

ENROLLED SENATE
BILL NO. 441

By: Brown of the Senate

and

Monson of the House

An Act relating to health care; amending 63 O.S. 1991, Sections 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509 and 2510, which relate to health maintenance organizations; modifying intent statement; providing for organization and operation of prepaid health plans; modifying and adding definitions; deleting obsolete language; providing for licensure by State Department of Health with certain exception; making enrollment in plans voluntary; construing act; requiring certain services be provided directly or by contract or agreement; prohibiting engaging in certain practices; authorizing plans to provide certain services; providing for adjustment of prepaid premium for certain purposes; requiring State Board of Health to provide by rule for certain claims reimbursements and geographic service area variations; providing for reimbursement for services received by certain enrollees at certain rates; modifying powers; modifying deposit of certain fees; requiring surety bond or certain acceptable alternatives and providing for waiver; prohibiting certain misleading or deceptive practices; providing certain exception to prohibition against canceling or nonrenewing coverage; prohibiting certain practice unless licensed as an insurer; prohibiting operation of health maintenance organization or prepaid health plan unless licensed; providing for criminal penalty and injunctive relief; providing administrative fine; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2501, is amended to read as follows:

Section 2501. It is the purpose and intent of the Legislature to promote and protect the public health, to promote a wider distribution of health care services, and to maintain the standards and promote the progress of providing alternative delivery systems of prepaid health care, including comprehensive medically necessary managed care services and comprehensive health maintenance services in this state. While it is the intent of this act to provide an opportunity for the development of prepaid health plans and health maintenance organizations, there is no intention to impair the

present system of delivery of health services. It shall be the policy of this state to eliminate legal barriers to the organization, promoting and expansion of alternative delivery systems of comprehensive prepaid health care.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 2502, is amended to read as follows:

Section 2502. Notwithstanding any law to the contrary, any person may organize and operate a health maintenance organization or a prepaid health plan which provides comprehensive health ~~maintenance~~ services to enrollees who have become subscribers to said health maintenance organization or prepaid health plan pursuant to a contract entitling each enrollee to comprehensive health ~~maintenance~~ services on a prepaid, capitated basis.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 2503, is amended to read as follows:

Section 2503. As used in ~~Sections~~ Section 2501 ~~through 2510 et seq.~~ of this title:

1. "Health maintenance organization" means any organization, subject to the provisions of ~~Sections~~ Section 2501 ~~through 2510 et seq.~~ of this title, organized pursuant to the laws of this state, or the laws of another state or the District of Columbia, which provides, either directly or through arrangements with others, comprehensive health ~~maintenance~~ services to members enrolled with the organization on a fixed prepayment basis. ~~The term health maintenance organization includes any organization designed to receive funds pursuant to the provisions of the federal Health Maintenance Organization Act of 1973 (P.L. 93-222);~~

2. "Enrollee" means a person who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with a health maintenance organization or prepaid health plan for comprehensive health ~~maintenance~~ services;

3. "Person" includes but is not limited to individuals, partnerships, associations, corporations, or other public or private legal entities;

4. "Agent" means a person associated with a health maintenance organization and who engages in solicitation;

5. "Department" means the Oklahoma State Department of Health; ~~and~~

6. "Comprehensive health ~~maintenance~~ services" includes but is not limited to allopathic, osteopathic, chiropractic, podiatric, optometric ~~and~~, psychological, outpatient diagnostic and treatment, inpatient hospital, short-term rehabilitation and physical therapy, medically necessary emergency, short-term outpatient mental health, substance abuse diagnostic and medical treatment, home health, and preventive health services; ~~and~~

7. a. "Prepaid health plan" means any organization, subject to the provisions of Section 2501 et seq. of this title, organized pursuant to the laws of this state, or the laws of another state or the District of Columbia, which provides, either directly, or through arrangements with others, or through reimbursement of claims, comprehensive health services to members enrolled with the plan on a fixed prepayment basis.
- b. As used in this paragraph, "reimbursement of claims" means that a prepaid health plan may make provisions for reimbursements to members who receive covered services through noncontracting providers and may make provisions for payments to noncontracting providers for covered services rendered to members. A prepaid health plan may impose supplementary deductibles and

copayments for covered services rendered through noncontracting providers in order to cover the costs of such services and to encourage members to use contracting providers.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 2504, is amended to read as follows:

Section 2504. A. Upon compliance with the provisions of ~~Sections~~ Section 2501 through 2510 et seq. of this title, any organization, association, or corporation, public or private, may be licensed by the State Department of Health to organize, operate and maintain a health maintenance organization or a prepaid health plan for its duly enrolled members and their dependents in this state. Prior to the issuing of any license to a health maintenance organization or a prepaid health plan, the State Department of Health shall forward one copy of the application to the State Insurance Commissioner, who shall be required within thirty (30) days to review said application with regard to the provisions in the application for fiscal responsibility and fiducial integrity, and make recommendations to the Department. If a response is not received from the ~~State~~ State Insurance Commissioner within thirty (30) days, the Department may proceed to make a determination upon the application as submitted. The ~~State~~ State Insurance Commissioner, after notice and hearing, may promulgate such reasonable rules ~~and regulations~~ as are necessary to provide for the licensing of agents. The Department shall annually determine if each health maintenance organization or prepaid health plan has complied with all requirements set forth in this section and in any ~~regulations~~ rules promulgated pursuant to ~~Sections~~ Section 2501 through 2510 et seq. of this title. Every health maintenance organization and prepaid health plan may be relicensed, annually, upon compliance with the provisions of ~~Sections~~ Section 2501 through 2510 et seq. of this title and any regulations promulgated pursuant to the provisions of ~~Sections~~ Section 2501 through 2510 et seq. of this title. Enrollment in any such organization or plan shall be voluntary only.

B. A license from the Department shall not be required for any prepaid health plan duly licensed as an insurer by the Insurance Commissioner pursuant to Title 36 of the Oklahoma Statutes. Nothing in this subsection shall be construed to prevent a person from electing to apply for and obtain separate licenses as an insurer under Title 36 of the Oklahoma Statutes and as a prepaid health plan under Section 2501 et seq. of this title.

C. Each application or reapplication for a license or annual license renewal pursuant to the provisions of this section shall be accompanied by an application fee of Five Thousand Dollars (\$5,000.00).

SECTION 5. AMENDATORY 63 O.S. 1991, Section 2505, is amended to read as follows:

Section 2505. Health maintenance organizations and prepaid health plans shall provide comprehensive health ~~maintenance~~ services directly or by contract or agreement with other persons, corporations, institutions, associations, foundations or other legal entities, public or private, the services required of it in accordance with this act and the laws governing such professions and services. Such organizations and plans may contract or agree with other persons to provide actuarial, underwriting, marketing, billing, fiscal, and other services as may be required for the operation of a health maintenance organization or prepaid health plan. Health maintenance organizations and prepaid health plans may contract to provide certain selected comprehensive health ~~maintenance~~ services for organizations or corporations which provide

certain other comprehensive health ~~maintenance~~ services to their members or employees through alternative health care plans. A health maintenance organization or prepaid health plan shall not engage in the practice of medicine or any other profession except as provided by law. A health maintenance organization or prepaid health plan may adjust its prepaid premium to permit financial risk-sharing with other organizations or corporations which contract with the health maintenance organization or prepaid health plan to provide such selected services.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 2506, is amended to read as follows:

Section 2506. Health maintenance organizations and prepaid health plans may provide any services included in state or federal health care programs, such as state employees benefits, the state basic health benefits program, "Medicare," "Medicaid," "Champus" and Veterans Administrations and other health programs provided in whole or in part by state or federal funds, in accordance with the laws governing such programs.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 2507, is amended to read as follows:

Section 2507. ~~Health maintenance~~ A. Comprehensive health services as herein provided may be furnished to enrollees of health maintenance organizations outside this state only in accordance with the laws of the state or of the United States which govern the provisions of such services in the state or place concerned; provided, that an enrollee may be reimbursed directly for emergency health care expenses incurred by him while temporarily outside the state, when such expenses would have been provided under the enrollee's program had he been within the state, but such. Such reimbursement made by a health maintenance organization shall not be construed as an indemnity and no health maintenance organization shall be an insurer or make any contract of insurance of any kind whatsoever.

B. 1. The State Board of Health shall provide by rule the requirements for claims reimbursements by a prepaid health plan for health care services rendered by professionals or facilities not covered under an agreement with the managed care organization, whether those providers are located inside or outside the state.

2. The State Board of Health also shall provide by rule for geographic service area variations which remit prepaid health plans to enroll persons who desire to become members but who do not reside in an area where contracting primary and emergency care providers are available and accessible within reasonable promptness.

3. Prepaid health plans may reimburse out-of-state providers for services received by Title XIX enrollees at the medicaid fee-for-service rates in effect in this state or the rates in effect in the state in which care was rendered, whichever are lower.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 2508, is amended to read as follows:

Section 2508. A. The State Department of Health shall ~~fix~~:

1. Fix and collect license fees for the operation of health maintenance organizations and prepaid health plans; shall enforce

2. Enforce the provisions of this act; and shall promulgate

3. Promulgate rules and regulations as necessary to effectuate the purposes of this act, to protect the public and to ensure the sound, proper and efficient operation of health maintenance organizations and prepaid health plans in this state; and shall have

4. Have authority to revoke any license for violation of any of the rules and regulations or any violation of law or for other good cause.

B. All actions of the Department shall be subject to the provisions of the Oklahoma Administrative Procedures Act.

C. License fees collected shall be deposited in the ~~General Revenue~~ Public Health Special Fund of the State Treasury.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 2509, is amended to read as follows:

Section 2509. Each health maintenance organization and prepaid health plan shall furnish a surety bond in an amount satisfactory to the State Department of Health, or deposit with the Department, cash or securities acceptable to the Department in at least the same amount as a guarantee that the obligations to the enrollees will be performed. The Department may waive this requirement whenever satisfied that the assets of the organization or plan or its contracts with insurers, governments or other ~~organizations~~ entities are sufficient to reasonably assure the performance of its obligations.

SECTION 10. AMENDATORY 63 O.S. 1991, Section 2510, is amended to read as follows:

Section 2510. A. No health maintenance organization or prepaid health plan, or representative thereof, shall cause or knowingly permit the use of advertising which is untrue or misleading, or solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive.

1. A statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan;

2. A statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which such statement is made or such item of information is communicated, such statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health care plan, if such benefit or advantage or absence of limitation, exclusion or disadvantage does in fact exist;

3. An evidence of coverage shall be deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans and evidences of coverage therefor, to expect benefits, services, charges or other advantages which evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

B. An enrollment may not be canceled or nonrenewed except for the failure to pay the charge for such coverage or, in the case of Title XIX enrollees for loss of eligibility for medical assistance, or for such other reasons as may be promulgated by the Department.

C. No health maintenance organization or prepaid health plan, unless licensed as an insurer, may use in its name, contracts or literature, any of the words "insurance," "casualty," "surety," "mutual" or any other words descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2511 of Title 63, unless there is created a duplication in numbering, reads as follows:

No person may proceed to operate a health maintenance organization or prepaid health plan or imply directly or indirectly that it is authorized to operate a health maintenance organization or prepaid health plan, unless that person first applies for and is granted a license by the Department under Section 2501 et seq. of this title. Any person who operates a health maintenance organization or prepaid health plan without first having obtained a license as required herein, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punishable by payment or a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00). If the State Department of Health, through one of its agents or representatives, notifies in writing, through certified mail, the person who has unlawfully commenced the operation of a health maintenance organization or prepaid health plan to cease and desist, then each day that such person continues such offering or development shall be a separate offense. If any person continues to operate a health maintenance organization or prepaid health plan after the issuance of a cease and desist order, the Department shall seek an injunction to prohibit the continued offering or development.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2512 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any person who has been determined by the State Department of Health to have violated any provision of Section 2501 et seq. of this title or any rule promulgated or order issued pursuant to the provisions of said sections, may be liable for an administrative penalty of not more than One Hundred Dollars (\$100.00) for each day that said violation continues. The maximum administrative penalty shall not exceed Twenty Thousand Dollars (\$20,000.00) for any related series of violations.

SECTION 13. This act shall become effective September 1, 1993.
Passed the Senate the 20th day of May, 1993.

President of the Senate

Passed the House of Representatives the 24th day of May, 1993.

Speaker of the House of Representatives