LEGISLATIVE BILL 320

Approved by the Governor March 14, 1989

Introduced by Banking, Commerce and Insurance Committee, Landis, 46, Chairperson; Conway, 17; Abboud, 12; Wesely, 26; Schmit, 23; Weihing, 48; Lynch, 13

AN ACT relating to insurance; to adopt the Prepaid Limited Health Service Organization Act; and to provide severability.

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

Section 1. This act shall be known and may be cited as the Prepaid Limited Health Service Organization Act.

Sec. 2. For purposes of the Prepaid Limited Health Service Organization Act:

(1) Director shall mean the Director of Insurance;

(2) Enrollee shall mean an individual, including dependents, who is entitled to limited health services pursuant to a contract with an entity authorized to provide or arrange for such services under the act;

(3) Evidence of coverage shall mean any certificate, agreement, or contract issued pursuant to section 9 of this act setting forth the coverage to which an enrollee is entitled;

(4) Limited health services shall mean dental care services, vision care services, mental health services, substance abuse services, pharmaceutical services, podiatric care services, and such other services as may be determined by the director to be limited health services. Limited health services shall not include hospital, medical, surgical, or emergency services except as such services are provided incident to the limited health services set forth in this subdivision;

(5) Prepaid limited health service organization shall mean any corporation, partnership, or other entity which, in return for a prepayment, undertakes to provide or arrange for the provision of one or more limited health services to enrollees. Prepaid limited health service organization shall not include (a) an entity otherwise authorized pursuant to the laws of this state either to provide any limited

health service on a prepayment or other basis or to indemnify for any limited health service, (b) an entity that meets the requirements of section 7 of this act, or (c) a provider or entity when providing or arranging for the provision of limited health services pursuant to a contract with a prepaid limited health service organization or with an entity described in subdivision (5)(a) or (b) of this section;

(6) Provider shall mean any physician, dentist, health facility, or other person or institution which is duly licensed or otherwise authorized to deliver or furnish limited health services; and

(7) Subscriber shall mean the person whose employment or other status, except for family dependency, is the basis for entitlement to limited health services pursuant to a contract with an entity authorized to provide or arrange for such services under the act.

Sec. 3. No person, corporation, partnership, or other entity may operate a prepaid limited health service organization in this state without obtaining and maintaining a certificate of authority from the director pursuant to the Prepaid Limited Health Service Organization Act.

Sec. 4. An application for a certificate of authority to operate as a prepaid limited health service organization shall be filed with the director on a form prescribed by the director. Such application shall be verified by an officer or authorized representative of the applicant and shall set forth or be accompanied by the following:

(1) A copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments to such documents;

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

(3) A list of the names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including, but not limited to, all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers, any person or entity owning or having the right to acquire ten percent or more of the voting securities of the applicant, and the partners or members in the case of a partnership or

association;

(4) A statement generally describing the applicant, its facilities and personnel, and the limited health services to be offered;

(5) A copy of the form of any contract made or to be made between the applicant and any providers regarding the provision of limited health services to enrollees;

(6) A copy of the form of any contract made or to be made between the applicant and any person listed in subdivision (3) of this section;

(7) A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any functions, including, but not limited to, marketing, administration, enrollment, investment management, and subcontracting for the provision of limited health services to enrollees;

(8) A copy of the form of any group contract which is to be issued to employers, unions, trustees, or other organizations and a copy of any form of evidence of coverage to be issued to subscribers;

(9) A copy of the most recent financial statements of the applicant audited by independent certified public accountants. If the financial affairs of the applicant's parent company are audited by independent certified public accountants but those of the applicant are not, a copy of the most recent audited financial statement of the applicant's parent company, certified by an independent certified public accountant, attached to which shall be consolidating financial statements of the applicant, shall satisfy this requirement unless the director determines that additional or more recent financial information is required for the proper administration of the Prepaid Limited Health Service Organization Act;

(10) A financial plan which includes a three-year projection of anticipated operating results, a statement of the sources of working capital, any other sources of funding, and provisions for contingencies;

(11) A schedule of rates and charges;

(12) A description of the proposed method of marketing;

(13) A description of the complaint procedures to be utilized as required under section 13 of this act;

(14) A description of the quality assessment and utilization review procedures to be utilized by the applicant;

(15) A description of how the applicant will comply with section 18 of this act;

(16) The fee for issuance of a certificate of authority provided in section 24 of this act; and

(17) Such other information as the director may reasonably require to make the determinations required by the act.

Sec. 5. (1) Following receipt of an application filed pursuant to section 4 of this act, the director shall review such application and notify the applicant of deficiencies therein. The director shall issue a certificate of authority if the following conditions are met:

(a) The requirements of section 4 of this act have been fulfilled;

(b) The individuals responsible for the conduct of the affairs of the applicant are competent and trustworthy, possess good reputations, and have had appropriate experience, training, or education;

(c) The applicant is financially responsible and may reasonably be expected to meet its obligations to enrollees and to prospective enrollees. In making this determination, the director may consider:

(i) The financial soundness of the applicant's arrangements for limited health services and the minimum standard rates, deductibles, copayments, and other patient charges used in connection therewith;

(ii) The adequacy of working capital, other sources of funding, and provisions for contingencies;

(iii) Any agreement providing for payment of the cost of the limited health services or for alternative coverage in the event of insolvency of the prepaid limited health service organization; and

(iv) The manner in which the requirements of section 18 of this act have been fulfilled;

(d) The agreements with providers for the provision of limited health services contain the provisions required by section 17 of this act; and

(e) Any deficiencies identified by the director have been corrected.

(2) If the certificate of authority is denied, the director shall notify the applicant by certified mail and shall specify the reasons for denial in the notice. The prepaid limited health service organization shall have ten days from the date of receipt of the notice to request a hearing before the director pursuant to the Administrative Procedure Act.

Sec. 6. Within one hundred eighty days after the effective date of this act, every prepaid limited

health service organization operating in this state without a certificate of authority shall submit an application for a certificate of authority to the director. Each such organization may continue to operate during the pendency of its application. In the event an application is denied under this section, the applicant shall then be treated as a prepaid limited health service organization whose certificate of authority has been revoked.

Sec. 7. (1) Any entity authorized pursuant to the laws of this state to operate a health maintenance organization, an accident and health insurance company, or a fraternal benefit society and which is not otherwise authorized pursuant to the laws of this state to offer limited health services on a per capita or fixed prepayment basis may do so by filing for approval with the director the information described in subdivisions (4), (5), (7), (8), (10), (11), (12), and (14) of section 4 of this act and any subsequent material modification or addition thereto.

(2) If the director disapproves the filing, the procedures set forth in subsection (2) of section 5 of this act shall be followed.

Sec. 8. (1) A prepaid limited health service organization shall file with the director prior to use a notice of any change in rates, charges, or benefits and of any material modification of any matter or document furnished pursuant to section 4 of this act, together with such supporting documents as are necessary to fully explain the change or modification. If the director does not disapprove such filing within thirty days of its filing, such filing shall be deemed approved.

(2) If a prepaid limited health service organization desires to add one or more limited health services, it shall file a notice with the director and, at the same time, shall submit the information required by section 4 of this act if different from that filed with the prepaid limited health service organization's application and shall demonstrate compliance with sections 17, 18, and 24 of this act. If the director does not disapprove such filing within thirty days of its filing, such filing shall be deemed approved.

(3) If the director does not approve the change, modification, or addition of a limited health service, the director shall notify the prepaid limited health service organization by certified mail and shall specify the reasons for disapproval in the notice. The prepaid limited health service organization shall have ten days from the date of receipt of the notice to

request a hearing before the director pursuant to the Administrative Procedure Act.

Sec. 9. (1) Every subscriber shall be issued an evidence of coverage which shall contain a clear and complete statement of:

(a) The services to which each enrollee is entitled;

(b) Any limitation of the services, kind of services, or benefits to be provided and exclusions, including any deductible, copayment, or other charges;

(c) Where and in what manner information is available as to where and how services may be obtained; and

(d) The method for resolving complaints.

(2) Any amendment to the evidence of coverage may be provided to the subscriber in a separate document.

Sec. 10. The rates and charges shall be reasonable in relation to the services provided. The director may request a statement from the prepaid limited health service organization describing the appropriateness of the rates and charges.

Sec. 11. (1) A prepaid limited health service organization shall be subject to sections 44-1522 to 44-1535. No other provision of Chapter 44 shall apply unless specifically mentioned in the Prepaid Limited Health Service Organization Act or unless prepaid limited health service organizations are specifically mentioned in the provisions of Chapter 44.

(2) The provision of limited health services by a prepaid limited health service organization or other entity pursuant to the Prepaid Limited Health Service Organization Act shall not be deemed to be the practice of medicine or other healing arts.

(3) Solicitation to arrange for or provide limited health services in accordance with the Prepaid Limited Health Service Organization Act shall not be construed to violate any provision of law relating to solicitation or advertising by health professionals.

(4) A prepaid limited health service organization organized under the laws of this state shall be deemed to be a domestic insurer for purposes of sections 44-2101 to 44-2119 unless specifically exempted in writing from one or more of the provisions of such sections by the director.

Sec. 12. Notwithstanding any other law of this state, no prepaid limited health service organization, health maintenance organization, accident and health insurance company, or fraternal benefit

society shall be required to include, in any contract or policy issued to a group, any coverage that would duplicate the coverage for limited health services, whether in the form of services, supplies, or reimbursement, which is provided in accordance with the Prepaid Limited Health Service Organization Act under a contract or policy issued to the same group or to a part of that group by a prepaid limited health service organization, a health maintenance organization, an accident and health insurance company, or a fraternal benefit society.

Sec. 13. Every prepaid limited health service organization shall establish and maintain a complaint system to provide reasonable procedures for the resolution of written complaints initiated by enrollees or providers. This section shall not be construed to preclude an enrollee or a provider from filing a complaint with the director or as limiting the director's ability to investigate such complaints.

Sec. 14. (1) The director may make an examination of the affairs of any prepaid limited health service organization 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 four years.

(2) Every prepaid limited health service organization shall make its relevant books and records available for such examination and in every way cooperate with the director to facilitate such examination.

(3) The expenses of examinations under this section shall be charged to the prepaid limited health service organization being examined, and the prepaid limited health service organization shall remit the charges to the director.

(4) In lieu of such examination, the director may accept the report of an examination made by the chief administrative officer of an insurance department of another state.

Sec. 15. The funds of a prepaid limited health service organization shall be invested only in cash, certificates of deposit, or obligations of a state or of the United States.

Sec. 16. No individual may apply, procure, negotiate, or place for others any policy or contract of a prepaid limited health service organization unless that individual holds a license pursuant to the Insurance Producers Licensing Act to sell accident and health insurance policies or health maintenance

organization contracts.

Sec. 17. All contracts with providers or with entities subcontracting for the provision of limited health services to enrollees on a prepayment or other basis shall contain or shall be construed to contain the following terms and conditions:

(1) In the event the prepaid limited health service organization fails to pay for limited health services for any reason whatsoever, including, but not limited to, insolvency or breach of this contract, the enrollees shall not be liable to the provider for any sums owed to the provider under this contract;

(2) No provider or an agent, trustee, or assignee thereof may maintain an action at law or attempt to collect from the enrollee sums owed to the provider by the prepaid limited health service organization;

(3) These provisions shall not prohibit collection of copayments from enrollees;

(4) These provisions shall survive the termination of this contract, regardless of the reason giving rise to the termination;

(5) Termination of this contract shall not release the provider from the obligations and duties imposed by this contract to complete procedures in progress on enrollees then receiving treatment for a specific condition for a period not to exceed thirty days at the same schedule of copayment or other applicable charge in effect upon the effective date of termination of this contract; and

(6) Any amendment to the provisions of this contract shall be submitted to and be approved by the director prior to becoming effective.

Sec. 18. (1) Each prepaid limited health service organization shall, at all times, have and maintain a tangible net equity at least equal to the greater of (a) fifty thousand dollars or (b) two percent of the organization's annual gross premium income, up to a maximum of the required capital and surplus of an accident and health insurer.

(2) A prepaid limited health service organization that has uncovered expenses in excess of fifty thousand dollars, as reported on the most recent annual financial statement filed with the director, shall maintain tangible net equity equal to twenty-five percent of the uncovered expense in excess of fifty thousand dollars in addition to the tangible net equity required by subsection (1) of this section.

(3) For the purpose of this section: (a) Net

equity shall mean the excess of total assets over total liabilities, excluding liabilities which have been subordinated in a manner acceptable to the director; and (b) tangible net equity shall mean net equity reduced by the value assigned to intangible assets, including, but not limited to: (i) Goodwill; (ii) going-concern value; (iii) organizational expense; (iv) starting-up costs; (v) obligations of officers, directors, owners, or affiliates, except short-term obligations of affiliates for goods or services arising in the normal course of business which are payable on the same terms as equivalent transactions with nonaffiliates and which are not past due; (vi) long-term prepayments of deferred charges; and (vii) nonreturnable deposits.

(4)(a) Each prepaid limited health service organization shall deposit, with the director or with any organization or trustee acceptable to the director through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that is acceptable to the director in an amount equal to twenty-five thousand dollars plus twenty-five percent of the tangible net equity required in subsection (1) of this section not to exceed one hundred thousand dollars.

(b) The deposit shall be an admitted asset of the prepaid limited health service organization in the determination of tangible net equity.

(c) All income from deposits shall be an asset of the prepaid limited health service organization. A prepaid limited health service organization may withdraw a deposit or any part thereof after making a substitute deposit of equal amount and value. Any securities shall be approved by the director before being substituted.

(d) The deposit shall be used to protect the interests of the prepaid limited health service organization's enrollees and to assure continuation of limited health services to enrollees of a prepaid limited health service organization that is in rehabilitation or conservation. If a prepaid limited health service organization is placed in receivership or liquidation, the deposit shall be an asset subject to the liquidation laws of the state.

(e) The director may reduce or eliminate the deposit requirement if the prepaid limited health service organization has made an acceptable deposit with the state or jurisdiction of domicile for the protection of all enrollees, wherever located, and delivers to the director a certificate to such effect, duly authenticated by the appropriate state official holding

the deposit.

(5) Upon application by a prepaid limited health service organization, the director may waive some or all of the requirements of subsection (1) of this section for any period of time the director deems proper upon a finding that either (a) the prepaid limited health service organization has a net equity of five million dollars or more or (b) an entity having a net equity of five million dollars or more furnishes to the director a written commitment which is acceptable to the director to provide for the uncovered expenses of the prepaid limited health service organization. For the purposes of this subsection, uncovered expense shall mean the cost of limited health services that are the obligation of a prepaid limited health service organization (i) for which an enrollee may be liable in the event of the insolvency of the organization and (ii) for which alternative arrangements acceptable to the director have not been made to cover the costs. Costs incurred by a provider who has agreed in writing not to bill enrollees, except for permissible supplemental charges, shall be considered covered expenses.

Sec. 19. (1) A prepaid limited health service organization shall maintain in force a fidelity bond in its own name on its officers and employees in an amount not less than fifty thousand dollars or in any other amount prescribed by the director. Except as otherwise provided by subsection (2) of this section, the bond shall be issued by an insurance company that is licensed to do business in this state, or if the fidelity bond required by this subsection is not available from an insurance company that holds a certificate of authority in this state, a fidelity bond procured by a surplus lines licensee resident in this state in compliance with section 44-140 shall satisfy the requirements of this subsection.

(2) In lieu of the bond specified in subsection (1) of this section, a prepaid limited health service organization may deposit with the director fifty thousand dollars in cash or securities or other investments of the types set forth in section 15 of this act. Such a deposit shall be maintained in joint custody with the director in the amount and subject to the same conditions required for a bond under this section.

Sec. 20. (1) Every prepaid limited health service organization shall file with the director annually, on or before March 1, a report verified by at least two principal officers covering the preceding

calendar year.

(2) Such report shall be on forms prescribed by the director and shall include:

(a) A financial statement of the organization, including its balance sheet, income statement, and statement of changes in financial position for the preceding year, audited by an independent certified public accountant, or the director may in lieu of such statement accept a consolidated audited financial statement of its parent company audited by an independent certified public accountant, attached to which shall be consolidating financial statements of the prepaid limited health service organization;

(b) Any material changes in the information submitted pursuant to section 4 of this act;

(c) The number of subscribers at the beginning of the year, the number of subscribers as of the end of the year, and the number of enrollments terminated during the year; and

(d) Such other information relating to the performance of the prepaid limited health service organization as is necessary to enable the director to carry out his or her duties under the Prepaid Limited Health Service Organization Act.

(3) The director may require more frequent reports containing such information as is necessary to enable the director to carry out his or her duties under the act.

(4) The director may assess a fine of up to one hundred dollars per day for each day any required report is late, and the director may suspend the organization's certificate of authority pending the proper filing of the required report by the organization.

Sec. 21. (1) The director may suspend or revoke any certificate of authority issued to a prepaid limited health service organization pursuant to the Prepaid Limited Health Service Organization Act upon determining that any of the following conditions exists:

(a) The prepaid limited health service organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to section 4 of this act unless amendments to such submissions have been filed with and approved by the director;

(b) The prepaid limited health service organization issues an evidence of coverage or uses rates or charges which do not comply with the

requirements of section 9 or 10 of this act;

(c) The prepaid limited health service organization is unable to fulfill its obligations to furnish limited health services;

(d) The prepaid limited health service organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(e) The prepaid limited health service organization has failed to implement the complaint system required by section 13 of this act in a reasonable manner to resolve valid complaints;

(f) The continued operation of the prepaid limited health service organization would be hazardous to its enrollees;

(g) The tangible net equity of the prepaid limited health service organization is less than that required by section 18 of this act or the prepaid limited health service organization has failed to correct any deficiency in its tangible net equity as required by the director; and

(h) The prepaid limited health service organization has otherwise failed to substantially comply with the act.

(2) If the director has cause to believe that grounds for the suspension or revocation of a certificate of authority exist, he or she shall notify the prepaid limited health service organization in writing by certified mail specifically stating the grounds for suspension or revocation and fixing a time not more than sixty days thereafter for a hearing on the matter. Any decision of the director may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(3) When the certificate of authority of a prepaid limited health service 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 or solicitation whatsoever. The director may, by written order, permit such further operation of the organization as he or she 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 limited health services.

Sec. 22. In lieu of any penalty specified

elsewhere in the Prepaid Limited Health Service Organization Act or when no penalty is specifically provided, whenever any prepaid limited health service organization or other person, corporation, partnership, or entity subject to the act has been found, pursuant to the Administrative Procedure Act, to have violated any provision of the Prepaid Limited Health Service Organization Act, the director may:

(1) Issue and cause to be served upon the organization, person, or other entity charged with the violation a copy of such findings and an order requiring such organization, person, or other entity to cease and desist from engaging in the act or practice which constitutes the violation; and

(2) Impose a monetary penalty of not more than one thousand dollars for each violation but not to exceed an aggregate penalty of ten thousand dollars.

Sec. 23. Any supervision, rehabilitation, conservation, or liquidation of a prepaid limited health service organization shall be deemed to be the supervision, rehabilitation, conservation, or liquidation of an insurance company and shall be conducted pursuant to Chapter 44, article 1. No prepaid limited health service organization shall be subject to the insurance laws, rules, and regulations governing insurance insolvency guaranty funds, nor shall any insurance insolvency guaranty fund provide protection to any individuals entitled to receive limited health services from a prepaid limited health service organization.

Sec. 24. Every prepaid limited health service organization subject to the Prepaid Limited Health Service Organization Act shall pay to the director the following fees:

(1) For filing an application for certificate of authority or amendment thereto, one hundred dollars;

(2) For filing a change in rates, charges, or benefits, material modification of any matter or document, or addition of a limited health service, fifty dollars;

(3) For filing each annual report, fifty dollars; and

(4) For filing periodic reports as required by the director, fifty dollars.

Sec. 25. (1) Any information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any provider by any prepaid limited health service organization and any contract submitted pursuant to the requirements of

the Prepaid Limited Health Service Organization Act shall be held in confidence and shall not be disclosed to any person except:

(a) To the extent that it may be necessary to carry out the purposes of the act;

(b) Upon the express consent of the enrollee, applicant, provider, or prepaid limited health service organization, whichever is applicable;

(c) Pursuant to statute or court order for the production of evidence or the discovery thereof; or

(d) In the event of claim or litigation in which such data or information is relevant.

(2) With respect to any information pertaining to the diagnosis, treatment, or health of any enrollee or applicant, a prepaid limited health service organization shall be entitled to claim any statutory privileges against disclosure which the provider who furnished such information to the prepaid limited health service organization is entitled to claim.

(3) Any information provided to the director which constitutes a trade secret, is privileged information, or is part of an investigation or examination by the director shall be held in confidence.

Sec. 26. The same taxes provided for in subsection (3) of section 44-3279 shall be imposed upon each prepaid limited health service organization, and such organizations also shall be entitled to the same tax deductions, reductions, abatements, and credits that health maintenance organizations are entitled to receive.

Sec. 27. The director may adopt and promulgate rules and regulations to carry out the Prepaid Limited Health Service Organization Act.

Sec. 28. 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.