

SB 349 INTRODUCED BY REGAN, HIMSL
AUTHORIZE AND REGULATE HEALTH MAINTENANCE
ORGANIZATIONS

2/16 INTRODUCED
2/16 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
2/18 HEARING
DIED IN COMMITTEE

1 Senate BILL NO. 349
2 INTRODUCED BY Don Stimmel
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE AND
5 REGULATE HEALTH MAINTENANCE ORGANIZATIONS."
6

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

8 Section 1. Short title. [This act] may be cited as
9 "The Health Maintenance Organization Act".

10 Section 2. Definitions. As used in [this act], unless
11 the context requires otherwise, the following definitions
12 apply:

13 (1) "Basic health care services" means emergency care,
14 inpatient hospital and physician care, and outpatient
15 medical services. Mental health services and services for
16 alcohol or drug abuse are required basic health services.

17 (2) "Commissioner" means the commissioner of insurance
18 provided for in 2-15-1903.

19 (3) "Department" means the insurance department
20 provided for in 2-15-1902.

21 (4) "Department of health" means the department of
22 health and environmental sciences provided for in 2-15-2101.

23 (5) "Enrollee" means an individual who is enrolled in
24 a health maintenance organization.

25 (6) "Evidence of coverage" means any certificate,

1 agreement, or contract issued to an enrollee or an employer
2 setting out the coverage to which the enrollee is entitled.

3 (7) "Health care services" means any services included
4 in the furnishing to any individual of medical or dental
5 care, vision care, or hospitalization or incident to the
6 furnishing of such care or hospitalization, as well as the
7 furnishing to any person of any and all other services for
8 the purpose of preventing, alleviating, curing, or healing
9 human illness, injury, or physical disability.

10 (8) "Health maintenance organization" means an
11 organization that undertakes to provide or arrange for basic
12 health care services to enrollees on a prepaid basis and may
13 include providing or arranging for:

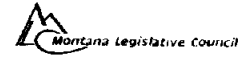
14 (a) physician services directly through physician
15 employees or under arrangements with individual physicians
16 or groups of physicians; and

17 (b) other health care services on a prepayment or
18 other financial basis.

19 (9) "Person" means an individual or entity, including
20 but not limited to a partnership, association, trust, or
21 corporation.

22 (10) "Provider" means a physician, hospital, or other
23 person licensed or otherwise authorized to furnish health
24 care services in this state.

25 (11) "Uncovered expenditures" means the costs of health



1 care services that are covered by a health maintenance
2 organization, but for which an enrollee would be liable in
3 the event of the organization's insolvency.

4 Section 3. Establishment of health maintenance
5 organizations. (1) Any person may apply to the commissioner
6 for and obtain a certificate of authority to establish and
7 operate a health maintenance organization in compliance with
8 [this act]. No person may establish or operate a health
9 maintenance organization in this state without first
10 obtaining a certificate of authority under [this act]. A
11 foreign corporation may qualify under [this act], subject to
12 its obtaining a certificate of authority to do business in
13 this state as a foreign corporation under 35-1-1001.

14 (2) Each health maintenance organization operating as
15 of [the effective date of this act] shall submit an
16 application for a certificate of authority under subsection
17 (3) within 30 days of [the effective date of this act]. Each
18 applicant may continue to operate until the commissioner
19 acts on the application. If an application is denied under
20 [section 4], the applicant must be treated as a health
21 maintenance organization whose certificate of authority has
22 been revoked.

23 (3) Each application for a certificate of authority
24 must be verified by an officer or authorized representative
25 of the applicant, must be in a form prescribed by the

1 commissioner, and must set forth or be accompanied by the
2 following:

3 (a) a copy of the organizational documents of the
4 applicant, such as the articles of incorporation, articles
5 of association, partnership agreement, trust agreement, or
6 other applicable documents, and all amendments thereto;

7 (b) a copy of the bylaws, rules and regulations, or
8 similar document, if any, regulating the conduct of the
9 internal affairs of the applicant;

10 (c) a list of the names, addresses, and official
11 positions of the persons who are to be responsible for the
12 conduct of the affairs of the applicant, including all
13 members of the board of directors, board of trustees,
14 executive committee, or other governing board or committee,
15 the principal officers in the case of a corporation, and the
16 partners or members in the case of a partnership or
17 association;

18 (d) a copy of any contract made or to be made between
19 any providers or persons listed in subsection (3)(c) and the
20 applicant;

21 (e) a copy of the form of evidence of coverage to be
22 issued to the enrollees;

23 (f) a copy of the form or group contract, if any,
24 which is to be issued to employers, unions, trustees, or
25 other organizations;

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

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

14 (i) a power of attorney duly executed by the
 15 applicant, if not domiciled in this state, appointing the
 16 commissioner and his successors in office, and his duly
 17 authorized deputies, as the agent of the applicant upon whom
 18 all lawful process involving the health maintenance
 19 organization in a cause of action arising in this state may
 20 be served;

21 (j) a statement reasonably describing the geographic
 22 area or areas to be served;

23 (k) a description of the complaint procedures to be
 24 used as required under [section 11];

25 (l) a description of the procedures and programs to be

1 implemented to meet the quality of health care requirements
 2 in [section 4(1)(b)];

3 (m) a description of the mechanism by which enrollees
 4 will be afforded an opportunity to participate in matters of
 5 policy and operation under [section 6(2)]; and

6 (n) other information the commissioner may require to
 7 make the determinations required in [section 4].

8 (4) An applicant or a health maintenance organization
 9 holding a certificate of authority under [this act] shall,
 10 unless otherwise provided for in [this act], file a notice
 11 describing any material modification of the operation set
 12 out in the information required by subsection (3). The
 13 notice must be filed with the commissioner prior to the
 14 modification. If the commissioner does not disapprove the
 15 notice within 30 days of filing, the modification is
 16 approved. The commissioner may promulgate rules exempting
 17 from the filing requirements of this subsection those items
 18 he considers unnecessary.

19 (5) An applicant or a health maintenance organization
 20 holding a certificate of authority granted hereunder shall
 21 file all contracts of reinsurance. Any agreement between the
 22 organization and an insurer is subject to the laws of this
 23 state regarding reinsurance. All reinsurance agreements and
 24 any modifications thereto must be filed with and approved by
 25 the commissioner. Reinsurance agreements remain in full

1 force and effect for at least 90 days following written
2 notice by registered mail of cancellation by either party to
3 the commissioner.

4 Section 4. Issuance of certificate of authority.
5 (1) (a) Upon receipt of an application for issuance of a
6 certificate of authority, the commissioner shall transmit
7 copies of the application and accompanying documents to the
8 department of health.

9 (b) The department of health shall determine whether
10 the applicant for a certificate of authority, with respect
11 to health care services to be furnished:

12 (i) has demonstrated the willingness and potential
13 ability to assure that the health care services will be
14 provided in a manner to assure both availability and
15 accessibility of adequate personnel and facilities and in a
16 manner enhancing availability, accessibility, and continuity
17 of service;

18 (ii) has arrangements for an ongoing quality assurance
19 program concerning health care processes and outcomes; and

20 (iii) has a procedure to develop, compile, evaluate,
21 and report statistics relating to the cost of its
22 operations, the pattern of use of its services, the
23 availability and accessibility of its services, and other
24 matters as may be reasonably required by the department of
25 health.

1 (c) Within 30 days of receipt of the application for
2 issuance of a certificate of authority, the department of
3 health shall certify to the commissioner that the proposed
4 health maintenance organization meets the requirements of
5 subsection (1)(b) or that the health maintenance
6 organization does not meet the requirements and specify in
7 what respects it is deficient.

8 (2) The commissioner shall issue or deny a certificate
9 of authority to a person filing an application pursuant to
10 [section 3] within 30 days of receipt of the certification
11 from the department of health. A certificate of authority
12 must be issued upon payment of the application fee
13 prescribed in [section 22] if the commissioner is satisfied
14 that the following conditions are met:

15 (a) the persons responsible for the conduct of the
16 affairs of the applicant are competent, trustworthy, and
17 possess good reputations;

18 (b) the department of health certifies, in accordance
19 with subsection (1), that the health maintenance
20 organization's proposed plan of operation meets the
21 requirements of subsection (1)(b);

22 (c) the health maintenance organization will
23 effectively provide or arrange for the provisions of basic
24 health care services on a prepaid basis, through insurance
25 or otherwise, except to the extent of reasonable

1 requirements for copayments;

2 (d) the health maintenance organization is financially
3 responsible and may reasonably be expected to meet its
4 obligations to enrollees and prospective enrollees. In
5 making this determination, the commissioner may consider:

6 (i) the financial soundness of the arrangements for
7 health care services and the schedule of charges used in
8 connection with the services;

9 (ii) the adequacy of working capital;

10 (iii) any agreement with an insurer, a hospital or
11 medical service corporation, a government, or any other
12 organization for ensuring the payment of the cost of health
13 care services or the provision for automatic applicability
14 of an alternative coverage in the event of discontinuance of
15 the health maintenance organization;

16 (iv) any agreement with providers for the provision of
17 health care services; and

18 (v) a deposit of cash or securities submitted in
19 accordance with [section 13].

20 (e) the enrollees will be afforded an opportunity to
21 participate in matters of policy and operation pursuant to
22 [section 6];

23 (f) nothing in the proposed method of operation, as
24 shown by the information submitted pursuant to [section 3]
25 or by independent investigation, is contrary to the public

1 interest; and

2 (g) any deficiencies identified by the department of
3 health have been corrected.

4 (3) A certificate of authority may only be denied
5 after compliance with the requirements of [section 21].

6 Section 5. Powers of health maintenance organizations.

7 (1) The powers of a health maintenance organization include
8 but are not limited to:

9 (a) the purchase, lease, construction, renovation,
10 operation, or maintenance of hospitals, medical facilities,
11 or both, and their ancillary equipment, and such property as
12 may reasonably be required for its principal office or for
13 such purposes as may be necessary in the transaction of the
14 business of the organization;

15 (b) the making of loans to a medical group under
16 contract with it in furtherance of its operations or the
17 making of loans to a corporation under its control for the
18 purpose of acquiring or constructing medical facilities and
19 hospitals or in furtherance of a program providing health
20 care services to enrollees;

21 (c) the furnishing of health care services through
22 providers that are under contract with or employed by the
23 health maintenance organization;

24 (d) the contracting with any person for the
25 performance on its behalf of certain functions such as

1 marketing, enrollment, and administration;

2 (e) the contracting with an insurance company licensed
3 in this state or with a health service corporation
4 authorized to do business in this state for the provision of
5 insurance, indemnity, or reimbursement against the cost of
6 health care services provided by the health maintenance
7 organization; and

8 (f) the offering of other health care services in
9 addition to basic health care services.

10 (2) A health maintenance organization shall file
11 notice, with adequate supporting information, with the
12 commissioner prior to the exercise of any power granted in
13 subsection (1)(a), (1)(b), or (1)(d). The commissioner may
14 only disapprove such exercise of power if in his opinion it
15 would substantially and adversely affect the financial
16 soundness of the health maintenance organization and
17 endanger its ability to meet its obligations. If the
18 commissioner does not disapprove such exercise of power
19 within 30 days of the filing, it is approved. The
20 commissioner may promulgate rules exempting from the filing
21 requirement of this subsection those activities he finds to
22 have a minimal effect.

23 Section 6. Governing body. (1) The governing body of
24 any health maintenance organization may include providers or
25 other individuals, or both.

1 (2) The governing body shall establish a mechanism to
2 afford the enrollees an opportunity to participate in
3 matters of policy and operation through the establishment of
4 advisory panels, by the use of advisory referenda on major
5 policy decisions, or through the use of other mechanisms.

6 Section 7. Fiduciary responsibilities. (1) A director,
7 officer, employee, or partner of a health maintenance
8 organization who receives, collects, disburses, or invests
9 funds in connection with the activities of the organization
10 is responsible for the funds in a fiduciary relationship to
11 the organization.

12 (2) A health maintenance organization shall maintain
13 in force a fidelity bond on employees and officers in an
14 amount not less than \$100,000 or other sum as may be
15 prescribed by the commissioner. All fidelity bonds shall be
16 written with at least a 1-year discovery period and if
17 written with less than a 3-year discovery period must
18 contain a provision that no cancellation or termination of
19 the bond, whether by or at the request of the insured or by
20 the underwriter, takes effect prior to the expiration of 90
21 days after written notice of such cancellation or
22 termination has been filed with the commissioner unless an
23 earlier date of cancellation or termination is approved by
24 the commissioner.

25 Section 8. Evidence of coverage and charges for health

1 care services. (1) (a) Each enrollee residing in this state
 2 is entitled to an evidence of coverage. If the enrollee
 3 obtains coverage through an insurance policy or a contract
 4 issued by a health service corporation, whether by option or
 5 otherwise, the insurer or the health service corporation
 6 shall issue the evidence of coverage. Otherwise, the health
 7 maintenance organization shall issue the evidence of
 8 coverage.

9 (b) No evidence of coverage or amendment thereto may
 10 be issued or delivered to any person in this state until a
 11 copy of the form of the evidence of coverage or amendment
 12 thereto has been filed with and approved by the
 13 commissioner.

14 (c) An evidence of coverage must contain:

15 (i) no provisions or statements that are unjust,
 16 unfair, inequitable, misleading, deceptive, that encourage
 17 misrepresentation, or that are untrue, misleading, or
 18 deceptive as defined in [section 14(1)]; and

19 (ii) a clear and concise statement, if a contract, or a
 20 reasonably complete summary, if a certificate, of:

21 (A) the health care services and the insurance or
 22 other benefits, if any, to which the enrollee is entitled;

23 (B) any limitations on the services, kind of services,
 24 benefits, or kind of benefits, to be provided, including any
 25 deductible or copayment feature;

1 (C) where and in what manner information is available
 2 as to how services may be obtained;

3 (D) the total amount of payment for health care
 4 services and the indemnity or service benefits, if any, that
 5 the enrollee is obligated to pay with respect to individual
 6 contracts;

7 (E) a clear and understandable description of the
 8 health maintenance organization's method for resolving
 9 enrollee complaints; and

10 (F) any subsequent change of the evidence of coverage
 11 may be evidenced in a separate document issued to the
 12 enrollee.

13 (d) A copy of the form of the evidence of coverage to
 14 be used in this state, and any amendment thereto, is subject
 15 to the filing and approval requirements of subsection (1)(b)
 16 unless it is subject to the jurisdiction of the commissioner
 17 under the laws governing health insurance or health service
 18 corporations, in which event the filing and approval
 19 provisions of those laws apply. If the provisions of the
 20 health insurance or health service corporation law do not
 21 contain the requirements under subsection (1)(c), the
 22 requirements in subsection (1)(c) are applicable.

23 (2) No schedule of charges for enrollee coverage for
 24 health care services or an amendment to a schedule may be
 25 used until a copy of the schedule or amended schedule has

1 been filed with the commissioner. Charges may be established
 2 in accordance with actuarial principles for various
 3 categories of enrollees, provided that charges applicable to
 4 an enrollee may be individually determined based on the
 5 status of his health. The charges may not be excessive,
 6 inadequate, or unfairly discriminatory. A certification by a
 7 qualified actuary or other qualified person acceptable to
 8 the commissioner as to the appropriateness of the use of the
 9 charges, based on reasonable assumptions, must accompany the
 10 filing along with adequate supporting information.

11 (3) The commissioner shall within a reasonable period
 12 approve an evidence of coverage form if the requirements of
 13 subsection (1) are met. It is unlawful to issue any form
 14 until approved. If the commissioner disapproves a form, he
 15 shall notify the filer. In the notice, the commissioner
 16 shall specify the reasons for his disapproval. A hearing
 17 must be granted within 30 days after a request in writing by
 18 the person filing. If the commissioner does not approve any
 19 form within 30 days of the filing of such forms, they are
 20 approved.

21 (4) The commissioner may require the submission of
 22 whatever relevant information he considers necessary in
 23 determining whether to approve or disapprove the filing of a
 24 form made pursuant to this section.

25 Section 9. Annual report. Each health maintenance

1 organization shall annually, on or before the first day of
 2 March, file a report, verified by at least two of its
 3 principal officers, with the commissioner with a copy to the
 4 department of health covering the preceding calendar year.
 5 The report must be on forms prescribed by the commissioner.
 6 The commissioner may require any additional reports he
 7 considers reasonably necessary and appropriate to enable him
 8 to carry out his duties under [this act].

9 Section 10. Information to enrollees. Each health
 10 maintenance organization shall provide promptly to its
 11 enrollees notice of any material change in the operation of
 12 the organization that will affect them directly.

13 Section 11. Complaint system. (1) A health maintenance
 14 organization shall establish and maintain a complaint system
 15 that has been approved by the commissioner after
 16 consultation with the department of health, to provide
 17 reasonable procedures for the resolution of written
 18 complaints initiated by enrollees.

19 (2) A health maintenance organization shall submit to
 20 the commissioner an annual report in a form prescribed by
 21 the commissioner that includes:

22 (a) a description of the procedures of the complaint
 23 system; and

24 (b) the total number of complaints handled through the
 25 complaint system and a compilation of causes underlying the

1 complaints filed.

2 (3) The health maintenance organization shall maintain
3 a record of each written complaint filed with it for 3 years
4 and the commissioner shall have access to such records.

5 Section 12. Investments. With the exception of
6 investments made in accordance with [section 5(1)(a),
7 (1)(b), and (2)], the funds of a health maintenance
8 organization may only be invested in securities or other
9 investments permitted by the laws of this state for the
10 investment of assets constituting the legal reserves of life
11 insurance companies or such other securities or investments
12 as the commissioner may permit.

13 Section 13. Protection against insolvency. (1) Each
14 health maintenance organization shall deposit with the
15 commissioner or with an organization or trustee acceptable
16 to him through which a custodial or controlled account is
17 used, cash, securities, or any combination of these or other
18 measures acceptable to him in the amount set forth in this
19 section.

20 (2) The amount for a health maintenance organization
21 that is beginning operation is the greater of:

22 (a) 5% of its estimated expenditures for health care
23 services for its first year of operation;

24 (b) twice its estimated average monthly uncovered
25 expenditures for its first year of operation; or

1 (c) \$100,000.

2 (3) At the beginning of each succeeding year, unless
3 not applicable, the health maintenance organization shall
4 deposit with the commissioner, organization, or trustee,
5 cash, securities, or any combination of these or other
6 measures acceptable to him in an amount equal to 4% of its
7 estimated annual uncovered expenditures for that year.

8 (4) (a) An organization that is in operation on [the
9 effective date of this act] shall on the first day of the
10 fiscal year beginning 6 months or more after [the effective
11 date of this act] make a deposit equal to the larger of:

12 (i) 1% of the preceding 12 months' uncovered
13 expenditures; or

14 (ii) \$100,000.

15 (b) In the second fiscal year the amount of the
16 additional deposit must be equal to 2% of its estimated
17 annual uncovered expenditures. In the third fiscal year the
18 additional deposit must be equal to 3% of its estimated
19 annual uncovered expenditures for that year. In the fourth
20 fiscal year and subsequent years the additional deposit must
21 be equal to 4% of its estimated annual uncovered
22 expenditures for each year. Each year's estimate, after the
23 first year of operation, must reasonably reflect the prior
24 year's operating experience and delivery arrangements.

25 (5) The commissioner may waive any of the deposit

1 requirements set forth in subsections (1) and (2) whenever
2 he is satisfied that:

3 (a) the organization has sufficient net worth and an
4 adequate history of generating net income to assure its
5 financial viability for the next year;

6 (b) its performance and obligations are guaranteed by
7 an organization with sufficient net worth and an adequate
8 history of generating net income; or

9 (c) the assets of the organization or its contracts
10 with insurers, health service corporations, governments, or
11 other organizations are reasonably sufficient to assure the
12 performance of its obligations.

13 (6) When an organization has achieved a net worth not
14 including land, buildings, and equipment of at least \$1
15 million or has achieved a net worth including
16 organization-related land, buildings, and equipment of at
17 least \$5 million, the annual deposit requirement does not
18 apply. The annual deposit requirement does not apply to an
19 organization if the total amount of the accumulated deposit
20 is equal to 25% of its estimated annual uncovered
21 expenditures for the next calendar year. If the organization
22 has a guaranteeing organization that has been in operation
23 for at least 5 years and has a net worth not including land,
24 buildings, and equipment of at least \$1 million or that has
25 been in operation for at least 10 years and has a net worth

1 including organization-related land, buildings, and
2 equipment of at least \$5 million, the annual deposit
3 requirement does not apply. However, if the guaranteeing
4 organization is sponsoring more than one organization, the
5 net worth requirement must be increased by a multiple equal
6 to the number of such organizations.

7 (7) All income from deposits belongs to the depositing
8 organization and must be paid to it as it becomes available.
9 A health maintenance organization that has made a securities
10 deposit may withdraw that deposit or any part thereof after
11 making a substitute deposit of cash, securities, or any
12 combination of these or other measures of equal amount and
13 value. Any securities must be approved by the commissioner
14 before being substituted.

15 (8) In any year in which an annual deposit is not
16 required of an organization, at the organization's request,
17 the commissioner shall reduce the required previously
18 accumulated deposit by \$100,000 for each \$250,000 of net
19 worth in excess of the amount that allows the organization
20 not to make the annual deposit. If the amount of net worth
21 no longer supports a reduction of its required deposit, the
22 organization shall immediately redeposit \$100,000 for each
23 \$250,000 of reduction in net worth, provided that its total
24 deposit may not exceed the maximum required under this
25 section.

1 (9) Each health maintenance organization that obtains
 2 a certificate of authority after [the effective date of this
 3 act] shall have and maintain a capital account of at least
 4 \$100,000 in addition to any deposit requirements under this
 5 section. The capital account must be net of any accrued
 6 liabilities and be in the form of cash, securities, or any
 7 combination of these or other measures acceptable to the
 8 commissioner.

9 Section 14. Prohibited practices. (1) No health
 10 maintenance organization or representative thereof may cause
 11 or knowingly permit the use of advertising that is untrue or
 12 misleading, solicitation that is untrue or misleading, or
 13 any form of evidence of coverage that is deceptive. For
 14 purposes of this section:

15 (a) a statement or item of information is untrue if it
 16 does not conform to fact in any respect that is or may be
 17 significant to an enrollee of or person considering
 18 enrollment with a health maintenance organization;

19 (b) a statement or item of information is misleading,
 20 whether or not it may be literally untrue, if in the total
 21 context in which the statement is made or the item of
 22 information is communicated, the statement or item of
 23 information may be reasonably understood by a reasonable
 24 person, not possessing special knowledge regarding health
 25 care coverage, as indicating any benefit or advantage or the

1 absence of any exclusion, limitation, or disadvantage of
 2 possible significance to an enrollee of or person
 3 considering enrollment in a health maintenance organization
 4 if such benefit or advantage or absence of limitation,
 5 exclusion, or disadvantage does not in fact exist; and

6 (c) an evidence of coverage is deceptive if the
 7 evidence of coverage taken as a whole, and with
 8 consideration given to typography and format as well as
 9 language, is such as to cause a reasonable person not
 10 possessing special knowledge regarding health maintenance
 11 organizations and evidences of coverage therefor to expect
 12 benefits, services, charges, or other advantages that the
 13 evidence of coverage does not provide or that the health
 14 maintenance organization issuing such evidence of coverage
 15 does not regularly make available for enrollees covered
 16 under such evidence of coverage.

17 (2) The provisions of Title 33, chapter 18, affecting
 18 unfair trade practices apply to health maintenance
 19 organizations and evidences of coverage except to the extent
 20 that the commissioner determines that the nature of health
 21 maintenance organizations and evidences of coverage render
 22 such sections clearly inappropriate.

23 (3) A health maintenance organization may not cancel
 24 or refuse to review an enrollee, except for reasons stated
 25 in the organization's rules applicable to all enrollees, for

1 failure to pay the charge for such coverage, or for other
2 reasons as the commissioner provides by rule.

3 (4) No health maintenance organization unless licensed
4 as an insurer may refer to itself as an insurer or use a
5 name deceptively similar to the name or description of an
6 insurance or surety corporation doing business in the state.

7 (5) A person not in possession of a valid certificate
8 of authority issued pursuant to [this act] may not use the
9 phrase "health maintenance organization" or "HMO" in the
10 course of operation.

11 Section 15. Regulation of agents. (1) The commissioner
12 may, after notice and hearing, promulgate reasonable rules
13 as he considers necessary to provide for the licensing of
14 agents. An agent means a person who is appointed or employed
15 by a health maintenance organization and who engages in
16 solicitation of membership in the organization. The term
17 does not include a person enrolling members on behalf of an
18 employer, union, or other organization to whom a master
19 subscriber contract has been issued.

20 (2) The commissioner may by rule exempt certain
21 classes of persons from the requirement of obtaining a
22 license:

23 (a) if the functions they perform do not require
24 special competence, trustworthiness, or the regulatory
25 surveillance made possible by licensing; or

1 (b) if other existing safeguards make regulation
2 unnecessary.

3 Section 16. Powers of insurers and health service
4 corporations. (1) An insurance company licensed in this
5 state or a health service corporation authorized to do
6 business in this state may either directly or through a
7 subsidiary or affiliate organize and operate a health
8 maintenance organization under the provisions of [this act].
9 Two or more such insurance companies, health service
10 corporations, or subsidiaries or affiliates thereof, may
11 jointly organize and operate a health maintenance
12 organization. The business of insurance includes the
13 providing of health care by a health maintenance
14 organization owned or operated by an insurer or a subsidiary
15 thereof.

16 (2) An insurer or a health service corporation may
17 contract with a health maintenance organization to provide
18 insurance or similar protection against the cost of care
19 provided through health maintenance organizations and to
20 provide coverage in the event of the failure of the health
21 maintenance organization to meet its obligations.

22 (3) The enrollees of a health maintenance organization
23 constitute a permissible group under the laws of this state.
24 The insurer of health service corporations may make benefit
25 payments to health maintenance organizations for health care

1 services rendered by providers under group contracts.

2 Section 17. Examination. (1) The commissioner may make
3 an examination of the affairs of a health maintenance
4 organization and providers with whom such organization has
5 contracts, agreements, or other arrangements as often as is
6 reasonably necessary for the protection of the interests of
7 the people of this state but not less frequently than once
8 every 3 years.

9 (2) The department of health may make an examination
10 concerning the quality of health care service of any health
11 maintenance organization and providers with whom such
12 organization has contracts, agreements, or other
13 arrangements as often as is reasonably necessary for the
14 protection of the interests of the people of this state but
15 not less frequently than once every 3 years.

16 (3) Each health maintenance organization and provider
17 shall submit its relevant books and records for examination
18 and in every way facilitate the examination. For the purpose
19 of examination, the commissioner and the department of
20 health may administer oaths to and examine the officers and
21 agents of the health maintenance organization and the
22 principals of such providers concerning their business.

23 (4) The expense of examination under this section must
24 be assessed against the organization being examined and
25 remitted to the commissioner or the department conducting

1 the examination.

2 (5) In lieu of an examination, the commissioner may
3 accept the report of an examination made by the insurance
4 regulatory official of another state.

5 Section 18. Suspension or revocation of certificate of
6 authority. (1) The commissioner may suspend or revoke any
7 certificate of authority issued to a health maintenance
8 organization under [this act] if he finds that any of the
9 following conditions exist:

10 (a) the health maintenance organization is operating
11 in contravention of its basic organizational document or in
12 a manner contrary to that described in other information
13 submitted under [section 3], unless amendments to such
14 submissions have been filed with and approved by the
15 commissioner;

16 (b) the health maintenance organization issues
17 evidence of coverage or uses a schedule of charges for
18 health care services that do not comply with the
19 requirements of [section 8];

20 (c) the health maintenance organization does not
21 provide or arrange for basic health care services;

22 (d) the department of health certifies to the
23 commissioner that:

24 (i) the health maintenance organization does not meet
25 the requirements of [section 4(1)(b)]; or

1 (ii) the health maintenance organization is unable to
2 fulfill its obligations to furnish health care services;

3 (e) the health maintenance organization is no longer
4 financially responsible and may reasonably be expected to be
5 unable to meet its obligations to enrollees or prospective
6 enrollees;

7 (f) the health maintenance organization has failed to
8 implement a mechanism affording the enrollees an opportunity
9 to participate in matters of policy and operation under
10 [section 6];

11 (g) the health maintenance organization has failed to
12 implement the complaint system required by [section 11] in a
13 reasonable manner to resolve valid complaints;

14 (h) the health maintenance organization or any person
15 on its behalf has advertised or merchandised its services in
16 an untrue, misrepresentative, misleading, deceptive, or
17 unfair manner;

18 (i) the continued operation of the health maintenance
19 organization would be hazardous to its enrollees; or

20 (j) the health maintenance organization has otherwise
21 failed substantially to comply with [this act].

22 (2) A certificate of authority may only be suspended
23 or revoked after compliance with the requirements of
24 [section 21].

25 (3) When the certificate of authority of a health

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

6 (4) When the certificate of authority of a health
7 maintenance organization is revoked, it shall proceed,
8 immediately following the effective date of the order of
9 revocation, to wind up its affairs, and may conduct no
10 further business except as may be essential to the orderly
11 conclusion of the affairs of the organization. It may not
12 engage in further advertising or solicitation. The
13 commissioner may, by written order, permit further operation
14 of the organization as he may find to be in the best
15 interest of enrollees, to the end that enrollees will be
16 afforded the greatest practical opportunity to obtain
17 continuing health care coverage.

18 Section 19. Rehabilitation, liquidation, or
19 conservation of a health maintenance organization. (1) Any
20 rehabilitation, liquidation, or conservation of a health
21 maintenance organization is considered to be the
22 rehabilitation, liquidation, or conservation of an insurance
23 company and must be conducted under the supervision of the
24 commissioner pursuant to the law governing the
25 rehabilitation, liquidation, or conservation of insurance

1 companies. The commissioner may apply for an order directing
 2 him to rehabilitate, liquidate, or conserve a health
 3 maintenance organization upon any one or more grounds set
 4 out in 33-2-1331, or when in his opinion the continued
 5 operation of the health maintenance organization would be
 6 hazardous either to the enrollees or to the people of this
 7 state. Enrollees shall have the same priority in the event
 8 of liquidation or rehabilitation as the law provides to
 9 policyholders of an insurer.

10 (2) A claim by a health care provider for an uncovered
 11 expenditure has the same priority as an enrollee, provided
 12 the provider of services agrees not to assert the claim
 13 against an enrollee of the health maintenance organization.

14 Section 20. Rules. The commissioner may after notice
 15 and hearing promulgate reasonable rules as are necessary or
 16 proper to carry out the provisions of [this act].

17 Section 21. Administrative procedures. (1) When the
 18 commissioner has cause to believe that grounds for the
 19 denial of an application for a certificate of authority
 20 exist or that grounds for the suspension or revocation of a
 21 certificate of authority exist, he shall notify the health
 22 maintenance organization and the department of health in
 23 writing specifically stating the grounds for denial,
 24 suspension, or revocation and fixing a time of at least 20
 25 days after the notice for a hearing on the matter.

1 (2) A representative of the department of health must
 2 be in attendance at the hearing and shall participate in the
 3 proceedings. The recommendation and findings of the
 4 department of health with respect to matters relating to the
 5 quality of health care services provided in connection with
 6 a decision regarding denial, suspension, or revocation of a
 7 certificate of authority are conclusive and binding upon the
 8 commissioner. After the hearing or upon the failure of the
 9 health maintenance organization to appear at the hearing,
 10 the commissioner shall take action as he considers advisable
 11 based on written findings. The written findings must be
 12 mailed to the health maintenance organization and a copy
 13 must be sent to the department of health. The action of the
 14 commissioner and the recommendation and findings of the
 15 department of health are subject to judicial review. The
 16 court may modify, affirm, or reverse the order of the
 17 commissioner in whole or in part.

18 (3) The provisions of the Montana Administrative
 19 Procedure Act apply to proceedings under this section to the
 20 extent they are not in conflict with subsection (1).

21 Section 22. Fees. Each health maintenance organization
 22 subject to [this act] shall pay to the commissioner the
 23 following fees:

24 (1) for filing an application for a certificate of
 25 authority or amendment thereto, \$10;

1 (2) for filing an amendment to the organization
2 documents that requires approval, \$10; and

3 (3) for filing each annual report, \$100.

4 Section 23. Penalties and enforcement. (1) The
5 commissioner may, in lieu of suspension or revocation of a
6 certificate of authority under [section 18], levy an
7 administrative penalty in an amount not less than \$100 or
8 more than \$10,000, if reasonable written notice is given of
9 the intent to levy the penalty and the health maintenance
10 organization has a reasonable time within which to remedy
11 the defect in its operations that gave rise to the penalty
12 citation.

13 (2) If the commissioner for any reason has cause to
14 believe that a violation of [this act] has occurred or is
15 threatened, he may give notice to the health maintenance
16 organization and its representatives or other persons who
17 appear to be involved in the suspected violation, to arrange
18 a conference with the alleged violators or their authorized
19 representatives for the purpose of attempting to ascertain
20 the facts relating to the suspected violation. If it appears
21 that a violation has occurred or is threatened, the
22 conference must attempt to arrive at an adequate and
23 effective means of correcting or preventing a violation.
24 Proceedings under this subsection may not be governed by any
25 formal procedural requirements and may be conducted in such

1 manner as the commissioner considers appropriate under the
2 circumstances. However, unless consented to by the health
3 maintenance organization, no rule or order may result from a
4 conference until the requirements of this section or
5 [section 21] are satisfied.

6 (3) The commissioner may issue an order directing a
7 health maintenance organization or its representative to
8 cease and desist from engaging in any act or practice in
9 violation of the provisions of [this act]. Within 20 days
10 after service of the cease and desist order, the respondent
11 may request a hearing on the question of whether acts or
12 practices in violation of [this act] have occurred. A
13 hearing on the order must be conducted pursuant to 2-4-612
14 and a decision is subject to judicial review in accordance
15 with the Montana Administrative Procedure Act.

16 (4) In case of any violation of the provisions of
17 [this act], if the commissioner elects not to issue a cease
18 and desist order, or in the event of noncompliance with a
19 cease and desist order issued pursuant to subsection (3),
20 the commissioner may institute a proceeding to obtain
21 injunctive or other appropriate relief in the district court
22 of Lewis and Clark County or in the district court of the
23 county in which the health maintenance organization has its
24 principal place of business.

25 Section 24. Statutory construction and relationship to

1 other laws. (1) Except as otherwise provided in [this act],
 2 provisions of the insurance laws and provisions of health
 3 service corporation laws are not applicable to a health
 4 maintenance organization granted a certificate of authority
 5 under [this act]. This provision does not apply to an
 6 insurer or health service corporation licensed and regulated
 7 pursuant to the insurance laws or the health service
 8 corporation laws of this state except with respect to its
 9 health maintenance organization activities authorized and
 10 regulated pursuant to [this act].

11 (2) Solicitation of enrollees by a health maintenance
 12 organization granted a certificate of authority or its
 13 representatives may not be construed to violate any
 14 provision of law relating to solicitation or advertising by
 15 health professionals.

16 (3) A health maintenance organization authorized under
 17 [this act] may not be considered to be practicing medicine
 18 and is exempt from the provision of 37-3-102 relating to the
 19 practice of medicine.

20 Section 25. Premium tax exemption. A health
 21 maintenance organization is exempt from all premium taxes.

22 Section 26. Filings and reports as public documents.
 23 All applications, filings, and reports required under [this
 24 act], except trade secrets or privileged or confidential
 25 commercial or financial information, other than an annual

1 financial report required under [section 9], are public
 2 documents.

3 Section 27. Confidentiality of medical information.
 4 (1) Data or information pertaining to the diagnosis,
 5 treatment, or health of any enrollee or applicant obtained
 6 from such person or from a provider by a health maintenance
 7 organization must be held in confidence and may not be
 8 disclosed to any person except:

9 (a) to the extent that it may be necessary to carry
 10 out the purposes of [this act];

11 (b) upon the express consent of the enrollee or
 12 applicant;

13 (c) pursuant to statute or court order for the
 14 production of evidence or the discovery thereof; or

15 (d) in the event of claim or litigation between such
 16 person and the health maintenance organization wherein such
 17 data or information is pertinent.

18 (2) A health maintenance organization is entitled to
 19 claim any statutory privilege against disclosure of medical
 20 information that the provider who furnished the information
 21 to the health maintenance organization is entitled to claim.

22 Section 28. Acquisition of control -- merger. No
 23 person may make a tender for, request or invite tenders of,
 24 enter into an agreement to exchange securities for, or
 25 acquire in the open market or otherwise, any voting security

1 of a health maintenance organization or enter into any other
2 agreement if, after the consummation thereof, that person
3 would directly or indirectly, by conversion or by exercise
4 of any right to acquire be in control of the health
5 maintenance organization. No person may enter into an
6 agreement to merge or consolidate with or otherwise acquire
7 control of a health maintenance organization, unless at the
8 time any offer, request, or invitation is made or any
9 agreement is entered into, or prior to the acquisition of
10 the securities if no offer or agreement is involved, the
11 person has filed with the commissioner and has sent to the
12 health maintenance organization information required by
13 33-2-1104 and the offer, request, invitation, agreement, or
14 acquisition has been approved by the commissioner. Approval
15 by the commissioner is governed by 33-2-1105.

16 Section 29. Dual choice. Each public or private
17 employer in this state that has at least 25 employees and
18 that offers its employees a health benefit plan and each
19 employee benefit fund in this state that offers its members
20 any form of health benefit shall make available to and
21 inform its employees or members of the option of enrolling
22 in a health maintenance organization holding a valid
23 certificate of authority and that provides health care
24 services in the geographic area in which a substantial
25 number of employees or members reside. If there is a

1 prevailing collective bargaining agreement, the selection of
2 a health maintenance organization to be made available to
3 the employees must be made under the agreement.

4 Section 30. Severability. If a part of this act is
5 invalid, all valid parts that are severable from the invalid
6 part remain in effect. If a part of this act is invalid in
7 one or more of its applications, the part remains in effect
8 in all valid applications that are severable from the
9 invalid applications.

10 Section 31. Effective date. This act is effective on
11 passage and approval.

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