

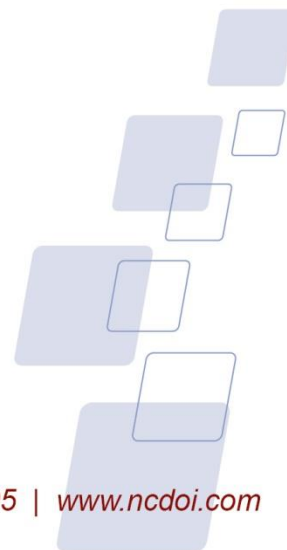
# Prepaid Health Plans (PHP)

## Recommended Solvency, Licensing and Fee Requirements

House Bill 372

An Act to Transform and Reorganize North Carolina's Medicaid  
and NC Health Choice Programs

March 1, 2016



## **Prepaid Health Plans (PHP)**

### **Recommended Solvency, Licensing and Fee Requirements**

### **House Bill 372**

#### **HB 372:**

- *Section 6. Role of the Department of Insurance. – The transformed Medicaid and NC Health Choice system shall include the licensing of PHPs based on solvency requirements established and implemented by the Department of Insurance. The Commissioner of Insurance, in consultation with the Director of the Division of Health Benefits, shall develop recommended solvency requirements that are similar to the solvency requirements for similarly situated regulated entities and recommended licensing procedures that include an annual review by the Commissioner and reporting of changes in licensure to the Division of Health Benefits. The Commissioner shall report the recommendations as well as proposed fees to offset the cost of licensure and any necessary statutory changes to the Joint Legislative Oversight Committee on Medicaid and NC Health Choice by March 1, 2016.*

The North Carolina Department of Insurance's (Department) recommended solvency and licensing requirements for PHPs are based on the solvency and licensing requirements for North Carolina Health Maintenance Organizations (HMOs). HMOs are considered by the Department to be the most similarly situated regulated organization. HMOs are regulated under Article 67 of Chapter 58 of the North Carolina General Statutes.

**Note:** *These proposed requirements are intended to apply only to PHPs that are not already licensed as health organizations under Chapter 58 of the North Carolina General Statutes.*

### **Financial Requirements**

#### ***Capital Standards***

- Each PHP will be required to maintain a minimum capital and surplus equal to the greater of one million dollars (\$1,000,000) or the amount required pursuant to the risk based capital (RBC) standards of Article 12 of Chapter 58 of the North Carolina General Statutes.
- Capital and surplus provide a cushion against unexpected increases in liabilities or decreases in assets.
- By utilizing RBC standards the capital and surplus requirement for a PHP may increase or decrease as a PHP increases or decreases its risk.
- The five major categories of risks involved in RBC are asset risk – affiliates, asset risk – other, underwriting risk, credit risk and business risk.

- The RBC calculation uses a standardized formula to establish a de facto minimum capital level (authorized control level or ACL) that is then compared to a company's actual capital level. There are five ratio levels that are used by the Department to determine what action, if any, should be taken against a company.
- Utilizing a fixed minimum capital standard rather than RBC is not considered adequate by the Department.
- Fixed minimum capital standards are generally intended to make sure that there is adequate capital to initiate operations and to fund receivership expenses in the event of insolvency.

### ***Reserve Requirements***

- Each PHP will be required, when determining liability, to include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, that are unpaid and for which the PHP may be liable and to provide for the expense of adjustment or settlement of such claims.
- Reserves have to be actuarially determined.

### ***Investment Restrictions***

- The funds of a PHP can only be invested or maintained in securities, other investments, or assets permitted by the laws of North Carolina for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the Commissioner may permit.
- The Commissioner will not allow any investment if in his opinion such investment would substantially and adversely affect the financial soundness of the PHP and endanger its ability to meet its obligations.

### ***Deposits***

- The Commissioner will require a minimum deposit of five hundred thousand dollars (\$500,000) or such higher amount as he deems necessary.
- All deposits will be kept on deposit in accordance with the provisions of Article 5 of Chapter 58 of the North Carolina General Statutes.

### ***Working Capital***

- At the time of licensing a PHP must have working capital of at least \$1,500,000.
- Working capital must be sufficient to cover all start-up costs and operating expenses for a reasonable period of time from the date of issuance of the license.
- Going forward, the amount of working capital shall be enough to reasonably expect the PHP to meet its obligations.

### ***Financial Reporting Requirements***

- Each PHP will be subject to G.S. 58-2-165 which will require each PHP to submit financial information consistent with that required for other insurers, including HMOs. These standardized reports will be utilized by Department analysts in order to determine a PHP's financial condition.
- As with other insurers, PHPs will report utilizing statutory accounting principles (SAP).
- PHPs will file financial statements utilizing the NAIC Model Financial Statement Blank.
- The PHP annual filing will include an actuarial certification of unpaid claim reserves and a calculation of risk based capital.
- Each PHP will be required to file audited financial statements with the Department on or before June 1 of each year.
- PHP's will be subject to Article 19 of Chapter 58 of the North Carolina General Statutes (Insurance Holding Company Act) in order to monitor transactions between a PHP and its affiliates.
- All financial filings will be treated as public documents.

### ***Examinations***

- The Commissioner will be allowed to make an examination of the affairs of any PHP as often as the Commissioner deems necessary but not less frequently than once every five years.
- Examinations will be conducted under G.S. 58-2-131 through 58-2-134 (Examination Law).

### ***Protection against Insolvency***

- In addition to the \$500,000 deposit and the capital and surplus requirement, each PHP will be required to have and maintain at all times an adequate plan for protection against insolvency. Such a plan may involve procuring a reinsurance agreement covering excess loss, stop loss, or catastrophes.

### **Department Intervention**

When a PHP has been identified as troubled or potentially troubled, the Department will have the regulatory obligation to take preventive and corrective measures that are timely, suitable and necessary to reduce the impact of risks identified during on-site and off-site solvency monitoring.

### ***Hazardous Financial Condition***

- Whenever the condition of a PHP indicates that the continued operation of a PHP might be hazardous to its enrollees, creditors, or the general public, then the Commissioner may order the PHP to take such action as may be reasonably necessary to rectify the condition.
- The Commissioner may consider any or all of the standards in G.S. 58-30-60(b) when determining whether the continued operation of a PHP is hazardous to its enrollees, creditors or the general public.

- The Commissioner will notify the Division of Health Benefits prior to taking any action against a PHP.

### ***Suspension or Revocation of License***

- The Commissioner may suspend or revoke a PHP license for various reasons including:
  - The PHP is operating significantly in contravention of its basic organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted at the time of application, unless amendments to such submissions have been filed with and approved by the Commissioner.
  - The PHP is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.
  - The PHP is operating in a manner that would be hazardous to its enrollees.
  - The PHP knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the PHP or with any order issued by the Commissioner after notice and opportunity for a hearing.
  - The PHP has knowingly published or made to the Department or to the public any false statement or report, including any report or any data that serves as the basis for any report, required to be submitted by the PHP.
- The Commissioner will notify the Division of Health Benefits prior to suspending or revoking a PHP license.

### ***Rehabilitation and Liquidation***

- The Commissioner may apply for an order directing him to rehabilitate or liquidate a PHP upon one or more grounds set out in Article 30 of Chapter 58 of the North Carolina General Statutes or when in his opinion the continued operation of the PHP would be hazardous either to the enrollees, creditors or to the general public.
- Any rehabilitation or liquidation of a PHP will be deemed to be the rehabilitation or liquidation of an insurance company and will be conducted under the supervision of the Commissioner pursuant to Article 30 of Chapter 58 of the North Carolina General Statutes.
- The provisions of Articles 48 and 62 of Chapter 58 of the North Carolina General Statutes don't apply to PHPs (no guaranty association coverage).
- Priority will be given to the Department of Health and Human Services over all other claims in G.S. 58-30-220 except for claims in G.S. 58-30-220(1) (cost of the receiver's administrative expenses).

### **LICENSING**

- A new license type will be created for PHPs that are not already licensed as a health organization in North Carolina.
- The application process is substantially similar to the application process for HMOs.

- The application will require an applicant to provide certain information to the Department including:
  - A list of the names, addresses, official positions and biographical affidavit of the persons who are to be responsible for the conduct of the affairs of the applicant, including, but not limited to all members of the board of directors, executive committee, and the principal officers accompanied by a completed release of information for each of these individuals.
  - A detailed plan of operation.
  - A description of the nature and extent of any reinsurance program to be implemented.
  - Disclosure identifying all affiliates, including a description of any management, service or cost sharing arrangements.
  - Financial statements showing the applicant's assets, liabilities, and sources of financial support.
  - A financial feasibility study which includes:
    - Detailed enrollment projections
    - A projection of balance sheets
    - A projection of cash flow statements showing:
      - Capital expenditures
      - Purchase and sale of investments
      - Deposits with the State
    - Income and expense statements anticipated from the start of operations until the organization has net income for at least one year.
    - A statement as to the sources of working capital as well as any other sources of funding.
  - A description of the procedures to be implemented to meet the protection against insolvency requirements.
- The Department will issue a license to the applicant upon the payment of the application fee and upon being satisfied of the following:
  - The amounts provided as working capital are repayable only out of earned income in excess of amounts paid and payable for operating expenses and expenses of providing services and such reserve as the Department of Insurance deems adequate.
  - That the amount of money actually available for working capital is sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the license.
  - The adequacy of the expertise, experience, and character of the person or persons who will manage the PHP.
- After licensure a PHP will be required to, in addition to all financial reporting requirements:
  - Submit to the Commissioner for approval any material change in the information submitted at the time of licensure.
  - Report to the Division of Health Benefits any change in licensing status.

**FEES**

The amount of fees necessary to offset the cost of licensing, including ongoing solvency monitoring, will vary based on the number of PHPs licensed:

# PHPs	3	4	5	6	7	8
Estimated Salary & Benefits	\$536,718	\$640,376	\$725,606	\$725,606	\$725,606	\$1,018,152
Estimated Other Expenses	40,621	47,605	54,446	54,446	54,446	75,256
<b>Estimated Total</b>	<b>\$577,339</b>	<b>\$687,981</b>	<b>\$780,052</b>	<b>\$780,052</b>	<b>\$780,052</b>	<b>\$1,093,408</b>

# PHPs	9	10	11	12	13
Estimated Salary & Benefits	\$1,018,152	\$1,158,666	\$1,158,665	\$1,158,665	\$1,158,665
Estimated Other Expenses	75,256	82,240	82,240	82,240	82,240
<b>Total</b>	<b>\$1,093,408</b>	<b>\$1,240,905</b>	<b>\$1,240,905</b>	<b>\$1,240,905</b>	<b>\$1,240,905</b>

## **Proposed Statutory Changes for the Licensing of Prepaid Health Plans**

### Article xx.

#### Prepaid Health Plan Licensing.

##### **§ 58-xx-1. Short title.**

This Article may be cited as the Prepaid Health Plan Licensing Act.

##### **§ 58-xx-5. Definitions.**

(a) "Commissioner" means the Commissioner of Insurance.

(b) "Enrollee" means an individual who is covered by and receives health care services through a PHP.

(c) "Health care services" means services provided by a PHP under a capitated contract with the North Carolina Department of Health and Human Services through the Division of Health Benefits.

(d) "Person" has the same meaning as in G.S. 58-1-5(9).

(e) "Prepaid Health Plan" or "PHP" means a person that has entered into a capitated contract with the North Carolina Department of Health and Human Services through the Division of Health Benefits to deliver Medicaid and NC Health Choice services.

(f) "Working capital" means the excess of current assets over current liabilities; provided that the only borrowed funds that may be included in working capital must be those borrowed funds that are repayable only from net earned income and must be repayable only with the advance permission of the Commissioner.

(g) "Insolvent" or "insolvency" means that the PHP has been declared insolvent and is placed under an order of liquidation by a court of competent jurisdiction.

##### **§ 58-xx-10. Licensing.**

(a) Notwithstanding any law of this State to the contrary, only those persons authorized by the Department of Health and Human Services, through the Division of Health Benefits, may apply to the Commissioner for a license to operate a PHP in compliance with this Article.

(b) Any person that is already a licensed health organization in this State under this Chapter shall not be subject to this Article provided that the solvency requirements for such organization are equal to or greater than the requirements of this Article.

(c) Each license application shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Commissioner, and shall be set forth or be accompanied by the following:

- (1) A copy of the organizational documents, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;
- (2) A copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;
- (3) A list of the names, addresses, official positions and biographical affidavit of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation, and the partners or members in the case



of a partnership or association, accompanied by a completed release of information for each of these individuals, on forms acceptable to the Commissioner;

- (4) A disclosure identifying all affiliates, including a description of any management, service, or cost sharing arrangements;
- (5) Name and address of registered agent;
- (6) A detailed plan of operation;
- (7) The names and addresses of the applicant's qualified actuary and external auditors;
- (8) Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the Commissioner directs that additional or more recent financial information is required for the proper administration of this Article;
- (9) A financial feasibility study, which includes detailed enrollment projections, a projection of balance sheets, cash flow statements, showing any capital expenditures, purchase and sale of investments and deposits with the State, and income and expense statements anticipated from the start of operations until the PHP has had net income for at least one year; and a statement as to the sources of working capital as well as any other sources of funding;
- (10) A power of attorney duly executed by such applicant, if not domiciled in this State, appointing the Commissioner and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this State upon whom all lawful process in any legal action or proceeding against the PHP on a cause of action arising in this State may be served;
- (11) A description of the procedures to be implemented to meet the protection against insolvency requirements of G.S. 58-xx-110;
- (12) Such other information as the Commissioner may require to make the determinations required in G.S. 58-xx-20.

(d) A PHP shall file a notice describing any significant modification of the operation set out in the information required by subsection (b) of this section. Such notice shall be filed with the Commissioner prior to the modification. If the Commissioner does not disapprove within 90 days after the filing, such modification shall be deemed to be approved. Every PHP shall file with the Commissioner all subsequent changes in the information or forms that are required by this Article to be filed with the Commissioner.

#### **§ 58-xx-15. Commissioner use of consultants and other professionals.**

The Commissioner may contract with consultants and other professionals to expedite and complete the application process, examinations, and other regulatory activities required pursuant to this Article, the costs of which shall be reimbursed by the applicant or licensee. Such contracts for financial, legal, examination and other services shall not be subject to any of the following:

- (1) G.S. 114-2.3.
- (2) G.S. 147-17.

- (3) Articles 3, 3C, and 8 of Chapter 143 of the General Statutes, together with rules and procedures adopted under those Articles concerning procurement, contracting, and contract review.

**§ 58-xx-20. Issuance and continuation of license.**

(a) Before issuing or continuing any such license, the Commissioner of Insurance may make such an examination as he deems expedient. The Commissioner of Insurance shall issue a license upon the payment of the application fee prescribed in G.S. 58-xx-160 and upon being satisfied on the following points:

- (1) The applicant, other than acquiring a license under this Article, has been approved by the North Carolina Department of Health and Human Services, through the Division of Health Benefits, to enter into a capitated contract for the delivery of Medicaid and NC Health Choice services;
  - (2) The applicant has a minimum capital and surplus equal to or greater than that required by G.S. 58-xx-110(b);
  - (3) The amounts provided as working capital are repayable only out of earned income in excess of amounts paid and payable for operating expenses and expenses of providing services and such reserve as the Department of Insurance deems adequate, as provided hereinafter;
  - (4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the license and that the PHP is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. Such working capital shall initially be a minimum of one million five hundred thousand dollars (\$1,500,000) or such higher amount as the Commissioner shall determine to be adequate.
  - (5) The adequacy of the expertise, experience, and character of the person or persons who will manage the PHP.
- (b) A license shall be denied only after compliance with the requirements of G.S. 58-xx-155.

**§ 58-xx-25. Deposits.**

(a) The Commissioner shall require a minimum deposit of five hundred thousand dollars (\$500,000) or such higher amount as he deems necessary for the protection of enrollees.

(b) All deposits required by this section shall be administered in accordance with the provisions of Article 5 of this Chapter.

**§ 58-67-30. Management and exclusive agreements; custodial agreements.**

(a) No PHP shall enter into an exclusive management or custodial agreement unless the agreement is first filed with the Commissioner and approved under this section within 45 days after filing or such reasonable extended period as the Commissioner shall specify by notice that is given within the 45 day period.

(b) The Commissioner shall disapprove an agreement submitted under subsection (a) of this section if the Commissioner determines that the agreement:

- (1) Subjects the PHP to excessive charges;
- (2) Extends for an unreasonable period of time;

- (3) Does not contain fair and adequate standards of performance;
- (4) Enables persons under the contract to manage the PHP who are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the PHP with due regard for the interests of its enrollees, creditors, or the public; or
- (5) Contains provisions that impair the interests of the PHP's enrollees, creditors, or the public.

**§ 58-xx-45. Fiduciary responsibilities.**

Any director, officer or partner of a PHP who receives, collects, disburses, or invests funds in connection with the activities of such PHP shall be responsible for such funds in a fiduciary relationship to the enrollees.

**§ 58-xx-55. Statements filed with Commissioner.**

Every PHP subject to this Article is subject to G.S. 58-2-165.

**§ 58-xx-60. Investments.**

(a) With the exception of investments made in accordance with subsection (b), the funds of a PHP shall be invested or maintained only in securities, other investments, or other assets permitted by the laws of this State for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the Commissioner may permit.

(b) A PHP may, with the Commissioner's prior approval:

- (1) Invest its funds to purchase, lease, construct, renovate, operate or maintain hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the PHP.
- (2) Make loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation or corporations under its control for the purpose of acquiring or constructing medical facilities and hospitals or in furtherance of a program providing health care services to enrollees.

(c) The Commissioner will not allow any investment if in his opinion such investment would substantially and adversely affect the financial soundness of the PHP and endanger its ability to meet its obligations.

**§ 58-xx-100. Examinations.**

The Commissioner may make an examination of the affairs of any PHP as often as the Commissioner deems it necessary for the protection of the interests of the people of this State but not less frequently than once every five years. Examinations shall otherwise be conducted under G.S. 58-2-131 through G.S. 58-2-134.

**§ 58-xx-105. Hazardous financial condition.**

(a) Whenever the financial condition of any PHP indicates a condition such that the continued operation of the PHP might be hazardous to its enrollees, creditors, or the general

public, then the Commissioner may order the PHP to take such action as may be reasonably necessary to rectify the existing condition, including but not limited to one or more of the following steps:

- (1) To reduce the total amount of present and potential liability for benefits by reinsurance;
  - (2) To reduce the volume of new business being accepted;
  - (3) To reduce the expenses by specified methods;
  - (4) To suspend or limit the writing of new business for a period of time; or
  - (5) To require an increase to the PHP's capital and surplus by contribution.
- (b) The Commissioner may consider any or all of the standards in G.S. 58-30-60(b) when determining whether the continued operation of a PHP is hazardous to its enrollees, creditors or the general public.
- (c) The remedies listed above are in addition to, and not in lieu of, the remedies and measures available to the Commissioner under the provisions of Article 30 of this Chapter.
- (d) The Commissioner shall notify the Division of Health Benefits of the North Carolina Department of Health and Human Services prior to taking any action against a PHP under this section.

#### **§ 58-xx-110. Protection against insolvency.**

- (a) The Commissioner shall require deposits in accordance with the provisions of G.S. 58-xx-25.
- (b) Each PHP shall maintain a minimum capital and surplus equal to the greater of one million dollars (\$1,000,000) or the amount required pursuant to the risk-based capital provisions of Article 12 of this Chapter.
- (c) Every PHP shall have and maintain at all times an adequate plan for protection against insolvency acceptable to the Commissioner. In determining the adequacy of such a plan, the Commissioner may consider:
- (1) A reinsurance agreement preapproved by the Commissioner covering excess loss, stop loss, or catastrophes. The agreement must provide that the Commissioner will be notified no less than 60 days prior to cancellation or reduction of coverage.
  - (2) Any other arrangements offering protection against insolvency that the Commissioner may require.

#### **§ 58-xx-120. Continuation of benefits.**

- (a) The Commissioner shall require that each PHP have a plan for handling insolvency, which plan allows for continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to enrollees who are confined in an inpatient facility until their discharge or expiration of benefits. In considering such a plan, the Commissioner may require:
- (1) Insurance to cover the expenses to be paid for benefits after an insolvency;
  - (2) Provisions in provider contracts that obligate the provider to provide services for the duration of the period after the PHP's insolvency for which premium payment has been made and until the enrollees' discharge from inpatient facilities;
  - (3) Insolvency reserves such as the Commissioner may require;

- (4) Letters of credit acceptable to the Commissioner;
- (5) Any other arrangements to assure that benefits are continued as specified above.

**§ 58-xx-135. Incurred but not reported claims.**

(a) Every PHP shall, when determining liability, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures that have been incurred, whether reported or unreported, that are unpaid and for which such PHP is or may be liable; and to provide for the expense of adjustment or settlement of such claims.

(b) Such liabilities shall be computed in accordance with rules adopted by the Commissioner for HMOs upon reasonable consideration of the ascertained experience and character of the PHP.

**§ 58-xx-140. Suspension or revocation of license.**

(a) The Commissioner may suspend or revoke a PHP license if the Commissioner finds that the PHP:

- (1) Is operating significantly in contravention of its organizational document, or in a manner contrary to that described in and reasonably inferred from any other information submitted under G.S. 58-xx-10, unless amendments to such submissions have been filed with and approved by the Commissioner.
- (2) Is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees.
- (3) Is operating in a manner that would be hazardous to its enrollees.
- (4) Knowingly or repeatedly fails or refuses to comply with any law or rule applicable to the PHP or with any order issued by the Commissioner after notice and opportunity for a hearing.
- (5) Has knowingly published or made to the Department or to the public any false statement or report.

(b) A license shall be suspended or revoked only after compliance with G.S. 58-xx-155.

(c) When a PHP license is suspended, the PHP shall not, during the suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation.

(d) When a PHP license is revoked, the PHP shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the PHP. The PHP shall engage in no advertising or solicitation. The Commissioner may, by written order, permit such further operation of the PHP as the Commissioner may find to be in the best interest of enrollees and the State of North Carolina.

(e) The Commissioner shall notify the Division of Health Benefits of the North Carolina Department of Health and Human Services prior to taking any action against a PHP under this section.

**§ 58-xx-145. Rehabilitation or liquidation of PHP.**

Any rehabilitation or liquidation of a PHP shall be deemed to be the rehabilitation or liquidation of an insurance company and shall be conducted under the supervision of the

Commissioner pursuant to Article 30 of this Chapter. The Commissioner may apply for an order directing him to rehabilitate or liquidate a PHP upon one or more grounds set out in Article 30 of this Chapter or when in his opinion the continued operation of the PHP would be hazardous either to the enrollees or to the people of this State. Priority shall be given to the North Carolina Department of Health and Human Services over all other claims in G.S. 58-30-220 except for claims in G.S. 58-30-220(1).

**§ 58-xx-150. Regulations.**

The Commissioner may, after notice and hearing, promulgate reasonable rules and regulations as are necessary or proper to carry out the provisions of this Article. Such rules and regulations shall be subject to review in accordance with G.S. 58-xx-155.

**§ 58-xx-155. Administrative procedures.**

(a) When the Commissioner has cause to believe that grounds for the denial of an application for a license exist, or that grounds for the suspension or revocation of a license exist, he shall notify the PHP in writing specifically stating the grounds for denial, suspension, or revocation and fixing a time of at least 30 days thereafter for a hearing on the matter.

(b) After such hearing, or upon the failure of the PHP to appear at such hearing, the Commissioner shall take action as is deemed advisable or written findings which shall be mailed to the PHP. The action of the Commissioner shall be subject to review by the Superior Court of Wake County. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the Commissioner in whole or in part.

(c) The provisions of Chapter 150B of the General Statutes of this State shall apply to proceedings under this section to the extent that they are not in conflict with subsections (a) and (b).

**§ 58-xx-160. Fees.**

Every PHP subject to this Article shall pay to the Commissioner a fee of \_\_\_\_\_ dollars (\$\_\_\_\_\_.00) for filing an application for a license and an annual license continuation fee of \_\_\_\_\_ dollars (\$\_\_\_\_\_) for each license. The license shall continue in full force and effect, subject to timely payment of the annual license continuation fee in accordance with G.S. 58-6-7 and subject to any other applicable provisions of the insurance laws of this State.

**§ 58-xx-165. Penalties and enforcement.**

(a) The Commissioner may, in addition to or in lieu of suspending or revoking a license under G.S. 58-xx-140, proceed under G.S. 58-2-70, provided that the PHP has a reasonable time within which to remedy the defect in its operations that gave rise to the procedure under G.S. 58-2-70.

(b) Any person who violates this Article or any other provision of this Chapter that expressly applies to PHPs shall be guilty of a Class 1 misdemeanor.

(c) (1) If the Commissioner shall for any reason have cause to believe that any violation of this Article or any other provision of this Chapter that expressly applies to PHPs has occurred or is threatened, the Commissioner may give notice to the PHP and to the representatives or other persons who appear to be involved in such suspected violation to arrange a conference with the alleged



violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation, and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation.

- (2) Proceedings under this subsection shall not be governed by any formal procedural requirements, and may be conducted in such manner as the Commissioner may deem appropriate under the circumstances.
- (d) (1) The Commissioner may issue an order directing a PHP or a representative of a PHP to cease and desist from engaging in any act or practice in violation of the provisions of this Article or any other provision of this Chapter that expressly applies to PHPs.
- (2) Within 30 days after service of the cease and desist order, the respondent may request a hearing on the question of whether acts or practices have occurred that are in violation of this Article or any other provision of this Chapter that expressly applies to PHPs. The hearing shall be conducted under Article 3A of Chapter 150B of the General Statutes, and judicial review shall be available as provided by Article 4 of Chapter 150B of the General Statutes.

(e) In the case of any violation of the provisions of this Article or any other provision of this Chapter that expressly applies to PHPs, if the Commissioner elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued under subsection (d) of this section, the Commissioner may institute a proceeding to obtain injunctive relief, or seeking other appropriate relief, in the Superior Court of Wake County.

#### **§ 58-xx-170. Statutory construction and relationship to other laws.**

Except as otherwise provided in this Chapter, provisions of the insurance laws and service corporation laws do not apply to any PHP licensed under this Article. This section does not apply to an insurer or service corporation licensed and regulated under the insurance laws or the service corporation laws of this State except with respect to its PHP activities authorized and regulated under this Article or any other provision of this Chapter that expressly applies to PHPs.

#### **§ 58-xx-171. Other laws applicable to PHPs.**

The following provisions of this Chapter are applicable to PHPs that are subject to this Article:

<u>G.S. 58-2-125.</u>	<u>Authority over all insurance companies; no exemptions from license.</u>
<u>G.S. 58-2-131 -</u>	
<u>G.S. 58-2-134.</u>	<u>Examination Law.</u>
<u>G.S. 58-2-150.</u>	<u>Oath required for compliance with law.</u>
<u>G.S. 58-2-155.</u>	<u>Investigation of charges.</u>
<u>G.S. 58-2-160.</u>	<u>Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.</u>
<u>G.S. 58-2-162.</u>	<u>Embezzlement by insurance agents, brokers, or administrators.</u>
<u>G.S. 58-2-165.</u>	<u>Annual, semiannual, monthly, or quarterly statements to be filed with Commissioner.</u>

<u>G.S. 58-2-185.</u>	<u>Record of business kept by companies and agents; Commissioner may inspect.</u>
<u>G.S. 58-2-190.</u>	<u>Commissioner may require special reports.</u>
<u>G.S. 58-2-195.</u>	<u>Commissioner may require records, reports, etc., for agencies, agents, and others.</u>
<u>G.S. 58-2-200.</u>	<u>Books and papers required to be exhibited.</u>
<u>G.S. 58-2-205.</u>	<u>CPA audits of financial statements.</u>
<u>G.S. 58-7-21.</u>	<u>Credit allowed a domestic ceding insurer.</u>
<u>G.S. 58-7-26.</u>	<u>Asset or reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of G.S. 58-7-121.</u>
<u>G.S. 58-7-30.</u>	<u>Insolvent ceding insurer.</u>
<u>G.S. 58-7-31.</u>	<u>Life and health reinsurance agreements.</u>
<u>G.S. 58-7-46.</u>	<u>Notification to Commissioner for president or chief executive officer changes.</u>
<u>G.S. 58-7-73.</u>	<u>Dissolution of insurers.</u>
<u>G.S. 58-7-160.</u>	<u>Investments unlawfully acquired.</u>
<u>G.S. 58-7-162.</u>	<u>Allowed or admitted assets.</u>
<u>G.S. 58-7-163.</u>	<u>Assets not allowed.</u>
<u>G.S. 58-7-165.</u>	<u>Eligible investments.</u>
<u>G.S. 58-7-167.</u>	<u>General qualifications.</u>
<u>G.S. 58-7-168.</u>	<u>Authorization of investment.</u>
<u>G.S. 58-7-170.</u>	<u>Diversification.</u>
<u>G.S. 58-7-172.</u>	<u>Cash and deposits.</u>
<u>G.S. 58-7-173.</u>	<u>Permitted insurer investments.</u>
<u>G.S. 58-7-179.</u>	<u>Mortgage loans.</u>
<u>G.S. 58-7-180.</u>	<u>Chattel mortgages.</u>
<u>G.S. 58-7-183.</u>	<u>Special consent investments.</u>
<u>G.S. 58-7-185.</u>	<u>Prohibited investments and investment underwriting.</u>
<u>G.S. 58-7-188.</u>	<u>Time limit for disposal of ineligible property and securities; effect of failure to dispose.</u>
<u>G.S. 58-7-190.</u>	<u>Valuation of securities and investments.</u>
<u>G.S. 58-7-193.</u>	<u>Valuation of property.</u>
<u>G.S. 58-7-197.</u>	<u>Replacing certain assets; reporting certain liabilities.</u>
<u>G.S. 58-7-200.</u>	<u>Investment transactions.</u>
<u>G.S. 58-7-205.</u>	<u>Derivative transactions.</u>
<u>Part 7 of Article 10.</u>	<u>Annual Financial Reporting.</u>
<u>Article 12.</u>	<u>Risk-Based Capital Requirements.</u>
<u>Article 13.</u>	<u>Asset Protection Act.</u>
<u>Article 19.</u>	<u>Insurance Holding Company System Regulatory Act.</u>

**§ 58-xx-175. Filings and reports as public documents.**

All applications, filings and reports required under this Article shall be treated as public documents.

**§ 58-xx-185. Severability.**



If any section, term, or provision of this Article shall be adjudged invalid for any reason, such judgments shall not affect, impair, or invalidate any other section, term, or provision of this Article, but the remaining sections, terms, and provisions shall be and remain in full force and effect.