

CHAPTER 33

INSURANCE

HOUSE BILL 99-1275

BY REPRESENTATIVE Fairbank;
also SENATOR Epps.

AN ACT

CONCERNING THE CHANGES TO THE OPERATING REQUIREMENTS OF HEALTH MAINTENANCE ORGANIZATIONS, AND, IN CONNECTION THEREWITH, CHANGING INDEMNITY BENEFITS, SOLVENCY REQUIREMENTS, AND REPORTING REQUIREMENTS OF HEALTH MAINTENANCE ORGANIZATIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-16-403 (1) (f), Colorado Revised Statutes, is amended to read:

10-16-403. Powers of health maintenance organizations. (1) The powers of a health maintenance organization include, but are not limited to, the following:

(f) The offering, in addition to basic health care services, of:

(I) Additional health care services;

(II) Indemnity benefits ~~covering out-of-area services, emergency services, and special services not provided on a direct services basis; such benefits shall not exceed ten~~ NOT EXCEEDING TWENTY percent of ~~the total benefits covered~~ NET MEDICAL AND HOSPITAL EXPENSES INCURRED ON AN ANNUAL BASIS;

(III) Indemnity benefits, in addition to ~~those relating to out-of-area services, emergency services, and special services provided~~ BENEFITS PROVIDED DIRECTLY OR INDIRECTLY THROUGH CONTRACTS WITH PROVIDERS, BY THE HEALTH MAINTENANCE ORGANIZATION, through insurers or nonprofit hospital, medical-surgical, and health service corporations;

SECTION 2. 10-16-411, Colorado Revised Statutes, is amended to read:

10-16-411. Protection against insolvency. (1) (a) Before issuing any certificate of authority, the commissioner shall require that the health maintenance organization

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

have an initial minimum surplus of one million ~~two~~ FIVE hundred thousand dollars. ~~and shall thereafter maintain the minimum surplus required pursuant to paragraph (b) of this subsection (1):~~ "Surplus" means total assets less all liabilities with the exception of long-term loans from the secretary of the United States department of health and human services or other loan or obligation with terms and conditions acceptable to the commissioner. Such loan or obligation shall be considered equity until such time as the funding source shall declare that repayment shall commence. Upon such declaration, the amount necessary to fund the repayments, including accrued interest thereon, for the ensuing twelve months will be included as a direct liability and so classified in the determination of minimum surplus as provided by this subsection (1).

(a.5) THE MINIMUM SURPLUS REQUIRED BY PARAGRAPH (a) OF THIS SUBSECTION (1) MAY BE REDUCED BY UP TO FIVE HUNDRED THOUSAND DOLLARS IF THE HEALTH MAINTENANCE ORGANIZATION HAS AVAILABLE TO IT AN ADMINISTRATIVE INFRASTRUCTURE THAT THE COMMISSIONER CONSIDERS APPROPRIATE TO REDUCE, CONTROL, OR ELIMINATE START-UP COSTS ASSOCIATED WITH THE ADMINISTRATION OF THE HEALTH MAINTENANCE ORGANIZATION. SUCH INFRASTRUCTURE INCLUDES OFFICE SPACE AND EQUIPMENT, COMPUTER SYSTEMS, SOFTWARE, MANAGEMENT SERVICES CONTRACT, AND PERSONNEL RECRUITMENT FEES.

(b) ~~Except as provided in paragraphs (c) and (d) of this subsection (1);~~ Every health maintenance organization shall maintain a minimum surplus AT LEAST equal to ~~the greater of:~~ ONE MILLION DOLLARS.

~~(I) Six hundred thousand dollars;~~

~~(II) Two percent of annual premium revenues as reported on the most recent annual financial statement filed with the commissioner; or~~

~~(III) An amount equal to the sum of three months' uncovered health care expenditures as reported on the most recent annual financial statement filed with the commissioner.~~

(c) ~~A health maintenance organization certificated before April 12, 1989, shall maintain a minimum surplus as follows:~~

~~(I) Two hundred thousand dollars by December 31, 1989, or one-third of the amount specified in either subparagraph (II) or (III) of paragraph (b) of this subsection (1), whichever is greater;~~

~~(II) Four hundred thousand dollars by December 31, 1990, or two-thirds of the amount specified in either subparagraph (II) or (III) of paragraph (b) of this subsection (1), whichever is greater;~~

~~(III) Six hundred thousand dollars by December 31, 1991, or the amount specified in either subparagraph (II) or (III) of paragraph (b) of this subsection (1), whichever is greater.~~

(d) ~~The commissioner may extend the time by which a health maintenance organization must comply with the provisions of paragraph (b) of this subsection (1)~~

~~if the commissioner determines that:~~

~~(I) Such extension is in the best financial interest of the health maintenance organization; and~~

~~(II) Such extension will not cause or permit the organization to operate in a manner or condition that is or may be hazardous to its enrollees or creditors.~~

(2) THE COMMISSIONER MAY, BY RULE, ESTABLISH STANDARDS CONSISTENT WITH THE RISK-BASED CAPITAL MODELS APPLICABLE TO MANAGED CARE ORGANIZATIONS DEVELOPED OR ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS THAT REQUIRE ANY SUCH CORPORATION TO MAINTAIN A GREATER MINIMUM LEVEL OF SURPLUS THAN THE SPECIFIED DOLLAR MINIMUMS ESTABLISHED BY SUBSECTION (1) OF THIS SECTION. SUCH MINIMUM LEVEL OF SURPLUS SHALL REFLECT THE TYPE, VOLUME, AND NATURE OF THE BUSINESS BEING TRANSACTED. SUCH RULES MAY ADDITIONALLY REQUIRE THE SUBMISSION OF AN OPINION BY A QUALIFIED ACTUARY THAT STATES WHETHER OR NOT THE SURPLUS LEVEL OF THE ENTITY IS SUFFICIENT.

~~(2)~~ (3) If a health maintenance organization fails to comply with the surplus requirements of this section, the commissioner is authorized to take appropriate action to assure that the continued operation of the health maintenance organization will not be detrimental to its enrollees.

(4) (a) IF THE INITIAL APPLICATION OF THIS SECTION WOULD CAUSE A REDUCTION IN THE TOTAL CAPITAL AND SURPLUS OF A HEALTH MAINTENANCE ORGANIZATION OF TEN PERCENT OR MORE OR WOULD CAUSE THE CAPITAL AND SURPLUS OF A HEALTH MAINTENANCE ORGANIZATION TO FALL TO OR BELOW THE COMPANY ACTION LEVEL AS DEFINED BY THE COMMISSIONER BY RULE, SUCH HEALTH MAINTENANCE ORGANIZATION MAY, WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF SUCH RULE, FILE WITH THE COMMISSIONER A REQUEST TO PHASE IN THE REQUIREMENTS OF THIS SECTION OVER A PERIOD NOT TO EXCEED THREE YEARS OR ANOTHER TIME PERIOD AS APPROVED BY THE COMMISSIONER.

(b) ANY REQUEST MADE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL INCLUDE A COMPLETE ANALYSIS, IN A FORM PRESCRIBED BY THE COMMISSIONER, OF THE IMPACT UPON THE HEALTH MAINTENANCE ORGANIZATION MAKING THE REQUEST, THAT IS EXPECTED TO RESULT FROM APPLICATION OF THIS SECTION AND, IF A PHASE-IN IS REQUESTED, A DESCRIPTION OF THE HEALTH MAINTENANCE ORGANIZATION'S PLAN FOR THE PHASE-IN PERIOD. THE COMMISSIONER SHALL NOT DENY A REQUEST FOR A PHASE-IN EXCEPT UPON NOTICE AND AN OPPORTUNITY FOR A HEARING AS PROVIDED IN SECTION 24-4-105, C.R.S.

(c) ANY REQUEST FOR A HEARING MADE PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4) SHALL INCLUDE A DESCRIPTION OF THE BASIS UPON WHICH RELIEF IS SOUGHT. UPON RECEIPT OF SUCH A REQUEST, THE COMMISSIONER SHALL, WITH REGARD TO THE HEALTH MAINTENANCE ORGANIZATION MAKING THE REQUEST, POSTPONE THE EFFECTIVE DATE OF THE SECTION PENDING THE CONCLUSION OF THE HEARING AND THE TAKING OF FINAL AGENCY ACTION THEREON. THE HEARING SHALL COMMENCE WITHIN SIXTY DAYS AFTER THE COMMISSIONER RECEIVES THE REQUEST AND SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-105, C.R.S.

SECTION 3. 10-16-412 (2) and (3), Colorado Revised Statutes, are amended, and the said 10-16-412 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

10-16-412. Statutory deposit. (2) (a) Every health maintenance organization licensed after April 12, 1989, shall have an initial deposit of ~~one~~ THREE hundred fifty thousand dollars.

(b) ~~Every health maintenance organization certificated prior to April 12, 1989, shall be granted six months in which to increase its deposit to the requirements of this section.~~

(3) Health maintenance organizations shall establish and maintain the following minimum deposits:

(a) The following schedule, based upon enrollment levels achieved on December 31 of the preceding year:

- (I) ~~\$150,000: Enrollment of less than 20,000;~~
- (II) ~~\$200,000: Enrollment of 20,000 but less than 40,000;~~
- (III) ~~\$250,000: Enrollment of 40,000 but less than 60,000;~~
- (IV) \$300,000: Enrollment of NOT LESS THAN 60,000; ~~but less than 80,000;~~
- (V) \$350,000: Enrollment of ~~80,000~~ 60,000 but less than 100,000;
- (VI) \$400,000: Enrollment of 100,000 or more.

(b) The statutory deposit shall at all times equal or exceed twenty-five percent of the health maintenance organization's uncovered expenditures for the previous calendar year. At such time ~~that the uncovered expenditures exceed~~ AS THE DEPOSIT IS LESS THAN twenty-five percent of the health maintenance organization's uncovered expenditures for the PREVIOUS calendar year, additional deposits will be required to maintain this level. The maximum deposit required, however, shall not exceed one million dollars. ~~This deposit will be made at the rate of one and one-half percent of the actual subscription income for the preceding calendar year, not to exceed one hundred fifty thousand dollars.~~

(4) (a) IF THE INITIAL APPLICATION OF THIS SECTION WOULD CREATE UNDUE FINANCIAL RISKS TO THE ENROLLEES OF A HEALTH MAINTENANCE ORGANIZATION, SUCH HEALTH MAINTENANCE ORGANIZATION MAY, WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, FILE WITH THE COMMISSIONER A REQUEST TO PHASE IN THE REQUIREMENTS OF THIS SECTION OVER A PERIOD NOT TO EXCEED THREE YEARS OR ANOTHER TIME PERIOD AS APPROVED BY THE COMMISSIONER.

(b) ANY REQUEST MADE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4) SHALL INCLUDE A COMPLETE ANALYSIS, IN A FORM PRESCRIBED BY THE COMMISSIONER, OF THE IMPACT UPON THE HEALTH MAINTENANCE ORGANIZATION

MAKING THE REQUEST, THAT IS EXPECTED TO RESULT FROM APPLICATION OF THIS SECTION AND, IF A PHASE-IN IS REQUESTED, A DESCRIPTION OF THE HEALTH MAINTENANCE ORGANIZATION'S PLAN FOR THE PHASE-IN PERIOD. THE COMMISSIONER SHALL NOT DENY A REQUEST FOR A PHASE-IN EXCEPT UPON NOTICE AND AN OPPORTUNITY FOR A HEARING AS PROVIDED IN SECTION 24-4-105, C.R.S.

(c) ANY REQUEST FOR A HEARING MADE PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (4) SHALL INCLUDE A DESCRIPTION OF THE BASIS UPON WHICH RELIEF IS SOUGHT. UPON RECEIPT OF SUCH A REQUEST, THE COMMISSIONER SHALL, WITH REGARD TO THE HEALTH MAINTENANCE ORGANIZATION MAKING THE REQUEST, POSTPONE THE EFFECTIVE DATE OF THE SECTION PENDING THE CONCLUSION OF THE HEARING AND THE TAKING OF FINAL AGENCY ACTION THEREON. THE HEARING SHALL COMMENCE WITHIN SIXTY DAYS AFTER THE COMMISSIONER RECEIVES THE REQUEST AND SHALL BE CONDUCTED IN ACCORDANCE WITH SECTION 24-4-105, C.R.S.

SECTION 4. 10-16-421 (1), Colorado Revised Statutes, is amended to read:

10-16-421. Statutory construction and relationship to other laws. (1) Except for sections 10-1-102, 10-1-121, 10-1-122, 10-3-118, 10-3-128, and 10-3-208 (7), and parts 4 to 7 8 of article 3 of this title, and as otherwise provided in this article, the provisions of the insurance law and provisions of nonprofit hospital, medical-surgical, and health service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this part 4.

SECTION 5. 10-16-102 (23) (a), Colorado Revised Statutes, is amended to read:

10-16-102. Definitions. As used in this article, unless the context otherwise requires:

(23) "Health maintenance organization" means any person who:

(a) Provides, either directly or through contractual or other arrangements with others, health care services to enrollees; ~~on a fixed prepayment basis;~~ and

SECTION 6. 10-16-107 (3) (e) (I), Colorado Revised Statutes, is amended to read:

10-16-107. Rate regulation - approval of policy forms - benefit certificates - evidences of coverage - loss ratio guarantees - disclosures on treatment of intractable pain. (3) (e) (I) No schedule of charges or rates for enrollee coverage for health care services, or amendments thereto, may be used by a health maintenance organization until a copy of such schedule or amendments has been filed with the commissioner ~~at least thirty days prior to its effective date; except individual group rates that shall be filed~~ concurrent with or prior to the effective date.

SECTION 7. Repeal. 10-16-111 (2) (c) and (2) (d), Colorado Revised Statutes, are repealed as follows:

10-16-111. Annual statement and reports. (2) **Health maintenance organizations.** (c) ~~Each health maintenance organization shall file monthly financial statements with the commissioner in the form prescribed. Monthly reports~~

shall include documentary proof or a statement regarding the financial commitments referred to in section 10-16-411.

~~(d) The commissioner may waive the monthly reporting requirements and permit less frequent reporting upon the determination that the health maintenance organization is financially sound, has a competent and efficient management program, adequately exceeds the solvency requirements of this part 1 and part 4 of this article, and meets the statutory deposit requirements of section 10-16-412.~~

SECTION 8. 10-3-801 (5), Colorado Revised Statutes, is amended to read:

10-3-801. Definitions. As used in this part 8, unless the context otherwise requires:

(5) "Insurer" has the same meaning as set forth in section 10-3-502 (12); except that it shall include fraternal benefit societies AND HEALTH MAINTENANCE ORGANIZATIONS and shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

SECTION 9. Effective date - applicability. This act shall take effect July 1, 1999, and shall apply to acts occurring on or after said date.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 23, 1999