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### **Amending Chapter 72, Colorado Revised Statutes 1963, as Amended, Concerning Nonprofit Hospital, Medical-Surgical, and Other Health Service Corporations**

Colorado General Assembly

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## CHAPTER 352

## INSURANCE

NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND  
HEALTH SERVICE CORPORATIONS

(House Bill No. 1012. By Representatives Monfort, Sonnenberg, Safran, Black, and Fowler; also Senators Anderson, Brown, Cisneros, Hahn, Kemp, Lucas, and Oliver.)

## A N A C T

AMENDING CHAPTER 72, COLORADO REVISED STATUTES 1963, AS AMENDED, CONCERNING NONPROFIT HOSPITAL, MEDICAL-SURGICAL, AND OTHER HEALTH SERVICE CORPORATIONS.

*Be it enacted by the General Assembly of the State of Colorado:*

Section 1. Chapter 72 of Colorado Revised Statutes 1963, as amended, is hereby amended BY THE ADDITION OF A NEW ARTICLE 23 to read:

## ARTICLE 23

NONPROFIT HOSPITAL, MEDICAL-SURGICAL,  
AND HEALTH SERVICE CORPORATIONS.

72-23-1. **Short title.**—This article shall be known and may be cited as "The Nonprofit Hospital, Medical-Surgical, and Health Service Corporation Act".

72-23-2. **Purpose.**—It is the policy of the general assembly, and the intent and purpose of this article, to promote the availability of hospital care, medical-surgical care, and other health services on a voluntary nonprofit prepaid basis, and to thereby promote the health and welfare of the people of the state of Colorado.

72-23-3. **Incorporation and organization—exemptions.**—(1) Any nonprofit corporation heretofore or hereafter organized under the laws of the state of Colorado for the purpose of establishing, maintaining, and operating a nonprofit plan, whereby prepaid hospital care, medical-surgical care, and other health services are made available to persons who become subscribers to such plan or plans under a contract with the corporation, shall be subject to and be governed by the provisions of this article, and, except as hereinafter otherwise specifically provided, shall not be subject to the laws of this state relating to insurance or insurance companies.

(2) The provisions of this article shall not apply to any employer's health plan or services established and maintained solely for its employees and their immediate families, nor to any labor organization's health plan

or services established and maintained solely for its members and their immediate families, which plans or services are self-insured, nor to any such health plan or services established, maintained, and insured jointly by any employer and any labor organization or organizations.

**72-23-4. Filing of articles of incorporation.**—(1) Whenever any number of persons shall associate to form a corporation for any of the purposes named in section 72-23-3, they shall submit articles of incorporation which shall be issued in triplicate to the commissioner and the attorney general for examination. After being approved by such officers, the articles shall be filed and recorded in the office of the secretary of state who shall issue a certificate of incorporation. A copy of such articles, certified by the secretary of state, shall be filed with the commissioner.

(2) When not less than the amount required by section 72-23-13 shall have been deposited with the commissioner, as provided for in this article, the commissioner shall cause an examination to be made either by himself or some disinterested person, especially appointed by him for the purpose, who shall certify that the provisions of this article have been complied with by said corporation, as far as applicable thereto. Such certificate shall be filed in the office of the commissioner, who shall thereupon deliver to such corporation a certified copy thereof, which, together with a copy of the articles of incorporation, shall be filed in the office of the clerk and recorder of the county wherein the principal office of the company is to be located, before the authority to commence business is granted.

(3) Whenever any such corporation shall thereafter desire to amend its articles of incorporation, it shall file its certificate of amendment with the commissioner before filing the same with the secretary of state, and if the commissioner, with the advice of the attorney general, shall find the same to have been legally adopted and to be in due legal form and to be not in conflict with the provisions of law governing such companies, then and not otherwise, such certificate of amendment shall be filed with the secretary of state.

(4) Any corporation organized under the laws of this state relating to corporations not for profit prior to the effective date of this article for the purposes named in section 72-23-3, shall within one year after said effective date, comply with all of the provisions hereof and shall thereupon become subject to and be governed by said provisions.

**72-23-5. Contents of articles.**—(1) (a) In addition to the contents required or permitted by the general corporation laws of this state relating to corporations not for profit, the articles of incorporation of any corporation shall comply with the following:

(b) The name of the corporation shall not include the words "insurance", "casualty", "surety", "mutual", or any other words descriptive of the insurance, casualty, or surety business. The corporate name of any corporation to be formed under this article shall not be the same as, or deceptively similar to, the name of any other corporation authorized to do business in this state; and

(c) The statement of purposes shall be in conformity with the provisions of this article.

(2) Any such corporation heretofore organized whose existing articles of incorporation shall not be in substantial conformity with this article shall forthwith cause to be adopted and filed, as herein required, such

amendments thereto as shall be necessary to effect substantial compliance herewith.

**72-23-6. Directors.**—The property and lawful business of every such corporation subject to the provisions of this article shall be held and managed by a board of trustees or directors with such powers and authority as shall be necessary or incidental to the complete execution of the purposes of each such corporation as limited by its articles or the bylaws. No such board shall be less than ten nor more than twenty-four in number.

**72-23-7. Contracts.**—Such corporations subject to the provisions of this article may enter into contracts for the rendering of hospital services, medical-surgical services, and other health services on behalf of any of their subscribers with hospitals maintained by the state, or by any of its political subdivisions, or maintained by a nonprofit corporation organized for hospital purposes, or with other corporations, associations, partnerships, or individuals furnishing hospital services, medical-surgical services, or other health services. Nothing contained in this article shall require any such corporation to contract or remain under contract with any individual hospital, physician, or other purveyor of health services; nor shall any employee, agent, officer, or trustee of any such corporation influence or seek to influence any subscriber in the choice or selection of a contracting hospital or contracting physician, or any other contracting purveyor of health services, except, that nothing in this article shall prevent any such nonprofit corporation which has subscribers or members solely from one industry, from contracting with any physician or physicians to provide medical, surgical, and other health services to such subscribers or members and their immediate families, nor prevent such corporation from specifying or recommending any physician or physicians to render such services to its subscribers or members and their immediate families, for any particular type or types, or classification or classifications, of medical, surgical, or other health care.

**72-23-8. Annual statement.**—All corporations subject to the provisions of this article doing business in this state on the effective date of this article, or which may thereafter do business in this state, shall make and file annually with the commissioner, on or before the first day of March of each year, a statement under oath upon a form to be prescribed by the commissioner stating the amount of all membership dues, or subscriber fees, collected in this state or from residents thereof by the corporation making such statement during the year ending the last day of December next preceding; the amounts actually paid during such year for hospital, medical-surgical, and other health services for the subscribers or members of the corporation, and the amounts placed in established reserves for cases billed but not yet paid, unreported and unbilled cases, retroactive cost adjustments, and membership dues or fees paid in advance but not yet earned. The fee for filing such annual statement shall be fifty dollars.

**72-23-9. Fees paid by corporations.**—(1) (a) There shall be paid to the commissioner by every corporation subject to the provisions of this article the following fees:

(b) For filing a certified copy of articles of incorporation, fifty dollars;

(c) For filing annual statement, fifty dollars;

(d) For certificate of authority to transact business in this state, twenty-five dollars;

(e) For filing each amendment for articles of incorporation, five dollars;

- (f) For each enrollment representative's examination, five dollars;
- (g) For each enrollment representative's initial license, ten dollars;
- (h) For each enrollment representative's renewal license, two dollars;
- (i) For each copy of any document or other paper filed in the office of the commissioner, per folio, twenty cents;
- (j) For comparing and proofreading a copy of any document or other paper submitted for certification with the original thereof as filed in the office of the commissioner, per folio, twenty cents;
- (k) For affixing the seal of the office of the commissioner and certifying any document or other paper, one dollar.

**72-23-10. Authority to do business.**—No corporation subject to the provisions of this article shall transact any business in this state unless it shall first procure from the commissioner a certificate of authority stating that the requirements of the laws of this state have been complied with and authorizing it to do business. The certificate of authority shall expire on the last day of February in each year and shall be renewed annually if the corporation has continued to comply with the provisions of this article.

**72-23-11. Automatic extension of certificate.**—When the annual statement of a corporation subject to the provisions of this article shall have been filed and all fees due from the corporation shall have been tendered, the corporation's certificate of authority to do business in this state shall automatically be extended until such time as the commissioner should refuse to relicense such corporation, and when the fee involved in the renewal of an enrollment representative's license shall have been tendered by the corporation, or the individual representative, the license shall automatically be extended until such time as the commissioner should refuse to renew such license.

**72-23-12. Requirements for certificate of authority.**—(1) (a) The commissioner shall not issue or renew his certificate of authority to any corporation operating or proposing to operate a nonprofit hospital, medical-surgical, and other health services plan, unless:

(b) The subscription or membership certificates which the corporation offers to its subscribers or members, together with a schedule of the dues and fees to be paid by subscribers or members have been filed with the commissioner in accordance with the provisions of section 72-23-15.

(c) The schedule of the dues and fees to be paid by subscribers or members is such as will enable such corporation to meet the expenses of the hospital, medical-surgical, and other health services which are made available to its subscribers or members without impairing the guarantee fund required by section 72-23-13, and the use of such schedule will not result in an accumulation of excess reserves over and above reserves established for claims in process, unreported and unbilled claims, retroactive cost adjustments to the purveyors of hospital, medical-surgical, and other health services and membership dues or fees received in advance but not yet earned. So long as a corporation's unencumbered reserve or surplus over and above the required reserves specified in this section do not exceed a sum equal to one-third of the corporation's total membership dues or subscription fees received during the immediate preceding calendar year, such unencumbered reserve or surplus shall not be deemed an excessive accumulation for the purposes of this section.

**72-23-13. Liquid reserves—guarantee fund deposit.**—(1) No corporation subject to provision of this article shall be permitted to do any business

in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five per cent of the corporation's subscription income collected in the preceding year not exceeding two million dollars, plus two and one-half per cent of such income exceeding two million dollars but not exceeding ten million dollars, plus one per cent of such income exceeding ten million dollars; but, in no event shall such reserves be less than fifty thousand dollars. All corporations subject to the provisions of this article shall place on deposit with the commissioner a guarantee fund of cash or approved securities in an amount determined by such formula, but not less than fifty thousand dollars nor more than one hundred fifty thousand dollars. Any amount of said liquid reserves required by this subsection in excess of one hundred fifty thousand dollars shall be maintained by the corporation at all times, but shall not be required to be placed on deposit with the insurance commissioner.

(2) The cash or securities representing the guarantee fund required by this section shall be deposited with the commissioner who shall give receipts for all securities so deposited with him to the corporation depositing them. It shall be the duty of the commissioner upon the receipt of such securities to forthwith deposit the same in the presence of an authorized officer of the depositing corporation, in a safety deposit box, accessible only to the commissioner or his representative who may be an employee of the insurance department or a designated trust officer of the depository, and an authorized officer of the corporation, in the vault of any bank, trust company, or safety deposit company in the state of Colorado to be selected by the commissioner, and the depositing corporation shall pay the several fees for such boxes. So long as the depositing corporation shall continue solvent the commissioner shall permit such corporation to collect and receive the interest and dividends on the securities so deposited, and from time to time, withdraw any such securities on depositing other acceptable securities in the place of those so withdrawn. If the commissioner shall willfully fail, refuse, or neglect to faithfully keep, deposit, and account for any such securities received by him, or shall willfully fail, refuse, or neglect to furnish proper certificate of securities so held by him, the commissioner shall be responsible therefor upon his official bond, and suit may be brought upon said bond by any person damaged by such failure, refusal, or neglect.

**72-23-14. Scope of benefits.**—The benefits or services which a corporation subject to the provisions of this article may contract to make available to its members or subscribers shall include all of the services made available by hospitals, or other licensed health care institutions, doctors of medicine, osteopathy, dentistry, and podiatry, nursing services, appliances, drugs, medicine, ambulance service, and such other health services or items as the board of trustees of any such corporation may approve; but no corporation subject to the provisions of this article may offer to its members or subscribers any certificate or form which would provide for a cash payment or allowance for sickness, accident, disability, or death, other than payments of or toward the charges made by the purveyors of the health services covered by the certificates issued by said corporation, or for any form of casualty or life insurance unless such corporation shall first comply with the statutes of this state applicable to companies offering such forms of insurance.

**72-23-15. Approval of benefit certificates.**—(1) On and after the effective date of this article, no corporation subject to the provisions hereof shall deliver or issue for delivery in this state any subscription certificate or membership certificate describing the health benefits available there-

under, or any endorsement, rider, or application which becomes a part thereof, until a copy of the form and the schedule of rates, dues, fees, or other periodic charges applicable thereto, to be paid by subscribers or members, have been filed with the commissioner; nor shall any such certificate endorsement, rider, or application be used until the expiration of thirty days after the filing thereof, unless the commissioner shall sooner give his written approval thereto. The commissioner shall notify, in writing, the corporation which has filed any such form if it does not comply with the requirements of law, or if it contains any provision which is deceptive and ambiguous or misleading, specifying the reasons for his opinion. In all other cases the commissioner shall give his approval.

(2) After the expiration of such thirty days from the filing of any such form, or at any time after having given written approval thereof, the commissioner, after a hearing of which at least ten days written notice has been given to the corporation issuing such form, may withdraw approval if he finds said form is being offered to the public by means of advertising, communications, or dissemination of information which is deceptive or misleading. Such disapproval shall be effected by written order of the commissioner, which shall state the grounds for disapproval and the date, not less than thirty days after such hearing when the withdrawal of approval shall become effective.

**72-23-16. Contracts with other organizations.**—Any corporation subject to the provisions of this article may contract with any agency, instrumentality, or political subdivision of the United States of America, or of the state of Colorado for the making available of hospital, medical-surgical, and other health care services, and in aid or furtherance of such contract may accept, receive, and administer in trust, funds directly or indirectly made available by such agency, instrumentality, or political subdivision. Any such corporation may also subcontract with any organization which has contracted with any agency, instrumentality, or political subdivision of the United States of America, or of the state of Colorado for the furnishing of hospital, medical-surgical, or other health services by which subcontract such corporation undertakes to furnish the services specified by the basic contract. Any corporation subject to the provisions of this article may also enter into agreements or contracts with other similar organizations or corporations licensed to do business in this state or any other state for the transfer of subscribers or members, for the reciprocal or joint provision of benefits to the subscribers or members of such corporation and such organizations or such other joint undertakings as the corporation's board of directors or trustees may approve.

**72-23-17. Enrollment representative defined.**—A person who, for compensation, solicits subscription to or the establishment of membership in a prepayment plan offered by a corporation subject to the provisions of this article, or transmits for a person other than himself an application for such subscription or membership, or offers or assumes to act in the negotiation thereof shall be an enrollment representative or agent within the intent of this article.

**72-23-18. Licensing of representatives.**—Every corporation subject to the provisions of this article shall notify the commissioner through its proper officer or agent of the name, title, and address of each person it desires appointed to act as the corporation's enrollment representative or agent. The notice shall be accompanied by an application from the appointee, and shall be in writing upon a form furnished by the commissioner. If upon receipt of such written notice, when accompanied by the fee required by section 72-23-9, it appears that the appointee is a competent and

suitable person who intends to hold himself out in good faith as the corporation's agent, and that he qualifies under the provisions of this section, the commissioner shall issue to such appointee a license which shall state in substance that the person named therein is a constituted enrollment representative or agent of the corporation in this state. The commissioner may at any time prior to the granting of such license require an appointee to submit to an examination, in a form prescribed by the commissioner, on the qualifications of such person to act as an enrollment representative or agent in this state.

**72-23-19. Renewals of licenses.**—If for cause shown, and after a hearing or examination the commissioner shall determine any person to be unsuitable to act as an enrollment representative or agent, he shall thereupon refuse to issue a license or shall revoke any license previously issued, and shall notify in writing both the appointee and the corporation of such refusal. Unless revoked by the commissioner or unless the corporation by written notification to the commissioner cancels the authority of an agent or representative to act for it, any license issued or any renewal thereof shall expire on the first day of January next after its issuance and may be renewed annually upon payment of the annual license renewal fee.

**72-23-20. Examinations and investigations.**—The commissioner, or any person authorized by him, shall have the power to examine the financial condition, affairs, and management of any corporation subject to the provisions of this article. For such purpose he shall have free access to all the books, papers, and documents relating to the business of the corporation, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of such corporation, or any other person in relation to its affairs, transactions, and conditions. The commissioner shall make an examination of each corporation subject to the provisions of this article at least once every three years, and the corporation examined shall pay to the commissioner a fee of fifty dollars for each examiner for each day required in making such examination.

**72-23-21. Revocation of certificate—appeal.**—(1) The commissioner shall not make public the result of any examination or investigation of any corporation found to be insolvent, or with its capital impaired prior to suspending or revoking the authority of such company to do business in this state. If the commissioner determines, after examination, hearing, or other evidence, that such corporation is in an unsound condition, or has failed to comply with the law, or with the provisions of its charter, or that its condition is, or its methods are, such as to render its operations hazardous to the public, or to its subscribers, or that its actual assets, exclusive of its capital, are less than its liabilities, or if its officers or agents refuse to submit to examination, or to perform any legal obligation relative thereto, or refuse on behalf of the corporation to pay the examination charges, he shall suspend or revoke all certificates of authority granted to said corporation, and to its officers or agents, and shall cause notice thereof to be published in one or more daily newspapers published in the city and county of Denver, which shall have a general state circulation, and no solicitation of new business shall thereafter be done by it or its agents in this state, while such default or disability continues, nor until its authority to do business is restored. Before suspending or revoking the certificate of authority of any such corporation, unless it is insolvent or its capital impaired, the commissioner shall grant fifteen days in which to show cause why such action should not be taken.

(2) A corporation whose certificate of authority has been suspended



or revoked by the commissioner, may appeal, within fifteen days after such order to the district court of the city and county of Denver, which court, upon the filing of the proper petition, shall cause the records and orders of the commissioner to be brought before it, and upon hearing of the case by the court de novo, the court shall by its final decree either affirm or reverse and vacate the order of the commissioner.

(3) The court shall have the power to make an order suspending or staying the order of the commissioner suspending or revoking the license of a corporation pending the appeal; but the corporation appealing shall give a bond, with sureties satisfactory to the court, in such amount as the court determines to be just and proper, conditioned to pay to the state and to any and all persons whomsoever any and all loss that may be sustained by reason of the stay or suspension of such order of said commissioner, and that during the period allowed for taking such appeal, the publication of notice of the revocation or suspension of license of such corporation as provided by this section, shall not be made. If the order of the commissioner has been stayed or suspended by the order of said court, such publication shall not be made until after the discharge of such stay or until the affirmation of such order of revocation or suspension.

(4) Upon appeal, the corporation shall be entitled to a trial by jury upon all issues of fact. If the trial is by jury, the court shall submit to the jury specific requests to find, covering the matters in issue separately, and the jury shall return a special verdict upon each question submitted, and if by such verdict it shall be found that the corporation, association, or society is insolvent because of obligations due and unpaid which exceed its assets, the court may render judgment that it be enjoined from exercising any corporate rights, privileges, or franchises in this state.

(5) (a) In the event of such a finding of insolvency, the commissioner shall have and exercise all of the powers and authorities set forth in article 17 of chapter 72, C.R.S. 1963, known as the "Uniform Insurers Liquidation Act".

(b) If no charge of insolvency is made, or, if made, is not established by the verdict of the jury, but it shall be found by such verdict that the corporation, association, or society has exceeded its corporate powers or failed to comply with any provisions of this article or has done or committed any act for which its license may be revoked or suspended under any of the provisions of this article, or has conducted its business unlawfully or fraudulently, the court may make and enter judgment enjoining and restraining it from the commission of such acts or such of them as the court may determine, and in case of failure to desist therefrom within the time to be specified in such judgment, that the corporation be perpetually enjoined from doing any further business in this state. Pending the trial if no bond has been given as provided, upon motion of the attorney general and upon notice to the corporation, association, or society, the court may grant an injunction restraining it and its officers from collecting any debt, or demand and from paying out or in any way transferring or delivering to any person any money, property, or effects, during the pendency of the proceedings except by direction of the court, and may appoint one or more temporary receivers in such cases. From the decree of said district court a writ of error shall lie to the supreme court of the state as in other cases; and it shall be the duty of the district court and of the supreme court to advance the hearing of said matter as far as justice and the business of the court may permit.

72-23-22. **Complaints.**—Any individual subscriber of a corporation

subject to the provisions of this article who believes himself to be aggrieved by any act or omission of such corporation or its officers, directors, agents, or representatives, may file a statement in writing of his grievance in the office of the commissioner and the commissioner may make such investigation of such grievance as he deems appropriate. No such investigation by the commissioner shall act as a bar to any suit in a court of competent jurisdiction instituted by any such member or subscriber, or any defense thereto by the corporation involved.

**72-23-23. Regulations.**—In the implementation of this article, the commissioner may, after notice and hearing, promulgate such reasonable rules and regulations not inconsistent with the provisions of this chapter 72 as he shall deem necessary for the proper administration of this article.

**72-23-24. Exemption of direct payment methods.**—Nothing contained in this article shall be construed to affect or apply to hospitals, or other licensed health care institutions, nor to any individuals, partnerships, associations, or corporations which are the direct purveyors of health services; nor shall anything contained herein be construed to in anyway limit the rights of such hospitals, or other licensed health care institutions or purveyors of health services to establish methods of payment directly with the purchasers of their services; but the commissioner may require from any such institution or purveyor of service such information as will enable him to determine whether any such arrangements for payment for services are subject to the provisions of this article.

**Section 2. Effective date.**—This act shall take effect on July 1, 1967; but any corporation organized prior to the passage of this act, under the laws of the state of Colorado relating to corporations not for profit, for the purpose of administering, maintaining, and operating a health service plan, as described in this act, shall be allowed a period of one year after the effective date of this act to make the applications and filings and to meet the requirements set forth in this act; provided, however, that any corporation organized prior to the passage of this act shall be allowed a period of four years after the effective date of this act to meet requirements of 72-23-13 of this act.

**Section 3. Safety clause.**—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 8, 1967