

**[Ariz. Rev. Stat. § 20-120.]**

§ 20-120. Payment bonds for third party intermediary entities; contract provisions; definitions: Insurance -- General Provisions -- Scope of Title

A. A health care insurer shall not contract with a third party intermediary entity for the delivery or provision of health benefits or services by or through that entity to a group or panel of covered persons, unless the third party intermediary entity at its own expense secures a payment bond or posts a cash deposit pursuant to this section.

B. The following apply to a payment bond required by this section:

1. The payment bond shall be in a face amount that is at least equal to the average monthly payment amount that the third party intermediary entity is entitled to receive under the terms of its contract with the health care insurer.
2. The payment bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the director pursuant to chapter 2, article 1 of this title.
3. The payment bond serves solely as a source of payment of claims for covered health benefits or services provided by subcontracted health care professionals to the group or panel of covered persons under the contract between the third party intermediary entity and the health care insurer.
4. A subcontracted health care professional who has provided covered health care benefits or services to one or more covered persons under a subcontract with a third party intermediary entity, and who has not been paid in full for the covered benefits or services provided pursuant to the subcontract within ninety days after the date on which the last of the benefits or services were provided, may sue on the payment bond for the unpaid amount owed under the subcontract, may prosecute the action to final judgment and may execute on the judgment against the payment bond. The suit shall commence within one year after the date on which the last of the benefits or services sued for were provided.
5. A health care insurer that pays claims of subcontracted health care professionals for covered health care benefits or services that were the contractual responsibility of a third party intermediary entity may sue on the payment bond for the claims amounts paid, may prosecute the action to final judgment and may execute on the judgment against the payment bond. The suit shall commence within one year after the date on which the last of the claims sued for were paid.
6. The payment bond shall include a provision allowing the prevailing party in a suit on the bond to recover as a part of the judgment a reasonable attorney fee as determined by the court.

7. A health care insurer shall review annually a payment bond secured pursuant to this section to determine whether the face amount of the payment bond needs to be adjusted.

C. The following apply to cash deposits required by this section:

1. A cash deposit posted pursuant to this section shall be in an amount that is at least equal to the average monthly payment amount that the third party intermediary entity is entitled to receive under the terms of its contract with the health care insurer and shall be deposited with and held in trust by the state treasurer.

2. Instead of requiring a third party intermediary to post the entire cash deposit at the outset, for a six month period beginning with the initial contract payment, the health care insurer may withhold from the monthly contract payment to be made to the third party intermediary entity an amount that is equal to one-sixth of the cash deposit required to be posted pursuant to this subsection. The health care insurer shall transfer the monies withheld pursuant to this subsection for deposit with the state treasurer to be held in trust as provided in this section. Monies withheld and not yet deposited with the state treasurer pursuant to this subsection are held in trust for the purposes described in this section and are not the monies of the health care insurer.

3. A cash deposit made pursuant to this section serves solely as a source of payment of claims for covered health benefits or services provided by subcontracted health care professionals to the group or panel of covered persons under the contract between the third party intermediary entity and the health care insurer.

4. A subcontracted health care professional who has provided covered health care benefits or services to one or more covered persons under a subcontract with a third party intermediary entity and who has not been paid in full for the provided benefits or services pursuant to the subcontract within ninety days after the date on which the last of the benefits or services were provided, may sue on the cash deposit for the unpaid amount owed under the subcontract, may prosecute the action to final judgment and may execute on the judgment against the cash deposit. The suit shall commence within one year after the date on which the last of the benefits or services sued for were provided.

5. A health care insurer that pays claims of subcontracted health care professionals for covered health care benefits or services that were the contractual responsibility of a third party intermediary entity may sue on the cash deposit for the claims amounts paid, may prosecute the action to final judgment and may execute on the judgment against the cash deposit. The suit shall not commence before one year after the date on which the last of the claims sued for were paid.

6. Out of monies held on deposit by the state treasurer for a specific third party intermediary entity pursuant to this section, monies may be awarded and paid to the prevailing party in a suit on the cash deposit. The court may award as a part of the judgment on that cash deposit a reasonable attorney fee as determined by the court.

7. A health care insurer shall review annually a cash deposit posted pursuant to this section to determine whether the face amount needs to be adjusted.

D. The following apply to contracts between a third party intermediary entity and a health care insurer:

1. The contract shall require the third party intermediary entity to submit a quarterly report on the timeliness of payments made to all subcontracted health care professionals to the health care insurer to measure compliance with payment timeliness standards.

2. The contract shall require the third party intermediary entity to pay its subcontracted health care professionals within the time period specified under section 20-3102.

E. This section does not:

1. Authorize any entity that does not hold a certificate of authority to engage in the business of insurance in this state.

2. Require a third party intermediary entity to post a payment bond or cash deposit if the entity holds a certificate of authority as an administrator, disability insurer, service corporation or health care services organization.

3. Create any new private right or cause of action for or on behalf of any person, other than a right to sue on a payment bond or cash deposit under subsection B or C of this section. A general creditor or judgment creditor or any other claimant of a third party intermediary entity shall not levy on any payment bond or cash deposit secured or held pursuant to this section.

4. Require a third party intermediary entity that serves as a provider network for an affiliated staff or group model health care services organization under a common line of ownership or control to post a payment bond or cash deposit to that health care services organization. Notwithstanding that a payment bond or cash deposit is not required under this paragraph, the health care services organization may require the third party intermediary entity to meet other payment bond or cash deposit requirements established by the health care services organization. If the health care services organization does not require the third party intermediary entity to post a payment bond or cash deposit, the health care services organization is responsible for payment of claims for covered health benefits or services that are provided by subcontracted health care professionals to covered persons if the third party intermediary entity fails to make payment pursuant to the subcontracts.

5. Require one or more persons who are licensed health care professionals, hospitals or other institutional health care providers to post a payment bond or cash deposit under a contract where the assumption of business risk is limited to benefits or services that may be lawfully furnished within the lawful scope of practice by that person or persons.

6. Limit the ability of a health care insurer to impose additional financial requirements on a third party intermediary entity.

7. Require a third party intermediary entity to post a payment bond or cash deposit if the entity has not been delegated responsibility to process and pay the claims of the health care providers for which the entity has assumed the business risk.

F. Any bond that is secured or deposit that is posted under this section shall be released and returned:

1. To the third party intermediary entity on extinguishment by reinsurance or otherwise of substantially all liability of the insurer for the security of which the bond or deposit is held.

2. To the third party intermediary entity to the extent the bond or deposit is more than the amount required.

3. On proper order of a court of competent jurisdiction to the receiver, conservator, rehabilitator or liquidator of the third party intermediary entity or to any other properly designated official or officials who succeed to the management and control of the third party intermediary entity's assets.

G. A surety shall not terminate a bond issued pursuant to this section unless the surety files a written notice of termination with the director at least thirty days before terminating the bond.

H. A release of deposited monies shall not be made except on application to and the written order of the director. The director is not personally liable for the good faith release of all or any part of a deposit.

I. A third party intermediary entity shall approve or deny claims in the manner prescribed in chapter 20 of this title.

J. This section applies to all contracts between third party intermediary entities and health care insurers that are entered into or renewed from and after December 31, 2000.

K. For the purposes of this section:

1. "Administrator" means an entity that holds a certificate of authority pursuant to chapter 2, article 9 of this title.

2. "Covered persons" means enrollees, insureds, members, subscribers, dependents or other persons who are covered by a contract of disability insurance, subscription contract, evidence of coverage or other prepaid plan or arrangement with a health care insurer.

3. "Health care insurer" means a disability insurer, service corporation or health care services organization.

4. "Health care professional" has the same meaning prescribed in section 20-3151.

5. "Health care services organization" means an entity that holds a certificate of authority pursuant to chapter 4, article 9 of this title.

6. "Service corporation" means an entity that holds a certificate of authority pursuant to chapter 4, article 3 of this title.

7. "Third party intermediary entity" means an entity that assumes business risk through a written contract with a disability insurer, service corporation or health care services organization for the cost of providing covered health care benefits or services to a group or panel of covered persons if not all of those benefits or services will be provided by the entity or by licensed health care professionals who are subcontracted to the entity.