

**INITIATIVE 346**

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 346 to the Legislature is a true and correct copy as it was received by this office.

1 AN ACT Relating to maximum capital and surplus accumulations by  
2 health care service contractors and health maintenance organizations;  
3 amending RCW 48.31C.060 and 48.43.305; and adding a new section to  
4 chapter 48.43 RCW.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.43 RCW  
7 to read as follows:

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

16 (a) The excess shall be returned to the policyholders by their  
17 choice of one of three methods: Electronic transfer; check; or  
18 reduction of next year's premium. If the refund will be less than ten  
19 dollars per subscriber, the excess shall be retained by the health care

1 service contractor or health maintenance organization for distribution  
2 when the per subscriber refund is ten dollars or more.

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

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

12 (d) Nothing in this section shall prohibit a health care service  
13 contractor or health maintenance organization from maintaining reserves  
14 above minimum requirements but below the maximum limit, or from  
15 returning moneys to or reducing moneys payable by subscribers, prior to  
16 reaching the maximum limit.

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

22 (2)(a) The initial refund shall be distributed to the policyholders  
23 of record on January 1, 2004, through December 31, 2005. The refund  
24 will be a percentage of premiums paid during this time frame. The  
25 calculations shall be approved by the commissioner's office.

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

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

32 **Sec. 2.** RCW 48.31C.060 and 2001 c 179 s 6 are each amended to read  
33 as follows:

34 (1)(a) Subject to subsection (2) of this section, each registered  
35 health carrier shall report to the commissioner all dividends and other  
36 distributions to shareholders or members not within the ordinary course  
37 of business within five business days after their declaration and at

1 least fifteen business days before payment and shall provide the  
2 commissioner such other information as may be required by rule.

3 (b) Any payment of a dividend or other distribution to shareholders  
4 or members which would reduce the net worth of the health carrier below  
5 the greater of (i) the minimum required by RCW 48.44.037 for a health  
6 care service contractor or RCW 48.46.235 for a health maintenance  
7 organization or (ii) the company action level RBC under RCW  
8 48.43.300(9)(a) is prohibited.

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

20 (b) For purposes of this section, an extraordinary dividend or  
21 distribution is a dividend or distribution of cash or other property  
22 whose fair market value, together with that of other dividends or  
23 distributions not within the ordinary course of business made within  
24 the period of twelve consecutive months ending on the date on which the  
25 proposed dividend is scheduled for payment or distribution, exceeds the  
26 lesser of: (i) Ten percent of the health carrier's net worth as of the  
27 31st day of the previous December; or (ii) the net income of the health  
28 carrier for the twelve-month period ending the 31st day of the previous  
29 December, but does not include pro rata distributions of any class of  
30 the company's own securities.

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

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

14 **Sec. 3.** RCW 48.43.305 and 1998 c 241 s 2 are each amended to read  
15 as follows:

16 (1) Every domestic carrier shall, on or prior to the filing date of  
17 March 1st, prepare and submit to the commissioner a report of its RBC  
18 levels as of the end of the calendar year just ended, in a form and  
19 containing such information as is required by the RBC instructions. In  
20 addition, every domestic carrier shall file its RBC report:

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

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

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

28 (ii) The filing date.

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

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

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

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

36 and

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

4 ~~(3) ((An excess of capital over the amount produced by the risk-~~  
5 ~~based capital requirements contained in RCW 48.43.300 through 48.43.370~~  
6 ~~and the formulas, schedules, and instructions referenced in RCW~~  
7 ~~48.43.300 through 48.43.370 is desirable in the business of insurance.~~  
8 ~~Accordingly, carriers should seek to maintain capital above the RBC~~  
9 ~~levels required by RCW 48.43.300 through 48.43.370. Additional capital~~  
10 ~~is used and useful in the insurance business and helps to secure a~~  
11 ~~carrier against various risks inherent in, or affecting, the business~~  
12 ~~of insurance and not accounted for or only partially measured by the~~  
13 ~~risk-based capital requirements contained in RCW 48.43.300 through~~  
14 ~~48.43.370.~~

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