*** § 1124. Institutions of higher education exempt; certificate of authority.** (a) For the purposes of this section:

(1) "Qualified actuary" means an actuary who is a member in good standing of the American Academy of Actuaries or Society of Actuaries, with experience in establishing rates for self-insured trusts providing health benefits or other similar experience.

(2) "Institution of higher education" or "institution" means an educational institution in this state that:

(A) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who have completed a secondary school education in a home school setting that is treated as a home school or private school under the laws of this state;

(B) is legally authorized within this state to provide a program of education beyond secondary education;

(C) provides an educational program for which the institution awards a bachelor's degree, graduate degree, or professional degree;

(D) is a public or other nonprofit institution;

(E) is accredited by a nationally recognized accrediting agency or association;

(F) is governed by the board of regents of this state; and

(G) maintains an endowment of at least one billion dollars.

(3) "Student" means a person enrolled in an institution of higher education and may include a postdoctoral fellow.

(4) "Student contract" means evidence of coverage furnished to a student that sets forth all benefits and terms and conditions, with regard to a student health plan.

(5) "Student health plan" or "plan" means any self-funded plan established or maintained by an institution of higher education for the purpose of providing medical, surgical, or hospital services to a student, the student's spouse or domestic partner, the student's child or children, or other persons chiefly dependent upon the student for support and maintenance.

(b) An institution of higher education shall not establish, maintain, or otherwise participate in a student health plan in this state unless the institution obtains and maintains a certificate of authority from the superintendent pursuant to the provisions of this section.

(c) Except as otherwise provided in this section or a regulation promulgated by the superintendent, an institution providing a plan shall:

(1) be subject to all consumer protection laws applicable to corporations organized under article forty-three of this chapter, including minimum requirements of article forty-three of this chapter and regulations thereunder regarding benefits, contracts, and rates; and

(2) provide that its plan will have an expected loss ratio of not less than eighty-two percent. In reviewing a rate filing or application by a plan, the superintendent may modify the eighty-two percent expected minimum loss ratio requirement if the superintendent determines the modification to be in the interests of the people of this state or if the superintendent determines that a modification is necessary to maintain plan solvency. No later than one hundred twenty days after the close of a plan's fiscal year, a plan shall annually report the actual loss ratio for the previous plan fiscal year in a format acceptable to the superintendent. If the expected loss ratio is not met, the superintendent may direct the plan to take corrective action. Mandatory uniform student administrative health fees paid by the students irrespective of whether the student is a plan member to an institution shall not be deemed to be included in the premiums paid by students for health benefit coverage under a plan.

(d) An institution shall file an application for a certificate of authority on such form as the superintendent may prescribe, and shall provide to the satisfaction of the superintendent the following:

(1) a copy of the student contract, including a table of the premium rates charged or proposed to be charged;

(2) a report indicating the benefit provisions, premium rates, and incurred medical losses associated with the institution's students under the insurance policy or contract insuring the institution's students, for the three years prior to the date of the application;

(3) the most recent certified independently-audited financial statement for the institution;

(4) a report prepared by a qualified actuary that supports the proposed premiums for the plan;

(5) a copy of all agreements between the institution and any plan administrator, with regard to the student health plan;

(6) a pro-forma balance sheet, including actuarially determined claims liabilities, and statement of revenue and expenses, including reasonably projected expenses, medical losses, and premiums to be charged to students for the plan during the first three years;

(7) a narrative description of the:

(A) accounting methodology that the institution will utilize, including a description of the separate accounts for revenues and expenses, including medical and hospital expenses and administration expenses, reserves for claims and expenses thereon, including incurred-but-not-reported, unearned premium reserves, contingent reserves, and any asset accounts (cash, premiums receivable, investments) relevant to the plan. The accounts may be established within the institution's general accounting ledger system, provided the general ledger accounts are clearly identifiable as pertaining to the plan, including any such accounts allocated to the plan;

(B) billing and claim payment procedures, including the names and contact information for those persons charged with handling accounting and claims issues; and

(C) any compensation the institution will receive in connection with the plan.

(8) copy of any stop-loss insurance policy issued or proposed to be issued by an insurer authorized to do the business of accident and health insurance in this state or is a health service corporation organized under article forty-three of this chapter; and

(9) such other information as the superintendent may require.

(e) Upon compliance with this section, the superintendent may issue a certificate of authority to an applicant. Every certificate of authority shall contain the name of the certified entity and its home office address. The superintendent shall refuse to grant a certificate of authority to an applicant that fails to meet the requirements of this section. The superintendent may refuse to issue any certificate of authority if in the superintendent's judgment, the refusal will best promote the interests of the people of this state.

Notice of refusal shall be in writing and shall set forth the basis for refusal. If the applicant submits a written request within thirty days after receipt of the notice of refusal, then the superintendent shall conduct a hearing to give the applicant the opportunity to show cause

why the refusal should not be made final.

(f) In order to obtain and maintain a certificate of authority, an institution shall:

(1) file a complete application with the superintendent in accordance with subsection (d) of this section;

(2) have within its own organization adequate resources and competent personnel to administer the student health plan or, in order to provide such administrative services, in whole or part, has contracted with a person or entity to serve as a plan administrator, determined by the institution to be qualified based upon written documentation furnished to the institution, provided that the documentation shall be made available to the superintendent upon request;

(3) establish and maintain premium rates sufficient to meet its contractual obligations and to satisfy the reserve requirements set forth in subsection (h) of this section;

(4) establish and maintain a fair and equitable process for claims review, dispute resolution, and appeal procedures, including arbitration of rejected claims, and procedures for handling claims for benefits in the event of plan dissolution, that are satisfactory to the superintendent and are subject to article forty-nine of this chapter;

(5) provide covered students with a student contract; and

(6) file all plan documents, including the summary plan description, and any amendments thereto, with the superintendent and receive the superintendent's approval in accordance with this section.

(g) An institution that has received a certificate of authority shall file with the superintendent, for the superintendent's prior approval, any amendments to the student contract, student health plan, or premium rates charged for the plan.

(h)(1) An institution shall establish reserves with the amounts necessary to satisfy all contractual obligations and liabilities of the plan, including: (A) a reserve for payment of claims and expenses thereon reported but not yet paid, and claims and expenses thereon incurred but not yet reported, which shall not be less than an amount equal to twenty-five percent of expected incurred claims and expenses thereon for the current plan year, unless a qualified actuary has demonstrated to the superintendent's satisfaction that a lesser amount shall be adequate; (B) a reserve for unearned premium equivalents,

computed pro-rata on the basis of the unexpired portion of the policy period; and (C) a contingent reserve fund, established and maintained for the sole purpose of satisfying unexpected obligations of the plan in the event of termination of the plan, which shall not be less than five percent of the annualized earned premium equivalents during the current fiscal year of the plan.

(2) A qualified actuary may demonstrate that a lesser amount of a reserve for payment of claims and expenses thereon reported but not yet paid, and claims and expenses thereon incurred-but-not-yet-reported, shall be adequate by showing that the institution has obtained a medical stop-loss insurance policy issued by an insurer authorized by the superintendent to do the business of accident and health insurance in this state or is a health service corporation organized under article forty-three of this chapter. If at any time the reserve funds required to be established pursuant to this section fall below the required minimum amounts, then the institution shall immediately notify the superintendent of such impairment. The institution shall cure the impairment within five business days.

(3) The assets constituting the student health plan's contingent reserve fund shall consist solely of certificates of deposit issued by a United States bank and payable in United States legal tender, or securities representing investments of the types specified in paragraphs one, two, three, eight, and ten of subsection (a) of section one thousand four hundred four of this chapter, or as otherwise expressly permitted by the superintendent. Any interest earned or capital gain realized on the money so deposited or invested shall accrue to and become part of the plan's reserve funds or contingent reserve, as applicable.

(4) The plan's assets, liabilities, income and expenses shall be accounted for separate and apart from all other assets, liabilities, income and expenses of the university. The accounting for the plan's contingent reserve fund shall show: (A) the purpose, source, date and amount of each sum paid into the fund; (B) the interest earned by such fund; (C) capital gains or losses resulting from the sale of investments of the plan's contingent reserve fund; (D) the order, purpose, date and amount of each payment from the contingent reserve fund; and (E) the assets of the contingent reserve fund, indicating cash balance and

schedule of investments.

(5) The requirements for funding of the plan's reserves shall be calculated using generally accepted accounting principles. Only those expenses that relate to the plan shall be included in calculating the requirements for funding of the plan's reserve funds. Expenses allocated to the plan shall be allocated on an equitable basis in conformity with generally accepted accounting principles consistently applied. The books, accounts, and records of the plan shall be maintained as to clearly and accurately disclose the nature and details of all expenses so as to support the reasonableness of such expenses.

(i)(1) An institution of higher education shall file with the superintendent within one hundred twenty days of the close of the plan's fiscal year a report that contains:

(A) an annual financial statement, verified by the oath of at least two of the institution's principal officers, with direct knowledge of the operations of the student health plan, showing the financial condition of the plan during the most recent fiscal year, in accordance with law and generally accepted accounting principles, in a form prescribed by the superintendent;

(B) the identity of the qualified actuary utilized by the institution or plan and the amount paid to the qualified actuary by the institution or plan during its most recent fiscal year;

(C) the identities of the plan's ten largest vendors by payment amount during its most recent fiscal year;

(D) the name and contact information of the person or entity appointed by the institution to administer the student health plan;

(E) a pro-forma statement of projected revenue and expenses for health benefits anticipated by the plan for the next twelve-month period of the plan's operation, provided on a fiscal year;

(F) a detailed report of the operations and condition of the plan's reserve funds; and

(G) such other information as the superintendent may require.

(2) An institution of higher education shall file with the superintendent within one hundred twenty days of the close of its student health plan's fiscal year the most recent certified, independently audited financial statement for the institution. The statement shall include an opinion of an independent certified public

accountant. The notes to the financial statement shall show the financial results of the student health plan operations and a description as to how the institution meets the reserve requirements in paragraph one of subsection (h) of this section, including the amounts reported for each of the reserves, the method used to calculate the reserves, and the change in the reserves from the beginning of the plan's fiscal year to the end of the plan's fiscal year. In addition, the notes to financial statement shall detail the assets comprising the contingent reserve fund to demonstrate compliance with paragraph one of subsection (h) of this section.

(3) An institution that fails to file any report or statement required by this chapter, or fails to reply within thirty days to a written inquiry by the superintendent in connection therewith shall, in addition to other penalties provided by this chapter, be subject, upon due notice and opportunity to be heard, to a penalty of up to one thousand dollars per day of delay, not to exceed twenty-five thousand dollars in the aggregate, for each such failure.

(j) The superintendent may, pursuant to section three hundred nine, three hundred ten, three hundred eleven, and three hundred twelve of this chapter, and pursuant to the financial services law, make an examination into the affairs of any institution, with regard to a student health plan issued by the institution, as often as the superintendent deems it expedient for the protection of the interests of the people of this state. The expenses of every examination of the affairs of an institution, with regard to a student health plan established or maintained by the institution, shall be borne and paid by the institution so examined. The expenses of examination shall include reimbursement for the compensation paid for the services of persons employed by the superintendent or by the superintendent's authority to make such examination, and for the necessary traveling and living expenses of the person or persons making the examination.

(k)(1) The superintendent may suspend or revoke a certificate of authority issued to an institution if the superintendent finds, after notice and hearing, that the institution has failed to comply with any requirement imposed on it by the provisions of this chapter and if in the superintendent's judgment such suspension or revocation is reasonably necessary to protect the interests of the people of this

state, including:

(A) for any cause that would be a basis for denial of an initial application for such a certificate;

(B) failure to maintain the reserves required by subsection (h) of this section; or

(C) the superintendent finds that the institution has refused to produce its accounts, records, and files for examination or has refused to cooperate or give information with respect to the affairs of the student health plan or to perform any other legal obligation relating to such an examination when required by the superintendent.

(2) Any certificate of authority suspended or revoked under this subsection shall be surrendered to the superintendent, and the institution shall notify all participating students of that decision in such form and manner as the superintendent may prescribe, but not later than ten days after receipt of notice of the superintendent's decision requiring suspension or revocation. In addition, the institution shall submit a plan for the superintendent's approval for winding up the plan's affairs in an orderly manner designed to result in timely payment of all benefits, in such form and manner as the superintendent may prescribe.

(3) Notwithstanding subdivision two of section eighty-seven of the public officers law, all final decisions to suspend or revoke the certificate of authority with regard to an institution shall be public.

(l) In any case in which an institution determines that there is a reason to believe that the student health plan will terminate, the institution shall so inform the superintendent at least sixty days prior thereto, and shall file a sworn statement with the superintendent concerning all current and future liabilities under its discontinued plan. The institution also shall submit a plan for the superintendent's approval for winding up the plan's affairs in an orderly manner designed to result in timely payment of all benefits, in such form and manner as the superintendent may prescribe.

(m)(1) Any funds of the institution, as they pertain to the student health plan, shall be accounted for separate and apart from all other assets, liabilities, income and expenses of the institution until all plan benefits and other plan obligations have been satisfied. Until such time, the institution shall continue to maintain and fund the reserve

funds required to be established under subsection (h) of this section. If at any time the superintendent determines that additional funds shall be deposited in the reserve funds, then the institution shall make the deposit within five days of the superintendent's determination.

(2) If, after twenty-four months, or such longer period as deemed necessary by the superintendent, all plan benefits and other plan obligations have been satisfied, the institution, upon approval by the superintendent, shall no longer be required to maintain assets within the plan's reserve funds within accounts within the institution's general accounting ledger system.

(n) An institution shall not issue a stop-loss insurance policy.

(o) The superintendent may promulgate such regulations as the superintendent deems necessary to implement the provisions of this section and to ensure that the plans established under this section are in the best interests of the students, students' spouses, the students' children, and other persons chiefly dependent upon the students for support and maintenance.

(p) Except as otherwise provided in this section, any institution of higher education that violates this section shall be subject to the penalties set forth in section one hundred nine of this chapter.

* NB There are 2 § 1124's