

Offered: 3/16/90
Referred: Rules

6-1615J

Original sponsor(s): SEN. KERTTULA, Sturgulewski

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 335 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to health maintenance organizations;
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 21 is amended by adding a new chapter to read:

10 CHAPTER 86. HEALTH MAINTENANCE ORGANIZATIONS.

11 Sec. 21.86.010. ESTABLISHMENT OF HEALTH MAINTENANCE ORGANIZA-
12 TIONS. (a) A person may apply to the director for and obtain a
13 certificate of authority to establish and operate a health maintenance
14 organization in compliance with this chapter. A person may not estab-
15 lish or operate a health maintenance organization in this state unless
16 the person obtains a certificate of authority under this chapter. A
17 foreign corporation may, subject to its registration, qualify under
18 this chapter to do business in this state as a foreign corporation.

19 (b) An application for a certificate of authority must be veri-
20 fied by an officer or authorized representative of the applicant, must
21 be in a form prescribed by the director, and must contain or be accom-
22 panied by the following:

23 (1) a copy of the organizational documents of the appli-
24 cant, including the articles of incorporation, articles of associa-
25 tion, partnership agreement, trust agreement, or other applicable
26 documents, and all amendments to the documents;

27 (2) a copy of the bylaws, regulations, or similar document,
28 if any, regulating the conduct of the internal affairs of the appli-
29 cant;

1 (3) a list of the names, addresses, and official positions
2 of the persons who are responsible for the conduct of the affairs of
3 the applicant, including all members of the board of directors, board
4 of trustees, executive committee, or other governing board or commit-
5 tee, the principal officers in the case of a corporation, and the
6 partners or members in the case of a partnership or association;

7 (4) a copy of contracts made or to be made between the
8 applicant and providers or between the applicant and persons listed in
9 (3) of this subsection;

10 (5) a copy of the form of evidence of coverage that is to
11 be issued to the enrollees;

12 (6) a copy of the form or group contract, if any, that is
13 to be issued to employers, unions, trustees, or other organizations;

14 (7) financial statements showing the applicant's assets,
15 liabilities, and sources of financial support; if the applicant's
16 financial affairs are audited by independent certified public accoun-
17 tants, a copy of the applicant's most recent certified financial
18 statement satisfies the requirement of this paragraph unless the
19 director finds that additional or more recent financial information is
20 required for the proper administration of this chapter;

21 (8) a description of the proposed method of marketing, a
22 financial plan that includes a projection of operating results antic-
23 ipated until the organization has had net income for at least one
24 year, and a statement as to the sources of working capital as well as
25 any other sources of funding;

26 (9) a power of attorney executed by the applicant, if not
27 domiciled in this state, appointing the director and the director's
28 successors in office, and authorized deputies, as the true and lawful
29 attorney of the applicant in and for this state, upon whom all lawful

1 process in any legal action or proceeding against the health mainte-
2 nance organization, on a cause of action arising in this state, may be
3 served;

4 (10) a statement reasonably describing the geographic area
5 or areas to be served;

6 (11) a description of the complaint procedures to be used,
7 as required under AS 21.86.100;

8 (12) as required by regulations adopted by the director, a
9 description of the procedures and programs to be implemented to assure
10 compliance with state and federal statutes and regulations regarding
11 the quality of health care;

12 (13) a description of the mechanism by which enrollees will
13 be afforded an opportunity to participate in matters of policy and
14 operation under AS 21.86.040;

15 (14) the deposit required under AS 21.86.140(b);

16 (15) other information that the director requires in order
17 to make a determination under AS 21.86.020;

18 (16) the application fee prescribed under AS 21.06.250.

19 (c) An applicant, or a health maintenance organization holding a
20 certificate of authority granted under this chapter, shall, unless
21 otherwise provided for, file a notice describing any material modi-
22 fication of the organization's operation as described in the informa-
23 tion submitted under (b) of this section. The notice shall be filed
24 with the director before the modification. If the director does not
25 disapprove the modification within 30 days after the filing of the
26 notice, the modification is considered approved. The director may
27 adopt regulations exempting from the filing requirements of this
28 subsection those items that the director considers unnecessary to
29 report.

1 (d) An applicant, or a health maintenance organization holding a
2 certificate of authority granted under this chapter, shall file with
3 the director all contracts of reinsurance. An agreement between the
4 organization and an insurer is subject to the laws of this state
5 regarding reinsurance. All reinsurance agreements, and modifications
6 to a reinsurance agreement, shall be filed with the director and must
7 be approved by the director. A reinsurance agreement remains in full
8 force and effect for at least 90 days following written notice to the
9 director, by registered mail, of cancellation by either party.

10 Sec. 21.86.020. ISSUANCE OF CERTIFICATE OF AUTHORITY; APPROVAL
11 OF CHANGES. (a) Within 10 days after receipt of an application for a
12 certificate of authority, the director shall forward a copy of the
13 application to the commissioner of health and social services. Within
14 60 days after the commissioner of health and social services receives
15 the copy of the application, the commissioner shall make a recommenda-
16 tion regarding the granting of the certificate of authority.

17 (b) The director shall either issue or deny a certificate of
18 authority within 30 days after receipt of the commissioner of health
19 and social services' recommendation. However, the director may extend
20 the time for issuance or denial of a certificate of authority if
21 additional information is needed in order to make a decision, and
22 notice of the extension is provided to the applicant by the 90th day
23 after the director received the application. A certificate of author-
24 ity shall be issued if the director determines that the following
25 conditions are met:

26 (1) the persons responsible for the conduct of the affairs
27 of the applicant are competent and trustworthy;

28 (2) the applicant will effectively provide or arrange for
29 the provision of basic health care services on a prepaid basis,

1 through insurance or otherwise, except to the extent of reasonable
2 requirements for copayments;

3 (3) the applicant is financially responsible and may rea-
4 sonably be expected to meet its obligations to enrollees and pro-
5 spective enrollees; in determining if this condition is met, the
6 director may consider

7 (A) the financial soundness of the arrangements for
8 health care services and the schedule of charges used in con-
9 nection with those services;

10 (B) the adequacy of working capital;

11 (C) an agreement with an insurer, a hospital or medi-
12 cal service corporation, a government, or other organization for
13 ensuring the payment of the cost of health care services or
14 providing for automatic applicability of an alternative coverage
15 if the health maintenance organization is discontinued;

16 (D) an agreement with providers for the provision of
17 health care services; and

18 (E) a deposit of cash or securities submitted under
19 AS 21.86.140;

20 (4) the enrollees will be afforded an opportunity to par-
21 ticipate in matters of policy and operation as provided in AS 21.86.-
22 040;

23 (5) nothing in the proposed method of operation, as shown
24 by the information submitted under AS 21.86.010 or by independent
25 investigation, is contrary to the public interest;

26 (6) the information submitted under AS 21.86.010(b)(12)
27 indicates that the applicant will be able to comply with state and
28 federal statutes and regulations regarding the quality of health care.

29 (c) If a certificate of authority is denied under this section,

1 the applicant may request a hearing under AS 21.86.200.

2 Sec. 21.86.030. POWERS OF A HEALTH MAINTENANCE ORGANIZATION.

3 (a) A health maintenance organization may

4 (1) purchase, lease, construct, renovate, operate, or
5 maintain hospitals, other health care facilities, their ancillary
6 equipment, and property reasonably required for its principal office
7 or for purposes necessary in the transaction of the business of the
8 organization;

9 (2) make loans to a medical group under contract with it in
10 furtherance of its program, or make loans to a corporation or corpora-
11 tions under its control for the purpose of acquiring or constructing
12 medical facilities and hospitals or in furtherance of a program
13 providing health care services to enrollees;

14 (3) furnish health care services through providers that are
15 under contract with or employed by the health maintenance organiza-
16 tion;

17 (4) contract with a person for the performance, on the
18 organization's behalf, of certain functions such as marketing, enroll-
19 ment, and administration;

20 (5) contract with an insurance company licensed in this
21 state, or with a hospital or medical service corporation authorized to
22 do business in this state, for the provision of insurance, indemnity,
23 or reimbursement against the cost of health care services provided by
24 the health maintenance organization;

25 (6) offer other health care services, in addition to basic
26 health care services.

27 (b) A health maintenance organization shall file a notice and
28 adequate supporting information with the director before the exercise
29 of a power granted in (a)(1), (2), or (4) of this section. The

1 director may disapprove the exercise of a power only if, in the direc-
2 tor's opinion, it would substantially and adversely affect the finan-
3 cial soundness of the health maintenance organization and endanger its
4 ability to meet its obligations. If the director does not disapprove
5 the exercise of power within 30 days after the filing of the notice,
6 it is considered approved. The director may adopt regulations ex-
7 empting from the filing requirement of this section those activities
8 having a minimal effect on the health maintenance organization.

9 (c) Nothing in this section relieves a health maintenance orga-
10 nization that wishes to exercise the power described in (a)(1) of this
11 section from the requirements of

- 12 (1) AS 18.07, regarding obtaining a certificate of need;
13 (2) AS 18.20, regarding regulation of hospitals; and
14 (3) other statutes applicable to hospitals or other health
15 care facilities.

16 Sec. 21.86.040. GOVERNING BODY; ENROLLEE PARTICIPATION. (a)
17 The governing body of a health maintenance organization may include
18 providers, or other individuals, or both. At least one-third of the
19 governing body must consist of consumers who are substantially repre-
20 sentative of enrollees.

21 (b) The governing body of a health maintenance organization
22 shall establish a mechanism to afford its enrollees an opportunity to
23 participate in matters of policy and operation through the establish-
24 ment of advisory panels, by the use of advisory referenda on major
25 policy decisions, or through the use of other mechanisms.

26 Sec. 21.86.050. FIDUCIARY RESPONSIBILITY. (a) A director,
27 officer, employee, or partner of a health maintenance organization who
28 receives, collects, disburses, or invests money in connection with the
29 activities of that organization is responsible for that money in a

1 fiduciary relationship to the organization.

2 (b) A health maintenance organization shall maintain in force a
3 fidelity bond on employees and officers in an amount not less than
4 \$100,000, or another amount prescribed by the director. The bond must
5 be written with at least a one-year discovery period and, if written
6 with less than a three-year discovery period, must contain a provision
7 that cancellation or termination of the bond, whether by or at the
8 request of the insured or by the underwriter, does not take effect
9 sooner than 90 days after written notice of cancellation or termina-
10 tion has been filed with the director, unless an earlier cancellation
11 or termination date is approved by the director.

12 Sec. 21.86.060. PROVISION OF SERVICES. (a) A health mainte-
13 nance organization may provide physician services directly, through
14 physician employees, or may provide the services under arrangements
15 with individual physicians or one or more groups of physicians.

16 (b) In addition to basic health care services, a health mainte-
17 nance organization may provide, or arrange for, other health care
18 services on a prepayment or other financial basis.

19 (c) Health care services may be provided only by appropriately
20 licensed health care providers.

21 Sec. 21.86.070. EVIDENCE OF COVERAGE; CHARGES FOR HEALTH CARE
22 SERVICES. (a) An enrollee residing in this state is entitled to
23 evidence of coverage. If an enrollee obtains coverage from an insur-
24 ance policy or from a subscriber contract issued by a hospital or
25 medical service corporation, whether by option or otherwise, the
26 insurer or hospital or medical service corporation shall issue the
27 evidence of coverage, otherwise, the health maintenance organization
28 shall issue the evidence of coverage. Each subsequent change in
29 coverage must be evidenced in a separate document issued to the

1 enrollee.

2 (b) Except as provided in (d) of this section, evidence of
3 coverage, or an amendment or endorsement to coverage, may not be
4 issued or delivered to a person in this state until a copy of the form
5 of the evidence of coverage, amendment, or endorsement has been filed
6 with and approved by the director. A filing shall be made not less
7 than 30 days before the intended date of delivery or issuance. The
8 form of evidence of coverage, amendment, or endorsement is considered
9 approved 30 days after it was filed, unless it is affirmatively ap-
10 proved or disapproved by an order of the director before the expira-
11 tion of the 30-day period. If the form of evidence of coverage,
12 amendment, or endorsement is disapproved, the director's order must
13 specify the reasons for disapproval. A hearing shall be granted to a
14 person aggrieved by either an approval or disapproval under this
15 subsection if a written request is made by that person to the direc-
16 tor. The hearing shall be granted within 30 days after the receipt of
17 the written request.

18 (c) An evidence of coverage

19 (1) may not contain a provision or statement that is un-
20 just, unfair, inequitable, misleading, deceptive, or encourages mis-
21 representation, or that is untrue, misleading, or prohibited under
22 AS 21.86.150; and

23 (2) must contain a clear and concise statement, if a con-
24 tract, or a reasonably complete summary, if a certificate, of

25 (A) the health care services and the insurance or
26 other benefits, if any, to which the enrollee is entitled;

27 (B) limitations on the services, kind of services,
28 benefits, or kind of benefits, to be provided, including a de-
29 ductible or copayment feature;

1 (C) where, and in what manner, information is avail-
2 able as to how services may be obtained;

3 (D) the total amount of payment for health care ser-
4 vices and the indemnity or service benefits, if any, that the
5 enrollee is obligated to pay with respect to individual con-
6 tracts; and

7 (E) the health maintenance organization's method for
8 resolving enrollee complaints.

9 (d) If a form of the evidence of coverage, or an amendment or
10 endorsement to it, is subject to the jurisdiction of the director
11 under AS 21.42.120 and 21.42.130, or under AS 21.87.180, the filing
12 requirements of (b) of this section do not apply. If a form of evi-
13 dence of coverage, or an amendment or endorsement to it, is subject to
14 AS 21.42.120 and 21.42.130, or to AS 21.87.180, those applicable
15 provisions, as well as (c) of this section, apply to the content of
16 the form of evidence of coverage, amendment, or endorsement.

17 (e) A schedule of charges for enrollee coverage for health care
18 services, or an amendment or endorsement to it, may not be used until
19 a copy of the schedule has been filed with and approved by the direc-
20 tor. A filing shall be made not less than 30 days before its proposed
21 use. The schedule of charges, amendment, or endorsement is considered
22 approved 30 days after it was filed unless it was affirmatively ap-
23 proved or disapproved by an order of the director before the expira-
24 tion of the 30-day period. If a schedule of charges, amendment, or
25 endorsement is disapproved, the director's order must specify the
26 reasons for disapproval. A hearing shall be granted to a person
27 aggrieved by either an approval or disapproval under this subsection
28 if a written request is made by that person to the director. The
29 hearing shall be granted within 30 days after receipt of the written

1 request.

2 (f) A schedule of charges, or an amendment or endorsement to it,
3 shall be established according to sound actuarial principles for
4 various categories of enrollees, but charges applicable to an enrollee
5 may not be individually determined based on that enrollee's health
6 status. The charges may not be excessive, inadequate, nor unfairly
7 discriminatory. Certification by an actuary who is a member in good
8 standing of the American Academy of Actuaries or another person who is
9 considered qualified by the director, as to the appropriateness of the
10 application of the charges, based on reasonable assumptions, must
11 accompany each filing under (e) of this section, along with adequate
12 supporting information.

13 (g) The director may require that additional relevant material
14 considered necessary by the director be submitted in order to deter-
15 mine the acceptability of a filing made under either (b) or (e) of
16 this section.

17 Sec. 21.86.080. ANNUAL STATEMENT; ADDITIONAL REPORTS. A health
18 maintenance organization shall file an annual statement with the
19 director under AS 21.09.200 and shall provide a copy to the commis-
20 sioner of health and social services. The annual statement shall be
21 verified by at least two principal officers of the organization. The
22 director may require additional reports that are reasonably necessary
23 and appropriate in order for the director or the commissioner of
24 health and social services to carry out the duties prescribed by this
25 chapter.

26 Sec. 21.86.090. INFORMATION TO ENROLLEES. A health maintenance
27 organization shall promptly notify its enrollees of a material change
28 in its operation that would directly affect the enrollees.

29 Sec. 21.86.100. COMPLAINT SYSTEM; REPORT. (a) A health

1 maintenance organization shall establish and maintain a complaint
2 system to provide reasonable procedures for the resolution of written
3 complaints initiated by its enrollees. A complaint system must pro-
4 vide a procedure for forwarding to the commissioner of health and
5 social services a duplicate copy of a complaint relating to patient
6 care or facility operation.

7 (b) A health maintenance organization must annually, on or
8 before March 1, submit to the director, in a form prescribed by the
9 director, a report covering the preceding calendar year. The health
10 maintenance organization shall provide a copy of this report to the
11 commissioner of health and social services. The report submitted
12 under this subsection must include

13 (1) a description of the procedures used in its complaint
14 system;

15 (2) the total number of complaints handled through its
16 complaint system and a compilation of the causes underlying the com-
17 plaints filed; and

18 (3) the number, amount, and disposition of malpractice
19 claims made by an enrollee that were settled during the year by the
20 health maintenance organization; information concerning malpractice
21 claims shall be held confidential by the director and by the commis-
22 sioner of health and social services, and is not subject to public
23 disclosure.

24 (c) The director or the commissioner of health and social ser-
25 vices may, at any time during normal business hours, examine the
26 complaint system in any place of business of the health maintenance
27 organization in order to determine compliance with this section.

28 Sec. 21.86.110. RECOVERY OF HEALTH CARE COSTS. If a health
29 maintenance organization determines that an enrollee has received

1 health care services that the enrollee is not entitled to receive
2 under the terms of the health maintenance agreement, the organization
3 may not recover an amount above the actual cost of providing the
4 health care service. This section does not apply if the enrollee gave
5 or withheld information to the health maintenance organization with
6 the intent to mislead or misinform the organization as to the enroll-
7 ee's right to receive the health care services.

8 Sec. 21.86.120. RETURN OF AGREEMENT. A person who enters into a
9 health maintenance agreement may return the agreement to the health
10 maintenance organization or the agent from whom it was purchased
11 within 10 days of the delivery of the agreement to the person if the
12 person is not satisfied for any reason. Upon return of the agreement,
13 the health maintenance organization shall promptly refund the fee paid
14 for the agreement. Notice of the substance of this section must be
15 printed on the face of the agreement.

16 Sec. 21.86.130. INVESTMENTS. With the exception of investments
17 made under AS 21.86.030, a health maintenance organization's money
18 may only be invested as allowed by AS 21.21 for the investment of
19 legal reserves of a life insurer.

20 Sec. 21.86.140. PROTECTION AGAINST INSOLVENCY. (a) Except as
21 otherwise provided in this section, a health maintenance organization
22 shall deposit with the director, or with an organization or trustee
23 acceptable to the director through which a custodial or controlled
24 account is used, cash, securities, or a combination of these or other
25 means acceptable to the director in the manner and amount required by
26 this section.

27 (b) Except as provided in (d) and (e) of this section, the
28 deposit amount for a health maintenance organization that begins
29 operation after the effective date of this Act is the greater of 10

1 percent of its estimated expenditures for health care services for its
2 first year of operation, twice its estimated average monthly uncovered
3 expenditures for its first year of operation, or \$250,000. Except as
4 provided in (d) and (e) of this section, at the beginning of each
5 succeeding year of operation, the organization shall deposit with the
6 director, or organization or trustee, cash, securities, or a combina-
7 tion of these or other means acceptable to the director in an amount
8 equal to four percent of its estimated annual uncovered expenditures
9 for that year. Each year's estimate, after the first year of opera-
10 tion, shall reasonably reflect the prior year's operating experience
11 and delivery arrangements.

12 (c) Except as provided in (d) and (e) of this section, a health
13 maintenance organization that is in operation on the effective date of
14 this Act shall, on the first day of its fiscal year beginning six
15 months or more after the effective date of this Act, make a deposit
16 equal to the greater of one percent of the preceding 12 months' uncov-
17 ered expenditures or \$250,000. The organization shall, at the begin-
18 ning of its second fiscal year after the effective date of this Act,
19 deposit an amount equal to two percent of the organization's estimated
20 annual uncovered expenditures for that year. At the beginning of its
21 third fiscal year, the organization shall deposit an amount equal to
22 three percent of its estimated annual uncovered expenditures for that
23 year. At the beginning of the fourth fiscal year and subsequent
24 years, the organization shall deposit an amount equal to four percent
25 of its estimated annual uncovered expenditures for that year. Each
26 year's estimate, after the first year of operation, must reasonably
27 reflect the prior year's operating experience and delivery arrange-
28 ments.

29 (d) The director may waive the deposit requirements in (b) and

1 (c) of this section if the director is satisfied that

2 (1) the organization has sufficient net worth and an ade-
3 quate history of generating net income to assure its financial viabil-
4 ity for the next year;

5 (2) the organization's performance and obligations are
6 guaranteed by another organization that has sufficient net worth and
7 an adequate history of generating net income; or

8 (3) the assets of the organization, or its contracts with
9 insurers, hospital or medical service corporations, governments, or
10 other organizations, are reasonably sufficient to assure the perfor-
11 mance of its obligations.

12 (e) The annual deposit requirements of (b) and (c) of this
13 section do not apply if

14 (1) a health maintenance organization has achieved a net
15 worth, not including land, buildings, and equipment, of at least
16 \$1,000,000 or has achieved a net worth, including land, buildings, and
17 equipment, of at least \$5,000,000;

18 (2) the total amount of the health maintenance organiza-
19 tion's accumulated deposit is equal to 25 percent of its estimated
20 annual uncovered expenditures for the next calendar year, or is equal
21 to the capital and surplus requirements for the formation for admit-
22 tance of a disability insurer in this state, whichever is less;

23 (3) a health maintenance organization has a guaranteeing
24 organization that

25 (A) does not sponsor any other health maintenance
26 organization; and

27 (B) has been in operation for at least

28 (i) five years and has a net worth, not including
29 land, buildings, and equipment, of at least \$1,000,000; or

1 (ii) 10 years and has a net worth, including land,
2 buildings, and equipment, of at least \$5,000,000; or

3 (4) a health maintenance organization has a guaranteeing
4 organization that sponsors more than one health maintenance orga-
5 nization and that

6 (A) has been in operation for at least

7 (i) five years and has a net worth that is at
8 least that required by (3)(B)(i) of this subsection multi-
9 plied by a number equal to the number of organizations
10 sponsored; or

11 (ii) 10 years and has a net worth that is at least
12 that required by (3)(B)(ii) of this subsection multiplied by
13 a number equal to the number of organizations sponsored; or

14 (B) has, for each organization sponsored, a net worth
15 at least equal to the capital and surplus requirement for a
16 disability insurer.

17 (f) All deposit income belongs to the depositing health mainte-
18 nance organization, and shall be paid to it as it becomes available.
19 A health maintenance organization that has made a deposit of securi-
20 ties may withdraw that deposit, or any part of it, after making a
21 substitute deposit of cash, securities, or a combination of these or
22 other means of equal amount and value. Substitution of securities
23 must have prior approval by the director.

24 (g) In a year in which an annual deposit is not required of a
25 health maintenance organization under this section, at the organiza-
26 tion's request the director shall reduce the required, previously
27 accumulated deposit by \$100,000 for each \$250,000 of net worth in
28 excess of the amount that allows the organization not to make the
29 annual deposit. If the amount of an organization's net worth is

1 reduced to less than the amount that allowed a reduction in accumulat-
2 ed deposit, the organization shall immediately redeposit \$100,000 for
3 each \$250,000 of reduction in net worth, except that the total deposit
4 need not exceed the maximum required under this section.

5 (h) A health maintenance organization that obtains a certificate
6 of authority shall have and maintain a capital account of at least
7 \$100,000 in addition to deposit requirements under this section. The
8 capital account must equal at least \$100,000 after deducting accrued
9 liabilities, and must be in the form of cash, securities, or a combi-
10 nation of these or other means acceptable to the director.

11 Sec. 21.86.150. PROHIBITED PRACTICES. (a) A health maintenance
12 organization or a representative of a health maintenance organization
13 may not cause or knowingly permit a person to provide, on behalf of
14 the health maintenance organization, health care services that the
15 person is not licensed to provide.

16 (b) A health maintenance organization, or a representative of a
17 health maintenance organization, may not cause or knowingly permit the
18 use of advertising that is untrue or misleading, solicitation that is
19 untrue or misleading, or a form of evidence of coverage that is decep-
20 tive. For purposes of this chapter,

21 (1) a statement or item of information is considered to be
22 untrue if it does not conform to fact in any respect that is or might
23 be significant to an enrollee of, or person considering enrollment
24 with, a health maintenance organization;

25 (2) a statement or item of information is considered to be
26 misleading, whether or not it is untrue, if, in the total context in
27 which the statement is made or the item of information is communicat-
28 ed, the statement or item of information might be understood by a
29 reasonable person, not possessing special knowledge regarding health

1 care coverage, as indicating a benefit or advantage or the absence of
2 an exclusion, limitation, or disadvantage of possible significance to
3 an enrollee of, or person considering enrollment in, a health mainte-
4 nance organization if the benefit or advantage or absence of limita-
5 tion, exclusion, or disadvantage does not exist;

6 (3) an evidence of coverage is considered to be deceptive
7 if the evidence of coverage taken as a whole, and with consideration
8 given to typography and format, as well as to language, might cause a
9 reasonable person, not possessing special knowledge regarding health
10 maintenance organizations or an evidence of coverage, to expect bene-
11 fits, services, charges, or other advantages that the evidence of
12 coverage does not provide or that the health maintenance organization
13 issuing the evidence of coverage does not regularly make available for
14 an enrollee covered under the evidence of coverage.

15 (c) AS 21.36 applies to health maintenance organizations and to
16 an evidence of coverage except to the extent that the director deter-
17 mines that the nature of health maintenance organizations and the evi-
18 dence of coverage renders that chapter clearly inappropriate.

19 (d) A health maintenance organization may not cancel or refuse
20 to review an enrollee, except for

21 (1) reasons stated in the organization's regulations appli-
22 cable to all enrollees;

23 (2) failure to pay the charge for the enrollee's coverage;

24 or

25 (3) other reasons adopted by the director by regulation.

26 (e) Unless it is licensed as an insurer, a health maintenance
27 organization may not refer to itself as an insurer or use a name
28 deceptively similar to the name or description of an insurance or
29 surety corporation doing business in the state.

1 (f) A person may not use the phrase "health maintenance orga-
2 nization" or "HMO" in the course of the person's operations unless the
3 person possesses a valid certificate of authority issued under this
4 chapter.

5 Sec. 21.86.160. REGULATION OF AGENTS. (a) The director may
6 adopt regulations necessary to provide for the licensing of health
7 maintenance organization agents.

8 (b) The director may, by regulation, exempt certain classes of
9 persons from the requirement of obtaining an agent license if

10 (1) the function the class performs does not require spe-
11 cial competence or trustworthiness, or the regulatory surveillance
12 made possible by licensing; or

13 (2) other existing safeguards make regulation through
14 licensing unnecessary.

15 Sec. 21.86.170. POWERS OF INSURERS AND OF HOSPITAL OR MEDICAL
16 SERVICE CORPORATIONS. (a) An insurer licensed in this state, or a
17 hospital or medical service corporation authorized to do business in
18 this state, may, either directly or through a subsidiary or affiliate,
19 organize and operate a health maintenance organization under the
20 provisions of this chapter. Two or more insurance companies, hos-
21 pitals or medical service corporations, or subsidiaries or affiliates
22 of them, may jointly organize and operate a health maintenance organi-
23 zation. The business of insurance is considered to include providing
24 health care by a health maintenance organization owned or operated by
25 an insurer or subsidiary of an insurer.

26 (b) An insurer or hospital or medical service corporation may
27 contract with a health maintenance organization to provide insurance
28 or similar protection against the cost of care provided through a
29 health maintenance organization and to provide coverage in the event

1 of the failure of the health maintenance organization to meet its
2 obligations. The enrollees of a health maintenance organization
3 constitute a permissible group under this title. Under a contract au-
4 thorized by this subsection, the insurer or hospital or medical ser-
5 vice corporation may make benefit payments to health maintenance
6 organizations for health care services rendered by providers.

7 Sec. 21.86.180. EXAMINATIONS. (a) The director shall examine
8 the affairs and transactions of a health maintenance organization in
9 the same manner as prescribed for an insurer in AS 21.06.140 - 21.06.-
10 180.

11 (b) As often as is reasonably necessary for the protection of
12 the interests of the people of the state, but at least once every
13 three years, the director shall require submission of an independent
14 review of the quality of care provided by a health maintenance orga-
15 nization either directly or indirectly through contract, agreement, or
16 other arrangement for provisions of health care services to enrollees
17 of the health maintenance organization. The review required under
18 this subsection shall be done by a review organization approved by the
19 Department of Health and Social Services and shall be done under
20 regulations adopted by that department. The health maintenance orga-
21 nization shall pay the cost of the review.

22 Sec. 21.86.190. SUSPENSION OR REVOCATION OF CERTIFICATE OF
23 AUTHORITY. (a) After compliance with AS 21.86.200, the director may
24 suspend or revoke a certificate of authority issued to a health main-
25 tenance organization under this chapter if

26 (1) the health maintenance organization is operating sig-
27 nificantly in contravention of its basic organizational document or in
28 a manner contrary to that described in other information submitted
29 under AS 21.86.010 or 21.86.020(d);

1 (2) the health maintenance organization issues an evidence
2 of coverage, or uses a schedule of charges for health care services,
3 that does not comply with the requirements of AS 21.86.070;

4 (3) the health maintenance organization does not provide or
5 arrange for the provision of basic health care services;

6 (4) the health maintenance organization is not in com-
7 pliance with state and federal statutes and regulations as required
8 under AS 21.86.010(b)(12), or is unable to fulfill its obligations to
9 furnish health care services;

10 (5) the health maintenance organization is no longer finan-
11 cially responsible and may reasonably be expected to be unable to meet
12 its obligations to enrollees or prospective enrollees;

13 (6) the health maintenance organization has failed to
14 implement a mechanism affording the enrollees an opportunity to par-
15 ticipate in matters of policy and operation under AS 21.86.040;

16 (7) the health maintenance organization has failed to
17 implement the complaint system required by AS 21.86.100 in a reason-
18 able manner to resolve valid complaints;

19 (8) the health maintenance organization, or any person on
20 its behalf, has advertised or merchandised its services in an untrue,
21 misrepresentative, misleading, deceptive, or unfair manner;

22 (9) the continued operation of the health maintenance
23 organization would be hazardous to its enrollees;

24 (10) the health maintenance organization has otherwise
25 failed substantially to comply with this chapter.

26 (b) If the certificate of authority of a health maintenance
27 organization is suspended, the health maintenance organization may
28 not, during the period of the suspension, enroll additional enrollees
29 except newborn children or other newly acquired dependents of existing

1 enrollees, and may not engage in advertising or solicitation. The
2 director may, by written order, specify limitations in the operation
3 of the organization during the period of suspension as the director
4 finds to be in the best interests of enrollees.

5 (c) If the certificate of authority of a health maintenance
6 organization is revoked, the organization shall, immediately following
7 the effective date of the order of revocation, proceed to wind up its
8 affairs, and may not conduct further business except that essential to
9 the orderly conclusion of the affairs of the organization. The orga-
10 nization may not engage in further advertising or solicitation. The
11 director may, by written order, permit continued operation of the
12 organization as the director finds to be in the best interest of
13 enrollees, so that enrollees will be afforded the greatest practical
14 opportunity to obtain continuing health care coverage.

15 Sec. 21.86.200. ADMINISTRATIVE PROCEDURES. (a) If the director
16 has reason to believe that grounds for the denial, suspension, or
17 revocation of a certificate of authority exist, the director shall
18 notify the applicant or the health maintenance organization in writ-
19 ing, specifically stating the grounds for denial, suspension, or
20 revocation. A person aggrieved by a decision of the director regard-
21 ing denial, suspension, or revocation of a certificate of authority
22 may request a hearing under AS 21.06.180. If a hearing is requested,
23 it shall be held under the procedures in AS 21.06.170 - 21.06.220,
24 except that AS 21.06.190 does not apply in the case of a hearing
25 regarding denial of a certificate.

26 (b) After a hearing under (a) of this section, or upon the
27 failure of an applicant or health maintenance organization to appear
28 at such a hearing, the director shall make written findings and issue
29 an order, that shall be mailed to the applicant or health maintenance

1 organization and concurrently provided to the commissioner of health
2 and social services. An appeal of the director's order may be made in
3 the manner provided by AS 21.06.230.

4 Sec. 21.86.210. REHABILITATION, LIQUIDATION, OR CONSERVATION.

5 (a) A rehabilitation, liquidation, or conservation of a health main-
6 tenance organization is considered to be a rehabilitation, liquida-
7 tion, or conservation of an insurer, and shall be conducted under
8 AS 21.78. The director may apply to the superior court for an order
9 directing the rehabilitation, liquidation, or conservation of a health
10 maintenance organization upon one or more of the grounds contained in
11 AS 21.78.040, 21.78.050, or 21.78.060, or if, in the director's
12 opinion, the continued operation of the organization would be
13 hazardous to either enrollees or to the people of the state.

14 (b) Enrollees of a health maintenance organization have the same
15 priority in the event of liquidation or rehabilitation as AS 21.78
16 provides to policyholders of an insurer. A claim made by a health
17 care provider in a liquidation or rehabilitation that pertains to
18 services provided to an enrollee, has the same priority as an enrollee
19 if the provider agrees not to assert the claim against an enrollee and
20 if any payment fully discharges the obligation of the enrollee.

21 Sec. 21.86.220. REGULATIONS. The commissioner of health and
22 social services may adopt regulations necessary to carry out the
23 commissioner's duties under this chapter. The director may adopt
24 regulations necessary to carry out the director's duties under this
25 chapter.

26 Sec. 21.86.230. FEES. (a) A health maintenance organization
27 shall pay fees to the director as provided under AS 21.06.250.

28 (b) A health maintenance organization shall pay to the com-
29 missioner of health and social services fees, as established in regu-

1 lations adopted by the commissioner of health and social services,
2 that relate to the regulatory functions performed by that department
3 under this chapter.

4 Sec. 21.86.240. TAXATION. A health maintenance organization is
5 taxed as provided under AS 21.09.210(b)(1), and shall file the report
6 required of an authorized insurer under AS 21.09.210(a).

7 Sec. 21.86.250. PENALTIES AND ENFORCEMENT. (a) Instead of, or
8 in addition to, suspending or revoking a certificate of authority, the
9 director may, in an order issued under AS 21.86.200, impose an admin-
10 istrative penalty in an amount not less than \$1,000 nor more than
11 \$25,000 for each violation of an applicable provision of this chapter
12 or a regulation adopted under this chapter.

13 (b) The director may issue an order directing a health mainte-
14 nance organization or a person representing a health maintenance
15 organization to stop engaging in an act or practice that is in vio-
16 lation of this chapter or a regulation adopted under this chapter.
17 Within five days after service of a stop order under this subsection,
18 the respondent may request, in writing, a hearing on the question of
19 whether the act or practice has occurred in violation of this chapter
20 or a regulation adopted by the director. The hearing shall commence
21 within 10 days after the written request for the hearing has been
22 received by the director unless the respondent requests that the
23 hearing take place at a later date and the director agrees to the
24 later hearing date.

25 Sec. 21.86.260. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER
26 LAW. (a) Except as provided in this chapter, this title does not
27 apply to a health maintenance organization that obtains a certificate
28 of authority under this chapter. This subsection does not apply to an
29 insurer licensed under AS 21.09 or a hospital or medical service

1 corporation licensed under AS 21.87 except with respect to its health
2 maintenance organization activities authorized by and regulated under
3 this chapter.

4 (b) Solicitation of enrollees by a health maintenance orga-
5 nization that has obtained a certificate of authority or by its li-
6 censed agents or authorized employee representatives, may not be
7 construed to violate a law of this state relating to solicitation or
8 advertising by health care professionals.

9 (c) A health maintenance organization that obtains a certificate
10 of authority under this chapter is not considered to be practicing
11 medicine, and is exempt from a law of this state relating to the
12 practice of medicine. However, this subsection does not exempt a
13 health care provider from a licensing requirement, or from another law
14 of this state regarding providers.

15 Sec. 21.86.270. FILINGS AND REPORTS AS PUBLIC DOCUMENTS. Except
16 for information described in AS 21.86.100(b)(3) and except for trade
17 secrets, privileged, confidential commercial, or financial information
18 as determined by the director, all applications, filings, and reports
19 required under this chapter, including annual financial statements
20 that are required under AS 21.86.080, are public documents.

21 Sec. 21.86.280. CONFIDENTIALITY OF MEDICAL INFORMATION. Data or
22 information pertaining to the diagnosis, treatment, or health of an
23 enrollee or applicant that is obtained from that person, or from a
24 provider, by a health maintenance organization shall be held in confi-
25 dence and may not be disclosed except (1) to the extent necessary to
26 carry out the purposes of this chapter; (2) upon the express consent
27 of the enrollee or applicant; (3) under a statute or court order for
28 the production of evidence or discovery; or (4) in the event of a
29 claim or litigation between the person and the health maintenance

1 organization regarding which the data or information is relevant. A
2 health maintenance organization may claim a statutory privilege
3 against disclosure that the provider who furnished the information to
4 the health maintenance organization is entitled to claim.

5 Sec. 21.86.290. CONTRACT AUTHORITY FOR COMMISSIONER OF HEALTH
6 AND SOCIAL SERVICES. In carrying out duties under this chapter, the
7 commissioner of health and social services may contract with qualified
8 persons to make recommendations concerning the determinations required
9 to be made by the commissioner. Recommendations made by a contractor
10 may be accepted in full or in part by the commissioner of health and
11 social services.

12 Sec. 21.86.300. ACQUISITION OF CONTROL OR MERGER OF A HEALTH
13 MAINTENANCE ORGANIZATION. (a) A person may not acquire control of
14 the voting securities of a domestic health maintenance organization,
15 if, after the consummation of the transaction, that person would,
16 directly or indirectly, or by conversion or by exercise of any right
17 to acquire, be in control of the health maintenance organization, or
18 enter into an agreement to merge or consolidate with, or otherwise to
19 acquire control of, a health maintenance organization.

20 (b) Subsection (a) of this section does not apply to a person
21 who at the time the offer, request, or invitation is made or the
22 agreement is entered into, or before the acquisition of the securities
23 if no offer or agreement is involved, has filed with the director and
24 has sent to the health maintenance organization, information required
25 by AS 21.22 and the offer, request, invitation, agreement, or acquisi-
26 tion has been approved by the director. Approval by the director
27 under this subsection is governed by AS 21.22.

28 (c) In this section

29 (1) "acquire control of" means to make a tender for, make a

1 request or invitation for tenders of, enter into an agreement to
2 exchange securities for, or acquire in the open market or otherwise;

3 (2) "domestic" means formed under the laws of this state.

4 Sec. 21.86.310. DUAL CHOICE. (a) An employer in this state,
5 whether public or private, that offers its employees a health benefit
6 plan and employs 25 or more employees during any week of the calendar
7 year, and an employee benefit fund in this state that offers its
8 members any form of health benefit, shall make available to its em-
9 ployees or members the option to enroll in at least one health mainte-
10 nance organization, holding a valid certificate of authority, that
11 provides health care services in the geographic areas in which sub-
12 stantial numbers of the employees or members reside. If employees of
13 the employer are members of a collective bargaining unit, the option
14 of enrollment in a health maintenance organization shall first be
15 submitted to the bargaining representative of the bargaining unit. If
16 the option is approved by the bargaining representative, the option of
17 enrollment shall then be made to each represented employee.

18 (b) An employer in this state is not required to pay more for
19 employee health benefits as a result of the application of this sec-
20 tion than would be required if this section did not apply to the
21 employer. If an employee chooses enrollment in a health maintenance
22 organization, the employer is required to pay, on behalf of that
23 employee, only an amount equal to the lesser of

24 (1) the amount that would have to be paid to an insurer on
25 behalf of its employees for substantially similar health benefits; or

26 (2) the health maintenance organization's charge for cover-
27 age that is approved by the director under AS 21.86.070.

28 (c) This section does not apply to an employer whose employees
29 or members reside in an area where health care services are not

1 provided by a health maintenance organization.

2 Sec. 21.86.900. DEFINITIONS. In this chapter,

3 (1) "agent" means a person who is appointed by a health
4 maintenance organization and who engages in solicitation of membership
5 in the organization; "agent" does not include a person enrolling
6 health maintenance organization members on behalf of an employer, a
7 union, or other organization to whom a master subscriber contract has
8 been issued, or an employee, who is not an independent contractor, of
9 the health maintenance organization;

10 (2) "basic health care services" means emergency care,
11 inpatient hospital and physician care, and outpatient medical ser-
12 vices, but does not include mental health services or services for
13 alcohol or drug abuse;

14 (3) "enrollee" means an individual who is enrolled in a
15 health maintenance organization;

16 (4) "evidence of coverage" means a certificate, agreement,
17 or contract issued to an enrollee, setting out the coverage to which
18 the enrollee is entitled;

19 (5) "health care services" means services for medical or
20 dental care, or hospitalization, or services incident to the furnish-
21 ing of that care or hospitalization, and includes services for the
22 purpose of preventing, alleviating, curing, or healing human illness,
23 injury, or physical disability;

24 (6) "health maintenance organization" means a person that
25 undertakes to provide or arrange for basic health care services to
26 enrollees on a prepaid basis;

27 (7) "person" has the meaning given in AS 01.10.060 and
28 includes a joint venture;

29 (8) "provider" means a physician, hospital, or other person

1 licensed or otherwise authorized in this state to furnish health care
2 services;

3 (9) "uncovered expenditures" means the costs of health care
4 services that are covered by a health maintenance organization, but
5 for which an enrollee would also be liable if the organization became
6 insolvent.

7 * Sec. 2. AS 39.30.090(a)(4) is amended to read:

8 (4) The Department of Administration shall comply with the
9 dual choice requirements of AS 21.86.310, and shall obtain the insur-
10 ance policy from any insurer authorized to transact business in the
11 state under AS 21.09 and AS 21.90, or from a health maintenance orga-
12 nization authorized to operate in this state under AS 21.86.

13 * Sec. 3. AS 39.30.090(b)(3) is amended to read:

14 (3) "insurance", "insurance carrier" and "insurance policy"
15 include health care services, health care service contractors and
16 contracts, and health maintenance organizations.

17 * Sec. 4. TRANSITION. A health maintenance organization operating in
18 the state on the effective date of this Act shall submit an application as
19 required under AS 21.86.010(b), enacted in sec. 1 of this Act, for a cer-
20 tificate of authority within 60 days after the effective date of this Act.
21 An applicant may continue to operate until the director acts upon the
22 application. If the application is denied under AS 21.86.020, enacted in
23 sec. 1 of this Act, the applicant shall be treated as a health maintenance
24 organization whose certificate of authority has been revoked.

25 * Sec. 5. APPLICABILITY. AS 21.86.310(a), enacted in sec. 1 of this
26 Act, applies to an employer or a collective bargaining agreement upon the
27 expiration or renewal date of a contract or policy under the employer's
28 health benefit plan, or of the collective bargaining agreement.

29 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).