

40-4211. Deposit of securities with commissioner to guarantee performance; surety bond or irrevocable letter of credit in lieu of securities deposit. (a) Each prepaid service plan shall deposit and maintain with the commissioner of insurance securities of the type eligible for deposit by insurers. Such securities shall have at all times a market value in accordance with the following:

(1) A prepaid service plan which has transacted no business in this state prior to the effective date of this act, shall deposit an initial amount of \$50,000 with the commissioner of insurance, prior to the issuance of its certificate of registration and before receiving any membership fees;

(2) a prepaid service plan transacting business in this state prior to the effective date of this act and having in force in this state less than \$300,000 of annual membership fees shall deposit with the commissioner of insurance a sum equal to 50% of the membership fees in force or \$50,000, whichever is less;

(3) a prepaid service plan transacting business in this state prior to the effective date of this act and having in force in this state more than \$300,000 but less than \$750,000 of annual membership fees, shall deposit with the commissioner of insurance an amount of not less than \$75,000; and

(4) a prepaid service plan transacting business in this state prior to the effective date of this act and having in force in this state \$750,000 or more of annual membership fees, shall deposit with the commissioner of insurance an amount of not less than \$100,000.

(b) In lieu of any deposit of securities required under subsection (a), a prepaid service plan may file with the commissioner of insurance a surety bond in such form, amount and conditions as prescribed by the commissioner or present the commissioner with an irrevocable letter of credit issued by a state or federally chartered bank domiciled in Kansas. Any such surety bond or irrevocable letter of credit issued or written for a specific term shall be renewed or replaced not less than 90 days prior to expiration. In the event satisfactory evidence of such renewal or replacement is not received by the commissioner at least 60 days prior to expiration, the commissioner is hereby authorized to draw upon the letter of credit or surety bond to the extent possible and necessary to assure that the obligations of the prepaid service plan to its members are provided for in accordance with subsection (c). The surety bond or irrevocable letter of credit shall be for the same purpose as the deposit of securities for which it is in lieu thereof. The commissioner of insurance shall not approve any surety bond under the terms of which the protection afforded against insolvency is not equivalent to the protection afforded by those securities provided for in subsection (a).

(c) Securities or surety bonds deposited with or irrevocable letters of credit presented to the commissioner of insurance pursuant to this section shall be for the benefit of any person or persons sustaining an actionable injury due to the failure of the prepaid service plan to faithfully perform its obligations to its members or those providers with whom they have contracted, and such securities, surety bonds or irrevocable letters of credit shall be subject to action thereon by any such person or persons for such purposes in the event of insolvency or impairment of the prepaid service plan.

(d) The commissioner of insurance shall be responsible for the safekeeping of all securities deposited with the commissioner under this section. Such securities shall not be subject to taxation on account of being in this state, but shall be held exclusively and solely to guarantee the prepaid service plan's performance of its obligations to its members.

(e) The deposit of securities or surety bond or the irrevocable letter of credit required under this section shall be maintained unimpaired as long as the prepaid service plan continues in business in this state. When a prepaid service plan ceases to do business in this state and furnishes the commissioner of insurance proof satisfactory that such prepaid service plan has discharged or otherwise adequately provided for all its obligations to its members in this state, the commissioner of insurance shall release the deposited securities to the parties entitled thereto on presentation of receipts for such securities, shall release any surety bond filed in lieu of such deposit or shall consent to revocation of any letter of credit presented in lieu of such deposit.

(f) The commissioner of insurance, at any time, may enter an order increasing the amount of the deposit of securities, surety bond or irrevocable letter of credit specified under this section if the commissioner of insurance finds that there has been a substantial change in the facts, including an increase in the amounts of membership fees in force in this state on which the original determination was based. The prepaid service plan may request a hearing on any such increase within 30 days of the issuance of the commissioner's order. A hearing shall be held within 30 days of such a request by the prepaid service plan. Failure by a prepaid service plan to meet the new requirements ordered under this subsection within 30 days after a final decision by the commissioner of insurance or 30 days after the period for submitting a request for a hearing on the matter constitutes a ground for revocation of the certificate of registration of the prepaid service plan.

History: L. 1987, ch. 157, § 11; L. 1989, ch. 145, § 1; July 1.