

40-19c02. Merger or consolidation; application and approval by insurance commissioner; penalties. (a) Any nonprofit hospital service corporation organized under the mutual nonprofit hospital service corporation act or nonprofit medical service corporation organized under the nonprofit medical service corporation act may:

(1) Merge or consolidate with any other nonprofit medical or hospital service corporation as hereinafter provided;

(2) merge or consolidate with any other nonprofit medical or hospital service corporation which is authorized to do business in this state if such merger or consolidation is authorized by the laws of the state or territory in which such nondomestic nonprofit medical or hospital service corporation is organized as hereinafter provided;

(3) by virtue of such merger or consolidation, do the kinds of business in the manner and for the purposes for which a nonprofit medical or hospital service corporation or a combination thereof, may be organized in this state or in the manner and for the purposes for which a nonprofit medical or hospital service corporation, or both, may be licensed or authorized to do business in this state.

(b) Such merger or consolidation shall be made under the conditions, provisions, and restrictions, and with the powers herein set forth to wit: The directors of each corporation shall enter into a joint agreement, under the corporate seal of each corporation for the merger or consolidation of said corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the surviving or new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers, and their places of residence, and how and when directors and officers shall be chosen, with such other details as required by this act and as they shall deem necessary to perfect the said merger or consolidation. Said agreement shall not be effective unless the same shall be approved by the commissioner of insurance in the manner hereinafter provided.

(c) Upon approval of the agreement of merger or consolidation by the directors of each of such corporations, as hereinbefore provided, the merging or consolidating corporations by their officers shall file a verified joint application in duplicate for approval with the commissioner of insurance accompanied by or containing the following:

(1) Two (2) duplicate originals of the agreement;

(2) affidavits of officers of each of the corporations setting forth the facts necessary to show that all requirements of law have been complied with;

(3) if the surviving or the new corporation shall be a domestic corporation and any nondomestic corporation is a party to the merger or consolidation and the laws of the state or territory under which such nondomestic corporation is incorporated require approval of a merger or consolidation by an official of such state or territory, a certificate of approval of such official. If the laws of the domiciliary state or territory of such nondomestic corporation require prior or joint approval by the proper supervisory official of this state, the Kansas insurance commissioner may act in unison or jointly with the proper official of such other state in the consideration of the application for approval of the agreement of merger or consolidation;

(4) an instrument appointing the commissioner of insurance and the commissioner's successor or successors in office the true and lawful attorney of such corporation for service of process, containing the same provisions and having the same effect as the instrument required by K.S.A. 40-218, and amendments thereto;

(5) in the case of a merger, if the articles of incorporation of the surviving corporation are to be amended, such amendments;

(6) in the case of a consolidation, a copy of the articles of incorporation of the new corporation, and if a nondomestic corporation, such articles to be certified by the public official with whom the original is required to be filed in its domiciliary state or territory;

(7) a financial statement of each of the merging or consolidating corporations as of a date not earlier than thirty (30) days prior to the date of the application to merge or consolidate; and

(8) when the application for the approval of the merger or consolidation is filed with the commissioner of insurance for action there shall also be filed a certificate executed by the president or a vice-president and attested by the secretary or an assistant secretary, or the executive officers corresponding thereto, and under the corporate seal of each of the corporations party to the agreement of merger or consolidation, verified by the affidavits of such officers, setting forth all fees, commissions or other compensations, or valuable considerations paid or to be paid, directly or indirectly, to any person in any manner securing, aiding, promoting or assisting in any such merger or consolidation.

(d) The commissioner of insurance shall examine the application and accompanying papers, and, if the commissioner finds the same to be in accordance with the provisions of this act and not inconsistent with the laws and the constitutions of this state and the United States and not injurious to the interests of the subscribers and creditors of such corporations, the commissioner shall endorse approval thereon.

(e) The commissioner of insurance, upon approval or disapproval of said application, shall cause the same to be so endorsed and the entire proceedings to be filed and recorded in the office of the secretary of state and a copy of the same certified by the secretary of state to be filed in the office of the commissioner of insurance. Within fifteen (15) days after approval by the commissioner of insurance, a certified copy of the approved application and agreement shall also be filed by the officers of the new or surviving corporation in the office of the register of deeds in the county wherein the registered office and home offices of the merging or consolidating corporations were located and in the county wherein the registered office and home office of the surviving or new corporation shall be located and in the office of the register of deeds of each county in this state in which any of the corporations, parties to the agreement, shall have real property at the time of merger or consolidation. When approved by the commissioner of insurance, the said agreement shall be deemed effective and the date when so approved shall be the date of consolidation or merger of said corporations, and:

(1) The said corporations shall thereupon be one (1) corporation under the name adopted in and by said agreement, possessing all the rights, privileges, immunities, powers, and franchises theretofore vested in each of them.

(2) The separate existence of all the corporations to the agreement of merger or consolidation except the surviving or new corporation shall cease.

(3) All property, real, personal and mixed, and all debts due on whatever account, including premiums due from subscribers and all other choses in action and all and every other interest of, or belonging to or due to, each of the corporations merged or consolidated shall be deemed to be transferred to and vested in such surviving or new corporation without further act or deed; and the title to any real estate, or any interest therein, under the laws of this

state vested in any of the corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(4) Such surviving or new corporation shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the corporations so merged or consolidated; any claim existing or action pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place; neither the rights of creditors nor liens upon the property of any of such corporations shall be impaired by such merger or consolidation, but such liens shall be limited to the property upon which they were liens immediately prior to the time of such merger or consolidation, unless otherwise provided in the agreement of merger or consolidation.

(5) In the case of merger, the articles of incorporation of the surviving corporation shall be supplanted, amended or superseded to the extent, if any, that any provision or provisions of such articles of incorporation shall be revised in the agreement of merger and the articles of incorporation shall be deemed to be thereby and to that extent amended.

(6) In the case of a consolidation the new articles of incorporation shall be deemed to be the articles of incorporation of such new corporation.

(7) The surviving or new corporation may, for the purpose of complying with the requirements of the law relating to age of a corporation, elect to be the age of any of the merging or consolidating corporations and shall for this purpose be considered as having such age. Such election shall be set forth in the application for approval of the agreement of merger or consolidation.

(8) The surviving or new corporation shall maintain the reserves and deposits as required by law of other like kinds of corporations doing like kinds of business.

(9) The surviving or new corporation after merger or consolidation shall be subject to the same fees, taxes, or penalties and other requirements of law as other like kinds of corporations doing like kinds of business.

(f) (1) No director or officer of any corporation party to a merger or consolidation, except as fully expressed in the agreement of merger or consolidation, shall receive any fee, commission, other compensation or valuable consideration, whatever, directly or indirectly, for in any manner aiding, promoting or assisting in such merger or consolidation.

(2) Any person violating the provisions of paragraph (1) of subsection (f) shall be fined not less than one thousand dollars (\$1,000), and not more than five thousand dollars (\$5,000) or imprisoned in the county jail for not more than one (1) year, or both, and shall forfeit any office such person holds in the merged or consolidated corporation.

(g) Nothing contained in this section shall be construed to enlarge the charter powers of any nonprofit medical or nonprofit hospital service corporation except in conformity with the provisions of the proposed articles of incorporation of the merged or consolidated corporation as provided in this act, nor to authorize any such corporation to do any kind of business not authorized by its charter or articles of incorporation, nor to authorize any such corporation to do any kind of business in this state not authorized by its license or certificate of authority to do business in this state.

History: L. 1980, ch. 137, § 20; July 1.