

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977



ENROLLED

SENATE BILL NO. 389

(By Mr. Hatfield)



PASSED April 9, 1977

In Effect thirty days from Passage

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Senate Bill No. 389

(By MR. HATFIELD)

[Passed April 9, 1977; in effect ninety days from passage.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five-a, relating to establishing health maintenance organizations; issuance of certificate of authority; powers of health maintenance organizations; fiduciary responsibilities; approval of contracts; evidence of coverage and charges for health care services; annual report; information to enrollees; enrollment; complaint system; investments; prohibited practices; regulation of marketing; examinations; suspension or revocation of certificate of authority; rehabilitation, liquidation or conservation of health maintenance organizations; regulations; administrative procedures; fees; penalties and enforcement; filings and reports as public documents; confidentiality of medical information; authority to contract with health maintenance organizations under medicaid; and required health maintenance organization option.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-five-a, to read as follows:

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-1. Short title and purpose.

1 (a) This article may be cited as the "Health Maintenance
2 Organization Act of 1977."

3 (b) Faced with the continuation of mounting costs of
4 health care coupled with its inaccessibility to large
5 segments of the population, the Legislature has deter-
6 mined that there is a need to encourage alternative

7 methods for the delivery of health care services, with a
8 view toward achieving greater efficiency, availability,
9 distribution, and economy in providing these services.

10 In carrying out this intention, it is the policy of the
11 state to eliminate legal barriers to the establishment of
12 prepaid health care plans accountable to consumers for the
13 health care services they provide; to provide for the
14 financial and administrative soundness of these health
15 care plans as it relates to their ability to provide such
16 services, and to exempt prepaid health care plans from
17 regulation as an insurer, the operation of insurance laws
18 of the state and all other laws inconsistent with the pur-
19 poses of this article.

§33-25A-2. Definitions.

1 (1) "Basic health care services" means physician,
2 hospital, out-of-area, podiatric, laboratory, X-ray, emer-
3 gency, short-term mental health services not exceeding
4 twenty outpatient visits in any twelve-month period, and
5 cost-effective preventive services including immuniza-
6 tions, well-child care, periodic health evaluations for
7 adults, voluntary family planning services, infertility ser-
8 vices and children's eye and ear examinations conducted
9 to determine the need for vision and hearing corrections.

10 (2) "Commissioner" means the commissioner of insur-
11 ance.

12 (3) "Consumer" means any person who is not a pro-
13 vider of care or an employee, officer, director, or stock-
14 holder of any provider of care.

15 (4) "Copayment" means a nominal payment required of
16 enrollees as a condition of the receipt of specific health
17 services.

18 (5) "Employee" means a person in some official em-
19 ployment or position working for a salary or wage con-
20 tinuously for no less than one calendar quarter and who
21 is in such a relation to another person that the latter may
22 control the work of the former and direct the manner in
23 which the work shall be done.

24 (6) "Employer" means any individual, corporation,
25 partnership, other private association, or state or local

26 government that employs the equivalent of at least
27 twenty-five full-time employees during any four consecu-
28 tive calendar quarters.

29 (7) "Enrollee" means an individual who has been vol-
30 untarily enrolled in a health maintenance organization,
31 including individuals on whose behalf a contractual ar-
32 rangement has been entered into with a health mainte-
33 nance organization to receive health care services.

34 (8) "Evidence of coverage" means any certificate,
35 agreement or contract issued to an enrollee setting out the
36 coverage and other rights to which the enrollee is en-
37 titled.

38 (9) "Health care services" means any services or goods
39 included in the furnishing to any individual of medical,
40 mental or dental care, or hospitalization or incident to the
41 furnishing of such care of hospitalization, osteopathic
42 services, home health, health education, rehabilitation, as
43 well as the furnishing to any person of any and all other
44 services or goods for the purpose of preventing, alleviat-
45 ing, curing or healing human illness or injury.

46 (10) "Health maintenance organization" means a public
47 or private organization which provides, or otherwise
48 makes available to enrollees, health care services, includ-
49 ing at a minimum basic health care services:

50 (a) Is compensated except for copayments for the
51 provision of basic health care services to enrollees solely
52 on a predetermined periodic rate basis;

53 (b) Provides physicians' services primarily (i) directly
54 through physicians who are either employees or partners
55 of such organization, or (ii) through arrangements with
56 individual physicians or one or more groups of physicians
57 organized on a group practice or individual practice
58 basis, or (iii) through some combination of (i) and (ii)
59 above;

60 (c) Assures the availability, accessibility and quality
61 including effective utilization of the health care services
62 which it provides or makes available through clearly
63 identifiable focal points of legal and administrative re-
64 sponsibility.

65 (11) "Individual practice basis" means any agreement or
66 arrangement to provide medical services on behalf of a
67 health maintenance organization among or between phy-
68 sicians or between a health maintenance organization and
69 individual physicians or groups of physicians, where the
70 physicians are not employees or partners of such health
71 maintenance organization and are not members of or
72 affiliated with a medical group.

73 (12) "Medical group" means (a) a professional corpora-
74 tion, partnership, association, or other organization which
75 is composed solely of health professionals licensed to
76 practice medicine or osteopathy and of such other licensed
77 health professionals, including podiatrists, dentists and
78 optometrists, as are necessary for the provision of health
79 services for which the group is responsible; (b) a majority
80 of the members of which are licensed to practice medicine
81 or osteopathy; (c) as their principal professional activity
82 engage in the coordinated practice of their profession; (d)
83 pool their income for practice as members of the group
84 and distribute it among themselves according to a pre-
85 arranged salary, drawing account or other plan; and (e)
86 share medical and other records and substantial portions
87 of major equipment and professional, technical, and ad-
88 ministrative staff.

89 (13) "Premium" means a predetermined periodic rate
90 unrelated to the actual or potential utilization of services
91 of any particular person which is charged by the health
92 maintenance organization for health services provided to
93 an enrollee.

94 (14) "Provider" means any physician, hospital or other
95 person or organization which is licensed or otherwise
96 authorized in this state to furnish health care services.

97 (15) "Service area" means the area identified by a
98 health maintenance organization as the area within which
99 health care services will be provided by the health main-
100 tenance organization.

§33-25A-3. Establishment of health maintenance organizations.

1 (1) Notwithstanding any law of this state to the con-
2 trary, any person may apply to the commissioner for and

3 obtain a certificate of authority to establish or operate a
4 health maintenance organization in compliance with this
5 article. No person shall sell health maintenance organi-
6 zation enrollee contracts, nor shall any health mainte-
7 nance organization commence services, prior to receipt of
8 a certificate of authority. Any person may, however,
9 establish the feasibility of a health maintenance organi-
10 zation prior to receipt of authority through funding drives
11 and by receiving loans, grants and preliminary payments.
12 The commissioner shall promulgate regulations in ac-
13 cordance herewith establishing methods of determining
14 the feasibility of operating prospective health mainte-
15 nance organizations.

16 (2) Every health maintenance organization in opera-
17 tion as of the effective date of this article shall submit an
18 application for a certificate of authority under this sec-
19 tion within thirty days of the effective date of this
20 article. Each such applicant may continue to operate until
21 the commissioner acts upon the application. In the event
22 that an application is denied pursuant to section four of
23 this article, the applicant shall henceforth be treated as a
24 health maintenance organization whose certificate of
25 authority has been revoked.

26 (3) The commissioner may require any organization pro-
27 viding or arranging for health care services on a pre-
28 determined periodic rate to apply for a certificate of
29 authority under this article. Any organization directed to
30 apply for a certificate of authority shall be subject to the
31 provisions of subsection (2) of this section.

32 (4) Each application for a certificate of authority shall
33 be verified by an officer or authorized representative of
34 the applicant, shall be in a form prescribed by the com-
35 missioner, and shall set forth or be accompanied by any
36 and all information required by the commissioner, in-
37 cluding (a) the basic organizational document; (b) the
38 bylaws or rules and regulations; (c) a list of the names,
39 addresses and official positions of each member of the
40 governing body, which shall contain a full disclosure in
41 the application of any financial interest by such officer
42 or member of the governing body or any provider or any
43 organization or corporation owned or controlled by such

44 person and the health maintenance organization and the
45 extent and nature of any contract or financial arrange-
46 ments between such persons and the health maintenance
47 organization; (d) description of the health maintenance
48 organization; (e) a copy of each evidence of coverage
49 form and of each enrollee contract form; (f) financial
50 statements which include the assets, liabilities, and
51 sources of financial support of the applicant and any
52 corporation or organization owned or controlled by the
53 applicant; (g) (i) a description of the proposed method
54 of marketing the plan, (ii) a schedule of proposed charges,
55 and (iii) a financial plan which includes a three-year
56 projection of the expenses and income and other sources
57 of future capital; (h) a power of attorney duly executed
58 by such applicant, if not domiciled in this state, appoint-
59 ing the commissioner and his successors in office, and
60 duly authorized deputies, as the true and lawful attorney
61 of such applicant in and for this state upon whom all
62 lawful process in any legal action or proceeding against
63 the health maintenance organization on a cause of action
64 arising in this state may be served; (i) a statement
65 reasonably describing the geographic area or areas to be
66 served and the type or types of enrollees to be served; (j)
67 a description of the complaint procedures to be utilized
68 as required under section twelve of this article; (k) a
69 description of the mechanism by which enrollees will be
70 afforded an opportunity to participate in matters of policy
71 and operation under section six of this article; and (l)
72 such other information as the commissioner may require
73 to be provided.

74 (5) A health maintenance organization shall, unless
75 otherwise provided for by regulations promulgated by the
76 commissioner, file notice prior to any modification of the
77 operations or documents filed pursuant to this section or
78 as the commissioner may require by regulation. If the
79 commissioner does not disapprove of the filing within
80 thirty days of filing, it shall be deemed approved and may
81 be implemented by the health maintenance organiza-
82 tion.

§33-25A-4. Issuance of certificate of authority.

1 (1) Upon receipt of an application for a certificate of
2 authority, the commissioner shall determine whether the
3 application for a certificate of authority, with respect to
4 health care services to be furnished has demonstrated:

5 (a) The willingness and potential ability to assure
6 that basic health services will be provided in such a
7 manner as to enhance and assure both the availability and
8 accessibility of adequate personnel and facilities;

9 (b) Arrangements for an ongoing evaluation of the
10 quality of health care;

11 (c) A procedure to develop, compile, evaluate, and
12 report statistics relating to the cost of its operations,
13 the pattern of utilization of its services, the quality, avail-
14 ability and accessibility of its services, and such other
15 matters as may be reasonably required by regulation.

16 (2) The commissioner shall issue or deny a certificate
17 of authority to any person filing an application within
18 sixty days after receipt of the application. Issuance of a
19 certificate of authority shall be granted upon payment of
20 the application fee prescribed, if the commissioner is
21 satisfied that the following conditions are met:

22 (a) The health maintenance organization's proposed
23 plan of operation meets the requirements of subsection
24 (1) of this section;

25 (b) The health maintenance organization will effec-
26 tively provide or arrange for the provisions of at least
27 basic health care services on a prepaid basis except for
28 copayments: *Provided*, That nothing herein shall be con-
29 strued to relieve a health maintenance organization from
30 the obligations to provide health care services because of
31 the nonpayment of copayments unless the enrollee fails to
32 make payment in at least three instances over any twelve-
33 month period: *Provided, however*, That nothing herein
34 shall permit a health maintenance organization to charge
35 copayments to medicare beneficiaries or medicaid
36 recipients in excess of the copayments permitted under
37 those programs, nor shall a health maintenance organiza-
38 tion be required to provide services to such medicare

39 beneficiaries or medical recipients in excess of the bene-
40 fits compensated under such programs;

41 (c) The health maintenance organization is financially
42 responsible and may reasonably be expected to meet its
43 obligations to enrollees and prospective enrollees. In
44 making this determination, the commissioner may con-
45 sider:

46 (i) The financial soundness of the health maintenance
47 organization's arrangements for health care services and
48 proposed schedule of charges used in connection therewith;

49 (ii) The adequacy of working capital;

50 (iii) Any arrangements which will guarantee for a
51 reasonable period of time the continued availability or
52 payment of the cost of health care services in the event
53 of discontinuance of the plan;

54 (iv) Any agreement with providers for the provisions of
55 health care services; and

56 (d) Reasonable provisions have been made for emer-
57 gency and out-of-area health care services;

58 (e) The enrollees will be afforded an opportunity to
59 participate in matters of policy and operation pursuant to
60 section six of this article;

61 (f) The health maintenance organization has demon-
62 strated that it will assume full financial risk on a pro-
63 spective basis for the provision of health care services,
64 including hospital care: *Provided*, That the requirement
65 in this paragraph shall not prohibit a health maintenance
66 organization from obtaining insurance or making other
67 arrangements (i) for the cost of providing to any enrollee
68 comprehensive health maintenance services, the aggregate
69 value of which exceeds four thousand dollars in any year,
70 (ii) for the cost of providing comprehensive health care
71 services to its members on a nonelective emergency basis,
72 or while they are outside the area served by the organiza-
73 tion, or (iii) for not more than ninety-five percent of the
74 amount by which the health maintenance organization's
75 costs for any of its fiscal years exceed one hundred five
76 percent of its income for such fiscal years.

77 (3) A certificate of authority shall be denied only
78 after compliance with the requirements of section twenty-
79 one of this article.

80 (4) Except as provided in subsection (2), section three
81 of this article, no person who has not been issued a
82 certificate of authority shall use the words "health
83 maintenance organization" or the initials "HMO" in its
84 name, contracts or literature: *Provided*, That persons
85 who are operating under a contract with, operating in
86 association with, enrolling enrollees for, or otherwise
87 authorized by a health maintenance organization licensed
88 under this article to act on its behalf may use the terms
89 "health maintenance organization" or "HMO" for the
90 limited purpose of denoting or explaining their associa-
91 tion or relationship with the authorized health mainte-
92 nance organization. No health maintenance organization
93 which has a minority of board members who are con-
94 sumers shall use the words "consumer controlled" in its
95 name or in any way represent to the public that it is con-
96 trolled by consumers.

§33-25A-5. Powers of health maintenance organizations.

1 Upon obtaining a certificate of authority as required
2 under this article, a health maintenance organization may
3 enter into health maintenance contracts in this state and
4 engage in any activities, consistent with the purposes and
5 provisions of this article, which are necessary to the
6 performance of its obligations under such contracts, sub-
7 ject to the limitations provided for in this article. The
8 commissioner may promulgate rules and regulations lim-
9 iting or regulating the powers of health maintenance
10 organizations which he finds to be in the public interest.

§33-25A-6. Governing body.

1 (1) The governing body of any health maintenance
2 organization may include enrollees, providers, or other
3 individuals.

4 (2) Such governing body shall establish a mechanism to
5 afford the enrollees an opportunity to participate in
6 matters of policy and operation through the establishment
7 of advisory panels, by the use of advisory referenda on

8 major policy decisions, or through the use of other mech-
9 anisms as may be prescribed by the commissioner.

§33-25A-7. Fiduciary responsibilities; approval of contracts.

1 (a) Any director, officer or partner of a health main-
2 tenance organization who receives, collects, disburses or
3 invests funds in connection with the activities of such
4 organization shall be responsible for such funds in a
5 fiduciary relationship to the enrollees.

6 (b) Any contracts made with hospitals and practition-
7 ers of medical, dental and related services enabling a
8 health maintenance organization to provide health care
9 services authorized under this article shall be filed with
10 the commissioner. The commissioner shall have power to
11 require immediate renegotiation of such contracts when-
12 ever he determines that they provide for excessive pay-
13 ments, or that they fail to include reasonable incentives
14 for cost control, or that they otherwise substantially and
15 unreasonably contribute to escalation of the costs of pro-
16 viding health care services to enrollees.

§33-25A-8. Evidence of coverage and charges for health care services.

1 (1) (a) Every enrollee is entitled to evidence of coverage
2 in accordance with this section. The health maintenance
3 organization or its designated representative shall issue
4 the evidence of coverage.

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

10 (c) An evidence of coverage shall contain a clear,
11 concise and complete statement of (i) the health care
12 services and the insurance or other benefits, if any, to
13 which the enrollee is entitled; (ii) any exclusions or
14 limitations on the services, kind of services, benefits, or
15 kind of benefits, to be provided, including any copay-
16 ments; (iii) where and in what manner information is
17 available as to how services, including emergency and out-
18 of-area services, may be obtained; (iv) the total amount

19 of payment and copayment, if any, for health care ser-
20 vices and the indemnity or service benefits, if any, which
21 the enrollee is obligated to pay with respect to individual
22 contracts, or an indication whether the plan is contribu-
23 tory or noncontributory with respect to group certificates;
24 and (v) a description of the health maintenance organi-
25 zation's method for resolving enrollee complaints.

26 (d) Any subsequent approved change in an evidence
27 of coverage shall be issued to each enrollee.

28 (e) A copy of the form of the evidence of coverage to
29 be used in this state, and any amendment thereto, shall
30 be subject to the filing and approval requirements of
31 subdivision (b), subsection (1) of this section, unless the
32 commissioner promulgates a regulation dispensing with
33 this requirement or unless it is subject to the jurisdic-
34 tion of the commissioner under the laws governing health
35 insurance or, hospital or medical service corporations, in
36 which event the filing and approval provisions of such
37 laws shall apply. To the extent, however, that such pro-
38 visions do not apply the requirements in subdivision (c),
39 subsection (1) of this section, shall be applicable.

40 (2) Such charges may be established in accordance
41 with actuarial principles: *Provided*, That premiums shall
42 not be excessive, inadequate, or unfairly discriminatory.
43 A certification by a qualified actuary, to the appropri-
44 ateness of the charges based on reasonable assumptions
45 shall accompany the filing along with adequate supporting
46 information. In determining whether such charges are
47 reasonable, the commissioner shall consider whether such
48 health maintenance organization has (a) made a vigorous,
49 good faith effort to control rates paid to health care
50 providers; and (b) established a premium schedule, in-
51 cluding copayments, if any, which encourages enrollees
52 to seek out preventive health care services.

53 (3) The commissioner shall within a reasonable period
54 approve any form if the requirements of subsection (1)
55 are met and any schedule of charges if the requirements
56 of subsection (2) are met. It shall be unlawful to issue
57 such form or to use such schedule of charges until ap-
58 proved. If the commissioner disapproves of such filing,

59 he shall notify the filer promptly. In the notice, the com-
60 missioner shall specify the reasons for his disapproval
61 and the findings of fact and conclusions which support
62 his reasons. A hearing will be granted by the commis-
63 sioner within fifteen days after a request in writing, by
64 the person filing, has been received by the commission. If
65 the commissioner does not disapprove any form or sched-
66 ule of charges within sixty days of the filing of such
67 forms or charges, they shall be deemed approved.

68 (4) The commissioner may require the submission of
69 whatever relevant information in addition to the sched-
70 ule of charges which he deems necessary in determining
71 whether to approve or disapprove a filing made pursuant
72 to this section.

73 (5) An enrollee shall be allowed to cancel a contract
74 with a health maintenance organization at any time for
75 any reason provided that a health maintenance organiza-
76 tion may require that he or she give thirty days' notice
77 of disenrollment to such organization.

§33-25A-9. Annual report.

1 (1) Every health maintenance organization shall
2 annually, on or before the first day of March, file a report
3 verified by at least two principal officers with the com-
4 missioner, covering the preceding calendar year.

5 (2) Such report shall be on forms prescribed by the
6 commissioner and shall include:

7 (a) A financial statement of the organization, including
8 its balance sheet and receipts and disbursements for the
9 preceding year certified by an independent certified
10 public accountant, reflecting at least (i) all prepayment
11 and other payments received for health care services
12 rendered, (ii) expenditures to all providers, by classes or
13 groups of providers, and insurance companies or nonprofit
14 health service plan corporations engaged to fulfill obli-
15 gations arising out of the health maintenance contract,
16 and (iii) expenditures for capital improvements, or
17 additions thereto, including, but not limited to, construc-
18 tion, renovation or purchase of facilities and capital
19 equipment;

20 (b) The number of new enrollees enrolled during the
21 year, the number of enrollees as of the end of the year
22 and the number of enrollees terminated during the year;

23 (c) A summary of information compiled pursuant to
24 subdivision (c), subsection (1), section four of this article
25 in such form as may be required by the department of
26 health;

27 (d) A report of the names and residence addresses of
28 all persons set forth in subdivision (c), subsection (4),
29 section three of this article who were associated with the
30 health maintenance organization during the preceding
31 year, and the amount of wages, expense reimbursements,
32 or other payments to such individuals for services to the
33 health maintenance organization, including a full dis-
34 closure of all financial arrangements during the preceding
35 year required to be disclosed pursuant to subdivision
36 (c), subsection (4), section three of this article; and

37 (e) Such other information relating to the performance
38 of the health maintenance organization as is reasonably
39 necessary to enable the commissioner to carry out his
40 duties under this article.

§33-25A-10. Information to enrollees.

1 Every health maintenance organization or its repre-
2 sentative shall annually, before the first day of April,
3 provide to its enrollees a summary of: Its most recent
4 annual financial statement including a balance sheet and
5 statement of receipts and disbursements; a description
6 of the health maintenance organization, its basic health
7 care services, its facilities and personnel, any material
8 changes therein since the last report, the current evidence
9 of coverage, and a clear and understandable description
10 of the health maintenance organization's method for
11 resolving enrollee complaints: *Provided*, That with respect
12 to enrollees who have been enrolled through contracts
13 between a health maintenance organization and an em-
14 ployer, the health maintenance organization shall be
15 deemed to have satisfied the requirement of the section by
16 providing the requisite summary to each enrolled em-
17 ployee.

§33-25A-11. Enrollment.

1 (1) Once a health maintenance organization has been
2 in operation at least five years, or has enrollment of not
3 less than fifty thousand persons, such health maintenance
4 organization shall, in any year following a year in which
5 the health maintenance organization has achieved an
6 operating surplus, maintain an open enrollment period of
7 at least thirty days during which time the health main-
8 tenance organization shall, within the limits of its
9 capacity, accept individuals in the order in which
10 they apply without regard to preexisting illness, medical
11 conditions, or degree of disability except for individuals
12 who are confined to an institution because of chronic
13 illness or permanent injury: *Provided*, That no health
14 maintenance organization shall be required to continue
15 an open enrollment period after such time as enrollment
16 pursuant to such open enrollment period is equal to three
17 percent of the health maintenance organization's net
18 increase in enrollment during the previous year.

19 (2) Where a health maintenance organization demon-
20 strates to the satisfaction of the commissioner that it
21 has a disproportionate share of high-risk enrollees and
22 that, by maintaining open enrollment, it would be re-
23 quired to enroll so disproportionate a share of high-risk
24 enrollees as to jeopardize its economic viability, the
25 commissioner may:

26 (a) Waive such requirement for open enrollment for a
27 period of not more than three years; or

28 (b) Authorize such organization to impose such under-
29 writing restrictions upon open enrollment as are neces-
30 sary (i) to preserve its financial stability; (ii) to prevent
31 excessive adverse selection by prospective enrollees; or
32 (iii) to avoid unreasonably high or unmarketable charges
33 for enrollee coverage of health services. A health main-
34 tenance organization may receive more than one such
35 waiver or authorization.

36 (3) The enrollment by a health maintenance organiza-
37 tion of medicare beneficiaries who are at least sixty-five
38 years of age and medicaid beneficiaries shall not exceed
39 fifty percent of its total enrollee population. The commis-
40 sioner may waive this requirement with respect to any

41 health maintenance organization intending to enroll at
42 least forty percent of its enrollees from medically under-
43 served areas, as defined by the commissioner, if he is
44 satisfied that such organization is making substantial
45 progress toward achieving compliance.

§33-25A-12. Complaint system.

1 (1) A health maintenance organization shall establish
2 and maintain a complaint system, which has been ap-
3 proved by the commissioner, to provide adequate and
4 reasonable procedures for the expeditious resolution of
5 written complaints initiated by enrollees concerning any
6 matter relating to any provisions of such organization's
7 health maintenance contracts, including, but not limited
8 to, claims regarding the scope of coverage for health care
9 services; denials, cancellations, or nonrenewals of enrollee
10 coverage; observance of an enrollee's rights as a patient;
11 and the quality of the health care services rendered.

12 (2) A health maintenance organization shall give a
13 timely and reasoned response, in writing, to each written
14 complaint it receives. Copies of such complaints and the
15 responses thereto shall be available to the commissioner,
16 and the public for inspection for three years.

17 (3) Each health maintenance organization shall submit
18 to the commissioner an annual report in a form prescribed
19 by the commissioner which describes such complaint sys-
20 tem and contains a compilation and analysis of the com-
21 plaints filed, their disposition, and their underlying
22 causes.

§33-25A-13. Investments.

1 With the exception of investments otherwise made in
2 accordance with this article, the investable funds of a
3 health maintenance organization shall be invested only in
4 securities or other investments permitted by the laws of
5 this state for the investment of assets constituting the
6 legal reserves of life insurance companies or such other
7 securities or investments as the commissioner may permit.

§33-25A-14. Prohibited practices.

1 (1) No health maintenance organization, or representa-
2 tive thereof, may cause or knowingly permit the use of

3 advertising which is untrue or misleading, solicitation
4 which is untrue or misleading, or any form of evidence
5 of coverage which is deceptive. For purposes of this
6 article:

7 (a) A statement or item of information shall be deemed
8 to be untrue if it does not conform to fact in any respect
9 which is or may be significant to an enrollee of, or person
10 considering enrollment in, a health maintenance orga-
11 nization;

12 (b) A statement or item of information shall be deemed
13 to be misleading, whether or not it may be literally
14 untrue, if, in the total context in which such statement
15 is made or such item of information is communicated,
16 such statement or item of information may be reasonably
17 understood by a reasonable person, not possessing special
18 knowledge regarding health care coverage, as indicating
19 any benefit or advantage or the absence of any exclusion,
20 limitation, or disadvantage of possible significance to an
21 enrollee of, or person considering enrollment in, a health
22 maintenance organization, if such benefit or advantage or
23 absence of limitation, exclusion or disadvantage does not
24 in fact exist;

25 (c) An evidence of coverage shall be deemed to be
26 deceptive if the evidence of coverage taken as a whole,
27 and with consideration given to typography and format,
28 as well as language, shall be such as to cause a reasonable
29 person, not possessing special knowledge regarding health
30 maintenance organizations, and evidences of coverage
31 therefor, to expect benefits, services, or other advantages
32 which the evidence of coverage does not provide or which
33 the health maintenance organization issuing such evidence
34 of coverage does not regularly make available for enrollees
35 covered under such evidence of coverage; and

36 (d) The commissioner may further define practices
37 which are untrue, misleading, or deceptive.

38 (2) No health maintenance organization may cancel or
39 fail to renew the coverage of an enrollee except for (a)
40 failure to pay the charge for health care coverage; (b)
41 termination of the health maintenance organization; (c)
42 termination of the group plan; (d) enrollee moving out of

43 the area served; (e) enrollee moving out of an eligible
44 group; or (f) other reasons established in regulations
45 promulgated by the commissioner. No health maintenance
46 organization shall use any technique of rating or grouping
47 to cancel or fail to renew the coverage of an enrollee. **An**
48 enrollee shall be given thirty days' notice of any can-
49 cellation or nonrenewal, including therein the reason
50 therefor: *Provided*, That each enrollee moving out of an
51 eligible group shall be granted the opportunity to enroll
52 in the health maintenance organization on an individual
53 basis.

54 A health maintenance organization may not disenroll an
55 enrollee for nonpayment of copayments unless the
56 enrollee has failed to make payment in at least three in-
57 stances over any twelve-month period; however, the en-
58 rollee may not be disenrolled if the disenrollment would
59 constitute abandonment of a patient. Any enrollee wrong-
60 fully disenrolled shall be reenrolled.

61 (3) No health maintenance organization may use in its
62 name, contracts, or literature any of the words "insur-
63 ance," "casualty," "surety," "mutual," or any other words
64 which are descriptive of the insurance, casualty or surety
65 business or deceptively similar to the name or description
66 of any insurance or surety corporation doing business
67 in this state: *Provided*, That when a health maintenance
68 organization has contracted with an insurance company
69 for any coverage permitted by this article, it may so
70 state.

71 (4) The providers under agreement with a health
72 maintenance organization to provide health care services
73 and the health maintenance organization shall not have
74 recourse against enrollees for amounts above those speci-
75 fied in the evidence of coverage as the periodic **prepay-**
76 ment, or copayment, for health care services.

77 (5) No health maintenance organization shall enroll
78 more than three hundred thousand persons in this state.

79 (6) No health maintenance organization shall dis-
80 criminate in enrollment policies or quality of services
81 against any person on the basis of race, sex, age, religion,
82 place of residence, health status, or source of payment:

83 *Provided*, That differences in rates based on valid actuarial
84 distinctions, including, distinctions relating to age and
85 sex, shall not be considered discrimination in enrollment
86 policies.

87 (7) No agent of a health maintenance organization or
88 person selling enrollments in a health maintenance orga-
89 nization shall sell an enrollment in a health maintenance
90 organization unless such agent or person shall first dis-
91 close in writing to the prospective purchaser the follow-
92 ing information using the following exact terms in bold
93 print: (a) "Services offered," including any exclusions or
94 limitations; (b) "full cost," including copayments; (c)
95 "facilities available and hours of services"; (d) "trans-
96 portation services"; (e) "disenrollment rate"; and (f)
97 "staff," including the names of all full-time staff physi-
98 cians, consulting specialists, hospitals and pharmacies as-
99 sociated with the health maintenance organization. In
100 any home solicitation, any three-day cooling-off period
101 applicable to consumer transactions generally shall apply
102 in the same manner as consumer transactions.

103 The form disclosure statement shall not be used in
104 sales until it has been approved by the commissioner or
105 submitted to the commissioner for ten days without
106 disapproval. Any person who fails to disclose the req-
107 uisite information prior to the sale of an enrollment
108 may be held liable in an amount equivalent to one year's
109 subscription rate to the health maintenance organiza-
110 tion, plus costs and a reasonable attorney's fee.

111 (8) No contract with an enrollee shall prohibit an
112 enrollee from canceling his or her enrollment at any
113 time for any reason except that such contract may re-
114 quire thirty days' notice to the health maintenance orga-
115 nization.

116 (9) Any person who in connection with an enrollment
117 violates any subsection of this section may be held liable
118 for an amount equivalent to one year's subscription rate,
119 plus costs and a reasonable attorney's fee.

§33-25A-15. Regulation of marketing.

1 The commissioner may, in his discretion, after notice
2 and hearing, promulgate rules and regulations as are

3 necessary to regulate marketing of health maintenance
4 organizations by persons compensated directly or indi-
5 rectly by such health maintenance organizations. When
6 necessary such rules and regulations may prohibit door-to-
7 door solicitations, may prohibit commission sales, and
8 may provide for such other proscriptions and other regu-
9 lations as are required to effectuate the purposes of this
10 article.

§33-25A-16. Powers of insurers and hospital and medical service corporations.

1 (1) An insurance company licensed in this state, or a
2 hospital or medical service corporation authorized to do
3 business in this state, may either directly or through a
4 subsidiary or affiliate organize and operate a health main-
5 tenance organization under the provisions of this article.
6 Notwithstanding any other law which may be inconsistent
7 herewith, any two or more such insurance companies,
8 hospital or medical service corporations, or subsidiaries
9 or affiliates thereof, may jointly organize and operate a
10 health maintenance organization. The business of insur-
11 ance is deemed to include the providing of health care
12 by a health maintenance organization owned or operated
13 by an insurer or a subsidiary thereof.

14 (2) Notwithstanding any provision of insurance and
15 hospital or medical service corporation laws, an insurer or
16 a hospital or medical service corporation may contract
17 with a health maintenance organization to provide insur-
18 ance or similar protection against the cost of care provided
19 through health maintenance organizations and to provide
20 coverage in the event of the failure of the health main-
21 tenance organization to meet its obligations. The enrollees
22 of a health maintenance organization constitute a permis-
23 sible group under such laws. Among other things, under
24 such contracts, the insurer or hospital or medical service
25 corporation may make benefit payments to health main-
26 tenance organizations for health care services rendered by
27 providers.

§33-25A-17. Examinations.

1 (1) The commissioner may make an examination of the
2 affairs of any health maintenance organization and pro-

3 viders with whom such organization has contracts, agree-
4 ments or other arrangements as often as he deems it
5 necessary for the protection of the interests of the people
6 of this state but not less frequently than once every three
7 years.

8 (2) The commissioner shall contract with the depart-
9 ment of health to make examinations concerning the
10 quality of health care services of any health maintenance
11 organization and providers with whom such organization
12 has contracts, agreements or other arrangements as often
13 as it deems necessary for the protection of the interests
14 of the people of this state but not less frequently than
15 once every three years: *Provided*, That in making the
16 foregoing examination, the department of health shall
17 utilize the services of persons or organizations with
18 demonstrable expertise in assessing quality of health
19 care.

20 (3) Every health maintenance organization and affli-
21 ated provider shall submit its books and records to
22 such examinations and in every way facilitate them. For
23 the purpose of examinations, the commissioner and the
24 department of health shall have all powers necessary to
25 conduct such examinations, including, but not limited to,
26 the power to issue subpoenas, the power to administer
27 oaths to, and examine the officers and agents of the health
28 maintenance organization and the principles of such
29 providers concerning their business.

30 (4) The expenses of examinations under this section
31 shall be assessed against the organization being examined
32 and remitted to the commissioner.

33 (5) In lieu of such examination, the commissioner may
34 accept the report of an examination made by other states.

§33-25A-18. Suspension or revocation of certificate of authority.

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

5 (a) The health maintenance organization is operating
6 significantly in contravention of its basic organizational

7 document, in any material breach of contract with an
8 enrollee, or in a manner contrary to that described in and
9 reasonably inferred from any other information sub-
10 mitted under section three unless amendments to such
11 submissions have been filed with an approval by the
12 commissioner;

13 (b) The health maintenance organization issues evi-
14 dence of coverage or uses a schedule of premiums for
15 health care services which do not comply with the re-
16 quirements of section eight of this article;

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

19 (d) The department of health certifies to the com-
20 missioner that: (i) The health maintenance organization
21 is unable to fulfill its obligations to furnish health care
22 services as required under its contract with enrollees; or
23 (ii) the health maintenance organization does not meet
24 the requirements of subsection (1), section four of this
25 article;

26 (e) The health maintenance organization is no longer
27 financially responsible and may reasonably be expected to
28 be unable to meet its obligations to enrollees or prospec-
29 tive enrollees;

30 (f) The health maintenance organization has failed to
31 implement a mechanism affording the enrollees an
32 opportunity to participate in matters of policy and opera-
33 tion under section six of this article;

34 (g) The health maintenance organization has failed to
35 implement the complaint system required by section
36 twelve of this article in a manner to reasonably resolve
37 valid complaints;

38 (h) The health maintenance organization, or any
39 person on its behalf, has advertised or merchandised its
40 services in an untrue, misrepresentative, misleading,
41 deceptive or unfair manner;

42 (i) The continued operation of the health maintenance
43 organization would be hazardous to its enrollees; or

44 (j) The health maintenance organization has otherwise
45 failed to substantially comply with this article.

46 (2) A certificate of authority shall be suspended or
47 revoked only after compliance with the requirements of
48 section twenty-one of this article.

49 (3) When the certificate of authority of a health
50 maintenance organization is suspended, the health
51 maintenance organization shall not, during the period of
52 such suspension, enroll any additional enrollees except
53 newborn children or other newly acquired dependents of
54 existing enrollees, and shall not engage in any advertis-
55 ing or solicitation whatsoever.

56 (4) When the certificate of authority of a health
57 maintenance organization is revoked, such organization
58 shall proceed, immediately following the effective date of
59 the order of revocation, to terminate its affairs, and shall
60 conduct no further business except as may be essential
61 to the orderly conclusion of the affairs of such organiza-
62 tion. It shall engage in no further advertising or sollicita-
63 tion whatsoever. The commissioner may, by written
64 order, permit such further operation of the organization
65 as he may find to be in the best interests of enrollees, to
66 the end that enrollees will be afforded the greatest
67 practical opportunity to obtain continuing health care
68 coverage.

**§33-25A-19. Rehabilitation, liquidation or conservation of
health maintenance organization.**

1 Any rehabilitation, liquidation or conservation of a
2 health maintenance organization shall be deemed to be
3 the rehabilitation, liquidation or conservation of an in-
4 surance company and shall be conducted under the super-
5 vision of the commissioner pursuant to the law governing
6 the rehabilitation, liquidation or conservation of in-
7 surance companies. The commissioner may apply for
8 an order directing him to rehabilitate, liquidate or con-
9 serve a health maintenance organization upon any one
10 or more grounds set out in the vocational rehabilitation
11 statutes or when, in his opinion, the continued operation
12 of the health maintenance organization would be hazard-
13 ous either to the enrollees or to the people of this state.

§33-25A-20. Regulations.

1 The commissioner may after notice and hearing
2 promulgate reasonable rules and regulations in accor-
3 dance with chapter twenty-nine-a of this code, as are
4 necessary or proper to effectuate the purposes of this
5 article and to prevent circumvention and evasion thereof.

§33-25A-21. Administrative procedures.

1 (1) When the commissioner has cause to believe that
2 grounds for the denial of an application for a certifi-
3 cate of authority exist, or that grounds for the suspension
4 or revocation of a certificate of authority exist, he shall
5 notify the health maintenance organization in writing
6 specifically stating the grounds for denial, suspension or
7 revocation and fixing a time of at least twenty days
8 thereafter for a hearing on the matter.

9 (2) After such hearing, or upon the failure of the
10 health maintenance organization to appear at such hear-
11 ing, the commissioner shall take action as is deemed
12 advisable on written findings which shall be mailed to the
13 health maintenance organization. The action of the com-
14 missioner shall be subject to review. The court may
15 modify, affirm or reverse the order of the commissioner
16 in whole or in part.

17 (3) The provisions of the administrative procedures
18 act, chapter twenty-nine-a of this code, shall apply to
19 proceedings under this article to the extent that they are
20 not in conflict with subsections (1) and (2) of this
21 section.

§33-25A-22. Fees.

1 Every health maintenance organization subject to this
2 article shall pay to the commissioner the following fees:
3 For filing an application for a certificate of authority or
4 amendment thereto, one hundred dollars; and for filing
5 each annual report, ten dollars. Fees charged under this
6 section shall be deposited in the general fund of the state
7 treasury.

§33-25A-23. Penalties and enforcement.

1 (1) The commissioner may, in lieu of suspension or
2 revocation of a certificate of authority under section

3 nineteen of this article, levy an administrative penalty
4 in an amount not less than one hundred dollars nor more
5 than five thousand dollars, if reasonable notice in writing
6 is given of the intent to levy the penalty and the health
7 maintenance organization has a reasonable time within
8 which to remedy the defect in its operations which gave
9 rise to the penalty citation. The commissioner may
10 augment this penalty by an amount equal to the sum
11 that he calculates to be the damages suffered by en-
12 rollees or other members of the public.

13 (2) Any person who violates any provision of this
14 article shall be guilty of a misdemeanor, and, upon
15 conviction thereof, shall be fined not less than one
16 thousand dollars nor more than ten thousand dollars, or
17 imprisoned in the county jail not more than one year, or
18 both fined and imprisoned.

19 (3) (a) If the commissioner shall for any reason have
20 cause to believe that any violation of this article or
21 regulations promulgated pursuant thereto has occurred
22 or is threatened, prior to the levy of a penalty or sus-
23 pension or revocation of a certificate of authority, the
24 commissioner shall give notice to the health maintenance
25 organization and to the representatives, or other persons
26 who appear to be involved in such suspected violation, to
27 arrange a conference with the alleged violators or their
28 authorized representatives for the purpose of attempting
29 to ascertain the facts relating to such suspected violation,
30 and, in the event it appears that any violation has oc-
31 curred or is threatened, to arrive at an adequate and
32 effective means of correcting or preventing such viola-
33 tion.

34 (b) Proceedings under this subsection shall not be
35 governed by any formal procedural requirements, and
36 may be conducted in such manner as the commissioner
37 may deem appropriate under the circumstances. En-
38 rollees shall be afforded notice by publication of pro-
39 ceedings under this subsection (3) and shall be afforded
40 the opportunity to intervene.

41 (4) (a) The commissioner may issue an order direct-
42 ing a health maintenance organization or a representative

43 of a health maintenance organization to cease and desist
44 from engaging in any act or practice in violation of the
45 provisions of this article or regulations promulgated
46 pursuant thereto.

47 (b) Within ten days after service of the order of cease
48 and desist, the respondent may request a hearing on the
49 question of whether acts or practices in violation of this
50 article have occurred. Such hearings shall be conducted
51 pursuant to chapter twenty-nine-a of this code, and
52 judicial review shall be available as provided by chapter
53 twenty-nine-a of this code.

54 (5) In the case of any violation of the provisions of
55 this article or regulations promulgated pursuant thereto,
56 if the commissioner elects not to issue a cease and desist
57 order, or in the event of noncompliance with a cease and
58 desist order issued pursuant to subsection (4) of this
59 section, the commissioner may institute a proceeding to
60 obtain injunctive relief, or seeking other appropriate
61 relief, in the circuit court of the county of the principal
62 place of business of the health maintenance organization.

63 (6) Any enrollee of or resident of the service area of
64 the health maintenance organization may bring an action
65 to enforce any provision, standard or regulation enforce-
66 able by the commissioner. In the case of any successful
67 action to enforce this article, or accompanying standards
68 or regulations, the individual shall be awarded the costs
69 of the action together with a reasonable attorney's fee
70 as determined by the court.

§33-25A-24. Statutory construction and relationship to other laws.

1 (1) Except as otherwise provided in this article, provi-
2 sions of the insurance law and provisions of hospital or
3 medical service corporation laws shall not be applicable to
4 any health maintenance organization granted a certifi-
5 cate of authority under this article. This provision shall
6 not apply to an insurer or hospital or medical service
7 corporation licensed and regulated pursuant to the in-
8 surance laws or the hospital or medical service corpora-
9 tion laws of this state except with respect to its health

10 maintenance corporation activities authorized and regu-
11 lated pursuant to this article.

12 (2) Factually accurate advertising or solicitation re-
13 garding the range of services provided, the premiums
14 and copayments charged, the sites of services and hours
15 of operation, and any other quantifiable, nonprofessional
16 aspects of its operation by a health maintenance orga-
17 nization granted a certificate of authority, or its repre-
18 sentative shall not be construed to violate any provision
19 of law relating to solicitation or advertising by health
20 professions: *Provided*, That nothing contained herein
21 shall be construed as authorizing any solicitation or ad-
22 vertising which identifies or refers to any individual
23 provider, or makes any qualitative judgment concerning
24 any provider.

25 (3) Any health maintenance organization authorized
26 under this article shall not be deemed to be practicing
27 medicine and shall be exempt from the provision of chap-
28 ter thirty of this code, relating to the practice of medicine.

§33-25A-25. Filings and reports as public documents.

1 All applications, filings and reports required under this
2 article shall be treated as public documents.

§33-25A-26. Confidentiality of medical information.

1 Any data or information pertaining to the diagnosis,
2 treatment or health of any enrollee or applicant obtained
3 from such person or from any provider by any health
4 maintenance organization shall be held in confidence and
5 shall not be disclosed to any person except (1) to the
6 extent that it may be necessary to facilitate an assess-
7 ment of the quality of care delivered pursuant to section
8 seventeen of this article or to review the complaint system
9 pursuant to section twelve of this article; (2) upon the
10 express written consent of the enrollee or legally au-
11 thorized representative; (3) pursuant to statute or court
12 order for the production of evidence or the discovery
13 thereof; or (4) in the event of claim or litigation between
14 such person and the health maintenance organization
15 wherein such data or information is pertinent.

16 A health maintenance organization shall be entitled to
17 claim any statutory privileges against such disclosure
18 which the provider who furnished such information to
19 the health maintenance organization is entitled to claim.

§33-25A-27. Authority to contract with health maintenance organizations under medicaid.

1 The department of welfare is hereby authorized to
2 enter into contracts with health maintenance organiza-
3 tions certified and permitted to market under the laws
4 of this state, and to furnish to recipients of medical as-
5 sistance under Title XIX of the Social Security Act, 42
6 U.S.C. Section 1396, et. seq., health care services offered
7 to such recipients under the Medical Assistance Plan of
8 West Virginia.

§33-25A-28. Required health maintenance organization option.

1 (1) Each employer shall offer no less than once every
2 year to every employee and dependent entitled to receive
3 health care under an existing health benefit plan sup-
4 ported in whole or in part by such employer the oppor-
5 tunity to become enrollees in certified health maintenance
6 organizations which have the capacity to provide basic
7 health services in health maintenance organization ser-
8 vice areas in which at least twenty-five such employees
9 reside: *Provided*, That nothing herein shall require an em-
10 ployer to contribute more on behalf of an employee seek-
11 ing to enroll in a health maintenance organization than
12 would be contributed on the employee's behalf to the
13 existing health plan.

14 (2) If any employees of an employer are represented by
15 a collective bargaining representative or other employee
16 representative designated or selected under any law of
17 this state, the offer described in subsection (1) of this
18 section should be made to such collective bargaining
19 representatives or other employee representative, and
20 only if such representative approves the offer should
21 it be made to employees represented by such represen-
22 tatives.

23 (3) If there is more than one certified health mainte-
24 nance organization which meets the requirements of sub-

25 section (1) of this section and such health maintenance
26 organizations have service areas contemporaneously
27 covering the same twenty-five or more employees, the
28 employer shall offer such employees at least one health
29 maintenance organization which provides health ser-
30 vices primarily through staff physicians, or medical
31 groups, or a combination of both; and one health mainte-
32 nance organization which provides health services
33 through other means.

34 (4) Any employer who knowingly fails to comply with
35 any of the requirements of this section shall be subject
36 to a fine of not more than ten thousand dollars for every
37 thirty-day period that such violation continues.

38 (5) The commissioner is authorized, in addition to the
39 remedy provided in subsection (4) of this section, to seek
40 an injunction in a court of competent jurisdiction to
41 compel compliance with the provisions of this section.

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OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 25, 1977

Time 3:45 p.m.

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SECY. OF STATE