

## §2308-A. Health insurance affiliates

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Foreign health service plan" means a nonprofit hospital and medical service organization or similar nonprofit entity organized under the laws of another state. [PL 1997, c. 344, §5 (NEW).]

B. "Health insurance affiliate" means any domestic for-profit stock insurer required to be authorized under Title 24-A, section 404 to provide health insurance or any domestic for-profit stock health maintenance organization required to be licensed under Title 24-A, chapter 56 that is formed, acquired, invested in or otherwise established, whether directly or indirectly, by a nonprofit hospital and medical service organization. [PL 1997, c. 344, §5 (NEW).]

C. "Nonprofit hospital and medical service organization" or "organization" means a corporation or other entity authorized by the superintendent and organized pursuant to this chapter for the purpose of providing nonprofit hospital service plans within the meaning of section 2301, subsection 1, nonprofit medical service plans within the meaning of section 2301, subsection 2 and any organization that provides only nonprofit health care plans within the meaning of section 2301, subsection 3. [PL 2003, c. 171, §17 (AMD).]

D. "Ownership interest" means any equity interest in a health insurance affiliate, including, without limitation, capital stock, voting securities, securities convertible into voting securities, general partnership shares, limited partnership shares, surplus notes or other interests possessing voting rights. [PL 1997, c. 344, §5 (NEW).]

E. "Person" has the meaning set forth in Title 24-A, section 222, subsection 2, paragraph E. [PL 1997, c. 344, §5 (NEW).]  
[PL 2003, c. 171, §17 (AMD).]

**2. Authorization.** A nonprofit hospital and medical service organization may not, directly or indirectly, form, acquire, invest in or otherwise establish a health insurance affiliate unless:

A. The organization has substantial control over the health insurance affiliate, which control for purposes of this section must be satisfied by:

- (1) Ownership of 50% or more of the outstanding ownership interests of the health insurance affiliate;
- (2) Ownership of or the power to vote, directly or indirectly, 50% or more of the voting securities of the health insurance affiliate;
- (3) The legal authority to prevent any change in the articles of incorporation, bylaws or other establishing or governing documents of the health insurance affiliate without its consent;
- (4) The legal authority to prevent any change in the health insurance affiliate's legal status or trade names, the geographic area in which the health insurance affiliate operates or the fundamental type of business in which the health insurance affiliate engages without its consent; and
- (5) Fifty percent or more control of the management policies or operations of the health insurance affiliate.

An organization that does not meet the requirements of subparagraphs (1), (2) and (5) is deemed to meet those requirements if the organization and one or more nonprofit hospital and medical service organizations or foreign health service plans, in the aggregate, meet the requirements of subparagraphs (1), (2) and (5). At all times the organization's ownership interest in the health insurance affiliate must exceed the aggregate ownership interests in the health insurance affiliate

owned or controlled by any persons permitted to hold ownership interests pursuant to paragraph B; [PL 1997, c. 344, §5 (NEW).]

B. Individuals or nonprofit and noncharitable entities owning or controlling ownership interests in the health insurance affiliate are subject to the following limitations so that only:

(1) Up to a maximum of 25% of the ownership interests in the health insurance affiliate may be owned or controlled by individual physicians licensed to practice in this State, as long as the remaining ownership interests are owned or controlled by the organization under paragraph A, subparagraph (1), the organization and one or more organizations or foreign health service plans under paragraph A, subparagraph (2) or nonprofit charitable health care entities under paragraph C; or

(2) Up to a maximum of 20% of the ownership interests in the health insurance affiliate, in the aggregate, may be owned or controlled by nonprofit and noncharitable entities formed by physicians licensed to practice in this State and hospitals licensed in this State for the purpose of arranging for or delivering health care, or a combination of such an entity and individual physicians licensed to practice in this State as long as the remaining ownership interests are owned or controlled by the organization under paragraph A, subparagraph (1), the organization and one or more organizations or foreign health service plans under paragraph A, subparagraph (2) or nonprofit charitable health care entities under paragraph C; [PL 1997, c. 344, §5 (NEW).]

C. Any ownership interests not owned or controlled by the organization under paragraph A, subparagraph (1), the organization and one or more organizations or foreign health service plans under paragraph A or persons described under paragraph B are owned or controlled by nonprofit charitable entities that qualify for federal income tax exemption under the United States Internal Revenue Code of 1986, Section 501(c)(3) or (c)(4), as amended; [PL 1997, c. 344, §5 (NEW).]

D. The health insurance affiliate meets the following requirements with respect to its officers, directors and employees:

(1) No ownership interests of the health insurance affiliate are owned or controlled by officers, directors or employees of:

(a) The health insurance affiliate;

(b) Any person owning or controlling ownership interests in the health insurance affiliate; or

(c) Any affiliate of a person described in this subparagraph or subparagraph (2);

(2) Notwithstanding subparagraph (1), an individual that owns or controls an ownership interest in a health insurance affiliate, including an individual serving as an officer, director or employee of a person described in paragraph B that owns or controls an ownership interest in a health insurance affiliate, serves as a director of the health insurance affiliate, subject to the limitations set forth in subparagraph (4);

(3) Notwithstanding subparagraph (1), at any time, no more than one officer of the health insurance affiliate is an individual that owns or controls an ownership interest in a health insurance affiliate, or an individual serving as an officer, director or employee of a person described in paragraph B that owns or controls an ownership interest in a health insurance affiliate;

(4) The total percentage of directors of a health insurance affiliate who represent or are appointed by each person described in paragraph B that owns or controls an ownership interest in the health insurance affiliate does not exceed the total percentage ownership interests in the health insurance affiliate owned or controlled by persons described in paragraph B; and

(5) The health insurance affiliate has in place procedures and policies to prohibit conflicts of interest that may benefit the persons described in subparagraph (1), divisions (a), (b) and (c), including, but not limited to, conflicts to the detriment of the health insurance affiliate's ability to fulfill its charitable purposes.

Nothing contained in this paragraph prohibits interlocking boards of directors between or among the person described in subparagraph (1), divisions (a), (b) and (c), provided no officer, director or employee of any person described in subparagraph (1), divisions (a), (b) and (c) owns or controls an ownership interest prohibited by this paragraph; [PL 1997, c. 344, §5 (NEW).]

E. The organization provides written notice to the superintendent at least 60 days prior to forming, acquiring, investing in or otherwise establishing a health insurance affiliate; and [PL 1997, c. 344, §5 (NEW).]

F. At all times when the organization owns or controls an ownership interest in the health insurance affiliate, the organization or the health insurance affiliate, together or separately, does not inappropriately stratify risks. For the purpose of this paragraph, the superintendent may treat the organization and the health insurance affiliate as a single person. If the superintendent determines that this paragraph has been violated, the superintendent shall provide the organization and the health insurance affiliate with notice of the violation and a reasonable opportunity to cure the violation. [PL 1997, c. 344, §5 (NEW).]

[PL 1997, c. 344, §5 (NEW).]

**3. Application of Title 24-A.** The provisions of Title 24-A apply to a health insurance affiliate in accordance with the following:

A. A health insurance affiliate that is a health insurer is subject to all the following provisions:

- (1) Title 24-A, section 222;
- (2) Title 24-A, section 423-C;
- (3) Title 24-A, section 425;
- (4) Title 24-A, chapter 47, subchapter IV;
- (5) Title 24-A, section 4614, subsections 4 and 6; and
- (6) All other applicable provisions of Title 24-A; [PL 1997, c. 344, §5 (NEW).]

B. A health insurance affiliate that is a health maintenance organization is subject to all the following provisions:

- (1) Title 24-A, section 222, subsections 2 to 10 and Title 24-A, section 222, subsections 13-A to 18;
- (2) Title 24-A, section 423-C;
- (3) Title 24-A, section 425;
- (4) Title 24-A, sections 3474 to 3476;
- (5) Title 24-A, section 3483; and
- (6) All other applicable provisions of Title 24-A; and [PL 2023, c. 405, Pt. A, §82 (AMD).]

C. The provisions of Title 24-A, section 4214 do not apply to a health insurance affiliate. [PL 1997, c. 344, §5 (NEW).]

[PL 2023, c. 405, Pt. A, §82 (AMD).]

**4. Control.** For the purposes of this section and Title 24-A, section 222, a health insurance affiliate is presumed to be controlled by the nonprofit hospital and medical service organization, notwithstanding that the organization may not have actual control. Notwithstanding that the

organization is presumed to control the health insurance affiliate under this subsection, the superintendent may determine that one or more other persons also control the health insurance affiliate. The superintendent, in the superintendent's sole discretion, may determine that a health insurance affiliate is not controlled by an organization that owns or controls less than 50% of the ownership interests of a health insurance affiliate pursuant to subsection 2, paragraph A.

[PL 1997, c. 344, §5 (NEW).]

**5. Continuing obligations; penalties.** In addition to all requirements for obtaining or maintaining a certificate of authority from the superintendent under Title 24-A, a health insurance affiliate must continuously meet all requirements of this section and Title 5, section 194-A, subsection 7. The superintendent's determination that a health insurance affiliate has failed to meet the requirements of this section or Title 5, section 194-A, subsection 7 constitutes grounds for suspension or revocation of the health insurance affiliate's certificate of authority under Title 24-A, section 417 and grounds for commencement of delinquency proceedings under Title 24-A, chapter 57. Upon any such failure, the superintendent may require any person who owns or controls any ownership interest in the health insurance affiliate to dispose of that ownership interest within the later of 18 months after the date of the failure as determined by the superintendent, 18 months after the superintendent's determination that a failure has occurred or such other time as the superintendent may prescribe. The superintendent may permit one owner to dispose of its ownership interest to another owner.

[PL 1997, c. 344, §5 (NEW).]

**6. Capital contributions.** Any person who acquires any ownership interests in the health insurance affiliate shall make capital contributions in cash or the cash equivalent in proportion to that person's ownership interests in the health insurance affiliate. The superintendent, in the superintendent's sole discretion, may permit other forms of capital contributions that do not have the effect of diluting the ownership or control of the health insurance affiliate by the nonprofit hospital and medical service organization.

[PL 1997, c. 344, §5 (NEW).]

**7. Transactions with related persons.** In addition to the requirements contained under Title 24-A and other applicable law, all transactions between a health insurance affiliate and any related person must be consistent with fair market value in an arm's length transaction. For purposes of this subsection, a "related person" means:

A. Any person who owns or controls an ownership interest in a health insurance affiliate; [PL 1997, c. 344, §5 (NEW).]

B. Any person who is a beneficial owner, as defined in Title 24-A, section 222, subsection 2, paragraph A-1, of any ownership interest in the health insurance affiliate; [PL 1997, c. 344, §5 (NEW).]

C. Any person who, directly or indirectly, has the power to control the management, policies or operations of the health insurance affiliate; or [PL 1997, c. 344, §5 (NEW).]

D. Any affiliate of the health insurance affiliate or of any person described in paragraphs A to C. [PL 1997, c. 344, §5 (NEW).]

[PL 1997, c. 344, §5 (NEW).]

**8. Distribution of working capital and surplus.** No less frequently than annually, a health insurance affiliate shall distribute to those persons who own or control any ownership interest providing for the right to receive dividends or distributions any excess working capital and surplus, subject to rules adopted and decisions issued by the superintendent. Nothing in this subsection limits the authority of the Superior Court under Title 5, section 194-A, subsection 7.

[PL 1997, c. 344, §5 (NEW).]

**9. Investment restrictions.** Any investment by a nonprofit hospital and medical service organization in a health insurance affiliate under this section is subject to all applicable investment restrictions, including, without limitation, Title 24-A, section 222 and Title 24-A, chapter 13-A. A health insurance affiliate in which an organization owns or controls 50% or more ownership interest is deemed to be a subsidiary of the organization for purposes of Title 24-A, section 1157, subsection 5, paragraph B.

[PL 1997, c. 344, §5 (NEW).]

**10. Aggregate transactions.** The superintendent may aggregate any transactions that are part of a plan or series of like transactions to determine whether those transactions comply with this section and other applicable laws.

[PL 1997, c. 344, §5 (NEW).]

**11. Oversight.** In addition to other applicable provisions of this Title and Title 24-A, any person whose domicile is outside the State that owns or controls an ownership interest in a health insurance affiliate and any affiliate of that organization:

A. Is subject to the jurisdiction of the superintendent and the courts of this State; and [PL 1997, c. 344, §5 (NEW).]

B. Must appoint the superintendent as lawful agent for receipt of service of process. [PL 1997, c. 344, §5 (NEW).]

[PL 1997, c. 344, §5 (NEW).]

**12. Attorney General to intervene.** In any proceeding before the superintendent involving the health insurance affiliate in which the Attorney General intervenes, the Attorney General has the right to review all documents or other information received by the superintendent or in connection with the proceeding. The Attorney General is subject to all confidentiality provisions for those documents or information that apply to the superintendent.

[PL 1997, c. 344, §5 (NEW).]

**13. Rules.** The superintendent may adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[PL 1997, c. 344, §5 (NEW).]

#### SECTION HISTORY

PL 1997, c. 344, §5 (NEW). PL 2003, c. 171, §17 (AMD). PL 2023, c. 405, Pt. A, §82 (AMD).

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