

CHAPTER 906

H.B. No. 1584

An Act relating to the authorization and regulation of single purpose health care plans as health maintenance organizations.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), is amended by amending Subdivisions (i) and (j) and adding Subdivisions (r) and (s) to read as follows:

(i) "Health care services" means any services, including the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury *or a single health care service plan.*

(j) "Health maintenance organization" means any person who arranges for or provides a health care plan or a single health care service plan to enrollees on a prepaid basis.

(r) "Single health care service" means a health care service that an enrolled population may reasonably require in order to be maintained in good health with respect to a particular health care need for the purpose of preventing, alleviating, curing, or healing human illness or injury of a single specified nature and that is to be provided by one or more persons each of whom is licensed by the state to provide that specific health care service.

(s) "Single health care service plan" means a plan under which any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of a single health care service, provided, that a part of the plan consists of arranging for or the provision of the single health care service, as distinguished from an indemnification against the cost of that service, on a prepaid basis through insurance or otherwise and that no part of that plan consists of arranging for the provision of more than one health care need of a single specified nature.

SECTION 2. Section 3, Texas Health Maintenance Organization Act (Article 20A.03, Vernon's Texas Insurance Code), is amended by adding Subsections (c) and (d) to read as follows:

(c) Notwithstanding any other law of this state or provision of this Act, a health maintenance organization may be organized, established, operated, and issued a certificate of authority by the commissioner of insurance for the sole purpose of providing a single health care service plan. A foreign corporation may qualify under this Act, subject to its regulation to do business in the state as a foreign corporation under the Texas Business Corporation Act and in compliance with this Act and other applicable state laws.

(d) Funds collected under this Act shall be sufficient to administer this Act.

SECTION 3. Subsection (b), Section 5, Texas Health Maintenance Organization Act (Article 20A.05, Vernon's Texas Insurance Code), is amended to read as follows:

(b) The commissioner shall, after notice and hearing, issue or deny a certificate of authority to any person filing an application pursuant to Section 4 of this Act within 75 days of the receipt of the certification of the board; provided, however, that the commissioner may grant a delay of final action on the application to an applicant who has demonstrated a need therefor, including any delay occasioned by an application to the federal government. Issuance of the certificate of authority shall be granted upon payment of the application fee prescribed in Section 32 of this Act if:

(1) the board certifies that the health maintenance organization's proposed plan of operation meets the requirements of Subsection (a)(2) of this section; and

(2) the commissioner is satisfied that:

(A) the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(B) the health care plan or single health care service plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services or single health care service on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for co-payment;

(C) the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner shall consider:

(i) the financial soundness of the health care plan's arrangement for health care services and a schedule of charges used in connection therewith;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of plan;

(iv) any agreement which provides for the provision of health care services; and

(v) any surety bond or deposit of cash or securities submitted in accordance with Section 13 of this Act as a guarantee that the obligations will be duly performed;

(D) the enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to Section 7(b) of this Act;

(E) nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 4 of this Act, or by independent investigation, is contrary to Texas law.

SECTION 4. Subsection (a), Section 6, Texas Health Maintenance Organization Act (Article 20A.06, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The powers of a health maintenance organization include, but are not limited to, the following:

(1) the purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and ancillary equipment and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the health maintenance organization;

(2) the making of loans to a medical group, under an independent contract with it in furtherance of its program, or corporations under its control, for the purpose of acquiring or constructing medical facilities and hospitals, or in the furtherance of a program providing health care services to enrollees;

(3) the furnishing of or *arranging for* medical care services *only* through physicians or groups of physicians who have independent contracts with the health maintenance organizations; the furnishing of or arranging for the delivery of health care services *only* through providers or groups of providers who are under contract with or employed by the health maintenance organization, *except for the furnishing of or authorization for emergency services, services by referral, and services to be provided outside of the service area as approved by the commissioner*; provided, however, that a health maintenance organization is not authorized to employ or contract with physicians or providers in any manner which is prohibited by any licensing law of this state under which such physicians or providers are licensed;

(4) the contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration;

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

(6) the offering [~~;~~ ~~in addition to the basic health care services;~~] of:

(A) [~~additional health care or medical services;~~

~~(B)~~ indemnity benefits covering out-of-area emergency services; and

(B) [~~(C)~~] indemnity benefits in addition to those relating to out-of-area and emergency services, provided through insurers or group hospital service corporations;

(7) receiving and accepting from government or private agencies payments covering all or part of the cost of the services provided or arranged for by the organization;

(8) all powers given to corporations (including professional corporations and associations), partnerships, and associations pursuant to their organizational documents which are not in conflict with provisions of this Act, or other applicable law.

SECTION 5. Section 9, Texas Health Maintenance Organization Act (Article 20A.09, Vernon's Texas Insurance Code), is amended by amending Subsections (a), (e), and (f) and adding Subsection (g) to read as follows:

(a)(1) Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a group hospital service corporation, whether by option or otherwise, the insurer or the group hospital service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading, or deceptive as defined in Section 14 of this Act; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the medical, ~~and~~ health care services, or single health care service and the issuance of other benefits, if any, to which the enrollee is entitled under the health care plan or single health care service plan;

(ii) any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided, including any deductible or co-payment feature;

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

(iv) the total amount of payment for health care services or single health care service and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or indication whether the plan is contributory or noncontributory with respect to group certificates; and

(v) a clear and understandable description of the health maintenance organization's methods for resolving enrollee complaints. Any subsequent changes may be evidenced in a separate document issued to the enrollee.

(4) Any form of the evidence of coverage or group contract to be used in this state, and any amendments thereto, are subject to the filing and approval requirements of Subsection (c) of this section, unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or group hospital service corporations, in which event the filing and approval provisions of such law shall apply. To the extent, however, that such provisions do not apply to the requirements of Subdivision (3), Subsection (a) of this section, the requirements of Subdivision (3) shall be applicable.

(e) Article 3.74 of the Texas Insurance Code applies to health maintenance organizations *other than those health maintenance organizations offering only a single health care service plan.*

(f) Article 3.51--9 of the Texas Insurance Code applies to health maintenance organizations *other than those health maintenance organizations offering only a single health care service plan.*

(g) *Evidence of coverage does not constitute a health insurance policy as that term is defined by the Insurance Code.*

SECTION 6. Section 13, Texas Health Maintenance Organization Act (Article 20A.13, Vernon's Texas Insurance Code), is amended by amending Subsection (g) and adding Subsections (i) and (j) to read as follows:

(g) Each health maintenance organization *offering basic health care services* shall maintain a minimum surplus of not less than \$200,000, net of accrued uncovered liabilities. The surplus may consist only of cash, bonds of the United States, bonds of this state, or a combination of these. If a health maintenance organization fails to comply with the surplus requirement of this subsection or Subsection (h) of this section, the commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be hazardous to its enrollees.

(i) *Notwithstanding any other provision of this article, a health maintenance organization authorized to offer only a single health care service plan providing a single health care service that is owned by residents of this state must have a minimum surplus of \$50,000.*

(j) *A health maintenance organization authorized to offer only a single health care service plan providing a single health care service that is owned by persons who are not residents of this state must have a minimum surplus of \$150,000.*

SECTION 7. The Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code) is amended by adding Section 15A to read as follows:

Sec. 15A. AGENTS FOR SINGLE HEALTH CARE SERVICE PLANS. (a) *A person acting as an agent for a health maintenance organization offering only a single health care service plan who is licensed by examination under Article 21.07, Insurance Code, or Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code), is subject to the licensing requirements provided by this section, and except as specifically provided by this Act or some other law, no other agent licensing requirements apply.*

(b) *The commissioner shall collect in advance from applicants for licensure as health maintenance organization agents under this section a nonrefundable license fee in an amount not to exceed \$70 as determined by the State Board of Insurance.*

(c) *Except as may be provided by a staggered renewal system adopted under Section 15(i) of this Act, each license issued to a health maintenance organization agent under this section shall expire two years following the date of issuance, unless before that time the license is suspended or revoked by the commissioner or the authority of the agent to act for the health maintenance organization is terminated.*

(d) *Licenses issued under this section that have not expired or been suspended or revoked may be renewed on written request and payment by the agent of a renewal fee in an amount not to exceed \$50 as determined by the board.*

(e) *An agent licensed under this section may represent and act as an agent for more than one health maintenance organization offering only a single health care service plan at any time while that agent's license is in force. The agent and the health maintenance organization offering only a single health care service plan involved must give notice to the State Board of Insurance of any additional appointment authorizing the agent to act as agent for an additional health maintenance organization offering only a single health care service plan. The notice must designate the health maintenance organization that the agent is then licensed to represent and must be accompanied by a certificate from each health maintenance organization to be named in each additional appointment stating that the health maintenance organization offers only a single health care service plan and desires to appoint the applicant as its agent. The notice must include other information required by the State Board of Insurance. The agent shall pay a nonrefundable fee in*

an amount not to exceed \$70 as determined by the State Board of Insurance for each additional appointment applied for. The fee must accompany the notice.

(f) The commissioner shall collect from each agent for any health maintenance organization offering only a single health care service plan a license fee and an appointment fee for each additional appointment.

(g) Fees collected under this section shall be used by the State Board of Insurance to administer this Act and laws governing and regulating agents for health maintenance organizations. The funds shall be deposited in the state treasury to the credit of the State Board of Insurance operating fund and shall be paid out for salaries, traveling expenses, office expenses, and other incidental expenses incurred and approved by the State Board of Insurance.

(h) The State Board of Insurance may, after notice and hearing, adopt reasonable rules that are necessary to provide for the licensing of agents under this section.

(i) An unexpired license issued under this section may be renewed by filing the required renewal application and fee with the State Board of Insurance on or before the expiration date of the license. If a license has been expired for not longer than 90 days, the license may be renewed by paying to the State Board of Insurance the required renewal fee and a fee that is one-half of the original license fee. If a license has been expired for longer than 90 days but less than two years, the license may be renewed by paying to the State Board of Insurance all unpaid renewal fees and a fee that is equal to the original license fee. If a license has been expired for two years or longer, the license may not be renewed. A new license may be obtained by complying with the requirements and procedures for obtaining an original license. At least 30 days before the expiration of a license, the commissioner shall send written notice of the impending license expiration to the licensee at the licensee's last known address. This section does not prevent the State Board of Insurance from denying or refusing to renew a license under applicable law or rules.

(j) The State Board of Insurance may waive any license requirement for an applicant under this section with a valid license from another state having license requirements substantially equivalent to those of this state.

(k) The State Board of Insurance may adopt a procedure for certifying and may certify continuing education programs for agents. Any agent licensed under this section shall participate in a continuing education program for at least four hours annually. The person conducting the continuing education program must be licensed by examination as a health maintenance organization agent.

(l) A health maintenance organization offering only a single health care service plan that desires to appoint an agent under this section shall provide to its prospective agents a written manual, a copy of which shall be filed with the State Board of Insurance, outlining and describing the single health care service offered by the health maintenance organization, outlining this Act, and the rules of the State Board of Insurance and commissioner adopted under this Act. The health maintenance organization shall certify to the State Board of Insurance that it has provided the written manual required by this subsection to its prospective agents and has provided, under the supervision of a licensed health maintenance organization agent, a minimum of four hours of training in its single health care service, this Act, and the rules of the State Board of Insurance and the commissioner adopted under this Act.

(m) Each health maintenance organization appointing an agent under this section shall certify to the State Board of Insurance at least annually that any agent appointed under this section has been provided an additional four hours of training on an annual basis on the single health care service offered by the health maintenance organization, this Act, and the rules of the State Board of Insurance and commissioner adopted under this Act. Failure to provide the certification of training constitutes grounds for termination of appointment of the agent by the State Board of Insurance.

(n) Any regular salaried officer or employee of a health maintenance organization offering only a single health care service plan who solicits applications on behalf of that health maintenance organization must be licensed as a health maintenance organization agent under this section and must take any examination and pay any fee provided by Subsections (b) and (j) of Section 15 of this Act.

(o) The commissioner shall collect in advance from agents requesting duplicate licenses a fee not to exceed \$20. The State Board of Insurance shall determine the amount of the fee.

SECTION 8. Subsection (a), Section 20, Texas Health Maintenance Organization Act (Article 20A.20, Vernon's Texas Insurance Code), is amended to read as follows:

(a) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Act if the commissioner finds that any of the following conditions exist:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational documents, or its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under Section 4 of this Act.

(2) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of Section 9 of this Act.

(3) The health care plan does not provide or arrange for basic health care services *or the single health care service plan does not provide or arrange for a single health care service.*

(4) The board certifies to the commissioner that:

(A) the health maintenance organization does not meet the requirements of Section 5(a)(2) of this Act; or

(B) the health maintenance organization is unable to fulfill its obligation to furnish health care services as required under its health care plan *or to furnish a single health care service as required under its single health care service plan.*

(5) The health maintenance organization is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to enrollees or prospective enrollees.

(6) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under Section 7(b) of this Act.

(7) The health maintenance organization has failed to implement the complaint system required by Section 12 of this Act in a manner to resolve reasonably valid complaints.

(8) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(9) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(10) The health maintenance organization has otherwise failed to comply substantially with this Act, and any rule and regulation thereunder.

SECTION 9. Subsections (f) and (h), Section 26, Texas Health Maintenance Organization Act (Article 20A.26, Vernon's Texas Insurance Code), are amended to read as follows:

(f)(1) This Act shall not be applicable to any person licensed to practice medicine in this state, nor to any professional association organized under the Texas Professional Association Act, as amended (Article 1528f, Vernon's Texas Civil Statutes), nor to any nonprofit corporation organized and complying with Section 4, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4509a, Vernon's Texas Civil Statutes), so long as that person, professional association, or nonprofit corporation is engaged in the delivery of health or medical care that is within the definition of the practice of medicine as defined in Section 2(k) of this Act.

(2) Any person, professional association, or nonprofit corporation referred to above, which shall employ or enter into a contractual arrangement with a provider or group of providers to furnish basic health care services *or a single health care service as defined in Sections 2(a) and (r) [Section 2(a)]* of this Act, would be subject to the provisions of this Act, and shall be required to obtain a certificate of authority from the commissioner.

(3) Notwithstanding any other law, any person, professional association, or nonprofit corporation referred to above, which conducts activities permitted by law but which do not require a certificate of authority under this Act, and in the process contracts with one or more physicians, professional associations, or nonprofit corporations referred to above, shall not, by virtue of such contract or arrangement, be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(4) Notwithstanding any other law, provisions of the insurance law and the provisions of the group hospital service corporation law shall not be applicable to the above persons, professional associations, or nonprofit corporations.

(h) Activities permitted under authority of Chapter 491, Acts of the 52nd Legislature, 1951, as amended, shall not be considered subject to the provisions of this Act *nor shall the provisions of Chapter 491, Acts of the 52nd Legislature, 1951, be applicable to organizations permitted under the authority of this Act.*

SECTION 10. Not later than 120 days from the effective date of this Act, each existing single health care service plan shall submit an application for a certificate of authority. Each applicant may continue to operate until the commissioner of insurance acts on the application. If an application is denied, the applicant shall be treated as a single health care service plan whose certificate of authority has been revoked.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 1, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 1584 on May 17, 1985, by a non-record vote; passed by the Senate, with amendments, on May 15, 1985, by the following vote: Yeas 30, Nays 0.

Approved: June 15, 1985

Effective: August 26, 1985