

CHAPTER 255 (SB 331)

AN ACT relating to health maintenance organizations.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 304.32-140 is amended to read as follows:

- (1) No corporation subject to provisions of this subtitle shall be permitted to do any business in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five percent (5%) of the corporation's subscription income collected in the preceding year not exceeding two million dollars (\$2,000,000), plus two and one-half percent (2.5%) of income exceeding two million dollars (\$2,000,000) but not exceeding ten million dollars (\$10,000,000), plus one percent (1%) of income exceeding ten million dollars (\$10,000,000); but in no event shall reserves be less than five hundred thousand dollars (\$500,000). All corporations subject to the provisions of this subtitle shall place on deposit with the custodian of insurance securities a guarantee fund of cash or approved securities in an amount determined by this formula, but not less than five hundred thousand dollars (\$500,000) nor more than one million five hundred thousand dollars (\$1,500,000). Any amount of liquid reserves required by this subsection in excess of one million five hundred thousand dollars (\$1,500,000) shall be maintained by the corporation at all times, but shall not be required to be placed on deposit, provided that such a corporation shall be allowed a period of five (5) years after July 15, 1982, to establish the liquid reserves and deposit the guarantee fund with the commissioner. ***A corporation subject to the provisions of this subtitle shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner.***
- (2) The cash or securities representing the guarantee fund required by this section shall be acceptable to the custodian of insurance securities and such securities shall be negotiable securities.
- (3) The investments of a corporation subject to the provisions of this subtitle shall be the same kind of investments which life insurance companies are authorized to have.

Section 2. KRS 304.38-070 is amended to read as follows:

- (1) This subsection applies to a corporation ***or limited liability corporation*** 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 corporation*** 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 such authority immediately prior to July 15, 1986. Notwithstanding the other provisions hereof, the exception provided in this paragraph shall cease to apply to any such 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) Each corporation authorized as a health maintenance organization shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000) **and shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner.** 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 such authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any such 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) This subsection 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, 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. Thereafter, a partnership authorized as a health maintenance organization shall possess and maintain a total of at least one million two hundred fifty thousand dollars (\$1,250,000) in its capital accounts **and shall comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the commissioner;**
- (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 such 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.

SECTION 3. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) **Any health maintenance organization that contracts with a provider or provider organization for the transfer of risk to the provider shall take reasonable steps to ensure the transferee is able to accept and manage the risk to be transferred. The health maintenance organization shall submit a plan for evaluating a provider's or provider organization's ability to accept and manage risk to the department for approval at least forty-five (45) days prior to the proposed date of the transfer of any risk.**
- (2) **If a health maintenance organization transfers risk to a provider:**
- (a) **Not in compliance with the standards listed in its approved plan; or**
- (b) **Prior to filing or receiving approval of its plan;**
- the commissioner may require the health maintenance organization to retain additional reserves to cover the risk transferred.**

Section 4. KRS 304.33-430 is amended to read as follows:

The order of distribution of claims from the insurer's estate shall be as stated in this section. The first fifty dollars (\$50) of the amount allowed on each claim in the classes under subsections (3)~~((2))~~ to (7)~~((6))~~, inclusive, of this section, shall be deducted from the claim and included in the class under subsection (9)~~((8))~~ of this section. Claims may not be cumulated by assignment to avoid application of the fifty dollars (\$50) deductible provision. Subject to the fifty dollars (\$50) deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class. No claim by a shareholder, policyholder, or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies.

- (1) Administration costs. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.
- (2) ***Health maintenance organization out-of-network claims. In a liquidation of a health maintenance organization, any claims for health plan benefits for out-of-network claims that would have otherwise been covered.***
- (3) Loss and unearned premium claims. Claims by policyholders, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and claims of guaranty associations or foreign guaranty associations. Notwithstanding the foregoing, the following claims shall be excluded from Class 2 priority:
 - (a) Obligations of the insolvent insurer arising out of reinsurance contracts;
 - (b) Obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured's request or after the policy has been canceled as provided in this chapter. Notwithstanding this subsection, earned premium claims on policies, other than reinsurance agreements, shall not be excluded;
 - (c) Obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity or subrogation, equitable or otherwise;
 - (d) Any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer;
 - (e) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy; and
 - (f) Tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.
- ~~(4)((3))~~—Claims of the federal government other than those claims included in Class 2.
- ~~(5)((4))~~—Wages.
 - (a) Debts due to employees for services performed, not to exceed one thousand dollars (\$1,000) to each employee which have been earned within one (1) year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.

- (b) This priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.
- ~~(6)~~~~(5)~~ Residual classification. All other claims including claims of the federal or any state or local government, not falling within other classes under this section. Claims, including those of any governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection ~~(9)~~~~(8)~~ of this section.
- ~~(7)~~~~(6)~~ Judgments. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.
- ~~(8)~~~~(7)~~ Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under subsections (1) to ~~(7)~~~~(6)~~ of this section, inclusive, from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court may make reasonable classifications of claims for purposes of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis.
- ~~(9)~~~~(8)~~ Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subsection ~~(8)~~~~(7)~~ of this section:
- (a) The first fifty dollars (\$50) of each claim in the classes under subsections (2) to ~~(7)~~~~(6)~~, inclusive, of this section, subordinated under this section;
 - (b) Claims under subsection (2) of KRS 304.33-380;
 - (c) Claims subordinated by KRS 304.33-600;
 - (d) Claims filed late;
 - (e) Portions of claims subordinated under subsection ~~(6)~~~~(5)~~ of this section; and
 - (f) Claims or portions of claims, payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.
- ~~(10)~~~~(9)~~ Preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in subsections ~~(8)~~~~(7)~~ and ~~(9)~~~~(8)~~ of this section.
- ~~(11)~~~~(10)~~ Proprietary claims. The claims of shareholders or other owners.

Section 5. KRS 304.33-360 is amended to read as follows:

- (1) Deadline for filing. Proof of all claims must be filed with the court in the form required by KRS 304.33-370 on or before the last day for filing specified in the notice required under KRS 304.33-250, except that proof of preferred ownership claims and proprietary claims under subsections ~~(9)~~~~(8)~~ and ~~(10)~~~~(9)~~ of KRS 304.33-430, need not be filed at all, and proof of

claims for unearned premiums and claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.

- (2) Excused late filings. For good cause shown, the liquidator shall recommend, and the court shall permit, a claimant making a late filing to share in dividends, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation. Good cause includes but is not limited to the following:
 - (a) That existence of a claim was not known to the claimant and that he filed within thirty (30) days after he learned of it;
 - (b) That a claim for unearned premiums or for cash surrender values or other investment values in life insurance or annuities which was not required to be filed was omitted from the liquidator's recommendations to the court under KRS 304.33-440, and that it was filed within thirty (30) days after the claimant learned of the omission;
 - (c) That a transfer to a creditor was avoided under KRS 304.33-290 to 304.33-330, inclusive, or was voluntarily surrendered under KRS 304.33-320 and that the filing satisfies the conditions of KRS 304.33-320;
 - (d) That valuation under KRS 304.33-420 of security held by a secured creditor shows a deficiency, which is filed within thirty (30) days after the valuation; and
 - (e) That a claim was contingent and became absolute, and was filed within thirty (30) days after it became absolute.
- (3) Unexcused late filings. The liquidator may consider any claim filed late which is not covered by subsection (2) of this section, and permit it to receive dividends, other than the first dividend, which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The latefiling claimant shall receive, at each distribution, the same percentage of the amount allowed on his claim as is then being paid to other claimants of the same priority plus the same percentage of the amount allowed on his claim as is then being paid to claimants of any lower priority. This shall continue until his claim has been paid in full.

Section 6. KRS 304.33-380 is amended to read as follows:

- (1) Claims contingent on judgments. The claim of a third party which is contingent only on his first obtaining a judgment against the insured shall be considered and allowed as if there were no such contingency.
- (2) Claims under terminated policies. Any claim that would have become absolute if there had been no termination of coverage under KRS 304.33-120, and which was not covered by insurance acquired to replace the terminated coverage, shall be allowed as if the coverage had remained in effect, unless at least ten (10) days before the insured event occurred either the claimant had actual notice of the termination or notice was mailed to him as prescribed by subsection (1) of KRS 304.33-250, or subsection (1) of KRS 304.33-260. If allowed, the claim shall share in distributions under subsection (9)~~[(8)]~~ of KRS 304.33-430.
- (3) Other contingent claims. A claim may be allowed even if contingent, if it is filed in accordance with subsection (2) of KRS 304.33-360. It may be allowed and may participate in all dividends declared after it is filed, to the extent that it does not prejudice the orderly administration of the liquidation.

- (4) Immature claims. Claims that are due except for the passage of time shall be treated as absolute claims are treated, except that where justice requires the court may order them discounted at the legal rate of interest.

Section 7. KRS 304.33-440 is amended to read as follows:

- (1) Immediate Access. Within one hundred twenty (120) days of a final determination of insolvency of a company by a court of competent jurisdiction of this state, the liquidator shall make application to the court for approval of a proposal to disburse assets out of such company's marshalled assets, from time to time as such assets become available, to guaranty associations or foreign guaranty associations having obligations because of the insolvency. Such proposal shall at least include provision for:
- (a) Reserving amounts for the payment of the expenses of administration and claims falling within the priorities established in KRS 304.33-430(1) and ~~(3)~~~~(2)~~;
 - (b) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;
 - (c) Equitable allocation of disbursements to each of the associations entitled thereto; and
 - (d) The securing by the liquidator from each of the associations entitled to disbursements pursuant to paragraph (e) of an agreement to return to the liquidator such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in KRS 304.33-430(1), ~~(3)~~~~(2)~~ and ~~(4)~~~~(3)~~ in accordance with such priorities. No bond shall be required of any such association.
 - (e) The liquidator's proposal shall also provide for disbursements to the associations in amounts at least equal to the payments made or to be made thereby for which associations could assert claims against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such payments made or to be made by the association then disbursements shall be in the amount of available assets.
 - (f) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states in which the company did business. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty (30) days prior to submission of such application to the court. Action on the application may be taken by the court provided the above required notice has been given and provided further that the liquidator's proposal complies with this subsection.
- (2) Recommended claims. The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as he deems necessary. He may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court. Unresolved disputes shall be determined under KRS 304.33-400. As often as practicable, he shall present to the court reports of claims against the insurer with his recommendations. The reports shall include the name and address of each claimant, the particulars of the claim and the amount of the claim finally recommended if any. As soon as reasonably possible after the last day for filing claims, he shall present a list of all claims not already reported. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts

are owed as cash surrender values or other investment values and the amounts owed. If the insurer has issued policies on the advance premium plan, the liquidator shall report the persons to whom, according to the records of the insurer, unearned premiums are owed and the amounts owed.

- (3) Allowance of claims. The court may approve, disapprove, or modify any report on claims by the liquidator, except that the liquidator's agreements with other parties shall be final and binding on the court on claims settled for \$500 or less. No claim under a policy of insurance shall be allowed for an amount in excess of the applicable policy limits.

Section 8. KRS 304.33-600 is amended to read as follows:

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within his control other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under subsection ~~(8)~~~~(7)~~ of KRS 304.33-430.

Approved March 31, 2000