

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007

A Bill

SENATE BILL 769

4
5 By: Senator T. Smith
6
7

For An Act To Be Entitled

8 AN ACT TO CREATE A SMALL EMPLOYER HEALTH
9 REINSURANCE PROGRAM; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO CREATE A SMALL EMPLOYER HEALTH
12 REINSURANCE PROGRAM.
13
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 23, Chapter 62, is amended to add an
20 additional subchapter to read as follows:

21 23-62-501. Title.

22 This subchapter shall be known and may be cited as the "Small Employer
23 Health Reinsurance Program Act of 2007".
24

25 23-62-502. Applicability.

26 Every small employer group carrier that offers small employer health
27 insurance in this state under the Arkansas Health Insurance Portability and
28 Accountability Act of 1997, § 23-86-301 et seq., is subject to this
29 subchapter.
30

31 23-62-503. Definitions.

32 As used in this subchapter:

33 (1) "Carrier" has the meaning provided in § 23-86-202; and

34 (2) "Small employer" has the meaning provided in § 23-86-202
35 unless otherwise provided by the plan of operation under § 23-62-506.
36



1 23-62-504. Small Employer Health Reinsurance Program.

2 (a) The Arkansas Small Employer Health Reinsurance Program is created
3 as a nonprofit entity.

4 (b) The program shall operate subject to the supervision and control
5 of the Arkansas Small Employer Health Reinsurance Program Board.

6 (c)(1) The program shall have the general powers and authority granted
7 under the laws of this state to insurance companies and health maintenance
8 organizations licensed to transact business, except the power to issue health
9 benefit plans directly to either groups or individuals.

10 (2) In addition to the general powers of the program provided in
11 subdivision (c)(1) of this section, the program may:

12 (A) Enter into contracts necessary or proper to carry out
13 this subchapter, including the authority, with the approval of the Insurance
14 Commissioner, to enter into contracts with similar programs of other states
15 for the joint performance of common functions or with persons or other
16 organizations for the performance of administrative functions;

17 (B) Sue or be sued, including taking any legal actions
18 necessary or proper to recover any assessments and penalties for, on behalf
19 of, or against the program or any reinsuring carriers;

20 (C) Take any legal action necessary to avoid the payment
21 of improper claims against the program;

22 (D) Define the health benefit plans for which reinsurance
23 will be provided and issue reinsurance policies in accordance with this
24 subchapter;

25 (E) Establish rules, conditions, and procedures for
26 reinsuring risks under the program;

27 (F) Establish actuarial functions as appropriate for the
28 operation of the program;

29 (G)(i) Assess carriers in accordance with § 23-62-509 and
30 make advance interim assessments as may be reasonable and necessary for
31 organizational and interim operating expenses.

32 (ii) Any interim assessments shall be credited as
33 offsets against any regular assessments due following the close of the fiscal
34 year;

35 (H) Appoint appropriate legal, actuarial, and other
36 committees as necessary to provide technical assistance in the operation of

1 the program, policy, and other contract design and any other function within
2 the authority of the program; and

3 (I)(i) Borrow money to effect the purposes of the program.

4 (ii) Any notes or other evidence of indebtedness of
5 the program not in default shall be legal investments for carriers and may be
6 carried as admitted assets.

7 (d) A small employer carrier may reinsure an entire employer group
8 within thirty (30) days after the commencement of the group's coverage under
9 a health benefit plan.

10 (e)(1) The program shall not reimburse a reinsuring carrier with
11 respect to the claims of a reinsured employee or dependent until the
12 reinsuring carrier has incurred an initial level of claims for the employee
13 or dependent of ten thousand dollars (\$10,000) in a calendar year for
14 benefits covered by the program.

15 (2) In addition, the reinsuring carrier shall be responsible for
16 ten percent (10%) of the next fifty thousand dollars (\$50,000) of benefit
17 payments during a calendar year, and the program shall reinsure the
18 remainder.

19 (3) A reinsuring carrier's liability under this subsection (e)
20 shall not exceed a maximum limit of fifteen thousand dollars (\$15,000) in any
21 one (1) calendar year with respect to any reinsured individual.

22 (4) Adjustments may be made in amounts and methods of
23 reinsurance to accommodate operating the program if recommended by the board
24 and approved by the commissioner.

25 (f)(1) The board annually shall adjust the initial level of claims and
26 the maximum limit to be retained by the reinsuring carrier to reflect
27 increases in costs and utilization within the standard market for health
28 benefit plans within the state.

29 (2) The adjustment shall not be less than the annual change in
30 the medical component of the Consumer Price Index for All Urban Consumers of
31 the Bureau of Labor Statistics of the United States Department of Labor,
32 existing on January 1, 2007, unless the board proposes and the commissioner
33 approves a lower adjustment factor.

34 (g) A small employer carrier may terminate reinsurance with the
35 program for an entire employer group on any anniversary of the health benefit
36 plan.

1 (h) If a federally qualified health maintenance organization is
2 subject to more restrictive requirements than those specified in this section
3 that limit the amount of risk that may be ceded to the program, the premium
4 rates charged for reinsurance by the program shall be reduced to reflect the
5 portion of the risk, if any, that may not be ceded to the program.

6 (i) A small employer carrier shall apply consistently all managed care
7 and claims-handling techniques, including utilization review, individual case
8 management, preferred provider provisions, and other managed care provisions
9 or methods of operation with respect to reinsured and nonreinsured business.

10 (j) The program is exempt from all taxes.

11
12 23-62-505. Arkansas Small Employer Health Reinsurance Program Board.

13 (a) The Arkansas Small Employer Health Reinsurance Program Board is
14 created.

15 (b)(1) The board shall consist of eight (8) members appointed by the
16 Insurance Commissioner.

17 (2) The commissioner or the commissioner's designated
18 representative shall serve as an ex officio member.

19 (c)(1) In selecting the members, the commissioner shall include
20 representatives of small employers and small employer carriers and other
21 individuals determined to be qualified by the commissioner.

22 (2) At least five (5) members of the board shall be
23 representatives of carriers and shall be selected from individuals nominated
24 in this state pursuant to procedures and guidelines developed by the
25 commissioner.

26 (d)(1) Each member shall serve for a term of three (3) years and until
27 his or her successor is appointed as provided in this section.

28 (2) A vacancy in the board shall be filled by the commissioner.

29 (e) A member may be removed by the commissioner for cause.

30
31 23-62-506. Plan of operation.

32 (a)(1) Within one hundred eighty (180) days after the appointment of
33 the initial members of the Arkansas Small Employer Health Reinsurance Program
34 Board, the board shall submit to the Insurance Commissioner a plan of
35 operation and any amendments necessary or suitable to assure the fair,
36 reasonable, and equitable administration of the Arkansas Small Employer

1 Health Reinsurance Program.

2 (2) After notice and hearing, the commissioner may approve the
3 plan of operation if the commissioner determines that the plan of operation:

4 (A) Complies with subsection (c) of this section;

5 (B) Is suitable to assure the fair, reasonable, and
6 equitable administration of the program; and

7 (C) Provides for the sharing of program gains or losses on
8 an equitable and proportionate basis.

9 (3) The plan of operation shall become effective upon written
10 approval by the commissioner.

11 (4) The plan of operation may address what size employers will
12 constitute a small employer.

13 (b)(1) If the board fails to submit a suitable plan of operation
14 within one hundred eighty (180) days after the appointment of its initial
15 members, the commissioner, after notice and hearing, shall adopt and
16 promulgate a temporary plan of operation.

17 (2) The commissioner shall amend or rescind any temporary plan
18 of operation adopted under this subsection at the time a plan of operation is
19 submitted by the board and approved by the commissioner.

20 (c) The plan of operation shall:

21 (1) Establish procedures for handling and accounting of program
22 assets and moneys and for an annual fiscal reporting to the commissioner;

23 (2) Establish procedures for selecting an administering carrier,
24 giving preference to those carriers that are not competitors in the small
25 employer health marketplace in this state, and set forth the powers and
26 duties of the administering carrier;

27 (3) Establish procedures for reinsuring risks in accordance with
28 this subchapter;

29 (4) Establish procedures for collecting assessments from
30 reinsuring carriers to fund claims and administrative expenses incurred or
31 estimated to be incurred by the program;

32 (5) Establish a methodology for applying the dollar thresholds
33 contained in this subchapter in the case of carriers that pay or reimburse
34 health care providers through capitation or salary; and

35 (6) Provide for any additional matters necessary for the
36 implementation and administration of the program.

1
2 23-62-507. Methodology.

3 (a)(1) As part of the plan of operation for the Arkansas Small
4 Employer Health Reinsurance Program, the Arkansas Small Employer Health
5 Reinsurance Program Board shall establish a methodology for determining
6 premium rates to be charged by the program for reinsuring small employers and
7 individuals pursuant to this section.

8 (2) The methodology shall include a system for classification of
9 small employers that reflects the types of case characteristics commonly used
10 by small employer carriers in the state.

11 (3) The methodology shall provide for the development of base
12 reinsurance premium rates that shall be multiplied by the factors set forth
13 in subsection (b) of this section to determine the premium rates for the
14 program.

15 (4) The base reinsurance premium rates shall be established by
16 the board subject to the approval of the Insurance Commissioner and shall be
17 set at levels that reasonably expect the program to break even over an
18 extended period of time.

19 (b)(1) The board shall periodically review the methodology established
20 under subsection (a) of this section, including the system of classification
21 and any rating factors, to assure that the methodology reasonably reflects
22 the claims experience of the program.

23 (2) The board may propose changes to the methodology that shall
24 be subject to the approval of the commissioner.

25 (c) The board may consider adjustments to the premium rates charged by
26 the program to reflect the use of effective cost containment and managed care
27 arrangements.

28
29 23-62-508. Annual report – Net losses.

30 (a) Before March 1 of every year, the Arkansas Small Employer Health
31 Reinsurance Program Board shall determine and report to the Insurance
32 Commissioner the Arkansas Small Employer Health Reinsurance Program net loss
33 for the previous calendar year, including administrative expenses and
34 incurred losses for the year, taking into account investment income and other
35 appropriate gains and losses.

36 (b) Any net loss for the year shall be recouped by assessments

1 of small employer carriers.

2
3 23-62-509. Assessments.

4 (a) As part of the plan of operation for the Arkansas Small Employer
5 Health Reinsurance Program, the Arkansas Small Employer Health Reinsurance
6 Program Board shall establish a formula by which to make assessments against
7 small employer carriers.

8 (b) The assessment formula shall be based on:

9 (1) Each small employer carrier's share of the total premiums
10 earned in the preceding calendar year from health benefit plans delivered or
11 issued for delivery to small employers in this state by small employer
12 carriers; and

13 (2) Each small employer carrier's share of the premiums earned
14 in the preceding calendar year from newly issued health benefit plans
15 delivered or issued for delivery during the calendar year to small employers
16 in this state by small employer carriers.

17 (c)(1) With the approval of the Insurance Commissioner, the board may
18 change the assessment formula established pursuant to subsection (b) of this
19 section.

20 (2) The board may provide for the shares of the assessment base
21 attributable to total premium and to the previous year's premium to vary
22 during a transition period.

23 (d) Subject to the approval of the commissioner, the board shall make
24 an adjustment to the assessment formula for reinsuring carriers that are
25 federally qualified, approved health maintenance organizations to the extent,
26 if any, that restrictions are placed on them that are not imposed on other
27 small employer carriers.

28 (e) Before March 1 of every year, the board shall determine and file
29 with the commissioner an estimate of the assessments needed to fund the
30 losses incurred by the program in the previous calendar year.

31 (f)(1) If assessments exceed net losses of the program, the excess
32 shall be held at interest and used by the board to offset future assessments.

33 (2) Future assessments include reserves for incurred but not
34 reported claims.

35 (g) Each small employer carrier's proportion of the assessment shall
36 be determined annually by the board based on annual statements and other

1 reports deemed necessary by the board and filed by the small employer
2 carriers with the board.

3 (h) The plan of operation shall provide for the imposition of an
4 interest penalty for late payment of assessments.

5 (i)(1) A small employer carrier may seek from the commissioner a
6 deferment from all or part of an assessment imposed by the board.

7 (2) The commissioner may defer all or part of the assessment of
8 a small employer carrier if the commissioner determines that the payment of
9 the assessment would place the small employer carrier in a financially
10 impaired condition.

11 (3) If all or part of an assessment against a small employer
12 carrier is deferred, the amount deferred shall be assessed against the other
13 participating small employer carriers in a manner consistent with the basis
14 for assessment set forth in this subsection.

15 (4) The small employer carrier receiving the deferment shall
16 remain liable to the program for the amount deferred and shall be prohibited
17 from reinsuring any individuals or groups with the program until such time as
18 it pays the assessments.

19
20 23-62-510. Limitation of liability.

21 Neither the participation in the Arkansas Small Employer Health
22 Reinsurance Program as a small employer carrier, the establishment of rates,
23 forms, or procedures, nor any other joint or collective action required by
24 this subchapter shall be the basis of any legal action, criminal or civil
25 liability, or penalty against the program or any of its small employer
26 carriers either jointly or separately.

27
28 23-62-511. Program gains.

29 (a) Any gains in the Arkansas Small Employer Health Reinsurance
30 Program shall be used first to cover incurred but not reported claims, plus
31 an actuarial calculated margin for future losses.

32 (b) Refunds shall be made in proportion to assessments until the total
33 of all assessments are refunded.

34 (c) Any remaining gains shall be used to reduce premiums in the
35 program.

36

1 23-62-512. Reporting of net health premiums.

2 Within sixty (60) days after the effective date of this subchapter,
3 each small employer carrier shall file with the Insurance Commissioner a
4 report containing the carrier's net health insurance premium derived from
5 health benefit plans delivered or issued for delivery to small employers in
6 this state in the previous calendar year.

7
8 23-62-513. Additional reporting.

9 (a) The Arkansas Small Employer Health Reinsurance Program Board shall
10 study and report at least every three (3) years to the Insurance Commissioner
11 on the effectiveness of this subchapter.

12 (b) The report:

13 (1) Shall analyze the effectiveness of this subchapter in
14 promoting rate stability, product availability, and coverage affordability;

15 (2) May contain recommendations for actions to improve the
16 overall effectiveness, efficiency, and fairness of the small employer group
17 health insurance marketplace;

18 (3) Shall address whether carriers and producers are fairly and
19 actively marketing or issuing health benefit plans to small employers in
20 fulfillment of the purposes of this subchapter; and

21 (4) May contain recommendations for market conduct or other
22 regulatory standards or action.

23
24 23-62-514. Marketing of health plans.

25 (a) Unless otherwise exempted in this subchapter, each small employer
26 carrier shall actively market all health benefit plans sold by the carrier to
27 eligible small employers in the state, except that a small employer carrier
28 that is eligible as a health insurance purchasing group may market different
29 health benefit plans in a health insurance purchasing group.

30 (b)(1) Except as provided in subdivision (b)(2) of this section, no
31 small employer carrier or producer shall, directly or indirectly, encourage
32 or direct a small employer to:

33 (A) Refrain from filing an application for coverage with
34 the small employer carrier because of the geographic location of the small
35 employer or any health-status-related industry or occupational factor of the
36 small employer; or

1 (B) Seek coverage from another carrier because of the
2 geographic location of the small employer or any health-status-related
3 industry or occupational factor of the small employer.

4 (2) Subdivision (b)(1) of this section does not apply with
5 respect to information provided by a small employer carrier or producer to a
6 small employer regarding the established geographic service area or a
7 restricted network provision of a small employer carrier.

8 (c)(1) Except as provided in subdivision (c)(2) of this section, no
9 small employer carrier shall enter into, directly or indirectly, any
10 contract, agreement, or arrangement with a producer that provides for or
11 results in the compensation paid to the producer for the sale of a health
12 benefit plan to be varied because of a health-status-related factor of the
13 small employer at the inception or renewal of the health benefit plan.

14 (2) Subdivision (c)(1) of this section does not apply with
15 respect to a compensation arrangement that provides compensation to a
16 producer on the basis of percentage of premium, provided that the percentage
17 shall not vary because of any health-status-related factor of the small
18 employer, except that compensation paid to a producer on a separately
19 identifiable substandard premium, excluding the base premiums, may be
20 whatever is agreed upon between the carrier and the producer.

21 (d) No small employer carrier may terminate, fail to renew, or limit
22 its contract or agreement of representation with a producer because of the
23 geographic location of a small employer or a health-status-related industry
24 or occupational factor of the small employer at the inception or renewal of
25 the health benefit plan placed by the producer with the small employer
26 carrier.

27 (e) A small employer carrier or producer may not induce or otherwise
28 encourage a small employer to separate or otherwise exclude an employee or
29 dependent from health coverage or benefits provided in connection with the
30 employee's employment.

31 (f) Denial by a small employer carrier of an application for coverage
32 from a small employer shall be in writing and shall state the reason or
33 reasons for the denial.

34 (g) The Insurance Commissioner may establish regulations setting forth
35 additional standards to provide for the fair marketing and broad availability
36 of health benefit plans to small employers in this state.

1 (h)(1) A violation of this section by a small employer carrier or a
2 producer is an unfair trade practice under the Trade Practices Act, § 23-66-
3 201 et seq.

4 (2) If a small employer carrier enters into a contract,
5 agreement, or other arrangement with a third-party administrator to provide
6 administrative, marketing, or other services related to the offering of
7 health benefit plans to small employers in this state, the third-party
8 administrator shall be subject to this section as if it were a small employer
9 carrier.

10
11 23-62-515. Rules and regulations.

12 The Insurance Commissioner may promulgate rules and regulations deemed
13 necessary or desirable to implement this subchapter.

14
15 SECTION 2. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS
16 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL, AND TEMPORARY LAW.

17 The terms of the initial members of the Arkansas Small Employer Health
18 Reinsurance Program Board shall be as follows:

19 (1) Two (2) of the members to serve a term of two (2) years;

20 (2) Three (3) of the members to serve a term of four (4) years;

21 and

22 (3) Three (3) of the members to serve a term of six (6) years.