

## No. 1980-234

## AN ACT

SB 1509

Amending the act of December 29, 1972 (P.L.1701, No.364), entitled "An act 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," further providing for the establishment, organization, operation and supervision of health maintenance organizations, providing for the powers and duties of the Secretary of Health and the Insurance Commissioner, and changing certain penalties.

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

Section 1. Sections 1, 2, 3 and 4, act of December 29, 1972 (P.L.1701, No.364), known as the "Voluntary Nonprofit Health Service Act of 1972," are amended to read:

Section 1. Short Title.—This act shall be known and may be cited as the ["**Voluntary Nonprofit Health Service Act of 1972.**"] "**Health Maintenance Organization Act.**"

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.] *health maintenance organizations and to authorize the Secretary of Health to provide technical advice and assistance to corporations desiring to establish, operate and maintain a health maintenance organization to the end that increased competition and consumer choice offered by diverse health maintenance organizations can constructively serve to advance the purposes of quality assurance, cost-effectiveness and access.*

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

"**Basic health services**" means those health services, including as a minimum, but not limited to, emergency care, inpatient hospital and physician care, ambulatory physician care, and outpatient and preventive medical services.

[(1)] "Court" means the Commonwealth Court of Pennsylvania.

[(2)] "Commissioner" means the Insurance Commissioner of the Commonwealth of Pennsylvania.

**“Direct provider” means an individual who is a direct provider of health care services under a benefit plan of a health maintenance organization or an individual whose primary current activity is the administration of health facilities in which such care is provided. An individual shall not be considered a direct provider of health care solely because the individual is a member of the governing body of a health-related organization.**

**“Health maintenance organization” means an organized system which combines the delivery and financing of health care and which provides basic health services to voluntarily enrolled subscribers for a fixed prepaid fee.**

**[(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] *Shall* 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, No.105), 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.] *any corporation may establish, maintain and operate a health maintenance organization upon receipt of a certificate of authority to do so in accordance with this act.*

(b) Such [contracts may] *health maintenance organizations shall:*

(1) Provide either directly or through arrangements with others, *basic 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] *basic health 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 or (iii) under similar arrangements which are found by the secretary to provide adequate financial incentives for the provision of quality and cost-effective care.

Section 2. Sections 5 and 6 of the act are repealed.

Section 3. The act is amended by adding sections to read:

**Section 5.1. Certificate of Authority.**—(a) *Every application for a certificate of authority under this act shall be made to the commissioner and secretary in writing and shall be in such form and contain such information as the regulations of the Departments of Insurance and Health may require.*

(b) *A certificate of authority shall be jointly issued by order of the commissioner and secretary when:*

(1) *The secretary has found and determined that the applicant:*

(i) *has demonstrated the potential ability to assure both availability and accessibility of adequate personnel and facilities in a manner enhancing availability, accessibility and continuity of services;*

(ii) *has arrangements for an ongoing quality of health care assurance program; and*

(iii) *has appropriate mechanisms whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis; and*

(2) *The commissioner has found and determined that the applicant has a reasonable plan to operate the health maintenance organization in a financially sound manner and is reasonably expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:*

(i) *The adequacy of working capital and funding sources.*

(ii) *Arrangements for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization.*

(iii) *Any agreement with providers of health care services whereby they assume financial risk for the provision of services to subscribers.*

(iv) *Any deposit of cash, or guaranty or maintenance or minimum restricted reserves which the commissioner, by regulation, may adopt to assure that the obligations to subscribers will be performed.*

(c) *Within ninety days of receipt of a completed application for a certificate of authority, the commissioner and secretary shall jointly either:*

(1) *approve the application and issue a certificate of authority; or*

(2) *disapprove the application specifying in writing the reasons for such disapproval. Any disapproval of an application may be appealed in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).*

**Section 6.1. Foreign Health Maintenance Organizations.**—(a) *A health maintenance organization approved and regulated under the laws of another state may be authorized by issuance of a certificate of*

*authority to operate or do business in this Commonwealth by satisfying the commissioner and the secretary that it is fully and legally organized under the laws of its state, and that it complies with all requirements for health maintenance organizations organized within the Commonwealth.*

*(b) The commissioner and the secretary may waive or modify the provisions of this act under which they have the authority to act if they determine that the same are not appropriate to a particular health maintenance organization 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 maintenance organization of another state.*

*(c) The commissioner and the secretary are hereby authorized and directed to develop with other states reciprocal licensing agreements concerning the licensure of health maintenance organizations which permit the commissioner and the secretary to accept audits, inspections and reviews of agencies from other states to determine whether health maintenance organizations licensed in other states meet Commonwealth requirements.*

Section 4. Sections 7, 8, 9, 10, 11, 12 and 13 of the act are amended to read:

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.] *A corporation receiving a certificate of authority to operate a health maintenance organization under the provisions of this act shall be organized in such a manner that assures that at least one-third of the membership of the board of directors of the health maintenance organization will be subscribers of the organization.* 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] *secretary*. The [commissioner] *secretary* 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] health maintenance organization** 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] health maintenance organization** 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] health maintenance organization** 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. For purposes of this section, the Administrative Agency Law shall be applicable.] *(a) Except as otherwise provided in this act, a health maintenance organization operating under the provisions of this act shall not be subject to the laws of this State now in force relating to insurance corporations engaged in the business of insurance nor to any law hereafter enacted relating to the business of insurance unless such law specifically and in exact terms applies to such health maintenance organization. For a health maintenance organization established, operated and maintained by a corporation, this exemption shall apply only to the operations and subscribers of the health maintenance organization.*

*(b) All health maintenance organizations shall be subject to the following insurance laws:*

*(1) The act of July 22, 1974 (P.L.589, No.205), known as the "Unfair Insurance Practices Act."*

*(2) Any rehabilitation, liquidation or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies.*

*(c) All rates charged subscribers or groups of subscribers by a health maintenance organization and the form and content of all contracts between a health maintenance organization and its subscribers or groups of subscribers, all rates of payment to hospitals made by a health maintenance organization pursuant to contracts provided for in this act, budgeted acquisition costs in connection with the solicitation of subscribers, and the certificates issued by a health maintenance organization representing its agreements with subscribers shall, at all times, be on file with the commissioner and be deemed approved unless explicitly rejected within sixty days of filing. Filings shall be made to the commissioner in such form, and shall set forth such information as the commissioner may require to carry out the provisions of this act. Any disapproval of a filing by the commissioner may be appealed in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).*

*[(c)] (d) 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.*

*(e) A health maintenance organization shall establish and maintain a grievance resolution system satisfactory to the secretary, whereby the complaints of its subscribers may be acted upon promptly and satisfactorily.*

*(f) If a health maintenance organization offers eye care which is within the scope of the practice of optometry, it shall make optometric care available to its subscribers, and shall make the same reimbursement whether the service is provided by an optometrist or a physician.*

**Section 11. [Financial Report] Reports and Examinations.—**

*(a) 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] *financial affairs* 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.*

*(b) A corporation shall maintain its financial records in such manner that the revenues and expenses associated with the establishment, maintenance and operation of its prepaid health care delivery system under this act are identifiable and distinct from other activities it may engage in which are not directly related to the establishment, maintenance and operation of its prepaid health care delivery system under this act.*

*(c) The secretary or his agents shall have free access to all the books, records, papers and documents that relate to the business of the corporation, other than financial.*

**Section 12. Contracts to Provide Medical Care.—**A [nonprofit health service plan] *health maintenance organization* 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] *health maintenance organization established, maintained and operated by a corporation not-for-profit* 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 5. Section 15 of the act, repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

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.] (a) *The commissioner and secretary may suspend or revoke any certificate of authority issued to a health maintenance organization under this act, or, in their discretion, impose a penalty of not more than one thousand dollars (\$1,000) for each and every unlawful act committed, if they find that any of the following conditions exist:*

(1) *that the health maintenance organization is providing inadequate or poor quality care, thereby creating a threat to the health and safety of its subscribers;*

(2) *that the health maintenance organization is unable to fulfill its contractual obligations to its subscribers;*

(3) *that the health maintenance organization or any person on its behalf has advertised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner; or*

(4) *that the health maintenance organization has otherwise failed to substantially comply with this act.*

(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] *health maintenance organization*, 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.] *Hearing procedure and appeals from decisions of the commissioner or secretary shall be as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).*

Section 6. Sections 16 and 17 of the act are amended to read:

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.] *Certificates of authority shall not be required of:*

(1) *Health maintenance organizations offered by employers for the exclusive enrollment of their own employees, or by unions for the sole use of their members.*

(2) *Any plan, program or service offered by an employer for the prevention of disease among his employees.*

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.]

*(a) Any requirements or privileges granted under this act shall apply exclusively to that portion of business or activities which reasonably relates to the establishment, maintenance and operation of a health maintenance organization pursuant to the provisions of this act.*

*(b) Any health maintenance organization program approved by the commissioner or secretary and operating under the provisions of 40 Pa.C.S. Ch.61 (relating to hospital plan corporations) or 40 Pa.C.S. Ch.63 (relating to professional health services plan corporations) or under any statute superseded by either of such statutes, prior to the effective date of this act, may continue to operate under the provisions of such authority or successor provisions, if any.*

Section 7. Section 18 of the act is repealed.

Section 8. (a) This act shall take effect in 60 days.

(b) The commissioner and the secretary shall jointly, on the effective date of this act, issue a health maintenance organization certificate of authority to each organization previously approved as a voluntary nonprofit health service plan by the Insurance Commissioner and Secretary of Health.

APPROVED—The 19th day of December, A. D. 1980.

DICK THORNBURGH