provides that all risk-based
12 capital reports are confidential and provides that such
13 reports are not to be used or introduced as evidence with
14 regard to any rate proceeding.

15 New Code section 521F.10 provides that the commissioner may
16 exempt from filing a risk-based capital report a domestic
17 health organization which writes direct business only in this
18 state, writes direct annual premiums of \$100,000 or less, and
19 does not assume reinsurance in excess of 5 percent of direct
20 annual premiums written; is authorized to do business pursuant
21 to Code chapter 514 and writes direct annual premiums of
22 \$100,000 or less; or is a limited health service organization
23 that covers fewer than 500 lives.

24 New Code section 521F.11 establishes the manner in which
25 the chapter applies to foreign health organizations.

26 New Code section 521F.12 provides that the commissioner,
27 insurance division, and employees and agents of the division
28 do not incur liability as the result of any action taken in
29 the exercise of powers or performance of duties under new Code
30 chapter 521F.

31 New Code section 521F.13 provides that notice by the
32 commissioner to a health organization which may result in
33 regulatory action under new Code chapter 521F is effective
34 upon being sent if transmitted by certified mail, or in the
35 case of any other transmission is effective upon the health

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2316

1 organization's receipt of the notice.

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HOUSE FILE 2316

S-5187

1 Amend House File 2316, as passed by the House, as
2 follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. NEW SECTION. 514L.1 LIABILITY OF A
6 MANAGED CARE HEALTH PLAN OR HEALTH MAINTENANCE
7 ORGANIZATION.

8 1. For purposes of this section, unless the
9 context otherwise requires:

10 a. "Managed care health plan" means a health
11 benefit plan that selects and contracts with health
12 care providers; manages and coordinates health care
13 delivery; monitors necessity, appropriateness, and
14 quality of health care delivered by health care
15 providers; and performs utilization review and cost
16 control.

17 b. "Health maintenance organization" means a
18 health maintenance organization as defined in section
19 514B.1, subsection 6.

20 2. a. A managed care health plan or health
21 maintenance organization shall exercise ordinary care
22 when making health care treatment decisions and is
23 liable for damages for harm to an insured or enrollee
24 proximately caused by its failure to exercise ordinary
25 care. An insured or enrollee may bring an action
26 against a managed care health plan or health
27 maintenance organization for a breach of the duty to
28 exercise ordinary care.

29 For purposes of this section, a managed care health
30 plan or health maintenance organization includes an
31 employee, agent, or other person acting on behalf of
32 the managed care health plan or health maintenance
33 organization.

34 b. In any action brought under this section
35 against a managed care health plan or health
36 maintenance organization, the managed care health plan
37 or health maintenance organization may assert as a
38 defense either of the following:

39 (1) The managed care health plan or health
40 maintenance organization did not control, influence,
41 or participate in the health care treatment decision.

42 (2) The managed care health plan or health
43 maintenance organization did not deny or delay payment
44 for any treatment prescribed or recommended by a
45 health care provider.

46 c. This section does not create a duty on the part
47 of the managed care health plan or health maintenance
48 organization to provide treatment which is not covered
49 by the health care plan of the managed care health
50 plan or health maintenance organization.

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Page 2

1 d. In an action against a managed care health plan
2 or health maintenance organization, a finding that a
3 physician or other health care provider is an
4 employee, agent, or representative of such managed
5 care health plan or health maintenance organization
6 shall not be based solely on proof that such person's
7 name appears in a listing of approved health care
8 providers made available to insureds or enrollees."
9 2. By renumbering as necessary.

By JOHNIE HAMMOND

S-5187 FILED MARCH 21, 2000
RULED OUT OF ORDER

(p. 782)

HOUSE FILE 2316

AN ACT

RELATING TO THE REGULATION OF HEALTH ORGANIZATIONS FOR
PURPOSES OF SOLVENCY AND ESTABLISHING A MEASURE FOR THE
RISK-BASED CAPITAL OF A HEALTH ORGANIZATION.

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

Section 1. NEW SECTION. 521F.1 PURPOSE.

The purpose of this chapter is to establish minimum capital requirements for health organizations that will provide protection related to the risks to which an individual health organization may be subject including, but not limited to, the health organization's asset risk, underwriting risk, credit risk, and other business risk.

Sec. 2. NEW SECTION. 521F.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Adjusted risk-based capital report" means a risk-based capital report adjusted by the commissioner pursuant to section 521F.3, subsection 4.
2. "Commissioner" means the commissioner of insurance.
3. "Corrective order" means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.
4. "Domestic health organization" means a health organization domiciled in this state.
5. "Filing date" means March 1 of each year.

6. "Foreign health organization" means a health organization that is not domiciled in this state.

7. "Health organization" means a health maintenance organization, limited service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation or other managed care organization licensed under chapter 514, 514B, or 1993 Iowa Acts, chapter 158, or any other entity engaged in the business of insurance, risk transfer, or risk retention, that is subject to the jurisdiction of the commissioner of insurance or the director of public health. "Health organization" does not include an insurance company licensed to transact the business of insurance under chapter 508, 515, or 520, and which is otherwise subject to chapter 521E.

8. "Revised risk-based capital plan" means a risk-based capital plan that has been rejected by the commissioner and has been revised by the health organization, with or without the commissioner's recommendation.

9. "Risk-based capital instructions" means the instructions included in the risk-based capital report as adopted by the national association of insurance commissioners, as such risk-based capital instructions may be amended by the national association of insurance commissioners from time to time in accordance with the procedures adopted by the national association of insurance commissioners.

10. "Risk-based capital level" means a health organization's company-action-level risk-based capital, regulatory-action-level risk-based capital, authorized-control-level risk-based capital, or mandatory-control-level risk-based capital as follows:

a. "Company-action-level risk-based capital" means the product of two and the health organization's authorized-control-level risk-based capital.

b. "Regulatory-action-level risk-based capital" means the product of one and one-half and the health organization's authorized-control-level risk-based capital.

c. "Authorized-control-level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions.

d. "Mandatory-control-level risk-based capital" means the product of seven-tenths and the health organization's authorized-control-level risk-based capital.

11. "Risk-based capital plan" means a comprehensive financial plan containing the elements identified in section 521F.4, subsection 2.

12. "Risk-based capital report" means the report required in section 521F.3.

13. "Total adjusted capital" means the sum of the following:

- a. A health organization's statutory capital and surplus.
- b. Such other items, if any, as identified in the risk-based capital instructions.

Sec. 3. NEW SECTION. 521F.3 RISK-BASED CAPITAL REPORTS.

1. A domestic health organization, on or prior to the filing date, shall prepare and submit to the commissioner a report of the health organization's risk-based capital levels as of the end of the calendar year immediately preceding the filing date, in a form and containing the information required by the risk-based capital instructions. A domestic health organization shall also file its risk-based capital report with the insurance commissioner in each state in which the health organization is authorized to do business, if such insurance commissioner has notified the health organization of its request in writing. Upon receipt of the written request, the health organization shall file its risk-based capital report with the requesting commissioner by no later than the later of the following:

- a. Fifteen days from the receipt of the written request.
- b. The filing date.

2. a. A health organization's risk-based capital shall be determined pursuant to the formula set forth in the risk-based capital instructions. The formula shall take into account all

of the following, and may be adjusted, as deemed appropriate by the commissioner, for the covariance between the following:

- (1) Assets risk.
- (2) Credit risk.
- (3) Underwriting risk.
- (4) All other business risks and other relevant risks as identified in the risk-based capital instructions.

b. The risk factors shall be applied in the manner set forth in the risk-based capital instructions.

3. A health organization shall seek to maintain capital above the risk-based capital levels required by this chapter.

4. A risk-based capital report filed by a domestic health organization which in the judgment of the commissioner is inaccurate, shall be adjusted by the commissioner to correct the inaccuracy. The commissioner shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment.

Sec. 4. NEW SECTION. 521F.4 COMPANY-ACTION-LEVEL EVENT.

1. "Company-action-level event" means any of the following:

a. The filing of a risk-based capital report by a health organization which indicates that the health organization's total adjusted capital is greater than or equal to its regulatory-action-level risk-based capital but less than its company-action-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates an event in paragraph "a", provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. If a hearing is requested pursuant to section 521F.8, notification by the commissioner to the health organization after the hearing that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph "a".

2. Upon the occurrence of a company-action-level event, the health organization shall prepare and submit to the commissioner a risk-based capital plan that includes all of the following:

- a. Identification of the conditions which contributed to the company-action-level event.
- b. Proposed corrective actions which the health organization intends to implement and which are expected to result in the elimination of the company-action-level event.
- c. Projections of the health organization's financial results for the current year and at least the two succeeding years, including projections of statutory balance sheets, operating income, net income, capital and surplus, and risk-based capital levels. Projections shall be provided assuming the absence of the proposed corrective actions and assuming the implementation of the proposed corrective actions. Projections shall be provided for each major line of business and separately identify each significant income, expense, and benefit component.
- d. Identification of the primary assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions.

e. Identification of the quality of, and problems associated with, the health organization's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

3. The risk-based capital plan shall be filed within forty-five days of the company-action-level event, or, if the health organization requests a hearing pursuant to section 521F.8 for the purpose of challenging the adjusted risk-based capital report, within forty-five days after notification to the insurer that the commissioner, after hearing, has rejected the insurer's challenge.

4. Within sixty days after the submission by a health organization of a risk-based capital plan to the commissioner,

the commissioner shall notify the health organization whether the risk-based capital plan shall be implemented or, in the judgment of the commissioner, is unsatisfactory. If the commissioner determines the risk-based capital plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination, and may set forth proposed revisions which in the judgment of the commissioner will render the risk-based capital plan satisfactory. Upon the receipt of the notification from the commissioner, the health organization shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the commissioner, and file the revised risk-based capital plan with the commissioner.

5. The revised risk-based capital plan shall be filed within forty-five days of the receipt of notification from the commissioner of the commissioner's determination that the risk-based capital plan is unsatisfactory, or, if the health organization requests a hearing pursuant to section 521F.8 for the purpose of challenging the commissioner's determination, within forty-five days after notification to the health organization that the commissioner, after hearing, has rejected the health organization's challenge.

6. After notification of the health organization by the commissioner that the health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the commissioner, pursuant to section 521F.8, may specify in the notification that the notification constitutes a regulatory-action-level event.

7. a. A domestic health organization that files a risk-based capital plan or revised risk-based capital plan with the commissioner shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance commissioner in a state in which the health organization is authorized to do business if both of the following apply:

- (1) The other state has a risk-based capital provision substantially similar to section 521F.9, with respect to the confidentiality and availability of such plans.

(2) The insurance commissioner of that state has notified the health organization in writing of its request to receive a copy of the risk-based capital plan or revised risk-based capital plan.

b. Upon receipt of the written request under paragraph "a", subparagraph (2), the health organization shall file a copy of the risk-based capital plan or revised risk-based capital plan with the requesting commissioner by no later than the later of the following:

(1) Fifteen days after the receipt of the written request.

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed under subsection 3 or 5, as applicable.

Sec. 5. NEW SECTION. 521F.5 REGULATORY-ACTION-LEVEL EVENT.

1. "Regulatory-action-level event" means any of the following:

a. The filing of a risk-based capital report by the health organization that indicates that the health organization's total adjusted capital is greater than or equal to its authorized-control-level risk-based capital but less than its regulatory-action-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in paragraph "a", provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph "a".

d. Failure of the health organization to file a risk-based capital report by the filing date, unless the health organization has provided an explanation for the failure which

is satisfactory to the commissioner and has cured the failure within ten days after the filing date.

e. Failure of the health organization to submit a risk-based capital plan to the commissioner within the time period set forth in section 521F.4, subsection 3.

f. Notification by the commissioner to the health organization of both of the following:

(1) The risk-based capital plan or revised risk-based capital plan filed by the health organization, in the judgment of the commissioner, is unsatisfactory.

(2) Notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the health organization, provided the health organization has not challenged the determination pursuant to section 521F.8.

g. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the determination made by the commissioner pursuant to paragraph "f".

h. Notification by the commissioner to the health organization that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if the failure has a substantial adverse effect on the ability of the health organization to eliminate the company-action-level event pursuant to the health organization's risk-based capital plan or revised risk-based capital plan and the commissioner has so stated in the notification. However, notification by the commissioner pursuant to this paragraph does not constitute a company-action-level event if the health organization has challenged the determination of the commissioner pursuant to section 521F.8.

i. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner rejected the health organization's challenge of the commissioner's determination pursuant to paragraph "h".

2. Upon the occurrence of a regulatory-action-level event, the commissioner shall do all of the following:

a. Require the health organization to prepare and submit a risk-based capital plan or revised risk-based capital plan, as applicable.

b. Perform an examination or analysis of the assets, liabilities, and operations of the health organization, including a review of its risk-based capital plan or revised risk-based capital plan.

c. Subsequent to the examination or analysis pursuant to paragraph "b", issue a corrective order.

3. The commissioner, in determining the corrective actions to be ordered, may take into account factors the commissioner deems relevant with respect to the health organization based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the health organization, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan shall be submitted within forty-five days after the occurrence of the regulatory-action-level event, except as follows:

a. If the health organization challenges a risk-based capital report pursuant to section 521F.8, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the health organization that the commissioner, after a hearing pursuant to section 521F.8, has rejected the health organization's challenge.

b. If the health organization challenges a revised risk-based capital plan pursuant to section 521F.8, and in the judgment of the commissioner the challenge is not frivolous, within forty-five days after the notification to the health organization that the commissioner, after a hearing pursuant to section 521F.8, has rejected the health organization's challenge.

4. The commissioner may retain actuaries, investment experts, and other consultants as deemed necessary by the commissioner to review the health organization's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities, and operations of the health organization; and assist in the formulation of the corrective order with respect to the health organization. Fees of the actuaries, investment experts, or other consultants retained by the commissioner shall be paid by the health organization subject to the review or examination.

Sec. 6. NEW SECTION. 521F.6 AUTHORIZED-CONTROL-LEVEL EVENT.

1. "Authorized-control-level event" means any of the following:

a. The filing of a risk-based capital report by the health organization which indicates that the health organization's total adjusted capital is greater than or equal to its mandatory-control-level risk-based capital but less than its authorized-control-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in paragraph "a", provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph "a".

d. Failure of the health organization to respond to a corrective order in a manner satisfactory to the commissioner, unless the health organization has challenged the corrective order pursuant to section 521F.8.

e. Failure of the health organization to respond to a corrective order in a manner satisfactory to the commissioner

after the health organization has challenged the corrective order pursuant to section 521F.8, and the commissioner, after a hearing pursuant to section 521F.8, has rejected the challenge or modified the corrective order.

2. In the event of an authorized-control-level event, the commissioner shall do either of the following:

a. Take action as required pursuant to section 521F.5 in the same manner as if a regulatory-action-level event has occurred.

b. Take action as necessary to cause the health organization to be placed under supervision or other regulatory control under chapter 507C, if the commissioner deems such action to be in the best interests of the policyholders and creditors of the health organization and of the public. If the commissioner takes such action pursuant to this paragraph, the authorized-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C and the commissioner has the rights, powers, and duties with respect to the health organization as set forth in chapter 507C. If the commissioner takes action under this paragraph pursuant to an adjusted risk-based capital report, the health organization is entitled to the protections of chapter 17A pertaining to summary proceedings.

Sec. 7. NEW SECTION. 521F.7 MANDATORY-CONTROL-LEVEL EVENT.

1. "Mandatory-control-level event" means any of the following:

a. The filing of a risk-based capital report which indicates that a health organization's total adjusted capital is less than its mandatory-control-level risk-based capital.

b. Notification by the commissioner to a health organization of an adjusted risk-based capital report that indicates the event in paragraph "a", provided the health organization does not challenge the adjusted risk-based capital report and request a hearing pursuant to section 521F.8.

c. After a hearing pursuant to section 521F.8, notification by the commissioner to the health organization that the commissioner has rejected the health organization's challenge of the adjusted risk-based capital report indicating the event in paragraph "a".

2. In the event of a mandatory-control-level event, the commissioner shall take action as necessary to place the health organization under supervision or other regulatory control pursuant to chapter 507C. If the commissioner takes action pursuant to this subsection, the mandatory-control-level event is deemed sufficient grounds for the commissioner to take action pursuant to chapter 507C, and the commissioner has the rights, powers, and duties with respect to the health organization as are set forth in chapter 507C. If the commissioner takes action pursuant to an adjusted risk-based capital report, the health organization is entitled to the protections of chapter 17A pertaining to summary proceedings. Notwithstanding this subsection, the commissioner may forego action for up to ninety days after the mandatory-control-level event if the commissioner finds a reasonable expectation exists that the mandatory-control-level event may be eliminated within the ninety-day period.

Sec. 8. NEW SECTION. 521F.8 CONFIDENTIAL HEARINGS.

1. A health organization receiving a notification pursuant to subsection 2 is entitled to a confidential hearing before the insurance division, at which the health organization may challenge a determination or action by the commissioner. Upon receipt of the health organization's request for a hearing, the commissioner shall set a date for the hearing, which shall be not less than ten and not more than thirty days after the date of the health organization's request.

2. A health organization shall notify the commissioner of the health organization's request for a confidential hearing within five days after the occurrence of any of the following:

a. Notification to a health organization by the commissioner of an adjusted risk-based capital report.

b. Notification to a health organization by the commissioner of both of the following:

- (1) The health organization's risk-based capital plan or revised risk-based capital plan is unsatisfactory.
- (2) That the notification pursuant to this paragraph constitutes a regulatory-action-level event with respect to the health organization.

c. Notification to a health organization by the commissioner that the health organization has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the company-action-level event in accordance with its risk-based capital plan or revised risk-based capital plan.

d. Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

Sec. 9. NEW SECTION. 521F.9 CONFIDENTIALITY -- USE OF REPORTS AND INFORMATION -- PROHIBITION ON ANNOUNCEMENTS -- PROHIBITION ON USE IN RATEMAKING.

1. A risk-based capital report, to the extent the information in the report is not required to be set forth in a publicly available annual statement schedule, a risk-based capital plan, including the results or report of any examination or analysis of a health organization performed pursuant to this chapter, and any corrective order issued by the commissioner pursuant to an examination or analysis, which are filed with the commissioner, are deemed not to be public records under chapter 22 and are privileged and confidential. This information shall not be made public and is not subject to subpoena, other than by the commissioner, and then only for the purpose of enforcement actions taken by the commissioner pursuant to this chapter or any other provision of the insurance laws of this state.

2. The comparison of a health organization's total adjusted capital to any of its risk-based capital levels is a

regulatory tool which may indicate the need for possible corrective action with respect to the health organization, and is not to be used as a means to rank health organizations generally.

3. Except as otherwise required under this chapter, the publication or dissemination in any manner of an announcement or statement which contains an assertion, representation, or statement with regard to the risk-based capital levels of a health organization, or of a component derived in the calculation, by a health organization, agent, broker, or other person engaged in any manner in the business of insurance, is prohibited. However, if a materially false statement comparing a health organization's total adjusted capital to its risk-based capital levels or a misleading comparison of any other amount to the health organization's risk-based capital levels is published or disseminated in any manner and if the health organization is able to demonstrate to the commissioner with substantial proof that the statement is false, misleading, or inappropriate, as the case may be, the health organization may publish an announcement in a written publication for the sole purpose of rebutting the materially false, misleading, or inappropriate statement.

4. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall be solely used by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations. The risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans shall not be used by the commissioner for ratemaking and shall not be considered or introduced as evidence in any rate proceeding 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 which a health organization or any affiliate is authorized to write.

Sec. 10. NEW SECTION. 521F.10 SUPPLEMENTAL PROVISIONS --
RULES -- EXEMPTION.

1. This chapter shall not preclude or limit any other powers or duties of the commissioner under insurance laws including but not limited to chapter 507C.
2. The commissioner may adopt rules pursuant to chapter 17A as are necessary for the administration of this chapter.
3. The commissioner may exempt from filing a risk-based capital report a domestic health organization which writes direct business only in this state and satisfies any of the following:
 - a. Writes direct annual premiums of one hundred thousand dollars or less, and does not assume reinsurance in excess of five percent of direct annual premiums written.
 - b. Is authorized to do business pursuant to chapter 514 and writes direct annual premiums of one hundred thousand dollars or less.
 - c. Is a limited health service organization that covers fewer than five hundred lives.

Sec. 11. NEW SECTION. 521F.11 FOREIGN HEALTH ORGANIZATIONS.

1. A foreign health organization, upon the written request of the commissioner, shall submit to the commissioner a risk-based capital report for the previous calendar year just ended by the later of the following:
 - a. The filing date.
 - b. Fifteen days after the request is received by the foreign health organization.
2. A foreign health organization, upon the written request of the commissioner, shall promptly submit to the commissioner a copy of any risk-based capital plan that is filed with the insurance commissioner of any other state.
3. The commissioner may require a foreign health organization to file a risk-based capital plan under either of the following circumstances:

- a. In the event of a company-action-level event, regulatory-action-level event, or authorized-control-level event as determined under the risk-based capital statute applicable in the state of domicile of the foreign health organization, or, if no risk-based capital statute is in force in that state, under this chapter.

- b. The insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file a risk-based capital plan in the manner specified under that state's risk-based capital statute, or if no risk-based capital statute is in force in that state, pursuant to this chapter.

4. The failure of the foreign health organization to file a risk-based capital plan is sufficient grounds to order the health organization to cease and desist from writing new insurance business in this state.

5. In the event of a mandatory-control-level event with respect to a foreign health organization, if a domiciliary receiver has not been appointed with respect to the foreign health organization under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign health organization, the commissioner may make application to the district court as permitted under chapter 507C with respect to the liquidation of property of foreign health organizations found in this state, and the occurrence of the mandatory-control-level event shall be considered adequate grounds for the application.

Sec. 12. NEW SECTION. 521F.12 IMMUNITY.

Liability shall not arise on the part of and a cause of action shall not arise against the commissioner or the insurance division or its employees or agents for an action taken in the exercise of powers or performance of duties under this chapter.

Sec. 13. NEW SECTION. 521F.13 NOTICES.

Notice by the commissioner to a health organization which may result in regulatory action under this chapter is

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effective upon being sent if transmitted by certified mail, or, in the case of any other transmission, is effective upon the health organization's receipt of the notice.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2316, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 4/5, 2000

THOMAS J. VILSACK
Governor