**Section 4521.70 Subordinated Indebtedness**

Subordinated indebtedness agreements (debenture) shall be submitted for the approval of the Director as required by Section 2-9 of the Act.

a) The agreement must state that:

1) All payments of principal and/or interest may be made only after the HMO has obtained approval from the Director;

2) The obligation of the HMO under the debenture may not be offset or be subject to recoupment with respect to any liability or obligation owed to the HMO; and

3) No agreement or interest securing the debentures, whether existing on the date of the debenture or subsequently entered, applies to the obligation under the debenture.

b) The agreement shall bear interest either:

1) At a fixed rate not exceeding the corporate base rate as reported by the largest bank (measured by assets) with its principal office located in Chicago, Illinois, in effect on the first business day of the month in which the subordinated indebtedness agreement is executed, plus 3% per annum; or

2) At a variable rate equal to the corporate base rate determined on the first business day of each month during the term of the loan, plus 2% per annum.

c) In no event shall the variable interest rate for any month exceed the initial rate for the loan or advance by more than 10% per annum. The HMO shall elect at the time of execution of the agreement whether the interest rate is to be fixed or floating for the term of the agreement. The following shall be submitted for the Director's approval prior to execution of the subordinated indebtedness agreement:

1) Duplicate copies of the entire subordinated indebtedness agreement.

2) A certified copy of the resolution of the board of directors or the appropriate authoritative body of the HMO. This resolution shall stipulate the maximum amount of subordinated indebtedness authorized.

d) The Director shall be notified immediately in writing upon the execution of any subordinated indebtedness agreement as to the amount of the agreement and to whom payable.

e) Accounting for the subordinated indebtedness on the HMO's financial statements shall be as follows:

1) All outstanding subordinated indebtedness and interest accrued on the indebtedness shall be reported separately in the Annual Statement on page 3 and in any other financial statements of the company as a special surplus account.

2) The issuance and repayment of the subordinated indebtedness, as well as the payment of the interest, shall be reflected as direct debits or credits to the net worth of the HMO's financial statement.

3) The interest expense incurred on the subordinated indebtedness during the current period shall be reflected on the Statement of Revenue, Expenses and Net Worth of the HMO's financial statements.

f) An HMO may only repay principal and make payment of interest on any subordinated indebtedness as provided under Section 2-9 of the Act. No payment shall be authorized by the Director unless:

1) The HMO's net worth is reasonable in relation to its outstanding liabilities and adequate for its financial needs; and

2) The payment is consistent with the terms of the subordinated indebtedness agreement approved pursuant to subsection (a).

(Source: Amended at 30 Ill. Reg. 4732, effective March 2, 2006)