

~~shall not sell the semen from that bull for the purpose of artificial insemination unless that person has the owner is in possession of a signed health certificate signed and issued by a licensed veterinarian within twelve six months before the date the semen was is collected, provided the. The health certificate shall not be valid if the bull had not been is moved to any other premise another premises between the date of examination and the date of collection, showing. The health certificate shall show that on the date of issue the breeding bull had been tested negative for tuberculosis and Bang's disease brucellosis and, to the best knowledge and belief of the examining veterinarian, was apparently free from any infectious, contagious, or communicable disease. If a breeding bull is moved to any other premise after issuance of the health certificate but prior to collection of the semen, that health certificate shall be invalid for purposes of this section.~~

Approved April 5, 2000

CHAPTER 1050

HEALTH ORGANIZATIONS — RISK-BASED CAPITAL REQUIREMENTS

H.F. 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 by¹ 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.

¹ See chapter 1232, §79 herein

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.²

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,

² See chapter 1232, §80 herein

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) The³ 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

³ See chapter 1232, §81 herein

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 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.