

## No. 2014-96

## AN ACT

HB 1574

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 purpose, for definitions, for required services, for board of directors, for contracts with practitioners, hospitals and insurance companies, for right to serve or benefits when outside the state, for supervision and for reports and examinations; and providing for applicability to limited liability companies.

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

Section 1. Section 2 of the act of December 29, 1972 (P.L.1701, No.364), known as the Health Maintenance Organization Act, amended December 19, 1980 (P.L.1300, No.234), is amended to read:

Section 2. Purpose.—The purpose of this act is to permit and encourage the formation and regulation of health maintenance organizations and to authorize the Secretary of Health to provide technical advice and assistance to corporations *and limited liability companies* 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 2. Section 3 of the act, amended December 19, 1980 (P.L.1300, No.234) and repealed in part December 20, 1982 (P.L.1409, No.326), is amended to read:

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.

"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.

**"Limited liability company" means a limited liability company listed under 15 Pa.C.S. § 8911(a)(3) (relating to purposes).**

"Secretary" means the Secretary of Health of the Commonwealth of Pennsylvania.

Section 3. Sections 4, 7, 8, 9, 10 and 11 of the act, amended December 19, 1980 (P.L.1300, No.234), are amended to read:

Section 4. Services Which Shall be Provided.—(a) Any law to the contrary notwithstanding, any corporation **or limited liability company** 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 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, basic health services; and

(3) Provide physicians' services (i) directly through physicians who are employes of such organization, (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 7. Board of Directors.—A corporation **or limited liability company** 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 **or board of managers** of the health maintenance organization will be subscribers of the organization. The board of directors **or board of managers** shall be elected in the manner stated in the corporation's charter or bylaws **or in the limited liability company's operating agreement**.

Section 8. Contracts with Practitioners, Hospitals, Insurance Companies, Etc.—(a) Contracts enabling the [corporation] **health maintenance organization** 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 secretary. The 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 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 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] a health maintenance organization** necessarily incurs expenses for such services while outside the service area, the 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) 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 *or limited liability company*, 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).

(d) Solicitors or agents compensated directly or indirectly by **[any corporation] a health maintenance organization** 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. Reports and Examinations.—(a) The **[corporation] health maintenance organization** 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] health maintenance organization** 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] health maintenance organization'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] health maintenance organization** 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] health maintenance organization** and shall have convenient access to all books, records, papers[,] and documents that relate to the financial affairs of the **[corporation] health maintenance organization**. They shall have authority to examine under oath or affirmation the officers, agents, employes and subscribers for the health services of the **[corporation] health maintenance organization**, and all other persons having or having had substantial part in the work of the **[corporation] health maintenance organization** 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] a health maintenance organization** for a written report authenticated by at least two of its principal officers concerning the financial affairs and status of the **[corporation] health maintenance organization**.

(b) A **[corporation] health maintenance organization** 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] health maintenance organization**, other than financial.

Section 4. The act is amended by adding a section to read:

***Section 14.1. Applicability to Limited Liability Companies.—This act and regulations promulgated under this act shall apply to a limited liability company as follows:***

***(1) The board of managers of a limited liability company shall be treated in the same manner as the board of directors of a corporation.***

***(2) The members of a limited liability company shall be treated in the same manner as the shareholders of a corporation.***

***(3) No limited liability company that is a health maintenance organization shall be treated differently from a corporation that is a health maintenance organization with respect to any of its liabilities.***

Section 5. This act shall take effect in 60 days.

APPROVED—The 2nd day of July, A.D. 2014

TOM CORBETT