

Chapter 75.

Hospital And Medical Service Corporations.

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23-75-101. Definition.

- (a) As used in this chapter, unless the context otherwise requires, "hospital service corporations", "medical service corporations", and "hospital and medical service corporations" are corporations organized under the laws of this state for the purpose of establishing, maintaining, and operating nonprofit hospital service or medical service plans, or combination of plans, whereby hospital, medical, and related services may be provided by hospitals, physicians, or others with which the corporations have contracted for the purposes, to such of the public as become subscribers to the corporations under contracts which entitle each subscriber to certain hospital or medical services or benefits, or both.
- (b) This section shall not be deemed to prohibit issuance, by corporations so authorized as of immediately prior to January 1, 1960, of contracts providing for the payment of cash indemnities for hospital, medical, or related services instead of providing for hospital or medical benefits on a service basis or from issuing contracts providing for a combination of indemnity and service benefits.

23-75-102. Applicability of other provisions.

The corporations shall also be subject to the following chapters and provisions of this

code, to the extent applicable and not in conflict with the express provisions of this chapter:

- (1) Sections 23-60-101 - 23-60-108, and 23-60-110, referring to scope of code;
- (2) Sections 23-61-101 et seq., 23-61-201 et seq., and 23-61-301 et seq., referring to the Insurance Commissioner;
- (3) Sections 23-63-102 - 23-63-104, 23-63-201 - 23-63-216, and 23-63-301 - 23-63-304, referring to registration of registered agents for service of process;
- (4) Sections 23-63-901 et seq., referring to administration of deposits;
- (5) Sections 23-64-101 et seq., referring to insurance producers, agents, brokers, and adjusters;
- (6) Sections 23-66-201 et seq., 23-66-301 - 23-66-306, 23-66-308 - 23-66-311, 23-66-313, and 23-66-314, referring to trade practices and frauds;
- (7) Sections 23-63-601 et seq. and 23-84-101 - 23-84-111, referring to assets and liabilities;
- (8) Sections 23-68-101 et seq., referring to rehabilitation and liquidation;
- (9) Sections 23-85-101 - 23-85-131, referring to accident and health insurance policies;
- (10) Sections 23-86-101 - 23-86-106, 23-86-108, and 23-86-109, referring to group and blanket accident and health insurance;
- (11) Sections 23-79-101 - 23-79-107, 23-79-109 - 23-79-128, 23-79-131 - 23-79-134, and 23-79-202 - 23-79-210, referring to insurance contracts;
- (12) Section 23-69-134, referring to home office and records; penalty for unlawful removal of records; and
- (13) Section 23-69-156, referring to extinguishment of unused corporate charters.

23-75-103. Provisions exclusive.

Hospital service corporations, medical service corporations, and hospital and medical service corporations incorporated in this state shall be governed by this chapter and shall be exempt from all other provisions of this code, except as expressly provided in this chapter. No insurance law hereafter enacted shall be deemed to apply to the corporations unless they are specifically referred to therein.

23-75-104. Not applicable to employer plan.

- (a) This chapter shall not apply to any employer operating or maintaining a hospital service plan or medical service plan, participation in which is limited to his employees and the employees of a parent company or subsidiary company of the employer.
- (b) As used in this section, the term "employees" shall include members of the families of employees.

23-75-105. Relationship of physician, patient, and hospital unaffected.

- (a) Nothing in this chapter shall be deemed to alter the relationship of physician and patient.
- (b) The corporation shall not in any way influence the subscriber in his free choice of

hospital or physician, other than to limit its benefits to participating hospitals and physicians.

- (c) Nothing in this chapter shall be deemed to abridge the right of any physician or hospital to decline patients in accordance with the standards and practices of the physician or hospital, and no such corporation shall be deemed to be engaged in the corporate practice of medicine.

23-75-106. Incorporation.

Any corporation shall hereafter be organized under the laws of this state relating to private corporations not for pecuniary profit, insofar as the laws are not inconsistent with any of the provisions of this chapter.

23-75-107. Certificate of authority - Application.

- (a) The corporation may issue contracts to its subscribers only when the Insurance Commissioner has, by certificate of authority, authorized it to do so.
- (b) Application for the certificate of authority shall be made on forms supplied or approved by the commissioner containing such information as he shall deem necessary.
- (c) Each application for the certificate of authority shall be accompanied by the fee prescribed by § 23-61-401 and copies of the following documents:
 - (1) Articles of incorporation;
 - (2) Bylaws;
 - (3) Proposed contracts between the applicant and participating hospitals and physicians, showing the terms under which service is to be furnished to subscribers;
 - (4) Proposed contracts to be issued to subscribers;
 - (5) A table of rates to be charged to subscribers;
 - (6) Financial statement of the corporation, including the amounts of contributions paid or agreed to be paid to the corporation for working capital and the names of each contributor and the terms of each contribution; and
 - (7) A statement of the area in which the corporation proposes to operate.

23-75-108. Certificate of authority - Requirements for issuance.

- (a) The Insurance Commissioner shall issue an initial certificate of authority authorizing the applicant to issue contracts to its subscribers when it is shown to the satisfaction of the commissioner that:
 - (1) The applicant is established as a bona fide nonprofit hospital service corporation or medical service corporation or combination of the two;
 - (2) The contracts, if any, between the applicant and the participating hospitals or physicians obligate each hospital or physician executing the contracts to render service to which each subscriber may be entitled under the terms of the contracts to be issued to the subscribers;
 - (3) The amounts provided as working capital of the corporation are repayable, without interest, out of operating expenses;

- (4) The amount of money actually available for working capital is sufficient to carry on the plan for a period of six (6) months from the date of issuance of the certificate of authority; and
- (5) The applicant has secured contracts of participation from sufficient hospitals or physicians or both to provide ample protection for its subscribers within the area proposed to be served by the applicant.
- (b) The certificate of authority shall expire or terminate and be subject to annual continuation, as provided in § 23-63-211 for insurers in general.
- (c) The certificate of authority shall be subject to suspension or revocation as provided in §§ 23-63-212 - 23-63-215.

23-75-109. Deposit for protection of subscribers.

- (a)(1) Corporations governed by this chapter shall at all times have on deposit through the Insurance Commissioner sums as follows:
 - (A) If newly formed under this chapter, the sum of fifteen thousand dollars (\$15,000);
 - (B) If formed under prior law, the sum as was required under the prior law.
- (2) Every such corporation shall deposit through the commissioner, not later than each February 1, an amount equal to two percent (2%) of the gross subscriptions collected during the preceding calendar year until the deposit of the corporation reaches a total of fifty thousand dollars (\$50,000). All deposits shall be held in trust for the benefit and protection of the subscribers and participating hospitals and physicians of the corporation making the deposit.
- (b) The deposit prescribed by this section shall be subject to withdrawal in whole or in part on the order of and as directed by the commissioner but may, with his approval, be invested in bonds of the United States, of any state, of any political subdivision of any state, or state warrants, which shall be assigned to the commissioner and held as provided for original deposits. The securities may, with the approval of the commissioner, be exchanged for similar securities or cash of equal amount. Interest on securities so deposited shall be payable to the corporation depositing them.
- (c) An unsettled final judgment, arising from transactions under its certificate of authority against such a corporation shall be a lien on the deposit prescribed by this section, subject to execution after thirty (30) days from the entry of final judgment. If the deposit is reduced thereby, it shall be replenished within ninety (90) days.
- (d) Upon the liquidation or dissolution of the corporation and the satisfaction of all its liabilities, any balance remaining in the deposit in the hands of the commissioner and any other assets of the insurer shall be distributed to the holders of certificates of participation in good standing at the time proceedings for the liquidation or dissolution of the corporation were commenced, prorated according to the gross amount of subscriptions which have been paid on the certificates up to the time the proceedings were commenced.

23-75-110. Contracting authority - Filing of contract.

- (a) A corporation holding a certificate of authority under this chapter may enter into contracts with licensed hospitals, with physicians and surgeons licensed to practice in

this state, with licensed nursing homes, with visiting nurse associations, and with any hospital maintained and operated by the state or any political subdivision thereof, or operated by any corporation or association or individual.

- (b) The contracts by any corporation holding a certificate of authority under this chapter with licensed hospitals, with physicians and surgeons duly licensed to practice in this state, with licensed nursing homes, with visiting nurse associations, and with any hospital maintained and operated by the state or any political subdivision thereof or with any corporation, association, or individual shall be filed with the Insurance Commissioner.

23-75-111. Subscription contracts.

- (a)(1) All rates charged by the corporation to subscribers or classes of subscribers having contracts covered by §§ 23-85-101 - 23-85-131, and the form and content of all contracts between the corporation and its subscribers, classes of subscribers, or groups of subscribers, and the certificates issued by the corporation representing their subscribers' agreements shall, at all times, be subject to the prior approval of the Insurance Commissioner.
 - (2) Application for approval shall be made to the commissioner in such form and shall set forth such information as the commissioner may require.
 - (3) Rates shall not be excessive, inadequate, or unfairly discriminatory in relation to the services offered.
 - (4) Upon the review at any time by the commissioner of an application, he shall, if requested by the applicant before issuing an order of disapproval hold a hearing upon not less than ten (10) days' written notice, specifying the matters to be considered at the hearing, to the corporation which makes the application, and if, after the hearing, he finds that the application or a part thereof does not meet the requirements of this code, he shall issue an order specifying in what respects he finds that it so fails. Notice thereof shall immediately be served on the applicant, either personally or by mail. Within thirty (30) days before the date of such notice, the applicant may apply to the Circuit Court of Pulaski County to show cause why the action of the commissioner should not be set aside and the application approved.
- (b) In any hospital service corporation contract, any medical service corporation contract, or any hospital and medical service corporation contract, whether group or individual, that contains a provision whereby coverage of a dependent in a family group terminates at a specified age, there shall also be a provision that coverage of an unmarried dependent who is incapable of sustaining employment by reason of mental retardation or physical disability, who became so incapacitated prior to the attainment of age nineteen (19) and who is chiefly dependent upon the contract holder or certificate holder for support and maintenance, shall not terminate, but coverage shall continue so long as the contract or certificate remains in force and so long as the dependent remains in such condition. At the request and expense of the corporation, proof of the incapacity and dependency must be furnished to the corporation by the contract or certificate holder at least thirty-one (31) days before the child's attainment of the limiting age, and, subsequently, as may be required by the corporation, but not more frequently than annually, after the two-year period following the child's

attainment of the limiting age.

- (c) Each contract shall plainly state the services to which the subscriber is entitled and those to which the subscriber is not entitled under the plan. As to benefits provided on a service, instead of cash indemnity, basis the contract shall constitute a direct obligation of the hospitals and physicians with which or with whom the corporation has contracted for hospital or medical services. A copy of the contract shall be delivered to the subscriber.
- (d)(1) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.
- (2) Each filing shall be on file for a waiting period of thirty (30) days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty (30) days if he gives written notice within the waiting period to the insurer which made the filing that he needs such additional time for the consideration of the filing.
- (3) Upon written application by the insurer, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof.
- (4) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

23-75-112. Directors.

The directors of a corporation shall at all times include representatives of:

- (1) Administrators or trustees of hospitals which have contracted with the corporation to render hospital service to subscribers, if the corporation is a hospital service corporation or a hospital and medical service corporation;
- (2) Physicians and surgeons licensed to practice in this state who have contracted with the corporation to render medical service to subscribers, if the corporation is a medical service corporation or a hospital and medical service corporation; and
- (3) The general public, exclusive of hospital representatives and physicians.

23-75-113. Expenses and investments.

- (a) The operating and administrative expenses of any corporation including, but not limited to, all costs in connection with the solicitation of subscribers to such corporation and capital expenditures shall not exceed thirty percent (30%) of paid subscriptions during the first year of operation, twenty-five percent (25%) of paid subscriptions during the second year of operation, and twenty percent (20%) of paid subscriptions in any year thereafter.
- (b) Every corporation heretofore incorporated shall maintain unearned subscription charges and other reserves upon the same basis as that required of domestic insurance companies transacting accident and health insurance.
- (c) The reserves required under this section constitute a liability of the corporation in a determination of its financial condition.

- (d) The funds for any corporation shall be invested as provided for insurers under §§ 23-63-801 - 23-63-833 and 23-63-835.

23-75-114. Annual report - Examination.

- (a)(1) Not later than March 1 of each year, every corporation shall file with the Insurance Commissioner a statement sworn to by at least two (2) of its principal officers, showing its condition on the last day of the next preceding calendar year.
- (2) In accordance with the specifications applicable to annual financial reports, each licensed hospital or medical service corporation shall prepare and file with the commissioner a quarterly financial report on forms and at such times as the commissioner shall prescribe. The quarterly statement shall be verified by the officers of the corporation.
- (b)(1) The commissioner may appoint an examiner, deputy examiner, or other person to examine into the affairs of the corporation.
- (2) The person shall have the power of visitation and examination; shall have and must be given free access to all the books, papers, and documents relating to the business of the corporation; and may summon the officers, agents, or employees thereof, or any other persons and require them to testify under oath concerning the affairs, transactions, and condition of the corporation.
- (3) An examination shall be conducted at least every three (3) years.
- (4) The cost of any examination and audit shall be paid by the corporation.
- (5) All costs shall be paid upon the completion of the examination.

23-75-115. Use of surplus.

Any surplus in excess of all reserves established by the directors of the corporation and shown in the annual report of a corporation may be used by the corporation for the following purposes in the order of priority shown:

- (1) To liquidate on a pro rata basis any losses incurred by hospitals, physicians, and surgeons, or other similar institutions or persons, upon the settlement of bills with the corporation in any previous years;
- (2) To return the original working capital contribution to the corporation, or any part thereof, on a pro rata basis; and
- (3) To reduce rates charged subscribers or to expand the services rendered to them.

23-75-116. Nonliability.

No liability shall attach to any corporation holding a certificate of authority under this chapter by reason of the failure on the part of any hospital or physician to render service to any of its subscribers, nor for the negligence, malpractice, or other acts of hospitals or physicians.

23-75-117. [Repealed.]

23-75-118. Review of decisions.

All orders of the Insurance Commissioner made pursuant to this chapter shall be subject

to the provisions of subchapters 1 and 2 of chapter 61 of this title, including the right of hearing, rehearing, and appeal.

23-75-119. Premium tax.

- (a) The officers of every foreign or alien corporation, and the officers of every domestic corporation, transacting business under this chapter shall, at the time of making its annual statement, file with the Insurance Commissioner a sworn statement of its net direct written premiums for the year ending December 31 next preceding from subscribers residing in this state and shall pay into the State Treasury a premium tax of two and one-half percent (2.5%) on its net direct written premiums in compliance with the provisions of § 26-57-601 et seq. as a tax for the privilege of transacting business in this state.
- (b) No certificate of authority shall be renewed for any corporation until the tax is paid.
- (c)(1) The tax shall be in lieu of other taxes, district or state, county or municipal, based on premiums written by the corporation in this state.
 - (2) No subdivision of this state may impose any license fee for the privilege of conducting business in any portion thereof.
- (d) Pursuant to and subject to the conditions expressed in the provisions of § 26-57-604, the corporation is entitled to take against its premium taxes due an offset or credit for the salaries or wages of noncommissioned Arkansas employees of the corporation.
- (e) Failure of any licensed corporation to report and/or pay this net direct written premium tax, absent an extension granted by the commissioner for good cause, shall subject the corporation to the applicable penalties of this chapter and § 26-57-601 et seq.
- (f) Each hospital or medical service corporation shall have one (1) fiscal year following the reporting and payment year of a premium tax obligation to request a refund or credit for any premium tax overpayment amount, after which demands or requests for such monetary overpayment refund or credit against premium tax due shall be disallowed. Any corporation thus failing or neglecting to request the overpayment refund or credit against premium taxes due and payable to this state during the year allowable as specified above shall not be allowed to carry over the overpayment credit for the following year or years and shall not be entitled to an overpayment refund.

23-75-120. Tax exemptions.

- (a) Every corporation doing business pursuant to this chapter is declared to be a nonprofit and benevolent institution.
- (b) The corporations are exempt from state, county, district, municipal, and school tax, including the taxes prescribed by this code, and excepting only tax on net direct written premiums under § 23-75-119 and § 26-57-601 et seq. and applicable fees prescribed by § 23-61-401 and other sections of this code, or the Insurance Commissioner's rules and regulations applicable to hospital and medical service corporations, and taxes on real and tangible personal property situated in this state.

23-75-121. Power to make donations for the public welfare.

Hospital and medical services corporations shall have power to make donations for the public welfare or for charitable, scientific, or educational purposes, subject to such limitations, if any, as may be contained in its articles of incorporation or any amendment thereto.

23-75-122. Conversion to legal reserve mutual life insurer.

- (a) A hospital and medical service corporation, as defined in § 23-75-101, may be converted to a legal reserve mutual life insurer, as defined in § 23-69-102, under a plan or procedure which shall be approved by the order of the Insurance Commissioner.
- (b) The commissioner shall approve any such plan or procedure if he finds that:
 - (1) The plan would not be contrary to law and would not be contrary to the interests of subscribers or contract holders or to the public;
 - (2) The plan has been approved by the corporation in accordance with its articles of incorporation, bylaws, and with the law;
 - (3) The plan provides for definite conditions to be fulfilled by a designated early date upon which the mutualization will be deemed effective; and
 - (4) The plan provides for the protection of all existing contractual rights of the corporation's subscribers or contract holders for medical and hospital service or case or claims for reimbursement therefor, and for the mutualizing insurer to assume, without reincorporation, all assets and liabilities of the corporation.
- (c) Upon conversion, the corporation will have the minimum surplus required of legal reserve mutual life insurers.
- (d) Upon completion of its conversion to a legal reserve mutual life insurer as provided for herein, the corporation shall be subject to and comply with all laws and regulations applicable to legal reserve mutual life insurers.
- (e) The corporation shall have the period of time which shall be specified in the commissioner's order to complete its conversion to a legal reserve mutual life insurer.