§ 4310. Investments; financial conditions; reserves. (a) Every corporation subject to the provisions of this article shall annually on or before the first day of March file in the office of the superintendent a statement, verified by at least two of the principal officers of such corporation, showing its condition on the thirty-first day of December then next preceding which shall be in such form and shall contain such matters as the superintendent shall prescribe.

(b) No such corporation shall invest in any securities other than those permitted by the provisions of paragraph two of subsection (a) of section one thousand four hundred three of this chapter, except as provided in paragraphs one and two of this subsection.

(1) A corporation (or two or more such corporations under common management) with admitted assets of greater than eighty million dollars and maintaining cash and reserve investments under subsection (a) of section one thousand four hundred four of this chapter (except paragraphs eight and ten of subsection (a) of such section) free from any lien or pledge, which, when valued in accordance with the provisions of this chapter, seven percent or more of net premium income for the most recent twelve month period, as shown by its last sworn statement, annual or quarterly, on file with the superintendent, may also invest its funds or otherwise acquire or loan upon investments permitted under paragraphs eight and ten of subsection (a) of section one thousand four hundred four of this chapter without having to meet the otherwise applicable qualitative standards and the otherwise applicable aggregate limitation for such investments, provided that the aggregate amount of all such investments shall not exceed the lesser of surplus to policyholders or fifteen percent of its admitted assets as shown by its last statement on file with the superintendent. Any corporation subject to the provisions of this article may jointly exercise control of a subsidiary by acting together with one or more other corporations, provided that such other corporations are either corporations subject to this article, foreign corporations which perform similar functions in other states or which belong to a national association comprised of similar corporations to which one or more corporations organized under this article also belong, or an institution controlled by any such foreign corporation. No such corporation shall hold a direct or indirect ownership interest in a risk retention group, as defined in article

fifty-nine of this chapter, other than in a risk retention group all of whose members are insurance companies. Notwithstanding any other provision of this chapter, including, but not limited to, section one thousand four hundred seven of this chapter, any corporation subject to the provisions of this article may also invest, in the aggregate, not more than three percent of its admitted assets in obligations, shares or other securities (including certificates of deposit) issued by a parent corporation which is organized as a not for profit entity or a corporation which is an affiliate or will be an affiliate after direct or indirect acquisition by the parent corporation; provided, however, that the board of directors of the parent organization is constituted in accordance with the requirements of subsection (k) of section four thousand three hundred one of this article and, provided further however, that the investments of the corporation organized under this article in its own subsidiaries shall not be included in that limitation.

(2) A corporation maintaining cash and reserve investments under subsection (a) of section one thousand four hundred four of this chapter (except paragraphs eight and ten of subsection (a) of such section), free from any lien or pledge, which, when valued in accordance with the provisions of this chapter, equal ten percent or more of net premium income for the most recent twelve month period, as shown by such corporation's last sworn statement, annual or quarterly, on file with the superintendent, may, in addition to the investments permitted by paragraph one of this subsection, invest up to fifteen percent of its admitted assets in investments permitted under paragraph two of subsection (a) of section one thousand four hundred four of this chapter, provided however that such investments need not meet the otherwise applicable qualitative standards of such paragraph two so long as all such investments are rated at BBB or higher (or the equivalent thereto) by a security rating agency recognized by the superintendent.

(c) Any such corporation shall be deemed insolvent whenever it is presently or prospectively unable to fulfill its outstanding contracts and other liabilities and reserves.

(d) Every such corporation shall maintain a reserve, to be designated as the statutory reserve fund, which shall from time to time during each calendar year be increased in an amount equal to at least one per centum

of the net premium income of such corporation during such whole calendar year, provided however, that:

(1) if such corporation reinsures part of its risk under any or all of its contracts by means of reinsurance approved by the superintendent as an appropriate substitute for the statutory reserve fund, then the required increase to the statutory reserve fund at the end of any calendar year shall be reduced by the amount of the premium paid by such corporation for such reinsurance during such calendar year or by one per centum of the net premium income received by such corporation during such calendar year on its contracts so reinsured for the period during which they are so reinsured, whichever amount is the lesser;

(2) the statutory reserve fund at the end of any calendar year shall not exceed twelve and one-half per centum of the net premium income of such calendar year;

(3) every such corporation shall, after the first full calendar year of doing business, accumulate and maintain a statutory reserve fund which shall from time to time during each calendar year be increased in an amount equal to at least five per centum of the net premium income of such corporation during such whole calendar year until such reserve shall be at least equal to fifty thousand dollars and thereafter such reserve shall be accumulated and maintained in the manner prescribed.

(e) (1) Such statutory reserve fund may, after application therefor by the corporation and approval thereof by the superintendent, be reduced below the amount required to be maintained by subsection (d) hereof, provided that no such reduction, except in the event of an epidemic or other catastrophe resulting in extraordinary hospital or medical utilization, shall, in the case of a corporation having a net premium income for the preceding calendar year of (i) less than ten million dollars or (ii) ten million dollars or more, reduce the statutory reserve below an amount equal to seventy-five per centum and fifty per centum, respectively, of the amount required to be maintained by subsection (d) hereof. Any reduction so authorized by the superintendent shall be restored within a period of not more than three years, or six years in the case of a corporation with a combined premium volume exceeding two billion dollars annually as of December thirty-first, nineteen hundred ninety-six, in accordance with a plan submitted by the corporation and approved by the superintendent which shall provide that

such restoration shall be in addition to, and not in lieu of, the increase in the statutory reserve fund hereinabove required, which increase must be made in every year except the year in which a reduction in the statutory reserve fund is authorized by the superintendent.

(2) Any six year plan submitted by a corporation with a combined premium volume exceeding two billion dollars annually as of December thirty-first, nineteen hundred ninety-six shall also be submitted to the special advisory review panel created pursuant to section four thousand three hundred nineteen of this chapter. Within sixty days of its receipt of the six year plan, such panel shall issue a report to the superintendent analyzing the six year plan and recommending any changes it deems appropriate. The superintendent shall hold public hearings regarding any such proposed six year plan and the recommendations of the panel. The superintendent shall consider the findings of the panel and the public hearings held on the six year plan during his approval process for the six year plan.

(f) No such corporation shall invest in any real property, except that any such corporation may, with the approval of the superintendent, invest in such real property as it may reasonably expect will be required for its principal office and the principal office or offices of any other corporation organized under this article which is affiliated with and which shares such principal office or offices with such corporation, or for such purposes as shall be requisite for the convenient accommodation in the transaction of the business of such corporations, but in no event in excess of the aggregate of eight per centum of the net premium income of such corporations and five per centum of the receipts from any governmental agency for which either of such corporations acts as fiscal intermediary during the twelve full months immediately preceding the granting of such approval.

(g) A health service corporation, in addition to the investment in real estate provided in subsection (f) of this section, may, with the approval of the superintendent, purchase an interest in real estate for the purpose of constructing a hospital or other health facility or center thereon (in accordance with the requirements of chapter seven hundred ninety-five of the laws of nineteen hundred sixty-five), or may purchase an existing hospital or facility for the purpose of providing health services or may make loans to a corporation or corporations under

its control for the purposes heretofore described, or for the purpose of organizing, managing or promoting a health maintenance organization, as such term is defined in article forty-four of the public health law primarily for the benefit of persons covered under contracts issued by such corporations, but in no event in excess of an amount equal to ten per centum of its annual net premium income during the twelve full months immediately preceding the granting of such approval. A health service corporation may make expenditures and incur liabilities for the purchase of real estate or for loans in excess of sums provided for in subsection (f) hereof and this subsection as permitted by the superintendent pursuant to paragraph five of subsection (e) of section four thousand three hundred one of this article. A health service corporation, with the approval of the superintendent of financial services, also may enter into agreements for the leasing of hospital facilities.

(h) Notwithstanding any other provisions of this chapter, and in addition to the provisions for the investment of funds and for the purchase of real estate as provided for in this article with the approval of the superintendent, a health service corporation may, with the approval of the superintendent, expend sums including loans to a corporation or corporations under its control to implement the program described herein for the amortization of capital costs for the purchase or construction of facilities in its operations, including a hospital or medical service center, and for the implementation of its program, but not in excess of an amount equal to five percentum of its net premium income during the twelve full months immediately preceding the granting of such approval.

(i) If a loan is made with the approval of the superintendent, to a corporation under the control of a health service corporation, it shall be made on condition that the superintendent may conduct an examination pursuant to sections three hundred nine and three hundred ten of this chapter into the affairs of such corporation.

(j) Every corporation subject to the provisions of this article, including a health service corporation or any of its instrumentalities or any hospital, facility or center directly operated by any such health service corporation, shall be exempt from every state, county, municipal and school tax.

(k) Notwithstanding the provisions of any other law, a corporation subject to the provisions of this article which has admitted assets greater than five hundred million dollars on its last annual report filed with the superintendent may enter into a transaction for an interest rate swap in an amount not to exceed the amount of debt on the books of the corporation on the effective date of this subsection that was incurred within twelve months of the construction of the corporation's home office, provided that such interest rate swap shall provide an initial new interest rate that is at least two hundred basis points lower than the interest rate on the existing debt. The counterparty to this transaction shall meet the qualifications of a qualified counterparty as provided in subparagraph (A) of paragraph three of subsection (f) of section fourteen hundred ten of this chapter except that, notwithstanding clause (iv) of subparagraph (C) of such paragraph, in the event that such counterparty is a qualified bank, such bank shall be rated A or better (or the equivalent thereto) by two independent nationally recognized rating organizations. Any such transaction shall be approved by the corporation's board of directors prior to its implementation.

(l) Notwithstanding any other provisions of this chapter to the contrary, in determining the financial condition of corporations subject to the provisions of this article and not-for-profit corporations authorized pursuant to article forty-four of the public health law, the department shall include real estate, including buildings, property, capital improvements and appurtenances owned and held that are utilized in the ordinary course of the business of such entities, provided that such real estate may be valued by the corporation at either its current amortized book value or at ninety percent of its current market value, as determined by an independent appraisal undertaken annually and in accordance with regulations promulgated by the superintendent.