

LEGISLATIVE BILL 139

Approved by the Governor March 2, 1982

Introduced by S. Marsh, 29

AN ACT relating to insurance; to authorize prepaid dental service corporations; to provide duties; to set standards for prepaid dental service corporations; to provide definitions; and to provide for severability.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be interpreted liberally to aid in maintaining a high level of competence and adherence to professional standards in the performance of dental services.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Director shall mean the Director of Insurance;

(2) Department shall mean the Department of Insurance;

(3) Prepaid dental service plan or plan shall mean a contractual arrangement to provide specified dental services, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost of such services is to be spread directly or indirectly among a group of persons. A prepaid dental service plan includes arrangements that create reasonable expectations of enforceable rights, but does not include the provision of, or reimbursement for, dental services incidental to other insurance coverages; and

(4) Prepaid dental service corporation shall mean a corporation organized under this act and offering a prepaid dental service plan in this state.

Sec. 3. The insurance laws of this state including this act shall not apply to:

(1) Retainer contracts made by dentists with individual patients with fees based on estimates of the nature and amount of services to be provided to the specific patient and similar contracts made with a group of patients involved in the same or closely related dental matters;

(2) Plans providing no benefits other than consultation and advice in connection with or in combination with referral services; and

(3) The furnishing of limited dental assistance on an informal basis, involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, education, or similar relationship.

Sec. 4. (1) No person may offer a prepaid dental service plan in this state unless authorized to do so by the director.

(2) Subsection (1) of this section shall not apply to any person issuing group policies if fewer than twenty-five per cent of the certificate holders or insureds reside in this state and the person is regulated to a comparable extent by another state in which a larger number of certificate holders or insureds reside.

(3) Any person offering a prepaid dental service on or before the effective date of this act shall submit an application for a certificate of authority under this act within ninety days after the effective date of this act, and such applicant may continue to operate until the director acts upon the application. If the application is denied, the applicant shall be treated as a prepaid dental service corporation whose certificate of authority has been revoked.

Sec. 5. (1) A prepaid dental service plan may be offered on an individual or group basis. Each person covered under a group contract shall be issued a certificate of coverage.

(2) No contract or certificate for dental service may be issued in this state unless a copy of the form has been filed with and approved by the director.

Sec. 6. The director may disapprove a contract or certificate form for dental service under a prepaid dental service plan if the director finds that the form:

(1) Is unfair, unfairly discriminatory, misleading, or encourages misrepresentation or misunderstanding of the contract;

(2) Provides coverage or benefits or contains other provisions that would endanger the solvency of such plan;

(3) Provides payment rates which are excessive, inadequate, or unfairly discriminatory; or

(4) Is contrary to law.

Sec. 7. (1) Provider contracts, and changes thereto, made between a prepaid dental service corporation and any provider of services covered by any plan shall be filed with the director and shall not become effective until approved by the director.

(2) A prepaid dental service corporation shall annually report to the director, in such detail as the director reasonably requires, the number and geographical distribution of providers of services with whom they maintain contractual relations and the nature of the relations.

Sec. 8. (1) A prepaid dental service corporation shall deposit with the director securities eligible for deposit by an insurance company which shall have at all times a market value of not less than fifty thousand dollars or an amount as provided by subsection (7) of this section. A deposit under this section shall be held to assure the faithful performance of the corporation's obligations under its prepaid dental service plan.

(2) In lieu of any deposit of securities required under subsection (1) of this section, a prepaid dental service corporation may file with the director a surety bond in the amount of fifty thousand dollars or an amount as provided by subsection (7) of this section. The bond shall be one issued by an insurance company authorized to do business in the State of Nebraska. The bond shall be for the same purposes as the deposit in lieu of which it is filed and it shall be subject to the director's approval. No such bond shall be canceled or subject to cancellation unless at least thirty days' advance notice thereof, in writing, is filed with the director.

(3) Securities or a bond posted by a prepaid dental service corporation pursuant to subsection (1) or (2) of this section shall be for the benefit of and subject to action thereon in the event of insolvency of the corporation by any person or persons sustaining an actionable injury due to the failure of the corporation to faithfully perform its obligations under its prepaid dental service plan.

(4) The State of Nebraska shall be responsible for the safekeeping of all securities deposited with the director under this section. The securities shall not,

on account of being in this state, be subject to taxation.

(5) The depositing corporation shall, during its solvency, have the right to exchange or substitute other securities of a like quality and value for securities on deposit, to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(6) The deposit or bond shall be maintained unimpaired as long as the corporation continues to offer a prepaid dental service plan in this state. Whenever the corporation ceases to offer a prepaid dental service plan and furnishes to the director proof satisfactory to the director that the corporation has adequately provided for all of its obligations under its prepaid dental service plans in this state, the director shall release the deposited securities on presentation of the director's receipts for such securities or shall release any bond filed in lieu of such deposit.

(7) The director may reduce the minimum market value of securities required under subsection (1) of this section or the amount of the surety bond required under subsection (2) of this section if the director finds that the reduction is justified by:

(a) The terms and number of existing contracts under its prepaid dental service plans;

(b) Support by financially sound public or private organizations or agencies;

(c) Agreements with dentists or other providers for the provisions of dental services;

(d) Agreements with other persons for insuring the payment of the cost of dental services or the provision for alternative coverage in the event the corporation is unable to perform its obligations; or

(e) Other reliable financial guarantees.

(8) No part of the securities or bond to be filed under this section shall be supplied directly or indirectly by dues payments made for the purpose of meeting requirements to practice a profession.

Sec. 9. A prepaid dental service corporation shall not contract itself to practice dentistry in any manner, nor shall the corporation control or attempt to control the dentist in the exercise of professional

judgment.

Sec. 10. A prepaid dental service corporation may contract with others, including insurance companies organized under any of the laws of the State of Nebraska, for partial or total administrative services or for joint participation, or otherwise cede to or accept from others the whole or any part of the corporation's dental service obligations. Such contracts shall be filed with and approved by the director as being in accordance with the plan of the corporation prior to their effectiveness. The director may issue rules and regulations concerning such contracts.

Sec. 11. The director shall report to the president of the Nebraska Dental Association, or to any person designated by the Nebraska Dental Association to receive grievances concerning dentists from the public, any information of possible violations of the code of ethics by dentists who provide services in connection with a prepaid dental service plan.

Sec. 12. (1) Two or more persons may organize a prepaid dental service corporation under this section.

(2) The articles of incorporation of the corporation shall conform to the requirements of the Nebraska Nonprofit Corporation Act or to the requirements of the Nebraska Business Corporation Act, except that:

(a) The name of the corporation shall indicate that dental services are to be provided;

(b) The purposes of the corporation shall be limited to providing dental services and business reasonably related thereto;

(c) The articles shall state whether members, shareholders, or providers of services may be required to share operating deficits, either through assessments or through reductions in compensation for services rendered, the general conditions and procedures for deficit sharing, and any limits on the amount of the deficit to be assumed by each individual member, shareholder, or provider;

(d) For corporations having members, the articles shall state the conditions and procedures for acquiring membership and that only members have the right to vote; and

(e) For corporations not having members, the articles shall state how the directors are to be

selected.

Sec. 13. The incorporators shall file with the director an application for a certificate of authority to do business, which shall include or have attached the following:

(1) The names, addresses, and occupations of all incorporators, proposed directors, and officers;

(2) For corporate incorporators, their articles and bylaws and a list of the names, addresses, and occupations of their directors and principal officers and, for the three most recent years, their annual statements and reports;

(3) The proposed articles and bylaws;

(4) All agreements relating to the corporation to which any incorporator or proposed director or officer is a party;

(5) The amount and sources of the funds available for organization expenses and the proposed arrangements for reimbursement and compensation of incorporators or other persons;

(6) The proposed compensation of directors and officers;

(7) The forms to be used for any contracts between the corporation and its members or other persons concerning the provision of services;

(8) The proposed minimum amount of surplus;

(9) The plan for conducting its prepaid dental service plans including all of the following:

(a) The geographical area in which any plan is intended to operate;

(b) The types of dental services intended to be offered;

(c) The proposed marketing methods and copies of proposed marketing materials; and

(d) To the extent required by the director, the proposed method for the establishment of payment rates and other charges under the plans; and

(10) Such other documents or information as the director reasonably requires.

Sec. 14. The director shall issue a certificate of authority to a corporation organized under this act if:

(1) The director finds that all requirements of law have been met;

(2) The director is satisfied that all natural persons who are incorporators, the directors and principal officers of corporate incorporators, and the proposed directors and officers of the corporation being formed are trustworthy, competent, and collectively have the competence and experience to offer the particular plans proposed; and

(3) The director is satisfied that the plan is consistent with the interest of the persons to be served and the public.

Sec. 15. Upon the issuance of the certificate of authority, and upon the issuance of the certificate of incorporation by the Secretary of State, the existence of the corporation organized under this act shall begin, the articles and bylaws shall become effective, the proposed directors and officers shall take office, and the corporation shall be authorized to offer prepaid dental service plans in this state subject to the requirements and restrictions of this act.

Sec. 16. A corporation organized under this act shall invest its funds as provided by Chapter 44 and its investments shall be valued as provided by Chapter 44. The investments shall exceed its liabilities and reserves except for claim liability covered by contracting dentist guarantees, and it shall be a continuing condition of licensing by the director that such solvency be maintained.

Sec. 17. A corporation organized under this act shall maintain the reserves necessary for the sound operation of its prepaid dental service plans, including unearned payment reserves. The amount and manner of calculating such reserves shall be determined by rule and regulation of the director.

Sec. 18. A prepaid dental service corporation shall not be a member of the Nebraska Property and Liability Insurance Guaranty Association described in Chapter 44, article 24, or the Nebraska Life and Health Insurance Guaranty Association described in Chapter 44,

article 27. The Nebraska Property and Liability Insurance Guaranty Association Act and the Nebraska Life and Health Insurance Guaranty Association Act shall not be applicable to prepaid dental service plans.

Sec. 19. Any person may advance to a corporation organized under this act on a contingent liability base such funds as are necessary for the purposes of its business or to enable it to comply with any requirements of this act. Such money and interest thereon as may have been agreed upon shall be repayable but shall be repaid only on prior approval by the director. Repayment shall only be made out of operating surplus after reserve requirements have been met. No assessments against members may be levied for the purpose of repayment and no dividends may be paid to members or shareholders as long as interest or repayment installments remain unpaid.

Sec. 20. All corporations organized pursuant to this act shall be governed by such other laws regulating profit and nonprofit corporations as do not conflict with this act.

Sec. 21. The Department of Insurance may appoint any deputy or examiner or other persons who shall have the power of visitation and examination into the affairs of any corporation organized pursuant to this act. Such deputy or examiner shall have free access to all the books, papers, and documents that relate to the business of the corporation, and may summon and qualify witnesses under oath to examine its officers, agents, or employees or other persons in relation to the affairs, transactions, and condition of such corporation.

Sec. 22. Any dissolution or liquidation of a corporation organized under this act shall be conducted under the supervision of the department which shall have all powers with respect thereto under the provisions of law with respect to the dissolution and liquidation of an insurance company. Provisions of section 44-127.25 shall be applicable to the liquidation of a corporation organized under this act.

Sec. 23. Each corporation organized under this act shall annually on March 1 file with the department its statement for the preceding calendar year, in the form prescribed by the director, showing all payments received for prepaid dental services in this state. Such annual statements may use accounting principles common to its business, but such accounting principles shall enable the director to ascertain whether the reserve required by section 17 of this act has been maintained.

Sec. 24. Any corporation organized under this act neglecting to file the annual statement in the form and within the time provided by section 23 of this act shall forfeit one hundred dollars for each day during which such neglect continues, and, upon notice by the director to that effect, its authority to do business in this state shall cease while such default continues.

Sec. 25. In addition to an annual statement, the director may require of corporations, under oath and in the form prescribed by the director, such additional regular or special reports as the director may deem necessary to the proper supervision of corporations under this act.

Sec. 26. Any corporation organized pursuant to this act shall be subject to taxation under the provisions of Chapter 77, article 9, to the extent that direct writing premiums are subject to taxation under such article.

Sec. 27. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.