



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

LICENSURE REQUIREMENTS FOR ARTICLE 43 CORPORATIONS

I. PERMIT AND LICENSE TO CONDUCT BUSINESS

A. Proposed Certificate of Incorporation

Prior to applying for a permit to solicit people and groups to be insured, a draft of the proposed corporation's certificate of incorporation must have the approval of the Superintendent of Financial Services and the Commissioner of Health prior to filing with the Secretary of State (§404(c) Not-For-Profit Corporation Law). A corporation providing medical expense indemnity, dental expense indemnity, hospital service or health service must first be organized under the Not-For-Profit Corporation Law, or as a consumers' cooperative stock corporation under Article Two of the Cooperative Corporations Law. The Not-For-Profit Corporation Law provides that a corporation of this type is a type D corporation and is subject to all provisions applicable to a type B Corporation (§201 Not-For-Profit Corporation Law).

The required contents of the certificate of incorporation are set forth in §402 of the Not-For-Profit Corporation Law. In addition, the certificate of incorporation must also include:

- a. the type of Article 43 Corporation license required (medical expense indemnity, dental expense indemnity, hospital service or health service) (§4301 Insurance Law);
- b. that the corporation shall adhere to the requirements of Insurance Law §4301(k)(1) for the composition of the board of directors;
- c. that the corporation shall be subject to the provisions of Article 74 of the Insurance Law; and
- d. that the Superintendent of Financial Services and the Secretary of State shall be designated as agent upon whom process against it may be served (§1212(a) Insurance Law).

B. Filing Requirements for the Application of a Permit:

Corporations subject to Article 43 of New York Insurance Law shall not solicit the purchase of, or enter into, any contract with any individual or group until it has obtained from the Superintendent of Financial Services a permit to do so. An application for a permit must contain the following:

- i) A statement of the territory in which the corporation will operate (which in the case of hospital service corporations, shall not exceed eighteen counties of this state), the services to be rendered by the corporation and the rates to be charged therefore, and shall be accompanied by each type of contract for service which the corporation proposes to render. Proposed rate and contract filings should be submitted electronically via SERFF to the Health Bureau of the Department of Financial Services in Albany;
- ii) A fee of \$10.00 payable to "Superintendent of Financial Services."
- iii) a surety bond in the sum of \$1,000.00 conditioned upon return to applicants for contracts of any advance payments made if within one year from the date of the issuance of such permit a license to do business as hereafter provided has not been issued; and

C. Filing Requirements for the Application of a License:

No corporation shall furnish medical expense indemnity, dental indemnity, hospital service or health service until it has obtained from the Superintendent of Financial Services a license to do business.

The application must be subscribed by two officers of the proposed corporation and affirmed by such officers as true under the penalties of perjury. An application fee of \$10.00 payable to "Superintendent of Financial Services" must be included. An application for licensure must contain the following information, documents and forms:

1. A statement of the number of subscribers (i.e., individuals and groups) from whom the proposed corporation has received applications for the services to be rendered during one year, and from each of whom it has received payment of not less than one-sixth of the full payment required from such subscribers;
2. A statement of the total collection of advance premium from subscribers in an amount not less than \$1,800.00.

3. Approval of Proposed Name

The name of the proposed insurer must be submitted to the Department's Office of General Counsel in Albany with a check for \$25.00 (payable to "Superintendent of Financial Services") in payment of the name-processing fee (Department Regulation No. 104, 11 NYCRR87.1). The proposed name of the insurer must conform to the requirements of Insurance Law Section 1102(g). The name of the insurer must also be approved by the Department of State pursuant to Section 303 of the Not-for-Profit Corporation Law. This approval is independent of the Department of Financial Services' approval.

4. By-Laws

A draft of the proposed corporation's by-laws. Pursuant to the Not-For-Profit Corporation Law and the administrative policy of the Department of Financial Services, the by-laws must contain the following provisions:

- a. the board of directors of a health service corporation shall consist of not less than 13 directors;
- b. the board of directors shall have at least four quarterly meetings a year;
- c. a fixed date for the annual meeting of the board of directors (§603(b) Not-For-Profit Corporation Law);
- d. the president and the secretary of the corporation shall not be the same person (§713(a) Not-For-Profit Corporation Law);
- e. the quorum requirements as set forth in §707 of the Not-For-Profit Corporation Law;
- f. the requirements of Insurance Law §4301(k)(1) (board composition), §4301(k)(2) (board vacancies), §4301(k)(3) (board membership in excess of ten years) and §4301(k)(4) (automatic forfeiture of office);
- g. an article on emergency by-laws, as provided in Article Seven-A of the New York State Defense Emergency Act (§9177 of the Unconsolidated Laws of 1962 of New York State);
- h. geographic representation of directors may be required if the proposed Article 43 Corporation services a large or bifurcated service area (§4301(k)(1)(B)); and
- i. written consent in lieu of a director's meeting is permitted only where time is of the essence and not in place of a regularly scheduled meeting.

5. Incorporators, Directors and Key Management Personnel

A listing of the proposed corporation's incorporators, directors and key management personnel with the required National Association of Insurance Commissioners ("NAIC") Biographical Affidavit completed for each person identified. The NAIC Biographical Affidavit can be obtained and downloaded at the NAIC website (http://www.naic.org/documents/industry_ucaa_form11.pdf). The proposed incorporators, directors and key management personnel will be subject to an investigation by the Department of Financial Services to determine their trustworthiness. As part of the investigation process, the Department will require submission of fingerprint cards from each of the proposed incorporators, directors and key management personnel upon receipt of the biographical affidavits.

6. Designation for Service of Process

Complete the NAIC Uniform Consent to Service of Process designating the Superintendent of Financial Services as attorney for service of process. The Uniform Consent to Service of Process can be obtained and downloaded from the NAIC website (http://www.naic.org/documents/industry_ucaa_form12.pdf).

7. Plan of Operations

A plan of operations for the proposed corporation containing the following:

- a. location of home office;
- b. staffing of principal positions, the individuals selected and their experience;
- c. proposed service, investment, advisory, management and/or reinsurance agreements;
- d. method of procuring business, including a detailed marketing plan;
- e. financial projections prepared on a monthly basis for both balance sheet and income statement for the proposed corporation's first three years of operations. The submission should set forth all assumptions made as to the projected results, including an enrollment projection listing each targeted group and the anticipated percentage of penetration. The projection should explain how the proposed corporation will be capitalized. Such projection should also include the calculation of the required statutory reserve fund as set forth in Insurance Law Section 4310(d); and
- f. a proposed tax allocation agreement, if applicable. (Circular Letter No. 33 dated December 20, 1979)
- g. a copy of all the proposed inter-company agreements, if applicable.

8. Contracts and Rates

A listing of all proposed contracts with a brief description of the benefits provided under such contracts should be included in the licensing application. All proposed contracts and rates should be submitted electronically via SERFF to the Health Bureau of the Department of Financial Services in Albany for approval. Instructions for SERFF filings in New York are posted on the Department's website at <http://www.dfs.ny.gov/insurance/health/hsGenIns.pdf>.

9. Pro-Forma Holding Company Registration Statement

If the proposed corporation will be a controlled insurer, Department Regulation 52 (11 NYCRR 80) requires the filing of the form pro-forma HC-1 with the application.

10. Section 1307 Loan Agreement

A proposed Insurance Law §1307 loan agreement, if applicable, should be included in the licensing application. A sample blank §1307 loan agreement is attached.

11. Resolutions of Board of Directors

Subsequent to the proposed corporation becoming a body corporate, the following resolutions of the board of directors (copies attached) are required:

A. Operation Commitment for Article 43 Corporations -

- a commitment that the proposed Article 43 Corporation will maintain its operations within the State of New York;

B. Commitments

- a commitment stating the number of director shall not be less than thirteen;
- a commitment stating that any director or officer found untrustworthy by the Superintendent will be removed;
- a commitment that the Superintendent will be notified of any changes made to the proposed Article 43 Corporation's plan of operations; and

C. In addition to the above, board of director's resolutions are needed for the adoption of a code of ethics and a conflict of interests procedure which would assign responsibility for the distribution, completion, collection and review of annual conflict of interests questionnaires.

II. FILING SUBMISSION

The application for licensure should be filed in duplicate with one set submitted to each of the following offices:

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Associate Attorney
Office of General Counsel
New York State Department of Financial Services
One Commerce Plaza
Albany, New York 12257

ÄRobert Solomon
Supervising Insurance Examiner
Health Bureau
New York State Department of Financial Services
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New York, New York 10004

III. ORGANIZATION EXAMINATION

It is the policy of the Department to conduct an organization examination of the proposed corporation prior to the issuance of a license. The examination is conducted after the satisfactory review of the licensure application and includes an inspection of all records and books of account, approved documents and forms as well as a verification of the capitalization of the proposed corporation. Upon completion of the examination, a report on organization is filed with the Department.

SAMPLE SECTION 1307 LOAN AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 20__ by and between _____, a corporation, duly created, organized, and existing under and by virtue of the Laws of the State of _____ and having its Principal Office at _____ (hereinafter referred to as "Lender"), and _____, a corporation duly created, organized, and existing under and by virtue of the Laws of the State of New York and having its Home Office at _____, New York (hereinafter referred to as "Borrower").

WITNESSTH:

WHEREAS, Borrower desires to borrow the sum of _____ (\$ _____) DOLLARS and Lender is willing to lend said sum to Borrower upon the terms, provisions and conditions hereinafter set forth; and

WHEREAS, the Insurance Law of the State of New York, Section 1307 (Contingent liability for borrowings) provides that a domestic insurer or health maintenance organization may, without pledging any of its assets, borrow funds pursuant to said Section 1307 upon the approval of the Superintendent of Financial Services of the State of New York.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, and intending to be legally bound hereby, Lender and Borrower agree as follows:

1. Upon approval by the Superintendent of Financial Services of the State of New York, pursuant to Section 1307 of the New York Insurance Law, Lender agrees to lend to Borrower, and Borrower agrees to borrow from Lender, the sum of _____ DOLLARS, and said loan for the convenience of Borrower shall be made simultaneously with the execution and delivery of this Agreement by Lender delivering to Borrower the said borrowed funds.

2. Borrower hereby acknowledges receipt from Lender of said funds.

3. The rate of interest on the said loan (\$ _____) shall not exceed that rate permitted pursuant to the provisions of Section 5-501 of the General Obligations Law of the State of New York and as further defined in Section 4.1 of the Regulations of the Department of Banking of the State of New York, as amended, which rate shall be _____ percent per annum.

4. The loan, or any part thereof, made by Lender to Borrower, under the terms of this Agreement, shall be repaid to Lender, on demand of Lender, provided, however, such repayment, and any interest payable on the loan, shall only be made out of free and divisible surplus of Borrower and all such amounts to be paid or repaid will be subject to the prior approval of the Superintendent of Financial Services of the State of New York.

5. That the funds borrowed, pursuant to this Agreement, shall not form a part of the Borrower's legal liabilities and shall not be a basis of any setoff, but, until repaid, all statements published or filed with the Superintendent of Financial Services of the State of New York by Borrower shall show, as a footnote thereto, the amount thereof then remaining unpaid.

6. That in the event of liquidation of Borrower, repayment of the balance of the said borrowed funds and any accrued interest then due and owing shall be paid to Lender out of any assets remaining after the payment of all policy obligations and all other liabilities but before distribution of assets to shareholders.

7. This Agreement, and all of the covenants and conditions hereinabove contained, shall be binding upon and inure to the benefit of Lender and Borrower and their respective successors or assigns, and on request of Lender, Borrower shall furnish to Lender such note, loan, certificate, or other evidence of this indebtedness, as Lender may request.

8. This Agreement, and the rights and obligations of the parties hereunder, shall be construed in accordance with, and governed by, the provisions of Section 1307 of the New York Insurance Law.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereunto affixed as of the day and year first above written.

(Corporate Seal)

ATTEST:

_____ By: _____
Secretary President

(Corporate Seal)

ATTEST:

_____ By: _____
Secretary President

(Revised 2/09)

REQUIRED BOARD OF DIRECTORS RESOLUTIONS

Preamble: In the administration of statutory responsibilities, the New York Superintendent of Financial Services has determined that the method and manner in which the affairs of some domestic insurers have been conducted has resulted in conditions which are detrimental to both the insurer's policyholders and the people of this State and the ability of the Superintendent of effectively administer the statutory responsibilities of his office.

In order to establish certain standards and understandings concerning the method and manner of conducting the affairs of domestic insurance entities that are not detrimental to the policyholders or the people of this State, and to permit the Superintendent to effectively administer the responsibilities of his office, this Commitment Letter composed of the foregoing Preamble and the following provisions must be made a part of the commitment for the proper and effective conduct of _____ to do an insurance business as an Article 43 insurer licensee of this State, witnessed by an authorized executive officer _____ according to a Certified Resolution of its Board of Directors which is complete, in form, both as to the foregoing and the following.

Whereas, _____ desires to be a New York insurer, licensed and incorporated in New York, for the purposes of conducting a _____ (non-profit medical expense indemnity corporation, or dental expense indemnity corporation, or hospital service corporation, or health service corporation).

Whereas, it is recognized that a New York license issued to _____ would be a privilege, and not an established right under the law, and

Whereas, the Board of Directors acknowledge that a proper plan for the conduct of _____ affairs and operations and the maintenance of its assets and records within this State is a proper and necessary concern to the Superintendent of Financial Services of New York and the people of this State, they hereby commit, by Certified Resolution of the Board of Directors, to ensure that _____ will be operated and managed in New York according to the following guidelines for the conduct of all of _____ business operations.

Operation Commitment For Article 43 Corporations

1. The Article 43 Corporation must maintain operations in New York with officers and personnel having decision making powers adequate to provide the primary functions and services necessary to fulfill its responsibilities to policyholders and its obligations under the New York Insurance Law.

The primary functions are to include but not be limited to: administration, underwriting, claims, policyholder services, investments, record keeping, accounting and reinsurance. Original books and records pertaining to and relating to these functions are to be located at the Article 43 Corporation's New York office.

The Article 43 Corporation's office in New York is to be sufficiently staffed to perform these functions in accordance with the meaning and intent of this commitment letter.

2. The Article 43 Corporation will maintain at its office in New York knowledgeable officers and qualified personnel responsible for independently directing and performing the daily operations of the insurer, including but not limited to the following:

a) Administration

The Article 43 Corporation's operations will be directed by its own management and no agreement or arrangement will be made pursuant to which another company will provide such management directly or indirectly. The management of the Article 43 Corporation will be fully responsible to the New York Department of Financial Services for the operations and conduct of said Article 43 Corporation. The management shall operate so as to ensure the separate operating identity of the insurer.

b) Underwriting

The Article 43 Corporation will establish and reduce to writing the underwriting standards for the acceptance of new business and maintain at its New York office all original documents and papers pertaining to the underwriting of risks and the issuance of policies.

c) Claims

The Article 43 Corporation will establish and reduce to writing claims settlement procedures, and maintain at its New York office all original documents and papers pertaining to the adjustment and settlement of claims.

d) Subscriber Services

Such services shall comprise as any and all activities involving personal contract and communication with policyholders and claimants to include but not to be limited to: Computation and payment of claims, policy changes, requests for general information, premium payments, policy lapses and reinstatements and consumer complaints.

e) Investments

The Article 43 Corporation will establish and reduce to writing its investment standard and criteria and make all decisions concerning the investment of funds in accordance with the investment statues of the New York Insurance Law. All of the Article 43 Corporation's securities and investments, its bank accounts, and evidences of asset ownership, must be located in New York.

f) Record Keeping

All other original records, documents and papers relating to the Article 43 Corporation's entire operations are to be maintained at the New York office. These are to include but not be limited to payroll and personnel records, purchasing and marketing activities.

g) Accounting

The Article 43 Corporation will perform all accounting functions at its New York office. Such accounting functions shall include but not be limited to: the initiation and preparation of all accounting records (ledgers, journals, etc.) and transactions relating to the operations and financial condition of said insurers, verification that original financial data and accounting transactions have been accurately prepared and reflected in the books of account, bank reconciliations, and reconciliations of EDP print-outs. All original accounting records, reports, annual and interim financial statement workpapers and audit reports (internal and external) are to be maintained at the Article 43 Corporation's New York office.

The above requirements shall not preclude the Article 43 Corporation from using an outside service for processing transactions, provided that the initiation of such records or transactions, originate and are verified at the Article 43 Corporation's New York office. There shall be at the New York office, qualified personnel knowledgeable of and familiar with all the details of the services provided.

h) Reinsurance

The Article 43 Corporation's decision to enter into reinsurance agreements, shall be made by the management staff located at the New York office. The Article 43 Corporation will establish written standards and criteria governing their reinsurance operations. All original documents, agreements, contracts, treaties, files and related material are to be located at the Article 43 Corporation's New York office.

This commitment letter must be approved by board resolutions of the Article 43 Corporation. Such resolutions must also specify that responsible officers, having decisions making powers, be authorized to sign and execute this commitment letter on behalf of the Article 43 Corporation.

It is further understood that the signing of this commitment letter is binding not only on present management but on any successor management which may be the result of internal or external changes, and must be made a part of, but not limited to, any merger, takeover, tender offer, assumption or pooling or interest agreement voluntarily or involuntarily entered into.

COMMITMENTS

I, (name), Secretary of (applicant), hereby certify that the following is a true correct copy of a resolution duly adopted by the Board of Directors of (applicant) on (Date)

Resolved that (name) be and is hereby authorized to execute and deliver to the Superintendent of Insurance of the State of New York a commitment letter in the form attached hereto.

Said Resolution has not been altered, amended or revoked.

In connection with the application of (applicant) for approval for the licensure of (domestic insurer), applicant hereby commits that:

- (a) In the event the Department approves the licensure of the (applicant), the number of the Board of Directors of (applicant) shall not be less than thirteen.
- (b) At such time as the New York Department of Financial Services completes its investigation of the principal officers and directors of (applicant), (applicant) will remove any present and/or future principal officer or director has demonstrated untrustworthiness or, in the opinion of the Department, does not appear to be of significant background, character and integrity to meet the standards of the Department and the public interest;
- (c) In the event the Department approves the licensure of (applicant), applicant will immediately notify the Department of each principal officer and director of (applicant) appointed to such position during the period commencing with the date of licensure of (applicant) and ending two years thereafter. With respect to each such person, (applicant) shall furnish the Department with biographical information on forms provided by the Department;
- (d) In the event the Department approves the licensure of (applicant), (applicant) shall not pay any dividends for a period of two years from the date of licensure without the prior written consent of the Department;
- (e) Whenever the New York Plan of Operation is changed from the initial Plan of Operation furnished this Department, the (applicant) shall submit a copy of the revised plan to the New York State Department of Financial Services.

By: _____

Title: _____

Company: _____