

RISK-BASED CAPITAL (RBC) FOR HEALTH ORGANIZATIONS MODEL ACT

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Drafting Note: The effectiveness of RBC is based on the reliability of the underlying data. The efficacy of RBC as a regulatory instrument is greatly improved if (a) an actuarial opinion supporting the estimated claims and loss adjustment reserves is required, and (b) the health organization be required to submit audited financial statements with the RBC calculation amended to reflect any significant audit adjustments. Additionally, the formula was developed for use in conjunction with the most current NAIC Health Maintenance Organization Annual Statement Blank. States should consider requiring the filing of this statement in order to verify the calculation upon examination.

Section 1. Definitions

As used in this Act, these terms shall have the following meanings:

- A. “Adjusted RBC report” means an RBC report which has been adjusted by the commissioner in accordance with Section 2D.
- B. “Corrective order” means an order issued by the commissioner specifying corrective actions which the commissioner has determined are required.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term “commissioner” appears.

- C. “Domestic health organization” means a health organization domiciled in this state.
- D. “Foreign health organization” means a health organization that is licensed to do business in this state under [cite appropriate statute] but is not domiciled in this state.

Drafting Note: The drafting committee does not recommend application of the risk-based capital model act to an insurance company organized under the laws of a state of the United States if the company (1) has a provision in its certificate of incorporation (or like corporate instrument) prohibiting the doing of insurance business with persons or entities that are citizens or residents of, or organized or located within, the United States and (2) does not, in fact, do insurance business with these persons or entities, so that none of its insurance liabilities are to any such person or entity.

- E. “NAIC” means the National Association of Insurance Commissioners.

- F. “Health organization” means a health maintenance organization, limited health service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation or other managed care organization licensed under Section [cite appropriate statute]. This definition does not include an organization that is licensed as either a life and health insurer or a property and casualty insurer under Section [cite appropriate statute] and that is otherwise subject to either the life or property and casualty RBC requirements.

Drafting Note: The formula was designed for use with provider sponsored organizations, and other similar risk-bearing entities (e.g., hospitals, doctors, limited liability corporations, networks, dental practices, etc.). In order to apply consistent regulatory treatment for similar organizations, States are encouraged to license these entities wherever possible under existing HMO laws or other laws specifically enacted to govern managed care plans.

Drafting Note: It is noted by the working group that when implementing this model law, a commissioner may wish to consider whether a licensed property/casualty or life and health insurer should be subject to the existing Property/Casualty RBC or Life RBC formulas as opposed to being defined as a health organization subject to the Health Organizations RBC formula. Such consideration may require legislative changes or present reporting or other practical problems when attempting to identify insurers by business segment vs. license status.

- G. “RBC instructions” means the RBC report including risk-based capital instructions adopted by the NAIC, as these RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.
- H. “RBC level” means a health organization’s Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:
- (1) “Company Action Level RBC” means, with respect to any health organization, the product of 2.0 and its Authorized Control Level RBC;
 - (2) “Regulatory Action Level RBC” means the product of 1.5 and its Authorized Control Level RBC;
 - (3) “Authorized Control Level RBC” means the number determined under the risk-based capital formula in accordance with the RBC Instructions;
 - (4) “Mandatory Control Level RBC” means the product of .70 and the Authorized Control Level RBC.
- I. “RBC plan” means a comprehensive financial plan containing the elements specified in Section 3B. If the commissioner rejects the RBC plan, and it is revised by the health organization, with or without the commissioner’s recommendation, the plan shall be called the “revised RBC plan.”
- J. “RBC report” means the report required in Section 2.
- K. “Total adjusted capital” means the sum of:
- (1) A health organization’s statutory capital and surplus (i.e. net worth) as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under [cite appropriate statute]; and
 - (2) Such other items, if any, as the RBC instructions may provide.

Drafting Note: The RBC formula adopted by the Health Organizations Risk-Based Capital Working Group was developed using current NAIC guidance contained in the HMO Model Act, and tested using current state practices regarding the assumption of admissibility of health care delivery assets. If the admissibility of these assets is reduced in a given jurisdiction, then that jurisdiction should consider this reduction in total adjusted capital when evaluating action levels described in Sections 3 through 6.

Section 2. RBC Reports

- A. A domestic health organization shall, on or prior to each March 1 (the “filing date”), prepare and submit to the commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, a domestic health organization shall file its RBC report:
- (1) With the NAIC in accordance with the RBC instructions; and
 - (2) With the insurance commissioner in any state in which the health organization is authorized to do business, if the insurance commissioner has notified the health organization of its request in writing, in which case the health organization shall file its RBC report not later than the later of:
 - (a) Fifteen (15) days from the receipt of notice to file its RBC report with that state; or
 - (b) The filing date.
- Drafting Note:** In jurisdictions where the required annual statement filing date is later than March 1, the due date of the RBC report may be adjusted.
- B. A health organization’s RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust for the covariance between) determined in each case by applying the factors in the manner set forth in the RBC instructions.
- (1) Asset risk;
 - (2) Credit risk;
 - (3) Underwriting risk; and
 - (4) All other business risks and such other relevant risks as are set forth in the RBC instructions.
- C. An excess of capital (i.e. net worth) over the amount produced by the risk-based capital requirements contained in the Act and the formulas, schedules and instructions referenced in this Act is desirable in the business of health insurance. Accordingly, health organizations should seek to maintain capital above the RBC levels required by this Act. Additional capital is used and useful in the insurance business and helps to secure a health organization against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this Act.

- D. If a domestic health organization files an RBC report that in the judgment of the commissioner is inaccurate, then the commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the health organization of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an “adjusted RBC report.”

Section 3. Company Action Level Event

Drafting Note: Risk-based capital is a method of establishing the minimum amount of capital appropriate for a health organization to support its overall business operations in consideration of its size, structure and risk profile. Typically, the formula result is compared to total adjusted capital to determine if any action is necessary. The domiciliary commissioner may wish to determine whether other financial resources (e.g. parental guarantees, letters of credit) provide adequate safeguards to consumers based on the dynamics of the market in their particular state, although the working group did not specifically examine, and expresses no opinion on the merits of any such alternative financial resources. Rather, the working group acknowledges that these arrangements may fall within the statutory or regulatory discretion that is available to a regulator in a given jurisdiction. However, this discretion should not be used to mask the reporting of any action level under the provisions of this Act, but may be used in evaluating an RBC plan submitted pursuant to Sections 3 through 5.

- A. “Company Action Level Event” means any of the following events:
- (1) The filing of an RBC report by a health organization that indicates that the health organization’s total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC;
 - (a) If a health organization has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Health RBC instructions;
 - (2) Notification by the commissioner to the health organization of an adjusted RBC report that indicates an event in Paragraph (1) of this subsection, provided the health organization does not challenge the adjusted RBC report under Section 7; or
 - (3) If, pursuant to Section 7, a health organization challenges an adjusted RBC report that indicates the event in Paragraph (1) of this subsection, the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization’s challenge.
- B. In the event of a Company Action Level Event, the health organization shall prepare and submit to the commissioner an RBC plan that shall:
- (1) Identify the conditions that contribute to the Company Action Level Event;
 - (2) Contain proposals of corrective actions that the health organization intends to take and that would be expected to result in the elimination of the Company Action Level Event;

- (3) Provide projections of the health organization's financial results in the current year and at least the two (2) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component;
 - (4) Identify the key assumptions impacting the health organization's projections and the sensitivity of the projections to the assumptions; and
 - (5) Identify 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.
- C. The RBC plan shall be submitted
 - (1) Within forty-five (45) days of the Company Action Level Event; or
 - (2) If the health organization challenges an adjusted RBC report pursuant to Section 7, within forty-five (45) days after notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.
- D. Within sixty (60) days after the submission by a health organization of an RBC plan to the commissioner, the commissioner shall notify the health organization whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the health organization shall set forth the reasons for the determination, and may set forth proposed revisions which will render the RBC plan satisfactory, in the judgment of the commissioner. Upon notification from the commissioner, the health organization shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:
 - (1) Within forty-five (45) days after the notification from the commissioner; or
 - (2) If the health organization challenges the notification from the commissioner under Section 7, within forty-five (45) days after a notification to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge.
- E. In the event of a notification by the commissioner to a health organization that the health organization's RBC plan or revised RBC plan is unsatisfactory, the commissioner may at the commissioner's discretion, subject to the health organization's right to a hearing under Section 7, specify in the notification that the notification constitutes a Regulatory Action Level Event.
- F. Every domestic health organization that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the health organization is authorized to do business if:

- (1) The state has an RBC provision substantially similar to Section 8A; and
- (2) The insurance commissioner of that state has notified the health organization of its request for the filing in writing, in which case the health organization shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:
 - (a) Fifteen (15) days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or
 - (b) The date on which the RBC plan or revised RBC plan is filed under Subsections C and D of this section.

Section 4. Regulatory Action Level Event

A. "Regulatory Action Level Event" means, with respect to a health organization, any of the following events:

- (1) The filing of an RBC 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 RBC but less than its Regulatory Action Level RBC;
- (2) Notification by the commissioner to a health organization of an adjusted RBC report that indicates the event in Paragraph (1), provided the health organization does not challenge the adjusted RBC report under Section 7;
- (3) If, pursuant to Section 7, the health organization challenges an adjusted RBC report that indicates the event in Paragraph (1), the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization's challenge;
- (4) The failure of the health organization to file an RBC report by the filing date, unless the health organization has provided an explanation for the failure that is satisfactory to the commissioner and has cured the failure within ten (10) days after the filing date;
- (5) The failure of the health organization to submit an RBC plan to the commissioner within the time period set forth in Section 3C;
- (6) Notification by the commissioner to the health organization that:
 - (a) The RBC plan or revised RBC plan submitted by the health organization is, in the judgment of the commissioner, unsatisfactory; and
 - (b) Notification constitutes a Regulatory Action Level Event with respect to the health organization, provided the health organization has not challenged the determination under Section 7;
- (7) If, pursuant to Section 7, the health organization challenges a determination by the commissioner under Paragraph (6), the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge;

- (8) Notification by the commissioner to the health organization that the health organization has failed to adhere to its RBC plan or revised RBC 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 in accordance with its RBC plan or revised RBC plan and the commissioner has so stated in the notification, provided the health organization has not challenged the determination under Section 7; or
 - (9) If, pursuant to Section 7, the health organization challenges a determination by the commissioner under Paragraph (8), the notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the challenge.
- B. In the event of a Regulatory Action Level Event the commissioner shall:
 - (1) Require the health organization to prepare and submit an RBC plan or, if applicable, a revised RBC plan;
 - (2) Perform such examination or analysis as the commissioner deems necessary of the assets, liabilities and operations of the health organization including a review of its RBC plan or revised RBC plan; and
 - (3) Subsequent to the examination or analysis, issue an order specifying such corrective actions as the commissioner shall determine are required (a “corrective order”).
- C. In determining corrective actions, the commissioner 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 RBC instructions. The RBC plan or revised RBC plan shall be submitted:
 - (1) Within forty-five (45) days after the occurrence of the Regulatory Action Level Event;
 - (2) If the health organization challenges an adjusted RBC report pursuant to Section 7 and the challenge is not frivolous in the judgment of the commissioner within forty-five (45) days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization’s challenge; or
 - (3) If the health organization challenges a revised RBC plan pursuant to Section 7 and the challenge is not frivolous in the judgment of the commissioner, within forty-five (45) days after the notification to the health organization that the commissioner has, after a hearing, rejected the health organization’s challenge.
- D. The commissioner may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the commissioner to review the health organization’s RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the health organization and formulate the corrective order with respect to the health organization. The fees, costs and expenses relating to consultants shall be borne by the affected health organization or such other party as directed by the commissioner.

Section 5. Authorized Control Level Event

- A. “Authorized Control Level Event” means any of the following events:
- (1) The filing of an RBC report by the health organization that indicates that the health organization’s total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;
 - (2) The notification by the commissioner to the health organization of an adjusted RBC report that indicates the event in Paragraph (1), provided the health organization does not challenge the adjusted RBC report under Section 7;
 - (3) If, pursuant to Section 7, the health organization challenges an adjusted RBC report that indicates the event in Paragraph (1), notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization’s challenge;
 - (4) The failure of the health organization to respond, in a manner satisfactory to the commissioner, to a corrective order (provided the health organization has not challenged the corrective order under Section 7); or
 - (5) If the health organization has challenged a corrective order under Section 7 and the commissioner has, after a hearing, rejected the challenge or modified the corrective order, the failure of the health organization to respond, in a manner satisfactory to the commissioner, to the corrective order subsequent to rejection or modification by the commissioner.
- B. In the event of an Authorized Control Level Event with respect to a health organization, the commissioner shall:
- (1) Take such actions as are required under Section 4 regarding a health organization with respect to which an Regulatory Action Level Event has occurred; or
 - (2) If the commissioner deems it to be in the best interests of the policyholders and creditors of the health organization and of the public, take such actions as are necessary to cause the health organization to be placed under regulatory control under [insert reference to relevant health organization rehabilitation and liquidation act]. In the event the commissioner takes such actions, the Authorized Control Level Event shall be deemed sufficient grounds for the commissioner to take action under [insert same reference], and the commissioner shall have the rights, powers and duties with respect to the health organization as are set forth in [insert same reference]. In the event the commissioner takes actions under this paragraph pursuant to an adjusted RBC report, the health organization shall be entitled to such protections as are afforded to health organizations under the provisions of Section [insert reference] pertaining to summary proceedings.

Section 6. Mandatory Control Level Event

- A. “Mandatory Control Level Event” means any of the following events:
- (1) The filing of an RBC report which indicates that the health organization’s total adjusted capital is less than its Mandatory Control Level RBC;
 - (2) Notification by the commissioner to the health organization of an adjusted RBC report that indicates the event in Paragraph (1), provided the health organization does not challenge the adjusted RBC report under Section 7; or
 - (3) If, pursuant to Section 7, the health organization challenges an adjusted RBC report that indicates the event in Paragraph (1), notification by the commissioner to the health organization that the commissioner has, after a hearing, rejected the health organization’s challenge.
- B. In the event of a Mandatory Control Level Event, the commissioner shall take such actions as are necessary to place the health organization under regulatory control under [insert reference to relevant health organization rehabilitation and liquidation act]. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the commissioner to take action under [insert same reference], and the commissioner shall have the rights, powers and duties with respect to the health organization as are set forth in [insert same reference]. If the commissioner takes actions pursuant to an adjusted RBC report, the health organization shall be entitled to the protections of Section [insert reference] pertaining to summary proceedings. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety-day period.

Drafting Note: States may want to consider allowing a health organization that is not writing new business by order of the commissioner to run-off its existing business under the supervision of the commissioner. The committee does not necessarily recommend this approach, but does acknowledge that there are states that use this approach when the possibility of harm to the policyholders and the public due to the run-off is minimal.

Section 7. Hearings

Upon the occurrence of any of the following events the health organization shall have the right to a confidential departmental hearing, on a record, at which the health organization may challenge any determination or action by the commissioner. The health organization shall notify the commissioner of its request for a hearing within five (5) days after the notification by the commissioner under Subsection A, B, C or D. Upon receipt of the health organization’s request for a hearing, the commissioner shall set a date for the hearing, which shall be no less than ten (10) nor more than thirty (30) days after the date of the health organization’s request. The events include:

- A. Notification to a health organization by the commissioner of an adjusted RBC report;
- B. Notification to a health organization by the commissioner that:
 - (1) The health organization’s RBC plan or revised RBC plan is unsatisfactory; and

- (2) Notification 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 RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the health organization to eliminate the Company Action Level Event with respect to the health organization in accordance with its RBC plan or revised RBC plan; or
- D. Notification to a health organization by the commissioner of a corrective order with respect to the health organization.

Section 8. Confidentiality; Prohibition on Announcements, Prohibition on Use in Ratemaking

- A. All RBC reports (to the extent the information is not required to be set forth in a publicly available annual statement schedule) and RBC plans (including the results or report of any examination or analysis of a health organization performed pursuant to this statute and any corrective order issued by the commissioner pursuant to examination or analysis) with respect to a domestic health organization or foreign health organization that are in the possession or control of the Department of Insurance shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
- B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection A.
- C. In order to assist in the performance of the commissioner's duties, the commissioner:
 - (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;
 - (2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
 - (3) [Optional provision] May enter into agreements governing sharing and use of information consistent with this subsection.

Drafting Note: The language in Subsection C(1) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

- D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Paragraph (3).
- E. It is the judgment of the legislature that the comparison of a health organization's total adjusted capital to any of its RBC levels is a regulatory tool which may indicate the need for corrective action with respect to the health organization, and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of this Act, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over a radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to the RBC levels of any health organization, or of any component derived in the calculation, by any health organization, agent, broker or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided, however, that if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its RBC levels (or any of them) or an inappropriate comparison of any other amount to the health organizations' RBC levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.
- F. It is the further judgment of the legislature that the RBC instructions, RBC reports, adjusted RBC reports, RBC plans and revised RBC plans are intended solely for use by the commissioner in monitoring the solvency of health organizations and the need for possible corrective action with respect to health organizations and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a health organization or any affiliate is authorized to write.

Section 9. Supplemental Provisions; Rules; Exemption

- A. The provisions of this Act are supplemental to any other provisions of the laws of this state, and shall not preclude or limit any other powers or duties of the commissioner under such laws, including, but not limited to, [cite rehabilitation and liquidation law and law pertaining to health organizations in hazardous financial condition].
- B. The commissioner may adopt reasonable rules necessary for the implementation of this Act.
- C. The commissioner may exempt from the application of this Act a domestic health organization that:
 - (1) Writes direct business only in this state;
 - (2) Assumes no reinsurance in excess of five percent (5%) of direct premium written; and

- (3) Writes direct annual premiums for comprehensive medical business of [\$X] or less; or
- (4) Is a limited health service organization that covers less than [X] lives.

Drafting Note: It is the drafters' intent that the domiciliary commissioner have the ability to exempt certain health organizations doing business only within the commissioner's jurisdiction. The intent is to limit this exemption to health organizations that do not write in excess of \$2,000,000 in annual premiums and limited health service organizations that cover less than 2,000 lives.

Section 10. Foreign Health Organizations

- A.
 - (1) A foreign health organization shall, upon the written request of the commissioner, submit to the commissioner an RBC report as of the end of the calendar year just ended the later of:
 - (a) The date an RBC report would be required to be filed by a domestic health organization under this Act; or
 - (b) Fifteen (15) days after the request is received by the foreign health organization.
 - (2) A foreign health organization shall, at the written request of the commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with the insurance commissioner of any other state.
- B. In the event of a Company Action Level Event, Regulatory Action Level Event or Authorized Control Level Event with respect to a foreign health organization as determined under the RBC statute applicable in the state of domicile of the health organization (or, if no RBC statute is in force in that state, under the provisions of this Act), if the insurance commissioner of the state of domicile of the foreign health organization fails to require the foreign health organization to file an RBC plan in the manner specified under that state's RBC statute (or, if no RBC statute is in force in that state, under Section 3 of this Act), the commissioner may require the foreign health organization to file an RBC plan with the commissioner. In such event, the failure of the foreign health organization to file an RBC plan with the commissioner shall be grounds to order the health organization to cease and desist from writing new insurance business in this state.

Drafting Note: Nothing in this section should be construed as limiting the commissioner's authority to regulate the health insurance market in his or her state. It is not the intention of the working group to infer that the commissioner is required to accept an RBC plan filed with the domiciliary commissioner by a health organization, especially given the potential for statutory or regulatory discretion discussed in the drafting note in Section 3.

- C. In the event of a Mandatory Control Level Event with respect to a foreign health organization, if no domiciliary receiver has 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 [cite appropriate state court] permitted under the [cite rehabilitation and liquidation statute] 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.

Section 11. Immunity

There shall be no liability on the part of, and no cause of action shall arise against, the commissioner or the insurance department or its employees or agents for any action taken by them in the performance of their powers and duties under this Act.

Section 12. Severability Clause

If any provision of this Act, or its application to any person or circumstance, is held invalid, that determination shall not affect the provisions or applications of this Act that can be given effect without the invalid provision or application, and to that end the provisions of this Act are severable.

Section 13. Notices

All notices by the commissioner to a health organization that may result in regulatory action under this Act shall be effective upon dispatch if transmitted by registered or certified mail, or in the case of any other transmission shall be effective upon the health organization's receipt of notice.

Section 14. Phase-In Provision

For RBC reports required to be filed by health organizations with respect to 1998, the following requirements shall apply in lieu of the provisions of Section 3, 4, 5 and 6:

- A. In the event of a Company Action Level Event with respect to a domestic health organization, the commissioner shall take no regulatory action under this Act.
- B. In the event of an Regulatory Action Level Event under Section 4A(1), (2) or (3) the commissioner shall take the actions required under Section 3.
- C. In the event of an Regulatory Action Level Event under Section 4A(4), (5), (6), (7), (8) or (9) or an Authorized Control Level Event, the commissioner shall take the actions required under Section 4 with respect to the health organization.
- D. In the event of a Mandatory Control Level Event with respect to a health organization, the commissioner shall take the actions required under Section 5 with respect to the health organization.

Drafting Note: This provision should be included for states that adopt the model law in 1998 for implementation in 1999 (based on 1998 annual statements).

Drafting Note: RBC is designed to interact with other operational requirements and regulatory frameworks that exist under state licensure laws. The working group drafted this section under the assumption that the state has a requirement for the filing of a comprehensive business plan in its application requirement. A comprehensive business plan would include some, if not all, of the following: feasibility studies and marketing plan; description of the proposed service area, provider contracts; provider access; plan administration and, if applicable, management contracts; minimum of three years of financial projections; description of any financial guarantees; and a summary of the benefits to be offered (and/or the benefit contracts). States are encouraged to implement these requirements if this information is not part of the application requirement. This section is not intended to limit initial capital to the first year RBC calculation. States should also consider start up losses and other contingencies when determining an appropriate level of initial capital funding for a health organization. A health organization that has just commenced operations and has only partial year data should estimate the initial RBC levels using operating (revenue and expense) projections (considering managed care arrangements) for its first full year (12 months) of managed care operations. The projections, including the risk-based capital requirement, should be the same as those filed as part of a comprehensive business plan that is submitted as part of the application for licensure. The underwriting, credit (capitation risk only), and business risk sections of the first RBC report submitted pursuant to Section 2 of this Act should be completed

using the health organization's actual operating data for the period from the commencement of operations until year-end, plus projections for the number of months necessary to provide 12 months of data. The affiliate, asset and portions of the credit risk section that are based on balance sheet information shall be reported using actual data. For subsequent years' reports the RBC results for all of the formula components should be calculated using actual data.

Section 15. Effective Date

This Act shall become effective immediately upon its enactment.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1998 Proc. 2nd Quarter 12, 13, 159, 407, 466-474 (adopted).

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2013 (typographical error correction).