

**304.38-070 Requirements for protection against insolvency -- Risk-based capital requirements.**

- (1) This subsection applies to a corporation or limited liability company applying for and holding a certificate of authority as a health maintenance organization:
  - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation or limited liability company shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars (\$1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars (\$2,000,000);
  - (b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. Notwithstanding the other provisions hereof, the exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and
  - (c) Each corporation authorized as a health maintenance organization shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000) and shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the commissioner. A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency as required for such authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.
- (2) This subsection applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:
  - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars (\$3,000,000) in its capital accounts. Thereafter, a partnership authorized as a health maintenance organization shall possess and maintain a total of at least one million two hundred fifty thousand dollars (\$1,250,000) in its capital accounts and shall comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the commissioner;
  - (b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while

meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.

- (3) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with risk-based capital (RBC) requirements as follows:
  - (a) For purposes of this subsection, risk-based capital shall be determined in accordance with the risk-based capital requirements for health maintenance organizations established under this subtitle and any administrative regulation promulgated pursuant to KRS Chapter 13A, except as otherwise provided in this subsection. A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with the same risk-based capital requirements as other health maintenance organizations, except that no additional phase-in or risk-based capital reports shall be required for 2000 or 2001, and the risk-based capital levels shall be established in accordance with paragraph (b) of this subsection;
  - (b) For the risk-based capital reports required to be filed by health maintenance organizations which manage care and process health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program, the risk-based capital levels shall be defined as follows:
    1. "Company Action Level RBC" means the product of two (2.0) and its Authorized Control Level RBC;
    2. "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;
    3. "Authorized Control Level RBC" means the product of four-tenths (.40) and the risk-based capital after covariance determined under the risk-based capital formula in accordance with the RBC instruction; and
    4. "Mandatory Control Level RBC" means the product of seven-tenths (.70) and the Authorized Control Level RBC; and
  - (c) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization managing care, processing health care claims, or providing health benefits to groups or individuals in addition to Medicaid-eligible and Kentucky Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle,

and shall not be eligible to calculate its risk-based capital according to this subsection.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1503, effective July 15, 2010; and repealed and reenacted ch. 51, sec. 137, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 137, effective June 26, 2007. -- Amended 2003 Ky. Acts ch. 136, sec. 1, effective June 24, 2003. -- Amended 2000 Ky. Acts ch. 255, sec. 2, effective July 14, 2000. -- Amended 1986 Ky. Acts ch. 437, sec. 28, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 128, sec. 7, effective July 15, 1982. -- Created 1974 Ky. Acts ch. 357, subtit. 38, sec. 7, effective June 21, 1972.

**Legislative Research Commission Note (7/15/2010).** This section was amended by 2010 Ky. Acts ch. 24 and repealed and reenacted by 2010 Ky. Acts ch. 51. These Acts do not appear to be in conflict and have been codified together pursuant to 2010 Ky. Acts ch. 51, sec. 184.

**Legislative Research Commission Note (7/15/2010).** 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."