

HOUSE BILL NO. 785

INTRODUCED BY MESSMORE, STICKNEY, COBB,
JACOBSON, DRISCOLL, SQUIRES
BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

FEBRUARY 12, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON HUMAN SERVICES & AGING.

FEBRUARY 13, 1991 FIRST READING.

FEBRUARY 21, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

FEBRUARY 22, 1991 PRINTING REPORT.

FEBRUARY 25, 1991 SECOND READING, DO PASS.

ENGROSSING REPORT.

FEBRUARY 26, 1991 THIRD READING, PASSED.
AYES, 98; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON PUBLIC HEALTH, WELFARE, & SAFETY.

FIRST READING.

APRIL 2, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 5, 1991 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *785*
 2 INTRODUCED BY *Messmore Stone* *Colby Johnson*
 3 *Small* BY REQUEST OF THE DEPARTMENT OF
 4 HEALTH AND ENVIRONMENTAL SCIENCES

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 7 MONTANA HEALTH MAINTENANCE ORGANIZATION ACT; TO ELIMINATE
 8 THE REQUIREMENT FOR CERTIFICATION BY THE DEPARTMENT OF
 9 HEALTH AND ENVIRONMENTAL SCIENCES BEFORE A CERTIFICATE OF
 10 AUTHORITY IS ISSUED TO A HEALTH MAINTENANCE ORGANIZATION; TO
 11 ELIMINATE OTHER REQUIREMENTS RELATING TO THE DEPARTMENT;
 12 AMENDING SECTIONS 33-31-102, 33-31-103, 33-31-201,
 13 33-31-202, 33-31-212, 33-31-401, 33-31-402, 33-31-404, AND
 14 33-31-405, MCA; REPEALING SECTION 33-31-104, MCA; AND
 15 PROVIDING AN EFFECTIVE DATE."

16
 17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 33-31-102, MCA, is amended to read:

19 "33-31-102. Definitions. As used in this chapter,
 20 unless the context requires otherwise, the following
 21 definitions apply:

- 22 (1) "Basic health care services" means:
 23 (a) consultative, diagnostic, therapeutic, and referral
 24 services by a provider;
 25 (b) inpatient hospital and provider care;

- 1 (c) outpatient medical services;
 2 (d) medical treatment and referral services;
 3 (e) accident and sickness services by a provider to
 4 each newborn infant of an enrollee pursuant to
 5 33-31-301(3)(e);
 6 (f) care and treatment of mental illness, alcoholism,
 7 and drug addiction;
 8 (g) diagnostic laboratory and diagnostic and
 9 therapeutic radiologic services;
 10 (h) preventive health services, including:
 11 (i) immunizations;
 12 (ii) well-child care from birth;
 13 (iii) periodic health evaluations for adults;
 14 (iv) voluntary family planning services;
 15 (v) infertility services; and
 16 (vi) children's eye and ear examinations conducted to
 17 determine the need for vision and hearing correction; and
 18 (i) treatment for phenylketonuria. "Treatment" means
 19 licensed professional medical services under the supervision
 20 of a physician and a dietary formula product to achieve and
 21 maintain normalized blood levels of phenylalanine and
 22 adequate nutritional status.
 23 (2) "Commissioner" means the commissioner of insurance
 24 of the state of Montana.
 25 ~~(3) "Department of health" means the department of~~



-2-
 INTRODUCED BILL
 HB 785

~~health-and-environmental-sciences-provided-for-in-2-15-2101-~~

~~{4}--"Director" means the director of the department of
health-and-environmental-sciences-provided-for-in-2-15-2101-~~

~~{5}{3}~~ "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

~~{6}{4}~~ "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

~~{7}{5}~~ "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

~~{8}{6}~~ "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

~~{9}{7}~~ "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.

~~{10}{8}~~ "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

~~{11}{9}~~ "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

~~{12}{10}~~ "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

1 ~~{13}~~{11} "Provider" means a physician, hospital,
 2 hospital-related facility, long-term care facility, dentist,
 3 osteopath, chiropractor, optometrist, podiatrist,
 4 psychologist, licensed social worker, registered pharmacist,
 5 or nurse specialist as specifically listed in 37-8-202 who
 6 treats any illness or injury within the scope and
 7 limitations of his practice or any other person who is
 8 licensed or otherwise authorized in this state to furnish
 9 health care services.

10 ~~{14}~~{12} "Uncovered expenditures" mean the costs of
 11 health care services that are covered by a health
 12 maintenance organization and for which an enrollee is liable
 13 if the health maintenance organization becomes insolvent."

14 **Section 2.** Section 33-31-103, MCA, is amended to read:

15 "33-31-103. Rules. ~~{1}~~ The commissioner may, after
 16 notice and hearing, make reasonable rules necessary to
 17 effectuate this chapter.

18 ~~{2}--The--department-of-health-may-make-reasonable-rules
 19 necessary-to-effectuate-this-chapter--"~~

20 **Section 3.** Section 33-31-201, MCA, is amended to read:

21 "33-31-201. Establishment of health maintenance
 22 organizations. (1) Notwithstanding any law of this state to
 23 the contrary, a person may apply to the commissioner for and
 24 obtain a certificate of authority to establish and operate a
 25 health maintenance organization in compliance with this

1 chapter. A person may not establish or operate a health
 2 maintenance organization in this state except as authorized
 3 by a subsisting certificate of authority issued to it by the
 4 commissioner. A foreign person may qualify for a certificate
 5 of authority if it first obtains from the secretary of state
 6 a certificate of authority to transact business in this
 7 state as a foreign corporation under 35-1-1001.

8 (2) Each health maintenance organization operating in
 9 this state as of October 1, 1987, shall submit an
 10 application for a certificate of authority under subsection
 11 (3) within 30 days after the effective date of rules adopted
 12 by the commissioner ~~and the department of health~~ as provided
 13 in 33-31-103. Each such applicant may continue to operate in
 14 this state until the commissioner acts upon the application.
 15 If an application is denied under 33-31-202, the applicant
 16 must be treated as a health maintenance organization whose
 17 certificate of authority has been revoked.

18 (3) Each application of a health maintenance
 19 organization, whether separately licensed or not, for a
 20 certificate of authority must:

- 21 (a) be verified by an officer or authorized
 22 representative of the applicant;
 23 (b) be in a form prescribed by the commissioner;
 24 (c) contain:
 25 (i) the applicant's name;

1 (ii) the location of the applicant's home office or
 2 principal office in the United States (if a foreign person);
 3 (iii) the date of organization or incorporation;
 4 (iv) the form of organization (including whether the
 5 providers affiliated with the health maintenance
 6 organization will be salaried employees or group or
 7 individual contractors);
 8 (v) the state or country of domicile; and
 9 (vi) any additional information the commissioner may
 10 reasonably require; and
 11 (d) set forth the following information or be
 12 accompanied by the following documents, as applicable:
 13 (i) a copy of the applicant's organizational documents,
 14 such as its corporate charters or articles of incorporation,
 15 articles of association, partnership agreement, trust
 16 agreement, or other applicable documents, and all amendments
 17 thereto, certified by the public officer with whom the
 18 originals were filed in the state or country of domicile;
 19 (ii) a copy of the bylaws, rules, and regulations, or
 20 similar document, if any, regulating the conduct of the
 21 applicant's internal affairs, certified by its secretary or
 22 other officer having custody thereof;
 23 (iii) a list of the names, addresses, and official
 24 positions of the persons responsible for the conduct of the
 25 applicant's affairs, including all members of the board of

1 directors, board of trustees, executive committee, or other
 2 governing board or committee; the principal officers in the
 3 case of a corporation; and the partners or members in the
 4 case of a partnership or association;
 5 (iv) a copy of any contract made or to be made between:
 6 (A) any provider and the applicant; or
 7 (B) any person listed in subsection (3)(d)(iii) and the
 8 applicant. The applicant may file a list of providers
 9 executing a standard contract and a copy of the contract
 10 instead of copies of each executed contract.
 11 (v) the extent to which any of the following will be
 12 included in provider contracts and the form of any
 13 provisions that:
 14 (A) limit a provider's ability to seek reimbursement
 15 for basic health care services or health care services from
 16 an enrollee;
 17 (B) permit or require a provider to assume a financial
 18 risk in the health maintenance organization, including any
 19 provisions for assessing the provider, adjusting capitation
 20 or fee-for-service rates, or sharing in the earnings or
 21 losses; and
 22 (C) govern amending or terminating an agreement with a
 23 provider;
 24 (vi) a financial statement showing the applicant's
 25 assets, liabilities, and sources of financial support. If

1 the applicant's financial affairs are audited by independent
 2 certified public accountants, a copy of the applicant's most
 3 recent certified financial statement satisfies this
 4 requirement unless the commissioner directs that additional
 5 or more recent financial information is required for the
 6 proper administration of this chapter.

7 (vii) a description of the proposed method of marketing,
 8 a financial plan that includes a projection of operating
 9 results anticipated until the organization has had net
 10 income for at least 1 year, and a statement as to the
 11 sources of working capital as well as any other source of
 12 funding;

13 (viii) a power of attorney executed by the applicant, on
 14 a form prescribed by the commissioner, appointing the
 15 commissioner, his successors in office, and his authorized
 16 deputies as the applicant's attorney to receive service of
 17 legal process issued against it in this state;

18 (ix) a statement reasonably describing the geographic
 19 service area or areas to be served, by county, including:

20 (A) a chart showing the number of primary and specialty
 21 care providers, with locations and service areas by county;

22 (B) the method of handling emergency care, with the
 23 location of each emergency care facility; and

24 (C) the method of handling out-of-area services;

25 (x) a description of the way in which the health

1 maintenance organization provides services to enrollees in
 2 each geographic service area, including the extent to which
 3 a provider under contract with the health maintenance
 4 organization provides primary care to those enrollees;

5 (xi) a description of the complaint procedures to be
 6 used as required under 33-31-303;

7 ~~{xii}-a-description-of-the-procedures-and-programs-to-be~~
 8 ~~implemented-to-meet-the-quality-of-health-care--requirements~~
 9 ~~in-33-31-202;~~

10 ~~{xiii}{xii}~~ a description of the mechanism by which
 11 enrollees will be afforded an opportunity to participate in
 12 matters of policy and operation under 33-31-222;

13 ~~{xiv}{xiii}~~ a summary of the way in which administrative
 14 services will be provided, including the size and
 15 qualifications of the administrative staff and the projected
 16 cost of administration in relation to premium income. If the
 17 health maintenance organization delegates management
 18 authority for a major corporate function to a person outside
 19 the organization, the health maintenance organization shall
 20 include a copy of the contract in its application for a
 21 certificate of authority. Contracts for delegated management
 22 authority must be filed with the commissioner in accordance
 23 with the filing provisions of 33-31-301(2); however, nothing
 24 in this subsection deprives the health maintenance
 25 organization of its right to confidentiality of any

1 proprietary information, and the commissioner may not
 2 disclose that proprietary information to any other person.
 3 All contracts must include:

- 4 (A) the services to be provided;
 5 (B) the standards of performance for the manager;
 6 (C) the method of payment, including any provisions for
 7 the administrator to participate in the profits or losses of
 8 the plan;
 9 (D) the duration of the contract; and
 10 (E) any provisions for modifying, terminating, or
 11 renewing the contract;
- 12 ~~(xv)~~(xiv) a summary of all financial guaranties by
 13 providers, sponsors, affiliates, or parents within a holding
 14 company system or any other guaranties that are intended to
 15 ensure the financial success of the plan, including hold
 16 harmless agreements by providers, insolvency insurance,
 17 reinsurance, or other guaranties;
- 18 ~~(xvi)~~(xv) a summary of benefits to be offered enrollees,
 19 including any limitations and exclusions and the
 20 renewability of all contracts to be written;
- 21 ~~(xvii)~~(xvi) evidence that it can meet the requirement of
 22 33-31-216(10); and
- 23 ~~(xviii)~~(xvii) any other information that the
 24 commissioner may reasonably require to make the
 25 determinations required in 33-31-202.

1 (4) Each health maintenance organization shall file
 2 each substantial change, alteration, or amendment to the
 3 information submitted under subsection (3) with the
 4 commissioner at least 30 days prior to its effective date,
 5 including changes in articles of incorporation and bylaws,
 6 organization type, geographic service area, provider
 7 contracts, provider availability, plan administration,
 8 financial projections and guaranties, and any other change
 9 that might affect the financial solvency of the plan. The
 10 commissioner may, after notice and hearing, disapprove any
 11 proposed change, alteration, or amendment to the business
 12 plan. The commissioner may make reasonable rules exempting
 13 from the filing requirements of this subsection those items
 14 he considers unnecessary.

15 (5) An applicant or a health maintenance organization
 16 holding a certificate of authority shall file with the
 17 commissioner all contracts of reinsurance and any
 18 modifications thereto. An agreement between a health
 19 maintenance organization and an insurer is subject to Title
 20 33, chapter 2, part 12. A reinsurance agreement must remain
 21 in full force and effect for at least 90 days following
 22 written notice of cancellation by either party by certified
 23 mail to the commissioner.

24 (6) Each health maintenance organization shall
 25 maintain, at its administrative office, and make available

1 to the commissioner upon request executed copies of all
2 provider contracts.

3 (7) The commissioner may make reasonable rules
4 exempting an insurer or health service corporation operating
5 a health maintenance organization as a plan from the filing
6 requirements of this section if information requested in the
7 application has been submitted to the commissioner under
8 other laws and rules administered by the commissioner."

9 **Section 4.** Section 33-31-202, MCA, is amended to read:

10 "**33-31-202. Issuance of certificate of authority.** (1)
11 Upon receipt of an application for issuance of a certificate
12 of authority, the commissioner shall transmit copies of the
13 application and accompanying documents to the department of
14 health. The department of health shall determine whether the
15 applicant for a certificate of authority, with respect to
16 health care services to be furnished, has:

17 (a) demonstrated the willingness and potential ability
18 to assure that it will provide health care services in a
19 manner assuring availability and accessibility of adequate
20 personnel and facilities and enhancing availability,
21 accessibility, and continuity of service;

22 (b) arrangements established in accordance with the
23 rules made by the department of health for an ongoing
24 quality assurance program concerning health care
25 availability, accessibility, and continuity of service; and

1 (c) a procedure established in accordance with rules
2 of the department of health to develop, compile, evaluate,
3 and report statistics relating to the cost of its
4 operations, the pattern of utilization of its services, the
5 availability and accessibility of its services, and any
6 other matters as may be reasonably required by the
7 department of health;

8 (2) Within 60 days of receipt of the application from a
9 health maintenance organization for issuance of a
10 certificate of authority, the department of health shall
11 certify to the commissioner that the proposed health
12 maintenance organization meets the requirements of
13 subsection (1) or shall, after notice and hearing, notify
14 the commissioner that the health maintenance organization
15 does not meet those requirements and specify in what
16 respects it is deficient. The director may extend by not
17 more than an additional 30 days the period within which he
18 may certify to the commissioner that the proposed health
19 maintenance organization meets or does not meet the
20 requirements of subsection (1) by giving notice of the
21 extension to the commissioner and the health maintenance
22 organization before the expiration of the initial 60-day
23 period;

24 (3)(1) The commissioner shall issue or deny a
25 certificate of authority to any person filing an application

1 pursuant to 33-31-201 within 180 days ~~of receipt of the~~
 2 ~~certification from the department of health~~ after he
 3 ~~receives the application.~~ The commissioner shall grant a
 4 certificate of authority upon payment of the application fee
 5 prescribed in 33-31-212 if the commissioner is satisfied
 6 that each of the following conditions is met:

7 (a) The persons responsible for the conduct of the
 8 applicant's affairs are competent and trustworthy.

9 ~~(b) The department of health certifies, in accordance~~
 10 ~~with subsection (2), that the health maintenance~~
 11 ~~organization's proposed plan of operation meets the~~
 12 ~~requirements of subsection (1).~~

13 ~~(c)~~ (b) The health maintenance organization will
 14 effectively provide or arrange for the provision of basic
 15 health care services on a prepaid basis, through insurance
 16 or otherwise, except to the extent of reasonable
 17 requirements for copayments.

18 ~~(d)~~ (c) The health maintenance organization is
 19 financially responsible and can reasonably be expected to
 20 meet its obligations to enrollees and prospective enrollees.
 21 In making this determination, the commissioner may in his
 22 discretion consider:

23 (i) the financial soundness of the arrangements for
 24 health care services and the schedule of charges used in
 25 connection therewith;

1 (ii) the adequacy of working capital;

2 (iii) any agreement with an insurer, a health service
 3 corporation, a government, or any other organization for
 4 ensuring the payment of the cost of health care services or
 5 the provision for automatic applicability of an alternative
 6 coverage in the event of discontinuance of the health
 7 maintenance organization;

8 (iv) any agreement with providers for the provision of
 9 health care services;

10 (v) any deposit of cash or securities submitted in
 11 accordance with 33-31-216; and

12 (vi) any additional information as the commissioner may
 13 reasonably require.

14 ~~(e)~~ (d) The enrollees will be afforded an opportunity to
 15 participate in matters of policy and operation pursuant to
 16 33-31-222.

17 ~~(f)~~ (e) Nothing in the proposed method of operation, as
 18 shown by the information submitted pursuant to 33-31-201 or
 19 by independent investigation, violates any provision of this
 20 chapter or rules adopted by the commissioner ~~or the~~
 21 ~~department of health.~~

22 ~~(g) Any deficiencies identified by the department of~~
 23 ~~health have been corrected.~~

24 ~~(4)~~ (2) The commissioner may in his discretion deny a
 25 certificate of authority only if he complies with the

1 requirements of 33-31-404."

2 **Section 5.** Section 33-31-212, MCA, is amended to read:

3 "33-31-212. Fees. (1) Each health maintenance
4 organization shall pay to the commissioner the following
5 fees:

6 (a) for filing an application for a certificate of
7 authority or amendment thereto, \$300;

8 (b) for filing an amendment to the organization
9 documents that requires approval, \$25;

10 (c) for filing each annual statement, \$25;

11 (d) for annual continuation of certificate of
12 authority, \$300.

13 (2) All fees, miscellaneous charges, fines, penalties,
14 and those amounts received pursuant to 33-31-211(3) and
15 33-31-405 collected by the commissioner pursuant to this
16 chapter and the rules adopted thereunder must be deposited
17 in the general fund.

18 ~~{3}--The-director-may-assess-fees-necessary-and-adequate
19 to-cover-the-expenses-of-the-director's-functions-under-this
20 chapter--"~~

21 **Section 6.** Section 33-31-401, MCA, is amended to read:

22 "33-31-401. Examination. (1) The commissioner may
23 examine the affairs of a health maintenance organization as
24 often as is reasonably necessary to protect the interests of
25 the people of this state. The commissioner shall make an

1 examination at least once every 3 years.

2 ~~{2}--The---department---of---health---may---examine---the
3 availability, accessibility, and continuity--of--the--health
4 care---services---provided---by---any---health---maintenance
5 organization---and---the--providers--with--whom--the--health
6 maintenance-organization-has-contracts, agreements, or other
7 arrangements-as-often-as-is-reasonably-necessary-to--protect
8 the-interests-of-the-people-of-this-state--The-department-of
9 health--shall-make-such-an-examination-at-least-once-every-3
10 years--~~

11 ~~{3}~~{2} Each authorized health maintenance organization
12 and provider shall submit its relevant books and records for
13 the examinations and in every way facilitate the
14 examinations. For the purpose of examination, the
15 commissioner ~~and--the--department--of--health~~ may administer
16 oaths to and examine the officers and insurance producers of
17 the health maintenance organization and the principals of
18 the providers concerning their business.

19 ~~{4}--{a}--{1}~~{3} (a) Upon presentation of a detailed
20 account of the charges and expenses of examinations by the
21 commissioner, the health maintenance organization being
22 examined shall pay to the examiner as necessarily incurred
23 on account of the examination the actual travel expenses, a
24 reasonable living-expense allowance, and a per diem, all at
25 reasonable rates customary therefor and as established or

1 adopted by the commissioner. The commissioner may present an
2 account periodically during the course of the examination or
3 at the termination of the examination as the commissioner
4 considers proper. A person may not pay and an examiner may
5 not accept any additional emolument on account of any
6 examination.

7 ~~(iii)~~(b) If a health maintenance organization fails to
8 pay the charges and expenses as referred to in subsection
9 ~~(4)(a)~~(i) (3)(a), the commissioner shall pay them out of the
10 funds of the commissioner in the same manner as other
11 disbursements of funds. The amount so paid must be a lien
12 upon all of the person's assets and property in this state
13 and may be recovered by suit by the attorney general on
14 behalf of the state of Montana and restored to the
15 appropriate fund.

16 ~~(b)--The--expenses--of--examination--conducted--by--the~~
17 ~~director--under--this--section--must--be--assessed--against--the~~
18 ~~health--maintenance--organization--and--remitted--to--the~~
19 ~~director;~~

20 ~~(5)~~(4) In lieu of an examination, the commissioner or
21 the director may accept the report of an examination made by
22 the commissioner or the director of another state."

23 **Section 7.** Section 33-31-402, MCA, is amended to read:

24 "33-31-402. Suspension or revocation of certificate of
25 authority. (1) The commissioner may in his discretion

1 suspend or revoke any certificate of authority issued to a
2 health maintenance organization under this chapter if he
3 finds that any of the following conditions exist:

4 (a) The health maintenance organization is operating in
5 contravention of its basic organizational document or in a
6 manner contrary to that described in any other information
7 submitted under 33-31-201 and provided that such operation
8 adversely affects the health maintenance organization's
9 ability to provide benefits and operate under the
10 application approved by the commissioner, unless amendments
11 to such submissions have been filed with and approved by the
12 commissioner.

13 (b) The health maintenance organization issues
14 evidences of coverage or uses a schedule of charges for
15 health care services that do not comply with the
16 requirements of 33-31-301.

17 (c) The health maintenance organization does not
18 provide or arrange for basic health care services.

19 ~~(d)--The--director--after--notice--and--hearing--certifies~~
20 ~~to--the--commissioner--that:~~

21 ~~(i)--the--health--maintenance--organization--does--not--meet~~
22 ~~the--requirements--of--33-31-202(i);--or~~

23 ~~(ii)--the--health--maintenance--organization--is--unable--to~~
24 ~~fulfill--its--obligations--to--furnish--health--care--services;~~

25 ~~(e)~~(d) The health maintenance organization is no longer

1 financially responsible and may reasonably be expected to be
2 unable to meet its obligations to enrollees or prospective
3 enrollees.

4 (f)(e) The health maintenance organization has failed
5 to implement a mechanism affording the enrollees an
6 opportunity to participate in matters of policy and
7 operation under 33-31-222.

8 (g)(f) The health maintenance organization has failed
9 to implement the complaint system required by 33-31-303 to
10 resolve valid complaints in a reasonable manner.

11 (h)(g) The health maintenance organization, or any
12 person on its behalf, has advertised or merchandised its
13 services in an untrue, misrepresentative, misleading,
14 deceptive, or unfair manner.

15 (i)(h) The continued operation of the health
16 maintenance organization would be hazardous to its
17 enrollees.

18 (j)(i) The health maintenance organization has
19 otherwise failed to substantially comply with this chapter.

20 (2) The commissioner may in his discretion suspend or
21 revoke a certificate of authority only if he complies with
22 the requirements of 33-31-404.

23 (3) When the certificate of authority of a health
24 maintenance organization is suspended, the health
25 maintenance organization may not, during the period of such

1 suspension, enroll any additional enrollees except newborn
2 infants or other newly acquired dependents of existing
3 enrollees and may not engage in any advertising or
4 solicitation.

5 (4) If the commissioner revokes the certificate of
6 authority of a health maintenance organization, the health
7 maintenance organization shall proceed, immediately
8 following the effective date of the order of revocation, to
9 wind up its affairs and may not transact further business
10 except as may be essential to the orderly conclusion of its
11 affairs. It may not engage in further advertising or
12 solicitation following the effective date of the order of
13 revocation. The commissioner may by written order permit
14 further operation of the health maintenance organization if
15 he finds further operation to be in the best interest of
16 enrollees to the extent that enrollees will be afforded the
17 greatest practical opportunity to obtain continuing health
18 care coverage."

19 **Section 8.** Section 33-31-404, MCA, is amended to read:

20 "33-31-404. **Administrative procedures.** (1) When the
21 commissioner has cause to believe that grounds for the
22 denial of an application for a certificate of authority
23 exist or that grounds for the suspension or revocation of a
24 certificate of authority exist, he shall give written notice
25 to the health maintenance organization ~~and the department of~~

1 health specifically stating the grounds for denial,
2 suspension, or revocation and fixing a time of at least 30
3 days after the notice for a hearing on the matter.

4 ~~(2) The director or his designated representative may~~
5 ~~attend the hearing and may participate in the proceeding.~~
6 ~~The recommendations and findings of the director with~~
7 ~~respect to matters relating to the availability,~~
8 ~~accessibility, and continuity of health care services~~
9 ~~provided in connection with any decision regarding denial,~~
10 ~~suspension, or revocation of a certificate of authority must~~
11 ~~be conclusive and binding upon the commissioner. After the~~
12 ~~hearing, or upon the failure of the health maintenance~~
13 ~~organization to appear at the hearing, the commissioner~~
14 ~~shall make written findings and act as he considers~~
15 ~~advisable. The commissioner shall mail the written findings~~
16 ~~to the health maintenance organization and submit a copy to~~
17 ~~the director. The action of the commissioner and the~~
18 ~~recommendations and findings of the director are~~ is ~~subject~~
19 ~~to review by the district court having jurisdiction. The~~
20 ~~court may, in disposing of the issue before it, modify,~~
21 ~~affirm, or reverse the order of the commissioner in whole or~~
22 ~~in part.~~

23 (3) Where notice and hearing are required with regard
24 to actions taken by the commissioner under this chapter, the
25 requirements of 33-1-314 through 33-1-316 and Title 33,

1 chapter 1, part 7, apply, except that the formal rules of
2 pleading and evidence must be observed. To the extent that
3 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7,
4 do not address the notice and hearing requirements of this
5 chapter, the provisions of Title 2, chapter 4, parts 6 and
6 7, apply.

7 ~~(4) Where notice and hearing are required with regard~~
8 ~~to actions taken by the director under this chapter, the~~
9 ~~provisions of Title 2, chapter 4, parts 6 and 7, apply."~~

10 **Section 9.** Section 33-31-405, MCA, is amended to read:

11 "33-31-405. Penalties and enforcement. (1) The
12 commissioner may, in addition to suspension or revocation of
13 a certificate of authority under 33-31-402, after notice and
14 hearing, impose an administrative penalty in an amount not
15 less than \$500 or more than \$10,000 if he gives reasonable
16 notice in writing of the intent to levy the penalty and the
17 health maintenance organization has a reasonable time within
18 which to remedy the defect in its operations that gave rise
19 to the penalty citation.

20 (2) If the commissioner ~~or the director~~ has cause to
21 believe that a violation of this chapter has occurred or is
22 threatened, the commissioner ~~or the director~~ may:

23 (a) give notice to the health maintenance organization
24 and to the representatives or other persons who appear to be
25 involved in the suspected violation;

1 (b) arrange a conference with the alleged violators or
2 their authorized representatives to attempt to ascertain the
3 facts relating to the suspected violation; and

4 (c) if it appears that a violation has occurred, or is
5 threatened, arrive at an adequate and effective means of
6 correcting or preventing the violation.

7 (3) (a) The commissioner may issue an order directing a
8 health maintenance organization or its representative to
9 cease and desist from engaging in an act or practice in
10 violation of this chapter.

11 (b) Within 15 days after service of the cease and
12 desist order, the respondent may request a hearing to
13 determine whether acts or practices in violation of this
14 chapter have occurred. The hearing must be conducted
15 pursuant to Title 2, chapter 4, part 6, and judicial review
16 must be available as provided by Title 2, chapter 4, part 7.

17 (4) If a health maintenance organization violates a
18 provision of this chapter and the commissioner elects not to
19 issue a cease and desist order or if the respondent does not
20 comply with a cease and desist order issued pursuant to
21 subsection (3), the commissioner may institute a proceeding
22 to obtain injunctive or other appropriate relief in the
23 district court of Lewis and Clark County."

24 NEW SECTION. **Section 10.** Repealer. Section 33-31-104,
25 MCA, is repealed.

1 NEW SECTION. **Section 11.** Effective date. [This act] is
2 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15


In compliance with a written request, there is hereby submitted a Fiscal Note for HB0785, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill to generally revise the Montana Health Maintenance Organization Act; to eliminate the requirement for certification by the Department of Health and Environmental Sciences before a certificate of authority is issued to a health maintenance organization; and to eliminate other requirements relating to the department.

FISCAL IMPACT:

None.



ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



CHARLOTTE K. (CHAR) MESSMORE, PRIMARY SPONSOR DATE
Fiscal Note for HB0785, as introduced **HB 785**

APPROVED BY COMM. ON HUMAN SERVICES AND AGING

1 House BILL NO. 785
2 INTRODUCED BY Messmore, Steve, C. H. Jacobson
3 BY REQUEST OF THE DEPARTMENT OF
4 HEALTH AND ENVIRONMENTAL SCIENCES

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
7 MONTANA HEALTH MAINTENANCE ORGANIZATION ACT; TO ELIMINATE
8 THE REQUIREMENT FOR CERTIFICATION BY THE DEPARTMENT OF
9 HEALTH AND ENVIRONMENTAL SCIENCES BEFORE A CERTIFICATE OF
10 AUTHORITY IS ISSUED TO A HEALTH MAINTENANCE ORGANIZATION; TO
11 ELIMINATE OTHER REQUIREMENTS RELATING TO THE DEPARTMENT;
12 AMENDING SECTIONS 33-31-102, 33-31-103, 33-31-201,
13 33-31-202, 33-31-212, 33-31-401, 33-31-402, 33-31-404, AND
14 33-31-405, MCA; REPEALING SECTION 33-31-104, MCA; AND
15 PROVIDING AN EFFECTIVE DATE."

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Section 33-31-102, MCA, is amended to read:

18 "33-31-102. Definitions. As used in this chapter,
19 unless the context requires otherwise, the following
20 definitions apply:

- 21 (1) "Basic health care services" means:
22 (a) consultative, diagnostic, therapeutic, and referral
23 services by a provider;
24 (b) inpatient hospital and provider care;

- 1 (c) outpatient medical services;
2 (d) medical treatment and referral services;
3 (e) accident and sickness services by a provider to
4 each newborn infant of an enrollee pursuant to
5 33-31-301(3)(e);
6 (f) care and treatment of mental illness, alcoholism,
7 and drug addiction;
8 (g) diagnostic laboratory and diagnostic and
9 therapeutic radiologic services;
10 (h) preventive health services, including:
11 (i) immunizations;
12 (ii) well-child care from birth;
13 (iii) periodic health evaluations for adults;
14 (iv) voluntary family planning services;
15 (v) infertility services; and
16 (vi) children's eye and ear examinations conducted to
17 determine the need for vision and hearing correction; and
18 (i) treatment for phenylketonuria. "Treatment" means
19 licensed professional medical services under the supervision
20 of a physician and a dietary formula product to achieve and
21 maintain normalized blood levels of phenylalanine and
22 adequate nutritional status.
23 (2) "Commissioner" means the commissioner of insurance
24 of the state of Montana.

25 (3) "Department of health" means the department of



-2-
SECOND READING
HB 785

1 ~~health-and-environmental-sciences-provided-for-in-2-15-2101-~~
 2 ~~{4}-"Director"-means-the-director-of-the-department--of~~
 3 ~~health-and-environmental-sciences-provided-for-in-2-15-2101-~~
 4 ~~{5}{3}~~ "Enrollee" means a person:
 5 (a) who enrolls in or contracts with a health
 6 maintenance organization;
 7 (b) on whose behalf a contract is made with a health
 8 maintenance organization to receive health care services; or
 9 (c) on whose behalf the health maintenance organization
 10 contracts to receive health care services.
 11 ~~{6}{4}~~ "Evidence of coverage" means a certificate,
 12 agreement, policy, or contract issued to an enrollee setting
 13 forth the coverage to which the enrollee is entitled.
 14 ~~{7}{5}~~ "Health care services" means:
 15 (a) the services included in furnishing medical or
 16 dental care to a person;
 17 (b) the services included in hospitalizing a person;
 18 (c) the services incident to furnishing medical or
 19 dental care or hospitalization; or
 20 (d) the services included in furnishing to a person
 21 other services for the purpose of preventing, alleviating,
 22 curing, or healing illness, injury, or physical disability.
 23 ~~{8}{6}~~ "Health care services agreement" means an
 24 agreement for health care services between a health
 25 maintenance organization and an enrollee.

1 ~~{9}{7}~~ "Health maintenance organization" means a person
 2 who provides or arranges for basic health care services to
 3 enrollees on a prepaid or other financial basis, either
 4 directly through provider employees or through contractual
 5 or other arrangements with a provider or a group of
 6 providers.
 7 ~~{10}{8}~~ "Insurance producer" means an individual,
 8 partnership, or corporation appointed or authorized by a
 9 health maintenance organization to solicit applications for
 10 health care services agreements on its behalf.
 11 ~~{11}{9}~~ "Person" means:
 12 (a) an individual;
 13 (b) a group of individuals;
 14 (c) an insurer, as defined in 33-1-201;
 15 (d) a health service corporation, as defined in
 16 33-30-101;
 17 (e) a corporation, partnership, facility, association,
 18 or trust; or
 19 (f) an institution of a governmental unit of any state
 20 licensed by that state to provide health care, including but
 21 not limited to a physician, hospital, hospital-related
 22 facility, or long-term care facility.
 23 ~~{12}{10}~~ "Plan" means a health maintenance organization
 24 operated by an insurer or health service corporation as an
 25 integral part of the corporation and not as a subsidiary.

1 ~~{13}~~(11) "Provider" means a physician, hospital,
 2 hospital-related facility, long-term care facility, dentist,
 3 osteopath, chiropractor, optometrist, podiatrist,
 4 psychologist, licensed social worker, registered pharmacist,
 5 or nurse specialist as specifically listed in 37-8-202 who
 6 treats any illness or injury within the scope and
 7 limitations of his practice or any other person who is
 8 licensed or otherwise authorized in this state to furnish
 9 health care services.

10 ~~{14}~~(12) "Uncovered expenditures" mean the costs of
 11 health care services that are covered by a health
 12 maintenance organization and for which an enrollee is liable
 13 if the health maintenance organization becomes insolvent."

14 **Section 2.** Section 33-31-103, MCA, is amended to read:

15 "33-31-103. Rules. ~~{1}~~ The commissioner may, after
 16 notice and hearing, make reasonable rules necessary to
 17 effectuate this chapter.

18 ~~{2}--The--department-of-health-may-make-reasonable-rules
 19 necessary-to-effectuate-this-chapter--"~~

20 **Section 3.** Section 33-31-201, MCA, is amended to read:

21 "33-31-201. Establishment of health maintenance
 22 organizations. (1) Notwithstanding any law of this state to
 23 the contrary, a person may apply to the commissioner for and
 24 obtain a certificate of authority to establish and operate a
 25 health maintenance organization in compliance with this

1 chapter. A person may not establish or operate a health
 2 maintenance organization in this state except as authorized
 3 by a subsisting certificate of authority issued to it by the
 4 commissioner. A foreign person may qualify for a certificate
 5 of authority if it first obtains from the secretary of state
 6 a certificate of authority to transact business in this
 7 state as a foreign corporation under 35-1-1001.

8 (2) Each health maintenance organization operating in
 9 this state as of October 1, 1987, shall submit an
 10 application for a certificate of authority under subsection
 11 (3) within 30 days after the effective date of rules adopted
 12 by the commissioner ~~and the department of health~~ as provided
 13 in 33-31-103. Each such applicant may continue to operate in
 14 this state until the commissioner acts upon the application.
 15 If an application is denied under 33-31-202, the applicant
 16 must be treated as a health maintenance organization whose
 17 certificate of authority has been revoked.

18 (3) Each application of a health maintenance
 19 organization, whether separately licensed or not, for a
 20 certificate of authority must:

- 21 (a) be verified by an officer or authorized
 22 representative of the applicant;
 23 (b) be in a form prescribed by the commissioner;
 24 (c) contain:
 25 (i) the applicant's name;

1 (ii) the location of the applicant's home office or
 2 principal office in the United States (if a foreign person);
 3 (iii) the date of organization or incorporation;
 4 (iv) the form of organization (including whether the
 5 providers affiliated with the health maintenance
 6 organization will be salaried employees or group or
 7 individual contractors);
 8 (v) the state or country of domicile; and
 9 (vi) any additional information the commissioner may
 10 reasonably require; and
 11 (d) set forth the following information or be
 12 accompanied by the following documents, as applicable:
 13 (i) a copy of the applicant's organizational documents,
 14 such as its corporate charters or articles of incorporation,
 15 articles of association, partnership agreement, trust
 16 agreement, or other applicable documents, and all amendments
 17 thereto, certified by the public officer with whom the
 18 originals were filed in the state or country of domicile;
 19 (ii) a copy of the bylaws, rules, and regulations, or
 20 similar document, if any, regulating the conduct of the
 21 applicant's internal affairs, certified by its secretary or
 22 other officer having custody thereof;
 23 (iii) a list of the names, addresses, and official
 24 positions of the persons responsible for the conduct of the
 25 applicant's affairs, including all members of the board of

1 directors, board of trustees, executive committee, or other
 2 governing board or committee; the principal officers in the
 3 case of a corporation; and the partners or members in the
 4 case of a partnership or association;
 5 (iv) a copy of any contract made or to be made between:
 6 (A) any provider and the applicant; or
 7 (B) any person listed in subsection (3)(d)(iii) and the
 8 applicant. The applicant may file a list of providers
 9 executing a standard contract and a copy of the contract
 10 instead of copies of each executed contract.
 11 (v) the extent to which any of the following will be
 12 included in provider contracts and the form of any
 13 provisions that:
 14 (A) limit a provider's ability to seek reimbursement
 15 for basic health care services or health care services from
 16 an enrollee;
 17 (B) permit or require a provider to assume a financial
 18 risk in the health maintenance organization, including any
 19 provisions for assessing the provider, adjusting capitation
 20 or fee-for-service rates, or sharing in the earnings or
 21 losses; and
 22 (C) govern amending or terminating an agreement with a
 23 provider;
 24 (vi) a financial statement showing the applicant's
 25 assets, liabilities, and sources of financial support. If

1 the applicant's financial affairs are audited by independent
 2 certified public accountants, a copy of the applicant's most
 3 recent certified financial statement satisfies this
 4 requirement unless the commissioner directs that additional
 5 or more recent financial information is required for the
 6 proper administration of this chapter.

7 (vii) a description of the proposed method of marketing,
 8 a financial plan that includes a projection of operating
 9 results anticipated until the organization has had net
 10 income for at least 1 year, and a statement as to the
 11 sources of working capital as well as any other source of
 12 funding;

13 (viii) a power of attorney executed by the applicant, on
 14 a form prescribed by the commissioner, appointing the
 15 commissioner, his successors in office, and his authorized
 16 deputies as the applicant's attorney to receive service of
 17 legal process issued against it in this state;

18 (ix) a statement reasonably describing the geographic
 19 service area or areas to be served, by county, including:

20 (A) a chart showing the number of primary and specialty
 21 care providers, with locations and service areas by county;

22 (B) the method of handling emergency care, with the
 23 location of each emergency care facility; and

24 (C) the method of handling out-of-area services;

25 (x) a description of the way in which the health

1 maintenance organization provides services to enrollees in
 2 each geographic service area, including the extent to which
 3 a provider under contract with the health maintenance
 4 organization provides primary care to those enrollees;

5 (xi) a description of the complaint procedures to be
 6 used as required under 33-31-303;

7 ~~(xii) a description of the procedures and programs to be~~
 8 ~~implemented to meet the quality of health care requirements~~
 9 ~~in 33-31-202;~~

10 ~~(xiii)~~ (xii) a description of the mechanism by which
 11 enrollees will be afforded an opportunity to participate in
 12 matters of policy and operation under 33-31-222;

13 ~~(xiv)~~ (xiii) a summary of the way in which administrative
 14 services will be provided, including the size and
 15 qualifications of the administrative staff and the projected
 16 cost of administration in relation to premium income. If the
 17 health maintenance organization delegates management
 18 authority for a major corporate function to a person outside
 19 the organization, the health maintenance organization shall
 20 include a copy of the contract in its application for a
 21 certificate of authority. Contracts for delegated management
 22 authority must be filed with the commissioner in accordance
 23 with the filing provisions of 33-31-301(2); however, nothing
 24 in this subsection deprives the health maintenance
 25 organization of its right to confidentiality of any

1 proprietary information, and the commissioner may not
2 disclose that proprietary information to any other person.
3 All contracts must include:

- 4 (A) the services to be provided;
- 5 (B) the standards of performance for the manager;
- 6 (C) the method of payment, including any provisions for
7 the administrator to participate in the profits or losses of
8 the plan;
- 9 (D) the duration of the contract; and
- 10 (E) any provisions for modifying, terminating, or
11 renewing the contract;

12 ~~(xv)~~(xiv) a summary of all financial guaranties by
13 providers, sponsors, affiliates, or parents within a holding
14 company system or any other guaranties that are intended to
15 ensure the financial success of the plan, including hold
16 harmless agreements by providers, insolvency insurance,
17 reinsurance, or other guaranties;

18 ~~(xvi)~~(xv) a summary of benefits to be offered enrollees,
19 including any limitations and exclusions and the
20 renewability of all contracts to be written;

21 ~~(xvii)~~(xvi) evidence that it can meet the requirement of
22 33-31-216(10); and

23 ~~(xviii)~~(xvii) any other information that the
24 commissioner may reasonably require to make the
25 determinations required in 33-31-202.

1 (4) Each health maintenance organization shall file
2 each substantial change, alteration, or amendment to the
3 information submitted under subsection (3) with the
4 commissioner at least 30 days prior to its effective date,
5 including changes in articles of incorporation and bylaws,
6 organization type, geographic service area, provider
7 contracts, provider availability, plan administration,
8 financial projections and guaranties, and any other change
9 that might affect the financial solvency of the plan. The
10 commissioner may, after notice and hearing, disapprove any
11 proposed change, alteration, or amendment to the business
12 plan. The commissioner may make reasonable rules exempting
13 from the filing requirements of this subsection those items
14 he considers unnecessary.

15 (5) An applicant or a health maintenance organization
16 holding a certificate of authority shall file with the
17 commissioner all contracts of reinsurance and any
18 modifications thereto. An agreement between a health
19 maintenance organization and an insurer is subject to Title
20 33, chapter 2, part 12. A reinsurance agreement must remain
21 in full force and effect for at least 90 days following
22 written notice of cancellation by either party by certified
23 mail to the commissioner.

24 (6) Each health maintenance organization shall
25 maintain, at its administrative office, and make available

1 to the commissioner upon request executed copies of all
2 provider contracts.

3 (7) The commissioner may make reasonable rules
4 exempting an insurer or health service corporation operating
5 a health maintenance organization as a plan from the filing
6 requirements of this section if information requested in the
7 application has been submitted to the commissioner under
8 other laws and rules administered by the commissioner."

9 **Section 4.** Section 33-31-202, MCA, is amended to read:

10 **"33-31-202. Issuance of certificate of authority. (1)**

11 ~~Upon receipt of an application for issuance of a certificate~~
12 ~~of authority, the commissioner shall transmit copies of the~~
13 ~~application and accompanying documents to the department of~~
14 ~~health. The department of health shall determine whether the~~
15 ~~applicant for a certificate of authority with respect to~~
16 ~~health care services to be furnished, has:~~

17 ~~(a) demonstrated the willingness and potential ability~~
18 ~~to assure that it will provide health care services in a~~
19 ~~manner assuring availability and accessibility of adequate~~
20 ~~personnel and facilities and enhancing availability,~~
21 ~~accessibility, and continuity of service;~~

22 ~~(b) arrangements established in accordance with the~~
23 ~~rules made by the department of health for an ongoing~~
24 ~~quality assurance program concerning health care~~
25 ~~availability, accessibility, and continuity of service; and~~

1 ~~(c) a procedure established in accordance with rules~~
2 ~~of the department of health to develop, compile, evaluate,~~
3 ~~and report statistics relating to the cost of its~~
4 ~~operations, the pattern of utilization of its services, the~~
5 ~~availability and accessibility of its services, and any~~
6 ~~other matters as may be reasonably required by the~~
7 ~~department of health;~~

8 ~~(2) Within 60 days of receipt of the application from a~~
9 ~~health maintenance organization for issuance of a~~
10 ~~certificate of authority, the department of health shall~~
11 ~~certify to the commissioner that the proposed health~~
12 ~~maintenance organization meets the requirements of~~
13 ~~subsection (1) or shall, after notice and hearing, notify~~
14 ~~the commissioner that the health maintenance organization~~
15 ~~does not meet those requirements and specify in what~~
16 ~~respects it is deficient. The director may extend by not~~
17 ~~more than an additional 30 days the period within which he~~
18 ~~may certify to the commissioner that the proposed health~~
19 ~~maintenance organization meets or does not meet the~~
20 ~~requirements of subsection (1) by giving notice of the~~
21 ~~extension to the commissioner and the health maintenance~~
22 ~~organization before the expiration of the initial 60-day~~
23 ~~period;~~

24 ~~(3)(1) The commissioner shall issue or deny a~~
25 ~~certificate of authority to any person filing an application~~

1 pursuant to 33-31-201 within 180 days of--receipt--of--the
 2 ~~certification--from--the--department--of--health~~ after he
 3 receives the application. The commissioner shall grant a
 4 certificate of authority upon payment of the application fee
 5 prescribed in 33-31-212 if the commissioner is satisfied
 6 that each of the following conditions is met:

7 (a) The persons responsible for the conduct of the
 8 applicant's affairs are competent and trustworthy.

9 ~~{b}--The--department--of--health--certifies--in--accordance~~
 10 ~~with--subsection--(2)--that--the--health--maintenance~~
 11 ~~organization's--proposed--plan--of--operation--meets--the~~
 12 ~~requirements--of--subsection--(1)-~~

13 ~~{e}{b}~~ The health maintenance organization will
 14 effectively provide or arrange for the provision of basic
 15 health care services on a prepaid basis, through insurance
 16 or otherwise, except to the extent of reasonable
 17 requirements for copayments.

18 ~~{d}{c}~~ The health maintenance organization is
 19 financially responsible and can reasonably be expected to
 20 meet its obligations to enrollees and prospective enrollees.
 21 In making this determination, the commissioner may in his
 22 discretion consider:

23 (i) the financial soundness of the arrangements for
 24 health care services and the schedule of charges used in
 25 connection therewith;

1 (ii) the adequacy of working capital;

2 (iii) any agreement with an insurer, a health service
 3 corporation, a government, or any other organization for
 4 ensuring the payment of the cost of health care services or
 5 the provision for automatic applicability of an alternative
 6 coverage in the event of discontinuance of the health
 7 maintenance organization;

8 (iv) any agreement with providers for the provision of
 9 health care services;

10 (v) any deposit of cash or securities submitted in
 11 accordance with 33-31-216; and

12 (vi) any additional information as the commissioner may
 13 reasonably require.

14 ~~{e}{d}~~ The enrollees will be afforded an opportunity to
 15 participate in matters of policy and operation pursuant to
 16 33-31-222.

17 ~~{f}{e}~~ Nothing in the proposed method of operation, as
 18 shown by the information submitted pursuant to 33-31-201 or
 19 by independent investigation, violates any provision of this
 20 chapter or rules adopted by the commissioner ~~or--the~~
 21 ~~department-of-health~~.

22 ~~{g}--Any--deficiencies--identified--by--the--department--of~~
 23 ~~health--have--been--corrected-~~

24 ~~{4}{2}~~ The commissioner may in his discretion deny a
 25 certificate of authority only if he complies with the

1 requirements of 33-31-404."

2 **Section 5.** Section 33-31-212, MCA, is amended to read:

3 "33-31-212. Fees. (1) Each health maintenance
4 organization shall pay to the commissioner the following
5 fees:

6 (a) for filing an application for a certificate of
7 authority or amendment thereto, \$300;

8 (b) for filing an amendment to the organization
9 documents that requires approval, \$25;

10 (c) for filing each annual statement, \$25;

11 (d) for annual continuation of certificate of
12 authority, \$300.

13 (2) All fees, miscellaneous charges, fines, penalties,
14 and those amounts received pursuant to 33-31-211(3) and
15 33-31-405 collected by the commissioner pursuant to this
16 chapter and the rules adopted thereunder must be deposited
17 in the general fund.

18 ~~{3}--The director may assess fees necessary and adequate
19 to cover the expenses of the director's functions under this
20 chapter--"~~

21 **Section 6.** Section 33-31-401, MCA, is amended to read:

22 "33-31-401. Examination. (1) The commissioner may
23 examine the affairs of a health maintenance organization as
24 often as is reasonably necessary to protect the interests of
25 the people of this state. The commissioner shall make an

1 examination at least once every 3 years.

2 ~~{2}--The department of health may examine the
3 availability, accessibility, and continuity of the health
4 care services provided by any health maintenance
5 organization and the providers with whom the health
6 maintenance organization has contracts, agreements, or other
7 arrangements as often as is reasonably necessary to protect
8 the interests of the people of this state. The department of
9 health shall make such an examination at least once every 3
10 years--~~

11 ~~{3}{2}~~ Each authorized health maintenance organization
12 and provider shall submit its relevant books and records for
13 the examinations and in every way facilitate the
14 examinations. For the purpose of examination, the
15 commissioner and the department of health may administer
16 oaths to and examine the officers and insurance producers of
17 the health maintenance organization and the principals of
18 the providers concerning their business.

19 ~~{4}{a}{+}{3}~~ (a) Upon presentation of a detailed
20 account of the charges and expenses of examinations by the
21 commissioner, the health maintenance organization being
22 examined shall pay to the examiner as necessarily incurred
23 on account of the examination the actual travel expenses, a
24 reasonable living-expense allowance, and a per diem, all at
25 reasonable rates customary therefor and as established or

1 adopted by the commissioner. The commissioner may present an
2 account periodically during the course of the examination or
3 at the termination of the examination as the commissioner
4 considers proper. A person may not pay and an examiner may
5 not accept any additional emolument on account of any
6 examination.

7 ~~(ii)~~(b) IF a health maintenance organization fails to
8 pay the charges and expenses as referred to in subsection
9 ~~(4)(a)(i)~~ (3)(a), the commissioner shall pay them out of the
10 funds of the commissioner in the same manner as other
11 disbursements of funds. The amount so paid must be a lien
12 upon all of the person's assets and property in this state
13 and may be recovered by suit by the attorney general on
14 behalf of the state of Montana and restored to the
15 appropriate fund.

16 ~~(b)--The--expenses--of--examination--conducted--by--the~~
17 ~~director--under--this--section--must--be--assessed--against--the~~
18 ~~health--maintenance--organization--and--remitted--to--the~~
19 ~~director:~~

20 ~~(5)(4)~~ In lieu of an examination, the commissioner or
21 the director may accept the report of an examination made by
22 the commissioner or the director of another state."

23 **Section 7.** Section 33-31-402, MCA, is amended to read:

24 "33-31-402. Suspension or revocation of certificate of
25 authority. (1) The commissioner may in his discretion

1 suspend or revoke any certificate of authority issued to a
2 health maintenance organization under this chapter if he
3 finds that any of the following conditions exist:

4 (a) The health maintenance organization is operating in
5 contravention of its basic organizational document or in a
6 manner contrary to that described in any other information
7 submitted under 33-31-201 and provided that such operation
8 adversely affects the health maintenance organization's
9 ability to provide benefits and operate under the
10 application approved by the commissioner, unless amendments
11 to such submissions have been filed with and approved by the
12 commissioner.

13 (b) The health maintenance organization issues
14 evidences of coverage or uses a schedule of charges for
15 health care services that do not comply with the
16 requirements of 33-31-301.

17 (c) The health maintenance organization does not
18 provide or arrange for basic health care services.

19 ~~(d)--The--director--after--notice--and--hearing--certifies~~
20 ~~to--the--commissioner--that:~~

21 ~~(i)--the--health--maintenance--organization--does--not--meet~~
22 ~~the--requirements--of--33-31-202(i);--or~~

23 ~~(ii)--the--health--maintenance--organization--is--unable--to~~
24 ~~fulfill--its--obligations--to--furnish--health--care--services--~~

25 ~~(e)~~(d) The health maintenance organization is no longer

1 financially responsible and may reasonably be expected to be
2 unable to meet its obligations to enrollees or prospective
3 enrollees.

4 ~~(f)~~(e) The health maintenance organization has failed
5 to implement a mechanism affording the enrollees an
6 opportunity to participate in matters of policy and
7 operation under 33-31-222.

8 ~~(g)~~(f) The health maintenance organization has failed
9 to implement the complaint system required by 33-31-303 to
10 resolve valid complaints in a reasonable manner.

11 ~~(h)~~(g) The health maintenance organization, or any
12 person on its behalf, has advertised or merchandised its
13 services in an untrue, misrepresentative, misleading,
14 deceptive, or unfair manner.

15 ~~(i)~~(h) The continued operation of the health
16 maintenance organization would be hazardous to its
17 enrollees.

18 ~~(j)~~(i) The health maintenance organization has
19 otherwise failed to substantially comply with this chapter.

20 (2) The commissioner may in his discretion suspend or
21 revoke a certificate of authority only if he complies with
22 the requirements of 33-31-404.

23 (3) When the certificate of authority of a health
24 maintenance organization is suspended, the health
25 maintenance organization may not, during the period of such

1 suspension, enroll any additional enrollees except newborn
2 infants or other newly acquired dependents of existing
3 enrollees and may not engage in any advertising or
4 solicitation.

5 (4) If the commissioner revokes the certificate of
6 authority of a health maintenance organization, the health
7 maintenance organization shall proceed, immediately
8 following the effective date of the order of revocation, to
9 wind up its affairs and may not transact further business
10 except as may be essential to the orderly conclusion of its
11 affairs. It may not engage in further advertising or
12 solicitation following the effective date of the order of
13 revocation. The commissioner may by written order permit
14 further operation of the health maintenance organization if
15 he finds further operation to be in the best interest of
16 enrollees to the extent that enrollees will be afforded the
17 greatest practical opportunity to obtain continuing health
18 care coverage."

19 **Section 8.** Section 33-31-404, MCA, is amended to read:
20 "33-31-404. **Administrative procedures.** (1) When the
21 commissioner has cause to believe that grounds for the
22 denial of an application for a certificate of authority
23 exist or that grounds for the suspension or revocation of a
24 certificate of authority exist, he shall give written notice
25 to the health maintenance organization ~~and the department of~~

1 health specifically stating the grounds for denial,
2 suspension, or revocation and fixing a time of at least 30
3 days after the notice for a hearing on the matter.

4 ~~(2) The director or his designated representative may~~
5 ~~attend the hearing and may participate in the proceeding.~~
6 ~~The recommendations and findings of the director with~~
7 ~~respect to matters relating to the availability,~~
8 ~~accessibility, and continuity of health care services~~
9 ~~provided in connection with any decision regarding denial,~~
10 ~~suspension, or revocation of a certificate of authority must~~
11 ~~be conclusive and binding upon the commissioner. After the~~
12 ~~hearing, or upon the failure of the health maintenance~~
13 ~~organization to appear at the hearing, the commissioner~~
14 ~~shall make written findings and act as he considers~~
15 ~~advisable. The commissioner shall mail the written findings~~
16 ~~to the health maintenance organization and submit a copy to~~
17 ~~the director. The action of the commissioner and the~~
18 ~~recommendations and findings of the director are is~~ subject
19 to review by the district court having jurisdiction. The
20 court may, in disposing of the issue before it, modify,
21 affirm, or reverse the order of the commissioner in whole or
22 in part.

23 (3) Where notice and hearing are required with regard
24 to actions taken by the commissioner under this chapter, the
25 requirements of 33-1-314 through 33-1-316 and Title 33,

1 chapter 1, part 7, apply, except that the formal rules of
2 pleading and evidence must be observed. To the extent that
3 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7,
4 do not address the notice and hearing requirements of this
5 chapter, the provisions of Title 2, chapter 4, parts 6 and
6 7, apply.

7 ~~(4) Where notice and hearing are required with regard~~
8 ~~to actions taken by the director under this chapter, the~~
9 ~~provisions of Title 2, chapter 4, parts 6 and 7, apply."~~

10 **Section 9.** Section 33-31-405, MCA, is amended to read:

11 "33-31-405. Penalties and enforcement. (1) The
12 commissioner may, in addition to suspension or revocation of
13 a certificate of authority under 33-31-402, after notice and
14 hearing, impose an administrative penalty in an amount not
15 less than \$500 or more than \$10,000 if he gives reasonable
16 notice in writing of the intent to levy the penalty and the
17 health maintenance organization has a reasonable time within
18 which to remedy the defect in its operations that gave rise
19 to the penalty citation.

20 (2) If the commissioner or the director has cause to
21 believe that a violation of this chapter has occurred or is
22 threatened, the commissioner or the director may:

23 (a) give notice to the health maintenance organization
24 and to the representatives or other persons who appear to be
25 involved in the suspected violation;

1 (b) arrange a conference with the alleged violators or
 2 their authorized representatives to attempt to ascertain the
 3 facts relating to the suspected violation; and

4 (c) if it appears that a violation has occurred, or is
 5 threatened, arrive at an adequate and effective means of
 6 correcting or preventing the violation.

7 (3) (a) The commissioner may issue an order directing a
 8 health maintenance organization or its representative to
 9 cease and desist from engaging in an act or practice in
 10 violation of this chapter.

11 (b) Within 15 days after service of the cease and
 12 desist order, the respondent may request a hearing to
 13 determine whether acts or practices in violation of this
 14 chapter have occurred. The hearing must be conducted
 15 pursuant to Title 2, chapter 4, part 6, and judicial review
 16 must be available as provided by Title 2, chapter 4, part 7.

17 (4) If a health maintenance organization violates a
 18 provision of this chapter and the commissioner elects not to
 19 issue a cease and desist order or if the respondent does not
 20 comply with a cease and desist order issued pursuant to
 21 subsection (3), the commissioner may institute a proceeding
 22 to obtain injunctive or other appropriate relief in the
 23 district court of Lewis and Clark County."

24 NEW SECTION. **Section 10.** Repealer. Section 33-31-104,
 25 MCA, is repealed.

1 NEW SECTION. **Section 11.** Effective date. [This act] is
 2 effective July 1, 1991.

-End-

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House BILL NO. *785*

INTRODUCED BY *Messmore* *Steele* *Chapman*
BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA HEALTH MAINTENANCE ORGANIZATION ACT; TO ELIMINATE THE REQUIREMENT FOR CERTIFICATION BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES BEFORE A CERTIFICATE OF AUTHORITY IS ISSUED TO A HEALTH MAINTENANCE ORGANIZATION; TO ELIMINATE OTHER REQUIREMENTS RELATING TO THE DEPARTMENT; AMENDING SECTIONS 33-31-102, 33-31-103, 33-31-201, 33-31-202, 33-31-212, 33-31-401, 33-31-402, 33-31-404, AND 33-31-405, MCA; REPEALING SECTION 33-31-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-31-102, MCA, is amended to read:

"33-31-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Basic health care services" means:
 - (a) consultative, diagnostic, therapeutic, and referral services by a provider;
 - (b) inpatient hospital and provider care;

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- (c) outpatient medical services;
- (d) medical treatment and referral services;
- (e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);
- (f) care and treatment of mental illness, alcoholism, and drug addiction;
- (g) diagnostic laboratory and diagnostic and therapeutic radiologic services;
- (h) preventive health services, including:
 - (i) immunizations;
 - (ii) well-child care from birth;
 - (iii) periodic health evaluations for adults;
 - (iv) voluntary family planning services;
 - (v) infertility services; and
 - (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction; and
- (i) treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.
- (2) "Commissioner" means the commissioner of insurance of the state of Montana.
- ~~(3) "Department of health" means the department of~~



~~health-and-environmental-sciences-provided-for-in-2-15-2101-~~

~~{4}--"Director"--means-the-director-of-the-department--of~~

~~health-and-environmental-sciences-provided-for-in-2-15-2101-~~

~~{5}{3} "Enrollee" means a person:~~

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

~~{6}{4} "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.~~

~~{7}{5} "Health care services" means:~~

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

~~{8}{6} "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.~~

~~{9}{7} "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers.~~

~~{10}{8} "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.~~

~~{11}{9} "Person" means:~~

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

~~{12}{10} "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.~~

1 ~~(13)~~(11) "Provider" means a physician, hospital,
 2 hospital-related facility, long-term care facility, dentist,
 3 osteopath, chiropractor, optometrist, podiatrist,
 4 psychologist, licensed social worker, registered pharmacist,
 5 or nurse specialist as specifically listed in 37-8-202 who
 6 treats any illness or injury within the scope and
 7 limitations of his practice or any other person who is
 8 licensed or otherwise authorized in this state to furnish
 9 health care services.

10 ~~(14)~~(12) "Uncovered expenditures" mean the costs of
 11 health care services that are covered by a health
 12 maintenance organization and for which an enrollee is liable
 13 if the health maintenance organization becomes insolvent."

14 **Section 2.** Section 33-31-103, MCA, is amended to read:

15 "33-31-103. Rules. ~~(1)~~ The commissioner may, after
 16 notice and hearing, make reasonable rules necessary to
 17 effectuate this chapter.

18 ~~(2)--The--department-of-health-may-make-reasonable-rules~~
 19 ~~necessary-to-effectuate-this-chapter--"~~

20 **Section 3.** Section 33-31-201, MCA, is amended to read:

21 "33-31-201. Establishment of health maintenance
 22 organizations. (1) Notwithstanding any law of this state to
 23 the contrary, a person may apply to the commissioner for and
 24 obtain a certificate of authority to establish and operate a
 25 health maintenance organization in compliance with this

1 chapter. A person may not establish or operate a health
 2 maintenance organization in this state except as authorized
 3 by a subsisting certificate of authority issued to it by the
 4 commissioner. A foreign person may qualify for a certificate
 5 of authority if it first obtains from the secretary of state
 6 a certificate of authority to transact business in this
 7 state as a foreign corporation under 35-1-1001.

8 (2) Each health maintenance organization operating in
 9 this state as of October 1, 1987, shall submit an
 10 application for a certificate of authority under subsection
 11 (3) within 30 days after the effective date of rules adopted
 12 by the commissioner ~~and-the-department-of-health~~ as provided
 13 in 33-31-103. Each such applicant may continue to operate in
 14 this state until the commissioner acts upon the application.
 15 If an application is denied under 33-31-202, the applicant
 16 must be treated as a health maintenance organization whose
 17 certificate of authority has been revoked.

18 (3) Each application of a health maintenance
 19 organization, whether separately licensed or not, for a
 20 certificate of authority must:

- 21 (a) be verified by an officer or authorized
 22 representative of the applicant;
 23 (b) be in a form prescribed by the commissioner;
 24 (c) contain:
 25 (i) the applicant's name;

1 (ii) the location of the applicant's home office or
 2 principal office in the United States (if a foreign person);
 3 (iii) the date of organization or incorporation;
 4 (iv) the form of organization (including whether the
 5 providers affiliated with the health maintenance
 6 organization will be salaried employees or group or
 7 individual contractors);
 8 (v) the state or country of domicile; and
 9 (vi) any additional information the commissioner may
 10 reasonably require; and

11 (d) set forth the following information or be
 12 accompanied by the following documents, as applicable:

13 (i) a copy of the applicant's organizational documents,
 14 such as its corporate charters or articles of incorporation,
 15 articles of association, partnership agreement, trust
 16 agreement, or other applicable documents, and all amendments
 17 thereto, certified by the public officer with whom the
 18 originals were filed in the state or country of domicile;

19 (ii) a copy of the bylaws, rules, and regulations, or
 20 similar document, if any, regulating the conduct of the
 21 applicant's internal affairs, certified by its secretary or
 22 other officer having custody thereof;

23 (iii) a list of the names, addresses, and official
 24 positions of the persons responsible for the conduct of the
 25 applicant's affairs, including all members of the board of

1 directors, board of trustees, executive committee, or other
 2 governing board or committee; the principal officers in the
 3 case of a corporation; and the partners or members in the
 4 case of a partnership or association;

5 (iv) a copy of any contract made or to be made between:

6 (A) any provider and the applicant; or

7 (B) any person listed in subsection (3)(d)(iii) and the
 8 applicant. The applicant may file a list of providers
 9 executing a standard contract and a copy of the contract
 10 instead of copies of each executed contract.

11 (v) the extent to which any of the following will be
 12 included in provider contracts and the form of any
 13 provisions that:

14 (A) limit a provider's ability to seek reimbursement
 15 for basic health care services or health care services from
 16 an enrollee;

17 (B) permit or require a provider to assume a financial
 18 risk in the health maintenance organization, including any
 19 provisions for assessing the provider, adjusting capitation
 20 or fee-for-service rates, or sharing in the earnings or
 21 losses; and

22 (C) govern amending or terminating an agreement with a
 23 provider;

24 (vi) a financial statement showing the applicant's
 25 assets, liabilities, and sources of financial support. If

1 the applicant's financial affairs are audited by independent
 2 certified public accountants, a copy of the applicant's most
 3 recent certified financial statement satisfies this
 4 requirement unless the commissioner directs that additional
 5 or more recent financial information is required for the
 6 proper administration of this chapter.

7 (vii) a description of the proposed method of marketing,
 8 a financial plan that includes a projection of operating
 9 results anticipated until the organization has had net
 10 income for at least 1 year, and a statement as to the
 11 sources of working capital as well as any other source of
 12 funding;

13 (viii) a power of attorney executed by the applicant, on
 14 a form prescribed by the commissioner, appointing the
 15 commissioner, his successors in office, and his authorized
 16 deputies as the applicant's attorney to receive service of
 17 legal process issued against it in this state;

18 (ix) a statement reasonably describing the geographic
 19 service area or areas to be served, by county, including:

20 (A) a chart showing the number of primary and specialty
 21 care providers, with locations and service areas by county;

22 (B) the method of handling emergency care, with the
 23 location of each emergency care facility; and

24 (C) the method of handling out-of-area services;

25 (x) a description of the way in which the health

1 maintenance organization provides services to enrollees in
 2 each geographic service area, including the extent to which
 3 a provider under contract with the health maintenance
 4 organization provides primary care to those enrollees;

5 (xi) a description of the complaint procedures to be
 6 used as required under 33-31-303;

7 ~~(xii) a description of the procedures and programs to be~~
 8 ~~implemented to meet the quality of health care requirements~~
 9 ~~in 33-31-202;~~

10 ~~(xiii)~~(xii) a description of the mechanism by which
 11 enrollees will be afforded an opportunity to participate in
 12 matters of policy and operation under 33-31-222;

13 ~~(xiv)~~(xiii) a summary of the way in which administrative
 14 services will be provided, including the size and
 15 qualifications of the administrative staff and the projected
 16 cost of administration in relation to premium income. If the
 17 health maintenance organization delegates management
 18 authority for a major corporate function to a person outside
 19 the organization, the health maintenance organization shall
 20 include a copy of the contract in its application for a
 21 certificate of authority. Contracts for delegated management
 22 authority must be filed with the commissioner in accordance
 23 with the filing provisions of 33-31-301(2); however, nothing
 24 in this subsection deprives the health maintenance
 25 organization of its right to confidentiality of any

1 proprietary information, and the commissioner may not
2 disclose that proprietary information to any other person.

3 All contracts must include:

- 4 (A) the services to be provided;
5 (B) the standards of performance for the manager;
6 (C) the method of payment, including any provisions for
7 the administrator to participate in the profits or losses of
8 the plan;
9 (D) the duration of the contract; and
10 (E) any provisions for modifying, terminating, or
11 renewing the contract;

12 ~~{xv}~~{xiv} a summary of all financial guaranties by
13 providers, sponsors, affiliates, or parents within a holding
14 company system or any other guaranties that are intended to
15 ensure the financial success of the plan, including hold
16 harmless agreements by providers, insolvency insurance,
17 reinsurance, or other guaranties;

18 ~~{xvi}~~{xv} a summary of benefits to be offered enrollees,
19 including any limitations and exclusions and the
20 renewability of all contracts to be written;

21 ~~{xvii}~~{xvi} evidence that it can meet the requirement of
22 33-31-216(10); and

23 ~~{xviii}~~{xvii} any other information that the
24 commissioner may reasonably require to make the
25 determinations required in 33-31-202.

1 (4) Each health maintenance organization shall file
2 each substantial change, alteration, or amendment to the
3 information submitted under subsection (3) with the
4 commissioner at least 30 days prior to its effective date,
5 including changes in articles of incorporation and bylaws,
6 organization type, geographic service area, provider
7 contracts, provider availability, plan administration,
8 financial projections and guaranties, and any other change
9 that might affect the financial solvency of the plan. The
10 commissioner may, after notice and hearing, disapprove any
11 proposed change, alteration, or amendment to the business
12 plan. The commissioner may make reasonable rules exempting
13 from the filing requirements of this subsection those items
14 he considers unnecessary.

15 (5) An applicant or a health maintenance organization
16 holding a certificate of authority shall file with the
17 commissioner all contracts of reinsurance and any
18 modifications thereto. An agreement between a health
19 maintenance organization and an insurer is subject to Title
20 33, chapter 2, part 12. A reinsurance agreement must remain
21 in full force and effect for at least 90 days following
22 written notice of cancellation by either party by certified
23 mail to the commissioner.

24 (6) Each health maintenance organization shall
25 maintain, at its administrative office, and make available

1 to the commissioner upon request executed copies of all
2 provider contracts.

3 (7) The commissioner may make reasonable rules
4 exempting an insurer or health service corporation operating
5 a health maintenance organization as a plan from the filing
6 requirements of this section if information requested in the
7 application has been submitted to the commissioner under
8 other laws and rules administered by the commissioner."

9 **Section 4.** Section 33-31-202, MCA, is amended to read:

10 "**33-31-202. Issuance of certificate of authority.** ~~{1}~~
11 ~~Upon receipt of an application for issuance of a certificate~~
12 ~~of authority, the commissioner shall transmit copies of the~~
13 ~~application and accompanying documents to the department of~~
14 ~~health. The department of health shall determine whether the~~
15 ~~applicant for a certificate of authority, with respect to~~
16 ~~health care services to be furnished, has:~~

17 ~~{a} demonstrated the willingness and potential ability~~
18 ~~to assure that it will provide health care services in a~~
19 ~~manner assuring availability and accessibility of adequate~~
20 ~~personnel and facilities and enhancing availability,~~
21 ~~accessibility, and continuity of service;~~

22 ~~{b} arrangements established in accordance with the~~
23 ~~rules made by the department of health, for an ongoing~~
24 ~~quality assurance program concerning health care~~
25 ~~availability, accessibility, and continuity of service; and~~

1 ~~{c} a procedure established in accordance with rules~~
2 ~~of the department of health, to develop, compile, evaluate,~~
3 ~~and report statistics relating to the cost of its~~
4 ~~operations, the pattern of utilization of its services, the~~
5 ~~availability and accessibility of its services, and any~~
6 ~~other matters as may be reasonably required by the~~
7 ~~department of health;~~

8 ~~{2} Within 60 days of receipt of the application from a~~
9 ~~health maintenance organization for issuance of a~~
10 ~~certificate of authority, the department of health shall~~
11 ~~certify to the commissioner that the proposed health~~
12 ~~maintenance organization meets the requirements of~~
13 ~~subsection {1} or shall, after notice and hearing, notify~~
14 ~~the commissioner that the health maintenance organization~~
15 ~~does not meet those requirements and specify in what~~
16 ~~respects it is deficient. The director may extend by not~~
17 ~~more than an additional 30 days the period within which he~~
18 ~~may certify to the commissioner that the proposed health~~
19 ~~maintenance organization meets or does not meet the~~
20 ~~requirements of subsection {1} by giving notice of the~~
21 ~~extension to the commissioner and the health maintenance~~
22 ~~organization before the expiration of the initial 60-day~~
23 ~~period;~~

24 ~~{3}{1}~~ The commissioner shall issue or deny a
25 certificate of authority to any person filing an application

1 pursuant to 33-31-201 within 180 days of receipt of the
 2 certification from the department of health after he
 3 receives the application. The commissioner shall grant a
 4 certificate of authority upon payment of the application fee
 5 prescribed in 33-31-212 if the commissioner is satisfied
 6 that each of the following conditions is met:

7 (a) The persons responsible for the conduct of the
 8 applicant's affairs are competent and trustworthy.

9 ~~(b) The department of health certifies, in accordance~~
 10 ~~with subsection (2), that the health maintenance~~
 11 ~~organization's proposed plan of operation meets the~~
 12 ~~requirements of subsection (1).~~

13 ~~(b)~~ The health maintenance organization will
 14 effectively provide or arrange for the provision of basic
 15 health care services on a prepaid basis, through insurance
 16 or otherwise, except to the extent of reasonable
 17 requirements for copayments.

18 ~~(c)~~ The health maintenance organization is
 19 financially responsible and can reasonably be expected to
 20 meet its obligations to enrollees and prospective enrollees.
 21 In making this determination, the commissioner may in his
 22 discretion consider:

23 (i) the financial soundness of the arrangements for
 24 health care services and the schedule of charges used in
 25 connection therewith;

1 (ii) the adequacy of working capital;

2 (iii) any agreement with an insurer, a health service
 3 corporation, a government, or any other organization for
 4 ensuring the payment of the cost of health care services or
 5 the provision for automatic applicability of an alternative
 6 coverage in the event of discontinuance of the health
 7 maintenance organization;

8 (iv) any agreement with providers for the provision of
 9 health care services;

10 (v) any deposit of cash or securities submitted in
 11 accordance with 33-31-216; and

12 (vi) any additional information as the commissioner may
 13 reasonably require.

14 ~~(d)~~ The enrollees will be afforded an opportunity to
 15 participate in matters of policy and operation pursuant to
 16 33-31-222.

17 ~~(e)~~ Nothing in the proposed method of operation, as
 18 shown by the information submitted pursuant to 33-31-201 or
 19 by independent investigation, violates any provision of this
 20 chapter or rules adopted by the commissioner or the
 21 department of health.

22 ~~(g) Any deficiencies identified by the department of~~
 23 ~~health have been corrected.~~

24 ~~(4)(2)~~ The commissioner may in his discretion deny a
 25 certificate of authority only if he complies with the

1 requirements of 33-31-404."

2 **Section 5.** Section 33-31-212, MCA, is amended to read:

3 "33-31-212. Fees. (1) Each health maintenance
4 organization shall pay to the commissioner the following
5 fees:

6 (a) for filing an application for a certificate of
7 authority or amendment thereto, \$300;

8 (b) for filing an amendment to the organization
9 documents that requires approval, \$25;

10 (c) for filing each annual statement, \$25;

11 (d) for annual continuation of certificate of
12 authority, \$300.

13 (2) All fees, miscellaneous charges, fines, penalties,
14 and those amounts received pursuant to 33-31-211(3) and
15 33-31-405 collected by the commissioner pursuant to this
16 chapter and the rules adopted thereunder must be deposited
17 in the general fund.

18 ~~{3}--The-director-may-assess-fees-necessary-and-adequate
19 to-cover-the-expenses-of-the-director's-functions-under-this
20 chapter--"~~

21 **Section 6.** Section 33-31-401, MCA, is amended to read:

22 "33-31-401. Examination. (1) The commissioner may
23 examine the affairs of a health maintenance organization as
24 often as is reasonably necessary to protect the interests of
25 the people of this state. The commissioner shall make an

1 examination at least once every 3 years.

2 ~~{2}--The---department---of---health---may---examine---the
3 availability,-accessibility,-and-continuity---of---the---health
4 care---services---provided---by---any---health---maintenance
5 organization---and---the---providers---with---whom---the---health
6 maintenance-organization-has-contracts,-agreements,-or-other
7 arrangements-as-often-as-is-reasonably-necessary-to---protect
8 the-interests-of-the-people-of-this-state--The-department-of
9 health--shall-make-such-an-examination-at-least-once-every-3
10 years--~~

11 ~~{3}{2}~~ Each authorized health maintenance organization
12 and provider shall submit its relevant books and records for
13 the examinations and in every way facilitate the
14 examinations. For the purpose of examination, the
15 commissioner ~~and--the--department--of--health~~ may administer
16 oaths to and examine the officers and insurance producers of
17 the health maintenance organization and the principals of
18 the providers concerning their business.

19 ~~{4}--(a)--{1}{3}~~ (a) Upon presentation of a detailed
20 account of the charges and expenses of examinations by the
21 commissioner, the health maintenance organization being
22 examined shall pay to the examiner as necessarily incurred
23 on account of the examination the actual travel expenses, a
24 reasonable living-expense allowance, and a per diem, all at
25 reasonable rates customary therefor and as established or

1 adopted by the commissioner. The commissioner may present an
2 account periodically during the course of the examination or
3 at the termination of the examination as the commissioner
4 considers proper. A person may not pay and an examiner may
5 not accept any additional emolument on account of any
6 examination.

7 ~~(i)~~(b) If a health maintenance organization fails to
8 pay the charges and expenses as referred to in subsection
9 ~~(4)~~(a), the commissioner shall pay them out of the
10 funds of the commissioner in the same manner as other
11 disbursements of funds. The amount so paid must be a lien
12 upon all of the person's assets and property in this state
13 and may be recovered by suit by the attorney general on
14 behalf of the state of Montana and restored to the
15 appropriate fund.

16 ~~(b) The expenses of examination conducted by the~~
17 ~~director under this section must be assessed against the~~
18 ~~health maintenance organization and remitted to the~~
19 ~~director.~~

20 ~~(5)~~(4) In lieu of an examination, the commissioner or
21 the director may accept the report of an examination made by
22 the commissioner or the director of another state."

23 **Section 7.** Section 33-31-402, MCA, is amended to read:

24 "33-31-402. Suspension or revocation of certificate of
25 authority. (1) The commissioner may in his discretion

1 suspend or revoke any certificate of authority issued to a
2 health maintenance organization under this chapter if he
3 finds that any of the following conditions exist:

4 (a) The health maintenance organization is operating in
5 contravention of its basic organizational document or in a
6 manner contrary to that described in any other information
7 submitted under 33-31-201 and provided that such operation
8 adversely affects the health maintenance organization's
9 ability to provide benefits and operate under the
10 application approved by the commissioner, unless amendments
11 to such submissions have been filed with and approved by the
12 commissioner.

13 (b) The health maintenance organization issues
14 evidences of coverage or uses a schedule of charges for
15 health care services that do not comply with the
16 requirements of 33-31-301.

17 (c) The health maintenance organization does not
18 provide or arrange for basic health care services.

19 ~~(d) The director, after notice and hearing, certifies~~
20 ~~to the commissioner that:~~

21 ~~(i) the health maintenance organization does not meet~~
22 ~~the requirements of 33-31-202(i); or~~

23 ~~(ii) the health maintenance organization is unable to~~
24 ~~fulfill its obligations to furnish health care services;~~

25 ~~(e)~~(d) The health maintenance organization is no longer

1 financially responsible and may reasonably be expected to be
2 unable to meet its obligations to enrollees or prospective
3 enrollees.

4 (f)(e) The health maintenance organization has failed
5 to implement a mechanism affording the enrollees an
6 opportunity to participate in matters of policy and
7 operation under 33-31-222.

8 (g)(f) The health maintenance organization has failed
9 to implement the complaint system required by 33-31-303 to
10 resolve valid complaints in a reasonable manner.

11 (h)(g) The health maintenance organization, or any
12 person on its behalf, has advertised or merchandised its
13 services in an untrue, misrepresentative, misleading,
14 deceptive, or unfair manner.

15 (i)(h) The continued operation of the health
16 maintenance organization would be hazardous to its
17 enrollees.

18 (j)(i) The health maintenance organization has
19 otherwise failed to substantially comply with this chapter.

20 (2) The commissioner may in his discretion suspend or
21 revoke a certificate of authority only if he complies with
22 the requirements of 33-31-404.

23 (3) When the certificate of authority of a health
24 maintenance organization is suspended, the health
25 maintenance organization may not, during the period of such

1 suspension, enroll any additional enrollees except newborn
2 infants or other newly acquired dependents of existing
3 enrollees and may not engage in any advertising or
4 solicitation.

5 (4) If the commissioner revokes the certificate of
6 authority of a health maintenance organization, the health
7 maintenance organization shall proceed, immediately
8 following the effective date of the order of revocation, to
9 wind up its affairs and may not transact further business
10 except as may be essential to the orderly conclusion of its
11 affairs. It may not engage in further advertising or
12 solicitation following the effective date of the order of
13 revocation. The commissioner may by written order permit
14 further operation of the health maintenance organization if
15 he finds further operation to be in the best interest of
16 enrollees to the extent that enrollees will be afforded the
17 greatest practical opportunity to obtain continuing health
18 care coverage."

19 **Section 8.** Section 33-31-404, MCA, is amended to read:

20 "33-31-404. Administrative procedures. (1) When the
21 commissioner has cause to believe that grounds for the
22 denial of an application for a certificate of authority
23 exist or that grounds for the suspension or revocation of a
24 certificate of authority exist, he shall give written notice
25 to the health maintenance organization ~~and the department of~~

1 health specifically stating the grounds for denial,
2 suspension, or revocation and fixing a time of at least 30
3 days after the notice for a hearing on the matter.

4 (2) ~~The director or his designated representative may~~
5 ~~attend the hearing and may participate in the proceeding.~~
6 ~~The recommendations and findings of the director with~~
7 ~~respect to matters relating to the availability,~~
8 ~~accessibility, and continuity of health care services~~
9 ~~provided in connection with any decision regarding denial,~~
10 ~~suspension, or revocation of a certificate of authority must~~
11 ~~be conclusive and binding upon the commissioner. After the~~
12 hearing, or upon the failure of the health maintenance
13 organization to appear at the hearing, the commissioner
14 shall make written findings and act as he considers
15 advisable. The commissioner shall mail the written findings
16 to the health maintenance organization and submit a copy to
17 the director. The action of the commissioner and the
18 recommendations and findings of the director are is subject
19 to review by the district court having jurisdiction. The
20 court may, in disposing of the issue before it, modify,
21 affirm, or reverse the order of the commissioner in whole or
22 in part.

23 (3) Where notice and hearing are required with regard
24 to actions taken by the commissioner under this chapter, the
25 requirements of 33-1-314 through 33-1-316 and Title 33,

1 chapter 1, part 7, apply, except that the formal rules of
2 pleading and evidence must be observed. To the extent that
3 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7,
4 do not address the notice and hearing requirements of this
5 chapter, the provisions of Title 2, chapter 4, parts 6 and
6 7, apply.

7 (4) ~~Where notice and hearing are required with regard~~
8 ~~to actions taken by the director under this chapter, the~~
9 ~~provisions of Title 2, chapter 4, parts 6 and 7, apply."~~

10 **Section 9.** Section 33-31-405, MCA, is amended to read:

11 "33-31-405. Penalties and enforcement. (1) The
12 commissioner may, in addition to suspension or revocation of
13 a certificate of authority under 33-31-402, after notice and
14 hearing, impose an administrative penalty in an amount not
15 less than \$500 or more than \$10,000 if he gives reasonable
16 notice in writing of the intent to levy the penalty and the
17 health maintenance organization has a reasonable time within
18 which to remedy the defect in its operations that gave rise
19 to the penalty citation.

20 (2) If the commissioner or the director has cause to
21 believe that a violation of this chapter has occurred or is
22 threatened, the commissioner or the director may:

23 (a) give notice to the health maintenance organization
24 and to the representatives or other persons who appear to be
25 involved in the suspected violation;

1 (b) arrange a conference with the alleged violators or
2 their authorized representatives to attempt to ascertain the
3 facts relating to the suspected violation; and

4 (c) if it appears that a violation has occurred, or is
5 threatened, arrive at an adequate and effective means of
6 correcting or preventing the violation.

7 (3) (a) The commissioner may issue an order directing a
8 health maintenance organization or its representative to
9 cease and desist from engaging in an act or practice in
10 violation of this chapter.

11 (b) Within 15 days after service of the cease and
12 desist order, the respondent may request a hearing to
13 determine whether acts or practices in violation of this
14 chapter have occurred. The hearing must be conducted
15 pursuant to Title 2, chapter 4, part 6, and judicial review
16 must be available as provided by Title 2, chapter 4, part 7.

17 (4) If a health maintenance organization violates a
18 provision of this chapter and the commissioner elects not to
19 issue a cease and desist order or if the respondent does not
20 comply with a cease and desist order issued pursuant to
21 subsection (3), the commissioner may institute a proceeding
22 to obtain injunctive or other appropriate relief in the
23 district court of Lewis and Clark County."

24 NEW SECTION. **Section 10.** Repealer. Section 33-31-104,
25 MCA, is repealed.

1 NEW SECTION. **Section 11.** Effective date. [This act] is
2 effective July 1, 1991.

-End-

HOUSE BILL NO. 785

INTRODUCED BY MESSMORE, STICKNEY, COBB,

JACOBSON, DRISCOLL, SQUIRES

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA HEALTH MAINTENANCE ORGANIZATION ACT; TO ELIMINATE THE REQUIREMENT FOR CERTIFICATION BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES BEFORE A CERTIFICATE OF AUTHORITY IS ISSUED TO A HEALTH MAINTENANCE ORGANIZATION; TO ELIMINATE OTHER REQUIREMENTS RELATING TO THE DEPARTMENT; AMENDING SECTIONS 33-31-102, 33-31-103, 33-31-201, 33-31-202, 33-31-212, 33-31-401, 33-31-402, 33-31-404, AND 33-31-405, MCA; REPEALING SECTION 33-31-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-31-102, MCA, is amended to read:

***33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Basic health care services" means:
- (a) consultative, diagnostic, therapeutic, and referral services by a provider;

- (b) inpatient hospital and provider care;
- (c) outpatient medical services;
- (d) medical treatment and referral services;
- (e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);
- (f) care and treatment of mental illness, alcoholism, and drug addiction;
- (g) diagnostic laboratory and diagnostic and therapeutic radiologic services;
- (h) preventive health services, including:
- (i) immunizations;
- (ii) well-child care from birth;
- (iii) periodic health evaluations for adults;
- (iv) voluntary family planning services;
- (v) infertility services; and
- (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction; and
- (i) treatment for phenylketonuria. "Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.
- (2) "Commissioner" means the commissioner of insurance of the state of Montana.

1 ~~{3}~~--"Department--of--health"--means--the--department-of
 2 ~~health-and-environmental-sciences-provided-for-in-2-15-2101-~~
 3 ~~{4}~~--"Director"--means--the--director--of--the--department--of
 4 ~~health-and-environmental-sciences-provided-for-in-2-15-2101-~~
 5 ~~{5}~~{3} "Enrollee" means a person:
 6 (a) who enrolls in or contracts with a health
 7 maintenance organization;
 8 (b) on whose behalf a contract is made with a health
 9 maintenance organization to receive health care services; or
 10 (c) on whose behalf the health maintenance organization
 11 contracts to receive health care services.
 12 ~~{6}~~{4} "Evidence of coverage" means a certificate,
 13 agreement, policy, or contract issued to an enrollee setting
 14 forth the coverage to which the enrollee is entitled.
 15 ~~{7}~~{5} "Health care services" means:
 16 (a) the services included in furnishing medical or
 17 dental care to a person;
 18 (b) the services included in hospitalizing a person;
 19 (c) the services incident to furnishing medical or
 20 dental care or hospitalization; or
 21 (d) the services included in furnishing to a person
 22 other services for the purpose of preventing, alleviating,
 23 curing, or healing illness, injury, or physical disability.
 24 ~~{8}~~{6} "Health care services agreement" means an
 25 agreement for health care services between a health

1 maintenance organization and an enrollee.
 2 ~~{9}~~{7} "Health maintenance organization" means a person
 3 who provides or arranges for basic health care services to
 4 enrollees on a prepaid or other financial basis, either
 5 directly through provider employees or through contractual
 6 or other arrangements with a provider or a group of
 7 providers.
 8 ~~{10}~~{8} "Insurance producer" means an individual,
 9 partnership, or corporation appointed or authorized by a
 10 health maintenance organization to solicit applications for
 11 health care services agreements on its behalf.
 12 ~~{11}~~{9} "Person" means:
 13 (a) an individual;
 14 (b) a group of individuals;
 15 (c) an insurer, as defined in 33-1-201;
 16 (d) a health service corporation, as defined in
 17 33-30-101;
 18 (e) a corporation, partnership, facility, association,
 19 or trust; or
 20 (f) an institution of a governmental unit of any state
 21 licensed by that state to provide health care, including but
 22 not limited to a physician, hospital, hospital-related
 23 facility, or long-term care facility.
 24 ~~{12}~~{10} "Plan" means a health maintenance organization
 25 operated by an insurer or health service corporation as an

1 integral part of the corporation and not as a subsidiary.

2 ~~(13)~~(11) "Provider" means a physician, hospital,
 3 hospital-related facility, long-term care facility, dentist,
 4 osteopath, chiropractor, optometrist, podiatrist,
 5 psychologist, licensed social worker, registered pharmacist,
 6 or nurse specialist as specifically listed in 37-8-202 who
 7 treats any illness or injury within the scope and
 8 limitations of his practice or any other person who is
 9 licensed or otherwise authorized in this state to furnish
 10 health care services.

11 ~~(14)~~(12) "Uncovered expenditures" mean the costs of
 12 health care services that are covered by a health
 13 maintenance organization and for which an enrollee is liable
 14 if the health maintenance organization becomes insolvent."

15 **Section 2.** Section 33-31-103, MCA, is amended to read:

16 "33-31-103. Rules. (1) The commissioner may, after
 17 notice and hearing, make reasonable rules necessary to
 18 effectuate this chapter.

19 ~~(2)--The--department-of-health-may-make-reasonable-rules~~
 20 ~~necessary-to-effectuate-this-chapter--"~~

21 **Section 3.** Section 33-31-201, MCA, is amended to read:

22 "33-31-201. Establishment of health maintenance
 23 organizations. (1) Notwithstanding any law of this state to
 24 the contrary, a person may apply to the commissioner for and
 25 obtain a certificate of authority to establish and operate a

1 health maintenance organization in compliance with this
 2 chapter. A person may not establish or operate a health
 3 maintenance organization in this state except as authorized
 4 by a subsisting certificate of authority issued to it by the
 5 commissioner. A foreign person may qualify for a certificate
 6 of authority if it first obtains from the secretary of state
 7 a certificate of authority to transact business in this
 8 state as a foreign corporation under 35-1-1001.

9 (2) Each health maintenance organization operating in
 10 this state as of October 1, 1987, shall submit an
 11 application for a certificate of authority under subsection
 12 (3) within 30 days after the effective date of rules adopted
 13 by the commissioner ~~and the department of health~~ as provided
 14 in 33-31-103. Each such applicant may continue to operate in
 15 this state until the commissioner acts upon the application.
 16 If an application is denied under 33-31-202, the applicant
 17 must be treated as a health maintenance organization whose
 18 certificate of authority has been revoked.

19 (3) Each application of a health maintenance
 20 organization, whether separately licensed or not, for a
 21 certificate of authority must:

- 22 (a) be verified by an officer or authorized
- 23 representative of the applicant;
- 24 (b) be in a form prescribed by the commissioner;
- 25 (c) contain:

1 (i) the applicant's name;

2 (ii) the location of the applicant's home office or
3 principal office in the United States (if a foreign person);

4 (iii) the date of organization or incorporation;

5 (iv) the form of organization (including whether the
6 providers affiliated with the health maintenance
7 organization will be salaried employees or group or
8 individual contractors);

9 (v) the state or country of domicile; and

10 (vi) any additional information the commissioner may
11 reasonably require; and

12 (d) set forth the following information or be
13 accompanied by the following documents, as applicable:

14 (i) a copy of the applicant's organizational documents,
15 such as its corporate charters or articles of incorporation,
16 articles of association, partnership agreement, trust
17 agreement, or other applicable documents, and all amendments
18 thereto, certified by the public officer with whom the
19 originals were filed in the state or country of domicile;

20 (ii) a copy of the bylaws, rules, and regulations, or
21 similar document, if any, regulating the conduct of the
22 applicant's internal affairs, certified by its secretary or
23 other officer having custody thereof;

24 (iii) a list of the names, addresses, and official
25 positions of the persons responsible for the conduct of the

1 applicant's affairs, including all members of the board of
2 directors, board of trustees, executive committee, or other
3 governing board or committee; the principal officers in the
4 case of a corporation; and the partners or members in the
5 case of a partnership or association;

6 (iv) a copy of any contract made or to be made between:

7 (A) any provider and the applicant; or

8 (B) any person listed in subsection (3)(d)(iii) and the
9 applicant. The applicant may file a list of providers
10 executing a standard contract and a copy of the contract
11 instead of copies of each executed contract.

12 (v) the extent to which any of the following will be
13 included in provider contracts and the form of any
14 provisions that:

15 (A) limit a provider's ability to seek reimbursement
16 for basic health care services or health care services from
17 an enrollee;

18 (B) permit or require a provider to assume a financial
19 risk in the health maintenance organization, including any
20 provisions for assessing the provider, adjusting capitation
21 or fee-for-service rates, or sharing in the earnings or
22 losses; and

23 (C) govern amending or terminating an agreement with a
24 provider;

25 (vi) a financial statement showing the applicant's

1 assets, liabilities, and sources of financial support. If
 2 the applicant's financial affairs are audited by independent
 3 certified public accountants, a copy of the applicant's most
 4 recent certified financial statement satisfies this
 5 requirement unless the commissioner directs that additional
 6 or more recent financial information is required for the
 7 proper administration of this chapter.

8 (vii) a description of the proposed method of marketing,
 9 a financial plan that includes a projection of operating
 10 results anticipated until the organization has had net
 11 income for at least 1 year, and a statement as to the
 12 sources of working capital as well as any other source of
 13 funding;

14 (viii) a power of attorney executed by the applicant, on
 15 a form prescribed by the commissioner, appointing the
 16 commissioner, his successors in office, and his authorized
 17 deputies as the applicant's attorney to receive service of
 18 legal process issued against it in this state;

19 (ix) a statement reasonably describing the geographic
 20 service area or areas to be served, by county, including:

21 (A) a chart showing the number of primary and specialty
 22 care providers, with locations and service areas by county;

23 (B) the method of handling emergency care, with the
 24 location of each emergency care facility; and

25 (C) the method of handling out-of-area services;

1 (x) a description of the way in which the health
 2 maintenance organization provides services to enrollees in
 3 each geographic service area, including the extent to which
 4 a provider under contract with the health maintenance
 5 organization provides primary care to those enrollees;

6 (xi) a description of the complaint procedures to be
 7 used as required under 33-31-303;

8 ~~(xii) a description of the procedures and programs to be~~
 9 ~~implemented to meet the quality of health care requirements~~
 10 ~~in 33-31-202;~~

11 ~~(xiii)~~ (xii) a description of the mechanism by which
 12 enrollees will be afforded an opportunity to participate in
 13 matters of policy and operation under 33-31-222;

14 ~~(xiv)~~ (xiii) a summary of the way in which administrative
 15 services will be provided, including the size and
 16 qualifications of the administrative staff and the projected
 17 cost of administration in relation to premium income. If the
 18 health maintenance organization delegates management
 19 authority for a major corporate function to a person outside
 20 the organization, the health maintenance organization shall
 21 include a copy of the contract in its application for a
 22 certificate of authority. Contracts for delegated management
 23 authority must be filed with the commissioner in accordance
 24 with the filing provisions of 33-31-301(2); however, nothing
 25 in this subsection deprives the health maintenance

1 organization of its right to confidentiality of any
 2 proprietary information, and the commissioner may not
 3 disclose that proprietary information to any other person.
 4 All contracts must include:
 5 (A) the services to be provided;
 6 (B) the standards of performance for the manager;
 7 (C) the method of payment, including any provisions for
 8 the administrator to participate in the profits or losses of
 9 the plan;
 10 (D) the duration of the contract; and
 11 (E) any provisions for modifying, terminating, or
 12 renewing the contract;
 13 ~~(xiv)~~ (xiv) a summary of all financial guaranties by
 14 providers, sponsors, affiliates, or parents within a holding
 15 company system or any other guaranties that are intended to
 16 ensure the financial success of the plan, including hold
 17 harmless agreements by providers, insolvency insurance,
 18 reinsurance, or other guaranties;
 19 ~~(xv)~~ (xv) a summary of benefits to be offered enrollees,
 20 including any limitations and exclusions and the
 21 renewability of all contracts to be written;
 22 ~~(xvi)~~ (xvi) evidence that it can meet the requirement of
 23 33-31-216(10); and
 24 ~~(xvii)~~ (xvii) any other information that the
 25 commissioner may reasonably require to make the

1 determinations required in 33-31-202.
 2 (4) Each health maintenance organization shall file
 3 each substantial change, alteration, or amendment to the
 4 information submitted under subsection (3) with the
 5 commissioner at least 30 days prior to its effective date,
 6 including changes in articles of incorporation and bylaws,
 7 organization type, geographic service area, provider
 8 contracts, provider availability, plan administration,
 9 financial projections and guaranties, and any other change
 10 that might affect the financial solvency of the plan. The
 11 commissioner may, after notice and hearing, disapprove any
 12 proposed change, alteration, or amendment to the business
 13 plan. The commissioner may make reasonable rules exempting
 14 from the filing requirements of this subsection those items
 15 he considers unnecessary.
 16 (5) An applicant or a health maintenance organization
 17 holding a certificate of authority shall file with the
 18 commissioner all contracts of reinsurance and any
 19 modifications thereto. An agreement between a health
 20 maintenance organization and an insurer is subject to Title
 21 33, chapter 2, part 12. A reinsurance agreement must remain
 22 in full force and effect for at least 90 days following
 23 written notice of cancellation by either party by certified
 24 mail to the commissioner.
 25 (6) Each health maintenance organization shall

1 maintain, at its administrative office, and make available
2 to the commissioner upon request executed copies of all
3 provider contracts.

4 (7) The commissioner may make reasonable rules
5 exempting an insurer or health service corporation operating
6 a health maintenance organization as a plan from the filing
7 requirements of this section if information requested in the
8 application has been submitted to the commissioner under
9 other laws and rules administered by the commissioner."

10 **Section 4.** Section 33-31-202, MCA, is amended to read:

11 "33-31-202. Issuance of certificate of authority. (1)
12 Upon receipt of an application for issuance of a certificate
13 of authority, the commissioner shall transmit copies of the
14 application and accompanying documents to the department of
15 health. The department of health shall determine whether the
16 applicant for a certificate of authority, with respect to
17 health care services to be furnished, has:

18 (a) demonstrated the willingness and potential ability
19 to assure that it will provide health care services in a
20 manner assuring availability and accessibility of adequate
21 personnel and facilities and enhancing availability,
22 accessibility, and continuity of service;

23 (b) arrangements established in accordance with the
24 rules made by the department of health, for an ongoing
25 quality assurance program concerning health care

1 availability, accessibility, and continuity of service, and
2 (c) a procedure established in accordance with rules
3 of the department of health, to develop, compile, evaluate,
4 and report statistics relating to the cost of its
5 operations, the pattern of utilization of its services, the
6 availability and accessibility of its services, and any
7 other matters as may be reasonably required by the
8 department of health.

9 (2) Within 60 days of receipt of the application from a
10 health maintenance organization for issuance of a
11 certificate of authority, the department of health shall
12 certify to the commissioner that the proposed health
13 maintenance organization meets the requirements of
14 subsection (1) or shall, after notice and hearing, notify
15 the commissioner that the health maintenance organization
16 does not meet those requirements and specify in what
17 respects it is deficient. The director may extend by not
18 more than an additional 90 days the period within which he
19 may certify to the commissioner that the proposed health
20 maintenance organization meets or does not meet the
21 requirements of subsection (1) by giving notice of the
22 extension to the commissioner and the health maintenance
23 organization before the expiration of the initial 60-day
24 period.

25 (3)(1) The commissioner shall issue or deny a

1 certificate of authority to any person filing an application
 2 pursuant to 33-31-201 within 180 days ~~of receipt of the~~
 3 ~~certification from the department of health~~ after he
 4 receives the application. The commissioner shall grant a
 5 certificate of authority upon payment of the application fee
 6 prescribed in 33-31-212 if the commissioner is satisfied
 7 that each of the following conditions is met:

8 (a) The persons responsible for the conduct of the
 9 applicant's affairs are competent and trustworthy.

10 ~~(b) The department of health certifies, in accordance~~
 11 ~~with subsection (2), that the health maintenance~~
 12 ~~organization's proposed plan of operation meets the~~
 13 ~~requirements of subsection (1):~~

14 ~~(b)~~ The health maintenance organization will
 15 effectively provide or arrange for the provision of basic
 16 health care services on a prepaid basis, through insurance
 17 or otherwise, except to the extent of reasonable
 18 requirements for copayments.

19 ~~(c)~~ The health maintenance organization is
 20 financially responsible and can reasonably be expected to
 21 meet its obligations to enrollees and prospective enrollees.
 22 In making this determination, the commissioner may in his
 23 discretion consider:

24 (i) the financial soundness of the arrangements for
 25 health care services and the schedule of charges used in

1 connection therewith;

2 (ii) the adequacy of working capital;

3 (iii) any agreement with an insurer, a health service
 4 corporation, a government, or any other organization for
 5 ensuring the payment of the cost of health care services or
 6 the provision for automatic applicability of an alternative
 7 coverage in the event of discontinuance of the health
 8 maintenance organization;

9 (iv) any agreement with providers for the provision of
 10 health care services;

11 (v) any deposit of cash or securities submitted in
 12 accordance with 33-31-216; and

13 (vi) any additional information as the commissioner may
 14 reasonably require.

15 ~~(d)~~ The enrollees will be afforded an opportunity to
 16 participate in matters of policy and operation pursuant to
 17 33-31-222.

18 ~~(e)~~ Nothing in the proposed method of operation, as
 19 shown by the information submitted pursuant to 33-31-201 or
 20 by independent investigation, violates any provision of this
 21 chapter or rules adopted by the commissioner ~~or the~~
 22 ~~department of health~~.

23 ~~(f) Any deficiencies identified by the department of~~
 24 ~~health have been corrected:~~

25 ~~(g)~~ The commissioner may in his discretion deny a

1 certificate of authority only if he complies with the
2 requirements of 33-31-404."

3 **Section 5.** Section 33-31-212, MCA, is amended to read:

4 "33-31-212. Fees. (1) Each health maintenance
5 organization shall pay to the commissioner the following
6 fees:

7 (a) for filing an application for a certificate of
8 authority or amendment thereto, \$300;

9 (b) for filing an amendment to the organization
10 documents that requires approval, \$25;

11 (c) for filing each annual statement, \$25;

12 (d) for annual continuation of certificate of
13 authority, \$300.

14 (2) All fees, miscellaneous charges, fines, penalties,
15 and those amounts received pursuant to 33-31-211(3) and
16 33-31-405 collected by the commissioner pursuant to this
17 chapter and the rules adopted thereunder must be deposited
18 in the general fund.

19 ~~(3) The director may assess fees necessary and adequate~~
20 ~~to cover the expenses of the director's functions under this~~
21 ~~chapter."~~

22 **Section 6.** Section 33-31-401, MCA, is amended to read:

23 "33-31-401. Examination. (1) The commissioner may
24 examine the affairs of a health maintenance organization as
25 often as is reasonably necessary to protect the interests of

1 the people of this state. The commissioner shall make an
2 examination at least once every 3 years.

3 ~~(2) The department of health may examine the~~
4 ~~availability, accessibility, and continuity of the health~~
5 ~~care services provided by any health maintenance~~
6 ~~organization and the providers with whom the health~~
7 ~~maintenance organization has contracts, agreements, or other~~
8 ~~arrangements as often as is reasonably necessary to protect~~
9 ~~the interests of the people of this state. The department of~~
10 ~~health shall make such an examination at least once every 3~~
11 ~~years.~~

12 ~~(3)(2)~~ Each authorized health maintenance organization
13 and provider shall submit its relevant books and records for
14 the examinations and in every way facilitate the
15 examinations. For the purpose of examination, the
16 commissioner ~~and the department of health~~ may administer
17 oaths to and examine the officers and insurance producers of
18 the health maintenance organization and the principals of
19 the providers concerning their business.

20 ~~(4)-(a)-(1)(3)~~ (a) Upon presentation of a detailed
21 account of the charges and expenses of examinations by the
22 commissioner, the health maintenance organization being
23 examined shall pay to the examiner as necessarily incurred
24 on account of the examination the actual travel expenses, a
25 reasonable living-expense allowance, and a per diem, all at

1 reasonable rates customary therefor and as established or
 2 adopted by the commissioner. The commissioner may present an
 3 account periodically during the course of the examination or
 4 at the termination of the examination as the commissioner
 5 considers proper. A person may not pay and an examiner may
 6 not accept any additional emolument on account of any
 7 examination.

8 ~~(b)~~ If a health maintenance organization fails to
 9 pay the charges and expenses as referred to in subsection
 10 ~~(4)(a)(i)~~ (3)(a), the commissioner shall pay them out of the
 11 funds of the commissioner in the same manner as other
 12 disbursements of funds. The amount so paid must be a lien
 13 upon all of the person's assets and property in this state
 14 and may be recovered by suit by the attorney general on
 15 behalf of the state of Montana and restored to the
 16 appropriate fund.

17 ~~(b) The expenses of examination conducted by the~~
 18 ~~director under this section must be assessed against the~~
 19 ~~health maintenance organization and remitted to the~~
 20 ~~director.~~

21 ~~(5)(4)~~ In lieu of an examination, the commissioner or
 22 the director may accept the report of an examination made by
 23 the commissioner or the director of another state."

24 **Section 7.** Section 33-31-402, MCA, is amended to read:
 25 "33-31-402. Suspension or revocation of certificate of

1 authority. (1) The commissioner may in his discretion
 2 suspend or revoke any certificate of authority issued to a
 3 health maintenance organization under this chapter if he
 4 finds that any of the following conditions exist:

5 (a) The health maintenance organization is operating in
 6 contravention of its basic organizational document or in a
 7 manner contrary to that described in any other information
 8 submitted under 33-31-201 and provided that such operation
 9 adversely affects the health maintenance organization's
 10 ability to provide benefits and operate under the
 11 application approved by the commissioner, unless amendments
 12 to such submissions have been filed with and approved by the
 13 commissioner.

14 (b) The health maintenance organization issues
 15 evidences of coverage or uses a schedule of charges for
 16 health care services that do not comply with the
 17 requirements of 33-31-301.

18 (c) The health maintenance organization does not
 19 provide or arrange for basic health care services.

20 ~~(d) The director, after notice and hearing, certifies~~
 21 ~~to the commissioner that:~~

22 ~~(i) the health maintenance organization does not meet~~
 23 ~~the requirements of 33-31-202(i); or~~

24 ~~(ii) the health maintenance organization is unable to~~
 25 ~~fulfill its obligations to furnish health care services.~~

1 ~~(e)~~(d) The health maintenance organization is no longer
2 financially responsible and may reasonably be expected to be
3 unable to meet its obligations to enrollees or prospective
4 enrollees.

5 ~~(f)~~(e) The health maintenance organization has failed
6 to implement a mechanism affording the enrollees an
7 opportunity to participate in matters of policy and
8 operation under 33-31-222.

9 ~~(g)~~(f) The health maintenance organization has failed
10 to implement the complaint system required by 33-31-303 to
11 resolve valid complaints in a reasonable manner.

12 ~~(h)~~(g) The health maintenance organization, or any
13 person on its behalf, has advertised or merchandised its
14 services in an untrue, misrepresentative, misleading,
15 deceptive, or unfair manner.

16 ~~(i)~~(h) The continued operation of the health
17 maintenance organization would be hazardous to its
18 enrollees.

19 ~~(j)~~(i) The health maintenance organization has
20 otherwise failed to substantially comply with this chapter.

21 (2) The commissioner may in his discretion suspend or
22 revoke a certificate of authority only if he complies with
23 the requirements of 33-31-404.

24 (3) When the certificate of authority of a health
25 maintenance organization is suspended, the health

1 maintenance organization may not, during the period of such
2 suspension, enroll any additional enrollees except newborn
3 infants or other newly acquired dependents of existing
4 enrollees and may not engage in any advertising or
5 solicitation.

6 (4) If the commissioner revokes the certificate of
7 authority of a health maintenance organization, the health
8 maintenance organization shall proceed, immediately
9 following the effective date of the order of revocation, to
10 wind up its affairs and may not transact further business
11 except as may be essential to the orderly conclusion of its
12 affairs. It may not engage in further advertising or
13 solicitation following the effective date of the order of
14 revocation. The commissioner may by written order permit
15 further operation of the health maintenance organization if
16 he finds further operation to be in the best interest of
17 enrollees to the extent that enrollees will be afforded the
18 greatest practical opportunity to obtain continuing health
19 care coverage."

20 **Section 8.** Section 33-31-404, MCA, is amended to read:

21 "33-31-404. **Administrative procedures.** (1) When the
22 commissioner has cause to believe that grounds for the
23 denial of an application for a certificate of authority
24 exist or that grounds for the suspension or revocation of a
25 certificate of authority exist, he shall give written notice

1 to the health maintenance organization ~~and the department of~~
 2 ~~health~~ specifically stating the grounds for denial,
 3 suspension, or revocation and fixing a time of at least 30
 4 days after the notice for a hearing on the matter.

5 (2) ~~The director or his designated representative may~~
 6 ~~attend the hearing and may participate in the proceeding.~~
 7 ~~The recommendations and findings of the director with~~
 8 ~~respect to matters relating to the availability,~~
 9 ~~accessibility, and continuity of health care services~~
 10 ~~provided in connection with any decision regarding denial,~~
 11 ~~suspension or revocation of a certificate of authority must~~
 12 ~~be conclusive and binding upon the commissioner. After the~~
 13 hearing, or upon the failure of the health maintenance
 14 organization to appear at the hearing, the commissioner
 15 shall make written findings and act as he considers
 16 advisable. The commissioner shall mail the written findings
 17 to the health maintenance organization ~~and submit a copy to~~
 18 ~~the director.~~ The action of the commissioner ~~and the~~
 19 ~~recommendations and findings of the director are~~ is subject
 20 to review by the district court having jurisdiction. The
 21 court may, in disposing of the issue before it, modify,
 22 affirm, or reverse the order of the commissioner in whole or
 23 in part.

24 (3) Where notice and hearing are required with regard
 25 to actions taken by the commissioner under this chapter, the

1 requirements of 33-1-314 through 33-1-316 and Title 33,
 2 chapter 1, part 7, apply, except that the formal rules of
 3 pleading and evidence must be observed. To the extent that
 4 33-1-314 through 33-1-316 and Title 33, chapter 1, part 7,
 5 do not address the notice and hearing requirements of this
 6 chapter, the provisions of Title 2, chapter 4, parts 6 and
 7 7, apply.

8 (4) ~~Where notice and hearing are required with regard~~
 9 ~~to actions taken by the director under this chapter, the~~
 10 ~~provisions of Title 2, chapter 4, parts 6 and 7, apply."~~

11 **Section 9.** Section 33-31-405, MCA, is amended to read:

12 "33-31-405. Penalties and enforcement. (1) The
 13 commissioner may, in addition to suspension or revocation of
 14 a certificate of authority under 33-31-402, after notice and
 15 hearing, impose an administrative penalty in an amount not
 16 less than \$500 or more than \$10,000 if he gives reasonable
 17 notice in writing of the intent to levy the penalty and the
 18 health maintenance organization has a reasonable time within
 19 which to remedy the defect in its operations that gave rise
 20 to the penalty citation.

21 (2) If the commissioner ~~or the director~~ has cause to
 22 believe that a violation of this chapter has occurred or is
 23 threatened, the commissioner ~~or the director~~ may:

24 (a) give notice to the health maintenance organization
 25 and to the representatives or other persons who appear to be

1 involved in the suspected violation;

2 (b) arrange a conference with the alleged violators or
3 their authorized representatives to attempt to ascertain the
4 facts relating to the suspected violation; and

5 (c) if it appears that a violation has occurred or is
6 threatened, arrive at an adequate and effective means of
7 correcting or preventing the violation.

8 (3) (a) The commissioner may issue an order directing a
9 health maintenance organization or its representative to
10 cease and desist from engaging in an act or practice in
11 violation of this chapter.

12 (b) Within 15 days after service of the cease and
13 desist order, the respondent may request a hearing to
14 determine whether acts or practices in violation of this
15 chapter have occurred. The hearing must be conducted
16 pursuant to Title 2, chapter 4, part 6, and judicial review
17 must be available as provided by Title 2, chapter 4, part 7.

18 (4) If a health maintenance organization violates a
19 provision of this chapter and the commissioner elects not to
20 issue a cease and desist order or if the respondent does not
21 comply with a cease and desist order issued pursuant to
22 subsection (3), the commissioner may institute a proceeding
23 to obtain injunctive or other appropriate relief in the
24 district court of Lewis and Clark County."

25 NEW SECTION. **Section 10. Repealer.** Section 33-31-104.

1 MCA, is repealed.

2 NEW SECTION. **Section 11. Effective date.** [This act] is
3 effective July 1, 1991.

-End-