(5) "Nonpreferred provider" means a provider eligible for payment under a preferred provider policy or preferred provider contract, who is not a contractee under the provisions of the insurance policy or insurance contract.

(6) "Unfair discrimination" means any act, method of competition, or practice engaged in by a nonprofit health service plan, which is prohibited by Sections 217 through 234, inclusive, of this article or any act, method of competition, or practice not specified in Sections 217 through 234, inclusive, of this article that the Commissioner believes is unfair or deceptive and which results in the institution of an action by the Commissioner under Section 216 of this article.

(b) (1) Subject to the approval of the Commissioner, a nonprofit health service plan may offer or administer a health benefit program under which the nonprofit health service plan may offer preferred provider policies or preferred provider contracts that limit the numbers and types of providers of health care services eligible for payment as preferred providers under the insurance policies or insurance contracts.

(2) A nonprofit health service plan may establish terms and conditions that shall be met by a provider in order to qualify for payment as a preferred provider under the insurance policies or insurance contracts.

(3) If a preferred provider policy or preferred provider contract provides for reimbursement for any service that is within the lawful scope of practice of a health care provider licensed under the Health Occupations Article, any participant, beneficiary, or other person covered by the insurance policy or insurance contract shall be entitled to reimbursement for that service.

(4) Preferred provider policies or preferred provider contracts offered under this section shall provide for payment of services rendered by nonpreferred providers. Unless the nonprofit health service plan demonstrates to the satisfaction of the Insurance Commissioner that an alternative level of payment is more appropriate under the circumstances, aggregate payments in any full calendar year made under this paragraph to nonpreferred providers after all deductible and copayment provisions have been applied may not on the average be less than 80% of the aggregate payments in that full calendar year to preferred providers for similar services in the same geographic area pursuant to the preferred providers' agreements to provide the services.

(c) If the rates for each institutional provider under a preferred provider policy or preferred provider contract vary based upon individual negotiations, geographic differences, or market conditions and are approved by the Health Services Cost Review Commission, the rates may not be deemed to constitute unfair discrimination under this article.

(d) This section does not apply to any employee benefit plan regulated by federal law or by the Employee Retirement Income Security Act of 1974 (ERISA).]

[470X.

(a) (1) In this section the following words have the meanings indicated.