ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document **No. 724**

H. P. 494 House of Representatives, February 11, 1975

Referred to the Committee on Health and Institutional Services. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Morton of Farmington.

Cosponsor: Mr. LaPointe of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED SEVENTY-FIVE

AN ACT Creating the Maine Health Maintenance Organization Act.

Be it enacted by the People of the State of Maine, as follows:

24-A MRSA c. 56 is enacted to read:

CHAPTER 56

HEALTH MAINTENANCE ORGANIZATIONS

§ 4201. Short title

This chapter may be cited as the Health Maintenance Organization Act of 1975.

§ 4202. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Basic health care services. "Basic health care services" shall mean health care services which an enrolled population might reasonably require in order to be maintained in good health, including as a minimum, emergency care, inpatient hospital care and inpatient-outpatient physician services, x-ray services and laboratory services.

2. Enrollee. "Enrollee" shall mean an individual who has been enrolled in a health maintenance organization.

3. Evidence of coverage. "Evidence of coverage" shall mean any certificate, agreement or contract issued to an enrollee setting out the coverage to which he is entitled.

4. Health care services. "Health care services" shall mean any services included in the furnishing to any individual of medical or dental care, or hosptialization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury.

5. "Health Maintenance Organizations" means a public or private organization, which is organized under the laws of the Federal Government, this State or the laws of another state or the District of Columbia, and which:

A. Provides, arranges for, pays for or reimburses the cost of health care services, including at a minimum basic health care services to enrolled participants;

B. Is compensated, except for reasonable copayments, for basic health care services to enrolled participants solely on a predetermined periodic rate basis;

C. Provides physicians' services primarily directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis under which all such physicians and groups are provided effective incentives to avoid unnecessary or unduly costly utilization, regardless of whether any physician is individually compensated primarily on a fee-for-service basis or otherwise; and

D. Assures the availability, accessibility and quality, including effective utilization of the health care services which it provides or makes available through clearly identifiable focal points of legal and administrative responsibility.

Nothing herein shall prevent an organization from providing fee-for-service health care services as well as HMO services.

6. Insurer. "Insurer" includes every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurances.

7. Nonprofit hospital or medical service organization. "Nonprofit hospital or medical service organization" shall mean any organization defined in and authorized to act under Title 24, chapter 19.

8. Person. "Person" includes an individual, firm, partnership, corporation, association, syndicate, organization, society, business trust, attorney-in-fact and every natural or artificial legal entity.

9. Provider. "Provider" shall mean any physician, hospital or other person which is licensed or otherwise authorized in this State to furnish health care services.

10. Superintendent. "Superintendent" shall mean the Insurance Superintendent.

§ 4203. Establishment of health maintenance organizations

1. Notwithstanding any law of this State to the contrary, any person may apply to the superintendent for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this chapter. No person shall establish or operate a health maintenance organization in this State, nor sell or offer to sell, or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this chapter. A foreign corporation may qualify under this chapter, subject to its registration to do business in this State as a foreign corporation.

2. Every existing health maintenance organization as of the effective date of this chapter shall submit an application for a certificate of authority under subsection 3 within 30 days of the effective date of this chapter. Each such applicant may continue to operate until the superintendent acts upon the application. In the event that an application is denied under section 4204, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.

3. Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the superintendent and shall set forth or be accompanied by the following:

A. A copy of the basic organizational document, if any, of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement or other applicable documents and all amendments thereto;

B. A copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

C. A list of the names, addresses and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee or other governing board or committee, the principal officers in the case of a corporation and the partners or members in the case of a partnership or association;

D. A copy of any contract made or to be made between any providers or persons listed in paragraph C and the applicant;

E. A statement generally describing the health maintenance organization, its health care services, facilities and personnel;

F. A copy of the form of evidence of coverage to be issued to the enrollees;

G. A copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees or other organizations;

H. Financial statements showing the applicant's assets, liabilities and sources of financial support. If the applicant's financial affairs are audited

by independent certified public accountants, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement, unless the superintendent directs that additional or more recent financial information is required for the proper administration of this chapter;

I. A description of the proposed method of marketing the plan, a financial plan which includes a 3-year projection of the initial operating results anticipated and a statement as to the sources of working capital as well as any other sources of funding;

J. A power of attorney duly executed by such applicant, if not domiciled in this State, appointing the superintendent and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this State upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this State may be served;

K. A statement reasonably describing the geographic area or areas to be served;

L. A description of the complaint procedures to be utilized as required under section 4211;

M. A description of the procedures and programs to be implemented to meet the quality of health care requirements in section 4204, subsection 1, paragraph B;

N. A description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under section 4206, subsection 2;

O. A schedule of rates with supporting actuarial and other data;

P. A description of a procedure to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services and such other matters as may be reasonably required by the Commissioner of Health and Welfare;

Q. Such other information as the superintendent may reasonably require to make the determinations required in section 4204.

4. The superintendent may promulgate rules and regulations exempting from any filing requirements of those items he deems unnecessary.

§ 4204. Issuance of certificate of authority

1. Procedure upon receipt of an application for issuance of a certificate of authority. Upon receipt of an application for issuance of a certificate of authority, the superintendent forthwith shall transmit copies of such application and accompanying documents to the Commissioner of Health and Welfare.

A. The Commissioner of Health and Welfare shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

(1) Has demonstrated the willingness and potential ability to assure that such health care services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities and in a manner enhancing availability, accessibility and continuity of service;

(2) Has arrangements, established in accordance with regulations promulgated by the Commissioner of Health and Welfare with the advice of the State Comprehensive Health Planning Agency for an on-going quality of health care assurance program concerning health care processes and outcomes; and

(3) Has a procedure, established in accordance with regulations of the Commissioner of Health and Welfare, to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services, the availability and accessibility of its services and such other matters as may be reasonably required by the Commissioner of Health and Welfare.

B. Within 60 days of receipt of the application for issuance of a certificate of authority, the Commissioner of Health and Welfare shall certify to the superintendent whether the proposed health maintenance organization meets the requirements of this section. If the Commissioner of Health and Welfare certifies that the health maintenance organization does not meet such requirements, he shall specify in what respects it is deficient.

2. The superintendent shall issue or deny a certificate of authority to any person filing an application pursuant to section 4203 within 20 days of receipt of the certification from the Commissioner of Health and Welfare. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in section 4220, if the superintendent is satisfied that the following conditions are met:

A. The Commissioner of Health and Welfare certifies that the health maintenance organization's proposed plan of operation meets the requirements of this section;

B. The HMO conforms to the definition under section 4202, subsection 5.

C. The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees.

In making this determination, the superintendent may consider:

(1) The financial soundness of the health maintenance organization's arrangements for health care services and the schedule of charges used in connection therewith;

(2) The adequacy of working capital;

(3) Any agreement with an insurer, a nonprofit hospital or medical service corporation, a government or any other organization for insuring or providing the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the plan;

(4) Any agreement with providers for the provision of health care services; and

(5) Any arrangements for insurance coverage or an adequate plan for self insurance to respond to claims for injuries arising out of the furnishings of health care services.

D. The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section 4206;

E. Nothing in the proposed method of operation, as shown by the information submitted pursuant to section 4203 or by independent investigation, is contrary to the public interest; and

F. Any deficiencies certified by the Commissioner of Health and Welfare have been corrected.

3. A certificate of authority shall be denied only after compliance with the requirements of section 4219.

§ 4205. Powers of health maintenance organizations

1. The powers of health maintenance organizations include, but are not limited to the following:

A. Subject to such licensure laws or regulations as are applicable, the purchase, lease, construction, renovation, operation or maintenance of hospitals, medical facilities, or both, and their ancillary equipment, and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the organization;

B. The making of loans to a medical group under contract with it in furtherance of its program or the making of loans to a corporation or corporations under its control for the purpose of acquiring or constructing medical facilities and hospitals or in furtherance of a program providing health care services to enrollees;

C. The furnishing of health care services through providers which are under contract with or employed by the health maintenance organization;

D. The contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment and administration;

E. The contracting with an insurance company licensed in this State for the provision of insurance or indemnity or with a nonprofit hospital or medical service organization for reimbursement against the cost of health care services provided by the health maintenance organization;

F. The offering, in addition to basic health care services, of:

(1) Additional health care services;

(2) Indemnity benefits covering out-of-area services;

(3) Indemnity benefits, in addition to those relating to out-of-area services.

§ 4206. Governing body

1. The governing body of any health maintenance organization may include providers, other individuals, or both.

2. Such governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions or through the use of other mechanisms.

§ 4207. Evidence of coverage and charges for health care services

1. Every person who has enrolled as a legal resident of this State in a health maintenance organization is entitled to evidence of coverage. If the enrollee obtains coverage under a health maintenance organization through an insurance policy or contract whether by option or otherwise, the insurer, nonprofit hospital and medical service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

2. No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this State until a copy of the form of the evidence of coverage, or amendment thereto, has been filed with and approved by the superintendent.

3. An evidence of coverage shall contain:

A. No provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading or deceptive as defined in section 4212; and

B. A clear and complete statement, if a contract, or a reasonably complete summary, if a certificate, of:

(1) The health care services and the insurance of other benefits, if any, to which the enrollee is entitled;

(2) Any limitations on the services, kinds of services, benefits, or kind of benefits, to be provided, including any deductible or copayment feature;

(3) Where and in what manner information is available as to how services may be obtained;

(4) The total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts or an indication whether the plan is contributory or noncontributory with respect to group certificates; and

(5) A clear and understandable description of the health maintenance organization's method of resolving enrollee complaints.

Any subsequent change may be evidenced in a separate document issued to the enrollee.

4. A copy of the form of the evidence of coverage to be used in this State, and any amendment thereto shall be subject to the filing and approval requirements of this section unless it is subject to the jurisdiction of the superintendent under the laws governing health insurance, or nonprofit hospital or medical service organization, in which event the filing and approval provisions of such laws shall apply.

5. No schedule of charges for enrollee coverage for health care services, or amendment thereto, may be used in conjunction with any health maintenance organization until a copy of such schedule, or amendment thereto, has been filed with and approved by the superintendent.

6. Such charges may be established in accordance with actuarial principles for various categories of enrollees, provided that charges applicable to an enrollee shall not be individually determined based on the status of his health. However, the charges shall not be excessive, inadequate or unfairly discriminatory. A certification, by a qualified actuary, to the appropriateness of the charges, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

7. The superintendent shall, within a reasonable period, approve any form and any schedule of charges if the requirements of this section are met. It shall be unlawful to issue such form or to use such schedule of charges until approved. If the superintendent disapproves such filing, he shall notify the filer. In the notice, the superintendent shall specify the reasons for his disapproval. A hearing will be granted within 10 days after a request in writing by the person filing. If the superintendent does not disapprove any form or schedule of charges within 30 days of the filing of such form or charges, they shall be deemed approved.

8. The superintendent may require the submission of whatever relevant information he deems necessary in determining whether to approve or disapprove a filing made pursuant to this section.

§ 4208. Annual report

1. Every health maintenance organization shall annually, on or before the first day of April, file a report verified by at least 2 principal officers with the superintendent with a copy to the Commissioner of Health and Welfare, covering the preceding calendar year.

2. Such report shall be on forms prescribed by the superintendent and shall include:

A. A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent public accountant; such financial statement shall conform to re-

port methods or procedures as prescribed in a regulation promulgated by the superintendent;

B. Any material changes in the information submitted pursuant to section 4203;

C. The number of persons enrolled during the year, the number of enrollees as of the end of the year and the number of enrollments terminated during the year;

D. A summary of information compiled pursuant to section 4204 in such form as required by the Commissioner of Health and Welfare; and

E. Such other information relating to the performance of the health maintenance organization as is necessary to enable the superintendent to carry out his duties under this chapter.

§ 4209. Information to enrollees

Every health maintenance organization shall annually provide to its enrollees:

1. The most recent annual statement of financial condition including a balance sheet and summary of receipts and disbursements;

2. A description of the organizational structure and operation of the health maintenance organization and a summary of any material changes since the issuance of the last report;

3. A description of services and information as to where and how to secure them; and

4. A clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

§ 4210. Open enrollment

1. After a health maintenance organization has been in operation 24 months, it shall have an annual open enrollment period of at least one month during which it accepts enrollees up to the limits of its capacity, as determined by the health maintenance organization, in the order in which they apply for enrollment. A health maintenance organization may apply to the superintendent for authorization to impose such underwriting restrictions upon enrollment as are necessary to preserve its financial stability, to prevent excessive adverse selection by prospective enrollees, or to avoid unreasonably high or unmarketable charges for enrollee coverage for health care services. The superintendent shall approve or deny such application within 10 days of the receipt thereof from the health maintenance organization.

2. Health maintenance organizations providing or arranging for services exclusively on a group contract basis may limit the open enrollment provided for in this section to all members of the group or groups covered by such contracts.

§ 4211. Complaint system

1. Every health maintenance organization shall establish and maintain a complaint system which has been approved by the superintendent, after consultation with the Commissioner of Health and Welfare, to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services.

2. Each health maintenance organization shall submit to the superintendent and the Commissioner of Health and Welfare an annual report in a form prescribed by the superintendent after consultation with the Commissioner of Health and Welfare, which shall include:

A. A descirption of the procedures of such complaint system;

B. The total number of complaints handled through such complaint system and a compilation of causes underlying the complaints filed; and

C. The number, amount and disposition of malpractice claims settled during the year by the health maintenance organization.

3. The health maintenance organization shall maintain records of written complaints filed with it concerning other than health care services and shall submit to the superintendent a summary report at such times and in such format as the superintendent may require. Such complaints involving other persons shall be referred to such persons with a copy to the superintendent.

4. The superintendent and the Commissioner of Health and Welfare may examine such complaint system.

§ 4212. Prohibited practices

1. No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For purposes of this chapter:

A. 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 maintenance organization;

B. 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 maintenance organization, if such benefit or advantage or absence of limitation, exclusion or disadvantage does not in fact exist;

C. An evidence of coverage shall be deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typo-

graphy and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health maintenance organizations and evidences of coverage therefor, to expect benefits services, charges or other advantages which the evidence of coverage does not provide or which the health maintenance organization issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

2. An enrollee may not be cancelled or nonrenewed except for the failure to pay the charge for such coverage or for such other reasons as may be promulgated by the superintendent.

3. No health maintenance organization, 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.

§ 4213. Regulation of agents

The superintendent may, after notice and hearing, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents. An agent means a person directly or indirectly associated with a health maintenance organization who engages in solicitation or enrollment.

§ 4214. Powers of insurers and nonprofit hospital or medical service corporations

1. An insurance company licensed in this State or a nonprofit hospital or medical service organization may, either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization under this chapter. Notwithstanding any other law which may be inconsistent herewith, any 2 or more such insurance companies, or nonprofit hospital or medical service organizations, or subsidiaries or affiliates thereof may jointly organize and operate a health maintenance organization.

2. Notwithstanding any provision of this Title, an insurer or a nonprofit hospital and medical service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided through health maintenance organizations and to provide coverage in the event of the failure of the health maintenance organization to meet its obligations.

3. The enrollees of a health maintenance organization constitute a permissible group, under such laws, and shall not be counted as part of any group for the purposes of chapter 35. Among other things, under such contracts, the insurer or nonprofit hospital or medical service corporation may make benefit payments to health maintenance organizations for health care services rendered by providers pursuant to the health maintenance organization.

4. With respect to the definitions of groups contained in chapter 35, the enrollees of a health maintenance organization from any such group shall

constitute a permissible group themselves and shall be excluded from consideration in determining whether or not the remaining members of such group are likewise a permissible group under said chapter 35.

§ 4215. Examinations

1. The superintendent may make an examination of the affairs of any health maintenance organization as often as he deems it necessary for the protection of the interests of the people of this State, but not less frequently than once every 3 years.

2. The Commissioner of Health and Welfare may make an examination concerning the quality of health care services of any health maintenance organization as often as he deems it necessary for the protection of the interests of the people of this State, but not less frequently than once every 3 years.

3. Every health maintenance organization shall submit its books and records relating to health care services to such examinations and in every way facilitate them. For the purpose of examinations, the superintendent and the Commissioner of Health and Welfare may administer oaths to and examine the officers and agents of the health maintenance organization.

4. The expenses of examinations under this section shall be assessed against the organization being examined and remitted to the superintendent or the Commissioner of Health and Welfare for whom the examination is being conducted.

5. In lieu of such examination, the superintendent or Commissioner of Health and Welfare may accept the report of an examination made by persons holding comparable office of another state.

§ 4216. Suspension or revocation of certificate of authority

1. The superintendent may suspend or revoke any certificate of authority issued to a health maintenance organization under this chapter if he finds that any of the following conditions exist:

A. The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under section 4203, unless amendments to such submissions have been filed with and approved by the superintendent.

B. The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of section 4207;

C. The health maintenance organization does not provide or arrange for basic health care services;

D. The Commissioner of Health and Welfare certifies to the superintendent that:

(1) The health maintenance organization does not meet the requirements of section 4204, subsection 1, paragraph B; or

(2) The health maintenance organization is unable to fulfill its obligations to furnish health care services.

E. The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

F. The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under section 4206.

G. The health maintenance organization has failed to implement the complaint system required by section 4211 in a manner to reasonably resolve valid complaints;

H. The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

I. The continued operation of the health maintenance organization would be hazardous to its enrollees;

J. The health maintenance organization has otherwise failed to substantially comply with this chapter.

2. A certificate of authority shall be suspended or revoked only after compliance with the requirements of section 4219.

3. When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees and shall not engage in any advertising or solicitation whatsoever.

4. When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The superintendent may, by written order, permit such further operation of the organization as he may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

§ 4217. Rehabilitation, liquidation or conservation of health maintenance organizations

Any rehabilitation, liquidation or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation or conservation of an insurance company and shall be conducted under the supervision of the superintendent pursuant to the laws governing the rehabilitation, liquidation or conservation of insurance companies. The superintendent may institute summary proceedings in the same manner as provided in the laws governing delinquent insurers, and he may apply for an order directing him to

rehabilitate, liquidate or conserve a health maintenance organization when in his opinion the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this State.

§ 4218. Regulations

The superintendent may, after notice and hearing, promulgate reasonable rules and regulations as are necessary or proper to carry out this chapter. Such rules and regulations shall be subject to review in accordance with sections 229 to 236.

§ 4219. Administrative procedures

1. When the superintendent has cause to believe that grounds for the denial of an application for a certificate of authority exist, or that grounds for the suspension or revocation of a certificate of authority exist, he shall notify the health maintenance organization and the Commissioner of Health and Welfare in writing, specifically stating the grounds for denial, suspension or revocation and fixing a time of at least 30 days thereafter for a hearing on the matter.

2. The Commissioner of Health and Welfare, or his designated repersentative, shall be in attendance at the hearing and shall participate in the proceedings. The recommendation and findings of the Commissioner of Health and Welfare with respect to matters relating to the quality of health care services provided in connection with any decision regarding denial, suspension or revocation of a certificate of authority shall be conclusive and binding upon the superintendent. After such hearing, or upon the failure of the health maintenance organization to appear at such hearing, the superintendent shall take action as is deemed advisable on written findings which shall be mailed to the health maintenance organization with a copy thereof to the Commissioner of Health and Welfare. Any person aggrieved by action of the superintendent taken pursuant to this section may appeal therefrom to the Superior Court for the county in which said person has a principal place of business. The appeal shall be taken within 30 days after notice of said action. The appeal shall be tried de novo to the court sitting without a jury.

§ 4220. Fees

1. Every health maintenance organization subject to this chapter shall pay to the superintendent the following fees:

A. For filing an initial application for a certificate of authority, $500;

B. For filing each annual report, $50.

2. Fees charged under this section shall be distributed as follows: 50% to the superintendent and 50% to the Commissioner of Health and Welfare.

§ 4221. Penalties and enforcement

1. The superintendent may, in lieu of suspension or revocation of a certificate of authority under section 4216, levy an administrative penalty in an amount not less than $100 nor more than $500, if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The superintendent may

augment this penalty by an amount equal to the sum that he calculates to be the damages suffered by enrollees or other members of the public.

2. If the superintendent or the Commissioner of Health and Welfare shall for any reason have cause to believe that any violation of this chapter has occurred or is threatened, the superintendent or Commissioner of Health and Welfare may give notice to the health maintenance organization and to the representatives, or other persons who appear to be involved in such suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation.

Proceedings under this subsection shall not be governed by any formal procedural requirements and may be conducted in such manner as the superintendent or the Commissioner of Health and Welfare may deem appropriate under the circumstances.

3. The superintendent may issue an order directing a health maintenance organization or a representative of a health maintenance organization to cease and desist from engaging in any act or practice in violation of this chapter.

Within 10 days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred.

4. In the Case of any violation under this chapter, if the superintendent elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to this section, the superintendent may apply to the Superior Court to issue an injunction restraining the company in whole or in part from proceeding further with its business, or he may apply for an order of the court to command performance consistent with contractual obligations of the health maintenance organization.

§ 4222. Statutory construction and relationship to other laws

1. Except as otherwise provided in this chapter, provisions of the insurance law shall not be applicable to any health maintenance organization granted a certificate of authority under this chapter. This provision shall not app'y to an insurer licensed and regulated pursuant to the insurance laws of this State, except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

2. Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

3. Any health maintenance organization authorized under this chapter shall not be deemed to be practicing medicine and shall be exempt from provisions of law relating to the practice of medicine.

§ 4223. Filings and reports as public documents

All applications, filings and reports required under this chapter shall be treated as public documents.

§ 4224. Confidentiality of medical information

Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this chapter; or upon the express consent of the enrollee or applicant; or pursuant to statute or court order for the production of evidence or the discovery thereof; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the health maintenance organization is entitled to claim.

§ 4225. Commissioner of Health and Welfare's authority to contract

The Commissioner of Health and Welfare, in carrying out his obligations under sections 4204, subsection 1, paragraph B, 4215 and 4216, subsection 1, may contract with qualified persons to make recommendations concerning the determinations required to be made by him. Such recommendations may be accepted in full or in part by the Commissioner of Health and Welfare.

§ 4226. Federal legislation

Nothing in this chapter shall prohibit any health maintenance organization from meeting the requirements of any federal law which would authorize such health maintenance organization to receive federal financial assistance or certification or to enroll beneficiaries assisted by federal funds.

FISCAL NOTE

The licensing fees being charged under this draft legislation are to be divided on a 50/50 basis with the Department of Health and Welfare. The filing fee for initial application for a Certificate of Authority is $500 and the filing fee for each annual report is $50. Therefore, the Insurance Bureau would realize initially a revenue of $250 upon receipt of an application for a Certificate of Authority and $25 each year thereafter, providing a Certificate of Authority was granted. These fees would be realized for each Health Maintenance Organization established under this proposed law. Therefore, the Bureau of Insurance has indicated that it can see no additional expense to that Bureau as a result of this proposed statute.

STATEMENT OF FACT

The purpose of this Act is to create a legal framework (with flexibility for refining and experimenting) for the organization and operation of a wide variety of Health Maintenance Organizations (HMO's), including those based on the medical care foundation concept. Also, to provide a regulatory monitoring system which will provide for the prevention and/or correction of abuses and assist in the enforcement and development of HMO's.