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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1812

Session of  
1977

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INTRODUCED BY McCLATCHY, KLINGAMAN, E. Z. TAYLOR AND NOYE,  
OCTOBER 27, 1977

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REFERRED TO COMMITTEE ON HEALTH AND WELFARE, OCTOBER 27, 1977

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AN ACT

1 Providing for the establishment of corporations having the  
2 purpose of establishing, maintaining and operating  
3 proprietary health maintenance organizations; providing for  
4 supervision and regulation by the Insurance Department and  
5 the Department of Health; conferring and imposing upon the  
6 Insurance Commissioner and the Secretary of Health certain  
7 powers and duties; and providing penalties.

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11      The General Assembly of the Commonwealth of Pennsylvania  
12 hereby enacts as follows:

13   Section 1.   Short title.

14       This act shall be known and may be cited as the "Proprietary  
15 Health Maintenance Organization Act."

16   Section 2.   Purpose.

17       Faced with the continuation of mounting costs of health care  
18 coupled with its inaccessibility to large segments of the  
19 population, the General Assembly has determined that there is a  
20 need to explore alternative methods for the delivery of health  
21 care services, with a view toward achieving greater efficiency  
22 and economy in providing these services. It is, therefore, the  
23 policy of the Commonwealth to eliminate the barriers to the  
24 organization, promotion, and expansion of health maintenance  
25 organizations to the extent that the needs of the citizens of  
26 this Commonwealth for high quality, economical and convenient  
27 health care services are satisfied; that unnecessary  
28 fragmentation and dehumanization of services are eliminated;  
29 that primary health care services are expanded to insure their  
30 availability to all citizens; and that health care resources are

1 more efficiently utilized.

2 Section 3. Definitions.

3 The following words and phrases when used in this act shall  
4 have, unless the context clearly indicates otherwise, the  
5 meanings given to them in this section:

6 "Commissioner." The Insurance Commissioner of the  
7 Commonwealth of Pennsylvania.

8 "Health maintenance organization." An organization which:

9 (1) Provides health services including as a minimum, but  
10 not limited to, emergency care, inpatient hospital and  
11 physician care, ambulatory physician care, and inpatient and  
12 outpatient preventive health services.

13 (2) Provides health services to enrolled individuals in  
14 the locality served by the organization on a per capita  
15 prepayment basis.

16 (3) Provides or arranges for physician's services  
17 directly through physicians who are either employees or  
18 partners of the health maintenance organization, or under  
19 arrangement with one or more groups of physicians (organized  
20 on a group or individual practice basis) where each group is  
21 reimbursed for its services primarily on the basis of an  
22 aggregate fixed sum or on a per capita basis, regardless of  
23 whether the individual physician members of the group are  
24 paid on a fee for service or other basis.

25 (4) Proves financial responsibility as required by the  
26 Insurance Commissioner based on the financial soundness of  
27 its arrangements for health care services and the proposed  
28 schedule of charges; the adequacy of its working capital; the  
29 arrangements which will guarantee for a reasonable period of  
30 time the continued availability or payment of the cost of

1 health care services in the event of discontinuance of the  
2 health maintenance organization; and proves capability of  
3 providing comprehensive health services as required by the  
4 Secretary of Health to carry out the provisions of this act.

5 "Secretary." The Secretary of Health of the Commonwealth of  
6 Pennsylvania.

7 Section 4. Provision of services by business corporations.

8 Any law to the contrary withstanding, upon compliance with  
9 this act, corporations organized for profit under the act of May  
10 5, 1933 (P.L.364, No.106), known as the "Business Corporation  
11 Law," may, pursuant to section 5, establish, maintain and  
12 operate health maintenance organizations through which health  
13 services are provided or arranged for at the expense of such  
14 corporations or through facilities, appliances, medicines or  
15 supplies owned, operated, or furnished by such corporations to  
16 such persons who become subscribers under contracts which  
17 entitle the subscribers to certain medical, hospital, or other  
18 related services.

19 Section 5. Incorporation and approval of charter.

20 (a) Whenever articles of incorporation having for the  
21 purpose the establishing, maintaining and operating of a health  
22 maintenance organization, whereby health services may be  
23 provided to the subscriber to such plan under the provisions of  
24 this act, and specifically setting forth therein the limits of  
25 the geographical area in which it will operate, are filed with  
26 the Department of State, the Department of State shall forthwith  
27 transmit copies of such articles of incorporation to the  
28 commissioner and secretary. Thereupon the commissioner and  
29 secretary shall make separate investigations of the proposed  
30 corporation and plan under which it proposes to operate, to

1 ascertain whether such services are consistent with the purposes  
2 and provisions of this act. Within 90 days of receipt of such  
3 articles of incorporation, the commissioner and secretary shall  
4 either:

5 (1) certify upon the copy of the articles of  
6 incorporation that the proposed corporation is consistent  
7 with the public welfare; or

8 (2) notify the incorporators of such proposed  
9 corporation specifically wherein it fails to comply.

10 (b) Within 15 days the proposed corporation may amend its  
11 articles of incorporation to meet the specific objections of the  
12 commissioner or secretary or may within 45 days after receipt of  
13 such notice, petition the Commonwealth Court for a rule to show  
14 cause why the action of the commissioner or secretary should not  
15 be set aside and the application approved. The Commonwealth  
16 Court is hereby given jurisdiction and authority to entertain  
17 and determine any such proceeding.

18 (c) The Department of State shall not approve such  
19 application unless and until the articles of incorporation are  
20 returned and certified by the commissioner and the secretary or  
21 until the expiration of 90 days from the date of filing of the  
22 articles of incorporation with the Department of State,  
23 whichever shall first occur.

24 (d) The commissioner and the secretary, in approving or  
25 disapproving the articles of incorporation, shall be guided in  
26 their separate determinations related to the purposes and  
27 provisions of this act, and may approve articles of  
28 incorporation under this act notwithstanding the fact that other  
29 health maintenance organizations authorized or permitted by this  
30 act or any other law shall be operating in the same part of the

1 same geographical area.

2 Section 6. Foreign proprietary health maintenance  
3 organizations.

4 (a) A proprietary health maintenance organization of another  
5 state shall not be authorized to operate or do any business in  
6 this Commonwealth until:

7 (1) It has complied with the provisions of Article X  
8 (relating to foreign business corporations) of the act of May  
9 5, 1933 (P.L.364, No.106), known as the "Business Corporation  
10 Law."

11 (2) It has filed with the commissioner and the secretary  
12 certified copies of its articles of incorporation, and has  
13 satisfied the commissioner and secretary that it is fully and  
14 legally organized under the laws of its state, and has  
15 complied with the laws of its state relating to health  
16 maintenance organizations.

17 (3) The commissioner and the secretary have made  
18 separate investigations of the proposed operations within the  
19 Commonwealth, and have determined that the plan is consistent  
20 with the purposes and provisions of this act. The  
21 commissioner and the secretary may determine that the plan is  
22 consistent with the purposes and provisions of this act  
23 notwithstanding the fact that other health maintenance  
24 organizations authorized or permitted by this or any other  
25 act may be operating in the same geographical area.

26 (b) Upon compliance with the requirements of this section, a  
27 health maintenance organization of another state shall be  
28 subject to all the provisions of this act except those relating  
29 to incorporation and approval of charter. The commissioner or  
30 the secretary may waive or modify the provisions thereof under

1 which he has the authority to act if he determines that the same  
2 are not appropriate to a particular health maintenance  
3 organization of another state, that such waiver or modification  
4 will be consistent with the purposes and provisions of this act,  
5 and that it will not result in unfair discrimination in favor of  
6 the health maintenance organization of another state.

7 Section 7. Contracts with practitioners, hospitals, insurance  
8 companies, etc.

9 (a) Contracts enabling the corporation to provide the  
10 services authorized under section 4 made with hospitals and  
11 practitioners of medical and related services shall be filed  
12 with the commissioner. The commissioner shall have the power to  
13 require immediate renegotiation of such contracts whenever he  
14 determines that they provide for excessive payments, or that  
15 they fail to include reasonable incentives for cost control, or  
16 that they otherwise substantially and unreasonably contribute to  
17 escalation of the costs of providing health care services to  
18 subscribers. If the commissioner does not act within 30 days,  
19 the contract shall be deemed approved.

20 (b) A health maintenance organization may reasonably  
21 contract with any individual, partnership, association,  
22 corporation or organization for the performance on its behalf of  
23 other necessary functions including, but not limited to,  
24 marketing, enrollment, and administration, and may contract with  
25 an insurance company authorized to do accident and health  
26 business in this State or a hospital plan corporation or a  
27 professional health service corporation for the provision of  
28 insurance or indemnity or reimbursement against the cost of  
29 health care services provided by the health service plan as it  
30 deems to be necessary. Such contract shall be filed with the

1 commissioner. If the commissioner does not disapprove the  
2 contract within 30 days, the contract shall be deemed approved.

3 Section 8. Right to serve or benefits when outside the service  
4 area.

5 If a subscriber entitled to services provided by the  
6 corporation necessarily and in an emergency incurs expenses for  
7 such services while outside the service area, the proprietary  
8 health maintenance organization to which the person is a  
9 subscriber shall, if satisfied both as to the necessity and  
10 emergency nature of such services and that it was such as the  
11 subscriber would have been entitled to under similar  
12 circumstances in the service area, reimburse the subscriber or  
13 pay on his behalf all or part of the reasonable expenses  
14 incurred for such services.

15 Section 9. Supervision.

16 (a) The corporation shall be subject to supervision by the  
17 commissioner and the secretary as provided by this act. It shall  
18 not be subject to the laws of this State now in force relating  
19 to health service plans or to insurance corporations engaged in  
20 the business of insurance nor to any law hereafter enacted  
21 relating to health service plans or to insurance and  
22 corporations engaged in the business of insurance, unless such  
23 law specifically and in exact terms applies to such health  
24 maintenance organizations.

25 (b) All rates charged subscribers or groups of subscribers  
26 by the corporation and the form and content of all contracts  
27 between the corporation and its subscribers or group of  
28 subscribers, all rates of payments to hospitals made by such  
29 corporation pursuant to the contract provided for in this act,  
30 budgeted acquisition costs in connection with the solicitation



1 of subscribers to such hospital plans, the reserves to be  
2 maintained by such corporation, and the certificates issued by  
3 such corporation representing their subscribers' agreements,  
4 shall at all times be on file with the commissioner and be  
5 deemed approved unless explicitly rejected within 30 days.  
6 Filings shall be made to the commissioner in such form, and  
7 shall set forth such information as the commissioner may require  
8 to carry out the provisions of this act. Upon the review at any  
9 time by the commissioner of an application, he shall, if  
10 requested by the applicant, before issuing an order of  
11 disapproval, hold a hearing upon not less than 15 days' written  
12 notice, specifying the matters to be considered at such hearing,  
13 to the corporation which made such application and if, after  
14 such hearing, he finds that such application or a part thereof  
15 does not meet the requirements of this act he shall issue an  
16 order specifying in what respects he finds that it so fails and  
17 notice thereof shall forthwith be served on the applicant,  
18 either personally or by mail. Within 45 days from the date of  
19 such notice, the applicant may apply to the Commonwealth Court  
20 by petition for a rule to show cause why the action of the  
21 commissioner should not be set aside and the application  
22 approved. For purposes of this section, the act of June 4, 1945  
23 (P.L.1388, No.442), known as the "Administrative Agency Law,"  
24 shall be applicable.

25 (c) Solicitors or agents compensated directly or indirectly  
26 by any corporation subject to the provisions of this act shall  
27 meet such prerequisites as the commissioner by regulation shall  
28 require to carry out the intent of this act.

29 Section 10. Financial report.

30 The corporation shall, on or before March 1 of every year,

1 file with the commissioner a statement verified by at least two  
2 or the principal officers of the corporation and an independent  
3 audit by a certified public accountant summarizing its financial  
4 activities during the calendar or fiscal year immediately  
5 preceding, and showing its financial condition at the close of  
6 business on December 31 of that year, or the corporation's  
7 fiscal year. Such statement shall be in such form and shall  
8 contain such information as the commissioner prescribes to carry  
9 out the intent of this act. The statement shall include all  
10 prepayment and other payments received for health care services  
11 rendered; expenditures to all providers; expenditures for  
12 capital improvements; and the number of new enrollees during the  
13 year, the total number of enrollees at the end of the year and  
14 the number of enrollees terminated during the year. The  
15 financial affairs and status of every such corporation shall be  
16 examined by the commissioner, or his agents, not less frequently  
17 than once in every two years and for this purpose the  
18 commissioner and his agents shall be entitled to the aid and  
19 cooperation of the officers and employees of the corporation and  
20 shall have convenient access to all books, records, papers, and  
21 documents that relate to the business of the corporation. They  
22 shall have authority to examine under oath or affirmation the  
23 officers, agents, employees and subscribers for the health  
24 services of the corporation, and all other persons having or  
25 having had substantial part in the work of the corporation in  
26 relation to its affairs, transactions and financial condition.  
27 The Insurance Commissioner may at any time without making such  
28 examination, call on any such corporation for a written report  
29 authenticated by at least two of its principal officers  
30 concerning the financial affairs and status of the corporation.

1 Section 11. Contracts to provide health care.

2 A health maintenance organization established pursuant to  
3 this act may receive and accept from governmental or private  
4 agencies payments covering all or part of the cost of  
5 subscriptions to provide its services, facilities, appliances,  
6 medicines or supplies.

7 Section 12. Rules and regulations.

8 The commissioner and the secretary, after notice and public  
9 hearings pursuant to the act of July 31, 1968 (P.L.769, No.240),  
10 known as the "Commonwealth Documents Law," are authorized and  
11 directed to promulgate such reasonable rules and regulations as  
12 deemed necessary to effectuate the purposes and provisions of  
13 this act.

14 Section 13. Penalty.

15 (a) Upon satisfactory evidence that a person, partnership,  
16 association, common law trust or corporation or any agent or  
17 officer thereof has violated any provisions of this act or has  
18 made any false statement with respect to any report or statement  
19 required by this act or required by the commissioner or  
20 secretary under this act, or has hindered or prevented the  
21 commissioner or secretary in the performance of any duty imposed  
22 on them by this act, or has fraudulently procured or has  
23 fraudulently attempted to procure any personal benefit under  
24 this act, the commissioner or secretary, whichever is  
25 appropriate, may, in his discretion, pursue any one or more of  
26 the following courses of action:

27 (1) Suspend or revoke the articles of incorporation or  
28 the right of a person to engage in the transactions of a  
29 corporation or similar entity of such offending party or  
30 parties.

(2) Impose a penalty of not more than \$1,000 for each and every unlawful act committed by such party or parties.

(b) Before the commissioner or secretary, whichever is appropriate, shall take any action as set forth in subsection (a), he shall give written notice to the person, partnership, association, common law trust or corporation, accused of a violation, stating specifically the nature of such alleged violation and fixing a time and place, at least 15 days thereafter, when a hearing of the matter shall be held. After such hearing or upon failure of the accused to appear at such hearing, the commissioner or secretary, whichever is appropriate, shall impose such of the penalties set forth in subsection (a) as he deems advisable.

(c) When the commissioner or secretary, whichever is appropriate, shall take action in any or all of the ways above recited, the party aggrieved may appeal from said action to the Commonwealth Court.

#### Section 14. Exclusions.

The provisions of this act shall not apply to:

(1) health service plans offered by hospitals or associated groups of hospitals or nonprofit corporations organized by hospitals for the furnishing of health services; or

(2) health service plans offered by the Medical Care Foundation for the furnishing of health services.

#### Section 15. Effect of act on other plans.

This act shall not apply to the following corporations, persons, plans, programs or services so long as no substantial changes in operation are made other than the expansion of benefits similar in nature to those presently being provided:

1           (1) Corporations organized and existing in accordance  
2 with and pursuant to the act of December 29, 1972 (P.L.1701,  
3 No.364), known as the "Voluntary Nonprofit Health Service Act  
4 of 1972."

5           (2) Corporations organized and existing in accordance  
6 with and pursuant to the former provisions of the act of May  
7 5, 1933 (P.L.289, No.105), known as the "Nonprofit  
8 Corporation Law," and the former provisions of the act of  
9 June 21, 1937 (P.L.1948, No.378), known as the "Nonprofit  
10 Hospital Plan Act."

11           (3) Corporations organized and existing in accordance  
12 with and pursuant to the former provisions of the act of June  
13 27, 1939 (P.L.1125, No.399), known as the "Nonprofit Medical,  
14 Osteopathic, Dental and Podiatry Service Corporation Act."

15           (4) Corporations organized and existing in accordance  
16 with and pursuant to the former provisions of the act of  
17 December 9, 1955 (P.L.819, No.239), known as the "Nonprofit  
18 Dental Service Corporation Act."

19           (5) Corporations organized and existing in accordance  
20 with and pursuant to Part III (relating to corporations not-  
21 for-profit) of Title 15 and chapters 61 (relating to hospital  
22 plan corporations) and 63 (relating to professional health  
23 services plan corporations) of Title 40 of the Pennsylvania  
24 Consolidated Statutes.

25           (6) Any plan established by an employer for the  
26 prevention of disease among his employees, offering limited  
27 medical services of a temporary basis.

28           (7) Any person when required under the act of June 2,  
29 1915 (P.L.736, No.338), known as "The Pennsylvania Workmen's  
30 Compensation Act," and related legislation when the employee

1 is not charged for such service.

2 (8) Any health service plan offered by hospitals or  
3 associated groups of hospitals or nonprofit corporations  
4 organized by hospitals for the furnishing of health services.

5 (9) Any health service plan afforded by the Medical Care  
6 Foundation for the furnishing of health services.

7 (10) Any medical or health service plan in existence and  
8 functioning for at least two years prior to the effective  
9 date of this act.

10 Section 16. Deductions from salary.

11 (a) An employee of the State, of any political subdivision,  
12 or of any institution supported in whole or in part by the State  
13 may authorize the deduction from his salary or wages of the  
14 amount of his subscription payments to any corporation provided  
15 for in this act. Such authorization shall be evidenced by  
16 approval of the head of the department, division, office or  
17 institution in which such employee is employed.

18 (b) In case of employees of the State, such authorization  
19 shall be directed to and filed with the Auditor General. In the  
20 case of employees of a political subdivision, such authorization  
21 shall be directed to and filed with the auditor or other fiscal  
22 officer of such political subdivision. In the case of employees  
23 of any institution supported in whole or in part by the State,  
24 such authorization shall be directed to and filed with the  
25 auditor or other fiscal officer of such institution.

26 (c) Upon filing with him of such authorization, such auditor  
27 or fiscal officer shall draw a warrant, in favor of the health  
28 care corporation referred to in such authorization, for the  
29 amount covering the sum of the deductions thereby authorized.

30 Section 17. General provisions.

1 (a) No health maintenance organization may cancel or fail to  
2 renew the coverage of an enrollee except for:

3 (1) Failure to pay the charge for health care coverage.

4 (2) Termination of health care plan.

5 (3) Enrollee moving out of the area served.

6 (4) Enrollee moving out of an eligible group.

7 (5) Failure to make copayments required by this plan.

8 An enrollee shall be given 60 days notice of any cancellation or  
9 nonrenewal.

10 (b) The fee for filing articles of incorporation with the  
11 Secretary of State, shall be \$250; for filing an amendment to  
12 the articles of incorporation shall be \$50; and for filing each  
13 annual report with the commissioner shall be \$50. Fees received  
14 pursuant to this subsection shall be deposited in the General  
15 Fund of the State Treasury.

16 Section 18. Severability.

17 If any provision of this act or the application thereof to  
18 any person or circumstances is held invalid, such invalidity  
19 shall not affect other provisions or applications of the act  
20 which can be given effect without the invalid provision or  
21 application, and to this end the provisions of this act are  
22 declared to be severable.

23 Section 19. Effective date.

24 This act shall take effect immediately.