

CHAPTER 65

AN ACT concerning risk based capital requirements for health maintenance organizations, amending P.L.1997, c.192 and amending and supplementing P.L.1973, c.337.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.26:2J-18.2 Definitions relative to risk based capital requirements for HMOs.

1. As used in sections 1 through 5 of P.L.2005, c.65 (C.26:2J-18.2 et seq.):

"Commissioner" means the Commissioner Banking and Insurance.

"Health maintenance organization" means an entity authorized to transact business in this State pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.).

C.26:2J-18.3 Increase of capital, surplus; methods, procedures.

2. The commissioner may increase the amount of capital or surplus required of a health maintenance organization, or subsequently revise or redetermine that increase, using appropriate methods and procedures established by rules and regulations adopted by the commissioner, in order to provide adequate protection against risks affecting the health maintenance organization's financial condition that are not adequately or fully covered by its reserves or other assets, but under no circumstances shall a health maintenance organization's capital or surplus be less than the capital or surplus required pursuant to regulation as prescribed by the commissioner; provided, however, that any increase required by a subsequent revision or redetermination pursuant to this section, shall be made only after a formal departmental hearing, on the record, unless that hearing is waived by the affected health maintenance organization. All matters pertaining to a hearing or to an increase in capital or surplus pursuant to this section shall be confidential and not subject to subpoena or public inspection, except to the extent that the commissioner finds release of that information necessary to protect the public. The hearing shall be initiated within 20 days after written notice to the health maintenance organization. Any declaration regarding an increase required by a subsequent revision or redetermination shall contain findings specifying the factors deemed significant in regard to the particular health maintenance organization, and shall set forth the reasons supporting the increase of capital or surplus ordered by the commissioner. In determining any increase, revision or redetermination in the amount of capital or surplus, the commissioner shall consider the risks of:

a. Increases or decreases in the frequency and severity of losses under normal operating conditions, as well as increases or decreases in those values, above or below the levels contemplated by the rates that it charged for coverage and above or below those reasonably expected under normal conditions;

b. Increases or decreases in expenses under normal operating conditions, as well as increases or decreases in those values, above or below the levels contemplated by the rates it charged for coverage and above or below those reasonably expected under normal conditions;

c. Increases or decreases in the value of, or return on, invested assets under normal operating conditions, as well as increases or decreases in those values, above or below those levels anticipated under normal conditions;

d. Changes in economic, social and market conditions that could adversely or favorably affect the financial condition of the health maintenance organization, including conditions that would make liquidity more or less important than contemplated and would prevent or facilitate timely investments or force or prohibit untimely sales of assets; and

e. Any other contingencies, including reinsurance and unfunded or extra contractual obligations, which may affect the health maintenance organization's financial condition.

C.26:2J-18.4 Factors in determining change in capital, surplus.

3. In determining any increase, revision or redetermination in the capital or surplus of a health maintenance organization pursuant to the provisions of section 2 of P.L.2005, c.65 (C.26:2J-18.3) the commissioner shall take into account the following factors:

a. Methods and techniques used to measure risk exposure and variability;

b. The information available relating to the magnitude of the various risks described in section 2 of P.L.2005, c.65 (C.26:2J-18.3);

c. The extent to which risks described in section 2 of P.L.2005, c.65 (C.26:2J-18.3) are independent or interrelated, and whether any dependency is direct or inverse;

d. The extent to which the health maintenance organization has provided protection against contingencies in ways other than the establishment of surplus, including, but not limited to: redundancy of premiums; margin in reserves and liabilities; adjustability of contracts pursuant to the terms of the contracts; voluntary or mandatory investment valuation reserves; reinsurance; the use of conservative actuarial assumptions to provide a margin of security; reserve adjustments after rate increases for policies written at earlier and less adequate rates; contingency or catastrophe reserves; and diversification of assets and underwriting risk; and

e. Any other relevant factors, including the National Association of Insurance Commissioners' reports and independent judgments of the soundness of the health maintenance organization's financial condition, as evidenced by the rating and reports of reliable professional financial services.

C.26:2J-18.5 Noncompliance, penalties.

4. The commissioner may suspend or revoke the authority to do business in this State of any health maintenance organization that does not comply with the provisions of P.L.2005, c.65 (C.26:2J-18.2 et al.).

C.26:2J-18.6 Regulations.

5. The commissioner may promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to effectuate the purposes of P.L.2005, c.65 (C.26:2J-18.2 et al.).

6. Section 26 of P.L.1973, c.337 (C.26:2J-26) is amended to read as follows:

C.26:2J-26 Filings and reports as public documents.

26. Filings and reports as public documents.

All applications, filings and reports required under this act shall be treated as public documents and, except for any examination being conducted pursuant to section 20 of P.L.1997, c.192 (C.26:2J-18.1), any matter pertaining to a change in capital or surplus pursuant to the provisions of P.L.2005, c.65 (C.26:2J-18.2 et al.) and contracts referred to in paragraphs (4) and (5) of subsection c. of section 3 of P.L.1973, c. 337 (C.26:2J-3), shall not be considered to be confidential.

7. Section 20 of P.L.1997, c.192 (C.26:2J-18.1) is amended to read as follows:

C.26:2J-18.1 Examination of HMO by Commissioner of Banking and Insurance.

20. The Commissioner of Banking and Insurance may conduct an examination of a health maintenance organization in accordance with the procedures provided in P.L.1993, c.236 (C.17:23-20 et seq.) as often as he deems necessary in order to protect the interests of providers, contract holders, members, and the residents of this State. An organization shall make its relevant books and records available for examination by the Commissioner of Banking and Insurance, and retain its records in accordance with a schedule established by the Commissioner of Banking and Insurance by regulation. The reasonable expenses of the examination shall be borne by the organization being examined. In lieu of such examination, the Commissioner of Banking and Insurance may accept the report of an examination made by the commissioner of another state.

8. This act shall take effect immediately.

Approved April 7, 2005.