

304.38-070 Requirements for protection against insolvency -- Risk-based capital requirements -- Requirements for health maintenance organizations.

- (1) Except as provided in subsection (5) of this section, the following applies to a corporation or limited liability company applying for and holding a certificate of authority as a health maintenance organization:
 - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation or limited liability company shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars (\$1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars (\$2,000,000);
 - (b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for that authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any health maintenance organization from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and
 - (c)
 1. Each corporation authorized as a health maintenance organization shall at all times:
 - a. Maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000); and
 - b. Comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner.
 2. A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency as required for that authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any health maintenance organization from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.
- (2) The following applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:
 - (a) Except as provided in paragraph (b) of this subsection:
 1. To qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars (\$3,000,000) in its capital accounts; and
 2. Thereafter, a partnership authorized as a health maintenance organization shall:
 - a. Possess and maintain a total of at least one million two hundred fifty thousand dollars (\$1,250,000) in its capital accounts; and

- b. Comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the commissioner; and
- (b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for that authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.
- (3) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with risk-based capital (RBC) requirements as follows:
 - (a)
 - 1. For purposes of this subsection, risk-based capital shall be determined in accordance with the risk-based capital requirements for health maintenance organizations established under this subtitle and any administrative regulation promulgated pursuant to KRS Chapter 13A, except as otherwise provided in this subsection.
 - 2. The corporation, partnership, or limited liability company shall comply with the same risk-based capital requirements as other health maintenance organizations, except that no additional phase-in or risk-based capital reports shall be required for 2000 or 2001, and the risk-based capital levels shall be established in accordance with paragraph (b) of this subsection;
 - (b) For the risk-based capital reports required to be filed by health maintenance organizations which manage care and process health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program, the risk-based capital levels shall be defined as follows:
 - 1. "Company Action Level RBC" means the product of two (2.0) and its Authorized Control Level RBC;
 - 2. "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;
 - 3. "Authorized Control Level RBC" means the product of four-tenths (.40) and the risk-based capital after covariance determined under the risk-based capital formula in accordance with the RBC instruction; and
 - 4. "Mandatory Control Level RBC" means the product of seven-tenths (.70) and the Authorized Control Level RBC; and
 - (c) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization

managing care, processing health care claims, or providing health benefits to groups or individuals in addition to Medicaid-eligible and Kentucky Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle, and shall not be eligible to calculate its risk-based capital according to this subsection.

(4) As used in subsection (5) of this section:

(a) "MA organization" has the same meaning as in 42 C.F.R. sec. 422.2, as amended;

(b) 1. "Net worth" means the excess of total admitted assets over total admitted liabilities, but the liabilities shall not include fully subordinated debt or surplus notes as approved by the commissioner.

2. In determining net worth:

- a. No debt shall be considered fully subordinated unless the debt is in a form approved by the commissioner;
- b. Any interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated; and
- c. The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.

3. For purposes of calculating a health maintenance organization's net worth, "admitted assets" includes the following, as may be subsequently modified by the commissioner:

- a. Receivables due from persons that are not more than ninety (90) days past due;
- b. Amounts due under reinsurance arrangements from insurance companies authorized to do business in this state;
- c. Undisputed tax refunds or other receivables due from the United States or this state;
- d. Amounts on deposit under KRS 304.38-073; and
- e. Investments determined as allowable by the commissioner under this chapter.

4. When determining liabilities for purposes of calculating a health maintenance organization's net worth, the health maintenance organization shall include an amount estimated in the aggregate to provide for:

- a. Any unearned premium;
- b. The payment of all claims for health care expenditures:
 - i. That have been incurred, whether reported or unreported;
 - ii. That are unpaid; and
 - iii. For which the organization is or may be liable; and
- c. The expense of adjustment or settlement of claims; and

- (c) "Provider-sponsored integrated health delivery network" has the same meaning as in KRS 304.17A-005.
- (5) The following applies to a corporation or limited liability company applying for or holding, or a provider-sponsored integrated health delivery network that elects to convert to and hold, a certificate of authority as a health maintenance organization that solely operates as an MA organization that meets the requirements of 42 C.F.R. sec. 422.400, as amended:
- (a) The health maintenance organization shall possess, when first so authorized, an initial net worth of one million five hundred thousand dollars (\$1,500,000);
 - (b) Thereafter, the health maintenance organization shall possess and maintain a minimum net worth equal to the greater of:
 - 1. One million five hundred thousand dollars (\$1,500,000); or
 - 2. As reported on the most recent annual statement filed with the commissioner, an amount totaling:
 - a. Four percent (4%) of the first one hundred fifty million dollars (\$150,000,000) of annual premium revenue; and
 - b. One and one-half percent (1.5%) of the annual premium revenue in excess of one hundred fifty million dollars (\$150,000,000);
 - (c) To the extent permitted under federal law, the health maintenance organization shall:
 - 1. Comply with the same risk-based capital requirements as other health maintenance organizations under subsection (1) of this section; and
 - 2. Except as provided in paragraph (d) of this subsection, be subject to the provisions of this subtitle relating to licensing and solvency and to the following provisions of this chapter, to the extent applicable and not in conflict with the applicable provisions of this subtitle:
 - a. Subtitle 1 -- Scope -- General Definitions and Provisions;
 - b. Subtitle 2 -- Insurance Commissioner;
 - c. Subtitle 3 -- Authorization of Insurers and General Requirements;
 - d. Subtitle 4 -- Fees and Taxes;
 - e. Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
 - f. Subtitle 6 -- Assets and Liabilities;
 - g. Subtitle 7 -- Investments;
 - h. Subtitle 8 -- Administration of Deposits;
 - i. Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;
 - j. Subtitle 12 -- Trade Practices and Frauds;
 - k. Subtitle 25 -- Continuity of Management;
 - l. Subtitle 33 -- Insurers Rehabilitation and Liquidation;
 - m. Subtitle 37 -- Insurance Holding Company Systems; and
 - n. Subtitle 99 -- Penalties; and

(d) For purposes of determining compliance with KRS 304.38-073, the commissioner shall:

1. Take into account any and all deposits as may be held with other states; and
2. Coordinate with the other states to not require the health maintenance organization to have total deposits in all states that are greater than the amount required in the state with the highest deposit requirement.

Effective: July 14, 2022

History: Amended 2022 Ky. Acts ch. 133, sec. 10, effective July 14, 2022. -- Amended 2010 Ky. Acts ch. 24, sec. 1503, effective July 15, 2010; and repealed and reenacted ch. 51, sec. 137, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 137, effective June 26, 2007. -- Amended 2003 Ky. Acts ch. 136, sec. 1, effective June 24, 2003. -- Amended 2000 Ky. Acts ch. 255, sec. 2, effective July 14, 2000. -- Amended 1986 Ky. Acts ch. 437, sec. 28, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 128, sec. 7, effective July 15, 1982. -- Created 1974 Ky. Acts ch. 357, subtit. 38, sec. 7, effective June 21, 1972.

Legislative Research Commission Note (7/15/2010). This section was amended by 2010 Ky. Acts ch. 24 and repealed and reenacted by 2010 Ky. Acts ch. 51. These Acts do not appear to be in conflict and have been codified together pursuant to 2010 Ky. Acts ch. 51, sec. 184.

Legislative Research Commission Note (7/15/2010). 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."