SENATE
OFFICE OF THE SECRETARY

'04 JUN 30 P12:10

RECEIVED BY:

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE

S. No. 32

Introduced by Senator Flavier

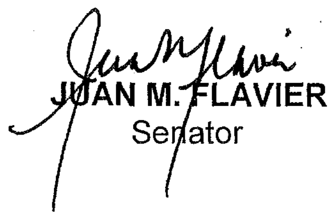
EXPLANATORY NOTE

Health Maintenance Organizations (HMOs) have become an important component of our health care system. It complements the National Insurance Program by helping ensure that enrolled members are given medical care in designated health care providers.

With the increase in the number of both the HMOs and people availing their services, there is a need to establish a regulatory framework to govern the operations of HMOs. This is both for the protection of the public as well as for the smooth operation of HMOs.

As provided for in this bill, the Insurance Commission shall supervise and regulate the operations of HMOs. The Department of Health, on the other hand, will take care of the licenses needed should HMOs also directly provide health care services.

Given the importance of this measure, this representation seeks its immediate passage.



JUAN M. FLAVIER
Senator

SENATE
OFFICE OF THE SECRETARY

'04 JUN 30 P12:10

RECEIVED BY:

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE

S. No. 32

Introduced by Senator Flavier

AN ACT
GOVERNING THE OPERATIONS OF HEALTH MAINTENANCE ORGANIZATIONS, REGULATING THEIR ACTIVITIES, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. -- This Act shall be known as the Health Maintenance Organizations (HMO) Act of 2004.

SEC. 2. Statement of Policy. -- It is hereby declared the policy of the State to protect and promote the right to health of the people and instill health consciousness among them. Pursuant to this policy, government shall enhance accessibility to affordable health care services by recognizing and tapping participation of the private sector in providing funding and managing the delivery of cost effective and quality health care services. Towards this end, the government shall provide the regulatory framework that will ensure the sustainability and viability of Health Maintenance Organizations (HMOs) in order to protect the interest of the public.

SEC. 3. Objectives. – In line with the above policy, this Act seeks to:

a) recognize HMOs as entities that combine financing management and provision of health services;

b) establish the regulatory framework for HMOs that shall protect the rights of the buying public as well as the various sectors involved in the delivery of health care services;

c) promote the provision of quality health care services; and

d) protect the rights of HMOs, their enrollees, and health care service providers.

SEC. 4. Definition of Terms. – When used in this Code, the following terms shall mean:

a) Actuary – a person with the necessary training, qualifications and experience and a fellow of the Actuarial Society of the Philippines, or of a similar society, as may be determined by the Insurance Commission. S/He shall, among others, compute rates and reserves for health care plans on the basis of experience tables and determine the financial soundness of health care agreements and operations of HMOs;

b) Agreement – a contract entered into by an HMO with a member or group of members or a corporation on behalf of its employees and/or their dependents, for the former to provide or arrange to provide pre-agreed or designated health care services to the latter, for a fixed period of time and for a specified fee;

c) Association – an organization of Health Maintenance Organizations recognized as the industry representative for purposes of achieving unity in the industry, facilitating government regulations, mutual assistance among HMOs, self-regulation and quality competition;

d) Co-payment – the amount a member must pay in order that s/he can receive a specific service which is not fully pre-paid;

e) Deductible – the amount an enrollee pays out-of-pocket before the health maintenance organization (HMO) pays the cost associated with treatment;

f) Department – the Department of Health;

g) Commission – the Insurance Commission;

h) Health Maintenance Organization (HMO) – a facility organized in accordance with law to provide pre-agreed or designated health care services to its enrolled members for a fixed periodic fee and for a specific period of time.

A health maintenance organization shall possess the following characteristics to qualify as HMO:

1) an organized system of managing and assuring health care services in a defined geographical area;
2) a pre-agreed set of basic and supplemental health maintenance and treatment services;
3) has enrolled group of individuals paying a fixed periodic fee.

i) Managed Care – a system of health care delivery that influences utilization and cost of services and measures performance with a goal to deliver quality and cost-effective health care;

j) Managed health plan – a plan that covers health care services through an integrated and organized system of financing, delivery and management of services to an enrolled population for a specific period of time on a fixed periodic fee;

k) Member or Enrollee – an individual or a person who is part of a group or an employee and/or dependents or a corporation who enters into a contract with an HMO;

l) Provider – a health professional, such as a physician, dentist, nurse, midwife, physical therapist or health care professional group, or a health facility such as hospital, diagnostic clinic, medical clinic, pharmacy, licensed or authorized by the proper government agency to provide health care services;

m) Participating or Accredited Provider – a provider as defined herein who, under and express contract with or is owned and operated by ah health maintenance organization (HMO), or with the latter's contractor or subcontractor, has agreed to provide health care services to the HMO enrollees, with the right to payment, other than co-payment or deductible directly or indirectly from the HMO.

SEC. 5. Registration. -- An HMO legally organized as a juridical person shall be registered with the Securities and Exchange Commission, thus, shall be organized in accordance with the provisions of the Corporation Code. However, HMOs organized as cooperatives shall be registered with the Cooperative Development Authority of the Philippines.

SEC. 6. Licensure. -- The Insurance Commission is hereby designated as the government agency to supervise and regulate the operations of HMO and all other entities offering health care services that fall under the definition of HMO in accordance with Section 4 of this Act. After registration with the Securities and Exchange Commission and the Cooperative Development Authority, as the case may be, said entities shall secure a license to operate as an HMO from the Insurance Commission. Existing HMOs at the time of the effectivity of this Act shall likewise secure a license to operate from the Insurance Commission in accordance with the Transitory Provisions provided herein.

The Commission shall issue the license to operate within thirty (30) days from the submission of the complete application and requirements. In case the application is not approved, the reasons therefore shall immediately be made known to the applicant immediately.

However, if the HMO will directly provide health care services such as medical consultation and/or treatment by their own employed medical professional, perform laboratory or diagnostic services, operate clinics or hospitals, they shall also secure license from the Department of Health for said facilities.

SEC. 7. Licensure Requirements. -- The Insurance Commission and the Department of Health shall promulgate the requirements for licensure and renewal of license of HMOs based on the provisions of Sec. 6 of this Act. The requirements shall include, but not be limited to, the following:

a) The minimum authorized and paid-up capitalization required;
b) Financial Statements/Projections for new HMOs;
c) Annual Statements for existing HMOs;
d) Data on membership enrollment;
e) Heath care services being offered;
f) Geographical area of operation;
g) Such other information or requirements that the Commission and/or the Department may deem necessary.

These requirements may be amended to conform to the needs of the time, and such requirements or any amendment thereto shall be published in at least one (1) newspaper of general circulation.

The license to operate granted under this Act shall be effective for a period of one (1) year, subject to renewal by the Commission.

SEC. 8. Renewal of License. -- The Insurance Commission shall issue rules and regulations for the renewal of license of HMOs.

SEC. 9. Suspension of License. -- The license to operate issued to HMOs may be suspended by the Commission, with strict adherence to due process, on the following grounds:

a) When, based on the financial reports, continued operation of the HMO business is no longer financially viable;

b) When, without justifiable cause, agreements with members are not honored;

c) When the statements in the application for license or renewal thereof are found to be false, misleading, inadequate or incomplete, such that the Department cannot ascertain the true status from such statement, sufficient to arrive at an honest appraisal of the true capability of the HMO;

d) When the decision of the Association on arbitration of complaint is not honored by an HMO;

e) When an HMO continuously violates the rules and regulations issued by the Commission and the Department in implementing this Act.

SEC. 10. Revocation of License. -- The Commission shall revoke the license of any Health Maintenance Organization, with strict adherence to due process, on the following grounds:

a) Repeated violations of the provisions of this Act or of the implementing rules and regulations issued;

b) Unjustified refusal to provide the health care services contracted for by a member, as provided in the agreement;

c) Impairment of the financial status of the HMO, as may be determined by the Commission during suspension based on paragraph 1, Sec. 9 hereof, after a fair appraisal by impartial actuaries and financial consultants, such that even if allowed to continue to operate, it can no longer provide services it assumed under the agreement with its members;

d) *Refusal to comply with* decisions of the Commission on cases submitted by the Association for arbitration.

In all cases of revocation, the Commission shall have the authority to assign the agreements of the HMO whose license was revoked, to other existing HMOs, or to order such applicable remedies in order to protect the rights derived by members from the agreements.

SEC. 11. Reinstatement of Suspended Licenses. -- The Commission shall order the reinstatement of a suspended license upon reasonable showing that the ground for which the suspension was based has ceased to exist, and that the HMO has sufficiently complied with the requirements the Commission may determine for such reinstatement.

SEC. 12. Actuaries/Financial Consultations. -- To protect the potential and enrolled members of HMOs, the Commission shall ensure that HMOs adhere to actuarially sound practices and possess financial capabilities to render the services stipulated in their agreements.

To achieve these objectives, the Commission shall engage the services of actuaries and/or financial consultants to analyze the financial status and the actuarial soundness of the HMO practices prior to issuance or renewal of licenses. For this purpose, the Commission shall require from HMOs such

additional data and reports it deems necessary: *Provided,* That data and reports are certified by either an actuary, financial consultant or external auditor.

SEC. 13. Services of Non-HMO Accredited Health Providers. -- Every enrollee shall be given the opportunity to seek the best possible health care that will suit his individual need, provided that he/she shall be willing to pay whatever additional cost it may entail. Therefore, services of doctors not included in the list of HMO accredited health providers shall be made available to enrollees.

SEC. 14. Association. -- All Health Maintenance Organizations shall, for purposes of achieving unity in the industry, facilitating government regulations, mutual assistance among HMOs, self-regulation and quality competition, shall be encouraged to be a member of an *Association of Health* Maintenance Organizations to be formed within sixty (60) days from the enactment of this Act.

SEC. 15. Arbitration by the Association and the Commission. -- Complaints that may be brought by enrollees or providers or even by an HMO against another HMO shall first be referred to the Association for arbitration. The Association shall refer such complaint to the grievance mechanism in the Association, and shall be decided within thirty (30) days. In the event no settlement of the complaint has been reached after thirty (30) days, the Association shall submit the case to the Commission which shall assume jurisdiction over the case, and shall decide the case within sixty (60) days. The decision of the Commission shall be final and executory, appealable to the Court of Appeals only on question of law: *Provided,* That the Insurance Commission, may, *motu propio*, assume original jurisdiction over complaints that are important and vital and which requires immediate resolution.

SEC. 16. Visitorial Powers. -- The Commissioner or any of his duly designated representatives, shall have the power of visitation, audit and examination into the affairs, financial condition, and methods of doing business of all health maintenance organizations, and he shall cause such examination to be made at least once a year or wherever it may be deemed proper and necessary. Free access to the books, records and documents of the organization shall be accorded to the Commissioner, or to his representatives, in such manner that the Commissioner or his representatives may readily verify or determine the true affairs, financial condition, and methods of doing business of such organization. In the course of such examination, the Commissioner or his duly designated representatives shall have authority to administer oaths and take testimony or other evidence on any matter relating to the affairs of the organization.

SEC. 17. Administrative Sanctions. -- The following administrative sanctions are hereby imposed for violations of this Act:

a) A fine of Twenty Thousand Pesos (P20,000.00) for the first violation of the provisions of this Act or its implementing rules and regulations (IRRs); Thirty Thousand Pesos (P30,000.00) for the second; and Fifty Thousand Pesos (P50,000.00) for the third violation. For the fourth violation, the provision on revocation of license shall apply;

b) A fine of One Hundred Thousand Pesos (P100,000.00) every time the license of the HMO is suspended; *Provided,* That payment of this fine shall not absolve the HMO from its obligations under the agreements it has contracted with enrollees and/or participating or accredited providers;

c) An order to freeze the assets and funds of the HMO suspended or revoked for the protection of investors, providers and members.

The amount that may be collected as fines shall be retained by the Commission for its use in the information dissemination mentioned in the following section: *Provided,* That a separate account be maintained by the Commission for such purpose.

Violations committed by HMOs in the direct provision of health care services, performance of laboratory or diagnostic services, operation of hospitals or clinics shall be subject to applicable rules and regulations of the Department of Health.

SEC. 18. Publication. -- The Commission and the Department shall jointly inform the public by publishing periodically:

a) List of licensed HMOs;

b) Suspension and/or revocation of the license of HMOs, copies of which shall be furnished to associations of the medical profession, hospitals and employers who shall inform their members accordingly.

SEC. 19. Transitory Provisions. -- Health Maintenance Organizations (HMOs) registered with the Securities and Exchange Commission, Cooperative Development Authority, and the Department that has been in operation prior to the effectivity of this Act shall continue to operate: *Provided,* That they shall apply for a new license with the Commission within six (6) months from the effectivity of this Act. The Commission shall grant the above HMOs their new licenses in accordance with this Act: *Provided, further,* That the existing agreements, the rights and obligations derived therefrom shall be respected: *Provided, furthermore,* That the HMOs comply with licensing requirements within six (6) months.

Prior to the formation of an Association of Health Maintenance Organization, the Insurance Commission shall handle arbitration proceedings for complaints lodged against HMOs.

SEC. 20. Appropriations. -- The amount necessary for the implementation of this Act shall be included in the General Appropriations Act.

SEC. 21. Implementing Rules and Regulations. -- The Commission and the Department, in consultation with the concerned sectors, shall promulgate the rules and regulations necessary to implement this Act within ninety (90) days from its approval. *Such rules and regulations* shall be furnished to HMOs and concerned sectors, and shall take effect upon publication in a newspaper of general circulation.

SEC. 22. Separability Clause. -- If any provision of this Act is declared unconstitutional or invalid, the other provisions not affected by such declaration shall remain in full force and effect.

SEC. 23. Repealing Clause. -- All laws, decrees, ordinances, rules and regulations, executive or administrative orders or parts thereof inconsistent with this Act are hereby repealed, amended or modified accordingly.

SEC. 24. Effectivity. -- This Act shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved,