

STATE OF NEBRASKA

DEPARTMENT OF INSURANCE

Timothy J. Hall
Director



March 25, 1998
CB-91

E. Benjamin Nelson
Governor

BULLETIN

SUBJECT: REGULATION OF PROVIDER SPONSORED ORGANIZATIONS

This bulletin sets out the position of the Director of Insurance regarding the regulation of Provider Sponsored Organizations (PSOs) and other similar risk-bearing entities (e.g. hospitals, doctors, limited liability corporations, networks, dental practices, etc.). It also provides information on recently enacted federal legislation affecting PSOs. It is the Director's goal to see that consumers have the solvency and consumer protections afforded by the insurance laws, irrespective of the ownership of their health carrier.

If a PSO or other similar risk-bearing entity enters into an arrangement with an individual, employer or other group that results in the provider assuming all or part of the risk for health care expenses or service delivery, the provider is engaged in the business of insurance. PSOs and other similar risk-bearing entities wishing to engage in the business of insurance must obtain the appropriate license (e.g., health insurer or HMO, etc.) from the Department of Insurance.

For example, if a group of doctors or hospital enters into an arrangement with an employer to provide future health care services to its employees for a fixed prepayment (i.e., full or partial capitation) the doctors or hospital are engaged in the business of insurance. Examples of other arrangements that may be the business of insurance include risk corridors, withhold or pooling arrangements.

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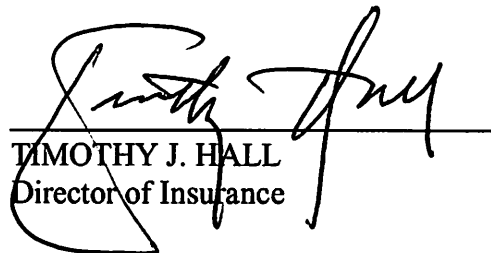
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One arrangement where a PSO or other similar risk-bearing entity need not obtain a license from the Department of Insurance is when the PSO or other similar risk-bearing entity agrees to assume all or part of the risk for health care expenses or service delivery under a contract with a duly licensed health insurer, for that insurer's policyholders, certificate holders or enrollees. An example of this is when a group of doctors or a hospital enters into an arrangement with an HMO to provide services to the HMO's enrollees in exchange for a fixed prepayment.

Under the recently enacted Balanced Budget Act of 1997 (BBA), PSOs wishing to participate in the Medicare+Choice program must be licensed by the state. However, PSOs engaged solely in the Medicare+Choice business are allowed to seek a three year federal waiver of state licensure requirements if a state denies a license for reasons related to solvency and the state's solvency standards are different than federal Medicare PSO solvency standards, or if the state does not act on the application within 90 days, or if the state imposes requirements on PSOs that it does not apply to similar risk-bearing entities. Federal solvency standards will be developed either through a negotiated rulemaking process, which is underway, or by the Secretary of Health and Human Services, if no agreement is reached through negotiated rulemaking. However, even if PSOs receive waivers from the state licensure requirement, the Secretary of Health and Human Services, who is charged with overseeing the waiver process, will require these PSOs to comply with state consumer protection standards. Also, at the end of the three-year waiver period the PSO must be state licensed. Notwithstanding the federal waiver process for Medicare, PSOs wishing to engage in business other than Medicare are required to seek state licensure.

The Department of Insurance requests PSOs and other similar risk-bearing entities who have entered into an arrangement, or who are considering doing so, to seek clarification that the arrangement complies with state law. The Department welcomes working with PSOs and other similar risk-bearing entities to bring these arrangements into compliance with state insurance law or other laws applicable to health carriers.



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