

§ 131E-299. Hold harmless agreements or special deposit.

(a) Unless the PSO maintains a special deposit in accordance with subsection (b) of this section, each contract between every PSO and a participating provider of health care services shall be in writing and shall set forth that in the event the PSO fails to pay for health care services as set forth in the contract, the Medicare subscriber or beneficiary shall not be liable to the provider for any sums owed by the PSO. No other provisions of these contracts shall, under any circumstances, change the effect of this provision. No participating provider or agent, trustee, or assignee thereof may maintain any action at law against a subscriber or beneficiary to collect sums owed by the PSO.

(b) In the event that the participating provider contract has not been reduced to writing or that the contract fails to contain the required prohibition, the PSO shall maintain a special deposit in cash or cash equivalent as follows:

- (1) If at any time uncovered expenditures exceed ten percent (10%) of total health care expenditures the PSO shall either:
 - a. Place an uncovered expenditures insolvency deposit with the Division, or with any organization or trustee acceptable to the Division through which a custodial or controlled account is maintained, cash or securities that are acceptable to the Division. This deposit shall at all times have a fair market value in an amount of one hundred twenty percent (120%) of the PSO's outstanding liability for uncovered expenditures for enrollees, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. If a PSO is not otherwise required to file a quarterly report, it shall file a report within 45 days of the end of the calendar quarter with information sufficient to demonstrate compliance with this section; or
 - b. Maintain adequate insurance or a guaranty arrangement approved in writing by the Division, to pay for any loss to beneficiaries claiming reimbursement due to the insolvency of the PSO. The Division shall approve a guaranty arrangement if the guarantying organization is a sponsoring provider, has been operating for at least 10 years, and has a net worth, including organization-related land, buildings, and equipment of at least fifty million dollars (\$50,000,000), unless the Division finds that the approval of this guaranty may be financially hazardous to beneficiaries.
- (2) The deposit required under sub-subdivision a. of subdivision (1) of this subsection is an admitted asset of the PSO in the determination of net worth. All income from these deposits or trust accounts shall be assets of the PSO and may be withdrawn from the deposit or account quarterly with the approval of the Division;
- (3) A PSO that has made a deposit may withdraw that deposit or any part of the deposit if (i) a substitute deposit of cash or securities of equal amount and value is made, (ii) the fair market value exceeds the amount of the required deposit, or (iii) the required deposit under this subsection is reduced or eliminated. Deposits, substitutions, or withdrawals may be made only with the prior written approval of the Division;
- (4) The deposit required under sub-subdivision a. of subdivision (1) of this section is in trust and may be used only as provided under this section. The Division may use the deposit of an insolvent PSO for administrative costs

associated with administering the deposit and payment of claims of enrollees of the PSO.

(c) Whenever the reimbursements described in this section exceed ten percent (10%) of the PSO's total costs for health care services over the immediately preceding six months, the PSO shall file a written report with the Division containing the information necessary to determine compliance with sub-subdivision a. of subdivision (1) of subsection (b) of this section no later than 30 business days from the first day of the month. Upon an adequate showing by the PSO that the requirements of this section should be waived or reduced, the Division may waive or reduce these requirements to an amount it deems sufficient to protect beneficiaries of the PSO consistent with the intent and purpose of this Article. (1998-227, s. 1.)