

40-3227. Deposit requirements; waiver of deposit; plan for continuation of benefits following insolvency. (a) Except as provided in paragraph (e), before issuing any certificate of authority, the commissioner shall require that the health maintenance organization have an initial net worth of \$1,500,000 and shall thereafter maintain the minimum net worth required under subsection (b).

(b) Except as provided in subsections (c) and (d) of this section, every health maintenance organization shall maintain a minimum net worth equal to the greater of:

- (1) \$1,000,000; or
- (2) two percent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner on the first \$150,000,000 of premium and 1% of annual premium on the premium in excess of \$150,000,000; or
- (3) an amount equal to the sum of three months uncovered health care expenditures as reported on the most recent financial statement filed with the commissioner; or
- (4) an amount equal to the sum of:
 - (A) Eight percent of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis as reported on the most recent financial statement filed with the commissioner; and
 - (B) four percent of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the commissioner.

(c) A health maintenance organization licensed on or before the day preceding the effective date of this section must maintain a minimum net worth of:

- (1) Twenty-five percent of the amount required by subsection (b) by December 31, 2000;
- (2) 50% of the amount required by subsection (b) by December 31, 2001;
- (3) 75% of the amount required by subsection (b) by December 31, 2002; and
- (4) 100% of the amount required by subsection (b) by December 31, 2003.

(d) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the commissioner. An interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated. The interest expenses relating to the repayment of a fully subordinated debt shall be considered covered expenses. A debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the commissioner, shall not be considered a liability and shall be recorded as equity.

(e) The net worth requirements of subsections (a) through (d) shall not apply to any health organization contracting with the Kansas department of health and environment to provide services provided under title XIX and title XXI of the social security act or any other public benefits, provided the public benefit contracts represent at least 90% of the premium volume of the health organization.

(f) Unless otherwise provided below, each health maintenance organization doing business in this state shall deposit with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities or any combination of these or other measures, for the benefit of all of the enrollees of the health maintenance organization, that are acceptable in the amount of \$150,000 for a medical group or staff model health maintenance organization or \$300,000 for an individual practice association.

(g) The commissioner may waive any of the deposit requirements set forth in subsection (f) whenever satisfied that:

- (1) The organization has sufficient net worth and an adequate history of generating net income to assure its financial viability for the next year; or
- (2) the organization's performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income; or
- (3) the assets of the organization or its contracts with insurers, hospital or medical service corporations, governments or other organizations are reasonably sufficient to assure the performance of its obligations.

(h) The deposit requirements imposed by this act shall not apply to health maintenance organizations not organized under the laws of this state to the extent an amount equal to or exceeding that required by this act has been deposited with the commissioner or an organization or trustee acceptable to the department of insurance of its state of domicile for the benefit of Kansas enrollees.

(i) All income from deposits shall belong to the depositing organization and shall be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities or any combination of these or other measures of equal amount and value. Any securities shall be approved by the commissioner before being substituted.

(j) Every health maintenance organization, when determining liability, shall include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, that are unpaid and for which the organization is or may be liable, and to provide for the expense of adjustment or settlement of those claims.

(k) The commissioner shall require that each health maintenance organization have a plan for handling insolvency which allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the commissioner may require:

- (1) Insurance to cover the expenses to be paid for continued benefits after an insolvency;
- (2) provisions in provider contracts that obligate the provider to provide services for the duration of the period after the health maintenance organization's insolvency for which premium payment has been made and until the enrollees' discharge from inpatient facilities;
- (3) insolvency reserves;
- (4) acceptable letters of credit; or
- (5) any other arrangements to assure that benefits are continued as specified in this subsection (k).

History: L. 1984, ch. 176, § 2; L. 1988, ch. 162, § 3; L. 1996, ch. 169, § 11; L. 2000, ch. 147, § 40; L. 2014, ch. 115, § 190; July 1.