

# MAINE STATE LEGISLATURE

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N I N E T Y - T H I R D   L E G I S L A T U R E

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Legislative Document

No. 968

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S. P. 335

In Senate, February 18, 1947.

Transmitted by revisor of statutes pursuant to joint order

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary.

Presented by Senator Morrill of Cumberland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-SEVEN

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**AN ACT to Provide for the Incorporation, Supervision, Regulation and Dissolution of Medical Service Plan Corporations, and to Prescribe Penalties for Violations.**

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

**R. S., c. 56, §§ 232-A-232-DD, additional.** Chapter 56 of the revised statutes is hereby amended by adding thereto 30 new sections to be numbered 232-A to 232-DD, to read as follows:

**‘Medical Service Plan Corporations**

**Sec. 232-A. Title.** Sections 232-A to 232-DD, inclusive, shall be known and may be cited as “The Medical Service Plan.”

**Sec. 232-B. Definitions.** For the purposes of sections 232-A to 232-DD, inclusive, the following terms shall have the respective meanings set forth in this section, unless different meanings are plainly indicated by the context:

**I. “Medical service plan corporation”** means a corporation organized under the terms of sections 232-A to 232-DD, inclusive, for the sole and specific purpose of establishing and operating a medical service plan.

II. "Medical service plan" means a plan or system under which medical service may be rendered to a subscriber or other beneficiary, by a physician or surgeon duly licensed to practice medicine under the provisions of section 3 of chapter 61, at the expense of a medical service plan corporation, in consideration of prepayments made by or on behalf of a subscriber prior to the occurrence of the conditions requiring medical service.

III. "Medical service" means the ordinary and usual professional services rendered by physicians or surgeons duly licensed to practice medicine in all of its branches under the provisions of section 3 of chapter 61; and shall not mean hospital services.

IV. "Subscriber" means a natural person to whom a subscription certificate has been issued by a medical service plan corporation.

V. "Beneficiary" means a person designated in a subscription certificate as one entitled to receive medical service.

VI. "Subscription certificate" means a certificate issued to a subscriber by a medical service corporation, setting forth the terms and conditions upon which a medical service plan corporation shall be liable to pay for medical service rendered to a subscriber or beneficiary.

VII. "Covered dependents" means a subscriber's spouse or a subscriber's child under the age of 18 years.

VIII. "Participating physician" means a physician or surgeon duly licensed to practice medicine in all of its branches under the provisions of section 3 of chapter 61, and who shall by written agreement with a medical service plan corporation, undertake to furnish medical service to the plan's subscribers and their covered dependents, and to abide by its by-laws, rules and regulations.

IX. "Commissioner" means the insurance commissioner of the state of Maine.

X. All masculine pronouns may import the masculine, feminine or neuter gender.

XI. "Person" means any of the following: a natural person, corporation, copartnership or association of persons.

Sec. 232-C. Prohibition of other medical service plan corporations; exceptions. It shall be unlawful for any person, except a medical service plan corporation chartered in accordance with the provisions of sections

232-A to 232-DD, inclusive, and operating in accordance with authority from the commissioner, to establish, maintain or operate a medical service plan, or to solicit subscribers to or enter into contracts with respect to a medical service plan. This prohibition, however, shall not be construed as preventing a person from furnishing medical services for the prevention of disease among his employees or from furnishing such medical service as is required under the workmen's compensation laws and related legislation, when the employee is not charged for such services; nor shall it be construed to prohibit an insurance company, or other corporation or society which is subject to the supervision of the commissioner, from operating in accordance with the laws governing insurance companies, or such corporations or societies; nor shall it be construed to prohibit the continued operation of any medical or health service plan in existence and functioning upon the effective date of sections 232-H to 232-DD, inclusive, or specifically heretofore authorized by private and special act of the legislature.

Sec. 232-D. Formation of corporation; commissioner to regulate. Seven or more persons who are physicians or surgeons duly licensed to practice medicine in all of its branches under the provisions of section 3 of chapter 61, residents of this state, may form, in accordance with the provisions of sections 232-A to 232-DD, inclusive, a corporation under the provisions of chapter 50 for the purpose of establishing and operating a non-profit medical service plan or plans. Such corporation shall be subject to regulation and supervision by the commissioner as hereinafter provided, but shall not be subject to the laws of this state with respect to insurance corporations except as provided in sections 232-A to 232-DD, inclusive.

Sec. 232-E. Management of corporation by trustees; term; how elected. The business and affairs of a medical service plan corporation shall be managed by a board of trustees, which shall have the power to adopt and to amend, from time to time, by-laws governing the conduct of the corporation's business. The board of trustees shall consist of 9 persons, residents of this state, and shall be selected in the manner in this section set forth. The original board of trustees shall be appointed by the incorporators. Five members of the board shall be physicians or surgeons duly licensed to practice medicine in all of its branches under the provisions of section 3 of chapter 61, and they shall serve for a term of 3 years; except that as to the original board, 2 of the 5 shall be appointed for 2 years and the remaining 3 for 3 years. The other 4 members of the board shall be citizens of the United States and residents of Maine, and shall be representative of the subscribers to the medical service plan, and of the approved

hospitals in the area in which the plan is operative. These 4 members of the board shall likewise serve for a term of 3 years; except that as to the original board, 2 of the 4 shall be appointed for 2 years and the remaining 2 for 3 years. Vacancies occurring on the board may be filled by the board in the manner prescribed by the by-laws. As the terms of the 5 members required by this section to be licensed physicians or surgeons expire, they shall be replaced, from time to time, by physicians or surgeons elected by the councilors of the Maine Medical Association, in the manner prescribed by the by-laws. As the terms of the 4 members not required by this section to be physicians or surgeons expire, they shall be replaced, from time to time, by election by the corporation's subscribers, in the manner prescribed by the by-laws.

Sec. 232-F. By-laws may limit services and subscribers. A medical service plan corporation may, in the discretion of its board of trustees, through its by-laws, limit or define the classes of person who shall be eligible to become subscribers, limit and define the benefits which it will furnish, and may divide such benefits as it undertakes to furnish into classes or kinds. In the absence of any such limitation or division of service, such a corporation may provide either or both general and special medical and surgical benefits, including such service as may be necessarily incident to medical care. Such corporation may limit the issuance of subscription certificates to residents of such counties as are specified in its by-laws.

Sec. 232-G. Physicians may become participating physicians. Every physician or surgeon duly licensed to practice medicine in all of its branches under the provisions of section 3 of chapter 61, and who is reputable and in good standing, shall be eligible to become a participating physician or surgeon in the medical service plan corporation operating in the county in which he resides or practices, under such terms and conditions as are imposed on other participating physicians or surgeons under similar circumstances. A medical service plan corporation shall impose no restrictions on the physicians or surgeons who treat its subscribers as to methods of diagnosis or treatment. The private physician-surgeon-patient relationship shall be maintained, and a subscriber shall at all times have free choice of any doctor of medicine who is a participating physician or surgeon in the corporation and who agrees to accept a particular beneficiary as a patient.

Sec. 232-H. Application to commissioner for license. Except as otherwise provided in section 232-C, no person shall offer to the public any medical service plan or otherwise engage in the business of a medical ser-

vice plan corporation without having first received a license from the commissioner. Application therefor shall be made to the commissioner upon forms prescribed by him, and shall include the following information:

I. The names, places of residence, occupations and qualifications of the incorporators;

II. The location of the corporation's principal office, and the name and address of its registered agent;

III. A detailed financial statement, including the amount of working capital to be contributed to the corporation before it shall commence doing business, as well as the name of each contributor, and the amount by him contributed and the terms of such contribution;

IV. A copy of the by-laws to be adopted by the board of trustees upon the issuance of a charter;

V. Specimen copies of all subscription certificates which it is proposed the corporation shall issue to subscribers, which certificates shall set forth in detail the rates to be charged subscribers and the nature and extent of the medical service which the subscriber or other beneficiary shall be entitled to receive at the expense of the corporation;

VI. Copies of all agreements to be entered into between the medical service plan corporation and participating physicians or surgeons, which shall set forth in detail the terms and conditions upon which a participating physician or surgeon shall be obliged to render medical service to subscribers of the corporation;

VII. A detailed statement as to the medical service plan or plans which the corporation proposes to offer, including the rates to be charged, the benefits to be provided and the names of the counties in which it is proposed the corporation shall have authority to engage in business;

VIII. A copy of the proposed charter under which the corporation intends to operate;

IX. Proof satisfactory to the commissioner that in the counties in which it is proposed that the medical service plan corporation shall operate, at least a majority of the licensed physicians and surgeons residing in such counties shall have agreed to become participating physicians or surgeons in association with the medical service plan corporation.

Sec. 232-I. Issuance of licenses; amendments. If after consideration of the statements and documents submitted to him and after such additional investigation as he deems necessary, the commissioner finds that:

I. The corporation has complied with the requirements of sections 232-A to 232-DD, inclusive;

II. The subscription certificates to be offered by the corporation and its methods of operation would not work a fraud on the subscriber;

III. The rates to be charged and the benefits to be provided are fair and reasonable to both the subscriber and to the corporation;

IV. The amount of money actually available for working capital is sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the issuance of the charter and is not less than \$5,000;

V. The amounts contributed as working capital of a corporation are repayable without interest and only out of the surplus earnings of the corporation;

VI. Adequate and reasonable reserves to insure the majority of the contracts are provided; and

VII. In the county or counties in which a corporation proposes to operate, a majority or more of the eligible resident doctors of medicine have agreed to become participating physicians or surgeons and to render the medical services for which the corporation agrees to pay, the commissioner shall approve and issue a license to the applicant corporation.

Amendments to a license shall be made by application to the commissioner in the same manner as on original application.

Sec. 232-J. Control by commissioner. After the issuance of a license, the commissioner as he deems in the public interest, may authorize or require a medical service plan corporation to solicit and fulfill contracts, to charge rates or to utilize soliciting methods different from those on which the license was based, provided that such contracts and practices are in compliance with the provisions of sections 232-A to 232-DD, inclusive, and are not violative of other laws of this state.

The commissioner may revoke or amend, after reasonable notice and hearing, any license, certificate, order, authority or consent made by him to a medical service plan corporation on being satisfied that the further solicitation of subscribers or further continuance of the practices in question will work a fraud on subscribers, or that the rates charged or the benefits provided are not fair and reasonable to both the subscriber and the corporation. The commissioner may also cancel the authority of the cor-

poration to transact business in any particular county if he shall find that less than a majority of the eligible licensed doctors of medicine residing or practicing in that county are participating physicians or surgeons.

Sec. 232-K. Examination by commissioner. The commissioner shall examine or cause to be examined, at least once in 5 years, and whenever the commissioner deems it prudent, any medical service corporation. The commissioner shall have free access to all the books, records and papers of the corporation, and may summon and examine under oath its officers, agents, employees and other persons in relation to its affairs and condition. The commissioner shall require every such corporation to keep its books, records, accounts and vouchers in such manner that he or his authorized representatives may readily verify its annual statement and determine whether the corporation has complied with the law.

Sec. 232-L. No contract with subscriber until commissioner has approved rates. No medical service plan corporation shall enter into any contract with a subscriber until it has filed with the commissioner a schedule of rates to be paid by a subscriber to each type of contract, and the commissioner has approved the rate for each type of contract.

Sec. 232-M. No subscription certificate to issue until approved by commissioner. No subscription certificate shall be issued by any medical service plan corporation until the form thereof has been filed with and approved by the commissioner, together with all applications, riders and endorsements for use in connection with the issuance or renewal thereof.

Sec. 232-N. Terms of subscription certificate; renewal. Every subscription certificate made by a medical service plan corporation shall provide for the payment for medical service as therein specified for a period of 12 months from the date of issue of the subscription certificate. Any such contract may provide that it shall ordinarily be renewed from year to year, unless there shall have been 1 month's prior written notice of termination either by the subscriber or by the corporation. During the first contract year the provisions of the contract may provide that the inception of coverage may be deferred for not more than 2 months from date of issue of the contract and may exclude treatment for illness or other condition requiring medical service existing at the inception of the contract.

Sec. 232-O. Contract must include certain provisions. Every contract entered into by a medical service plan corporation and a subscriber shall be in writing and a certificate stating the terms and conditions thereof shall be furnished the subscriber. No such subscription certificate shall be issued unless it contains the following provisions:



I. A statement of the amounts payable to the corporation by the subscriber and the times and manner in which such amounts shall be paid;

II. A statement of the nature of the medical services to be paid for and the period during which the certificate shall be effective; and if there are any types of medical services to be excepted, a detailed statement of such exceptions printed as hereinafter specified;

III. A statement of the terms or conditions, if any, upon which the certificate may be cancelled or otherwise terminated at the option of either party;

IV. A statement that the subscription certificate constitutes the entire contract between the corporation and the subscriber, and includes any endorsements attached;

V. A statement that no statement by the subscriber in his application for a certificate shall void the contract or be used in any legal proceeding thereunder, unless such application or an exact copy thereof is included in or attached to the certificate, and that no agent or representative of such corporation, other than an officer or officers designated in the certificate, is authorized to change the contract or waive any of its provisions;

VI. A statement that if the subscriber defaults in making any payment under the certificate, the subsequent acceptance of a payment by the corporation or by one of its duly authorized agents shall reinstate the certificate, but with respect to sickness and injury may cover only such sickness as may be first manifested more than a specified number of days, not exceeding 10, after the date of such acceptance;

VII. A statement of the period of grace which will be allowed the subscriber for making any payment due under the contract. Such period shall not be less than 10 days;

VIII. A statement that indemnity in the form of cash will not be paid to any subscriber except in reimbursement for payments made by the subscriber to a physician or surgeon and for which the corporation was liable at the time of such payment.

Sec. 232-P. Print and form of certificate. In every such subscription certificate, referred to in section 232-O:

I. All printed portions shall be plainly printed in type of which the face is not smaller than 10 point;

II. There shall be a brief description of the subscription certificate on its first page, and on its filing back in type of which the face is not smaller than 14 point;

III. The exceptions of the contract shall appear with the same prominence in the certificate as the benefits to which they apply; and

IV. If the contract contains any provisions purporting to make any portion of the license or of the by-laws of the corporation a part of the contract, such portions shall be set forth in full in the subscription certificate.

Sec. 232-Q. May contract with participating physicians. A medical service plan corporation may enter into agreements with physicians or surgeons qualified as set forth herein, under which such physicians or surgeons become participating physicians or surgeons in a plan operated by the corporation; such corporation may make to such physicians or surgeons such payments as shall have accrued to them by reason of services performed under the plan and on behalf of the corporation by them. Payment for medical services may be made to participating or non-participating physicians or surgeons at rates adopted by the board of trustees. A medical service plan corporation may enter into contracts for the payment of medical services to the subscribers or members of similar medical service plan corporations of other states, subject to the supervision of such other states, and shall have the right to reimburse any other medical service plan corporation or physicians or surgeons of another state or of the counties of this state in which the corporation does not transact business for service rendered to its subscribers, or beneficiaries named in the certificates issued to such subscribers, at the same rate paid participating physicians or surgeons under the certificate of the subscriber.

Sec. 232-R. Limitation on expense of soliciting. No such corporation subject to the provisions of sections 232-A to 232-DD, inclusive, shall, except upon the approval of the commissioner, disburse during any one calendar year more than 10% of the aggregate amount of payments received from subscribers during that year as expenditures for the solicitation of subscribers, except that during the 1st year after the issuance of a license such corporation may so disburse not more than 20% of such amount, and during the 2nd year not more than 15% thereof.

Sec. 232-S. Limitation on certain expense. No such corporation shall disburse during any one year, except upon the approval of the commissioner, a sum greater than 20% of payments received from subscribers

during that year as administrative expenses. The term "administrative expense" as used in this section shall include all expenditures for nonprofessional services and in general all expenses not directly connected with the payment for medical services, but not including expenses of soliciting subscriptions.

Sec. 232-T. Funds to be invested in investments legal for savings banks reserves. The funds of any medical service plan corporation may be invested only in accordance with the requirements provided by law for the investments of funds of savings banks. Every medical service plan corporation after its first full calendar year of doing business shall accumulate and maintain a special contingent reserve over and above its reserves and liabilities, at the rate of 2% annually of its net premium income so long as the special contingent reserve does not exceed 55% of its average annual income for the previous 5 years.

Sec. 232-U. Annual statement to be filed; fee. A medical service plan corporation transacting business in this state shall file annually, on or before the 1st day of March, with the insurance commissioner, a statement subscribed and sworn to by its president and secretary, or in their absence, by 2 of its principal officers, showing its financial condition at the close of business on the 31st day of December of the year last preceding, and showing its business transacted during that year, which statement shall be in such form and contain such matters as the commissioner shall prescribe. The commissioner may also require information from such a corporation or its officers in relation to its condition or affairs, or any matter connected with its transactions. The commissioner shall receive for such annual statement filed as herein provided the sum of \$30. Said fee shall be used solely to defray administrative charges and salaries for examinations required by law and for examining and auditing filed annual statements.

Sec. 232-V. Penalty. A medical service plan corporation which neglects to make and file its annual statement in the form and within the time provided by section 232-U, or neglects to reply in writing to inquiries of the commissioner within such reasonable time as may be specified by him, shall forfeit \$25 for each day's neglect, and upon notice by the commissioner to that effect, its authority to do new business in this state shall cease while such default continues.

Sec. 232-W. Agent must be licensed. No person, for himself or in behalf of any individual, firm, association, or corporation, shall sell or offer to sell, any such medical service plan as is provided for in sections 232-A to 232-DD, inclusive, without being licensed therefor by the commissioner.

Sec. 232-X. Commissioner to license. The commissioner shall grant a license to sell such service as is provided for in sections 232-A to 232-DD, inclusive, in behalf of any individual, firm, association, or corporation licensed therefor, to any applicant who shall furnish the commissioner with satisfactory evidence of his integrity and authority to sell the service offered. Such license, when granted, shall expire on January 1st thereafter, and annually thereafter may be renewed, so long as the commissioner shall be satisfied of the licensee's integrity, authority, and responsibility to provide the service stipulated.

Sec. 232-Y. Commissioner may apply for injunction. If the commissioner is satisfied, as to any medical service corporation, that:

- I. It has failed to comply with the provisions of its license; or
- II. It is being operated for profit; or
- III. It is fraudulently conducted; or
- IV. Its condition is such as to render its further transaction of business hazardous to the public or to its subscribers; or
- V. Its officers and agents have refused to submit to an examination under the provisions of section 232-K; or
- VI. It has compromised, or is attempting to compromise, with its creditors on the ground that it is financially unable to pay its claims in full; or
- VII. It is insolvent,

he may apply to the supreme judicial court for an injunction restraining it from further proceeding with its business. The court may forthwith issue a temporary injunction restraining the transaction of any business, and it may, after a full hearing, make the injunction permanent, and appoint one or more receivers to take possession of the books, papers, moneys and other assets of the corporation, settle its affairs, and distribute its funds to those entitled thereto, subject to such rules and orders as the court may prescribe.

Sec. 232-Z. Corporation shall mail list of participating doctors to subscribers. Every medical service plan corporation shall mail annually to each subscriber a list of the names and addresses of all of the physicians and surgeons in the county of the subscriber's residence who have agreements with the corporation to act as participating physicians or surgeons.

Sec. 232-AA. Corporation may accept contracts for needy. A medical service plan corporation may receive and accept from governmental or pri-

vate agencies or from other persons as defined in sections 232-A to 232-DD, inclusive, payments covering all or part of the cost of subscriptions to provide medical care for needy and other individuals. However, all contracts for medical care shall be between the medical service plan corporation and the person to receive such care.

Sec. 232-BB. Not liable. A medical service plan corporation shall not be liable for injuries resulting from negligence, misfeasance, malfeasance, non-feasance or malpractice on the part of any officer or employee of the corporation or on the part of any physician or surgeon, whether participating or not, in the course of rendering medical service to subscribers and beneficiaries.

Sec. 232-CC. Declared non-profit, non-taxable. Medical service plan corporations organized under the provisions of sections 232-A to 232-DD, inclusive, shall be operated and conducted not-for-profit. Every medical service plan organized hereunder is hereby declared to be a charitable and benevolent corporation, and all of its funds and property shall be exempt from every state, county, district, and municipal tax, and all other taxes and license fees, from the payment of which charitable and benevolent corporations or institutions are now or may hereafter be exempt.

Sec. 232-DD. Penalty for violation. Any person, or any agent or officer of the corporation who violates any provisions of sections 232-A to 232-DD, inclusive, or who makes any false statement with respect to any report or statement required by said sections or required by the commissioner under said sections shall be guilty of a misdemeanor.'