

CHAPTER 427**(SB 195)**

AN ACT relating to insurance.

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

Section 1. KRS 304.38-030 is amended to read as follows:

As used in this subtitle, unless the context otherwise requires:

- (1) "Commissioner" means the commissioner of insurance.
- (2) "Enrollee" means a person who has been enrolled in a health maintenance organization.
- (3) ***"Full service health maintenance organization" means a health maintenance organization that is authorized to provide all health care services.***
- (4) "Evidence of coverage" means any certificate, agreement, ~~or~~ contract, ***or other document*** issued to an enrollee stating the health care services to which ***the enrollee*** ~~he~~ is entitled. ***All coverages described in an evidence of coverage issued by a health maintenance organization are deemed to be "health benefit plans" to the extent defined in KRS 304.17A-005 unless exempted by the commissioner.***
- (5)~~(4)~~ "Health care services" means any services included in the furnishing to any individual of medical, optometric or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services and goods for the purpose of preventing, alleviating, curing, or healing human illness, physical disability or injury.
- (6) ***"Health discount plan" means:***
 - (a) ***A person who provides, for a fee, a list of participating providers who will give the health discount plan's enrollees a specified discount from the provider's regular fees without recourse to the health discount plan;***
 - (b) ***A provider, or provider organization that contracts with individuals or groups to provide a specific, predetermined set of routine services to the individual or group over the term of the contract in exchange for a fixed uniform fee paid by the enrollee without recourse to the health discount plan; or***
 - (c) ***A combination of paragraphs (a) and (b) of this subsection.***
- (7)~~(5)~~ "Health maintenance organization" means any person who undertakes to provide, directly or through arrangements with others, health care services to individuals ~~voluntarily~~ enrolled with such an organization on a per capita or a predetermined, fixed prepayment basis. ***Unless specifically stated, "health maintenance organization" shall include full service health maintenance organization, and single service organization.***
- (8)~~(6)~~ "Person" includes, but is not limited to, any individual, partnership, association, trust, or corporation.
- (9)~~(7)~~ "Provider" means a ***person or group of persons licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, or another health profession in a state or licensed to act as a hospital or another health care facility*** ~~partnership, corporation, association, or other legal entity which has entered into a services arrangement (or arrangements) with persons who are~~

~~licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, or other health profession in a state and a majority of whom are licensed to practice medicine or osteopathy].~~

(10) "*Single service organization*" means a health maintenance organization that is authorized to provide only one (1) type of health care service, including dental, mental health, optometry, podiatry, vision, or some other single health service. Single service organizations holding a certificate of authority according to this subtitle shall be subject to the provisions of KRS 304.17A-270, 304.17A-505, 304.17A-525, 304.17A-530, 304.17A-590, and 304.17A-545(4).

Section 2. KRS 304.38-035 is amended to read as follows:

No person shall in this state be, act as, or hold himself out as a health maintenance organization unless he holds a certificate of authority *as a full service health maintenance organization, or a single service organization* from the commissioner. *Health discount plans shall not be required to hold a certificate of authority as a health maintenance organization but shall be required to hold a certificate of filing as defined in Section 8 of this Act.*

Section 3. KRS 304.38-040 is amended to read as follows:

- (1) A corporation, *limited liability corporation*, or partnership may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this subtitle.
- (2) Health maintenance organizations which are corporations may be organized by applying the provisions of KRS Chapter 271B, if for profit, and KRS Chapter 273, if for nonstock, nonprofit, to the extent that the same are not inconsistent with the express provisions of this subtitle.
- (3) Each application for a certificate of authority shall be submitted to the commissioner upon a form prescribed by him and shall set forth or be accompanied by:
 - (a) Evidence that the applicant has been issued a certificate of need in accordance with the provisions of KRS Chapter 216B, *or evidence that no certificate of need is required by KRS Chapter 216B*;
 - (b) Articles of incorporation or partnership agreement in *quadruplicate*~~[triplicate]~~ originals acknowledged and verified by the applicant, such as the articles of incorporation, articles of association, partnership agreement, or other applicable documents;
 - (c) The initial bylaws of the organization in triplicate (or any other similar documents); (d)

A statement which shall include describing the health maintenance organization:

1. The *health services to be offered*~~[proposed method of marketing]~~;
2. The *financial risks to be assumed*~~[initial geographic area to be served]~~;
3. *The initial geographic area to be served*~~;~~~~[A financial program setting forth a three (3) year projection of such operation; and]~~
4. *Pro forma financial projections for the first three (3) years of operations including the assumptions the projections are based upon*~~[The sources of working capital and funding]~~;
5. *The sources of working capital and funding*;

6. *A description of the persons to be covered by the health maintenance organization;*
 7. *Any proposed reinsurance arrangements;*
 8. *Any proposed management, administrative, or cost-sharing arrangements; and*
 9. *A description of the health maintenance organization's proposed method of marketing;*
- (f) The names, addresses, and positions of the initial board of directors, board of trustees, or other governing body responsible for the conduct of the affairs of the applicant;
- (g) Any proposed *evidence of coverage*~~[contracts or agreements]~~ to be issued by the applicant to *individuals, enrollees, groups, or other contract holders*~~;~~
1. ~~Enrollees; and~~
 2. ~~Any employers, unions, or any other groups~~; and
- (h) Evidence of financial responsibility as provided in KRS 304.38-060 *or Section 13 of this Act.*

Section 4. KRS 304.38-060 is amended to read as follows:

Upon receipt of an application for issuance of a certificate of authority, the commissioner shall issue or deny the same. Issuance of a certificate of authority shall be granted only if the commissioner finds that the applicant has complied with KRS 304.38-040, has paid the application fee and the commissioner is satisfied that the following conditions are met:

- (1) The persons responsible for the conduct of the affairs of the application are competent, trustworthy, and possess good reputations;
- (2) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:
 - (a) The financial soundness of the health maintenance organization's arrangements for health care services and the schedule of charges used in connection therewith;
 - (b) The adequacy of working capital;
 - (c) Any agreement with an insurer, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization *or its inability to meet its financial obligations*;
 - (d) *Examples of any agreements*~~[agreement]~~ with providers for the provision of health care services *by provider type*; and
 - (e) Compliance with KRS 304.38-070 *if the applicant is applying for a full service health maintenance organization certificate of authority; or compliance with Section 13 of this Act if the applicant is applying for single service organization certificate of authority*, as a guarantee that the obligations will be duly performed.

Section 5. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- Insurance Commissioner;
- (3) Subtitle 3 -- Authorization of Insurers and General Requirements;
- (4) Subtitle 4 -- Fees and Taxes;
- (5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
- (6) Subtitle 6 -- Assets and Liabilities;
- (7) Subtitle 7 -- Investments;
- (8) Subtitle 8 -- Administration of Deposits;
- (9) **Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;**
- (10) Subtitle 12 -- Trade Practices and Frauds;
- (11)~~(10)~~ Subtitle 14 -- **The Insurance Contract**~~[KRS 304.14-500 to 304.14-560];~~
- (12) **Subtitle 17 -- Health Insurance Contracts;**
- (13)~~(11)~~ Subtitle 17A -- Health Benefit Plans;
- (14) **Subtitle 18 -- Group and Blanket Health Insurance;**
- (15) **Subtitle 24 -- Domestic Stock and Mutual Insurers;**
- (16)~~(12)~~ Subtitle 25 -- Continuity of Management;
- (17) **Subtitle 26 -- Insider Trading of Equity Securities;**
- (18)~~(13)~~ Subtitle 33 -- Insurers Rehabilitation and Liquidation; (19)~~(14)~~ Subtitle 37 -- Insurance Holding Company Systems; and
- (20)~~(15)~~ Subtitle 99 -- Penalties.

SECTION 6. A NEW SECTION OF SUBTITLE 43 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) **All prepaid dental plans that are not health discount plans as defined in Section 1 of this Act holding a certificate of authority according to this subtitle shall be deemed to be converted to a single service organization, and upon the next renewal of their certificate of authority shall be issued a certificate of authority to act as a single service organization if they meet the requirements for continuance of their prepaid dental plan certificate of authority. No certificate of authority to act as a prepaid dental plan shall be issued or renewed after July 15, 2000.**
- (2) **A prepaid dental plan holding a certificate of authority immediately prior to July 15, 2000, that is converted to a single service organization according to subsection (1) of this section shall not be required to meet the net worth requirements of Section 13 of this Act until it has accumulated net worth equal to or in excess of the net worth requirement in Section 13 of this Act or July 15, 2003, whichever is earlier. Until the former prepaid dental plan meets the requirements of Section 13 of this Act, it shall maintain at least a**

net worth equal to its net worth on June 1, 2000, and shall comply with any risk-based capital requirements in administrative regulations promulgated by the commissioner.

- (3) *All prepaid dental plans that are health discount plans as defined in Section 1 of this Act holding a certificate of authority according to this subtitle shall be deemed to be converted to health discount plans, and upon the next renewal of their certificates of authority shall be issued certificates of filing to act as health discount plans.*

SECTION 7. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Each certificate of authority issued to a health maintenance organization shall designate the type of services the health maintenance organization is authorized to provide, whether full service, or single service. A certificate of authority issued to a single service organization shall designate what type of health services the single service organization is authorized to provide.

SECTION 8. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *No person shall in this state be, act as, or hold himself out as a health discount plan unless he holds a certificate of filing from the commissioner.*
- (2) *A proposed health discount plan shall file with the commissioner an application for a certificate of filing accompanied by a nonrefundable filing fee of five dollars (\$5). Each application for a certificate of filing shall be submitted to the commissioner upon a form prescribed by him and shall set forth or be accompanied by:*
- (a) *The plan's name, location of its principal office, date of organization, and name and address of each officer and director;*
 - (b) *A copy of the articles of incorporation, bylaws, or any other organization document of the plan;*
 - (c) *A copy of any evidences of coverage and marketing materials to be used; and*
 - (d) *The address where books and records of the group will be maintained at all times.*
- (3) *Upon receipt of an application for issuance of a certificate of filing, the commissioner shall issue or deny the certificate of filing. Issuance of a certificate of filing shall be granted only if the commissioner finds that the applicant has complied with subsection (2) of this section, has paid the application fee, and the commissioner is satisfied that the health discount plans marketing materials and evidences of coverage comply with Section 9 of this Act.*
- (4) *A certificate of filing shall remain in effect until terminated at the request of the health discount plan or until suspended or revoked by the commissioner according to Section 10 of this Act. The commissioner shall not grant the request of the health discount plan to terminate its certificate of filing unless the plan has filed with the commissioner a statement describing what arrangements have been made to pay obligations of the plan.*

SECTION 9. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A health discount plan doing business in Kentucky shall include the following language on each of its policies, applications, or claim forms provided to Kentucky residents: "This contract is not an insurance policy and is not protected by the Kentucky Life and Health Guaranty Association."*

- (2) *No health discount plan shall disseminate any advertisement, policy, document, information, statement, or thing that misrepresents or is otherwise misleading in regard to the plan's nature, finances, operation, contracts, coverages, terms, or any other aspect of the plan.*

SECTION 10. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The commissioner may suspend or revoke any certificate of filing issued to a health discount plan under this subtitle if he finds that any of the following conditions exist:*
- (a) *The health discount plan is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, unless amendments to the submissions have been filed with and approved by the commissioner;*
 - (b) *The health discount plan, or any person at its direction, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;*
 - (c) *The health discount plan has engaged in any unfair or deceptive practices under its certificate of filing; or*
 - (d) *The health discount plan has failed to correct a violation of this subtitle within a reasonable time period established by the commissioner.*
- (2) *A certificate of filing shall be suspended or revoked only after a hearing according to KRS Chapter 13B.*
- (3) *When a certificate of filing of a health discount plan is suspended, the plan shall not, during the period of suspension, enroll any new participants and shall not engage in any advertising or solicitation.*
- (4) *If the certificate of filing of a health discount plan is revoked, the plan shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation. The commissioner may, by written order, permit further operation of the plan as he may find to be in the best interest of participants, to the end that the participants will be afforded the greatest practical opportunity to obtain coverage elsewhere. If the commissioner permits further operation, the health discount plan shall continue to collect the fee required of participants.*

Section 11. KRS 304.38-185 is amended to read as follows:

In his discretion, the commissioner may include health maintenance organizations *or designated types of health maintenance organizations* doing business pursuant to this subtitle in coordination of benefits guidelines prescribed pursuant to KRS 304.18-085.

Section 12. KRS 304.38-191 is amended to read as follows:

Any group policy, group plan or group contract issued, delivered or renewed by a health maintenance organization shall include conversion and continuation rights for certificate holders

equal to that provided in KRS 304.18-110 subject to the minimum benefits specified in KRS 304.18-120. ***This section shall not apply to single service organizations.***

SECTION 13. A NEW SECTION OF SUBTITLE 38 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

In order to qualify for authority to act as a single service organization, a corporation shall have a net worth of at least five hundred thousand dollars (\$500,000) when first so authorized. Thereafter, the single service organization shall maintain a net worth of at least one hundred twenty-five thousand dollars (\$125,000) and shall comply at all times with the risk-based capital requirements established in administrative regulations promulgated by the commissioner.

Section 14. KRS 304.38-073 is amended to read as follows:

Each ***full service*** health maintenance organization shall furnish to the commissioner a deposit of cash or securities approved by the commissioner in an amount not less than five hundred thousand dollars (\$500,000) so that the obligations to the enrollees shall be performed. ***Each single service organization shall furnish to the commissioner a deposit of cash or securities approved by the commissioner, in an amount not less than fifty thousand dollars (\$50,000) to ensure that the obligations to the enrollees shall be performed. A health maintenance organization may be required to furnish an additional deposit if the commissioner determines, after a hearing, that an additional deposit is necessary for the protection of the health maintenance organization's enrollees.***

Approved April 21, 2000