Medical Service.
Maine.

State of Maine
Senate Chamber
Augusta, Maine 04330

January 22, 1975

Senator Jerrold B. Speers, Chairman
Legislative Council
State House
Augusta, Maine

Dear Senator Speers:

In accordance with House Paper 1541, which ordered a study of the subject-matter of L.D. 1230, An Act Creating the Maine Health Maintenance Organization Act, I enclose herein the final report of the Committee.

Respectfully submitted,

Walter W. Hichens

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Chairman

WWH/ac

COMMITTEE ON HEALTH AND INSTITUTIONAL SERVICES

REPORT ON ITS STUDY OF THE SUBJECT MATTER OF L.D. 1230:

AN ACT CREATING THE MAINE HEALTH MAINTENANCE ORGANIZATION ACT

Senate

Walter W. Hichens, Chairman
Edwin H. Greeley
Carroll E. Minkowsky

House

Roswell E. Dyar, Chairman
Glenys W. Berry
Dorothy McCormick
Robert N. Soulas
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Domenico A. Santoro
Norman P. Whitzell
Harland C. Goodwin, Jr.
Thomas R. LaPointe
Leatrice M. Morin

Submitted to the

Legislative Council

107th Legislature

January 22, 1975

Origin of the Study:

L.D. 1230, AN ACT Creating the Maine Health Maintenance Organization Act, was introduced during the Regular Session of the 106th Legislature in 1973. After its public hearing, the bill was reported as "Leave to Withdraw" by the Committee on State Government.

Although the bill thus failed to be enacted, a joint order, H.P. 1541, was introduced which directed the Legislative Research Committee to study the subject matter of L.D. 1230 and "to determine whether or not the best interests of the state would be served by enactment of such legislation." Since the duties of the Legislative Research Committee had been assumed by the Joint Standing Committees, the Legislative Council assigned the study of L.D. 1230 to the Committee on Health and Institutional Services.

Reasons for the Study:

The reasons for the study fall into 2 general areas: the increasing costs of health care and the recent attention given to health maintenance organizations (HMO's) at the Federal level.

The costs of health care throughout the nation have risen sharply during the last 20 years. Between 1950 and 1968 the per capita annual expenditures for health care increased from $78 to $441. During the same period the Consumer Price

Index rose 45%, while hospital costs increased by 171%. In addition to these rises, the rapid growth in private health insurance coupled with the beginning of Medicare and Medicaid has caused a significant increase in the demand for health services. The catalysts needed to expand the supply of these services, however, have been either lacking or insufficiently utilized. The results of this imbalance have been a severe inflation in health care costs and a corresponding decrease in the availability and accessibility of health services.

The strain which this increasing demand has placed on the existing health care system has stimulated a number of proposals for its restructuring. One of these proposals focuses on the health maintenance organization (HMO) as a model for a competitive alternative to the present health care delivery system. The growing interest in the concept of the HMO resulted in the passage by Congress in December 1973 of P.L. 93-222, the Health Maintenance Organization Act of 1973 (S14). Under this law 325 million dollars was authorized to encourage and assist the development of HMO's during the next five years.

Until recently the development of HMO's within the state has enjoyed no widespread interest. Presently, no

organization in Maine functions exclusively as an HMO. Two groups, however, Rural Health Associates in Farmington and Penobscot Bay Medical Center in Rockland, and the Lubec Medical Center in Lubec have components which operate in accordance with the principles of typical HMO's.

Because of this absence of interest in HMO development, the legislature has neither sought to identify the need for enabling and regulatory legislation nor assessed the value of HMO's as a vehicle for meeting a portion of health care needs within the state. The continuing pressures on the existing health care system and the incentive for HMO development provided by the Federal law, however, have enhanced the possibilities for HMO development.

The committee believes that the passage of the Federal law and the availability of substantial Federal dollars for the planning and early start-up stages of HMO's have aroused new and expanded interest among several health service groups within the state. The committee's study, then, represents a timely and carefully considered legislative response to this changing set of conditions and to the anticipated increase in HMO activities within the state.

Course of study adopted by the committee:

A comprehensive study of HMO's would necessarily include both a thorough analysis of the strengths and shortcomings of these entities and a full assessment of the statutory changes which HMO development might require. The committee recognized, however, that such a comprehensive approach exceeded the intent of the study order and, therefore, determined to narrow the scope of its own efforts. In this study, then, the committee has concentrated on identifying and evaluating the need for HMO enabling legislation and any other related statutory changes.

During the first phase of the study, the committee attempted to familiarize itself with the concept of the health maintenance organization and its place in a changing system of health care delivery. Accordingly, the committee initiated its work with a series of meetings involving representatives of the Bureau of Insurance, the Department of Health and Welfare and Comprehensive Health Planning. The existing statutory framework for hospital and medical service organizations was reviewed and the intended effect of each section of L.D. 1230 was closely considered. Following these sessions, the committee sought to braoden its exposure to the topic

of HMO's by meeting with representatives from Associated Hospital Services (Blue Cross - Blue Shield) and the Union Mutual Insurance Company.

In the final part of the first phase of the study, the committee held public hearings in the areas served by two existing HMO-type groups in Maine. At these hearings in Strong and Rockland, the committee received a wide range of testimony relating to HMO's from subscribers, health administrators in the respective programs, physicians and concerned citizens.

With the background information on HMO's which it had assembled and the detailed analysis of L.D. 1230 which it had completed, the committee turned its attention to the Federal HMO law as the second phase of its study. After reviewing the provisions of the Federal law, the committee recognized that any projected state enabling legislation must be carefully blended with these Federal requirements.

To accurately assess the impact on Maine of the new Federal law, the committee needed to fully review the regulations issued pursuant to the law. Unfortunately, these regulations were initially delayed for several months and then published only in stages during the last six months of 1974. Although a large number of

these regulations have now been promulgated in the Federal Register, still another set is expected in early January.

The delays and then staggered appearance of the Federal regulations seriously disrupted the committee's progress in its study. During the period in which the regulations were awaited, however, several members attended conference which focused on HMO development and the shaping of state enabling legislation.

As the next phase of its study, the committee became acquainted with the major regulations relating to the effects of the Federal laws on state enabling legislation. In addition, the committee met with a consultant from H.E.W. whose services were made available to any states contemplating H.M.O. legislation. A full explanation of the Federal law was provided and the committee received and studied a draft of suggested enabling legislation designed for Maine.

The Federal Law:

Since the committee believes that the Federal law is a principle stimulus for the increasing interest in HMO's and a major determinent of any state legislation, a description of the more important provisions of this law is necessary.

The Federal law precisely defines an HMO in terms of the kinds of health care services which it must provide and the organizational structure through which it must operate. The Federal law, however, defines HMO's merely for the purposes of Federal assistance. Groups may develop HMO's which do not conform to the Federal guidelines. Such organizations would fail to qualify for Federal financial assistance but would not necessarily fail to be HMO's. The committee believes that in drafting any state HMO enabling legislation, these groups falling outside the Federal law must be considered. State legislation which is tied too tightly to the Federal law might ignore these groups and, thus, leave them either wholly unregulated or treated as simply a traditional health insurer.

To qualify for financial assistance under the Federal law, an HMO must provide a certain range of "basic" and "supplemental health services". These services must be offered to the members of the HMO on the basis of a fixed and uniform per person payment determined by a community rating system. By means of pre-payment on a periodic basis, the HMO member is eligible for any amount of the full range of services offered by the HMO. The HMO itself is simply the public or non-profit legal entity which offers this range of health care services by means of the fixed pre-payment method.

(P.L. 93-222; Sec. 1301-1302)

In addition to the definitions of HMO services, payment methods and health care providers, the law prescribes a set of organizational requirements for HMO's. Guidelines for the availability of services are described and provisions for financial solvency are set according to standards established by the Secretary of Health, Education and Welfare. Enrollment and membership policies, including a required 30 day open enrollment period each year, are set out for both urban and rural oriented HMO's. At least one-third of the membership of the HMO's governing body must be members of the HMO. Any HMO must carry out a continuing internal quality control program subject to standards set by the Secretary of HEW and must offer medical social services and health education services to its members. Finally, an HMO is required to develop procedures for public accountability of its activities. (P.L. 93-222; Sec. 1301)

A large number of employers also fall under one important provision of the law. Any employer who is subject to the minimum wage provisions of the Fair Labor Standards Act and who employs at least 25 individuals is required to offer the option of joining an HMO, when it is available, as part of the employees

health care plan. If an area is served by more than one HMO, then, the employee must be given a choice between the HMO's available. No employer, however, is required to pay more for the costs of an employee's membership in an HMO than is being paid for any other health plan offered. (P.L. 93-222; Sec. 1310) This provision should be of special interest to employers involved in union contracts with their employees. The HMO option will certainly become an item to be decided upon through the collective bargaining process.

The Federal law includes two provisions which are of special significance to Maine as it contemplates the enactment of enabling and regulatory legislation.

First, HMO's in rural areas must receive 20% of all funds available for HMO assistance in any fiscal year. Further, according to the regulations, requirements which are more appropriate to urban rather than rural areas may be waived by the Secretary of HEW in processing an application from a rural HMO. (P.L. 93-222; Sec. 1303, 1304, 1305)

Second, the Federal law provides that qualified HMO's may not be restricted in their operations by certain types of legal hindrances at the state level. (P.L. 93-222; Sec. 1311) The Federal law supersedes state law in these instances. Provisions of state law which may be superseded include:

1. any requirement that the services of the HMO must be approved by a medical society;

2. any requirement that physicians must constitute all or a percentage of the HMO's governing body;

3. any requirement that a certain percentage of the physicians in the served area participate in the HMO;

4. any prohibition on advertising by a professional group for the purpose of enrolling members;

5. any requirement that the HMO achieve standards for initial capitalization and the establishment of financial reserves demanded of insurers of health care services. Neither states nor the Federal government is prohibited from establishing standards of financial solvency for HMO's. This provision of the Federal law merely prevents any state from applying the standards required of traditional health insurers to HMO's.

The committee believes that each of these guidelines for restrictive state laws needs to be carefully considered in the development of any enabling legislation.

The Federal law provides for 325 million dollars over a 5 year period beginning in fiscal 1974 to successful HMO applicants throughout the country. This financial assistance is available for feasibility surveys, planning assistance, initial development and operating assistance for rural HMO's. In fiscal 1975, 55 million dollars has been authorized and appropriated while in 1976 another 85 million dollars will be available. HMO projects qualifying for this Federal money may receive grants;

loans and contracts in any or all of the eligibility categories.

The legal setting in Maine:

The committee believes that the money available under the Federal HMO Act has significantly changed the potential for HMO development within the state. In order to assess the need for additional state legislation, the committee reviewed the existing statutory requirements in the area of medical service organizations.

Presently, Maine has no laws which refer explicitly to HMO's. The enabling legislation for non-profit hospital or medical service organizations, 24 MRSA §§2301 ff, established conditions for the operations of such groups as Associated Hospital Services (Blue Cross - Blue Shield). Since Blue Cross - Blue Shield differs markedly in its structure, operating procedures and services provided from typical HMO's, this law in its present form is inappropriate for meaningful HMO regulation. In addition, the law contains several provisions which, even if applicable to an HMO, would be superseded by the Federal law.

The Bureau of Insurance and the Department of Health and Welfare, then, currently find themselves with insufficient statutory tools to handle the special characteristics of HMO's. These two agencies have by in-

formal agreement been able to monitor activities of the existing HMO-type groups. This arrangement, however, depends completely on the continuing good relationship between the state agency and the monitored corporation, and is, therefore, less satisfactory than the clear guidelines provided by statutes and regulations. If additional HMO's are developed, these present informal patterns may simply become unworkable.

In the absence of any additional state legislation, all regulation of HMO's qualifying under the Federal law will be carried out by the Secretary of Health, Education and Welfare. HMO's which do not qualify under the provisions of the Federal law will continue to be largely unregulated at any level of government.

The committee believes that the state has a strong interest in the protection of those people who become members of HMO's. The existing regulation of Federally funded HMO's coupled with the absence of statutory controls for HMO's falling outside the Federal law allows insufficient involvement by the state in this area of health services. If national health insurance in any of the forms now proposed is enacted by Congress, the interest in HMO development and membership will be even further increased. The committee believes, therefore, that additional state enabling and regulatory legislation is necessary.