

1 *Senate* BILL NO. *387*
 2 INTRODUCED BY *Norman Galstad Law*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 REGULATION OF NONPROFIT HEALTH SERVICE CORPORATIONS."
 6

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

8 Section 1. Definitions. As used in this act:

9 (1) "Health service corporation" means a nonprofit
 10 corporation organized or operating for the purposes of
 11 establishing and operating a nonprofit plan or plans under
 12 which prepaid hospital care, medical-surgical care and other
 13 health care and services, or reimbursement therefor, may be
 14 furnished to a member or beneficiary;

15 (2) "Health services" means the health care and
 16 services provided by hospitals, or other health care
 17 institutions, organizations, associations or groups, and by
 18 doctors of medicine, osteopathy, dentistry, chiropractic,
 19 optometry and podiatry, nursing services, medical
 20 appliances, equipment and supplies, drugs, medicines,
 21 ambulance services, and other therapeutic services and
 22 supplies;

23 (3) "Membership contract" means any agreement,
 24 contract or certificate by which a health service
 25 corporation describes the health services or benefits

1 provided to its members or beneficiaries;

2 (4) "Commissioner" means the commissioner of insurance
 3 of the state of Montana.

4 Section 2. Only this act applies to health service
 5 corporations. (1) All health service corporations
 6 heretofore or hereafter organized are subject to the
 7 provisions of this act. These corporations are not subject
 8 to any other law of this state relating to insurance or
 9 insurance companies.

10 (2) A law of this state other than the provisions of
 11 this act applicable to health service corporations shall be
 12 construed in accordance with the fundamental nature of a
 13 health service corporation, and in the event of a conflict
 14 between that law and the provisions of this act, the latter
 15 shall prevail.

16 Section 3. Purposes of health service corporation. A
 17 health service corporation may be organized for the purposes
 18 of:

19 (1) establishing and operating a voluntary, nonprofit
 20 plan or plans under which health services, or reimbursement
 21 therefor, are furnished to persons who become members or
 22 beneficiaries; or

23 (2) acting as agent or intermediary for other health
 24 service corporations, for governmental body or agency, or
 25 for other corporations, associations, partnerships or

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1 individuals in the field of health care and services; and

2 (3) research, education or related activity to further
3 objects within the purview of this act.

4 Section 4. No profit organization may be a health
5 service corporation. No group, association, or organization
6 created for or engaged in business or activity for profit,
7 provision for the incorporation of which is made by any of
8 the corporation laws of this state, may be organized or
9 operated, directly or indirectly, as a health service
10 corporation under this act.

11 Section 5. Reserve fund. (1) The corporation shall
12 maintain at all times, unobligated funds adequate to:

13 (a) provide the hospital, medical-surgical and other
14 health services made available to its members and
15 beneficiaries, and

16 (b) meet all costs and expenses.

17 (2) In addition, reserves of a health service
18 corporation in cash, certificates of deposit, obligations
19 issued or guaranteed by the government of the United States
20 or other assets approved by the commission shall be
21 maintained in an amount not less than:

22 (a) five hundred thousand dollars (\$500,000); or

23 (b) an amount equal to one (1) month's average income
24 from dues or fees paid to the corporation by its members or
25 beneficiaries, based on an average of the preceding twelve

1 (12) months; whichever is less.

2 If the reserves are not equal to the average in (2) (b),
3 they must have been increased during the preceding twelve
4 (12) months by an amount equal to one percent (1%) of the
5 gross dues or fee income during that period. The
6 determination of minimum reserves is subject, as to amounts
7 payable to participating providers of the health services,
8 to any right of the corporation to prorate the amounts under
9 the terms of its health service contracts with providers.
10 The commissioner may decrease or suspend the requirements of
11 this section if he finds that the action is in the best
12 interest of the members of the corporation.

13 Section 6. Forms -- filing. (1) A copy of all forms
14 of the membership contract or any type of endorsement or
15 rider shall be filed with the commissioner within thirty
16 (30) days after that form is first used. When a form does
17 not comply with the requirements of this act, the
18 commissioner shall notify the corporation in writing of that
19 failure and include the reasons for his opinion. Unless the
20 corporation requests a hearing within ten (10) days, notice
21 by the commissioner disallows use of this form by the
22 corporation. If the corporation challenges the
23 commissioner's disallowance of a form it shall request a
24 hearing on that issue. The commissioner shall schedule a
25 hearing as soon as practicable but not less than fifteen

1 (15) days from the date of the request. If the commissioner
 2 finds, after the hearing, that the form is not in compliance
 3 with this act he may disapprove the form and issue a final
 4 order to that effect. Notice of disapproval, including the
 5 grounds for disapproval, shall be presented to the
 6 corporation not less than thirty (30) days after the
 7 hearing. The final order is effective thirty (30) days
 8 after the hearing.

9 (2) A corporation whose forms have been ordered
 10 discontinued by the commissioner, may appeal, within fifteen
 11 (15) days after an order, to a district court of the state.
 12 The court, upon filing of the proper petition, shall cause
 13 the forms and orders of the commissioner to be brought
 14 before it, and upon hearing of the case, the court shall
 15 either affirm, or reverse and vacate the order of the
 16 commissioner.

17 (3) The court may suspend or stay a final order of the
 18 commissioner under this section, pending trial of the issues
 19 or the appeal.

20 Section 7. Allowed contracts. A corporation subject
 21 to the provisions of this act may enter into contracts for
 22 the rendering of health services on behalf of its members or
 23 beneficiaries with:

24 (1) hospitals maintained by a governmental body or
 25 agency, or

1 (2) hospitals maintained by a nonprofit corporation
 2 organized for hospital purposes, or

3 (3) with other corporations, organizations,
 4 associations, partnerships, or individuals furnishing health
 5 services.

6 A health service corporation may enter into agreements
 7 or contracts with other organizations or corporations
 8 licensed to do business in this state or in any other state
 9 for:

10 (1) the transfer of members or beneficiaries,

11 (2) the reciprocal joint provisions of benefits to the
 12 members of beneficiaries of the corporation and of those
 13 other organizations or corporations, or

14 (3) other joint undertakings the corporation's board
 15 of directors approves.

16 Section 8. Enrollment representative. (1) A person
 17 who, for compensation, solicits membership in a prepayment
 18 health service plan offered by a corporation subject to the
 19 provisions of this act, is an enrollment representative of
 20 that corporation.

21 (2) The definitions of enrollment representative as
 22 defined in this act do not include:

23 (a) an individual employed and used by enrollment
 24 representatives for the performance of clerical,
 25 stenographic and similar office duties;

1 (b) an individual employed and used for incidental
2 taking of an application for coverage from time to time in
3 the office of the employing enrollment representative;

4 (c) an individual who secures and forwards information
5 for the purpose of an existing group contractor for
6 enrolling individuals under an existing group contract.

7 Section 9. Enrollment representative -- filing with
8 commissioner -- license. (1) Each corporation subject to
9 the provisions of this chapter shall notify the commissioner
10 through its proper officer or agent of the name, title and
11 address of each person it desires appointed as an enrollment
12 representative. The notice shall be accompanied by a
13 written application, upon a form furnished by the
14 commissioner, from the appointee. If, upon receipt of this
15 written notice, when accompanied by the proper fee, it
16 appears that:

17 (a) the appointee is a competent and suitable person
18 who intends to hold himself out in good faith as the
19 corporation's enrollment representative, and

20 (b) he qualifies under the provisions of this section,
21 the commissioner shall issue to that appointee a license
22 which states that the person named is a constituted
23 enrollment representative of the corporation in this state.

24 (2) For appointees who have not acted as an enrollment
25 representative for a health service corporation for a period

1 of two (2) years prior to the effective date of this act, if
2 he considers it desirable, the commissioner may, require an
3 appointee to submit to an examination to determine the
4 qualifications of the appointee to act as an enrollment
5 representative in this state. This examination shall
6 inquire into an applicant's knowledge of the provisions of
7 this chapter and of the forms submitted and utilized by the
8 employing corporation.

9 (3) Upon receipt by the commissioner of notification
10 from a health service corporation that the corporation
11 desires a particular individual to be appointed as its
12 enrollment representative, that person has a temporary
13 enrollment representative's license until the commissioner
14 notifies the corporation of action taken upon the
15 application. If the commissioner rejects the application,
16 the prospective appointee's eligibility to act as an
17 enrollment representative ceases on the day the corporation
18 is notified of rejection.

19 Section 10. Licenses -- refusal to issue -- suspension
20 -- revocation. (1) If for cause shown, and after a hearing
21 or examination the commissioner determines a person is
22 unsuitable to act as an enrollment representative, he shall:

23 (a) refuse to issue a license, or

24 (b) revoke a license previously issued, and

25 (c) notify in writing both the appointee and the

1 corporation of refusal.

2 (2) Unless revoked by the commissioner or unless the
3 corporation by written notification to the commissioner
4 cancels the authority of an enrollment representative to act
5 for it, a license issued or a renewal thereof expires on
6 January 1 after its issuance. A license may be renewed
7 annually upon payment of the annual license renewal fee as
8 prescribed in section 17 of this act.

9 (3) The commissioner may suspend, for not more than
10 twelve (12) months, or revoke or refuse to continue any
11 license issued under this act if he finds that as to the
12 licensee any one or more of the following causes exists:

13 (a) any cause for which issuance of the license could
14 have been refused had it then existed and been known to the
15 commissioner;

16 (b) obtaining or attempting to obtain a license
17 through misrepresentation or fraud;

18 (c) violation of or noncompliance with applicable
19 provisions of this chapter, or willful violation of any
20 lawful rule, or order of the commissioner;

21 (d) misappropriation or conversion to his own use, or
22 illegal withholding, moneys or property belonging to the
23 health service corporation, its members, beneficiaries, or
24 others and received in conduct of business under the
25 license;

1 (e) conviction of a felony involving moral turpitude;
2 (f) fraudulent or dishonest practices, in the conduct
3 of his affairs under the license, or

4 (g) incompetence, untrustworthiness, or injury and
5 loss to the public while acting under the license.

6 (4) The action taken under subsection (3) shall be the
7 result of a hearing granted the licensee with twenty (20)
8 days notice. The notice and the reasons for the
9 commissioner's action shall be by certified mail to the
10 licensee and the corporation.

11 Section 11. Annual report. All corporations subject
12 to the provisions of this act shall make and file annually
13 with the commissioner, on or before March 1 of each year, a
14 report under oath setting forth:

15 (1) the name of the corporation;

16 (2) the address of its registered office in this state
17 and the name of its registered agent at that address;

18 (3) the names and addresses of its directors and
19 officers;

20 (4) a brief statement of the character of the affairs
21 which the corporation is actually conducting;

22 (5) the amount of all dues or fees collected from
23 members in the last fiscal year, the amounts actually paid
24 during that year for health services for the members or
25 beneficiaries, and the amounts placed in reserves;

1 (6) a balance sheet and statement of income and
 2 expenditures for the most recent fiscal year of the
 3 corporation, prepared and verified by two officers of the
 4 corporation and certified by a certified public accountant;

5 (7) a statement of any other facts or information
 6 concerning the financial affairs of the health service
 7 corporation which may be reasonably required by the
 8 commissioner.

9 Section 12. Examination of a health service
 10 corporation. (1) If the commissioner believes a health
 11 service corporation is unable or potentially unable to
 12 fulfill its contractual obligations to its members, the
 13 commissioner may conduct an examination of that corporation.

14 (2) Each health service corporation examined, its
 15 officers, employees, and agents shall produce and make
 16 available to the commissioner or his examiners the accounts,
 17 records, documents, files, information, assets and matters
 18 in his possession or control relating to the subject of the
 19 examination.

20 (3) The commissioner or his examiner shall make a
 21 verified report of the examination.

22 (4) The report shall comprise only facts appearing
 23 from the books, papers, records, or documents of the
 24 corporation examined, or ascertained from the testimony,
 25 under oath, of individuals concerning its affairs, and

1 conclusions and recommendations as warranted by those facts.

2 (5) The commissioner shall furnish a copy of the
 3 proposed report to the corporation examined not less than
 4 twenty (20) days prior to its filing in his office. If the
 5 corporation requests a hearing, in writing, within the
 6 twenty (20) day period, the commissioner shall grant one
 7 with respect to the report, and shall not file the report
 8 until after the hearing and after modifications, if any, the
 9 commissioner deems proper.

10 Section 13. Grievance procedure. Any individual
 11 member of a corporation, subject to the provisions of this
 12 act, who believes himself to be aggrieved by any act or
 13 omission of the corporation or its officers, directors, or
 14 employees, may file a statement in writing of his grievance
 15 in the office of the commissioner, and the commissioner may
 16 investigate the grievance. No investigation by the
 17 commissioner shall act as a bar to any suit in a court of
 18 competent jurisdiction instituted by an aggrieved member, or
 19 as a bar to any defense by the involved corporation.

20 Section 14. Non-liability. A health service
 21 corporation is not liable for injuries resulting from
 22 neglect, misfeasance, malfeasance or malpractice on the part
 23 of any person, organization, agency or corporation,
 24 rendering health services to the health service
 25 corporation's members and beneficiaries.

1 Section 15. Premium tax exemption. A health service
2 corporation is exempt from all premium taxes.

3 Section 16. Montana Administrative Procedure Act
4 applicable. All final administrative actions or decisions
5 of the commissioner under this act are subject to judicial
6 review under and in accordance with the Montana
7 Administrative Procedure Act.

8 Section 17. Fees. Every health service corporation
9 subject to the provisions of this act shall pay the
10 following fees to the commissioner of insurance for
11 enforcement of the provisions of this chapter:

- 12 (1) Enrollment representative's license:
 - 13 (a) application for original license including
14 examination and issuance of license.....\$10
 - 15 (b) annual renewal.....\$ 5
- 16 (2) Filing any other statement or report.....\$ 1
- 17 (3) For a certified copy of any document or other
18 paper filed in the office of the commissioner, per page \$.50
- 19 (4) For the certificate and for affixing the seal
20 thereto.....\$ 1
- 21 (5) Filing of a membership contract.....\$10
- 22 (6) Filing of a membership contract package.....\$25
- 23 (7) Filing annual report, a fee of twenty cents (\$.20)
24 for each individual or family unit the corporation covered
25 at the close of the year to which the annual report is

1 applicable; except that the minimum fee payable upon filing
2 of an annual report is one hundred dollars (\$100).

3 The commissioner shall promptly deposit with the state
4 treasurer to the credit of the general fund all fees and
5 license fees received by him under this section.

6 Section 18. Misleading statements prohibited. (1) No
7 person may make, issue, circulate or cause to be made,
8 issued or circulated any estimate, circular, or statement
9 misrepresenting:

10 (a) the terms of any health service corporation
11 membership contract issued or to be issued; or

12 (b) the benefits or advantages promised thereby; or
13 make any misleading representation or any misrepresentation
14 as to the financial condition of any health service
15 corporation.

16 (2) No person may make, publish, disseminate,
17 circulate, or place before the public, or cause directly or
18 indirectly, to be made, published, disseminated, circulated,
19 or placed before the public, in a newspaper, magazine or
20 other publication, or in the form of a notice, circular,
21 pamphlet, letter or poster, or over any radio or television
22 station, or in any other way, an advertisement,
23 announcement, or statement containing any assertion,
24 representation or statement with respect to the business of
25 a health service corporation which is untrue, deceptive or

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1 misleading.

2 (3) No person may make or issue or cause to be made or
3 issued any written or oral statement misrepresenting or
4 making incomplete comparisons as to the terms, conditions,
5 or benefits contained in any health service corporation
6 membership contract for the purpose of inducing or
7 attempting or tending to induce a member to cancel or
8 convert any membership contract.

9 (4) No person may file with any public official, or
10 make, publish, disseminate, circulate or deliver to any
11 person, or place before the public, or cause directly or
12 indirectly, to be made, published, disseminated, circulated,
13 delivered to any person, or placed before the public, any
14 false statement of financial condition of a health service
15 corporation with intent to deceive.

16 (5) No person may make any false entry in any book,
17 report or statement of any health service corporation with
18 intent to deceive any agent or examiner lawfully appointed
19 to examine into its condition or into any of its affairs, or
20 any public official to whom that health service corporation
21 is required by law to report, or who has authority by law to
22 examine into its condition, or into any of its affairs, or,
23 with like intent, willfully omit to make a true entry of any
24 material fact pertaining to the business of that health
25 service corporation in any book, report or statement of the

1 health service corporation.

2 (6) No person may make, publish, disseminate or
3 circulate, directly or indirectly, or aid, abet or encourage
4 the making, publishing, disseminating or circulating of any
5 oral or written statement or any pamphlet, circular, article
6 or literature which is false, or maliciously critical of or
7 derogatory to the financial condition of a health service
8 corporation, or of an organization proposing to become a
9 health service corporation, and which is calculated to
10 injure any person engaged or proposing to engage in the
11 business of operating a health service corporation.

12 (7) No person may enter into agreement to commit, or
13 by any concerted action commit, any act of boycott, coercion
14 or intimidation resulting in or tending to result in
15 unreasonable restraint of the operation of health service
16 corporations.

17 (8) No person may knowingly make or permit any
18 unreasonable discrimination between individuals in any
19 classification which may be established by a health service
20 corporation and of essentially the same condition of health
21 in the amount of dues or rates charged for any membership
22 contract or in the benefits payable thereunder, or in any of
23 the terms and conditions of such contract or in any manner
24 whatever. Nothing herein contained shall, however, restrict
25 the right of a health service corporation within the

1 discretion of its board of directors to limit or define the
 2 classes of persons who shall be eligible to become members,
 3 to limit and to define the benefits which it will furnish,
 4 and define such benefits as it undertakes to furnish into
 5 classes or kinds. A health service corporation may make
 6 available to its members health services, or reimbursement
 7 therefor, as the board of directors of that corporation may
 8 approve.

9 (9) Nothing contained in subsection (8) includes
 10 within the definition of discrimination any of the following
 11 practices:

12 (a) readjustment of the rate of payment for membership
 13 in a health service corporation under a group contract based
 14 on the loss or expense experience thereunder at the end of
 15 the first or any subsequent contract year thereunder which
 16 may be made retroactive only for that contract year;

17 (b) in the case of membership contracts issued on the
 18 pre-authorized bank draft or similar plans, making allowance
 19 to members in an amount which fairly represents the saving
 20 in collection expense;

21 (c) reduction of the rate of payment for group
 22 contracts covering a large number of members, but not
 23 exceeding savings in administrative expenses reasonably
 24 attributable to these contracts as compared with contracts
 25 offering similar benefits to smaller numbers of members;

1 (d) issuing individual membership contracts on a
 2 "salary savings" or payroll deduction plan reasonably
 3 commensurate with the savings made by use of such plan;

4 (10) nothing in this chapter gives the commissioner
 5 power to fix and determine a rate level by classification or
 6 otherwise.

7 Section 19. Notice of violation. If the commissioner
 8 shall for any reason have cause to believe that violation of
 9 this act has occurred or is threatened, the commissioner may
 10 give written notice to the health service corporation and to
 11 the representatives, or other persons who appear to be
 12 involved in the suspected violation, to arrange a conference
 13 with the alleged violators or their authorized
 14 representative for the purpose of attempting to ascertain
 15 the facts relating to the suspected violation, and in the
 16 event it appears that a violation has occurred or is
 17 threatened, to arrive at an adequate and effective means of
 18 correcting or preventing the violation.

19 Section 20. Cease and desist order. The commissioner
 20 acting in the name of the state may issue an order directing
 21 a health service corporation or a representative of a health
 22 service corporation to cease and desist from engaging in any
 23 act or practice in violation of the provisions of this act.

24 Within fifteen (15) days after service of the order of
 25 cease and desist, the respondent may request a hearing on

1 the question of whether acts or practices in violation of
2 this act have occurred. These hearings shall be conducted
3 under the Montana Administrative Procedure Act.

4 Section 21. Injunctive relief. In the case of any
5 violation of the provisions of this act, if the commissioner
6 elects not to issue a cease and desist order, or in the
7 event of noncompliance with a cease and desist order issued
8 under this act, the commissioner may institute a proceeding
9 to obtain injunctive relief, receivership, or other
10 appropriate relief, in the district court of the county in
11 which the violation occurs, or in which the principal place
12 of business of the health service corporation is located.
13 Any proceeding under this section shall conform to the
14 requirements of chapter 42 or 44 of Title 93, except that
15 the commissioner shall not be required to allege facts
16 tending to show the lack of an adequate remedy at law or
17 tending to show irreparable damage or loss.

18 Section 22. Grace period. Any corporation organized
19 prior to the effective date of this act, under chapter 23 of
20 Title 15, for the purpose of administering and operating a
21 nonprofit health service plan, as described in this act, has
22 a period of one (1) year after the effective date of this
23 act to comply with all the provisions hereof.

-End-

STATE OF MONTANA

REQUEST NO. 187-75

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 75, there is hereby submitted a Fiscal Note for Senate Bill 387 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 387 provides for the regulation of nonprofit health service corporations by the commissioner of insurance of the state of Montana.

ASSUMPTIONS:

1. The proposed legislation will require regulation of 90,000 health service members, 129 representatives and three health service corporations in FY 76.
2. There will be a 3% increase in membership and 8% increase in number of health service representatives in FY 77.
3. The commissioner of insurance will require an additional two personnel positions and office equipment.

FISCAL IMPACT:

	FY 76	FY 77
Increase in revenue for General Fund from health service corporation fees.	\$ 18,750	\$ 19,300
Increase in expenditures by category		
Personal Services	19,853	21,838
Operating Expenses	150	150
Capital Outlay	1,400	0
Total Increase in expenditures	<u>21,403</u>	<u>21,988</u>
Net Effect (Expenditure - Revenue)	<u>\$ 2,653</u>	<u>\$ 2,688</u>

CONCLUSIONS:

Enactment of Senate Bill 387 will result in an estimated net increase in expenditures of \$5,341 during the biennium.

Michael B. Billings

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/12/75

Approved by Committee
on Public Health, Welfare
& Safety

1 SENATE BILL NO. 387

2 INTRODUCED BY NORMAN, KOLSTAD, TOWE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
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4 of the state of Montana.

5 ~~Section 2. Only this act applies to health service~~
6 ~~corporations.~~ APPLICATION OF THIS ACT -- CONSTRUCTION OF
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9 provisions of this act. ~~These corporations are not subject~~
10 ~~to any other law of this state relating to insurance or~~
11 ~~insurance companies.~~

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13 this act applicable to health service corporations shall be
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16 between that law and the provisions of this act, the latter
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20 of:

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SECOND READING

1 service corporations, for governmental body or agency, or
 2 for other corporations, associations, partnerships or
 3 individuals in the field of health care and services; and

4 (3) research, education or related activity to further
 5 objects within the purview of this act.

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 8 created for or engaged in business or activity for profit,
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13 Section 5. ~~Reserve fund.~~ FINANCIAL SECURITY. (1) The
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 15 adequate to:

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 18 beneficiaries, and

19 (b) meet all costs and expenses.

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 7 (12) months by an amount equal to one percent (1%) of the
 8 gross dues or fee income during that period. The
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 11 to any right of the corporation to prorate the amounts under
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 17 before it, and upon hearing of the case, the court shall
 18 either affirm, or reverse and vacate the order of the
 19 commissioner.

20 (3) The court may suspend or stay a final order of the
 21 commissioner under this section, pending trial of the issues
 22 or the appeal.

23 Section 7. Allowed contracts. A corporation subject
 24 to the provisions of this act may enter into contracts for
 25 the rendering of health services on behalf of its members or

1 beneficiaries with:

2 (1) hospitals maintained by a governmental body or
 3 agency, or

4 (2) hospitals maintained by a nonprofit corporation
 5 organized for hospital purposes, or

6 (3) with other corporations, organizations,
 7 associations, partnerships, or individuals furnishing health
 8 services.

9 A health service corporation may enter into agreements
 10 or contracts with other organizations or corporations
 11 licensed to do business in this state or in any other state
 12 for:

13 (1) the transfer of members or beneficiaries,

14 (2) the reciprocal joint provisions of benefits to the
 15 members of beneficiaries of the corporation and of those
 16 other organizations or corporations, or

17 (3) other joint undertakings the corporation's board
 18 of directors approves.

19 Section 8. Enrollment representative. (1) A person
 20 who, for compensation, solicits membership in a prepayment
 21 health service plan offered by a corporation subject to the
 22 provisions of this act, is an enrollment representative of
 23 that corporation.

24 (2) The definitions of enrollment representative as
 25 defined in this act do not include:

1 (a) an individual employed and used by enrollment
2 representatives for the performance of clerical,
3 stenographic and similar office duties;

4 (b) an individual employed and used for incidental
5 taking of an application for coverage from time to time in
6 the office of the employing enrollment representative;

7 (c) an individual who secures and forwards information
8 for the purpose of an existing group contractor for
9 enrolling individuals under an existing group contract.

10 Section 9. Enrollment representative — filing with
11 commissioner — license. (1) Each corporation subject to
12 the provisions of this chapter shall notify the commissioner
13 through its proper officer or agent of the name, title and
14 address of each person it desires appointed as an enrollment
15 representative. The notice shall be accompanied by a
16 written application, upon a form furnished by the
17 commissioner, from the appointee. If, upon receipt of this
18 written notice, when accompanied by the proper fee, it
19 appears that:

20 (a) the appointee is a competent and suitable person
21 who intends to hold himself out in good faith as the
22 corporation's enrollment representative, and

23 (b) he qualifies under the provisions of this section,
24 the commissioner shall issue to that appointee a license
25 which states that the person named is a constituted

1 enrollment representative of the corporation in this state.

2 (2) For appointees who have not acted as an enrollment
3 representative for a health service corporation for a period
4 of two (2) years prior to the effective date of this act, if
5 he considers it desirable, the commissioner may, require an
6 appointee to submit to an examination to determine the
7 qualifications of the appointee to act as an enrollment
8 representative in this state. This examination shall
9 inquire into an applicant's knowledge of the provisions of
10 this chapter and of the forms submitted and utilized by the
11 employing corporation.

12 (3) Upon receipt by the commissioner of notification
13 from a health service corporation that the corporation
14 desires a particular individual to be appointed as its
15 enrollment representative, that person has a temporary
16 enrollment representative's license until the commissioner
17 notifies the corporation of action taken upon the
18 application. If the commissioner rejects the application,
19 the prospective appointee's eligibility to act as an
20 enrollment representative ceases on the day the corporation
21 is notified of rejection.

22 Section 10. Licenses — refusal to issue — suspension
23 — revocation. (1) If for cause shown, and after a hearing
24 or examination the commissioner determines a person is
25 unsuitable to act as an enrollment representative, he shall:

1 (a) refuse to issue a license, or
 2 (b) revoke a license previously issued, and
 3 (c) notify in writing both the appointee and the
 4 corporation of refusal.

5 (2) Unless revoked by the commissioner or unless the
 6 corporation by written notification to the commissioner
 7 cancels the authority of an enrollment representative to act
 8 for it, a license issued or a renewal thereof expires on
 9 January 1 after its issuance. A license may be renewed
 10 annually upon payment of the annual license renewal fee as
 11 prescribed in section 17 of this act.

12 (3) The commissioner may suspend, for not more than
 13 twelve (12) months, or revoke or refuse to continue any
 14 license issued under this act if he finds that as to the
 15 licensee any one or more of the following causes exists:

16 (a) any cause for which issuance of the license could
 17 have been refused had it then existed and been known to the
 18 commissioner;

19 (b) obtaining or attempting to obtain a license
 20 through misrepresentation or fraud;

21 (c) violation of or noncompliance with applicable
 22 provisions of this chapter, or willful violation of any
 23 lawful rule, or order of the commissioner;

24 (d) misappropriation or conversion to his own use, or
 25 illegal withholding, moneys or property belonging to the

1 health service corporation, its members, beneficiaries, or
 2 others and received in conduct of business under the
 3 license;

4 (e) conviction of a felony involving moral turpitude;

5 (f) fraudulent or dishonest practices, in the conduct
 6 of his affairs under the license, or

7 (g) incompetence, untrustworthiness, or injury and
 8 loss to the public while acting under the license.

9 (4) The action taken under subsection (3) shall be the
 10 result of a hearing granted the licensee with twenty (20)
 11 days' notice. The notice and the reasons for the
 12 commissioner's action shall be by certified mail to the
 13 licensee and the corporation.

14 Section 11. Annual report. All corporations subject
 15 to the provisions of this act shall make and file annually
 16 with the commissioner, on or before March 1 of each year, a
 17 report under oath setting forth:

18 (1) the name of the corporation;

19 (2) the address of its registered office in this state
 20 and the name of its registered agent at that address;

21 (3) the names and addresses of its directors and
 22 officers;

23 (4) a brief statement of the character of the affairs
 24 which the corporation is actually conducting;

25 (5) the amount of all dues or fees collected from

1 members in the last fiscal year, the amounts actually paid
2 during that year for health services for the members or
3 beneficiaries, and the amounts placed in reserves;

4 (6) a balance sheet and statement of income and
5 expenditures for the most recent fiscal year of the
6 corporation, prepared and verified by two officers of the
7 corporation and certified by a certified public accountant;

8 (7) a statement of any other facts or information
9 concerning the financial affairs of the health service
10 corporation which may be reasonably required by the
11 commissioner.

12 Section 12. Examination of a health service
13 corporation. (1) If the commissioner believes a health
14 service corporation is unable or potentially unable to
15 fulfill its contractual obligations to its members, the
16 commissioner may conduct an examination of that corporation.

17 (2) Each health service corporation examined, its
18 officers, employees, and agents shall produce and make
19 available to the commissioner or his examiners the accounts,
20 records, documents, files, information, assets and matters
21 in his possession or control relating to the subject of the
22 examination.

23 (3) The commissioner or his examiner shall make a
24 verified report of the examination.

25 (4) The report shall comprise only facts appearing

1 from the books, papers, records, or documents of the
2 corporation examined, or ascertained from the testimony,
3 under oath, of individuals concerning its affairs, and
4 conclusions and recommendations as warranted by those facts.

5 (5) The commissioner shall furnish a copy of the
6 proposed report to the corporation examined not less than
7 twenty (20) days prior to its filing in his office. If the
8 corporation requests a hearing, in writing, within the
9 twenty (20) day period, the commissioner shall grant one
10 with respect to the report, and shall not file the report
11 until after the hearing and after modifications, if any, the
12 commissioner deems proper.

13 Section 13. Grievance procedure. Any individual
14 member of a corporation, subject to the provisions of this
15 act, who believes himself to be aggrieved by any act or
16 omission of the corporation or its officers, directors, or
17 employees, may file a statement in writing of his grievance
18 in the office of the commissioner, and the commissioner may
19 investigate the grievance. No investigation by the
20 commissioner shall act as a bar to any suit in a court of
21 competent jurisdiction instituted by an aggrieved member, or
22 as a bar to any defense by the involved corporation.

23 Section 14. Nonliability. A health service
24 corporation is not liable for injuries resulting from
25 neglect, misfeasance, malfeasance or malpractice on the part

1 of any person, organization, agency or corporation,
2 rendering health services to the health service
3 corporation's members and beneficiaries.

4 Section 15. Premium tax exemption. A health service
5 corporation is exempt from all premium taxes.

6 Section 16. Montana Administrative Procedure Act
7 applicable. All final administrative actions or decisions
8 of the commissioner under this act are subject to judicial
9 review under and in accordance with the Montana
10 Administrative Procedure Act.

11 Section 17. Fees. Every health service corporation
12 subject to the provisions of this act shall pay the
13 following fees to the commissioner of insurance for
14 enforcement of the provisions of this chapter:

- 15 (1) Enrollment representative's license:
- 16 (a) application for original license including
- 17 examination and issuance of license.....\$10
- 18 (b) annual renewal.....\$ 5
- 19 (2) Filing any other statement or report.....\$ 1
- 20 (3) For a certified copy of any document or other
- 21 paper filed in the office of the commissioner, per page \$.50
- 22 (4) For the certificate and for affixing the seal
- 23 thereto.....\$ 1
- 24 (5) Filing of a membership contract.....\$10
- 25 (6) Filing of a membership contract package.....\$25

1 (7) Filing annual report, a fee of twenty cents (\$.20)
2 for each individual or family unit the corporation covered
3 at the close of the year to which the annual report is
4 applicable; except that the minimum fee payable upon filing
5 of an annual report is one hundred dollars (\$100).

6 The commissioner shall promptly deposit with the state
7 treasurer to the credit of the general fund all fees and
8 license fees received by him under this section.

9 ~~Section 18. Misleading statements prohibited.~~ TRADE
10 PRACTICES PROHIBITED. IN ORDER TO REGULATE TRADE PRACTICES
11 OF HEALTH SERVICE CORPORATIONS THE FOLLOWING PRACTICES ARE
12 PROHIBITED:

13 (1) No person may make, issue, circulate or cause to
14 be made, issued or circulated any estimate, circular, or
15 statement misrepresenting:

- 16 (a) the terms of any health service corporation
- 17 membership contract issued or to be issued; or
- 18 (b) the benefits or advantages promised thereby; or
- 19 make any misleading representation or any misrepresentation
- 20 as to the financial condition of any health service
- 21 corporation.

22 (2) No person may make, publish, disseminate,
23 circulate, or place before the public, or cause directly or
24 indirectly, to be made, published, disseminated, circulated,
25 or placed before the public, in a newspaper, magazine or

1 other publication, or in the form of a notice, circular,
 2 pamphlet, letter or poster, or over any radio or television
 3 station, or in any other way, an advertisement,
 4 announcement, or statement containing any assertion,
 5 representation or statement with respect to the business of
 6 a health service corporation which is untrue, deceptive or
 7 misleading.

8 (3) No person may make or issue or cause to be made or
 9 issued any written or oral statement misrepresenting or
 10 making incomplete comparisons as to the terms, conditions,
 11 or benefits contained in any health service corporation
 12 membership contract for the purpose of inducing or
 13 attempting or tending to induce a member to cancel or
 14 convert any membership contract.

15 (4) No person may file with any public official, or
 16 make, publish, disseminate, circulate or deliver to any
 17 person, or place before the public, or cause directly or
 18 indirectly, to be made, published, disseminated, circulated,
 19 delivered to any person, or placed before the public, any
 20 false statement of financial condition of a health service
 21 corporation with intent to deceive.

22 (5) No person may make any false entry in any book,
 23 report or statement of any health service corporation with
 24 intent to deceive any agent or examiner lawfully appointed
 25 to examine into its condition or into any of its affairs, or

1 any public official to whom that health service corporation
 2 is required by law to report, or who has authority by law to
 3 examine into its condition, or into any of its affairs, or,
 4 with like intent, willfully omit to make a true entry of any
 5 material fact pertaining to the business of that health
 6 service corporation in any book, report or statement of the
 7 health service corporation.

8 (6) No person may make, publish, disseminate or
 9 circulate, directly or indirectly, or aid, abet or encourage
 10 the making, publishing, disseminating or circulating of any
 11 oral or written statement or any pamphlet, circular, article
 12 or literature which is false, or maliciously critical of or
 13 derogatory to the financial condition of a health service
 14 corporation, or of an organization proposing to become a
 15 health service corporation, and which is calculated to
 16 injure any person engaged or proposing to engage in the
 17 business of operating a health service corporation.

18 (7) No person may enter into agreement to commit, or
 19 by any concerted action commit, any act of boycott, coercion
 20 or intimidation resulting in or tending to result in
 21 unreasonable restraint of the operation of health service
 22 corporations.

23 (8) No person may knowingly make or permit any
 24 unreasonable discrimination between individuals in any
 25 classification which may be established by a health service

1 corporation and of essentially the same condition of health
 2 in the amount of dues or rates charged for any membership
 3 contract or in the benefits payable thereunder, or in any of
 4 the terms and conditions of such contract or in any manner
 5 whatever. Nothing herein contained shall, however, restrict
 6 the right of a health service corporation within the
 7 discretion of its board of directors to limit or define the
 8 classes of persons who shall be eligible to become members,
 9 to limit and to define the benefits which it will furnish,
 10 and define such benefits as it undertakes to furnish into
 11 classes or kinds. A health service corporation may make
 12 available to its members health services, or reimbursement
 13 therefor, as the board of directors of that corporation may
 14 approve.

15 ~~(9)~~ SECTION 19. CERTAIN EXCLUSIONS. (1) Nothing
 16 contained in SECTION 18, subsection (8) includes within the
 17 definition of discrimination any of the following practices:

18 (a) readjustment of the rate of payment for membership
 19 in a health service corporation under a group contract based
 20 on the loss or expense experience thereunder at the end of
 21 the first or any subsequent contract year thereunder which
 22 may be made retroactive only for that contract year;

23 (b) in the case of membership contracts issued on the
 24 pre-authorized bank draft or similar plans, making allowance
 25 to members in an amount which fairly represents the saving

1 in collection expense;

2 (c) reduction of the rate of payment for group
 3 contracts covering a large number of members, but not
 4 exceeding savings in administrative expenses reasonably
 5 attributable to these contracts as compared with contracts
 6 offering similar benefits to smaller numbers of members;

7 (d) issuing individual membership contracts on a
 8 "salary savings" or payroll deduction plan reasonably
 9 commensurate with the savings made by use of such plan.

10 ~~(19)~~ (2) ~~nothing~~ NOTHING in this chapter gives the
 11 commissioner power to fix and determine a rate level by
 12 classification or otherwise.

13 Section 20. Notice of violation. If the commissioner
 14 shall for any reason have cause to believe that violation of
 15 this act has occurred or is threatened, the commissioner may
 16 give written notice to the health service corporation and to
 17 the representatives, or other persons who appear to be
 18 involved in the suspected violation, to arrange a conference
 19 with the alleged violators or their authorized
 20 representative for the purpose of attempting to ascertain
 21 the facts relating to the suspected violation, and in the
 22 event it appears that a violation has occurred or is
 23 threatened, to arrive at an adequate and effective means of
 24 correcting or preventing the violation.

25 Section 21. Cease and desist order. The commissioner

1 acting in the name of the state may issue an order directing
2 a health service corporation or a representative of a health
3 service corporation to cease and desist from engaging in any
4 act or practice in violation of the provisions of this act.

5 Within fifteen (15) days after service of the order of
6 cease and desist, the respondent may request a hearing on
7 the question of whether acts or practices in violation of
8 this act have occurred. These hearings shall be conducted
9 under the Montana Administrative Procedure Act.

10 Section 22. Injunctive relief. In the case of any
11 violation of the provisions of this act, if the commissioner
12 elects not to issue a cease and desist order, or in the
13 event of noncompliance with a cease and desist order issued
14 under this act, the commissioner may institute a proceeding
15 to obtain injunctive relief, receivership, or other
16 appropriate relief, in the district court of the county in
17 which the violation occurs, or in which the principal place
18 of business of the health service corporation is located.
19 Any proceeding under this section shall conform to the
20 requirements of chapter 42 or 44 of Title 93, except that
21 the commissioner shall not be required to allege facts
22 tending to show the lack of an adequate remedy at law or
23 tending to show irreparable damage or loss.

24 Section 23. Grace period. Any corporation organized
25 prior to the effective date of this act, under chapter 23 of

1 Title 15, for the purpose of administering and operating a
2 nonprofit health service plan, as described in this act, has
3 a period of one (1) year after the effective date of this
4 act to comply with all the provisions hereof.

5 SECTION 24. SECTION 15-2304, R.C.M. 1947, IS AMENDED
6 TO READ AS FOLLOWS:

7 "15-2304. Purposes. Corporations may be organized
8 under this act for any lawful purpose or purposes. All
9 ~~health--service--corporations--formed--under--this--act--for--the~~
10 ~~purposes--of--defraying--or--assuming--the--cost--of--professional~~
11 ~~services--of--licentates--in--the--field--of--health--or--the~~
12 ~~services--of--hospitals,--clinics--or--sanatoria,--or--both~~
13 ~~professional--and--hospital--services,--or--acting--as--agent,~~
14 ~~factor--or--representative--of,--or--contracting--on--behalf--of~~
15 ~~organizations--of--such--licentates,--or--group,--groups,--or~~
16 ~~organizations--of--hospitals,--or--both--licentate--and--hospital~~
17 ~~organizations,--in--the--matter--of--prepaid--service--plans--in--the~~
18 ~~field--of--health,--may--not--engage,--directly--or--indirectly,--in~~
19 ~~the--performance--of--the--corporate--purposes--or--objects--unless:~~

20 (1) ~~at--least--one--fourth--(1/4)--of--all--licentates--of--the~~
21 ~~particular--profession,--or,--in--the--case--of--hospital--service~~
22 ~~corporations,--at--least--one--fourth--(1/4)--of--the--whole--number~~
23 ~~of--hospitals--in--the--state--become--members,~~

24 (2) ~~membership--in--the--corporation--and--an--opportunity--to~~
25 ~~render--professional--services--upon--a--uniform--basis--is~~

1 ~~available to all licensed members of the particular~~
 2 ~~profession where professional licentiates are involved, and~~
 3 ~~membership in the corporation and an opportunity to render~~
 4 ~~hospital services upon a uniform basis is available to all~~
 5 ~~hospitals approved by or licensed by the department of~~
 6 ~~health and environmental sciences where hospitals are~~
 7 ~~involved;~~

8 ~~(2) a certificate has been issued to the corporation by~~
 9 ~~the particular professional board whose licentiates have~~
 10 ~~become members, or, in the case of hospitals by the~~
 11 ~~licensing agency of such hospitals, finding compliance with~~
 12 ~~the foregoing requirements.~~

13 ~~All health service corporations organized hereunder~~
 14 ~~shall be subject to supervision by the particular~~
 15 ~~professional board or hospital board or agency under which~~
 16 ~~members or hospitals are licensed and they shall at all~~
 17 ~~times be subject to examination by the attorney general on~~
 18 ~~behalf of the state, to ascertain the condition of affairs~~
 19 ~~of any such corporation, and to what extent, if at all, any~~
 20 ~~such corporation may fail to comply with trusts which it has~~
 21 ~~assumed or may depart from the general purposes for which it~~
 22 ~~is formed, and in case of any such failure or departure the~~
 23 ~~attorney general shall institute, in the name of the state,~~
 24 ~~the proceedings necessary to correct the same; all such~~
 25 ~~medical, hospital or health service corporations heretofore~~

1 ~~organized and existing under the nonprofit corporation laws~~
 2 ~~of Montana shall be subject to the provisions hereof. Such~~
 3 ~~health service corporations are hereby prohibited from~~
 4 ~~practicing any of the healing arts and also from operating~~
 5 ~~or conducting hospitals or hospital services."~~

-End-

1 SENATE BILL NO. 387

2 INTRODUCED BY NORMAN, KOLSTAD, TOWE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
5 REGULATION OF NONPROFIT HEALTH SERVICE CORPORATIONS; AND
6 AMENDING SECTION 15-2304, R.C.M. 1947."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Definitions. As used in this act:

10 (1) "Health service corporation" means a nonprofit
11 corporation organized or operating for the purposes of
12 establishing and operating a nonprofit plan or plans under
13 which prepaid hospital care, medical-surgical care and other
14 health care and services, or reimbursement therefor, may be
15 furnished to a member or beneficiary;

16 (2) "Health services" means the health care and
17 services provided by hospitals, or other health care
18 institutions, organizations, associations or groups, and by
19 doctors of medicine, osteopathy, dentistry, chiropractic,
20 optometry and podiatry, nursing services, medical
21 appliances, equipment and supplies, drugs, medicines,
22 ambulance services, and other therapeutic services and
23 supplies;

24 (3) "Membership contract" means any agreement,
25 contract or certificate by which a health service

1 corporation describes the health services or benefits
2 provided to its members or beneficiaries;

3 (4) "Commissioner" means the commissioner of insurance
4 of the state of Montana.

5 Section 2. ~~Only this act applies to health service~~
6 ~~corporations.~~ APPLICATION OF THIS ACT — CONSTRUCTION OF
7 OTHER RELATED LAWS. (1) All health service corporations
8 heretofore or hereafter organized are subject to the
9 provisions of this act. ~~These corporations are not subject~~
10 ~~to any other law of this state relating to insurance or~~
11 ~~insurance companies.~~

12 (2) A law of this state other than the provisions of
13 this act applicable to health service corporations shall be
14 construed in accordance with the fundamental nature of a
15 health service corporation, and in the event of a conflict
16 between that law and the provisions of this act, the latter
17 shall prevail.

18 Section 3. Purposes of health service corporation. A
19 health service corporation may be organized for the purposes
20 of:

21 (1) establishing and operating a voluntary, nonprofit
22 plan or plans under which health services, or reimbursement
23 therefor, are furnished to persons who become members or
24 beneficiaries; or

25 (2) acting as agent or intermediary for other health

1 service corporations, for governmental body or agency, of
 2 for other corporations, associations, partnerships or
 3 individuals in the field of health care and services; and

4 (3) research, education or related activity to further
 5 objects within the purview of this act.

6 Section 4. No profit organization may be a health
 7 service corporation. No group, association, or organization
 8 created for or engaged in business or activity for profit,
 9 provision for the incorporation of which is made by any of
 10 the corporation laws of this state, may be organized or
 11 operated, directly or indirectly, as a health service
 12 corporation under this act.

13 Section 5. ~~Reserve Fund~~ FINANCIAL SECURITY. (1) The
 14 corporation shall maintain at all times, unobligated funds
 15 adequate to:

16 (a) provide the hospital, medical-surgical and other
 17 health services made available to its members and
 18 beneficiaries, and

19 (b) meet all costs and expenses.

20 (2) In addition, reserves of a health service
 21 corporation in cash, certificates of deposit, obligations
 22 issued or guaranteed by the government of the United States
 23 or other assets approved by the ~~commissioner~~ COMMISSIONER
 24 shall be maintained in an amount not less than:

25 (a) five hundred thousand dollars (\$500,000); or

1 (b) an amount equal to one (1) month's average income
 2 from dues or fees paid to the corporation by its members or
 3 beneficiaries, based on an average of the preceding twelve
 4 (12) months; whichever is less.

5 If the reserves are not equal to the average in (2) (b),
 6 they must have been increased during the preceding twelve
 7 (12) months by an amount equal to one percent (1%) of the
 8 gross dues or fee income during that period. The
 9 determination of minimum reserves is subject, as to amounts
 10 payable to participating providers of the health services,
 11 to any right of the corporation to prorate the amounts under
 12 the terms of its health service contracts with providers.
 13 The commissioner may decrease or suspend the requirements of
 14 this section if he finds that the action is in the best
 15 interest of the members of the corporation.

16 Section 6. Forms — filing. (1) A copy of all forms
 17 of the membership contract or any type of endorsement or
 18 rider shall be filed with the commissioner within thirty
 19 (30) days after that form is first used. When a form does
 20 not comply with the requirements of this act, the
 21 commissioner shall notify the corporation in writing of that
 22 failure and include the reasons for his opinion. Unless the
 23 corporation requests a hearing within ten (10) days, notice
 24 by the commissioner disallows use of this form by the
 25 corporation. If the corporation challenges the

1 commissioner's disallowance of a form it shall request a
 2 hearing on that issue. The commissioner shall schedule a
 3 hearing as soon as practicable but not less than fifteen
 4 (15) days from the date of the request. If the commissioner
 5 finds, after the hearing, that the form is not in compliance
 6 with this act he may disapprove the form and issue a final
 7 order to that effect. Notice of disapproval, including the
 8 grounds for disapproval, shall be presented to the
 9 corporation not less than thirty (30) days after the
 10 hearing. The final order is effective thirty (30) days
 11 after the hearing.

12 (2) A corporation whose forms have been ordered
 13 discontinued by the commissioner, may appeal, within fifteen
 14 (15) days after an order, to a district court of the state.
 15 The court, upon filing of the proper petition, shall cause
 16 the forms and orders of the commissioner to be brought
 17 before it, and upon hearing of the case, the court shall
 18 either affirm, or reverse and vacate the order of the
 19 commissioner.

20 (3) The court may suspend or stay a final order of the
 21 commissioner under this section, pending trial of the issues
 22 or the appeal.

23 Section 7. Allowed contracts. A corporation subject
 24 to the provisions of this act may enter into contracts for
 25 the rendering of health services on behalf of its members or

1 beneficiaries with:

2 (1) hospitals maintained by a governmental body or
 3 agency, or

4 (2) hospitals maintained by a nonprofit corporation
 5 organized for hospital purposes, or

6 (3) with other corporations, organizations,
 7 associations, partnerships, or individuals furnishing health
 8 services.

9 A health service corporation may enter into agreements
 10 or contracts with other organizations or corporations
 11 licensed to do business in this state or in any other state
 12 for:

13 (1) the transfer of members or beneficiaries,

14 (2) the reciprocal joint provisions of benefits to the
 15 members of OR beneficiaries of the corporation and of those
 16 other organizations or corporations, or

17 (3) other joint undertakings the corporation's board
 18 of directors approves.

19 Section 8. Enrollment representative. (1) A person
 20 who, for compensation, solicits membership in a prepayment
 21 health service plan offered by a corporation subject to the
 22 provisions of this act, is an enrollment representative of
 23 that corporation.

24 (2) The definitions of enrollment representative as
 25 defined in this act do not include:

1 (a) an individual employed and used by enrollment
2 representatives for the performance of clerical,
3 stenographic and similar office duties;

4 (b) an individual employed and used for incidental
5 taking of an application for coverage from time to time in
6 the office of the employing enrollment representative;

7 (c) an individual who secures and forwards information
8 for the purpose of an existing group contractor for
9 enrolling individuals under an existing group contract.

10 Section 9. Enrollment representative — filing with
11 commissioner — license. (1) Each corporation subject to
12 the provisions of this chapter shall notify the commissioner
13 through its proper officer or agent of the name, title and
14 address of each person it desires appointed as an enrollment
15 representative. The notice shall be accompanied by a
16 written application, upon a form furnished by the
17 commissioner, from the appointee. If, upon receipt of this
18 written notice, when accompanied by the proper fee, it
19 appears that:

20 (a) the appointee is a competent and suitable person
21 who intends to hold himself out in good faith as the
22 corporation's enrollment representative, and

23 (b) he qualifies under the provisions of this section,
24 the commissioner shall issue to that appointee a license
25 which states that the person named is a constituted

1 enrollment representative of the corporation in this state.

2 (2) For appointees who have not acted as an enrollment
3 representative for a health service corporation for a period
4 of two (2) years prior to the effective date of this act, if
5 he considers it desirable, the commissioner may, require an
6 appointee to submit to an examination to determine the
7 qualifications of the appointee to act as an enrollment
8 representative in this state. This examination shall
9 inquire into an applicant's knowledge of the provisions of
10 this chapter and of the forms submitted and utilized by the
11 employing corporation.

12 (3) Upon receipt by the commissioner of notification
13 from a health service corporation that the corporation
14 desires a particular individual to be appointed as its
15 enrollment representative, that person has a temporary
16 enrollment representative's license until the commissioner
17 notifies the corporation of action taken upon the
18 application. If the commissioner rejects the application,
19 the prospective appointee's eligibility to act as an
20 enrollment representative ceases on the day the corporation
21 is notified of rejection.

22 Section 10. Licenses — refusal to issue — suspension
23 — revocation. (1) If for cause shown, and after a hearing
24 or examination the commissioner determines a person is
25 unsuitable to act as an enrollment representative, he shall:

1 (a) refuse to issue a license, or
 2 (b) revoke a license previously issued, and
 3 (c) notify in writing both the appointee and the
 4 corporation of refusal.

5 (2) Unless revoked by the commissioner or unless the
 6 corporation by written notification to the commissioner
 7 cancels the authority of an enrollment representative to act
 8 for it, a license issued or a renewal thereof expires on
 9 January 1 after its issuance. A license may be renewed
 10 annually upon payment of the annual license renewal fee as
 11 prescribed in section 17 of this act.

12 (3) The commissioner may suspend, for not more than
 13 twelve (12) months, or revoke or refuse to continue any
 14 license issued under this act if he finds that as to the
 15 licensee any one or more of the following causes exists:

16 (a) any cause for which issuance of the license could
 17 have been refused had it then existed and been known to the
 18 commissioner;

19 (b) obtaining or attempting to obtain a license
 20 through misrepresentation or fraud;

21 (c) violation of or noncompliance with applicable
 22 provisions of this chapter, or willful violation of any
 23 lawful rule, or order of the commissioner;

24 (d) misappropriation or conversion to his own use, or
 25 illegal withholding, moneys or property belonging to the

1 health service corporation, its members, beneficiaries, or
 2 others and received in conduct of business under the
 3 license;

4 (e) conviction of a felony involving moral turpitude;

5 (f) fraudulent or dishonest practices, in the conduct
 6 of his affairs under the license, or

7 (g) incompetence, untrustworthiness, or injury and
 8 loss to the public while acting under the license.

9 (4) The action taken under subsection (3) shall be the
 10 result of a hearing granted the licensee with twenty (20)
 11 days' notice. The notice and the reasons for the
 12 commissioner's action shall be by certified mail to the
 13 licensee and the corporation.

14 Section 11. Annual report. All corporations subject
 15 to the provisions of this act shall make and file annually
 16 with the commissioner, on or before March 1 of each year, a
 17 report under oath setting forth:

18 (1) the name of the corporation;

19 (2) the address of its registered office in this state
 20 and the name of its registered agent at that address;

21 (3) the names and addresses of its directors and
 22 officers;

23 (4) a brief statement of the character of the affairs
 24 which the corporation is actually conducting;

25 (5) the amount of all dues or fees collected from

1 members in the last fiscal year, the amounts actually paid
 2 during that year for health services for the members or
 3 beneficiaries, and the amounts placed in reserves;

4 (6) a balance sheet and statement of income and
 5 expenditures for the most recent fiscal year of the
 6 corporation, prepared and verified by two officers of the
 7 corporation and certified by a certified public accountant;

8 (7) a statement of any other facts or information
 9 concerning the financial affairs of the health service
 10 corporation which may be reasonably required by the
 11 commissioner.

12 Section 12. Examination of a health service
 13 corporation. (1) If the commissioner believes a health
 14 service corporation is unable or potentially unable to
 15 fulfill its contractual obligations to its members, the
 16 commissioner may conduct an examination of that corporation.

17 (2) Each health service corporation examined, its
 18 officers, employees, and agents shall produce and make
 19 available to the commissioner or his examiners the accounts,
 20 records, documents, files, information, assets and matters
 21 in his possession or control relating to the subject of the
 22 examination.

23 (3) The commissioner or his examiner shall make a
 24 verified report of the examination.

25 (4) The report shall comprise only facts appearing

1 from the books, papers, records, or documents of the
 2 corporation examined, or ascertained from the testimony,
 3 under oath, of individuals concerning its affairs, and
 4 conclusions and recommendations as warranted by those facts.

5 (5) The commissioner shall furnish a copy of the
 6 proposed report to the corporation examined not less than
 7 twenty (20) days prior to its filing in his office. If the
 8 corporation requests a hearing, in writing, within the
 9 twenty (20) day period, the commissioner shall grant one
 10 with respect to the report, and shall not file the report
 11 until after the hearing and after modifications, if any, the
 12 commissioner deems proper.

13 Section 13. Grievance procedure. Any individual
 14 member of a corporation, subject to the provisions of this
 15 act, who believes himself to be aggrieved by any act or
 16 omission of the corporation or its officers, directors, or
 17 employees, may file a statement in writing of his grievance
 18 in the office of the commissioner, and the commissioner may
 19 investigate the grievance. No investigation by the
 20 commissioner shall act as a bar to any suit in a court of
 21 competent jurisdiction instituted by an aggrieved member, or
 22 as a bar to any defense by the involved corporation.

23 Section 14. Nonliability. A health service
 24 corporation is not liable for injuries resulting from
 25 neglect, misfeasance, malfeasance or malpractice on the part

1 of any person, organization, agency or corporation,
2 rendering health services to the health service
3 corporation's members and beneficiaries.

4 Section 15. Premium tax exemption. A health service
5 corporation is exempt from all premium taxes.

6 Section 16. Montana Administrative Procedure Act
7 applicable. All final administrative actions or decisions
8 of the commissioner under this act are subject to judicial
9 review under and in accordance with the Montana
10 Administrative Procedure Act.

11 Section 17. Fees. Every health service corporation
12 subject to the provisions of this act shall pay the
13 following fees to the commissioner of insurance for
14 enforcement of the provisions of this chapter:

- 15 (1) Enrollment representative's license:
- 16 (a) application for original license including
- 17 examination and issuance of license.....\$10
- 18 (b) annual renewal.....\$ 5
- 19 (2) Filing any other statement or report.....\$ 1
- 20 (3) For a certified copy of any document or other
- 21 paper filed in the office of the commissioner, per page \$.50
- 22 (4) For the certificate and for affixing the seal
- 23 thereto.....\$ 1
- 24 (5) Filing of a membership contract.....\$10
- 25 (6) Filing of a membership contract package.....\$25

1 (7) Filing annual report, a fee of twenty cents (\$.20)
2 for each individual or family unit the corporation covered
3 at the close of the year to which the annual report is
4 applicable; except that the minimum fee payable upon filing
5 of an annual report is one hundred dollars (\$100).

6 The commissioner shall promptly deposit with the state
7 treasurer to the credit of the general fund all fees and
8 license fees received by him under this section.

9 ~~Section 18. Misleading statements prohibited.~~ TRADE
10 PRACTICES PROHIBITED. IN ORDER TO REGULATE TRADE PRACTICES
11 OF HEALTH SERVICE CORPORATIONS THE FOLLOWING PRACTICES ARE
12 PROHIBITED:

13 (1) No person may make, issue, circulate or cause to
14 be made, issued or circulated any estimate, circular, or
15 statement misrepresenting:

- 16 (a) the terms of any health service corporation
- 17 membership contract issued or to be issued; or
- 18 (b) the benefits or advantages promised thereby; or
- 19 make any misleading representation or any misrepresentation
- 20 as to the financial condition of any health service
- 21 corporation.

22 (2) No person may make, publish, disseminate,
23 circulate, or place before the public, or cause directly or
24 indirectly, to be made, published, disseminated, circulated,
25 or placed before the public, in a newspaper, magazine or

1 other publication, or in the form of a notice, circular,
2 pamphlet, letter or poster, or over any radio or television
3 station, or in any other way, an advertisement,
4 announcement, or statement containing any assertion,
5 representation or statement with respect to the business of
6 a health service corporation which is untrue, deceptive or
7 misleading.

8 (3) No person may make or issue or cause to be made or
9 issued any written or oral statement misrepresenting or
10 making incomplete comparisons as to the terms, conditions,
11 or benefits contained in any health service corporation
12 membership contract for the purpose of inducing or
13 attempting or tending to induce a member to cancel or
14 convert any membership contract.

15 (4) No person may file with any public official, or
16 make, publish, disseminate, circulate or deliver to any
17 person, or place before the public, or cause directly or
18 indirectly, to be made, published, disseminated, circulated,
19 delivered to any person, or placed before the public, any
20 false statement of financial condition of a health service
21 corporation with intent to deceive.

22 (5) No person may make any false entry in any book,
23 report or statement of any health service corporation with
24 intent to deceive any agent or examiner lawfully appointed
25 to examine into its condition or into any of its affairs, or

1 any public official to whom that health service corporation
2 is required by law to report, or who has authority by law to
3 examine into its condition, or into any of its affairs, or,
4 with like intent, willfully omit to make a true entry of any
5 material fact pertaining to the business of that health
6 service corporation in any book, report or statement of the
7 health service corporation.

8 (6) No person may make, publish, disseminate or
9 circulate, directly or indirectly, or aid, abet or encourage
10 the making, publishing, disseminating or circulating of any
11 oral or written statement or any pamphlet, circular, article
12 or literature which is false, or maliciously critical of or
13 derogatory to the financial condition of a health service
14 corporation, or of an organization proposing to become a
15 health service corporation, and which is calculated to
16 injure any person engaged or proposing to engage in the
17 business of operating a health service corporation.

18 (7) No person may enter into agreement to commit, or
19 by any concerted action commit, any act of boycott, coercion
20 or intimidation resulting in or tending to result in
21 unreasonable restraint of the operation of health service
22 corporations.

23 (8) No person may knowingly make or permit any
24 unreasonable discrimination between individuals in any
25 classification which may be established by a health service

1 corporation and of essentially the same condition of health
 2 in the amount of dues or rates charged for any membership
 3 contract or in the benefits payable thereunder, or in any of
 4 the terms and conditions of such contract or in any manner
 5 whatever. Nothing herein contained shall, however, restrict
 6 the right of a health service corporation within the
 7 discretion of its board of directors to limit or define the
 8 classes of persons who shall be eligible to become members,
 9 to limit and to define the benefits which it will furnish,
 10 and define such benefits as it undertakes to furnish into
 11 classes or kinds. A health service corporation may make
 12 available to its members health services, or reimbursement
 13 therefor, as the board of directors of that corporation may
 14 approve.

15 ~~(9) SECTION 19. CERTAIN EXCLUSIONS. (1)~~ Nothing
 16 contained in SECTION 18, subsection (8) includes within the
 17 definition of discrimination any of the following practices:

18 (a) readjustment of the rate of payment for membership
 19 in a health service corporation under a group contract based
 20 on the loss or expense experience thereunder at the end of
 21 the first or any subsequent contract year thereunder which
 22 may be made retroactive only for that contract year;

23 (b) in the case of membership contracts issued on the
 24 pre-authorized bank draft or similar plans, making allowance
 25 to members in an amount which fairly represents the saving

1 in collection expense;

2 (c) reduction of the rate of payment for group
 3 contracts covering a large number of members, but not
 4 exceeding savings in administrative expenses reasonably
 5 attributable to these contracts as compared with contracts
 6 offering similar benefits to smaller numbers of members;

7 (d) issuing individual membership contracts on a
 8 "salary savings" or payroll deduction plan reasonably
 9 commensurate with the savings made by use of such plan.

10 ~~(10)~~ (2) ~~nothing~~ NOTHING in this chapter gives the
 11 commissioner power to fix and determine a rate level by
 12 classification or otherwise.

13 Section 20. Notice of violation. If the commissioner
 14 shall for any reason have cause to believe that violation of
 15 this act has occurred or is threatened, the commissioner may
 16 give written notice to the health service corporation and to
 17 the representatives, or other persons who appear to be
 18 involved in the suspected violation, to arrange a conference
 19 with the alleged violators or their authorized
 20 representative for the purpose of attempting to ascertain
 21 the facts relating to the suspected violation, and in the
 22 event it appears that a violation has occurred or is
 23 threatened, to arrive at an adequate and effective means of
 24 correcting or preventing the violation.

25 Section 21. Cease and desist order. The commissioner

1 acting in the name of the state may issue an order directing
2 a health service corporation or a representative of a health
3 service corporation to cease and desist from engaging in any
4 act or practice in violation of the provisions of this act.

5 Within fifteen (15) days after service of the order of
6 cease and desist, the respondent may request a hearing on
7 the question of whether acts or practices in violation of
8 this act have occurred. These hearings shall be conducted
9 under the Montana Administrative Procedure Act.

10 Section 22. Injunctive relief. In the case of any
11 violation of the provisions of this act, if the commissioner
12 elects not to issue a cease and desist order, or in the
13 event of noncompliance with a cease and desist order issued
14 under this act, the commissioner may institute a proceeding
15 to obtain injunctive relief, receivership, or other
16 appropriate relief, in the district court of the county in
17 which the violation occurs, or in which the principal place
18 of business of the health service corporation is located.
19 Any proceeding under this section shall conform to the
20 requirements of chapter 42 or 44 of Title 93, except that
21 the commissioner shall not be required to allege facts
22 tending to show the lack of an adequate remedy at law or
23 tending to show irreparable damage or loss.

24 Section 23. Grace period. Any corporation organized
25 prior to the effective date of this act, under chapter 23 of

1 Title 15, for the purpose of administering and operating a
2 nonprofit health service plan, as described in this act, has
3 a period of one (1) year after the effective date of this
4 act to comply with all the provisions hereof.

5 SECTION 24. SECTION 15-2304, R.C.M. 1947, IS AMENDED
6 TO READ AS FOLLOWS:

7 "15-2304. Purposes. Corporations may be organized
8 under this act for any lawful purpose or purposes. ~~All~~
9 ~~health-service-corporations-formed-under-this-act-for-the~~
10 ~~purposes-of-defraying-or-assuming-the-cost-of-professional~~
11 ~~services-of-licentiates-in-the-field-of-health-or-the~~
12 ~~services-of-hospitals,--clinics--or--sanatoria,--or--both~~
13 ~~professional--and--hospital--services,--or--acting-as-agent,~~
14 ~~factor-or-representative-of,--or--contracting--on--behalf--of~~
15 ~~organizations--of--such--licentiates,--or--group,--groups,--or~~
16 ~~organizations-of-hospitals,--or--both-licentiate-and--hospital~~
17 ~~organizations,--in-the-matter-of-prepaid-service-plans-in-the~~
18 ~~field--of-health,--may-not-engage,--directly--or--indirectly,--in~~
19 ~~the-performance-of-the-corporate-purposes-or-objects-unless:~~

20 (1) ~~at-least-one-fourth-(1/4)-of-all-licentiates-of-the~~
21 ~~particular-profession,--or,--in-the-case-of--hospital--service~~
22 ~~corporations,--at-least-one-fourth-(1/4)-of-the-whole-number~~
23 ~~of-hospitals-in-the-state-become-members;~~

24 (2) ~~membership-in-the-corporation-and-an-opportunity-to~~
25 ~~render--professional--services--upon--a--uniform--basis--is~~

1 ~~available to all licensed members of the particular~~
 2 ~~profession where professional licentiates are involved, and~~
 3 ~~membership in the corporation and an opportunity to render~~
 4 ~~hospital services upon a uniform basis is available to all~~
 5 ~~hospitals approved by or licensed by the department of~~
 6 ~~health and environmental sciences where hospitals are~~
 7 ~~involved;~~

8 ~~(2) a certificate has been issued to the corporation by~~
 9 ~~the particular professional board whose licentiates have~~
 10 ~~become members, or, in the case of hospitals by the~~
 11 ~~licensing agency of such hospitals, finding compliance with~~
 12 ~~the foregoing requirements.~~

13 ~~All health service corporations organized hereunder~~
 14 ~~shall be subject to supervision by the particular~~
 15 ~~professional board or hospital board or agency under which~~
 16 ~~members or hospitals are licensed and they shall at all~~
 17 ~~times be subject to examination by the attorney general on~~
 18 ~~behalf of the state, to ascertain the condition of affairs~~
 19 ~~of any such corporation, and to what extent, if at all, any~~
 20 ~~such corporation may fail to comply with trusts which it has~~
 21 ~~assumed or may depart from the general purposes for which it~~
 22 ~~is formed, and in case of any such failure or departure the~~
 23 ~~attorney general shall institute, in the name of the state,~~
 24 ~~the proceedings necessary to correct the same; all such~~
 25 ~~medical, hospital or health service corporations heretofore~~

1 ~~organized and existing under the nonprofit corporation laws~~
 2 ~~of Montana shall be subject to the provisions hereof. Such~~
 3 ~~health service corporations are hereby prohibited from~~
 4 ~~practicing any of the healing arts and also from operating~~
 5 ~~or conducting hospitals or hospital services."~~

-End-

SENATE BILL NO. 387

INTRODUCED BY NORMAN, KOLSTAD, TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE REGULATION OF NONPROFIT HEALTH SERVICE CORPORATIONS; AND AMENDING SECTION 15-2304, R.C.M. 1947."

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

Section 1. Definitions. As used in this act:

(1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary;

(2) "Health services" means the health care and services provided by hospitals, or other health care institutions, organizations, associations or groups, and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry and podiatry, nursing services, medical appliances, equipment and supplies, drugs, medicines, ambulance services, and other therapeutic services and supplies;

(3) "Membership contract" means any agreement, contract or certificate by which a health service

corporation describes the health services or benefits provided to its members or beneficiaries;

(4) "Commissioner" means the commissioner of insurance of the state of Montana.

Section 2. ~~Only this act applies to health service corporations.~~ APPLICATION OF THIS ACT -- CONSTRUCTION OF

OTHER RELATED LAWS. (1) All health service corporations heretofore or hereafter organized are subject to the provisions of this act. ~~These corporations are not subject to any other law of this state relating to insurance or insurance companies.~~

(2) A law of this state other than the provisions of this act applicable to health service corporations shall be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict between that law and the provisions of this act, the latter shall prevail.

Section 3. Purposes of health service corporation. A health service corporation may be organized for the purposes of:

(1) establishing and operating a voluntary, nonprofit plan or plans under which health services, or reimbursement therefor, are furnished to persons who become members or beneficiaries; or

(2) acting as agent or intermediary for other health

1 service corporations, for governmental body or agency, or
 2 for other corporations, associations, partnerships or
 3 individuals in the field of health care and services; and

4 (3) research, education or related activity to further
 5 objects within the purview of this act.

6 Section 4. No profit organization may be a health
 7 service corporation. No group, association, or organization
 8 created for or engaged in business or activity for profit,
 9 provision for the incorporation of which is made by any of
 10 the corporation laws of this state, may be organized or
 11 operated, directly or indirectly, as a health service
 12 corporation under this act.

13 Section 5. ~~Reserve--fund.~~ FINANCIAL SECURITY. (1) The
 14 corporation shall maintain at all times, unobligated funds
 15 adequate to:

16 (a) provide the hospital, medical-surgical and other
 17 health services made available to its members and
 18 beneficiaries, and

19 (b) meet all costs and expenses.

20 (2) In addition, reserves of a health service
 21 corporation in cash, certificates of deposit, obligations
 22 issued or guaranteed by the government of the United States
 23 or other assets approved by the ~~commission~~ COMMISSIONER
 24 shall be maintained in an amount not less than:

25 (a) five hundred thousand dollars (\$500,000); or

1 (b) an amount equal to one (1) month's average income
 2 from dues or fees paid to the corporation by its members or
 3 beneficiaries, based on an average of the preceding twelve
 4 (12) months; whichever is less.

5 If the reserves are not equal to the average in (2)(b),
 6 they must have been increased during the preceding twelve
 7 (12) months by an amount equal to one percent (1%) of the
 8 gross dues or fee income during that period. The
 9 determination of minimum reserves is subject, as to amounts
 10 payable to participating providers of the health services,
 11 to any right of the corporation to prorate the amounts under
 12 the terms of its health service contracts with providers.
 13 The commissioner may decrease or suspend the requirements of
 14 this section if he finds that the action is in the best
 15 interest of the members of the corporation.

16 Section 6. Forms -- filing. (1) A copy of all forms
 17 of the membership contract or any type of endorsement or
 18 rider shall be filed with the commissioner within thirty
 19 (30) days after that form is first used. When a form does
 20 not comply with the requirements of this act, the
 21 commissioner shall notify the corporation in writing of that
 22 failure and include the reasons for his opinion. Unless the
 23 corporation requests a hearing within ten (10) days, notice
 24 by the commissioner disallows use of this form by the
 25 corporation. If the corporation challenges the

1 commissioner's disallowance of a form it shall request a
 2 hearing on that issue. The commissioner shall schedule a
 3 hearing as soon as practicable but not less than fifteen
 4 (15) days from the date of the request. If the commissioner
 5 finds, after the hearing, that the form is not in compliance
 6 with this act he may disapprove the form and issue a final
 7 order to that effect. Notice of disapproval, including the
 8 grounds for disapproval, shall be presented to the
 9 corporation not less than thirty (30) days after the
 10 hearing. The final order is effective thirty (30) days
 11 after the hearing.

12 (2) A corporation whose forms have been ordered
 13 discontinued by the commissioner, may appeal, within fifteen
 14 (15) days after an order, to a district court of the state.
 15 The court, upon filing of the proper petition, shall cause
 16 the forms and orders of the commissioner to be brought
 17 before it, and upon hearing of the case, the court shall
 18 either affirm, or reverse and vacate the order of the
 19 commissioner.

20 (3) The court may suspend or stay a final order of the
 21 commissioner under this section, pending trial of the issues
 22 or the appeal.

23 Section 7. Allowed contracts. A corporation subject
 24 to the provisions of this act may enter into contracts for
 25 the rendering of health services on behalf of its members or

1 beneficiaries with:

- 2 (1) hospitals maintained by a governmental body or
 3 agency, or
 4 (2) hospitals maintained by a nonprofit corporation
 5 organized for hospital purposes, or
 6 (3) with other corporations, organizations,
 7 associations, partnerships, or individuals furnishing health
 8 services.

9 A health service corporation may enter into agreements
 10 or contracts with other organizations or corporations
 11 licensed to do business in this state or in any other state
 12 for:

- 13 (1) the transfer of members or beneficiaries,
 14 (2) the reciprocal joint provisions of benefits to the
 15 members ~~of~~ OR beneficiaries of the corporation and of those
 16 other organizations or corporations, or
 17 (3) other joint undertakings the corporation's board
 18 of directors approves.

19 Section 8. Enrollment representative. (1) A person
 20 who, for compensation, solicits membership in a prepayment
 21 health service plan offered by a corporation subject to the
 22 provisions of this act, is an enrollment representative of
 23 that corporation.

24 (2) The definitions of enrollment representative as
 25 defined in this act do not include:

1 (a) an individual employed and used by enrollment
2 representatives for the performance of clerical,
3 stenographic and similar office duties;

4 (b) an individual employed and used for incidental
5 taking of an application for coverage from time to time in
6 the office of the employing enrollment representative;

7 (c) an individual who secures and forwards information
8 for the purpose of an existing group contractor for
9 enrolling individuals under an existing group contract.

10 Section 9. Enrollment representative -- filing with
11 commissioner -- license. (1) Each corporation subject to
12 the provisions of this chapter shall notify the commissioner
13 through its proper officer or agent of the name, title and
14 address of each person it desires appointed as an enrollment
15 representative. The notice shall be accompanied by a
16 written application, upon a form furnished by the
17 commissioner, from the appointee. If, upon receipt of this
18 written notice, when accompanied by the proper fee, it
19 appears that:

20 (a) the appointee is a competent and suitable person
21 who intends to hold himself out in good faith as the
22 corporation's enrollment representative, and

23 (b) he qualifies under the provisions of this section,
24 the commissioner shall issue to that appointee a license
25 which states that the person named is a constituted

1 enrollment representative of the corporation in this state.

2 (2) For appointees who have not acted as an enrollment
3 representative for a health service corporation for a period
4 of two (2) years prior to the effective date of this act, if
5 he considers it desirable, the commissioner may, require an
6 appointee to submit to an examination to determine the
7 qualifications of the appointee to act as an enrollment
8 representative in this state. This examination shall
9 inquire into an applicant's knowledge of the provisions of
10 this chapter and of the forms submitted and utilized by the
11 employing corporation.

12 (3) Upon receipt by the commissioner of notification
13 from a health service corporation that the corporation
14 desires a particular individual to be appointed as its
15 enrollment representative, that person has a temporary
16 enrollment representative's license until the commissioner
17 notifies the corporation of action taken upon the
18 application. If the commissioner rejects the application,
19 the prospective appointee's eligibility to act as an
20 enrollment representative ceases on the day the corporation
21 is notified of rejection.

22 Section 10. Licenses -- refusal to issue -- suspension
23 -- revocation. (1) If for cause shown, and after a hearing
24 or examination the commissioner determines a person is
25 unsuitable to act as an enrollment representative, he shall:

1 (a) refuse to issue a license, or
 2 (b) revoke a license previously issued, and
 3 (c) notify in writing both the appointee and the
 4 corporation of refusal.

5 (2) Unless revoked by the commissioner or unless the
 6 corporation by written notification to the commissioner
 7 cancels the authority of an enrollment representative to act
 8 for it, a license issued or a renewal thereof expires on
 9 January 1 after its issuance. A license may be renewed
 10 annually upon payment of the annual license renewal fee as
 11 prescribed in section 17 of this act.

12 (3) The commissioner may suspend, for not more than
 13 twelve (12) months, or revoke or refuse to continue any
 14 license issued under this act if he finds that as to the
 15 licensee any one or more of the following causes exists:

16 (a) any cause for which issuance of the license could
 17 have been refused had it then existed and been known to the
 18 commissioner;

19 (b) obtaining or attempting to obtain a license
 20 through misrepresentation or fraud;

21 (c) violation of or noncompliance with applicable
 22 provisions of this chapter, or willful violation of any
 23 lawful rule, or order of the commissioner;

24 (d) misappropriation or conversion to his own use, or
 25 illegal withholding, moneys or property belonging to the

1 health service corporation, its members, beneficiaries, or
 2 others and received in conduct of business under the
 3 license;

4 (e) conviction of a felony involving moral turpitude;

5 (f) fraudulent or dishonest practices, in the conduct
 6 of his affairs under the license, or

7 (g) incompetence, untrustworthiness, or injury and
 8 loss to the public while acting under the license.

9 (4) The action taken under subsection (3) shall be the
 10 result of a hearing granted the licensee with twenty (20)
 11 days' notice. The notice and the reasons for the
 12 commissioner's action shall be by certified mail to the
 13 licensee and the corporation.

14 Section 11. Annual report. All corporations subject
 15 to the provisions of this act shall make and file annually
 16 with the commissioner, on or before March 1 of each year, a
 17 report under oath setting forth:

18 (1) the name of the corporation;

19 (2) the address of its registered office in this state
 20 and the name of its registered agent at that address;

21 (3) the names and addresses of its directors and
 22 officers;

23 (4) a brief statement of the character of the affairs
 24 which the corporation is actually conducting;

25 (5) the amount of all dues or fees collected from

1 members in the last fiscal year, the amounts actually paid
 2 during that year for health services for the members or
 3 beneficiaries, and the amounts placed in reserves;

4 (6) a balance sheet and statement of income and
 5 expenditures for the most recent fiscal year of the
 6 corporation, prepared and verified by two officers of the
 7 corporation and certified by a certified public accountant;

8 (7) a statement of any other facts or information
 9 concerning the financial affairs of the health service
 10 corporation which may be reasonably required by the
 11 commissioner.

12 Section 12. Examination of a health service
 13 corporation. (1) If the commissioner believes a health
 14 service corporation is unable or potentially unable to
 15 fulfill its contractual obligations to its members, the
 16 commissioner may conduct an examination of that corporation.

17 (2) Each health service corporation examined, its
 18 officers, employees, and agents shall produce and make
 19 available to the commissioner or his examiners the accounts,
 20 records, documents, files, information, assets and matters
 21 in his possession or control relating to the subject of the
 22 examination.

23 (3) The commissioner or his examiner shall make a
 24 verified report of the examination.

25 (4) The report shall comprise only facts appearing

1 from the books, papers, records, or documents of the
 2 corporation examined, or ascertained from the testimony,
 3 under oath, of individuals concerning its affairs, and
 4 conclusions and recommendations as warranted by those facts.

5 (5) The commissioner shall furnish a copy of the
 6 proposed report to the corporation examined not less than
 7 twenty (20) days prior to its filing in his office. If the
 8 corporation requests a hearing, in writing, within the
 9 twenty (20) day period, the commissioner shall grant one
 10 with respect to the report, and shall not file the report
 11 until after the hearing and after modifications, if any, the
 12 commissioner deems proper.

13 Section 13. Grievance procedure. Any individual
 14 member of a corporation, subject to the provisions of this
 15 act, who believes himself to be aggrieved by any act or
 16 omission of the corporation or its officers, directors, or
 17 employees, may file a statement in writing of his grievance
 18 in the office of the commissioner, and the commissioner may
 19 investigate the grievance. No investigation by the
 20 commissioner shall act as a bar to any suit in a court of
 21 competent jurisdiction instituted by an aggrieved member, or
 22 as a bar to any defense by the involved corporation.

23 Section 14. Nonliability. A health service
 24 corporation is not liable for injuries resulting from
 25 neglect, misfeasance, malfeasance or malpractice on the part

1 of any person, organization, agency or corporation,
2 rendering health services to the health service
3 corporation's members and beneficiaries.

4 Section 15. Premium tax exemption. A health service
5 corporation is exempt from all premium taxes.

6 Section 16. Montana Administrative Procedure Act
7 applicable. All final administrative actions or decisions
8 of the commissioner under this act are subject to judicial
9 review under and in accordance with the Montana
10 Administrative Procedure Act.

11 Section 17. Fees. Every health service corporation
12 subject to the provisions of this act shall pay the
13 following fees to the commissioner of insurance for
14 enforcement of the provisions of this chapter:

- 15 (1) Enrollment representative's license:
 - 16 (a) application for original license including
 - 17 examination and issuance of license.....\$10
 - 18 (b) annual renewal.....\$ 5
 - 19 (2) Filing any other statement or report.....\$ 1
 - 20 (3) For a certified copy of any document or other
 - 21 paper filed in the office of the commissioner, per page \$.50
 - 22 (4) For the certificate and for affixing the seal
 - 23 thereto.....\$ 1
 - 24 (5) Filing of a membership contract.....\$10
 - 25 (6) Filing of a membership contract package.....\$25

1 (7) Filing annual report, a fee of twenty cents (\$.20)
2 for each individual or family unit the corporation covered
3 at the close of the year to which the annual report is
4 applicable; except that the minimum fee payable upon filing
5 of an annual report is one hundred dollars (\$100).

6 The commissioner shall promptly deposit with the state
7 treasurer to the credit of the general fund all fees and
8 license fees received by him under this section.

9 Section 18. ~~Misleading--statements--prohibited:~~ TRADE
10 PRACTICES PROHIBITED. IN ORDER TO REGULATE TRADE PRACTICES
11 OF HEALTH SERVICE CORPORATIONS THE FOLLOWING PRACTICES ARE
12 PROHIBITED:

13 (1) No person may make, issue, circulate or cause to
14 be made, issued or circulated any estimate, circular, or
15 statement misrepresenting:

16 (a) the terms of any health service corporation
17 membership contract issued or to be issued; or

18 (b) the benefits or advantages promised thereby; or
19 make any misleading representation or any misrepresentation
20 as to the financial condition of any health service
21 corporation.

22 (2) No person may make, publish, disseminate,
23 circulate, or place before the public, or cause directly or
24 indirectly, to be made, published, disseminated, circulated,
25 or placed before the public, in a newspaper, magazine or

1 other publication, or in the form of a notice, circular,
 2 pamphlet, letter or poster, or over any radio or television
 3 station, or in any other way, an advertisement,
 4 announcement, or statement containing any assertion,
 5 representation or statement with respect to the business of
 6 a health service corporation which is untrue, deceptive or
 7 misleading.

8 (3) No person may make or issue or cause to be made or
 9 issued any written or oral statement misrepresenting or
 10 making incomplete comparisons as to the terms, conditions,
 11 or benefits contained in any health service corporation
 12 membership contract for the purpose of inducing or
 13 attempting or tending to induce a member to cancel or
 14 convert any membership contract.

15 (4) No person may file with any public official, or
 16 make, publish, disseminate, circulate or deliver to any
 17 person, or place before the public, or cause directly or
 18 indirectly, to be made, published, disseminated, circulated,
 19 delivered to any person, or placed before the public, any
 20 false statement of financial condition of a health service
 21 corporation with intent to deceive.

22 (5) No person may make any false entry in any book,
 23 report or statement of any health service corporation with
 24 intent to deceive any agent or examiner lawfully appointed
 25 to examine into its condition or into any of its affairs, or

1 any public official to whom that health service corporation
 2 is required by law to report, or who has authority by law to
 3 examine into its condition, or into any of its affairs, or,
 4 with like intent, willfully omit to make a true entry of any
 5 material fact pertaining to the business of that health
 6 service corporation in any book, report or statement of the
 7 health service corporation.

8 (6) No person may make, publish, disseminate or
 9 circulate, directly or indirectly, or aid, abet or encourage
 10 the making, publishing, disseminating or circulating of any
 11 oral or written statement or any pamphlet, circular, article
 12 or literature which is false, or maliciously critical of or
 13 derogatory to the financial condition of a health service
 14 corporation, or of an organization proposing to become a
 15 health service corporation, and which is calculated to
 16 injure any person engaged or proposing to engage in the
 17 business of operating a health service corporation.

18 (7) No person may enter into agreement to commit, or
 19 by any concerted action commit, any act of boycott, coercion
 20 or intimidation resulting in or tending to result in
 21 unreasonable restraint of the operation of health service
 22 corporations.

23 (8) No person may knowingly make or permit any
 24 unreasonable discrimination between individuals in any
 25 classification which may be established by a health service

1 corporation and of essentially the same condition of health
 2 in the amount of dues or rates charged for any membership
 3 contract or in the benefits payable thereunder, or in any of
 4 the terms and conditions of such contract or in any manner
 5 whatever. Nothing herein contained shall, however, restrict
 6 the right of a health service corporation within the
 7 discretion of its board of directors to limit or define the
 8 classes of persons who shall be eligible to become members,
 9 to limit and to define the benefits which it will furnish,
 10 and define such benefits as it undertakes to furnish into
 11 classes or kinds. A health service corporation may make
 12 available to its members health services, or reimbursement
 13 therefor, as the board of directors of that corporation may
 14 approve.

15 ~~(9)~~ SECTION 19. CERTAIN EXCLUSIONS. (1) Nothing
 16 contained in SECTION 18, subsection (8) includes within the
 17 definition of discrimination any of the following practices:

18 (a) readjustment of the rate of payment for membership
 19 in a health service corporation under a group contract based
 20 on the loss or expense experience thereunder at the end of
 21 the first or any subsequent contract year thereunder which
 22 may be made retroactive only for that contract year;

23 (b) in the case of membership contracts issued on the
 24 pre-authorized bank draft or similar plans, making allowance
 25 to members in an amount which fairly represents the saving

1 in collection expense;

2 (c) reduction of the rate of payment for group
 3 contracts covering a large number of members, but not
 4 exceeding savings in administrative expenses reasonably
 5 attributable to these contracts as compared with contracts
 6 offering similar benefits to smaller numbers of members;

7 (d) issuing individual membership contracts on a
 8 "salary savings" or payroll deduction plan reasonably
 9 commensurate with the savings made by use of such plan.

10 ~~(10)~~ (2) ~~nothing~~ NOTHING in this chapter gives the
 11 commissioner power to fix and determine a rate level by
 12 classification or otherwise.

13 Section 20. Notice of violation. If the commissioner
 14 shall for any reason have cause to believe that violation of
 15 this act has occurred or is threatened, the commissioner may
 16 give written notice to the health service corporation and to
 17 the representatives, or other persons who appear to be
 18 involved in the suspected violation, to arrange a conference
 19 with the alleged violators or their authorized
 20 representative for the purpose of attempting to ascertain
 21 the facts relating to the suspected violation, and in the
 22 event it appears that a violation has occurred or is
 23 threatened, to arrive at an adequate and effective means of
 24 correcting or preventing the violation.

25 Section 21. Cease and desist order. The commissioner

1 acting in the name of the state may issue an order directing
2 a health service corporation or a representative of a health
3 service corporation to cease and desist from engaging in any
4 act or practice in violation of the provisions of this act.

5 Within fifteen (15) days after service of the order of
6 cease and desist, the respondent may request a hearing on
7 the question of whether acts or practices in violation of
8 this act have occurred. These hearings shall be conducted
9 under the Montana Administrative Procedure Act.

10 Section 22. Injunctive relief. In the case of any
11 violation of the provisions of this act, if the commissioner
12 elects not to issue a cease and desist order, or in the
13 event of noncompliance with a cease and desist order issued
14 under this act, the commissioner may institute a proceeding
15 to obtain injunctive relief, receivership, or other
16 appropriate relief, in the district court of the county in
17 which the violation occurs, or in which the principal place
18 of business of the health service corporation is located.
19 Any proceeding under this section shall conform to the
20 requirements of chapter 42 or 44 of Title 93, except that
21 the commissioner shall not be required to allege facts
22 tending to show the lack of an adequate remedy at law or
23 tending to show irreparable damage or loss.

24 Section 23. Grace period. Any corporation organized
25 prior to the effective date of this act, under chapter 23 of

1 Title 15, for the purpose of administering and operating a
2 nonprofit health service plan, as described in this act, has
3 a period of one (1) year after the effective date of this
4 act to comply with all the provisions hereof.

5 SECTION 24. SECTION 15-2304, R.C.M. 1947, IS AMENDED
6 TO READ AS FOLLOWS:

7 "15-2304. Purposes. Corporations may be organized
8 under this act for any lawful purpose or purposes. ~~All~~
9 ~~health--service--corporations--formed--under--this--act--for--the~~
10 ~~purposes--of--defraying--or--assuming--the--cost--of--professional~~
11 ~~services--of--licentiates--in--the--field--of--health,--or--the~~
12 ~~services--of--hospitals,--clinics--or--sanatoria,--or--both~~
13 ~~professional--and--hospital--services,--or--acting--as--agent,~~
14 ~~factor--or--representative--of,--or--contracting--on--behalf--of~~
15 ~~organizations--of--such--licentiates,--or--group,--groups,--or~~
16 ~~organizations--of--hospitals,--or--both--licentiate--and--hospital~~
17 ~~organizations,--in--the--matter--of--prepaid--service--plans--in--the~~
18 ~~field--of--health,--may--not--engage,--directly--or--indirectly,--in~~
19 ~~the--performance--of--the--corporate--purposes--or--objects--unless:~~
20 ~~(1)--at--least--one--fourth--(1/4)--of--all--licentiates--of--the~~
21 ~~particular--profession,--or,--in--the--case--of--hospital--service~~
22 ~~corporations,--at--least--one--fourth--(1/4)--of--the--whole--number~~
23 ~~of--hospitals--in--the--state--become--members;~~
24 ~~(2)--membership--in--the--corporation--and--an--opportunity--to~~
25 ~~render--professional--services--upon--a--uniform--basis--is~~

1 available--to--all--licensed--members--of--the--particular
 2 profession--where--professional--licentiate--are--involved,--and
 3 membership--in--the--corporation--and--an--opportunity--to--render
 4 hospital--services--upon--a--uniform--basis--is--available--to--all
 5 hospitals--approved--by--or--licensed--by--the--department--of
 6 health--and--environmental--sciences--where--hospitals--are
 7 involved;

8 ~~(3) a certificate has been issued to the corporation by~~
 9 ~~the particular professional board whose licentiate have~~
 10 ~~become members, or, in the case of hospitals by the~~
 11 ~~licensing agency of such hospitals, finding compliance with~~
 12 ~~the foregoing requirements.~~

13 All health--service--corporations--organized--hereunder
 14 shall--be--subject--to--supervision--by--the--particular
 15 professional--board--or--hospital--board--or--agency--under--which
 16 members--or--hospitals--are--licensed--and--they--shall--at--all
 17 times--be--subject--to--examination--by--the--attorney--general--on
 18 behalf--of--the--state,--to--ascertain--the--condition--of--affairs
 19 of--any--such--corporation,--and--to--what--extent,--if--at--all,--any
 20 such--corporation--may--fail--to--comply--with--trusts--which--it--has
 21 assumed--or--may--depart--from--the--general--purposes--for--which--it
 22 is--formed,--and--in--case--of--any--such--failure--or--departure--the
 23 attorney--general--shall--institute,--in--the--name--of--the--state,
 24 the--proceedings--necessary--to--correct--the--same;--all--such
 25 medical,--hospital--or--health--service--corporations--heretofore

1 organized--and--existing--under--the--nonprofit--corporation--laws
 2 of--Montana--shall--be--subject--to--the--provisions--hereof,--Such
 3 health--service--corporations--are--hereby--prohibited--from
 4 practicing--any--of--the--healing--arts--and--also--from--operating
 5 or--conducting--hospitals--or--hospital--services."

-End-