

**TITLE 365. INSURANCE DEPARTMENT**  
**CHAPTER 40. HEALTH MAINTENANCE ORGANIZATIONS (HMO)**  
**SUBCHAPTER 3. FINANCIAL**

**PART 1. HMO FORMS AND INSTRUCTIONS**

**365:40-3-1. Licensure forms**

(a) **Certificate of authority form.** The certificate of authority form, executed under the hand and seal of the Insurance Commissioner and delivered, is evidence of an HMO's authority to transact business within Oklahoma.

(b) **Annual statement form.** Annual statement forms must be filed by all admitted companies and postmarked on or before the first day of March of each year, reporting their business and financial condition as of December 31st of the preceding year. The completed forms must be subscribed and sworn to by the President, Secretary and other proper officers of the company. The Annual Statement is referred to as the "Convention Blank" and is in the general form and content approved by the National Association of Insurance Commissioners. The statements shall be prepared in accordance with the NAIC annual statement instruction handbooks and follow the NAIC accounting practices and procedures manuals as supplemented by the Insurance Commissioner by rule.

(c) **Quarterly statement form.** Quarterly statement forms must be filed by all domestic HMOs and postmarked on or before the forty-fifth day after the end of the reporting period of each year, reporting their business and financial condition as of March 31st, June 30th, and September 30th respectively. The completed forms must be subscribed and sworn to by the President, Secretary, and other proper executive officers of the company.

(d) **Uniform Consent To Service of Process form.** All companies must file the Uniform Consent to Service of Process form of the NAIC listing the person to whom service of process is to be forwarded. The appointment of Insurance Commissioner as attorney for service of process form for the State of Oklahoma must be filed by all licensed alien and foreign HMOs using the Uniform Consent to Service of Process form of the NAIC and shall continue in force so long as any liability remains outstanding in Oklahoma against the filing company as required by 36 O.S. § 6903.

(e) **Uniform Certificate of Authority Application form (UCAA).** All companies desiring admission or renewal licensure within Oklahoma shall submit the Uniform Certificate of Authority Application form of the NAIC (UCAA). A company agrees by its execution of such form to transact business, upon issuance of license, in accordance with the laws of Oklahoma, and to pay all fees and taxes as may at any time be imposed by law.

(1) Applicants shall submit three (3) copies of the form and its exhibits and/or attachments as well as any accompanying forms.

(2) State specific information required by the UCAA form shall include applicable items listed in 36 O.S. § 6903(C) and documentation to demonstrate compliance with 36 O.S. § 6907.

(f) **Certificate of similarity form.** All alien and foreign HMOs must execute the certificate of similarity form and such form must be attached to the Annual Statement filed with the Insurance Commissioner. This form certifies that the Annual Statement

filed with Oklahoma is an exact copy of the annual statement filed with the domiciliary regulatory agency.

(g) **Certificate of deposit form.** The certificate of deposit form, when executed by the Insurance Commissioner, certifies to the securities on deposit with the State of Oklahoma. Upon making application for license in Oklahoma, all alien and foreign HMOs must file a substantially similar form executed by their domiciliary regulatory agency.

(h) **Certificate of compliance form.** The certificate of compliance form, when executed by the Insurance Commissioner, certifies that the company named therein has complied with all the requirements of the Oklahoma law and is authorized to transact business within Oklahoma. Upon making application for license in Oklahoma, all alien and foreign HMOs must file a substantially similar form executed by their domiciliary regulatory agency.

(i) **Annual Oklahoma premium tax report.** The Oklahoma annual premium tax report, submitted with the Annual Statement filed with the Insurance Commissioner, reports Oklahoma tax on premium income of the filing HMO, and includes fire marshal tax calculations if applicable.

(j) **Appointment of examiner form.** The appointment of examiner form is used by the Insurance Commissioner to appoint examiners to represent Oklahoma and/or Zone 3 of the National Association of Insurance Commissioners in the examination of an HMO, which empowers the person so appointed to enter into the examination of the HMO named therein.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

### **365:40-3-2. Deposit of securities forms**

(a) **Deposit form.** The deposit form is used by all companies depositing securities with the Insurance Department to be held by the State Treasurer's Office. A description of the securities and value must be itemized on this form and said form must accompany securities being deposited when presented to the Insurance Commissioner for approval. After completion of transaction, a copy of this form is sent to said company for use to obtain release of deposited securities. Prior to the withdrawal of said securities, the deposit form must be executed by a company official authorized to make such withdrawals and presented to the Insurance Commissioner for approval.

(b) **Deposits in the name of Insurance Commissioner and HMO.** Deposits with the Insurance Commissioner made pursuant to 36 O.S. § 6913(B) shall be in the name of the Insurance Commissioner and the HMO making the deposit, and shall not be released by any company holding such security without the signatures of the Insurance Commissioner and the authorized personnel of the HMO. The deposit shall be held by the State Treasurer of Oklahoma unless the Insurance Commissioner approves, pursuant to 36 O.S. § 6913(B), the holding of said deposit by an organization or trustee acceptable to the Insurance Commissioner through which a custodial or controlled account is utilized.

(c) **Resolution form.** Each company having securities on deposit with the Insurance Department must adopt a resolution and file it with the Insurance Commissioner's Office authorizing and empowering certain persons designated by said company to deal with the

securities on deposit. Requests for exchange or withdrawal of deposited securities will not be honored unless made by designated persons.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

### **PART 3. HOLDING COMPANY SYSTEM**

#### **365:40-3-10. Definitions**

Unless the context otherwise requires, terms found in this subsection shall have the same meaning as defined in Section 1651 of Title 36.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

#### **365:40-3-11. Compliance with Article 16A of Title 36**

Definitions of terms found in Section 1651 of Title 36 shall apply when an HMO is seeking to comply with Article 16A of the Oklahoma Insurance Code pursuant to Section 6930 of Title 36. For purposes of this section, the definition of the term insurer as set out in Section 1651 of Title 36 shall include HMOs.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

#### **365:40-3-12. Annual Registration Statements**

(a) **Registration.** Every HMO which is authorized to do business in this state and every individual who controls an HMO shall annually register with the Insurance Commissioner, except a foreign HMO subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any HMO, which is subject to registration under this section, shall register thirty (30) days after it becomes subject to registration, unless the Insurance Commissioner for good cause shown extends the time for registration, and then within such extended time.

(b) **Information and Form Required.** Every HMO subject to registration shall file a registration statement on a form prescribed by the National Association of Insurance Commissioners, which shall contain current information about:

- (1) the capital structure, general financial condition, ownership and management of the HMO and any person controlling the HMO;
- (2) the identity and relationship of every member of the insurance holding company system;
- (3) the following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the previous calendar year between such HMO and its affiliates:
  - (A) loans, other investments or purchases, sales or exchanges of securities of the affiliates by the HMO or of the HMO by its affiliates;
  - (B) purchases, sales or exchanges of assets;

- (C) transactions not in the ordinary course of business;
- (D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the HMO's assets to liability, other than contracts for health care services entered into in the ordinary course of the HMO's business;
- (E) all management and service contracts and all cost-sharing arrangements;
- (F) reinsurance agreements;
- (G) dividends and other distributions to shareholders; and
- (H) consolidated tax allocation agreements.

(4) other matters concerning transactions between registered HMOs and any affiliates as may be included from time to time in any registration forms adopted or approved by the Commissioner; and

(5) any pledge of the HMO's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(c) **Materiality.** No information need be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purposes of this section. Unless the Commissioner by rule, regulation or order provides otherwise, sales purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one percent (1/2 of 1%) or less of an HMO's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.

(d) **Amendments to Registration Statements.** Each registered HMO shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the Commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition, provided, however, that subject to subsection (c) of Section 365:40-3-13 of this regulation, each registered HMO shall so report all dividends and other distributions to shareholders within two (2) business days following the declaration thereof.

(e) **Consolidated Filing.** The Insurance Commissioner may require two or more affiliated HMOs or insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement, so long as such consolidated filings correctly reflect the condition of and transactions between such persons.

(f) **Alternative Registration.** The Insurance Commissioner may allow an HMO which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated HMO which is required to register under subsection (a) and to file all information and material required to be filed pursuant to this Part.

(g) **Exemptions.** The provisions of this section shall not apply to any HMO, information or transaction if and to the extent that the Commissioner by rule, regulation, or order shall exempt the same from the provisions of this section.

(h) **Disclaimer.** Any person may file with the Commissioner a disclaimer of affiliation with any authorized HMO or such a disclaimer may be filed by such HMO or any member of an insurance holding company system. The disclaimer shall fully disclose all

material relationships and bases for affiliation between such person and such HMO as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the HMO shall be relieved of any duty to register or report under this section which may arise out of the HMO's relationship with such person unless and until the Commissioner disallows such a disclaimer. The Commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance. The filing of a disclaimer of affiliation shall not relieve a person from compliance with the requirements of 36 O.S. § 1653 or 6930.

(i) **Summary of Registration Statement.** All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(j) **Reporting Dividends to Shareholders.** Every domestic HMO that is a member of a holding company system shall report to the Insurance Department all dividends to shareholders within five (5) business days following declaration and at least ten (10) days, commencing from date of receipt by the Department, prior to payment thereof.

(k) **Information of HMOs.** Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an HMO where such information is reasonably necessary to enable the HMO to comply with the provisions of this article.

(l) **Violations.** The failure to file a registration statement, any summary of the registration statement thereto, or any additional information required by this section within the time specified for such filing shall be a violation of this section.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

### **365:40-3-13. Transactions with Affiliates**

(a) **Material transactions.** The board of directors will be charged with exercising that degree of care that a prudent person would have exercised under similar circumstances. Material transactions shall be subject to the following standards:

(1) the terms shall be fair and reasonable;

(2) the books, accounts and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transaction; and

(3) the HMO's capital and surplus following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the HMO's outstanding liabilities and adequate to its financial needs.

(b) **Insurance Commissioner's Approval Required.**

(1) The prior written approval of the Insurance Commissioner shall be required for the following transactions between a domestic HMO and its affiliates: sales, guarantees, purchases, exchanges, loans or extensions of credit or investments which, based upon an annual aggregate, involve more than five percent (5%) of the HMO's admitted assets or twenty-five percent (25%) of the HMO's capital and surplus, whichever is less, as of the latest statutory financial statement filed with the Insurance Commissioner; provided, however, that the Insurance

Commissioner must either approve or disapprove within thirty (30) days after receiving written notification from the HMO of the proposed transaction and failure to disapprove the proposed transaction within thirty (30) days shall constitute approval of the transaction;

(2) The prior written approval of the Insurance Commissioner shall be required for any transactions between a domestic HMO and its affiliates where the HMO is found by the Insurance Commissioner to be in unsound condition or in such condition as to render its further transaction of business in Oklahoma hazardous to its enrollees, members, subscribers or to the people of Oklahoma; provided, however, that the Insurance Commissioner must either approve or disapprove within ninety (90) days after written notification by the HMO and failure to disapprove the proposed transaction within ninety (90) days shall constitute approval of the transaction;

(3) The following transactions involving a domestic HMO and any person in its holding company system may not be entered into unless the HMO has notified the Insurance Commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the Insurance Commissioner may permit, and the Insurance Commissioner has not disapproved it within such period.

(A) loans or extensions of credit to any person who is not an affiliate, where the HMO makes such loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the HMO making such loans or extensions of credit provided such transactions are equal to or exceed the lesser of three percent (3%) of the HMO's admitted assets or twenty-five percent (25%) of capital and surplus;

(B) reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the HMO's liabilities equals or exceeds five percent (5%) of the HMO's capital and surplus as of the 31st day of December next preceding, including those agreements which may require as consideration the transfer of assets from an HMO to a nonaffiliate, if an agreement or understanding exists between the HMO and nonaffiliate that any portion of such assets will be transferred to one or more affiliates of the HMO;

(C) all management agreements, service contracts and all cost-sharing arrangements;

(c) **Approvals granted under other sections.** Nothing in this section shall supersede approvals granted under other sections of this title or transactions occurring prior to the effective date of this section.

(d) **Adequacy of Surplus.** For purposes of Article 16A of the Oklahoma Insurance Code and this subsection, in determining whether an HMO's capital and surplus is reasonable in relation to the HMO's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) the size of the HMO as measured by its assets, capital and surplus, reserves, premium writing, insurance in force and other appropriate criteria;
- (2) the extent to which the HMO's business is diversified among the several lines of insurance;
- (3) the number and size of risks in each line of business;
- (4) the extent of the geographical dispersion of the HMO's risks;
- (5) the nature and extent of the HMO's reinsurance program;
- (6) the quality, diversification, and liquidity of the HMO's investment portfolio;
- (7) the recent past and projected future trend in the size of the HMO's investment portfolio;
- (8) the capital and surplus maintained by other comparable HMOs;
- (9) the adequacy of the HMO's reserves;
- (10) the quality and liquidity of investments in subsidiaries. The Insurance Commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of capital and surplus whenever in his judgment such investment so warrants; and
- (11) the quality of the HMO's earnings and the extent to which the reported earnings include extraordinary items.

(e) **Dividends and Other Distributions.** No HMO shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty (30) days after the Commissioner has received notice of the declaration thereof and has not within such period disapproved such payment, or the Insurance Commissioner shall have approved such payment within such thirty-day period.

(1) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the greater of

(A) ten percent (10%) of such HMO's capital and surplus as of the 31st day of December next preceding, or

(B) the net income, not including realized capital gains, for the twelve-month period ending the 31st day of December next preceding, but shall not include pro rata distributions of any class of the HMO's own securities.

(2) Notwithstanding any other provision of law, an HMO may declare an extraordinary dividend or distribution which is conditional upon the Insurance Commissioner's approval thereof, and such a declaration shall confer no rights upon shareholders until

(A) the Insurance Commissioner has approved the payment of such dividend or distribution or

(B) the Insurance Commissioner has not disapproved such payment within the thirty-day period referred to above.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04; Amended at 25 Ok Reg 1686, eff 7-14-2008]

**365:40-3-14. Prior approval pursuant to 36 O.S. § 6903(C)**

(a) Pursuant to 36 O.S. § 6903(D), the prior written approval of the Insurance Commissioner shall be required for amendments or modifications to items required by 36 O.S. § 6903(C)(4), (5), (6), and (11).

(b) Requests for prior written approval required by 36 O.S. § 6903(C)(4) and (11) shall be made on HMO Form D as set forth in Appendix D of this Chapter. Pursuant to O.A.C. 365:40-3-12, an Amended Registration Statement (HMO Form B) shall be filed for all items approved by the Insurance Commissioner.

(c) Requests for prior written approval of items required by 36 O.S. § 6903(C)(5) and (6) shall be submitted to the Rate and Form Compliance Division of the Oklahoma Insurance Department. Pursuant to Section 365:40-3-12, an Amended Registration Statement (HMO Form B) shall be filed for all items approved by the Insurance Commissioner.

(d) Nothing in this section shall supersede approvals granted under other sections of this title or transactions occurring prior to July 14, 2010.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04; Amended at 27 Ok Reg 1565, eff 7-14-10]

#### **365:40-3-15. Notice of amendments or modifications pursuant to 36 O.S. § 6903(C)**

Pursuant to 36 O.S. § 6903(D), amendments or modifications to the items required by 36 O.S. § 6903(C)(1), (2), (3), (7), (8), (9), (10), (12), (13) and (14) shall be included in the Amendments to Registration Statements and shall be made on HMO Form B as set forth in Appendix B of this Chapter.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

#### **365:40-3-16. Redomestication**

(a) Any HMO which is organized under the laws of any other state and is admitted to do business in this state for the purpose of transacting business of a health maintenance organization may become a domestic HMO by complying with all of the requirements of law relative to the organization and licensing of a domestic HMO and by designating its principal place of business at a location in this state. Said domestic HMO will be entitled to like certificates and licenses to transact business in this state and shall be subject to the authority and jurisdiction of this state.

(1) The Insurance Commissioner shall approve an HMO's application to redomesticate unless he finds that:

(A) the HMO cannot comply with all the requirements of law relative to the organization and licensing of a domestic HMO,

(B) after redomestication, the HMO would not be able to satisfy the requirements for the issuance of a license to conduct business as an HMO in this State,

(C) the effect of the redomestication would be substantially to lessen competition in this state or tend to create a monopoly therein,

(D) the financial condition of the HMO is such as might jeopardize or prejudice the interest of its enrollees, members or subscribers or this state and is not in the public interest, or

(E) the competence, experience and integrity of those persons who control the operation of the HMO are such that it would not be in the interest of the enrollees, members, subscribers, the public or the state to permit the domestication.

(2) The HMO's application to redomesticate shall contain information acceptable to the Insurance Commissioner concerning its financial condition, its plan of operation for the succeeding three (3) years, and information concerning the competence, experience and integrity of those persons who control the operation of the HMO.

(3) The application for redomestication shall be deemed approved unless the Insurance Commissioner has, within thirty (30) days after the filing of a complete redomestication application, entered his order disapproving the redomestication.

(b) Any domestic HMO may, upon the approval of the Insurance Commissioner, transfer its domicile to any other state in which it is admitted to transact the business of an HMO, and upon such a transfer, shall cease to be a domestic HMO, and shall be admitted to this state if qualified as a foreign HMO. The Insurance Commissioner shall approve any such proposed transfer unless he shall determine such transfer is not in the interest of the enrollees, members and subscribers of this state.

(c) The certificate of authority, agents appointments and licenses, rates, and other items which the Insurance Commissioner allows, in his discretion, which are in existence at the time any HMO licensed to transact the business of an HMO in this state transfers its corporate domicile to this or any other state by merger, consolidation or any other lawful method shall continue in full force and effect upon such transfer if such insurer remains duly qualified to transact the business of an HMO in this state. All outstanding group or individual contracts of any transferring HMO shall remain in full force and effect and need not be endorsed as to the new name of the company or its new location unless so ordered by the Insurance Commissioner. Every transferring HMO shall file new group or individual contract forms with the Insurance Commissioner on or before the effective date of the transfer, but may use existing group or individual contract forms with appropriate endorsements if allowed by, and under such conditions as approved by the Insurance Commissioner. However, every such transferring HMO shall notify the Insurance Commissioner of the details of the proposed transfer, and shall file promptly, any resulting amendments to corporate documents required to be filed with the Insurance Commissioner.

(d) Applications for redomestication to this State shall be made by the filing of an HMO Form R as set forth in Appendix F of this Chapter.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

### **365:40-3-17. Forms: general requirements**

(a) **Forms A, B, C, D, E and R.** HMO Forms A, B, C, D, E and R, as set forth in Appendices A, B, C, D, E, and F of this Chapter, are intended to be guides in the

preparation of the statements required by Article 16A of Title 36, Section 6930 of Title 36 and O.A.C. 365:40-3-12, 13 and 16. They are not intended to be blank forms that are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable, or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(b) **Filing statements.** Two (2) complete copies of each statement, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Insurance Commissioner by personal delivery to the Office of the Insurance Commissioner in Oklahoma City, Oklahoma, or by mail addressed to the Insurance Commissioner of the State of Oklahoma, 3625 NW 56<sup>th</sup> Street, Suite 100, Oklahoma City, Oklahoma 73112. A copy of an HMO Form C shall be filed in each state in which an HMO is authorized to do business, if the HMO authority of that state has notified the HMO of its request in writing, in which case the HMO has thirty (30) days from receipt of the notice to file such form. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(c) **Format of statements.** Statements should be prepared on paper 8 1/2" x 11" in size and preferably bound at the top or the top left hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language, and monetary values shall be stated in United States Currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States Currency.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04; Amended at 30 Ok Reg 1801, eff 7-14-13]

### **365:40-3-18. Forms: incorporation by reference, summaries and omissions**

(a) **Incorporated by reference.** Information required by an item of HMO Forms A, B, D, E, or R as set forth in Appendices A, B, D, E and F of this Chapter may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of HMO Forms A, B, D, E or R provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the Insurance Commissioner that were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the

material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matters shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(b) **Summary or outline of document.** Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the Insurance Commissioner that was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of such documents is required to be filed with a schedule identifying the omitted documents and setting forth the material details in which the omitted documents differ from the documents filed.

(c) **Forms: additional information and exhibits.** In addition to the information expressly required to be included in HMO Forms A, B, C, D, E and R, as set forth in Appendices A, B, C, D, E and F of this Chapter, the Insurance Commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as he/she may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to HMO Forms A, B, C, D, E or R, as set forth in Appendices A, B, C, D, E and R of this Chapter, shall include on the top of the cover page the phrase: "Change Number [insert number] to" and shall indicate the date of the change and not the date of the original filing.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

### **365:40-3-19. Acquisition of control; statement filing (HMO Form A)**

(a) **HMO Form A.** A person required to file a statement pursuant to Section 6930 of the HMO Act and Section 1653 of the Holding Company Act shall furnish the required information on HMO Form A, hereby made a part of this section, as set forth in Appendix A of this Chapter. Such person shall also furnish the required information on HMO Form E, as set forth in Appendix E of this Chapter.

(b) **Amendments to applications.** The applicant shall promptly advise the Commissioner of any changes in the information so furnished on HMO Form A arising subsequent to the date upon which such information was furnished, but prior to the Commissioner's disposition of the application.

### **(c) Identification of Section 6930/Section 1653(a) Health Maintenance Organizations.**

(1) **Domestic HMO name.** The name of the domestic HMO on the cover page of an HMO Form A should be indicated as follows: "ABC HMO, a subsidiary of XYZ Holding Company."

(2) **Reference to subsidiary HMO and person being acquired.** Where an HMO is being acquired, references to "the HMO" contained in HMO Form A (Appendix

A of this Chapter) shall refer to both the domestic subsidiary HMO and the person being acquired.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**365:40-3-20. Pre-acquisition notification**

If a domestic HMO, including any person controlling a domestic HMO, is proposing a merger or acquisition pursuant to Section 6930 of the HMO Act and Section 1653(a) of the Holding Company Act, that person shall file a preacquisition notification form, HMO Form E, as set forth in Appendix E of this Chapter. In addition to the information required by HMO Form E, the Commissioner may require an expert opinion as to the competitive impact of the proposed acquisition.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**365:40-3-21. Annual registration of HMOs; statement filing (HMO Form B)**

(a) **HMO Form B.** An HMO filing an annual registration statement pursuant to O.A.C. 365:40-3-12 shall furnish the required information on HMO Form B as set forth in Appendix B of this Chapter.

(b) **Summary registration.** An HMO filing an annual registration statement pursuant to O.A.C. 365:40-3-12 is also required to furnish information required on HMO Form C, as set forth in Appendix C of this Chapter. An HMO shall file a copy of HMO Form C in each state in which the HMO is authorized to do business, if requested by the HMO authority/agency of that state.

(c) **Amendments to HMO Form B.**

(1) **15 day amendments.** An amendment to HMO Form B (Appendix B of this Chapter) shall be filed within 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement.

(2) **Filing date amendments.** Amendments shall be filed in the HMO Form B format, as set forth in Appendix B of this Chapter, with only those items which are being amended and reported. Each amendment shall include at the top of the cover page "Amendment No. [insert number] to HMO Form B for [insert year]" and shall indicate the date of the change and not the date of the original filing.

(d) **Alternative and consolidated registrations.**

(1) **Registration statement for affiliates.** Any authorized HMO may file a registration statement on behalf of any affiliated HMO or HMOs which are required to register under Section 365:40-3-12. A registration statement may include information not required by the Holding Company Act regarding any HMO in the insurance holding company system even if such HMO is not authorized to do business in this State. In lieu of filing a registration statement on HMO Form B (Appendix B of this Chapter), the authorized HMO may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided:

(A) the statement or report contains substantially similar information required to be furnished on HMO Form B; and

(B) the filing HMO is the principal company in the insurance holding company system.

(2) **Principal company in holding company.** The question of whether the filing HMO is the principal company in the insurance holding system is a question of fact and an HMO filing a registration statement or reporting in lieu of HMO Form B (Appendix B of this Chapter) on behalf of an affiliated HMO, shall set forth a brief statement of facts which will substantiate the filing HMO's claim that it, in fact, is the principal HMO in the insurance holding company system.

(3) **Section 365:40-3-12(f) or (g).** Any HMO may take advantage of the provisions of Section 365:40-3-12(f) or (g) without obtaining the prior approval of the Insurance Commissioner. The Insurance Commissioner, however, reserves the right to require individual filings if he/she deems such filings necessary in the interest of clarity, ease of administration or the public good.

(e) **Disclaimers and termination of registration.**

(1) **Disclaimer of affiliation.** A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") shall contain the following information:

(A) the number of authorized, issued and outstanding voting securities of the subject.

(B) with respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly.

(C) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person.

(D) a statement explaining why such person should not be considered to control the subject.

(2) **Termination of registration.** A request for termination of registration shall be deemed to have been granted unless the Insurance Commissioner notifies the registrant otherwise within 30 days after receipt of the request.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**365:40-3-22. Dividend to stockholders**

(a) A domestic HMO shall not pay any ordinary cash dividend to stockholders except out of that part of its available surplus funds which is derived from realized net profits on its business (positive unassigned funds). The restriction shall also apply to extraordinary dividends as defined in O.A.C. 365:40-3-13.

(b) A dividend otherwise proper may be payable out of the HMO's earned surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**365:40-3-23. Extraordinary dividends and other distributions**

(a) **Request for approval of extraordinary dividends.** Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

- (1) the amount of the proposed dividend;
- (2) the date established for payment of the dividend;
- (3) a statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
- (4) a copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:
  - (A) the amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the HMO's own securities) paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
  - (B) total capital and surplus as of the 31st day of the December next preceding;
  - (C) the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-months periods; and
  - (D) the dividends paid to stockholders excluding distributions of the HMO's own securities in the preceding two (2) calendar years.
- (5) a balance sheet and statement of income for the period intervening from the last annual statement filed with the Insurance Commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and
- (6) a brief statement as to the effect of the proposed dividend upon the HMO's surplus and the reasonableness of surplus in relation to the HMO's outstanding liabilities and the adequacy of surplus relative to the HMO's financial needs.

(b) **Report of dividends and distributions.** Subject to Section 365:40-3-13, each registered HMO shall report to the Commissioner all dividends and other distributions to shareholders within fifteen (15) business days following the declaration thereof, including the same information required by Section 365:40-3-13(a) and (b).

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**365:40-3-24. Adequacy of surplus**

The factors set forth in Section 365:40-3-13(d) are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an HMO's surplus, no single factor is necessarily controlling. The Commissioner, instead, will consider the net

effect of all of these factors plus other factors bearing on the financial condition of the HMO. In comparing the surplus maintained by other HMOs, the Commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the Commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**365:40-3-25. Failure to file**

Any failure of an HMO, without just cause, to timely file any registration statement, summary or other information as required by the HMO Act or this Part is a violation of this regulation.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**PART 5. MISCELLANEOUS**

**365:40-3-30. Liabilities**

Liabilities shall be computed in accordance with the provisions of the NAIC Accounting Practices and Procedures Manual of the NAIC.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**365:40-3-31. Name of HMO**

(a) No HMO shall be authorized to transact the business of an HMO in Oklahoma which has or uses a name so similar to that of any HMO already so authorized as to cause uncertainty or confusion; except, that in case of conflict of names between two HMOs, the Insurance Commissioner may permit or require the newly-authorized insurer to use in Oklahoma such supplementation or modification of its name as may reasonably be necessary to avoid such conflict.

(b) No insurer shall be authorized to transact the business of an HMO in Oklahoma which has or uses a name which tends to deceive or mislead as to the type of organization of the HMO.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**365:40-3-32 Standards for determining hazardous financial condition**

The following may be considered by the Insurance Commissioner to determine whether the continued operation of any HMO might be deemed to be hazardous to the enrollees, members, subscribers, creditors or the general public. The Commissioner may consider:

- (1) financial condition and market conduct examination reports;

- (2) the National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports;
- (3) the ratios of commission expense, general business expense, group and individual contract benefits and reserve increases as to annual premium and net investment income;
- (4) the HMO's assets;
- (5) the HMO's reinsurance program;
- (6) the HMO's operating results for the last twelve month period or any shorter period of time;
- (7) the financial condition of the HMO's affiliates, subsidiaries, or reinsurers;
- (8) contingent liabilities, pledges or guaranties;
- (9) whether any "controlling person" of an HMO is delinquent in the transmitting to, or payment of, net premiums to such HMO;
- (10) the age and collectibility of receivables;
- (11) competence and fitness of the management of the HMO, including officers, directors, or any other person who directly or indirectly controls the operation of such HMO;
- (12) whether the HMO has failed to respond to the Insurance Commissioner's inquiries relative to the condition of the HMO or has furnished false and misleading information in response to such inquiries;
- (13) whether the HMO either has filed any false or misleading sworn financial statements, or has released false or misleading financial statements to lending institutions or to the general public;
- (14) whether the HMO lacks adequate financial and administrative capacity to meet its obligations in a timely manner;
- (15) whether the HMO has experienced or will experience in the foreseeable future cash flow and/or liquidity problems.

[Source: Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]

**365:40-3-33. Commissioner's authority**

- (a) For the purposes of making a determination of an HMO's financial condition under the Act, the Insurance Commissioner may, if consistent with the facts and existing law:
- (1) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceedings;
  - (2) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;
  - (3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;
  - (4) Increase the HMO's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial likelihood that the HMO will be called upon to meet the obligation undertaken within the next 12-month period.

(b) If the Insurance Commissioner determines that the continued operation of the HMO licensed to transact business in this state may be hazardous to the enrollees, members, subscribers or the general public, then the Insurance Commissioner may, upon his determination, issue an order making such finding and including a list of requirements necessary to abate such finding. Such list may include, among other things:

- (1) reduce the total amount of present and potential liability for group and individual contract benefits by reinsurance;
- (2) reduce, suspend or limit the volume of business being accepted or renewed;
- (3) reduce general and commission expenses by specified methods;
- (4) increase the HMO's capital and surplus;
- (5) suspend or limit the declaration and payment of dividend by an HMO to its stockholders or to its enrollees, members or subscribers;
- (6) file reports in a form acceptable to the Insurance Commissioner concerning the market value of an HMO's assets;
- (7) limit or withdraw from certain investments or discontinue certain investment practices to the extent the Insurance Commissioner deems necessary;
- (8) document the adequacy of premium rates in relation to the risks;
- (9) file, in addition to regular annual and quarterly financial statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on such format as directed by the Insurance Commissioner.

[**Source:** Added at 21 Ok Reg 77, eff 11-1-03 (emergency); Added at 21 Ok Reg 1672, eff 7-14-04]