

CHAPTER 99

INSURANCE

HOUSE BILL 94-1275

BY REPRESENTATIVES Owen, Anderson, Coffman, and Reeser;
also SENATOR Blickensderfer.

AN ACT

CONCERNING THE AUTHORITY OF NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND HEALTH SERVICE CORPORATIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-16-111 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-16-111. Annual statement and reports. (1) **Nonprofit hospital, medical-surgical, and health service corporations.** All corporations subject to the provisions of this part 1 and part 3 of this article doing business in this state on July 1, 1967, or which may thereafter do business in this state, shall make and file annually with the commissioner, on or before the first day of March of each year, a statement under oath upon a form prescribed by the commissioner stating the amount of all membership dues or subscriber fees collected in this state or from residents thereof by the corporation making such statement during the year ending the last day of December next preceding; the amounts actually paid during such year for hospital, medical-surgical, and other health services for the subscribers or members of the corporation, and the amounts placed in established reserves for cases billed but not yet paid, unreported and unbilled cases, retroactive cost adjustments, ~~and~~ membership dues or fees paid in advance but not yet earned, AND ALL OTHER LIABILITIES AND OBLIGATIONS REQUIRED OF DOMESTIC INSURERS WHICH ARE CONSISTENT WITH THE RESPONSIBILITIES OF SUCH CORPORATIONS. THE ANNUAL STATEMENT MADE TO THE COMMISSIONER PURSUANT TO THIS SUBSECTION (1) SHALL AT LEAST INCLUDE THE SUBSTANCE OF THAT WHICH IS REQUIRED BY WHAT IS KNOWN AS THE CONVENTION BLANK FORM FOR HOSPITAL, MEDICAL, AND DENTAL SERVICE OR INDEMNITY CORPORATIONS ADOPTED FROM YEAR TO YEAR BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, INCLUDING ANY INSTRUCTIONS, PROCEDURES, AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

GUIDELINES NOT IN CONFLICT WITH ANY PROVISION OF THIS TITLE FOR COMPLETING THE CONVENTION BLANK FORM.

SECTION 2. 10-16-302 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-16-302. Incorporation and organization - exemptions. (1) Any nonprofit corporation organized under the laws of the state of Colorado for the purpose of establishing, maintaining, and operating a nonprofit plan, whereby prepaid hospital care, medical-surgical care, and other health services are made available to persons who become subscribers to such plan under a contract with the corporation, or for the purpose of providing long-term care insurance to persons pursuant to a contract with the corporation shall be subject to and governed by the provisions of part 1 of this article and this part 3 and, except as provided in this article AND ELSEWHERE IN THIS TITLE, shall not be subject to the laws of this state relating to insurance or insurance companies. The provisions of sections ~~10-1-102, 10-1-121, 10-1-122, 10-3-119 AND 10-3-128, ARTICLES 1 AND 2 OF THIS TITLE, AND parts 4, 5, 7, 8, and 11, AND 12 of article 3 of this title, and the provisions of section 10-16-104 (8)~~ shall apply to THE EXTENT APPLICABLE, SHALL GOVERN corporations organized pursuant to the provisions of this part 3.

SECTION 3. 10-16-310 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended, and the said 10-16-310 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

10-16-310. Surplus - guarantee fund deposit. (1) No corporation subject to the provisions of part 1 of this article and this part 3 shall be permitted to do any business in this state unless, in addition to the other requirements of law, it has and maintains ~~liquid reserves~~ SURPLUS in an amount not less than five percent of the corporation's subscription income collected in the preceding year, not exceeding two million dollars, plus two and one-half percent of such income exceeding two million dollars but not exceeding ten million dollars, plus one percent of such income exceeding ten million dollars; but, in no event shall such ~~reserves~~ SURPLUS be less than ~~fifty~~ ONE HUNDRED thousand dollars. All corporations subject to the provisions of part 1 of this article and this part 3 shall place on deposit with the commissioner a guarantee fund of cash or approved securities in an amount determined by such formula, but not less than ~~fifty~~ ONE HUNDRED thousand dollars nor more than one ~~hundred fifty~~ MILLION FIVE HUNDRED thousand dollars. Any amount of said ~~liquid reserves~~ SURPLUS required by this subsection (1) AND SUBSECTION (3) OF THIS SECTION in excess of one ~~hundred fifty~~ MILLION FIVE HUNDRED thousand dollars shall be maintained by the corporation at all times, but shall not be required to be placed on deposit with the commissioner.

(3) THE REGULATIONS AUTHORIZED IN THIS SUBSECTION (3) ARE TO BE PROMULGATED TO AVOID SITUATIONS WHERE THE TRANSACTIONS OF A CORPORATION SUBJECT TO THE PROVISIONS OF PART 1 OF THIS ARTICLE AND THIS PART 3 WOULD CREATE UNDUE FINANCIAL RISKS TO ITS SUBSCRIBERS OR THE PEOPLE OF THIS STATE. THE COMMISSIONER MAY BY REGULATION ESTABLISH STANDARDS CONSISTENT WITH THE RISK-BASED CAPITAL MODELS APPLICABLE TO HOSPITAL, MEDICAL, AND DENTAL SERVICE OR INDEMNITY CORPORATIONS DEVELOPED OR ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS WHICH REQUIRE ANY SUCH

CORPORATION TO MAINTAIN A GREATER MINIMUM LEVEL OF SURPLUS THAN THE SPECIFIED DOLLAR MINIMUMS ESTABLISHED BY SUBSECTION (1) OF THIS SECTION. SUCH MINIMUM LEVEL OF SURPLUS SHALL REFLECT THE TYPE, VOLUME, AND NATURE OF THE BUSINESS BEING TRANSACTED. SUCH REGULATIONS MAY ADDITIONALLY REQUIRE THE SUBMISSION OF AN OPINION BY A QUALIFIED ACTUARY WHICH STATES WHETHER OR NOT THE SURPLUS LEVEL OF THE ENTITY IS SUFFICIENT.

SECTION 4. 10-16-313, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is repealed as follows:

10-16-313. Licensing of representatives. ~~(1) A person who, for compensation, solicits subscription to or the establishment of membership in a prepayment plan offered by a corporation subject to the provisions of part 1 of this article and this part 3, or transmits for a person other than himself an application for such subscription or membership, or offers or assumes to act in the negotiation thereof shall be an enrollment representative or agent within the intent of part 1 of this article and this part 3.~~

~~(2) Every corporation subject to the provisions of part 1 of this article and this part 3 shall notify the commissioner through its proper officer or agent of the name, title, and address of each person it desires appointed to act as the corporation's enrollment representative or agent. The notice shall be accompanied by an application from the appointee, and shall be in writing upon a form furnished by the commissioner. If upon receipt of such written notice, when accompanied by the fee required by section 10-16-110, it appears that the appointee is a competent and suitable person who intends to hold out in good faith as the corporation's agent, and that the person qualifies under the provisions of this section, the commissioner shall issue to such appointee a license which shall state in substance that the person named therein is a constituted enrollment representative or agent of the corporation in this state. The commissioner may at any time prior to the granting of such license require an appointee to submit to an examination supervised by the commissioner, in a form prescribed by the commissioner, on the qualifications of such person to act at a minimum acceptable level of competence as an enrollment representative or agent in this state.~~

~~(3) If for cause shown, and after a hearing or examination, the commissioner determines any person to be unsuitable to act as an enrollment representative or agent, the commissioner shall thereupon refuse to issue a license or shall revoke any license previously issued and shall notify in writing both the appointee and the corporation of such refusal. Unless revoked by the commissioner or unless the corporation by written notification to the commissioner cancels the authority of an agent or representative to act for it, any license issued or any renewal thereof shall expire on the first day of January of the second year after its issuance and may be renewed for a two-year period upon payment of the license renewal fee.~~

SECTION 5. 10-16-314, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

10-16-314. Payment for examinations of corporations. ~~The commissioner, or any person authorized by him, has the power to examine the financial condition, affairs, and management of any corporation subject to the provisions of part 1 of this~~

~~article and of this part 3. For such purpose the commissioner has free access to all the books, papers, and documents relating to the business of the corporation and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of such corporation or any other person in relation to its affairs, transactions, and conditions. The commissioner shall make an examination of each corporation subject to the provisions of part 1 of this article and this part 3 at least once every three years, and the A corporation PERIODICALLY examined BY THE COMMISSIONER shall pay to the commissioner the cost of such examination, as determined by the commissioner.~~

SECTION 6. Part 3 of article 16 of title 10, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

10-16-323. Conversion of corporation to mutual insurance company. (1) IT IS THE INTENT OF THE GENERAL ASSEMBLY BY THE ENACTMENT OF THIS SECTION TO CREATE A PROCEDURE FOR NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND HEALTH SERVICE CORPORATIONS SUBJECT TO THE PROVISIONS OF PART 1 OF THIS ARTICLE AND THIS PART 3 TO ELECT TO CONVERT TO INSURANCE COMPANIES AS DEFINED IN ARTICLE 12 OF THIS TITLE. THE GENERAL ASSEMBLY IN SO DOING RECOGNIZES THE SUBSTANTIAL AND RECENT CHANGES IN MARKET AND HEALTH CARE CONDITIONS WHICH ARE AFFECTING SUCH CORPORATIONS AND FURTHER RECOGNIZES THE NEED FOR EQUAL REGULATORY TREATMENT AND COMPETITIVE EQUALITY FOR HEALTH CARE INSURERS. THE GENERAL ASSEMBLY FURTHER FINDS THAT A PROCEDURE FOR CONVERSION TO A MUTUAL INSURANCE COMPANY WILL BE IN THE BEST INTERESTS OF POLICYHOLDERS IN THAT IT WILL ENFRANCHISE POLICYHOLDERS AS VOTING MEMBERS OF SUCH MUTUAL INSURANCE COMPANIES AND THUS PROVIDE DIRECT ACCOUNTABILITY BY SUCH COMPANIES TO THEIR POLICYHOLDERS.

(2) ANY NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND HEALTH SERVICE CORPORATION, REFERRED TO IN THIS SECTION AS "CORPORATION", SUBJECT TO THE PROVISIONS OF PART 1 OF THIS ARTICLE AND THIS PART 3 MAY CONVERT, WITHOUT REINCORPORATION, TO A MUTUAL INSURANCE COMPANY UNDER ARTICLE 12 OF THIS TITLE UNDER A PLAN WHICH COMPLIES WITH THIS SECTION AND HAS BEEN APPROVED BY THE COMMISSIONER PURSUANT TO THIS SECTION.

(3) IN ORDER TO CONVERT TO A MUTUAL INSURANCE COMPANY, THE CORPORATION SHALL FILE WITH THE COMMISSIONER A PLAN FOR SUCH CONVERSION AND APPLY FOR AN AMENDED CERTIFICATE OF AUTHORITY PURSUANT TO PART 1 OF ARTICLE 3 OF THIS TITLE.

(4) THE PLAN SHALL SET FORTH WITH SPECIFICITY THE TERMS AND CONDITIONS OF THE PROPOSED CONVERSION AND SHALL DO ALL OF THE FOLLOWING:

(a) CERTIFY THAT THE PLAN HAS BEEN ADOPTED BY A MAJORITY VOTE OF THE BOARD OF DIRECTORS OF THE CORPORATION;

(b) ESTABLISH THAT THE PLAN AND THE PROPOSED CONVERSION WILL NOT BE PREJUDICIAL TO THE SUBSCRIBERS OF THE CORPORATION;

(c) PROVIDE FOR THE PROTECTION OF ALL EXISTING CONTRACTUAL RIGHTS OF THE

CORPORATION'S SUBSCRIBERS OR CONTRACT HOLDERS FOR MEDICAL AND HOSPITAL SERVICE OR CLAIMS FOR REIMBURSEMENT THEREOF, AND FOR THE ASSUMPTION OF ALL ASSETS, LIABILITIES, AND OBLIGATIONS OF THE CORPORATION;

(d) SPECIFY A REASONABLE TREATMENT FOR THE BENEFIT OF THE CORPORATION'S COLORADO SUBSCRIBERS OF THE SURPLUS, IF ANY, ACCUMULATED BY THE CORPORATION DURING ITS EXISTENCE AS A NONPROFIT CORPORATION;

(e) PROVIDE COPIES OF THE PROPOSED AMENDMENTS TO THE CORPORATION'S ARTICLES OF INCORPORATION, BYLAWS, AND OTHER DOCUMENTS OF ORGANIZATION TO EFFECTUATE THE CONVERSION;

(f) PROVIDE A PROPOSED FORM OF NOTICE OF THE PROPOSED CONVERSION TO BE PUBLISHED AS SET FORTH IN SUBSECTION (6) OF THIS SECTION; AND

(g) PROVIDE OTHER INFORMATION AS DETERMINED BY THE COMMISSIONER TO BE REASONABLY NECESSARY AND RELEVANT TO THE EVALUATION OF THE PLAN.

(5) THE COMMISSIONER SHALL PRELIMINARILY APPROVE THE CORPORATION'S PLAN FOR CONVERSION IF THE COMMISSIONER FINDS:

(a) THE PLAN MEETS THE STANDARDS SET FORTH IN PARAGRAPHS (a) TO (e) OF SUBSECTION (4) OF THIS SECTION, AND THE PROPOSED FORM OF NOTICE IS SATISFACTORY;

(b) THE PLAN WOULD NOT BE CONTRARY TO LAW NOR TO THE INTERESTS OF SUBSCRIBERS, CONTRACT HOLDERS, AND THE PUBLIC;

(c) UPON CONVERSION, THE CORPORATION WILL MEET THE STANDARDS AND CONDITIONS APPLICABLE TO MUTUAL INSURANCE COMPANIES, INCLUDING MINIMUM SURPLUS REQUIRED OF MUTUAL INSURANCE COMPANIES, AND THE CORPORATION HAS SPECIFIED A REASONABLE TREATMENT FOR THE BENEFIT OF ITS SUBSCRIBERS OF ANY SURPLUS.

(6) AFTER RECEIVING PRELIMINARY APPROVAL FROM THE COMMISSIONER PURSUANT TO SUBSECTION (5) OF THIS SECTION, THE CORPORATION SHALL:

(a) PUBLISH NOTICE OF THE PROPOSED PLAN OF CONVERSION ONCE A WEEK FOR THREE CONSECUTIVE WEEKS IN AT LEAST ONE DAILY NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTIES IN WHICH THE CORPORATION DOES BUSINESS; AND

(b) SUBMIT TO THE COMMISSIONER PROOF OF PUBLICATION OF THE NOTICE REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (6) AND PROPERLY EXECUTED AMENDMENTS TO THE CORPORATION'S ARTICLES OF INCORPORATION, BYLAWS, AND OTHER ORGANIZATIONAL DOCUMENTS TO EFFECTUATE THE CONVERSION AUTHORIZED IN THIS SECTION.

(7) UPON COMPLETION OF THE PUBLICATION REQUIRED IN SUBSECTION (6) OF THIS SECTION, THE COMMISSIONER MAY HOLD A HEARING TO ALLOW FOR ADDITIONAL PUBLIC COMMENT BEFORE MAKING A FINAL DECISION ON THE CONVERSION REQUEST. SUCH HEARING SHALL BE COMPLETED WITHIN SIXTY DAYS AFTER COMPLETION OF

PUBLICATION PURSUANT TO SUBSECTION (6) OF THIS SECTION.

(8) UPON COMPLETION OF ITS CONVERSION TO A MUTUAL INSURANCE COMPANY AS PROVIDED IN THIS SECTION, THE CORPORATION SHALL NO LONGER BE SUBJECT TO THIS ARTICLE AND SHALL BE SUBJECT TO AND COMPLY WITH ALL LAWS AND REGULATIONS APPLICABLE AS PROVIDED IN ARTICLE 12 OF THIS TITLE.

(9) IF THE CORPORATION SEEKING CONVERSION TO A MUTUAL INSURANCE COMPANY IS AGGRIEVED BY THE COMMISSIONER'S DECISION UNDER THIS SECTION, THE CORPORATION MAY REQUEST A HEARING PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S. ANY FINAL ACTION BY THE COMMISSIONER PURSUANT TO THIS SECTION SHALL BE SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS PURSUANT TO SECTION 24-4-106 (11), C.R.S.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 7, 1994