§ 4301. Organization of corporation; purposes; board of directors. (a) A corporation may be organized under the not-for-profit corporation law, and a consumers' cooperative stock corporation may be organized under article two of the cooperative corporations law, for the purpose of furnishing medical expense indemnity, dental expense indemnity, hospital service, or health service or, upon compliance with the applicable provisions of subsection (h) of this section, both medical expense indemnity and hospital service, to persons who become covered under contracts with such corporations.

(b) (1) Medical expense indemnity shall consist of reimbursement for:

(A) medical care provided through licensed physicians,

(B) dental care provided through licensed dentists,

(C) optometric care provided through licensed optometrists,

(D) podiatrical care provided through licensed podiatrists,

(E) chiropractic care provided through licensed chiropractors,

(F) psychiatric or psychological services provided through physicians, psychiatrists or certified and registered psychologists,

(G) physical and occupational therapy care provided through licensed physical and occupational therapists upon the prescription of a physician,

(H) nursing service,

(I) speech-language pathology or audiology services provided through licensed speech-language pathologists or audiologists, provided however, that nothing contained herein shall be construed to prohibit a contract from requiring said service from being performed pursuant to a medical order or similar or related service of a physician, in which case coverage need not be provided for any tests, evaluations or diagnoses if such tests, evaluations or diagnoses have already been provided by or through a physician within twelve months of the referral or order from the physician. However, nothing herein shall be construed as preventing a corporation from covering more than one test or evaluation provided by a speech-language pathologist or audiologist within a twelve-month period where such tests or evaluations is ordered by a physician as medically necessary. Nor shall anything herein be construed as prohibiting the limitation of such services, where covered, to specified settings other than offices, such as hospitals or to services provided by such professionals as part of a home care agency's services,

(J) necessary appliances, drugs, medicines and supplies, and

(K) bio-analytical or clinical laboratory examinations and reports thereof reported to a physician, osteopath, dentist, optometrist, podiatrist, chiropractor or physical therapist made by any privately operated bioanalytical or clinical laboratory.

(2) It is not mandatory that a contract issued by a medical expense indemnity corporation provide for and offer all of the services hereinabove described, but when any service is provided which can be performed by more than one of the practitioners hereinbefore referred to, benefits under the contract shall be provided regardless of which practitioner performed the service, provided that the performance of such service was within the scope of the license of such practitioner. Unless such contract shall otherwise provide there shall be no reimbursement for ophthalmic materials, lenses, spectacles, eyeglasses, and/or appurtenances thereto.

(3) Every medical expense indemnity corporation shall be open to the participation of licensed physicians, podiatrists, chiropractors, optometrists, physical and occupational therapists, speech-language pathologists, audiologists, and dentists, certified and registered psychologists without discrimination against schools of medical practice, podiatry practice, chiropractic practice, optometric practice, physical and occupational therapy practice, dental practice, speech-language pathology practice (subject to the permitted limitations of paragraph one of this subsection), audiology practice (subject to the permitted limitations of paragraph one of this subsection), and psychological training as defined in the education law.

(c) Dental expense indemnity shall consist of reimbursement for dental care provided through licensed dentists and of furnishing necessary appliances, drugs, medicines, and supplies, prosthetic appliances, orthodontic appliances, precious metal and ceramic restorations.

(d) (1) Hospital service shall consist of in-patient hospital care and out-patient hospital care when such hospital care is provided through a hospital which is maintained by the state or any of its political subdivisions, or maintained by a corporation organized for hospital purposes under the laws of this state, or such other hospitals as shall be designated by the state department of health, and hospitals of other states subject to the supervision of such other state, convalescent care

provided by any convalescent institution, or nursing care provided by any nursing home.

(2) A hospital service corporation may also provide reimbursement for expenses incurred outside of the hospital, convalescent institution or nursing home, for nursing service, necessary appliances, drugs, medicines, supplies, and any other services which would have been available in the hospital, convalescent institution or nursing home (excluding physicians' services), whether or not provided through a hospital, convalescent institution or nursing home.

(3) A hospital service corporation may also furnish reimbursement for ambulance service expenses.

(e) (1) Health service, as used in this article, shall consist of the types of services referred to in this section.

(2) A health service corporation, in any hospital, facility or center directly operated by it may provide hospital or medical care to persons other than persons covered under contracts issued by such corporation.

(3) A health service corporation may:

(A) exercise all of the powers of a medical expense indemnity, dental expense indemnity and hospital service corporation;

(B) organize, manage and promote a health maintenance organization as such term is defined in article forty-four of the public health law;

(C) contract or otherwise act jointly with a hospital corporation organized under article twenty-eight of the public health law, a hospital service corporation organized pursuant to this article, a health maintenance organization possessing a certificate of authority pursuant to article forty-four of the public health law, a professional service corporation organized under article fifteen of the business corporation law, a university faculty practice corporation organized under section fourteen hundred twelve of the not-for-profit corporation law or a partnership for the purpose of organizing, managing and promoting such prepaid comprehensive health services plan;

(D) contract or otherwise act jointly with an insurance company, authorized to do an accident and health insurance business in this state, for the purpose of organizing, managing and promoting such a health maintenance organization.

(4) A health service corporation engaged in providing medical care through medical groups, hospital services and dental care, may include

as a component of its rate a sum of five per centum of such rate to be used for the purchase or construction of facilities for the conduct of its business, and for the implementation of its program, or for making loans for the purposes of implementing the program of such corporation.

(5) To encourage the development in this state of health maintenance organizations as such term is defined in article forty-four of the public health law, the superintendent may modify any requirement applicable to health service corporations and other corporations organized under this article to permit such corporations to make fuller use of their resources in the development of such plans, including the acquisition and construction of hospitals, medical service centers and other health facilities and the equipment therefor, subject to such limitations as the superintendent shall deem necessary or proper to ensure the performance of contracts issued by such corporations and to protect the interests of persons covered under such contracts.

(6) Any other corporation subject to the provisions of this article may by appropriate amendment to its certificate of incorporation become a health service corporation.

(f) No foreign or alien medical expense indemnity corporation, dental expense indemnity corporation, health service corporation, or hospital service corporation shall be authorized to do business in this state. No person, firm, association or corporation shall in this state furnish or contract to furnish medical expense indemnity, dental expense indemnity, hospital service or health service under any insurance plan unless authorized so to do under the provisions of this chapter.

(g) Two or more corporations organized pursuant to the provisions of this article may, upon compliance with the applicable provisions of article seventy-one of this chapter, consolidate, if the superintendent finds that such consolidation will promote the public interest. No corporation resulting from any such consolidation shall operate in any county in which none of the corporations so consolidated was empowered to operate immediately prior to such consolidation.

(h) A medical expense indemnity corporation or a hospital service corporation may, pursuant to a plan submitted to and approved by the superintendent, furnish both medical expense indemnity and hospital service benefits, as these are defined in subsections (b) and (d) of this section, by amending its certificate or act of incorporation in the

manner provided in the applicable provisions of the not-for-profit corporation law and the cooperative corporations law. Except as the context otherwise requires, a corporation writing both medical expense indemnity and hospital service benefits shall be subject to all of the provisions of this article applicable to medical expense indemnity and hospital service corporations.

(i) Subject to the provisions of the preceding subsections, a hospital service corporation and a medical expense indemnity corporation and a dental expense indemnity corporation or any two of such corporations may issue a combined contract providing for hospital service, medical expense indemnity or dental expense indemnity, but no one of such corporations shall issue any such combined contract unless it complies with the applicable provisions of subsection (h) hereof. A hospital service corporation and a medical expense indemnity corporation and a dental expense indemnity corporation or any two of such corporations may underwrite jointly in such a combined contract such benefits as each might otherwise individually provide under this article. Any one of such corporations may act as agent for the other without being required to obtain a license as an agent under article twenty-one of this chapter.

(j) (1) Except as provided in this subsection, no medical expense indemnity corporation, dental expense indemnity corporation, health service corporation, or hospital service corporation shall be converted into a corporation organized for pecuniary profit. Every such corporation shall be maintained and operated for the benefit of its members and subscribers as a co-operative corporation.

(2) An article forty-three corporation which was the subject of an initial opinion and decision issued by the superintendent on or before December thirty-first, nineteen hundred ninety-nine, as the same may be amended or one or more article forty-three corporations whose main offices on January first, two thousand seven were located in one of the counties listed in section one thousand two hundred sixty-two of the public authorities law and its or their not-for-profit subsidiaries (including, without limitation, any such subsidiary licensed as a health service corporation pursuant to this chapter or as a health maintenance organization organized pursuant to article forty-four of the public health law), hereinafter referred to in the singular, may be converted into one or more corporations or other entities organized for pecuniary

profit, or into one or more for-profit organizations, in any such case, in accordance with the provisions of section seven thousand three hundred seventeen of this chapter.

(3) For the purposes of this subsection and section seven thousand three hundred seventeen of this chapter, "public asset" shall mean assets representing ninety-five percent of the fair market value of the corporation seeking to convert into a corporation or other entity organized for pecuniary profit pursuant to paragraph two of this subsection; provided, however, that for the purposes of the conversion of a corporation or corporations after the effective date of the chapter of the laws of two thousand seven which amended this paragraph, "public asset" shall mean assets representing ninety percent of the fair market value of the corporation or corporations. Fair market value, as defined in subsection (l) of section seven thousand three hundred seventeen of this chapter, shall be determined as of the date the superintendent approves the conversion transaction pursuant to subsection (f) of section seven thousand three hundred seventeen of this chapter.

(4) In addition to any other requirements of law, rule or regulation, the following requirements shall be applicable to the public asset:

(A) The public asset shall be transferred to the fund established pursuant to subsection (e) of section seven thousand three hundred seventeen of this chapter and the public asset shall be irrevocably dedicated to the purpose as set forth in such section;

(B) There is hereby established a board for the purpose of advising and making decisions with respect to the investment of assets and moneys in the fund created pursuant to subsection (e) of section seven thousand three hundred seventeen of this chapter. Such board shall be composed of five members appointed as follows: three members shall be appointed by the governor; one member appointed by the temporary president of the senate; and one member appointed by the speaker of the assembly. Each member of the board shall be appointed for a term of three years and may be reappointed at the end of said term by the same person that made the original appointment. A vacancy in the membership of the board shall be filled for the unexpired portion of the term provided for by the original appointment by the same person that made the original appointment. Each member may be removed, other than upon the expiration of his or her term, only for neglect of duty, misconduct or other good

cause. Each member of the board shall be a member of the public with knowledge and expertise in capital markets and a demonstrated commitment to ensuring continued access to, and availability of, health care services and may not be an officer or employee of the state or any municipal subdivision thereof;

(C) The members shall serve without compensation for their services as members, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties. Such members, except as otherwise provided by law, may engage in private employment, or in a profession or business;

(D) The board and its corporate existence shall continue until there are no longer any assets or moneys in the fund created pursuant to subsection (e) of section seven thousand three hundred seventeen of this chapter available for distribution;

(E) The affirmative vote of three of the members shall be necessary for the transaction of any business or the exercise of any power or function of the board. The board may delegate to one or more of its members, or its agents, such powers and duties as it may deem proper;

(F) The board shall have the power to:

(i) direct, in consultation with the director of the division of the budget regarding the anticipated schedule of payments to the state, the manner in which moneys in the fund created pursuant to subsection (e) of section seven thousand three hundred seventeen of this chapter are invested so as to maximize the value of the assets in such fund consistent with the board's statutory obligation to direct disbursements as described below and in subsection (e) of section seven thousand three hundred seventeen of this chapter;

(ii) direct that disbursements be made from such fund in accordance with the direction of the director of the division of the budget and as described in subsection (e) of section seven thousand three hundred seventeen of this chapter; and

(iii) make and execute contracts and all other instruments, and to exercise such other powers, necessary or convenient for the exercise of its powers and functions.

In directing investments pursuant to this subparagraph, the board shall not be limited by any restrictions on investments contained in any

other section of law, subject only to the board's obligations and the considerations set forth above;

(G) (i) Neither the members of the board nor any agent or other person or persons acting on its behalf, while acting within the scope of their authority as members or agents of the board, shall be subject to any personal liability resulting from the carrying out of the powers conferred hereunder, and (ii) the provisions of section seventeen of the public officers law shall apply to members of the board and agents or other persons acting on its behalf, in connection with any and all claims, demands, suits, actions or proceedings which may be made or brought against any of them arising out of any determination made or actions taken or omitted to be taken in compliance with any obligations under or pursuant to the terms of this section or section seven thousand three hundred seventeen of this chapter. The provisions of this subparagraph shall be severable from and shall survive any legal challenge to the legality, validity, or constitutionality of this section;

(H) Any action or proceeding in which any question arises as to the validity of any provision in this subsection or in section seven thousand three hundred seventeen of this chapter, shall be preferred over all other civil causes except election causes in all courts of the state of New York and shall be heard and determined in preference to all other civil business pending therein except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of counsel to the board in any action or proceeding questioning the validity of any provision herein in which he or she may be allowed to intervene;

(I) To assist in carrying out its functions, the board shall be authorized to hire independent financial, legal and other experts and consultants;

(J) Inconsistent provisions of other laws are superseded. Insofar as any provision in this section is inconsistent with the provisions of any other law, general, special or local, the provisions in this section shall be controlling;

(K) This section, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes;

(L) Each member of the board shall be and shall remain independent of any control or influence by the surviving corporation or other surviving entity organized for pecuniary profit and its affiliates and successors. Such requirement shall not prevent the board from voting its equity shares in the for-profit organization in accordance with the voting and shareholders rights agreement. No person who is an officer, director or employee of the corporation seeking conversion at the time such corporation applies to the superintendent for permission to convert shall be a member of the board;

(M) The board shall establish formal mechanisms to avoid conflicts of interest;

(N) The board shall enter into an asset preservation agreement with the converted corporation; and

(O) Notwithstanding any other provision of law, the board shall direct that such proceeds of the public asset are disbursed in accordance with direction from the director of the division of the budget and transferred to the credit of the tobacco control and insurance initiatives pool, or its successor to be used for the exclusive purposes provided therein.

(P) Section one hundred twelve of the state finance law shall apply to the fund established pursuant to subsection (e) of section seven thousand three hundred seventeen of this chapter and its board solely and exclusively with respect to procurement contracts for consulting and professional services recommended for award by the fund after June twenty-third, two thousand five; provided that all such contracts recommended for award by the fund on or before June twenty-third, two thousand five shall be valid and effective in accordance with their terms.

(Q) Section one hundred twelve of the state finance law shall not otherwise apply to the fund established pursuant to subsection (e) of section seven thousand three hundred seventeen of this chapter and its board except as provided in subparagraph (P) of this paragraph. Without in any way limiting the foregoing, section one hundred twelve of the state finance law specifically shall not apply to any and all agreements such fund, its board, or any medical expense indemnity corporation, dental expense indemnity corporation, health service corporation or hospital service corporation that has converted to for-profit status

pursuant to this section and section seven thousand three hundred seventeen of this chapter, may enter into, or has entered into, in connection with, or in anticipation of, sales of stock including, but not limited to, any and all underwriting agreements, pricing agreements and other documents related to such sales of stock or stock offerings, whether such agreements are entered into in connection with initial public offerings or subsequent public or private sales of stock.

(R) All disbursements from the fund established pursuant to subsection (e) of section seven thousand three hundred seventeen of this chapter shall be made pursuant to the provisions of this section and section seven thousand three hundred seventeen of this chapter without an appropriation. The provisions of this section and section seven thousand three hundred seventeen of this chapter shall be controlling, any other general, special or local law inconsistent therewith notwithstanding.

(5) For the purpose of this subsection and section seven thousand three hundred seventeen of this chapter, "charitable asset" shall mean assets representing five percent of the fair market value of the corporation seeking to convert into a corporation or other entity organized for pecuniary profit pursuant to paragraph two of this subsection; provided, however, that for the purposes of the conversion of a corporation or corporations after the effective date of the chapter of the laws of two thousand seven which amended this paragraph, "charitable asset" shall mean assets representing ten percent of the fair market value of the corporation or corporations. Fair market value, as defined in subsection (l) of section seven thousand three hundred seventeen of this chapter, shall be determined as of the date the superintendent approves the conversion transaction pursuant to subsection (f) of section seven thousand three hundred seventeen of this chapter. If one hundred percent of the stock is not transferred in connection with the conversion transaction, the proportion of stock to cash that is distributed as the charitable asset shall be the same as the proportion of stock to cash that is distributed as the public asset.

(k) (1) The board of directors of each health service, hospital service or medical expense indemnity corporation subject to this article shall be composed of persons who are representative of the member hospitals or licensed medical professionals of such corporation, persons covered under its contracts and the general public. The board of

directors of such corporations may also include persons who are employees of such corporations and who also serve as officers of such corporations. Not more than one-fifth of the directors of any such corporation shall be persons who are licensed to practice medicine in this state (other than physicians employed on a full-time basis in the fields of public health, public welfare, medical research or medical education) or who are trustees, directors or employees of a corporation organized for hospital purposes, or any combination thereof. Not more than one-eighth of the directors of any such corporation shall be persons who are employees of such corporation and who also serve as officers of such corporation. Any person who is an officer of such corporation but not an employee of such corporation shall be considered under one of the other classifications of directors set forth in this section, as appropriate. Whenever the maximum number of directors in either of the classifications set forth in the preceding sentences includes a fractional number equal to or greater than one-half, the number shall be rounded to the next greater whole number. Whenever the maximum number of directors in either of the classifications set forth in the preceding sentences includes a fractional number less than one-half, the number shall be rounded to the next lesser whole number. Of the directors not included in the classifications set forth in the preceding sentences,

(A) one-half in number, as nearly as possible, shall be persons covered under a contract or contracts issued by such health service, hospital service or medical expense indemnity corporation, and who are generally representative of broad segments of such covered persons, and

(B) one-half in number, as nearly as possible, shall be persons whose background and experience indicate that they are qualified to act in the broad public interest, whether or not they are persons covered under a contract or contracts issued by such health service, hospital service or medical expense indemnity corporation.

(C) A person who, or whose spouse or minor child, is an officer, director, or owner of more than ten per centum of the stock of a corporation whose aggregate sales to hospitals and licensed medical professionals and to facilities of a health service, hospital service or medical expense indemnity corporation exceed five per centum of its total sales may not serve as a director under subparagraph (A) or (B)

hereof.

(D) Each such health service, hospital service or medical expense indemnity corporation shall have an executive committee the members of which shall be composed, as nearly as possible, of representatives of any member hospitals or licensed medical professionals of such corporation, employee-officers of such corporation, persons covered under its contracts and the general public in the same proportions as the membership of the board of directors.

(E) The board of directors of a health service, hospital service or medical expense indemnity corporation with a combined premium volume exceeding two billion dollars annually as of December thirty-first, nineteen hundred ninety-six shall, in addition to its other responsibilities, have responsibility for ensuring that the corporation implements and maintains effective standards and procedures for operating efficiency and for quality of consumer service and claims payment, including but not limited to coordination of benefits and fraud prevention and shall establish one or more committees comprised solely of directors who are not officers or employees of the corporation. Such committee or committees shall have responsibility for recommending the selection of independent certified public accountants, reviewing the corporation's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by members, and evaluating the performance of officers deemed by such committee or committees to be principal officers of the company and recommending to the board of directors the selection and compensation of such principal officers.

(2) (A) Compliance with the provisions of paragraph one hereof shall be under the supervision of the superintendent.

(B) Within ten days after a vacancy in the board of directors of a health service, hospital service or medical expense indemnity corporation shall occur, such corporation shall notify the superintendent in writing that such vacancy exists. Not more than ten days after the election of a person as a director of a health service, hospital service or medical expense indemnity corporation, such corporation shall furnish, in writing, the following information to the superintendent: the name and address of the person so elected; whether such person is representative of any member hospital or licensed medical

professional of such corporation or persons covered under its contracts or the general public and qualified to serve pursuant to the provisions of paragraph one hereof or is an employee-officer of such corporation; and a biographical statement concerning such person. If the superintendent finds, after a hearing, that the composition of the board of directors of a health service, hospital service or medical expense indemnity corporation is not in compliance with the provisions of paragraph one hereof, he may direct that such board of directors be reconstituted in accordance with his finding.

(3) No person who has served as a director of any corporation subject to this article for ten consecutive years shall thereafter be elected for an additional term of office as such until at least one year has elapsed since the expiration of his prior term of office. The preceding sentence shall not apply to a director of any corporation subject to this article who is an employee of the corporation and who also serves as an officer of the corporation. The superintendent, upon application by a corporation subject to the provisions of this article, may waive the ten year limit in this paragraph for a non-employee serving as chairman of its board of directors.

(4) A director of a corporation subject to this article shall automatically forfeit his office if (i) he fails to attend at least one of the regular meetings of the board of directors held during any period of eighteen consecutive months, or (ii) unless excused by the board of directors of which he is a member, which action shall be entered on the minutes of such board, it shall appear at the end of any calendar year that he failed to attend at least one-half of the regular meetings of such board held in such calendar year. A director whose office becomes vacant pursuant to the provisions of this paragraph shall not be eligible for election to such office for a period of one year from the date the vacancy occurred.