## 62A.4523 PROTECTION AGAINST INSOLVENCY; DEPOSIT.

Subdivision 1. **Net equity.** (a) Except as approved in accordance with subdivision 4, each prepaid limited health service organization shall at all times have and maintain tangible net equity equal to the greater of:

(1) $100,000; or

(2) two percent of the organization's annual gross premium income, up to a maximum of the required capital and surplus of an accident and health insurer.

(b) A prepaid limited health service organization that has uncovered expenses in excess of $100,000, as reported on the most recent annual financial statement filed with the commissioner, shall maintain tangible net equity equal to 25 percent of the uncovered expense in excess of $100,000 in addition to the tangible net equity required by paragraph (a).

Subd. 2. **Definitions.** For the purpose of this section:

(1) "net equity" means the excess of total assets over total liabilities, excluding liabilities which have been subordinated in a manner acceptable to the commissioner; and

(2) "tangible net equity" means net equity reduced by the value assigned to intangible assets including, but not limited to, goodwill; going concern value; organizational expense; start-up costs; long-term prepayments of deferred charges; nonreturnable deposits; and obligations of officers, directors, owners, or affiliates, except short-term obligations of affiliates for goods or services arising in the normal course of business that are payable on the same terms as equivalent transactions with nonaffiliates and that are not past due.

Subd. 3. **Deposit.** (a) Each prepaid limited health service organization shall deposit with the commissioner or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that is acceptable to the commissioner, in an amount equal to $50,000 plus 25 percent of the tangible net equity required in subdivision 1; provided, however, that the deposit must not be required to exceed $200,000.

(b) The deposit is an admitted asset of the prepaid limited health service organization in the determination of tangible net equity.

(c) All income from deposits is an asset of the prepaid limited health service organization. A prepaid limited health service organization may withdraw a deposit or any part of it after making a substitute deposit of equal amount and value. Any securities must be approved by the commissioner before being substituted.

(d) The deposit must be used to protect the interests of the prepaid limited health service organization's enrollees and to ensure continuation of limited health care services to enrollees of a prepaid limited health service organization that is in rehabilitation or conservation. If a prepaid limited health service organization is placed in receivership or liquidation, the deposit is an asset subject to provisions of chapter 60B.

(e) The commissioner may reduce or eliminate the deposit requirement if the prepaid limited health service organization has made an acceptable deposit with the state or jurisdiction of domicile for the protection of all enrollees, wherever located, and delivers to the commissioner a certificate to that effect, duly authenticated by the appropriate state official holding the deposit.

Subd. 4. **Waiver of net equity requirement.** Upon application by a prepaid limited health service organization, the commissioner may waive some or all of the requirements of subdivision 1 for any period of time the commissioner deems proper upon a finding that either:

(1) the prepaid limited health service organization has a net equity of at least $10,000,000; or

(2) an entity having a net equity of at least $10,000,000 furnishes to the commissioner a written commitment, acceptable to the commissioner, to provide for the uncovered expenses of the prepaid limited health service organization.

Subd. 5. **Definition; uncovered expenses.** For the purposes of this section, "uncovered expense" means the cost of health care services that are the obligation of a prepaid limited health organization (1) for which an enrollee may be liable in the event of the insolvency of the organization and (2) for which alternative arrangements acceptable to the commissioner have not been made to cover the costs. Costs incurred by a provider who has agreed in writing not to bill enrollees, except for permissible supplemental charges, must be considered a covered expense.

**History:** *2005 c 17 art 2 s 14*