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§14–117.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Assets" means assets that are:

1. authorized under § 14-120 of this subtitle; and

2. determined by the Commissioner to be admitted assets under the guidelines issued by the National Association of Insurance Commissioners.

(ii) "Assets" does not include:

1. cash, notes, or receivables that result from the sale of an asset of a nonprofit health service plan or its affiliate or subsidiary if the purchaser may require the plan to repurchase the asset; or

2. stock of an affiliate or subsidiary of the plan if the stock has not been issued in accordance with a public offering or is not publicly traded on a recognized stock exchange.

(iii) Notwithstanding subparagraph (ii)2 of this paragraph, "assets" includes stock of an affiliate or subsidiary of a nonprofit health service plan to the extent that the Commissioner determines that the stock has a value that could be made available for the payment of claims and losses.

(3) "Earned premium" means earned premiums under:

(i) insurance contracts and policies; and

(ii) the insured part of other contracts.

(4) "Surplus" means the amount by which assets exceed liabilities described in § 5-103 of this article.

(b) Except as provided in subsection (d) of this section, a corporation authorized under this subtitle shall maintain a surplus in an amount equal to the greater of:

(1) $75,000; and

(2) 8% of the total earned premium received by the corporation in the immediately preceding calendar year.

(c) If the size and structure of the corporation requires, the Commissioner may require the differentiation of the corporation's activities into risk and nonrisk business for the purpose of determining the corporation's income that is derived from earned premium and other sources.

(d) If the Commissioner determines after a hearing that a larger surplus is necessary for the protection of subscribers to a nonprofit health service plan, the Commissioner may require a corporation authorized under this subtitle to maintain a surplus in an amount greater than the amount required by subsection (b) of this section.

(e) (1) The surplus of a corporation authorized under this subtitle may be considered to be excessive only if:

(i) the surplus is greater than the appropriate risk based capital requirements as determined by the Commissioner for the immediately preceding calendar year; and

(ii) after a hearing, the Commissioner determines that the surplus is unreasonably large.

(2) After the Commissioner has determined the surplus of a corporation authorized under this subtitle to be excessive, the Commissioner:

(i) may order the corporation to submit a plan for distribution of the excess in a fair and equitable manner; or

(ii) if the corporation fails to submit a plan of distribution within 60 days, may compile a plan and order the corporation to implement it.

(3) A distribution ordered under paragraph (2) of this subsection may be made only to subscribers who are covered by the corporation's nonprofit health service plan at the time the distribution is made.

(f) The Commissioner may not order a distribution or plan for distribution under subsection (e) of this section if the distribution would render the corporation impaired or insolvent under the laws of its domiciliary state or any other state in which the corporation is authorized to do business.

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