

**§ 58-67-115. Hold harmless agreements or special deposit.**

(a) Unless the HMO maintains a special deposit in accordance with subsection (b) of this section, each contract between every HMO and a participating provider of health care services shall be in writing and shall set forth that in the event the HMO fails to pay for health care services as set forth in the contract, the subscriber or enrollee shall not be liable to the provider for any sums owed by the HMO. No other provisions of such contracts shall, under any circumstances, change the effect of such a provision. No participating provider, or agent, trustee, or assignee thereof, may maintain any action at law against a subscriber or enrollee to collect sums owed by the HMO.

(b) In the event that the participating provider contract has not been reduced to writing or that the contract fails to contain the required prohibition, the HMO shall maintain a special deposit in cash or cash equivalent as follows:

- (1) Every HMO that has incurred uncovered health care expenditures in an amount that exceeds ten percent (10%) of its total expenditures for health care services for the immediately preceding six months, shall do either of the following:
  - a. Calculate as of the first day of every month and maintain for the remainder of the month, cash or cash equivalents acceptable to the Commissioner, as an account to cover claims for uncovered health care expenditures at least equal to one hundred twenty percent (120%) of the sum of the following:
    1. All claims for uncovered health care expenditures received for reimbursement, but not yet processed; and
    2. All claims for uncovered health care expenditures denied for reimbursement during the previous 60 days; and
    3. All claims for uncovered health care expenditures approved for reimbursement, but not yet paid; and
    4. An estimate for uncovered health care expenditures incurred, but not reported; and
    5. All claims for uncovered emergency services and uncovered services rendered outside the service area.
  - b. Maintain adequate insurance, or a guaranty arrangement approved in writing by the Commissioner, to pay for any loss to enrollees claiming reimbursement due to the insolvency of the HMO. The Commissioner shall approve a guaranty arrangement if the guaranteeing organization has been in operation for at least 10 years and has a net worth, including organization-related land, buildings, and equipment, of at least fifty million dollars (\$50,000,000); unless the Commissioner finds that the approval of such guaranty may be financially hazardous to enrollees. In order to qualify under the terms of this subsection, the guaranteeing organization shall (i) submit to the jurisdiction of this State for actions arising under the guarantee; (ii) submit certified, audited annual financial statements to the Commissioner; and (iii) appoint the Commissioner to receive service of process in this State.
- (2) Whenever the reimbursements described in this subsection exceed ten percent (10%) of the HMO's total costs for health care services over the immediately preceding six months, the HMO shall file a written report with the Commissioner containing the information necessary to determine

compliance with sub-subdivision (b)(1)a. of this section with its financial statements filed pursuant to G.S. 58-2-165. Upon an adequate showing by the HMO that the requirements of this section should be waived or reduced, the Commissioner may waive or reduce these requirements to such an amount as he deems sufficient to protect enrollees of the HMO consistent with the intent and purpose of this Article.

- (3) Any cash or cash equivalents maintained pursuant to the terms of this section shall be maintained as a special deposit controlled by and administered by the Commissioner in accordance with the provisions of G.S. 58-5-1. (1989, c. 776, s. 13; 2005-215, s. 19.)