

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

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Financial  
Part 3. Holding Company System  
365:40-3-13. Transactions with Affiliates [AMENDED]

**AUTHORITY:**

Insurance Commissioner, 36 O.S. §§ 307.1 and 6923

**DATES:**

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Failure of the Legislature to disapprove the rules resulted in approval on May 8, 2008

**Final adoption:**

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**Effective:**

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATION BY REFERENCE:**

n/a

**ANALYSIS:**

The amendment harmonizes the rule with Section 365:40-3-23.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES  
ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION  
308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2008**

**SUBCHAPTER 3. HOLDING COMPANY SYSTEM**

**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 underwriting gain, 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.