

Part 2 Domestic Organizations

31A-8-201 Scope of part.

This part applies to all organizations doing business in this state.

Amended by Chapter 123, 2005 General Session

31A-8-202 Corporate name -- Office -- Registered agent.

- (1) Sections 16-10a-402, 16-10a-403, and 42-2-5 apply to the reservation and registration of the corporate name in domestic health maintenance organizations. Reservation and registration fees under Section 31A-3-103 apply.
- (2) The location of an organization's principal office and the existence of a registered agent are governed by Title 16, Chapter 17, Model Registered Agents Act.

Amended by Chapter 364, 2008 General Session

31A-8-203 Incorporators.

One or more adult natural persons may organize and act as the incorporators of a domestic health maintenance organization under this part.

Enacted by Chapter 204, 1986 General Session

31A-8-204 Articles and bylaws.

- (1) The articles of a nonprofit organization shall conform to Subsections 16-6a-202(1)(a) through (e). The articles of other organizations shall conform to Section 16-10a-202. In addition:
 - (a) the powers of the corporation shall be limited to those permitted under Section 31A-8-105;
 - (b) the articles shall state whether the organization is a health maintenance organization or a limited health plan;
 - (c) the articles shall state the services to be provided or for which indemnity is to be paid, which services provided and indemnity guaranteed shall be consistent with the organization's designation under Subsection (1)(b);
 - (d) the articles shall state that as to health care services for which individual providers are required to be licensed, the services provided by the organization shall be provided by persons properly licensed to perform the services;
 - (e) the articles shall state whether providers of services are subject to assessment or withholding to pay operating costs or financial deficits;
 - (f) the articles shall state, for organizations having members, how persons become members and that only members vote; and
 - (g) the articles of an organization not having members shall state how the directors of the organization shall be selected and removed.
- (2) The articles or bylaws shall designate three or more officers as the principal officers of the corporation. The principal offices shall be held by at least three separate natural persons.
- (3) Section 31A-5-219 applies to amendments to articles of organizations.
- (4) Organizations shall adopt and maintain bylaws. Section 16-6a-206 applies to organizations, except for the statement that bylaws need not be adopted.

Amended by Chapter 364, 2008 General Session

31A-8-205 Organization permit and certificate of incorporation.

- (1) Section 31A-5-204 applies to the formation of organizations, except that "Section 31A-5-211" in Subsection 31A-5-204(5) shall be read "Section 31A-8-209."
- (2) In addition to the requirements of Section 31A-5-204, the application for a permit shall include a description of the initial locations of facilities where health care will be available to enrollees, the hours during which various services will be provided, the types of health care personnel to be used at each location and the approximate number of each personnel type to be available at each location, the methods to be used to monitor the quality of health care furnished, the method of resolving adverse benefit determinations initiated by enrollees or providers, the method used to give enrollees an opportunity to participate in matters of policy, the medical records system, and the method for documentation of utilization of health care by persons insured.

Amended by Chapter 308, 2002 General Session

31A-8-206 Powers under organization permit -- Deposit of proceeds of subscriptions.

Sections 31A-5-207 and 31A-5-208 apply to the powers of an organization under an organization permit and the deposit of proceeds of subscriptions, except that there are no qualifying insurance policies as referred to in Subsection 31A-5-207(2)(a).

Enacted by Chapter 204, 1986 General Session

31A-8-207 Termination of organization permit -- Payment of organization expenses.

Section 31A-5-209, other than Subsection 31A-5-209(3)(c), applies to the termination of the organization permit and the payment of organization expenses of organizations, except that "Section 31A-5-212" shall be read "Section 31A-8-213."

Amended by Chapter 185, 2002 General Session

31A-8-208 Incorporators' liability and organization expenses.

Section 31A-5-210 applies to incorporators' liability and organization expenses in organizations.

Enacted by Chapter 204, 1986 General Session

31A-8-209 Minimum capital or minimum permanent surplus.

- (1)
 - (a) A health maintenance organization being organized or operating under this chapter shall have and maintain a minimum capital or minimum permanent surplus of \$100,000.
 - (b) Each health maintenance organization authorized to do business in this state shall have and maintain qualified assets as defined in Subsection 31A-17-201(2) in an amount not less than the total of:
 - (i) the health maintenance organization's liabilities;
 - (ii) the health maintenance organization's minimum capital or minimum permanent surplus required by Subsection (1)(a); and
 - (iii) the greater of:
 - (A) the company action level RBC as defined in Subsection 31A-17-601(8)(b); or

(B) \$1,300,000.

- (2)
- (a) The minimum required capital or minimum permanent surplus for a limited health plan may not:
 - (i) be less than \$10,000; or
 - (ii) exceed \$100,000.
 - (b) The initial minimum required capital or minimum permanent surplus for a limited health plan required by Subsection (2)(a) shall be set by the commissioner, after:
 - (i) a hearing; and
 - (ii) consideration of:
 - (A) the services to be provided by the limited health plan;
 - (B) the size and geographical distribution of the population the limited health plan anticipates serving;
 - (C) the nature of the limited health plan's arrangements with providers; and
 - (D) the arrangements, agreements, and relationships of the limited health plan in place or reasonably anticipated with respect to:
 - (I) insolvency insurance;
 - (II) reinsurance;
 - (III) lenders subordinating to the interests of enrollees and trade creditors;
 - (IV) personal and corporate financial guarantees;
 - (V) provider withholds and assessments;
 - (VI) surety bonds;
 - (VII) hold harmless agreements in provider contracts; and
 - (VIII) other arrangements, agreements, and relationships impacting the security of enrollees.
 - (c) Upon a material change in the scope or nature of a limited health plan's operations, the commissioner may, after a hearing, alter the limited health plan's minimum required capital or minimum permanent surplus.
- (3) The commissioner may allow the minimum capital or permanent surplus account of an organization to be designated by some other name.
- (4) A pattern of persistent deviation from the accounting and investment standards under this section may be grounds for the commissioner to find that the one or more persons with authority to make the organization's accounting or investment decisions are incompetent for purposes of Subsection 31A-5-410(3).

Amended by Chapter 308, 2002 General Session

31A-8-211 Deposit.

- (1) Except as provided in Subsection (2), each health maintenance organization authorized in this state shall maintain a deposit with the commissioner under Section 31A-2-206 in an amount equal to the sum of:
- (a) \$100,000; and
 - (b) 50% of the greater of:
 - (i) \$900,000;
 - (ii) 2% of the annual premium revenues as reported on the most recent annual financial statement filed with the commissioner; or
 - (iii) 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.
- (2)

- (a) After a hearing the commissioner may exempt a health maintenance organization from the deposit requirement of Subsection (1) if:
 - (i) the commissioner determines that the enrollees' interests are adequately protected;
 - (ii) the health maintenance organization has been continuously authorized to do business in this state for at least five years; and
 - (iii) the health maintenance organization has \$5,000,000 surplus in excess of the health maintenance organization's company action level RBC as defined in Subsection 31A-17-601(8)(b).
 - (b) The commissioner may rescind an exemption given under Subsection (2)(a).
- (3)
- (a) Each limited health plan authorized in this state shall maintain a deposit with the commissioner under Section 31A-2-206 in an amount equal to the minimum capital or permanent surplus plus 50% of the greater of:
 - (i) .5 times minimum required capital or minimum permanent surplus; or
 - (ii)
 - (A) during the first year of operation, 10% of the limited health plan's projected uncovered expenditures for the first year of operation;
 - (B) during the second year of operation, 12% of the limited health plan's projected uncovered expenditures for the second year of operation;
 - (C) during the third year of operation, 14% of the limited health plan's projected uncovered expenditures for the third year of operation;
 - (D) during the fourth year of operation, 18% of the limited health plan's projected uncovered expenditures during the fourth year of operation; or
 - (E) during the fifth year of operation, and during all subsequent years, 20% of the limited health plan's projected uncovered expenditures for the previous 12 months.
 - (b) Projections of future uncovered expenditures shall be established in a manner that is approved by the commissioner.
- (4) A deposit required by this section may be counted toward the minimum capital or minimum permanent surplus required under Section 31A-8-209.

Amended by Chapter 308, 2002 General Session

31A-8-213 Certificate of authority.

- (1) An organization may apply for a certificate of authority at any time prior to the expiration of its organization permit. The application shall include:
 - (a) a detailed statement by a principal officer about any material changes that have taken place or are likely to take place in the facts on which the issuance of the organization permit was based; and
 - (b) if any material changes are proposed in the business plan, the information about the changes that would be required if an organization permit were then being applied for.
- (2) The commissioner shall issue a certificate of authority, if the commissioner finds that:
 - (a) the organization's capital and surplus complies with the requirements of Section 31A-8-209 as to the operations proposed under the new certificate of authority;
 - (b) there is no basis for revoking the organization permit under Section 31A-8-207;
 - (c) the deposit required by Section 31A-8-211 has been made;
 - (d) the organization satisfies the requirements of Section 31A-8-104; and
 - (e) all other applicable requirements of the law have been met.

- (3) The certificate of authority shall specify any limits imposed by the commissioner upon the organization's business or methods of operation, including the general types of health care services the organization is authorized to provide.
- (4) Upon the issuance of the certificate of authority:
 - (a) the board shall authorize and direct the issuance of certificates for shares, bonds, or notes subscribed to under the organization permit, and of insurance policies upon qualifying applications obtained under the organization permit; and
 - (b) the commissioner shall authorize the release to the organization of all funds held in escrow under Section 31A-5-208, as adopted by Section 31A-8-206.
- (5)
 - (a) An organization may at any time apply to the commissioner for a new or amended certificate of authority altering the limits on its business or methods of operation. The application shall contain or be accompanied by that information reasonably required by the commissioner under Subsections 31A-5-204(2) and 31A-8-205(2). The commissioner shall issue the new certificate as requested if the commissioner finds that the organization continues to satisfy the requirements specified under Subsection (2).
 - (b) If the commissioner issues an order under Chapter 27, Part 5, Administrative Actions, against an organization, the commissioner may also revoke the organization's certificate and issue a new one with any limitation the commissioner considers necessary.

Amended by Chapter 309, 2007 General Session

31A-8-214 Securities.

Chapter 5, Part 3, Securities of Domestic Insurance Corporations, applies to securities of organizations, except that the amount "\$150,000" in Subsection 31A-5-304(1) shall be read "one-half of the minimum capital required of the organization."

Amended by Chapter 90, 2004 General Session

31A-8-215 Management.

Chapter 5, Part 4, Management of Insurance Corporations, applies to organizations, except that for purposes of this chapter, Subsections 31A-5-412(3)(a)(vi) through (ix) shall be read: "corporate reorganizations under Section 31A-8-216."

Amended by Chapter 349, 2009 General Session

31A-8-216 Corporate reorganizations.

Sections 31A-5-501 through 31A-5-506 and Section 31A-5-508 apply to corporate reorganizations of organizations.

Enacted by Chapter 204, 1986 General Session

31A-8-217 Material transactions by insurers which are part of holding company system.

- (1) This section applies to an insurer licensed under this chapter that is part of a holding company system, for purposes of:
 - (a) the reporting requirements of Section 31A-16-105; and
 - (b) the material transaction standards of Section 31A-16-106.

- (2) Unless otherwise provided by rule, a transaction is not material under Subsection 31A-16-105(4) if the transaction involves an amount:
- (a) of not more than:
 - (i) 10% for each transaction; or
 - (ii) 20% for cumulative transactions during any one calendar year; and
 - (b) calculated:
 - (i) on the basis of the organization's surplus requirement, determined in accordance with Section 31A-5-211; and
 - (ii) as of December 31 of the year immediately preceding the transaction.

Amended by Chapter 252, 2003 General Session