

## No. 364

## AN ACT

## HB 2171

Providing for the establishment of nonprofit corporations having the purpose of establishing, maintaining and operating a health service plan; providing for supervision and certain regulations by the Insurance Department and the Department of Health; giving the Insurance Commissioner and the Secretary of Health certain powers and duties; exempting the nonprofit corporations from certain taxes and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.—This act shall be known and may be cited as the “Voluntary Nonprofit Health Service Act of 1972.”

Section 2. Purpose.—The purpose of this act is to permit and encourage the formation and regulation of health service plans to the end that the needs of the citizens of the Commonwealth for high quality, economical, and convenient health care services are satisfied; that unnecessary fragmentation and dehumanization of services are eliminated; that primary health care services are expanded to insure their availability to all citizens; and health care resources are more efficiently utilized.

Section 3. Definitions.—As used in this act:

- (1) “Court” means the Commonwealth Court of Pennsylvania.
- (2) “Commissioner” means the Insurance Commissioner of the Commonwealth of Pennsylvania.
- (3) “Secretary” means the Secretary of Health of the Commonwealth of Pennsylvania.
- (4) “Medical care foundation” means an organization established and controlled by the State and/or county medical societies as a separate corporation with its own board of directors.

Section 4. Services Which May be Provided.—(a) Any law to the contrary notwithstanding, corporations not for profit organized under the laws of the Commonwealth of Pennsylvania, upon compliance with section 14 of Article I of the act of May 5, 1933 (P.L.289), known as the “Nonprofit Corporation Law,” may establish, maintain and operate voluntary nonprofit health service plans by which health services are provided at the expense of such corporations or through facilities, appliances, medicines, or supplies owned, operated or furnished by such corporations to such persons who become subscribers to such plans under contracts which entitle the subscribers to certain medical, dental, hospital or other services related thereto.

(b) Such contracts may:

- (1) Provide either directly or through arrangements with others, health services to individuals enrolled;

(2) Provide either directly or through arrangements with other persons, corporations, institutions, associations or entities, those health services which a defined population might reasonably require in order to be maintained in good health, including as a minimum, but not limited to, emergency care, inpatient hospital and physician care, ambulatory physician care, and outpatient preventive medical services; and

(3) Provide physicians' services (i) directly through physicians who are employes of such organization, or (ii) under arrangements with one or more groups of physicians (organized on a group practice or individual practice basis) under which each such group is reimbursed for its services primarily on the basis of an aggregate fixed sum or on a per capita basis, regardless of whether the individual physician members of any such group are paid on a fee-for-service or other basis.

Section 5. Incorporation; Approval of Charter.—(a) Whenever articles of incorporation for the incorporation of any corporation, having for its purpose the establishing, maintaining and operating of a nonprofit health service plan, whereby health services may be provided to the subscriber to such plan under the provisions of this act, and specifically setting forth therein the limits of the geographical area in which it will operate, are filed with the Department of State, the Department of State shall forthwith transmit copies of such articles of incorporation to the commissioner and secretary. Thereupon the commissioner and secretary shall make separate investigations of the proposed corporation and plan under which it proposes to operate, to ascertain whether such services are consistent with the purposes and provisions of this act. Within sixty days of receipt of such articles of incorporation, the commissioner and secretary shall either (i) certify upon the copy of the articles or incorporation that the proposed corporation is consistent with the public welfare; or (ii) within such sixty-day period notify the incorporators of such proposed corporation specifically wherein it fails to comply.

(b) Within ten days the proposed corporation may amend its articles of incorporation to meet the specific objections of the commissioner and/or secretary or may within thirty days after the receipt of such notice, petition the Commonwealth Court for a rule to show cause why the action of the commissioner and/or secretary should not be set aside and the application approved. The said court is hereby given jurisdiction and authority to entertain and determine any such proceeding.

(c) The Department of State shall not approve such application unless and until the articles of incorporation are returned and certified by the commissioner and the secretary or until the expiration of sixty days from the date of filing of the articles of incorporation with the Department of State, whichever shall first occur.

(d) The commissioner and the secretary, in approving or disapproving the articles of incorporation, shall be guided in their separate determinations related to the purposes and provisions of this act, and may

approve articles of incorporation under this act notwithstanding the fact that other nonprofit health service plans authorized or permitted by this act or any other law shall be operating in the same part of the same geographical area.

Section 6. Foreign Nonprofit Health Service Plans.—(a) A nonprofit health service plan of another state shall not be authorized to operate or do any business in the Commonwealth until:

(1) It has complied with the provisions of Article IX, sections 901 through 916 relating to foreign nonprofit corporations, act of May 5, 1933 (P.L.289), known as the “Nonprofit Corporation Law”;

(2) It has filed with the commissioner and the secretary certified copies of its articles of incorporation, and has satisfied the commissioner and secretary that it is fully and legally organized under the laws of its state, and has complied with the laws of its state relating to nonprofit health service plans; and

(3) The commissioner and the secretary have made separate investigations of the proposed operations within the Commonwealth, and have determined that the plan is consistent with the purposes and provisions of this act. The commissioner and the secretary may determine that the plan is consistent with the purposes and provisions of this act notwithstanding the fact that other nonprofit health service plans authorized or permitted by this or any other act may be operating in the same geographical area.

(b) Upon compliance with the requirements of this section, a nonprofit health service plan of another state shall be subject to all the provisions of this act except those relating to incorporation, approval of charter, and board of directors. The commissioner or the secretary may waive or modify the provisions thereof under which he has the authority to act if he determines that same are not appropriate to a particular health service plan of another state, that such waiver or modification will be consistent with the purposes and provisions of this act, and that it will not result in unfair discrimination in favor of the health service plan of another state.

Section 7. Board of Directors.—A majority of the board of directors of any corporation organized under this act shall be subscribers or representatives of groups of subscribers. No more than ten per cent of the membership of the board of directors may be providers of health care services or professional employes of any hospital or other agency which is a provider of health care services, and such provider members of the board shall not constitute a majority of the membership of any committee appointed by the board. The board of directors shall be elected in the manner stated in the corporation’s charter or bylaws. Such board shall serve without compensation, but may be reimbursed for actual expenses incurred in carrying out their duties as members of the board of directors. The corporation may provide in its bylaws for the creation of a medical advisory board.

Section 8. Contracts with Practitioners, Hospitals, Insurance Companies, Etc.—(a) Contracts enabling the corporation to provide the services authorized under section 4 of this act made with hospitals and practitioners of medical, dental and related services shall be filed with the commissioner. The commissioner shall have power to require immediate renegotiation of such contracts whenever he determines that they provide for excessive payments, or that they fail to include reasonable incentives for cost control, or that they otherwise substantially and unreasonably contribute to escalation of the costs of providing health care services to subscribers, or that they are otherwise inconsistent with the purposes of this act.

(b) A health service plan may reasonably contract with any individual, partnership, association, corporation or organization for the performance on its behalf of other necessary functions including, but not limited to, marketing, enrollment, and administration, and may contract with an insurance company authorized to do an accident and health business in this State or a hospital plan corporation or a professional health service corporation for the provision of insurance or indemnity or reimbursement against the cost of health care services provided by the health service plan as it deems to be necessary. Such contracts shall be filed with the commissioner.

Section 9. Right to Serve or Benefits When Outside the State.—If a subscriber entitled to services provided by the corporation necessarily incurs expenses for such services while outside the service area, the voluntary nonprofit health service corporation to which the person is a subscriber may, in its discretion and if satisfied both as to the necessity for such services and that it was such as the subscriber would have been entitled to under similar circumstances in the service area, reimburse the subscriber or pay on his behalf all or part of the reasonable expenses incurred for such services. Such decision for reimbursement shall be subject to review by the commissioner at the request of a subscriber.

Section 10. Supervision.—(a) The corporation shall be subject to supervision by the commissioner and the secretary as provided by this act. It shall not be subject to the laws of this State now in force relating to health service plans or to insurance corporations engaged in the business of insurance nor to any law hereafter enacted relating to health service plans or to insurance and corporations engaged in the business of insurance, unless such law specifically and in exact terms applies to such voluntary nonprofit health services corporations.

(b) All rates charged subscribers or groups of subscribers by the corporation and the form and content of all contracts between the corporation and its subscribers or groups of subscribers, all rates of payments to hospitals made by such corporation pursuant to the contracts provided for in this act, budgeted acquisition costs in connection with the

solicitation of subscribers to such hospital plans, the reserves to be maintained by such corporation, and the certificates issued by such corporation representing their subscribers' agreements shall, at all times, be subject to the prior approval of the commissioner. Applications for such approval shall be made to the commissioner in such form, and shall set forth such information as the commissioner may require. Rates shall not be excessive, inadequate or unfairly discriminatory in relation to the services offered. Upon the review at any time by the commissioner of an application, he shall, if requested by applicant before issuing an order of disapproval hold a hearing upon not less than ten days' written notice, specifying the matters to be considered at such hearing, to the corporation which made such application, and if, after such hearing, he finds that such application or a part thereof does not meet the requirements of this act he shall issue an order specifying in what respects he finds that it so fails and notice thereof shall forthwith be served on the applicant, either personally or by mail. Within thirty days from the date of such notice, the applicant may apply to the Commonwealth Court by petition and a rule to show cause why the action of the commissioner should not be set aside and the application approved. For purposes of this section, the Administrative Agency Law shall be applicable.

(c) Solicitors or agents compensated directly or indirectly by any corporation subject to the provisions of this act shall meet such prerequisites as the commissioner by regulation shall require.

Section 11. Financial Report.—The corporation shall, on or before the first of March of every year, file with the commissioner a statement verified by at least two of the principal officers of the corporation summarizing its financial activities during the calendar or fiscal year immediately preceding, and showing its financial condition at the close of business on December 31 of that year, or the corporation's fiscal year. Such statement shall be in such form and shall contain such matter as the commissioner prescribes. The financial affairs and status of every such corporation shall be examined by the commissioner or his agents not less frequently than once in every three years and for this purpose the commissioner and his agents shall be entitled to the aid and cooperation of the officers and employes of the corporation and shall have convenient access to all books, records, papers, and documents that relate to the business of the corporation. They shall have authority to examine under oath or affirmation the officers, agents, employes and subscribers for the health services of the corporation, and all other persons having or having had substantial part in the work of the corporation in relation to its affairs, transactions and financial condition. The Insurance Commissioner may at any time, without making such examination, call on any such corporation for a written report authenticated by at least two of its principal officers concerning the financial affairs and status of the corporation.

Section 12. Contracts to Provide Medical Care.—A nonprofit health

service plan established pursuant to this act may receive and accept from governmental or private agencies payments covering all or part of the cost of subscriptions to provide its services, facilities, appliances, medicines or supplies.

Section 13. Exemption from Taxation.—Every voluntary nonprofit health services corporation is hereby declared to be a charitable and benevolent institution and all its income, funds, investments and property shall be exempt from all taxation of the State or its political subdivisions.

Section 14. Rules and Regulations.—The commissioner and the secretary are authorized and directed to promulgate such reasonable rules and regulations as deemed necessary to effectuate the purposes and provisions of this act.

Section 15. Penalty.—(a) Upon satisfactory evidence that a person, partnership, association, common law trust or corporation or any agent or officer thereof has violated any provision of this act or has made any false statement with respect to any report or statement required by this act or required by the commissioner or secretary under this act, or has hindered or prevented the commissioner or secretary in the performance of any duty imposed on them by this act, or has fraudulently procured or has fraudulently attempted to procure any personal benefit under this act, the commissioner or secretary, whichever is appropriate, may, in his discretion, pursue any one or more of the following courses of action:

(1) Suspend or revoke the articles of incorporation or the right of a person to engage in the transactions of a corporation or similar entity of such offending party or parties.

(2) Impose a penalty of not more than one thousand dollars (\$1,000) for each and every unlawful act committed by such party or parties.

(b) Before the commissioner or secretary, whichever is appropriate, shall take any action as above set forth, he shall give written notice to the person, partnership, association, common law trust or corporation, accused of violating the law, stating specifically the nature of such alleged violation and fixing a time and place, at least ten days thereafter, when a hearing of the matter shall be held. After such hearing or upon failure of the accused to appear at such hearing, the commissioner or secretary, whichever is appropriate, shall impose such of the above penalties as he deems advisable.

(c) When the commissioner or secretary, whichever is appropriate, shall take action in any or all of the ways above recited, the party aggrieved may appeal from said action to the Commonwealth Court.

Section 16. Exclusions.—The provisions of this act shall not apply to:

(1) Health service plans offered by hospitals or associated groups of hospitals or nonprofit corporations organized by hospitals for the furnishing of health services, or

(2) Health service plans offered by the Medical Care Foundation for the furnishing of health services, or

(3) Health service plans offered by proprietary corporations for the furnishing of health services.

Section 17. Effect of Act on Other Plans.—This act shall not apply to the following plans, programs or services so long as no substantial changes in operation are made other than the expansion of benefits similar in nature to those presently being provided:

(1) Corporations organized and existing in accordance with and pursuant to the act of May 5, 1933 (P.L.289), known as the "Nonprofit Corporation Law," and pursuant to the act of June 21, 1937 (P.L.1948), known as the "Nonprofit Hospital Plan Act."

(2) Corporations organized and existing in accordance with and pursuant to the act of June 27, 1939 (P.L.1125), known as the "Nonprofit Medical, Osteopathic, Dental and Podiatry Service Corporation Act."

(3) Corporations organized and existing in accordance with and pursuant to the act of December 9, 1955 (P.L.819), known as the "Nonprofit Dental Service Corporation Act."

(4) Any person for the prevention of disease among his employees.

(5) Any person when required under the act of June 2, 1915 (P.L.736), known as "The Pennsylvania Workmen's Compensation Act," and related legislation when the employe is not charged for such service.

(6) Any insurance company or other corporation or society which is being regulated by the Insurance Department at the time of the enactment of this act.

(7) Any medical or health service plan in existence and functioning for at least two years prior to the effective date of this act.

Section 18. Deductions from Salary.—(a) An employe of the State, of any political subdivision, or of any institution supported in whole or in part by the State may authorize the deduction from his salary or wages of the amount of his subscription payments to any corporation provided for in this act. Such authorization shall be evidenced by approval of the head of the department, division, office or institution in which such employe is employed.

(b) In case of employes of the State, such authorization shall be directed to and filed with the Auditor General. In the case of employes of a county, city, borough, township or other political subdivision, such authorization shall be directed to and filed with the auditor or other fiscal officer of such county, city, borough, township, or other political subdivision. In the case of employes of any institution supported in whole or in part by the State, such authorization shall be directed to and filed with the auditor or other fiscal officer of such institution.

(c) Upon the filing with him of such authorization, such auditor or fiscal officer shall draw a warrant, in favor of the health care corporation referred to in such authorization, for the amount covering the sum of the deductions thereby authorized.

Section 19. Effective Date.—This act shall take effect immediately.

APPROVED—The 29th day of December, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly  
No. 364.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive, flowing style.

*Secretary of the Commonwealth.*