*** § 4416. Excess reserves of certain health maintenance organizations.** 1. The commissioner is authorized to require any comprehensive health services plan issued a special purpose certificate of authority under section forty-four hundred three-a of this article, that satisfies the definition of corporation in subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law or is exempt from taxation under section 501 of the Internal Revenue Code of 1986 to submit all financial and other books and records the commissioner deems necessary in order to evaluate an organization's reserves. The commissioner, in consultation with the superintendent of the department of financial services, shall examine such books and records and shall issue a report on the health maintenance organization's reserves. A request under this section may be made no more than two times per year per plan.

2. Except for any public benefit corporation, the commissioner is authorized to promulgate regulations establishing a presumptive reserve ceiling for any comprehensive health services plan issued a special purpose certificate of authority under section forty-four hundred three-a of this article that satisfies the definition of corporation in subparagraph five of paragraph (a) of section one hundred two of the not-for-profit corporation law or that is exempt from taxation under section 501 of the Internal Revenue Code of 1986. Such regulations shall express the presumptive reserve ceiling as a percentage of the minimum contingent reserves applicable to such health maintenance organizations. The presumptive reserve ceiling shall be no less than one hundred fifty percent of the minimum contingent reserves applicable to such plans. In the event that the commissioner determines that a plan subject to this subdivision has reserves in excess of the presumptive reserve ceiling for two consecutive quarters, the commissioner may make a preliminary determination that all or a portion of such reserves in excess of the ceiling should be redeployed by depositing such excess reserves in the health care transformation fund pursuant to subdivision three of this section. Prior to making a preliminary determination, the commissioner shall consider whether such redeployment is consistent with financial soundness and efficiency and to the extent to which such reserves are being maintained consistent with the programmatic goals of the state.

Upon making such a preliminary determination, the department shall notify the plan and the plan shall be afforded an opportunity to submit information to the department to justify why such reserves in excess of the ceiling are necessary and should not be so redeployed. Provided however, under no circumstances shall the redeployment of such reserves for any plan exceed seven hundred and fifty million dollars annually.

3. If, after considering the information submitted by the plan, the commissioner adheres to the preliminary determination that the reserves in excess of the ceiling should be redeployed, the commissioner shall direct that such reserves be deposited to the health care transformation fund established pursuant to section ninety-two-hh of the state finance law or its successor to be used for investment in the transformation of health care delivery, including for capital investment, debt retirement or restructuring, housing and other social determinants of health, or transitional operating support to health care providers, pursuant to a plan prepared by the commissioner and approved by the director of the division of the budget.

4. Notwithstanding any law to the contrary, on or after August first, two thousand eighteen no entity subject to subdivision two of this section shall transfer or loan any funds to any subsidiary or member of the entity's holding company system or to a member or stockholder where a purpose of the transfer or loan is to avoid the application of this section.

* NB Repealed August 1, 2027