

TITLE 27  
INSURANCE

CHAPTER 21A  
HEALTH MAINTENANCE ORGANIZATIONS

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§ 27-21A-1. Definitions.

As used in this chapter, the following terms shall have the following meanings, respectively:

- (1) AGENT. A person who is appointed or employed by a health maintenance organization and who engages in solicitation of membership in such organization. This definition does not include a person enrolling members on behalf of an employer, union or other organization.
- (2) BASIC HEALTH CARE SERVICES. Emergency care, inpatient hospital and physician care, and outpatient medical services.
- (3) COMMISSIONER. The commissioner of insurance.
- (4) ENROLLEE. An individual who is enrolled in a health maintenance organization.
- (5) EVIDENCE OF COVERAGE. Any certificate, agreement, or contract issued to an enrollee setting out the coverage to which he is entitled.
- (6) HEALTH CARE SERVICES. Any services included in the furnishing to

any individual of medical or dental care, or hospitalization 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, injury or physical disability.

(7) HEALTH MAINTENANCE ORGANIZATION. Any person that undertakes to provide or arrange for basic health care services through an organized system which combines the delivery and financing of health care to enrollees. The organization shall provide physician services directly through physician employees or under contractual arrangements with either individual physicians or a group or groups of physicians. The organization shall provide basic health care services directly or under contractual arrangements. When reasonable and appropriate, the organization may provide physician services and basic health care services through other arrangements. The organization may provide, or arrange for, health care services on a prepayment or other financial basis.

(8) INSURER. Every insurer authorized in this state to issue contracts of accident and sickness insurance. Hospital service nonprofit corporations, nonprofit medical service corporations, and nonprofit health care corporations are included within such term.

(9) PERSON. Any natural or artificial person including, but not limited to, individuals, partnerships, associations, trusts, or corporations.

(10) PROVIDER. Any physician, hospital, or other person which is licensed or otherwise authorized in this state to furnish health care services.

(11) SCHEDULE OF CHARGES. A statement of the method used by a health maintenance organization to establish rates;

(12) STATE HEALTH OFFICER. The executive officer of the state department of public health;

(13) UNCOVERED EXPENDITURES. The costs of health care services that are covered by a health maintenance organization, for which an enrollee would also be liable in the event of the organization's insolvency. (Acts 1986, No. 86-471, § 1.)

#### § 27-21A-2. Establishment of health maintenance organizations.

(a) Notwithstanding any law of this state to be contrary, any person may apply to the commissioner 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 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 under the provisions of sections 10-2A-220, et seq.

(b) Health maintenance organizations licensed as of May 29, 1986, shall be issued a certificate of authority in accordance with section 27-21A-29.

(c) 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 commissioner, and shall set forth or be accompanied by the following:

(1) A certified copy of the organizational documents of the applicant such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

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

(3) A list of the names, addresses, official positions, and such biographical information as may be required by the commissioner concerning 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;

(4) A copy of any contract made or to be made between any persons listed in subdivision (3) and the applicant;

(5) A copy of the form of evidence of coverage to be issued to the enrollees;

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

(7) 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 certified financial statement shall be deemed to satisfy this requirement unless the commissioner directs that additional or more recent financial information is required for the proper administration of this chapter;

(8) A description of the proposed method of marketing, a financial plan which includes a projection of operating results anticipated until the organization has had net income for at least one year, and a statement as to the sources of working capital as well as any other sources of funding;

(9) A power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner 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;

(10) A statement reasonably describing the geographic area or areas to be served;

(11) A description of the complaint procedures to be utilized as required under section 27-21A-10;

(12) A description of the procedures and programs to be implemented to meet the health care requirements in subdivision (a)(2) of section 27-21A-3;

(13) The applicant's most recent report of examination and all annual reports and other periodic reports filed by the applicant within the past year in the applicant's state of domicile and state within which it maintains its principal place of business, if different from state of domicile; as well as any similar reports which the applicant may be required to file under federal law, if applicable;

(14) Such other information as the commissioner or state health officer may require to make the determinations required in section 27-21A-3.

(d)(1) An applicant or a health maintenance organization holding a certificate of authority granted hereunder shall, unless otherwise provided for in this act, file a notice describing any material modification of the operation set out in the information required by subsection (c). Such notice shall be filed with the commissioner and the state health officer prior to modification. If the commissioner does not disapprove within (30) days of filing, such modification shall be deemed approved;

(2) The commissioner or state health officer may promulgate rules and regulations exempting from the filing requirements of subdivision (d)(1) those items he deems unnecessary.

(e) An applicant, or a health maintenance organization holding a certificate of authority granted hereunder shall file with the commissioner all contracts of reinsurance. Any agreement between the organization and an insurer shall be subject to the laws of this state regarding reinsurance. All reinsurance agreements and any modifications thereto must be approved by the commissioner. If the commissioner does not disapprove such agreements or modifications within 30 days of filing, such agreements or modifications shall be deemed approved. Reinsurance agreements shall remain in full force and effect for at least 90 days following written notice by registered mail or cancellation by either party to the commissioner. (Acts 1986, No. 86-471, § 2.)

§ 27-21A-3. Issuance of certificate of authority.

(a)(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall forthwith transmit copies of such application and accompanying documents to the state health officer.

(2) The state health officer shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

a. 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;

b. Has arrangements, established in accordance with the regulations promulgated by the state health officer for an on-going quality assurance program concerning health care processes and outcomes; and

c. Has a procedure, established in accordance with regulations of the state health officer, 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 state health officer.

d. Has demonstrated that the health maintenance organization will effectively provide, or arrange for, the provision of health care services.

Such arrangements shall be established in accordance with rules promulgated by the state health officer for an on-going quality assurance/utilization review program concerning health care processes and outcomes.

e. Has demonstrated that a copy of the form or group contract which is to be issued to employers, unions, trustees, or other organizations or individuals is in compliance with rules promulgated by the state health officer; and

f. Has demonstrated that nothing in the proposed method of operation, as shown by the information submitted pursuant to section 27-21A-2, or by independent investigation is contrary to the public interest.

(3) Within 90 days of receipt of the application for issuance of a certificate of authority, the state health officer shall certify to the commissioner that the proposed health maintenance organization meets the requirements of subdivision (a)(2) or notify the commissioner that the health maintenance organization does not meet such requirements and specify in what respects it is deficient.

(b) After receipt of the certification from the state health officer, the commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to section 27-21A-2. Issuance of a certificate of authority shall be granted upon payment of the application fee prescribed in section 27-21A-21 if the commissioner is satisfied that the following conditions are met:

(1) The ownership, control or management of the entity is competent and trustworthy and possesses managerial experience that would make the proposed health maintenance organization beneficial to the subscribers. The commissioner shall not grant or continue to license the business of a health maintenance organization in this state at any time the commissioner has good reason to believe that the ownership, control, or management of the organization is under the control of any person whose business operations are, or have been marked by business practices or conduct that is to the detriment of the public, stockholders, investors, or creditors; by the improper manipulation of assets or of accounts; or by bad faith;

(2) The state health officer certifies, in accordance with subdivision (a)(3), that the health maintenance organization's proposed plan of operation meets the requirements of subdivision (a)(2);

(3) Except to the extent of contractually required provisions for copayments, the health maintenance organization will effectively provide or arrange for the provision of basic health care services

through insurance, written contractual agreements, or other existing arrangements; and

(4) The contracts for basic health care services contain a provision that providers shall hold the enrollee harmless for the payment of the cost of health care services in any event including, but not limited to, nonpayment of the health maintenance organization, or the health maintenance organization's insolvency. This provision shall not prohibit collection of supplemental charges or copayments on the health maintenance organization's behalf made in accordance with terms of any applicable agreement between the health maintenance organization and the enrollee.

(5) 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 commissioner shall consider:

a. The financial soundness of the applicant and its arrangements for health care services and the schedule of charges used in connection therewith;

b. The adequacy of working capital;

c. Any agreement with an insurer or other organization for insuring 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 health maintenance organization;

d. Any agreement form or contract form with providers for the provision of health care services; and

e. Any deposit of cash or securities submitted in accordance with section 27-21A-12.

(6) Nothing in the proposed method of operation, as shown by the information submitted pursuant to section 27-21A-2 or by independent investigation, is contrary to the public interest;

(7) Any deficiencies identified by the state health officer have been corrected; and

(8) The form or group contract, if any, which is to be issued to employers, unions, trustees, or other organizations is in compliance with the rules and regulations of the state insurance department as such rules and regulations specifically apply to health maintenance organizations. Any provisions of this chapter to the contrary notwithstanding, no provision of this chapter shall exempt any HMO from compliance with the rules and regulations required for licensing or in any way exempt any HMO participant or enrollee from quality care standards and regulations as a condition for licensure. Any HMO under contract as of April 1, 1986, with the Alabama medicaid agency that has a grant with a national foundation and is licensed by the Alabama department of public health shall not be responsible for any of the fees, taxes, and other financial regulations so long as the grant is in existence. Any HMO which contracts with the medicaid agency shall be exempt from the financial responsibilities and taxes listed in this chapter for that percentage of enrollees that are medicaid recipients. These HMOs shall also be exempt from any provision necessary for the medicaid agency to comply with federal regulations. (Acts 1986, No. 86-471, § 3.)

#### §27-21A-4. Powers of health maintenance organizations.

(a) The powers of a health maintenance organization include, but are not limited to the following:

(1) The purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and their ancillary equipment;

(2) The making of loans other than in the ordinary course of business, to providers under contract with it in furtherance of its program or the making of loans to a corporation or corporations in which it owns a majority interest for the purpose of acquiring or constructing medical facilities and hospitals or in furtherance of a program providing health care services to enrollees.

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

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

(5) The purchase, lease, construction, or renovation of property as may reasonably be required for its principal office or for such purposes as may be necessary in the transaction of the business of the organization;

(6) The contracting with an insurance company licensed in this state to do business in this state, or a health care service plan authorized to transact business in this state, for the provision of insurance, indemnity, or reimbursement against the cost of health care services provided by the health maintenance organization.

(7) The offering of other health care services, in addition to basic health care services or other required health care services.

(b) (1) A health maintenance organization shall file notice, assuring compliance with any applicable state or federal laws, with adequate supporting information, with the commissioner prior to the exercise of any power granted in subsections (a)(1), (a)(2), or (a)(4). The commissioner shall disapprove such exercise of power only if in his opinion it would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the commissioner does not disapprove within 30 days of the filing, it shall be deemed approved.

(2) The commissioner may promulgate rules and regulations exempting from the filing requirement of subdivision (b)(1) those activities having a de minimis effect. (Acts 1986, No. 86-471, § 4.)

#### § 27-21A-5. Governing body.

The governing body of any health maintenance organization may include providers, or other individuals, or both. (Acts 1986, No. 86-471, § 5.)

#### § 27-21A-6. Fiduciary responsibilities of directors, officers, employees and partners.

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

(b) A health maintenance organization shall maintain in force a fidelity bond on employees and officers in an amount not less than \$25,000 or such other sum as may be prescribed by the commissioner. All such bonds shall be written with at least a one-year discovery period and if written with less than a three-year discovery period shall contain a provision that no cancellation or termination of the bond, whether by or at the request of the insured or by the underwriter, shall take effect prior to the expiration of 90 days after written notice of such cancellation or termination has been filed with the commissioner unless an earlier date of such cancellation or termination is approved by the commissioner.

(c) Any officer, or director, or any member of any committee or any employee of a health maintenance organization who is charged with the duty of investing or handling the organization's funds shall not deposit or invest such funds except in the organization's corporate name; except, that such health maintenance organization may for its convenience hold any equity investment in a street name or in the name of a nominee; shall not borrow the funds of such organization; shall not be pecuniarily interested in any loan, pledge or deposit, security, investment, sale, purchase, exchange, reinsurance or other similar transaction or property of such insurer except as a stockholder or member and shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, any such transaction made by, or on behalf of, such insurer.

(d) No health maintenance organization shall guarantee any financial obligation of any of its officers or directors.

(e) This section shall not prohibit such a director, or officer, or member of a committee or employee from becoming a member of the health maintenance organization and enjoying the usual rights so provided for its members, nor shall it prohibit any such officer, director, or member of a committee or employee from participating as a beneficiary in any pension trust, deferred compensation plan, profit-sharing plan or stock option plan authorized by the health maintenance organization and to which he may be eligible, nor shall it prohibit any director or member of a committee from receiving a reasonable fee for legal services actually rendered to such health maintenance organization.

(f) The commissioner may, by regulations from time to time, define and permit additional exceptions to the prohibition contained in subsection (c) of this section solely to enable payment of reasonable compensation to the director who is not otherwise an officer or employee of the health maintenance organization, or to a corporation or firm in which a director is interested, for necessary services performed or sales or purchases made to, or for, the health maintenance organization's business and in the usual private, professional or business capacity of such director or such corporation or firm. (Acts 1986, No. 86-471, § 6.)

§ 27-21A-7. Evidence of coverage and charges for health care services.

(a)(1) Every enrollee residing in this state is entitled to an evidence of coverage. If the enrollee obtains such coverage through an insurance policy or a contract issued by a health care service plan, the insurer or the health care service plan 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 basic form of the evidence of coverage, or amendment thereto, has been filed with the commissioner and the state health officer, and approved by the commissioner.

(3) An evidence of coverage shall contain:

a. No provisions or statements which encourage misrepresentation, or which are untrue, misleading or deceptive as defined in subsection (a) of section 27-21A-13; and

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

1. The health care service and the insurance or other benefits, if any, to which the enrollee is entitled;

2. Any limitations on the services, kinds of services, benefits, or kinds 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 payments for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts; and

5. A clear and understandable description of the health maintenance organization's method for resolving enrollee complaints. Any subsequent change may be evidenced in a separate document issued to the enrollee.

(b) (1) No schedule of charges for enrollee coverage for health care services, or amendment thereto, may be used until a copy of such schedule, or amendment thereto, has been filed with and approved by the commissioner.

(2) Such schedule of charges shall be established in accordance with actuarial principles for various categories of enrollees, provided that the charges applicable to any enrollee shall not be individually determined based on his health status. Charges shall not be excessive, inadequate, or unfairly discriminatory. A certification, by a qualified actuary or other qualified person acceptable to the commissioner as to the appropriateness of

the use of the charges, based on reasonable assumptions, shall accompany the filing along with adequate supporting information.

(c) The commissioner shall within 30 days approve any form if the requirements of subsection (a) are met and the commissioner shall within 30 days approve any schedule of charges if the requirements of subsection (b) are met. It shall be unlawful to issue such form or to use such schedule of charges until approved. If the commissioner disapproves such filing, he shall notify the filer. In the notice, the commissioner shall specify the reasons for his disapproval. A hearing will be granted within 30 days after a request in writing by the person filing. If the commissioner does not approve any form or if the commissioner does not approve any schedule of charges within 30 days of the filing of such forms or schedule of charges, they shall be deemed approved.

(d) The commissioner 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. (Acts 1986, No. 86-471, § 7.)

#### § 27-21A-8. Reporting requirements.

Every health maintenance organization shall annually, on or before the first day of March, file a report verified by at least two principal officers with the commissioner, with a copy to the state health officer, covering the preceding calendar year. Such report shall be on forms prescribed by the commissioner, and shall include:

- (1) A financial statement of the organization;
- (2) Any material changes in the information submitted pursuant to subsection (c) of section 27-21A-2;
- (3) The number of persons enrolled at the beginning and end of the year;
- (4) A summary of information compiled pursuant to paragraph (a)(2)c of section 27-21A-3;
- (5) The amount of uncovered and covered expenditures that are payable and more than 90 days past due; and
- (6) Such additional information or reports as are deemed

reasonably necessary and appropriate by the commissioner to enable him to carry out his duties under this chapter. (Acts 1986, No. 86-471, § 8.)

#### § 27-21A-9. Information to enrollees.

Every health maintenance organization shall provide promptly to its enrollees notice of any material change in the operation of the organization that will affect them directly. (Acts 1986, No. 86-471, § 9.)

#### § 27-21A-10. Complaint system.

(a)(1) Every health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner, after consultation with the state health officer, to provide reasonable procedures for the resolution of written complaints initiated by enrollees.

(2) Each health maintenance organization shall submit to the commissioner and the state health officer an annual report in a form prescribed by the commissioner, after consultation with the state health officer, which shall include:

- a. A description 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 and other claims relating to the service or care rendered by the health maintenance organization made by enrollees of the organization that were settled during the year by the health maintenance organization. All such



information shall be held in confidence by the commissioner.

(b) The commissioner or the state health officer may examine such complaint system. (Acts 1986, No. 86-471, § 10.)

§ 27-21A-11. Investments.

With the exception of investments made in accordance with subdivisions (a)(1), (a)(2), (a)(5) and subsection (b) of section 27-21A-4, the funds of a health maintenance organization shall be invested only in securities or other investments permitted by the laws of this state for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the commissioner may permit. (Acts 1986, No. 86-471, § 11.)

§ 27-21A-12. Protection against insolvency.

(a) Unless otherwise provided below, each health maintenance organization shall deposit with the commissioner, or with any organization or trustee acceptable to him through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures acceptable to him in the amount set forth in this section.

(b) The amount for an organization that is beginning operation shall be the greater of: (1) five percent of its estimated expenditures for health care services for its first year of operation, (2) twice its estimated average monthly uncovered expenditures for its first year of operation, or (3) \$100,000. At the beginning of each succeeding year, unless not applicable, the organization shall deposit with the commissioner, or organization, or trustee, cash, securities, or any combination of these or other measures acceptable to the commissioner, in an amount equal to four percent of its estimated annual uncovered expenditures for that year.

(c) Unless not applicable, an organization that is in operation on May 29, 1986, shall make a deposit equal to the larger of: (1) one percent of the preceding 12 months uncovered expenditures, or (2) \$100,000 on the first day of the fiscal year beginning six months or more after May 29, 1986.

In the second fiscal year, if applicable, the amount of the additional deposit shall be equal to two percent of its estimated annual uncovered expenditures. In the third fiscal year, if applicable, the additional deposit shall be equal to three percent of its estimated annual uncovered expenditures for that year, and in the fourth fiscal year and subsequent years, if applicable, the additional deposit shall be equal to four percent of its estimated annual uncovered expenditures for each year. Each year's estimate, after the first year of operation shall reasonably reflect the prior year's operating experience and delivery arrangements.

(d) The commissioner may waive any of the deposit requirements set forth in subsections (a) and (b) above whenever satisfied that the organization has sufficient net worth and an adequate history of generating net income to assure its financial viability for the next year, or its performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income, or the assets of the organization or its contracts with insurers, health care service plans, governments, or other organizations are reasonably sufficient to assure the performance of its obligations; provided, however, that a minimum deposit of \$100,000 shall be required in all cases.

(e) When an organization has achieved a net worth composed of investments authorized under section 27-21A-11, but not including land, buildings, and equipment, of at least \$1 million or has achieved a net worth including direct investments in organization-related land, buildings, and equipment of at least \$5 million, the annual deposit requirement shall not apply.

The annual deposit requirement shall not apply to an organization if the total amount of the accumulated deposit is equal to 25 percent of its estimated annual uncovered expenditures for the next calendar year, or the capital and surplus requirements for the formation for admittance of an

accident and health insurer in this state, whichever is less.

If the organization has a guaranteeing organization which has been in operation for at least five years and has a net worth not including land, buildings and equipment of at least \$1 million or which has been in operation for at least 10 years and has a net worth including direct investments in organization-related land, buildings, and equipment of at least \$5 million, the annual deposit requirement shall not apply; provided, however, that if the guaranteeing organization is sponsoring more than one organization, the net worth requirement shall be increased by a multiple equal to the number of such organizations. This requirement to maintain a deposit in excess of the deposit required of an accident and health insurer shall not apply during any time that the guaranteeing organization maintains for each organization it sponsors a net worth of at least equal to the capital and surplus requirements for an accident and health insurer.

(f) All income from deposits shall belong to the depositing organization and shall be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the commissioner before being substituted.

(g) In any year in which an annual deposit is not required of an organization, at the organization's request the commissioner shall reduce the required, previously accumulated deposit by \$100,000 for each \$250,000 of net worth in excess of the amount that allows the organization not to make the annual deposit. If the amount of net worth no longer supports a reduction of its required deposit, the organization shall immediately redeposit \$100,000 for each \$250,000 of reduction in net worth, provided that its total deposit shall not exceed the maximum required under this section.

(h) Each health maintenance organization shall have and maintain a capital account of at least \$100,000 in addition to any deposit requirements under this section. The capital account shall be net of any accrued liabilities and be in the form of cash, securities or any combination of these or other measures acceptable to the commissioner.

(i) There is created a nonprofit unincorporated legal entity to be known as the Alabama health maintenance organization guaranty association. All health maintenance organizations authorized to transact business in this state shall participate in this guaranty association which shall protect all enrollees of such organizations in this state against failure in the performance of obligations due to the impairment or insolvency of a health maintenance organization. The association shall be separate from, but shall be modeled on the Alabama life and disability guaranty association, sections 27-44-1, et seq. and the commissioner shall take such actions and promulgate, in accordance with the provisions of section 27-2-17, such regulations as he may deem necessary to effectuate the provisions of this subsection. (Acts 1986, No. 86-471, § 12.)

#### § 27-21A-13. Prohibited practices.

(a) 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 or evidence of coverage which is deceptive. For purposes of this chapter:

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

(2) A statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which such statement is made or such item of information is communicated, such statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding

health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage or 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;

(3) An evidence of coverage shall be deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health 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.

(b) Sections 8-19-1, et seq. and 27-12-1, et seq. shall be construed to apply to health maintenance organizations and evidences of coverage except to the extent that such sections are clearly inappropriate in light of the nature of health maintenance organizations as set forth in this chapter.

(c) A health maintenance organization may not cancel or refuse to renew an individual enrollee, except for reasons stated in the organization's rules applicable to all enrollees, or for the failure to pay the charge for such coverage, or for such other reasons as may be promulgated by the commissioner; provided, however, that a health maintenance organization may not in any event cancel or refuse to renew an enrollee solely on the basis of the health of the enrollee.

(d) No health maintenance organization unless licensed as an insurer may refer to itself as a licensed insurer or use a name deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

(e) Any person not in possession of a valid certificate of authority issued pursuant to this chapter may not use the phrase "health maintenance organization" or "HMO" in the course of operation. (Acts 1986, No. 86-471, § 13.)

#### § 27-21A-14. Regulation of agents.

(a) Unless exempted pursuant to subsection (c) of this section, health maintenance organizations in this state shall only solicit enrollees or otherwise market their services through producers duly licensed in accordance with Chapters 7 and 8A of this title.

(b) The commissioner shall, after notice and hearing, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of producers.

(c) The commissioner may, by rule, exempt certain classes of persons from the requirement of obtaining a license for either of the following reasons:

(1) If the functions they perform do not require special competence, trustworthiness or the regulatory surveillance made possible by licensing.

(2) If other existing safeguards make regulation unnecessary.

(d) Nothing in this section shall be deemed to prohibit a health maintenance organization from advertising. (Acts 1986, No. 86-471, p.854, § 14; Act 2001-702, p. 1509, § 15.)

#### § 27-21A-15. Powers of insurers and health care service plans.

(a) An insurance company licensed in this state, or a health care service plan authorized to do business in this state, may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this chapter. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies, health care service plans, or subsidiaries or affiliates thereof,

may jointly organize and operate a health maintenance organization. The business of insurance is deemed to include the providing of health care by a health maintenance organization owned or operated by an insurer or a subsidiary thereof.

(b) Notwithstanding any provision of insurance and health care service plan laws, Title 10, chapter 4, article 6 and Title 27, an insurer or a health care service plan 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. For such purposes, the enrollees of a health maintenance organization constitute a permissible group under such laws. Among other things, under such contracts, the insurer or health care service plan may make benefit payments to health maintenance organizations for health care services rendered by providers. (Acts 1986, No. 86-471, § 15.)

§ 27-21A-16. Examination.

(a) The commissioner may make an examination of the affairs of any health maintenance organization and providers with whom such organization has contracts or agreements as often as is reasonably necessary for the protection of the interests of the people of this state, but not less frequently than once every three years.

(b) The state health officer may make an examination concerning health care service of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements as often as is reasonably necessary for the protection of the interests of the people of this state, but not less frequently than once every three years.

(c) Every health maintenance organization shall submit its relevant books and records for such examinations and in every way facilitate these examinations. For the purpose of examinations, the commissioner and the state health officer may administer oaths to, and examine the officers and agents of the health maintenance organization and the principals of such providers concerning their business.

(d) The expenses of examinations under this section shall be assessed against the organization being examined and such assessment shall be remitted to the commissioner to be deposited to the credit of the special examination revolving fund in section 27-2-25, or the state health officer to be deposited to the credit of a fund to be known as the health maintenance organization revolving fund. The expenses incurred by the commissioner and his examiners in the making of examinations pursuant to the provisions of this chapter, together with the compensation of such examiners, shall be paid from the special examination revolving fund. The expenses incurred by the state health officer and his examiners in the making of examinations pursuant to the provisions of this chapter, together with the compensation of such examiners, shall be paid from the health maintenance organization revolving fund.

(e) In lieu of such examination, the commissioner or state health officer may accept the report of an examination made by the commissioner, state health officer or other appropriate agency of the state of domicile of the health maintenance organization. The health maintenance organization shall file a copy of any such report with the commissioner and the state health officer.

(f) All records necessary for the complete examination of a health maintenance organization domiciled in this state shall be maintained in a location approved by the commissioner. (Acts 1986, No. 86-471, § 16.)

§ 27-21A-17. Suspension or revocation of certificate of authority.

(a) The commissioner in consultation with and with the approval of the state health officer, where necessary, 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:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in any other information submitted under section 27-21A-2, unless amendments to such submissions have been filed with the commissioner and the state health officer and approved by the commissioner;

(2) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with requirements of section 27-21A-7;

(3) The health maintenance organization does not provide or arrange for basic health care services;

(4) The state health officer certifies to the commissioner that:  
a. The health maintenance organization does not meet the requirements of subdivision (a)(2) of section 27-21A-3; or

b. The health maintenance organization is unable to fulfill its obligations to furnish health care services;

(5) 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:

(6) The health maintenance organization has failed to implement the complaint system required by section 27-21A-10 in a reasonable manner to facilitate the resolution of valid complaints;

(7) 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;

(8) The continued operation of the health maintenance organization would be hazardous to its enrollees;

(9) The health maintenance organization has otherwise failed substantially to comply with this chapter.

(b) A certificate of authority shall be suspended or revoked only after compliance with the requirements of section 27-21A-20.

(c) 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.

(d) 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, solicitation or enrollment whatsoever. The commissioner 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. (Acts 1986, No. 86-471, § 17.)

§ 27-21A-18. Rehabilitation, liquidation, or conservation of a health maintenance organization.

(a) 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 commissioner pursuant to the law governing the rehabilitation, liquidation, or conservation of insurance companies. The commissioner may apply for an order directing him to rehabilitate, liquidate, or conserve a health maintenance organization upon any one or more grounds set out in section 27-32-6, or 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. Enrollees shall have the same priority in the event of liquidation or rehabilitation as the law provides to policyholders of an insurer.

(b) A claim by a health care provider for an uncovered expenditure has the same priority as a claim of an enrollee, provided such provider of services agrees not to assert such claim against any enrollee of the health maintenance organization.

(c) The state health officer shall provide to the commissioner or receiver of any financially troubled health maintenance organization advice and support to facilitate the expeditious rehabilitation, liquidation, conservation or dissolution of the health maintenance organization. (Acts 1986, No. 86-471, § 18.)

§ 27-21A-19. Regulations.

The commissioner may, after notice and hearing, promulgate reasonable rules and regulations, in accordance with section 27-2-17, as are necessary or proper to carry out the provisions of this chapter. The state health officer may promulgate such rules and regulations in accordance with the provisions of sections 41-22-1, et seq. (Acts 1986, No. 86-471, § 19.)

§ 27-21A-20. Administrative procedures.

(a) When the commissioner 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 state health officer in writing specifically stating the grounds for denial, suspension, or revocation. If so requested in writing by the health maintenance organization, the commissioner shall set a hearing on the matter within 30 days of the receipt of such request.

(b) The state health officer or his designated representative, shall be in attendance at the hearing and shall participate in the proceedings. The recommendation and findings of the state health officer 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 commissioner. Within 30 days after such hearing, or upon the failure of the health maintenance organization to appear at such hearing, the commissioner 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 state health officer. The health maintenance organization can appeal the action of the commissioner and the recommendation and findings of the state health officer to the circuit court of Montgomery county by filing an appeal to such court within 30 days of the receipt of such findings. The court may, in disposing of the issue before it, modify, affirm, or reverse the order of the commissioner in whole or in part.

(c) Those provisions of this title, relating to the suspension, denial or revocation of a certificate of authority, shall apply to proceedings under this section. (Acts 1986, No. 86-471, § 20.)

§ 27-21A-21. Fees.

(a) Every health maintenance organization subject to this chapter shall pay to the commissioner the following fees:

- (1) For filing an application for certificate of authority or amendment thereto, \$50.00;
- (2) For filing an amendment to the organization documents that requires approval, \$10.00;
- (3) For filing each annual report, \$20.00;
- (4) For renewal of annual certificates of authority, \$200.00.

(b) Fees charged under this section shall be deposited to the credit of the general fund. (Acts 1986, No. 86-471, § 21.)

§ 27-21A-22. Penalties and enforcement.

(a) The commissioner may, in lieu of suspension or revocation of a certificate of authority under section 27-21A-17, levy an administrative penalty in an amount not less than \$500.00 nor more than \$5,000.00, 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 commissioner 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. All moneys collected under this section shall be deposited to the credit of the general fund.

(b) (1) If the commissioner or the state health officer shall for any reason have cause to believe that any violation of this chapter has occurred or is threatened, the commissioner or state health officer 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.

(2) Proceedings under this subsection shall not be governed by any formal procedural requirements, and may be conducted in such manner as the commissioner or the state health officer may deem appropriate under the circumstances. However, unless consented to by the health maintenance organization, no rule or order may result from a conference until the requirements of this section or section 27-21A-20 of this chapter are satisfied.

(c) (1) The commissioner, after notice to the state health officer, 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 the provisions of this chapter.

(2) Within 30 days after service of the cease and desist order, the respondent may request a hearing on the question of whether acts or practices in violation of this chapter have occurred. Such hearings shall be conducted and judicial review had in accord with the provisions of this title.

(d) In the case of any violation of the provisions of this chapter, if the commissioner elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to subsection (c), the commissioner may institute a proceeding to obtain injunctive or other appropriate relief in the circuit court of Montgomery county. (Acts 1986, No. 86-471, § 22.)

§27-21A-23. Statutory construction and relationship to other laws.

(a) Except as otherwise provided in this chapter, provisions of the insurance law and provisions of health care service plan laws shall not be applicable to any health maintenance organization granted a certificate of authority under this chapter. This provision shall not apply to an insurer or health care service plan licensed and regulated pursuant to the insurance law or the health care service plan laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

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

(c) Any health maintenance organization authorized under this chapter shall not be deemed to be practicing medicine and shall be exempt from the provisions of section 34-24-310, et seq., relating to the practice of

medicine.

(d) No person participating in the arrangements of a health maintenance organization other than the actual provider of health care services or supplies directly to enrollees and their families shall be liable for negligence, misfeasance, nonfeasance or malpractice in connection with the furnishing of such services and supplies.

(e) Nothing in this chapter shall be construed in any way to repeal or conflict with any provision of the certificate of need law.

(f) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to Section 27-1-17.

(g) Notwithstanding the provisions of subsection (a), a health maintenance organization shall be subject to the provisions of Chapter 56 of this title regarding the Access to Eye Care Act. (Acts 1986, No.86-471, p.854, § 23; Act 2001-445, p.573,§ 1; Act 2001-477, p.640, § 10.)

§ 27-21A-24. Filings and reports as public documents.

All applications, filings and reports required under this chapter, except those which are trade secrets or privileged or confidential commercial or financial information, other than any annual financial statement that may be required under section 27-21A-8, shall be treated as public documents. All testimony, documents and other evidence required to be submitted to the commissioner or state health officer in connection with enforcement of this chapter shall be absolutely confidential and shall not be admissible in evidence in any other proceeding. The commissioner or the state health officer may withhold from public inspection any examination or investigation report for so long as they deem necessary to protect the person examined from unwarranted injury or to be in the public interest. (Acts 1986, No. 86-471, § 24.)

§ 27-21A-25. 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. (Acts 1986, No. 86-471, § 25.)

§ 27-21A-26. State health officer's and commissioner's authority to contract.

The state health officer and the commissioner, in carrying out their obligations under this chapter, may contract with qualified persons to make recommendations concerning the determinations required to be made by them. Such recommendations may be accepted in full or in part by the state health officer or commissioner. (Acts 1986, No. 86-471, § 26.)

§ 27-21A-27. Acquisition of control of or merger of a health maintenance organization.

No person may make a tender for or a request or invitation for tenders of, or enter into an agreement to exchange securities for or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person would, directly or indirectly, (or by conversion or by exercise of any



right to acquire) be in control of the health maintenance organization, and no person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the health maintenance organization, information required by section 27-29-3, and the offer, request, invitation, agreement or acquisition has been approved by the commissioner. Approval by the commissioner shall be governed by the provisions of said section 27-29-3. Control under this section shall be defined in the same manner as it is defined for the purposes of section 27-29-3, as amended from time to time. (Acts 1986, No. 86-471, § 27.)

§27-21A-28. Taxes.

(a) The same taxes and filing requirements applicable to life insurers under this title, shall apply to and shall be imposed upon each health maintenance organization licensed under the provisions of this chapter; and the organization shall also be entitled to the same tax deductions, reductions, abatements, and credits that life insurers are entitled to receive. All taxes collected hereunder shall be deposited to the credit of the general fund.

(b) As to health maintenance organizations doing business in this state as of May 29, 1986, the taxes imposed by this section shall not take effect until January 1, 1989, but on and after such date shall be payable in accordance with the provisions of sections 27-4-4 and 27-4-5. (Acts 1986, No. 86-471, § 28.)

§27-21A-29. Existing health maintenance organizations.

(a) Notwithstanding any other provision of this chapter, any health maintenance organization licensed by the state board of health and in operation on May 29, 1986, shall be granted a certificate of authority upon payment of the application fee prescribed in section 27-21A-21 and compliance with section 27-21A-12. Nothing in this section shall prohibit any such health maintenance organization from continuing to conduct business in this state until such certificate of authority is issued.

(b) Any health maintenance organization which was licensed in this state prior to January 1, 1986, may continue to operate under existing noncontractual provider arrangements (which have been approved by the state health officer) for three years.

(c) After issuance of a certificate of authority in accordance with subsection (a) of this section, the commissioner may require submission by the health maintenance organization of any additional information required in section 27-21A-2 which has not previously been submitted to the state health officer. (Acts 1986, No. 86-471, § 29.)

§ 27-21A-30. Coordination of benefits.

(a) A health maintenance organization is entitled to coordinate benefits on the same basis as an insurer. No such coordination shall be allowed against policies covering individuals on other than a group basis.

(b) A health maintenance organization providing medical benefits or payments to an enrollee who suffers injury, disease, or illness by virtue of the negligent act or omission of a third party is entitled to reimbursement from such third party for the reasonable value of the benefits or payments provided. (Acts 1986, No. 86-471, §30.)

§ 27-21A-31. Health maintenance organization advisory council.

There shall be established a three member HMO advisory council to advise

and consult with the commissioner and the state health officer in carrying out their duties under this chapter. The members of such advisory body shall be appointed annually by the Alabama association of health maintenance organizations. (Acts 1986, No. 86-471., § 31.)

§27-21A-32. HMO enrollment requirements.

(a) The state government, or any agency, board, commission, institution, or political subdivision thereof, and any city or county, or board of education, which offers its employees a health benefits plan may make available to and inform its employees or members of the option to enroll in at least one health maintenance organization holding a valid certificate of authority which provides health care services in the geographic areas in which such employees or members reside.

(b) The first time a health maintenance organization is offered by an employer, either public or private, each covered employee must make an affirmative written selection among the different alternatives included in the health benefits plan. Thereafter, those who wish to change from one plan to another will be allowed to do so annually, provided, that nothing in this section shall prevent any health maintenance organization or insurer from requiring evidence of insurability or imposing underwriting restrictions on the acceptance of any such employee. In addition to the annual group enrollment period, the employer shall make available the opportunity to select among different existing alternatives within a health benefits plan to eligible employees, who are new employees or have changed their place of residence resulting in eligibility for the plan.

(c) This section shall impose no responsibilities or duties upon any employer, either public or private, to offer health maintenance organization coverage as part of its health benefits plan.

(d) No employer shall in any way be required to pay more for health benefits as a result of the application of this section than would otherwise be required by a prevailing collective bargaining agreement or other legally enforceable contract or obligation for the provision of health benefits to its employees, or in any plan provided voluntarily by an employer. (Acts 1986, No. 86-471, § 32.)

#### **CHAPTER 21A HEALTH MAINTENANCE ORGANIZATIONS**

**Collateral references.** - Coverage of artificial insemination procedures or other infertility treatments by health, sickness, or hospitalization insurance. 80 ALR4th 1059.