

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL****No. 1574** Session of  
2013

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INTRODUCED BY KILLION, GROVE, GINGRICH, MICOZZIE, YOUNGBLOOD,  
QUINN, TAYLOR, BRADFORD, CLAY, MURT, WATERS, DENLINGER AND  
THOMAS, JUNE 24, 2013

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AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, OCTOBER 16, 2013

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## AN ACT

1 Amending the act of December 29, 1972 (P.L.1701, No.364),  
2 entitled "An act providing for the establishment of nonprofit  
3 corporations having the purpose of establishing, maintaining  
4 and operating a health service plan; providing for  
5 supervision and certain regulations by the Insurance  
6 Department and the Department of Health; giving the Insurance  
7 Commissioner and the Secretary of Health certain powers and  
8 duties; exempting the nonprofit corporations from certain  
9 taxes and providing penalties," further providing for  
10 purpose, for definitions, for required services, for board of  
11 directors, for contracts with practitioners, hospitals and  
12 insurance companies, for right to serve or benefits when  
13 outside the state, for supervision and for reports and  
14 examinations; and providing for applicability to limited  
15 liability companies.

16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. Section 2 of the act of December 29, 1972  
19 (P.L.1701, No.364), known as the Health Maintenance Organization  
20 Act, amended December 19, 1980 (P.L.1300, No.234), is amended to  
21 read:

22 Section 2. Purpose.--The purpose of this act is to permit  
23 and encourage the formation and regulation of health maintenance

1 organizations and to authorize the Secretary of Health to  
2 provide technical advice and assistance to corporations and  
3 limited liability companies desiring to establish, operate and  
4 maintain a health maintenance organization to the end that  
5 increased competition and consumer choice offered by diverse  
6 health maintenance organizations can constructively serve to  
7 advance the purposes of quality assurance, cost-effectiveness  
8 and access.

9 Section 2. Section 3 of the act, amended December 19, 1980  
10 (P.L.1300, No.234) and repealed in part December 20, 1982  
11 (P.L.1409, No.326), is amended to read:

12 Section 3. Definitions.--As used in this act:

13 "Basic health services" means those health services,  
14 including as a minimum, but not limited to, emergency care,  
15 inpatient hospital and physician care, ambulatory physician  
16 care, and outpatient and preventive medical services.

17 "Commissioner" means the Insurance Commissioner of the  
18 Commonwealth of Pennsylvania.

19 "Direct provider" means an individual who is a direct  
20 provider of health care services under a benefit plan of a  
21 health maintenance organization or an individual whose primary  
22 current activity is the administration of health facilities in  
23 which such care is provided. An individual shall not be  
24 considered a direct provider of health care solely because the  
25 individual is a member of the governing body of a health-related  
26 organization.

27 "Health maintenance organization" means an organized system  
28 which combines the delivery and financing of health care and  
29 which provides basic health services to voluntarily enrolled  
30 subscribers for a fixed prepaid fee.

1 "Limited liability company" means a limited liability company  
2 listed under 15 Pa.C.S. § 8911(a)(3) (relating to limited  
3 liability companies)

4 "Secretary" means the Secretary of Health of the Commonwealth  
5 of Pennsylvania.

6 Section 3. Sections 4, 7, 8, 9, 10 and 11 of the act,  
7 amended December 19, 1980 (P.L.1300, No.234), are amended to  
8 read:

9 Section 4. Services Which Shall be Provided.--(a) Any law  
10 to the contrary notwithstanding, any corporation or limited  
11 liability company may establish, maintain and operate a health  
12 maintenance organization upon receipt of a certificate of  
13 authority to do so in accordance with this act.

14 (b) Such health maintenance organizations shall:

15 (1) Provide either directly or through arrangements with  
16 others, basic health services to individuals enrolled;

17 (2) Provide either directly or through arrangements with  
18 other persons, corporations, institutions, associations or  
19 entities, basic health services; and

20 (3) Provide physicians' services (i) directly through  
21 physicians who are employes of such organization, (ii) under  
22 arrangements with one or more groups of physicians (organized on  
23 a group practice or individual practice basis) under which each  
24 such group is reimbursed for its services primarily on the basis  
25 of an aggregate fixed sum or on a per capita basis, regardless  
26 of whether the individual physician members of any such group  
27 are paid on a fee-for-service or other basis or (iii) under  
28 similar arrangements which are found by the secretary to provide  
29 adequate financial incentives for the provision of quality and  
30 cost-effective care.

1 Section 7. Board of Directors.--A corporation or limited  
2 liability company receiving a certificate of authority to  
3 operate a health maintenance organization under the provisions  
4 of this act shall be organized in such a manner that assures  
5 that at least one-third of the membership of the board of  
6 directors or board of managers of the health maintenance  
7 organization will be subscribers of the organization. The board  
8 of directors or board of managers shall be elected in the manner  
9 stated in the corporation's charter or bylaws or in the limited  
10 liability company's operating agreement.

11 Section 8. Contracts with Practitioners, Hospitals,  
12 Insurance Companies, Etc.--(a) Contracts enabling the  
13 [corporation] health maintenance organization to provide the  
14 services authorized under section 4 of this act made with  
15 hospitals and practitioners of medical, dental and related  
16 services shall be filed with the secretary. The secretary shall  
17 have power to require immediate renegotiation of such contracts  
18 whenever he determines that they provide for excessive payments,  
19 or that they fail to include reasonable incentives for cost  
20 control, or that they otherwise substantially and unreasonably  
21 contribute to escalation of the costs of providing health care  
22 services to subscribers, or that they are otherwise inconsistent  
23 with the purposes of this act.

24 (b) A health maintenance organization may reasonably  
25 contract with any individual, partnership, association,  
26 corporation or organization for the performance on its behalf of  
27 other necessary functions including, but not limited to,  
28 marketing, enrollment, and administration, and may contract with  
29 an insurance company authorized to do an accident and health  
30 business in this State or a hospital plan corporation or a

1 professional health service corporation for the provision of  
2 insurance or indemnity or reimbursement against the cost of  
3 health care services provided by the health maintenance  
4 organization as it deems to be necessary. Such contracts shall  
5 be filed with the commissioner.

6 Section 9. Right to Serve or Benefits When Outside the  
7 State.--If a subscriber entitled to services provided by [the  
8 corporation] a health maintenance organization necessarily  
9 incurs expenses for such services while outside the service  
10 area, the health maintenance organization to which the person is  
11 a subscriber may, in its discretion and if satisfied both as to  
12 the necessity for such services and that it was such as the  
13 subscriber would have been entitled to under similar  
14 circumstances in the service area, reimburse the subscriber or  
15 pay on his behalf all or part of the reasonable expenses  
16 incurred for such services. Such decision for reimbursement  
17 shall be subject to review by the commissioner at the request of  
18 a subscriber.

19 Section 10. Supervision.--(a) Except as otherwise provided  
20 in this act, a health maintenance organization operating under  
21 the provisions of this act shall not be subject to the laws of  
22 this State now in force relating to insurance corporations  
23 engaged in the business of insurance nor to any law hereafter  
24 enacted relating to the business of insurance unless such law  
25 specifically and in exact terms applies to such health  
26 maintenance organization. For a health maintenance organization  
27 established, operated and maintained by a corporation or limited  
28 liability company, this exemption shall apply only to the  
29 operations and subscribers of the health maintenance  
30 organization.

1 (b) All health maintenance organizations shall be subject to  
2 the following insurance laws:

3 (1) The act of July 22, 1974 (P.L.589, No.205), known as the  
4 "Unfair Insurance Practices Act."

5 (2) Any rehabilitation, liquidation or conservation of a  
6 health maintenance organization shall be deemed to be the  
7 rehabilitation, liquidation or conservation of an insurance  
8 company and shall be conducted under the supervision of the  
9 commissioner pursuant to the law governing the rehabilitation,  
10 liquidation, or conservation of insurance companies.

11 (c) All rates charged subscribers or groups of subscribers  
12 by a health maintenance organization and the form and content of  
13 all contracts between a health maintenance organization and its  
14 subscribers or groups of subscribers, all rates of payment to  
15 hospitals made by a health maintenance organization pursuant to  
16 contracts provided for in this act, budgeted acquisition costs  
17 in connection with the solicitation of subscribers, and the  
18 certificates issued by a health maintenance organization  
19 representing its agreements with subscribers shall, at all  
20 times, be on file with the commissioner and be deemed approved  
21 unless explicitly rejected within sixty days of filing. Filings  
22 shall be made to the commissioner in such form, and shall set  
23 forth such information as the commissioner may require to carry  
24 out the provisions of this act. Any disapproval of a filing by  
25 the commissioner may be appealed in accordance with Title 2 of  
26 the Pennsylvania Consolidated Statutes (relating to  
27 administrative law and procedure).

28 (d) Solicitors or agents compensated directly or indirectly  
29 by [any corporation] a health maintenance organization subject  
30 to the provisions of this act shall meet such prerequisites as

1 the commissioner by regulation shall require.

2 (e) A health maintenance organization shall establish and  
3 maintain a grievance resolution system satisfactory to the  
4 secretary, whereby the complaints of its subscribers may be  
5 acted upon promptly and satisfactorily.

6 (f) If a health maintenance organization offers eye care  
7 which is within the scope of the practice of optometry, it shall  
8 make optometric care available to its subscribers, and shall  
9 make the same reimbursement whether the service is provided by  
10 an optometrist or a physician.

11 Section 11. Reports and Examinations.--(a) The  
12 [corporation] health maintenance organization shall, on or  
13 before the first of March of every year, file with the  
14 commissioner a statement verified by at least two of the  
15 principal officers of the [corporation] health maintenance  
16 organization summarizing its financial activities during the  
17 calendar or fiscal year immediately preceding, and showing its  
18 financial condition at the close of business on December 31 of  
19 that year, or the [corporation's] health maintenance  
20 organization's fiscal year. Such statement shall be in such form  
21 and shall contain such matter as the commissioner prescribes.  
22 The financial affairs and status of every [such corporation]  
23 health maintenance organization shall be examined by the  
24 commissioner or his agents not less frequently than once in  
25 every three years and for this purpose the commissioner and his  
26 agents shall be entitled to the aid and cooperation of the  
27 officers and employes of the [corporation] health maintenance  
28 organization and shall have convenient access to all books,  
29 records, papers, and documents that relate to the financial  
30 affairs of the [corporation] health maintenance organization.

1 They shall have authority to examine under oath or affirmation  
2 the officers, agents, employes and subscribers for the health  
3 services of the [corporation] health maintenance organization,  
4 and all other persons having or having had substantial part in  
5 the work of the [corporation] health maintenance organization in  
6 relation to its affairs, transactions and financial condition.  
7 The Insurance Commissioner may at any time, without making such  
8 examination, call on [any such corporation] a health maintenance  
9 organization for a written report authenticated by at least two  
10 of its principal officers concerning the financial affairs and  
11 status of the [corporation] health maintenance organization.

12 (b) A [corporation] health maintenance organization shall  
13 maintain its financial records in such manner that the revenues  
14 and expenses associated with the establishment, maintenance and  
15 operation of its prepaid health care delivery system under this  
16 act are identifiable and distinct from other activities it may  
17 engage in which are not directly related to the establishment,  
18 maintenance and operation of its prepaid health care delivery  
19 system under this act.

20 (c) The secretary or his agents shall have free access to  
21 all the books, records, papers and documents that relate to the  
22 business of the [corporation] health maintenance organization,  
23 other than financial.

24 Section 4. The act is amended by adding a section to read:

25 Section 14.1. Applicability to Limited Liability  
26 Companies.--This act and regulations promulgated under this act  
27 shall apply to a limited liability company as follows:

28 (1) The board of managers of a limited liability company  
29 shall be treated in the same manner as the board of directors of  
30 a corporation.

1     (2) The members of a limited liability company shall be  
2 treated in the same manner as the shareholders of a corporation.

3     (3) NO LIMITED LIABILITY COMPANY THAT IS A HEALTH     <--  
4 MAINTENANCE ORGANIZATION SHALL BE TREATED DIFFERENTLY FROM A  
5 CORPORATION THAT IS A HEALTH MAINTENANCE ORGANIZATION WITH  
6 RESPECT TO ANY OF ITS LIABILITIES.

7     Section 5. This act shall take effect in 60 days.