

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/29/01

A Bill

Act 1605 of 2001
HOUSE BILL 2489

5 By: Representative Biggs
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF CHAPTER 76
10 OF TITLE 23 OF THE ARKANSAS CODE RELATING TO
11 HEALTH MAINTENANCE ORGANIZATIONS; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14 HEALTH MAINTENANCE ORGANIZATION OMNIBUS
15 ACT.
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code 23-76-103 is amended to read as follows:

22 ~~23-76-103. Applicability of §§ 23-75-101, 23-75-110, 23-75-112, 23-~~
23 ~~75-120, and 23-86-111, 23-86-116.~~

24 ~~Sections 23-75-101, 23-75-110 and 23-75-112, 23-75-120 shall be~~
25 ~~construed to apply to health maintenance organizations, health care plans,~~
26 ~~and evidences of coverage except to the extent that the Insurance~~
27 ~~Commissioner determines that the nature of health maintenance organizations,~~
28 ~~health care plans, and evidences of coverage render such sections clearly~~
29 ~~inappropriate. On and after July 1, 1999, the provisions of §§ 23-86-111,~~
30 ~~23-86-116 as to continuation and conversion privileges shall apply to the~~
31 ~~subscriber policies and contracts of authorized health maintenance~~
32 ~~organizations.~~

33 (a) Except as otherwise provided in this chapter, provisions of the
34 insurance law and provisions of hospital and medical service corporation laws
35 shall not be applicable to any health maintenance organization granted a
36 certificate of authority under this chapter. This provision shall not apply

1 to an insurer or hospital and medical service corporation licensed and
 2 regulated pursuant to the insurance laws or the hospital and medical service
 3 corporation laws of this state except with respect to its health maintenance
 4 organization activities authorized and regulated pursuant to this chapter.

5 (b) The provisions of § 23-76-101 et seq., the Arkansas Insurance
 6 Code, § 23-60-101 et seq., and the law concerning hospital and medical
 7 service corporations, § 23-75-101 et seq., or any amendments thereto, shall
 8 not be applicable to any nonprofit vision service plan corporation composed
 9 of at least fifty (50) participating licensed optometrists or
 10 ophthalmologists licensed by the State of Arkansas to provide vision care
 11 services on a prepaid basis, when each licensed optometrist or
 12 ophthalmologist is subject to the rules and regulations of the professional's
 13 respective state board and when each participating licensed optometrist or
 14 ophthalmologist agrees to assume responsibility for completion of the
 15 provisions of the vision care services contracted for, so that no element of
 16 risk is incurred by any subscriber group or person.

17
 18 SECTION 2. Arkansas Code 23-76-104 is amended to read as follows:

19 23-76-104. ~~Inapplicability of certain laws~~ Insurance Code Sections
 20 applicable to Health Maintenance Organizations.

21 ~~(a) Except as otherwise provided in this chapter, provisions of the~~
 22 ~~insurance law and provisions of hospital and medical service corporation laws~~
 23 ~~shall not be applicable to any health maintenance organization granted a~~
 24 ~~certificate of authority under this chapter. This provision shall not apply~~
 25 ~~to an insurer or hospital and medical service corporation licensed and~~
 26 ~~regulated pursuant to the insurance laws or the hospital and medical service~~
 27 ~~corporation laws of this state except with respect to its health maintenance~~
 28 ~~organization activities authorized and regulated pursuant to this chapter.~~

29 ~~(b) The provisions of § 23-76-101 et seq., the Arkansas Insurance~~
 30 ~~Code, § 23-60-101 et seq., and the law concerning hospital and medical~~
 31 ~~service corporations, § 23-75-101 et seq., or any amendments thereto, shall~~
 32 ~~not be applicable to any nonprofit vision service plan corporation composed~~
 33 ~~of at least fifty (50) participating licensed optometrists or~~
 34 ~~ophthalmologists licensed by the State of Arkansas to provide vision care~~
 35 ~~services on a prepaid basis when each licensed optometrist or ophthalmologist~~
 36 ~~is subject to the rules and regulations of the professional's respective~~

1 state board and when each participating licensed optometrist or
 2 ophthalmologist agrees to assume responsibility for completion of the
 3 provisions of the vision care services contracted for so that no element of
 4 risk is incurred by any subscriber group or person.

5 ~~(c) The following provisions of the Arkansas Insurance Code, § 23-60-~~
 6 ~~101 et seq., are expressly applicable to health maintenance organizations: §§~~
 7 ~~23-85-132 and 23-86-111.~~

8 Except to the extent that the commissioner determines that the nature
 9 of health maintenance organizations, health care plans and evidences of
 10 coverage render such sections clearly inappropriate, the following sections
 11 of the Arkansas Code are applicable to health maintenance organizations:

12 (a) Sections 23-60-101 – 23-60-108 and 23-60-110, referring to scope
 13 of the Arkansas Insurance Code;

14 (b) Subchapters 1 – 3 of chapter 61 of this title, referring to the
 15 Insurance Commissioner;

16 (c) Sections 23-63-102 – 23-63-104, 23-63-201 – 23-63-216, general
 17 provisions, and § 23-63-301, et seq., referring to service of process, a
 18 registered agent as process agent, serving legal process, and time to plead;

19 (d) Subchapter 6 of chapter 63 of title 23, referring to assets and
 20 liabilities; §§ 23-63-901 – 23-63-912, referring to administration of
 21 deposits;

22 (e) Sections 23-63-1501 – 23-63-1512, referring to risk based capital
 23 requirements.

24 (f) Subchapters 1 and 2 of Chapter 64 of Title 23, referring to
 25 agents, brokers, solicitors, and adjusters;

26 (g) Sections 23-66-201 – 23-66-215, 23-66-301 – 23-66-306, 23-66-308 –
 27 23-66-314, referring to trade practices and frauds;

28 (h) Chapter 68 of Title 23, referring to rehabilitation and
 29 liquidation;

30 (i) Section 23-69-134, referring to home office and records, and the
 31 penalty for unlawful removal of records;

32 (j) Section 23-69-156, referring to extinguishing unused corporate
 33 charters;

34 (k) Sections 23-75-104 – 23-75-105, and §23-75-116, referring to
 35 hospital and medical service corporations;

36 (l) Sections 23-79-101 – 23-79-107, 23-79-109 – 23-79-128, 23-79-131 –

1 23-79-134, and 23-79-202 – 23-79-210, referring to insurance contracts;

2 (m) Sections 23-85-101 – 23-85-132, 23-85-134, and 23-85-136,

3 referring to individual accident and health insurance;

4 (n) Sections 23-86-101 – 23-86-106, 23-86-108 – 23-86-111, and 23-86-

5 113 – 23-86-117, 23-86-119 – 23-86-120, 23-86-201 – 23-86-209, 23-86-301 –

6 23-86-314, and 23-86-401 – 23-86-406, referring to blanket and group accident

7 and health insurance; and

8 (o) Chapter 99 of this title, referring to health care providers.

9
10 SECTION 3. Arkansas Code 23-76-107 is amended to read as follows:

11 23-76-107. Establishment.

12 (a)(1) Any ~~corporation which~~ person that meets the requirements of §
13 ~~23-76-101 et seq.~~ § 23-76-102(9) may apply to the Insurance Commissioner for
14 and obtain a certificate of authority to establish and operate a health
15 maintenance organization.

16 (2) No person shall establish or operate a health maintenance
17 organization in this state, nor sell or offer to sell, nor solicit offers to
18 purchase or receive advance or periodic consideration in conjunction with a
19 health maintenance organization without obtaining a certificate of authority
20 under § 23-76-101 et seq.

21 (3) The corporation must have the express authority to operate a
22 health maintenance organization contained in its articles of incorporation.
23 Incorporation shall not be required of any entity which has been issued a
24 certificate of authority prior to March 30, 1987.

25 (b)(1) Every health maintenance organization, as of July 9, 1975,
26 shall submit an application for a certificate of authority under subsection
27 (c) of this section within sixty (60) days of the effective date of this
28 chapter.

29 (2) Each applicant may continue to operate until the
30 commissioner acts upon the application.

31 (3) In the event that an application is denied under § 23-76-
32 108, the applicant shall henceforth be treated as a health maintenance
33 organization whose certificate of authority has been revoked.

34 (c) Each application for a certificate of authority shall be verified
35 by an officer or authorized representative of the applicant, shall be in a
36 form prescribed by the commissioner, and shall set forth or be accompanied by

1 the following:

2 (1) A copy of the basic organizational document, if any, of the
3 applicant, such as the articles of incorporation, articles of association,
4 partnership agreement, trust agreement, or other applicable documents, and
5 all amendments thereto;

6 (2) A copy of the bylaws, rules and regulations, or similar
7 document, if any, regulating the conduct of the internal affairs of the
8 applicant;

9 (3) A list of the names, addresses, and official positions of
10 the persons who are to be responsible for the conduct of the affairs of the
11 applicant, including all members of the board of directors, board of
12 trustees, executive committee, or other governing board or committee, the
13 principal officers in the case of a corporation, and the partners or members
14 in the case of a partnership or association;

15 (4) A copy of any contract made or to be made between any
16 providers or persons listed in subdivision (c)(3) of this section and the
17 applicant;

18 (5) A statement generally describing the health maintenance
19 organization, its health care plans, facilities, and personnel;

20 (6) A copy of the form of evidence of coverage to be issued to
21 the enrollees;

22 (7) A copy of the form of the group contract, if any, which is
23 to be issued to employers, unions, trustees, or other organizations;

24 (8) Financial statements showing the applicant's assets,
25 liabilities, and sources of financial support. If the applicant's financial
26 affairs are audited by independent certified public accountants, a copy of
27 the applicant's most recent regular certified financial statement shall be
28 deemed to satisfy this requirement unless the commissioner directs that
29 additional or more recent financial information is required for the proper
30 administration of this chapter;

31 ~~(9) A description of the proposed method of marketing the plan,~~
32 ~~a financial plan which includes a three year projection of the initial~~
33 ~~operating results anticipated, and a statement as to the sources of working~~
34 ~~capital as well as any other sources of funding~~ A financial feasibility plan
35 which includes detailed enrollment projections, the methodology for
36 determining premium rates to be charged during the first twelve (12) months

1 of operation certified by an actuary or other qualified person, a projection
 2 of balance sheets, cash flow statements showing any capital expenditures,
 3 purchase and sale of investments and deposits with the state, and income and
 4 expense statements anticipated from the start of operations until the
 5 organization has had net income for at least one (1) year, and a statement as
 6 to the source of working capital as well as any other sources of funds;

7 (10) A On and after January 1, 2003, a power of attorney
 8 executed by the applicant, if not domiciled in this state, ~~appointing the~~
 9 ~~commissioner and his successors in office, and authorized deputies, and~~
 10 filed, along with a proper fee specified by the commissioner, with the
 11 commissioner's office to register an Arkansas resident to serve as the true
 12 and lawful attorney of the applicant in and for this state upon whom all
 13 lawful process in any legal action or proceeding against the health
 14 maintenance organization on a cause of action arising in this state may be
 15 served. In the event no registered agent has been chosen, the commissioner
 16 may be served until the appointment of an Arkansas registered agent for
 17 service of process has been entered upon the records of the commissioner;

18 (11) A statement or map reasonably describing the geographic
 19 areas to be served;

20 (12) A description of the complaint procedures to be utilized as
 21 required under § 23-76-116;

22 (13) A description of the procedures and programs to be
 23 implemented to meet the quality of health care requirements in § 23-76-
 24 108(a)(2);

25 (14) A description of the mechanism by which enrollees will be
 26 afforded an opportunity to participate in matters of policy and operation
 27 under § 23-76-110(b); ~~and~~

28 (15) A list of the names and addresses of all providers with
 29 which the health maintenance organization has agreements; and

30 ~~(15)-(16)~~ (16) Such other information as the commissioner may require
 31 to make the determinations required in § 23-76-108.

32 (d)(1) A health maintenance organization shall, unless otherwise
 33 provided for in this chapter, file a notice describing any major modification
 34 of the operation set out in the information required by subsection (c) of
 35 this section. The notice shall be filed with the commissioner prior to the
 36 modification. If the commissioner does not disapprove within sixty (60) days

1 of filing, the modification shall be deemed approved.

2 (2) The commissioner shall promulgate rules and regulations
3 exempting from the filing requirements of subdivision (c)(1) of this section
4 those items he deems unnecessary.

5
6 SECTION 4. Arkansas Code 23-76-111 is amended to read as follows:

7 23-76-111. Fiduciary responsibilities of director, officer, or partner.

8 (a) Any director, officer, or partner of a health maintenance
9 organization who receives, collects, disburses, or invests funds in
10 connection with the activities of the organization shall be responsible for
11 the funds in a fiduciary relationship to the enrollees.

12 (b) A health maintenance organization shall maintain in force a
13 fidelity bond or fidelity insurance on these employees and officers,
14 directors and partners in an amount not less than two hundred fifty thousand
15 dollars (\$250,000) for each health maintenance organization or a maximum of
16 five million dollars (\$5,000,000) in aggregate maintained on behalf of health
17 maintenance organizations owned by a common parent corporation, or the sum
18 prescribed by the commissioner.

19
20 SECTION 5. Arkansas Code 23-76-112(b) and (c) are amended to read as
21 follows:

22 (b)(1) No schedule of charges for enrollee coverage for health care
23 services, or amendment thereto, may be used in conjunction with any health
24 care plan until either a copy of the schedule, ~~or amendment thereto,~~ or the
25 methodology for determining charges has been filed with and approved by the
26 commissioner.

27 (2) ~~The charges may~~ Either a specific schedule of charges or a
28 methodology for determining charges shall be established in accordance with
29 the actuarial principles for various categories of enrollees, provided that
30 charges applicable to an individual enrollee in a group contract shall not be
31 individually determined based on the status of ~~his~~ the enrollee's health.
32 However, the charges shall not be excessive, inadequate, or unfairly
33 discriminatory. A certification by a qualified actuary, to the
34 appropriateness of the ~~charges~~ use of the methodology, based on reasonable
35 assumptions, shall accompany the filing along with adequate supporting
36 information.

1 (c)(1) The commissioner shall, within a reasonable period, approve any
 2 form if the requirements of subsection (a) of this section are met and any
 3 schedule of charges or methodology for determining charges if the
 4 requirements of subsection (b) of this section are met. It shall be unlawful
 5 to issue the form or to use the schedule of charges or methodology for
 6 determining charges until approved.

7 (2) If the commissioner disapproves the filing, he shall notify
 8 the filer promptly. In the notice, the commissioner shall specify the reasons
 9 for his disapproval and the findings of fact and conclusion which support his
 10 reasons. A hearing will be granted by the commissioner within sixty (60) days
 11 after a request in writing by the person filing. If the commissioner does not
 12 disapprove any form or schedule of charges within sixty (60) days of the
 13 filing of the forms or charges, they shall be deemed approved.

14 (3) If the commissioner disapproves any form or schedule of
 15 charges or methodology for determining charges, his disapproval and the
 16 findings of fact and conclusions which support his reasons shall be subject
 17 to judicial review pursuant to § 23-61-307. The review shall be upon the
 18 entire record, and the commissioner's decision shall be sustained if it is
 19 supported by the preponderance of the evidence in the record.

20
 21 SECTION 6. Arkansas Code 23-76-114 is amended to read as follows:
 22 23-76-114. Information to enrollees.

23 ~~Every health maintenance organization shall annually provide to its~~
 24 ~~enrollees:-~~

25 ~~(1) The most recent annual statement of financial condition~~
 26 ~~including a balance sheet and summary of receipts and disbursements;-~~

27 ~~(2) A description of the organizational structure and operation~~
 28 ~~of the health care plan and a summary of any material changes since the~~
 29 ~~issuance of the last report;-~~

30 ~~(3) A description of services and information as to where and~~
 31 ~~how to secure them; and~~

32 ~~(4) A clear and understandable description of the health~~
 33 ~~maintenance organization's method for resolving enrollee complaints.-~~

34 (a) A health maintenance organization shall make available to its
 35 subscribers a list of providers upon enrollment and re-enrollment.

36 (b) Every health maintenance organization shall provide within thirty

1 (30) days to its subscribers a notice of any material change in the operation
 2 of the organization, including any major change in its provider network, that
 3 will affect them directly.

4 (c) An enrollee shall be notified in writing by the health maintenance
 5 organization of the termination of the primary care provider who provided
 6 health care services to that enrollee. The health maintenance organization
 7 shall provide assistance to the enrollee in transferring to another
 8 participating primary care provider.

9 (d) The health maintenance organization shall provide to subscribers
 10 information on how services may be obtained, where additional information on
 11 access to services can be obtained, and a telephone number where the enrollee
 12 can contact the HMO, at no cost to the enrollee.

13
 14 SECTION 7. Arkansas Code 23-76-116(a)(2) is amended to read as
 15 follows:

16 (2) Each health maintenance organization shall submit to the
 17 commissioner and the director an annual report in a form prescribed by the
 18 commissioner after consultation with the director which shall include:

19 (A) A description of the procedures of such complaint
 20 system;

21 (B) The total number of complaints handled through such
 22 complaint system and a compilation of causes underlying the complaints filed;
 23 and

24 (C) The number, amount, and disposition of malpractice
 25 claims settled during the year by the health maintenance organization ~~and any~~
 26 ~~of the providers used by it.~~

27
 28 SECTION 8. Arkansas Code 23-76-122 is amended to add an additional
 29 subsection (f) to read as follows:

30 (f)(1) Any examination under this section that is to commence within
 31 one (1) year prior to the date a health maintenance organization shall cease
 32 to provide health care services in this state, may, upon application of the
 33 health maintenance organization and approval of the commissioner, be reduced
 34 in scope or waived in its entirety.

35 (2) The commissioner shall consider the following in determining
 36 whether a full or partial waiver may be granted:

- 1 (A) Claims payment history;
 2 (B) Consumer complaint history with the department;
 3 (C) Financial condition; and
 4 (D) Compliance with § 23-76-118.

5 (3) Any health maintenance organization requesting a waiver of
 6 an examination shall continue to comply with § 23-76-118 until such time as
 7 it is no longer providing health care services in this state.

8

9 SECTION 9. Arkansas Code 23-76-113(b) is amended to read as follows:

10 (b) The report shall be on forms prescribed by the commissioner. For
 11 the report to be filed March 1, ~~2000~~ 2002, and annually thereafter, the
 12 annual report prescribed by the commissioner shall be the ~~appropriate and~~
 13 ~~most recent~~ current edition, published by the National Association of
 14 Insurance Commissioners', of the "Annual Statement Blank For Health
 15 Maintenance Organizations", which shall be prepared in accordance with the
 16 National Association of Insurance Commissioners' "Annual Statement
 17 Instructions For Health ~~Maintenance Organizations~~"; and shall follow those
 18 accounting practices and procedures prescribed by and published in the ~~most~~
 19 ~~recent~~ current edition of the National Association of Insurance
 20 Commissioners' "Accounting Practices and Procedures Manual ~~For Health~~
 21 ~~Maintenance Organizations~~". Each authorized health maintenance organization
 22 shall furnish all information as called for by the National Association of
 23 Insurance Commissioners' "Annual Statement Blank For Health ~~Maintenance~~
 24 ~~Organizations~~"; further, it shall be verified by oath or affirmation of the
 25 health maintenance organization's president or vice president and secretary
 26 or actuary. The commissioner shall furnish to each domestic health
 27 maintenance organization two (2) copies of the forms on which the annual
 28 statement is to be made. The annual report shall include:

29 (1) An annual audited financial report certified by an
 30 independent certified public accountant;

31 (2) Any material changes in the information submitted pursuant
 32 to § 23-76-107(c);

33 (3) The number of persons enrolled during the year, the number
 34 of enrollees as of the end of the year, and the number of enrollments
 35 terminated during the year;

36 (4) A summary of information compiled pursuant to § 23-76-108 in

1 such form as required by the director; and

2 (5) Any other information, on an annual, quarterly, or more
3 frequent basis as the commissioner shall prescribe, relating to the
4 performance of the health maintenance organization which is necessary to
5 enable the commissioner to carry out his duties under this chapter.

6
7 SECTION 10. Arkansas Code 23-76-113(d) is amended to read as follows:

8 (d)(1) Beginning on and after January 1, 2000, each authorized health
9 maintenance organization shall prepare and file with the commissioner a
10 quarterly financial report on forms and at such times as shall be prescribed
11 by the commissioner. ~~The~~ For the reports to be filed January 1, 2002, and
12 quarterly reports thereafter, the quarterly financial report shall be the
13 ~~appropriate and most recent~~ current edition published by the National
14 Association of Insurance Commissioners~~-, the "Quarterly Statement Blank For~~
15 ~~Health Maintenance Organizations"~~, which shall be prepared in accordance with
16 the National Association of Insurance Commissioners' "Quarterly Statement
17 Instructions For Health Maintenance Organizations"; and shall follow those
18 accounting procedures and practices prescribed by the National Association of
19 Insurance Commissioners' "Accounting Practices And Procedures Manual ~~For~~
20 ~~Health Maintenance Organizations"~~.

21 (2) The quarterly statement shall be verified by the officers of
22 the health maintenance organization as required by the current edition,
23 published by the National Association of Insurance Commissioners~~-convention~~
24 ~~blank~~ of the quarterly statement instructions as a companion to the reporting
25 form prescribed by the commissioner.

26
27
28 /s/ Biggs

29
30
31 APPROVED: 4/13/2001