

# ASSEMBLY, No. 2499

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## STATE OF NEW JERSEY

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INTRODUCED NOVEMBER 14, 1996

By Assemblywoman TURNER

1   **AN ACT** concerning health maintenance organizations and amending  
2   and supplementing P.L.1973, c.337.

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4   **BE IT ENACTED** by the Senate and General Assembly of the State  
5   of New Jersey:

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7       1. Section 15 of P.L.1973, c.337 (C.26:2J-15) is amended to read  
8   as follows:

9           15. a. No health maintenance organization, or representative  
10   thereof, may cause or knowingly permit the use of advertising which  
11   is untrue or misleading, solicitation which is untrue or misleading, or  
12   any form of evidence of coverage which is deceptive. For purpose of  
13   this act:

14           (1) a statement or item of information shall be deemed to be untrue  
15   if it does not conform to fact in any respect which is or may be  
16   significant to an enrollee of, or person considering enrollment in, a  
17   health care plan;

18           (2) a statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total  
19   context in which such statement is made or such item of information  
20   is communicated, such statement or item of information may be  
21   reasonably understood by a reasonable person, not possessing special  
22   knowledge regarding health care coverage, as indicating any benefit or  
23   advantage or the absence of any exclusion, limitation, or disadvantage  
24   of possible significance to an enrollee of, or person considering  
25   enrollment in, a health care plan, if such benefit or advantage or  
26   absence of limitation, exclusion or disadvantage does not in fact exist;

27           (3) an evidence of coverage shall be deemed to be deceptive if the  
28   evidence of coverage taken as a whole, and with consideration given  
29   to typography and format, as well as language, shall be such as to  
30   cause a reasonable person, not possessing special knowledge regarding  
31   health care plans and evidences of coverage therefore, to expect  
32   benefits, services, charges, or other advantages which the evidence of  
33   coverage does not provide or which the health care plan issuing such

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

Matter underlined thus is new matter.

1 evidence of coverage does not regularly make available for enrollees  
2 covered under such evidence of coverage.

3       b. The unfair trade practice provisions of the New Jersey insurance  
4 law (N.J.S.17B:30-1 through 22) shall be construed to apply to health  
5 maintenance organizations, health care plans and evidences of  
6 coverage except to the extent that the commissioner determines that  
7 the nature of health maintenance organizations, health care plans and  
8 evidence of coverage render such sections clearly inappropriate.

9       c. An enrollee may not be canceled or nonrenewed except for the  
10 failure to pay the charge for such coverage, or for such other reasons  
11 as may be promulgated by the commissioner.

12      d. No health maintenance organization, unless licensed as an  
13 insurer, may use in its name, evidence of coverage, or literature any of  
14 the words "insurance," "assurance," "casualty," "surety," "mutual," or  
15 any other words descriptive of the insurance, casualty, or surety  
16 business or deceptively similar to the name or description of any  
17 insurance, or surety corporation doing business in this State.

18       e. A health maintenance organization shall not consider a person's  
19 eligibility for medical assistance pursuant to P.L.1968, c.413  
20 (C.30:4D-1 et seq.), or the equivalent statute in another state, when  
21 determining the person's eligibility for enrollment in, or the provision  
22 of health care services under, a contract or certificate for health care  
23 services.

24       f. A health maintenance organization shall not provide financial  
25 incentives to a provider to withhold the provision of covered health  
26 care services to an enrollee that are deemed medically necessary by  
27 that provider.

28       g. A health maintenance organization shall not deny payment for  
29 health care services provided to an enrollee that are deemed medically  
30 necessary by the provider of those services, regardless of whether the  
31 enrollee has secured prior approval for those services from the health  
32 maintenance organization or the enrollee's primary care physician.

33       h. A health maintenance organization shall not discourage or  
34 prevent a provider, through a contractual arrangement or otherwise,  
35 from discussing a diagnostic testing or treatment option with an  
36 enrollee, regardless of whether the test or treatment option is covered  
37 under an enrollee agreement or is deemed experimental by the health  
38 maintenance organization.

39       i. A health maintenance organization shall not expend on health  
40 care benefits to its enrollees in any calendar year an amount which is  
41 less than 90% of its gross receipts for the previous calendar year as  
42 certified by the commissioner, except that this requirement shall not  
43 apply to a health maintenance organization which has been operating  
44 for less than one full calendar year.

45       As used in this subsection, "gross receipts" means all consideration  
46 given or contracted to be given, on a prepaid or copayment basis, to

1   a health maintenance organization, excluding consideration for  
2   services provided outside of this State to an individual who is not a  
3   resident of this State.

The provisions of this section shall be enforced by the State Director of the Division of Consumer Affairs and, where applicable, the commissioner or the Commissioner of Insurance. Nothing in this act shall limit the powers of the Attorney General and the procedures with respect to consumer fraud in P.L.1960, c.39 (C.56:8-1 et seq.). (cf: P.L.1995, c.291, s.9)

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11       2. (New section) A provider as defined in section 2 of P.L.1973,  
12 c.337 (C.26:2J-2) who, through a contractual arrangement or  
13 otherwise, provides health care services to a person enrolled with a  
14 health maintenance organization shall be immune from civil or criminal  
15 liability solely as a result of any limitation imposed by the enrollee's  
16 health maintenance organization with respect to the provision of health  
17 care services to the enrollee.

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19       3. This act shall take effect immediately.

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## STATEMENT

24 This bill prohibits a health maintenance organization (HMO) from  
25 implementing a number of restrictions with respect to enrollee  
26 treatment options which are currently imposed by HMO's. Under the  
27 bill, an HMO would be prohibited from:

-- providing financial incentives to a provider to withhold the provision of covered health care services to an enrollee that are deemed medically necessary by that provider;

31 -- denying payment for health care services provided to an enrollee  
32 that are deemed medically necessary by the provider of those services,  
33 regardless of whether the enrollee has secured prior approval for those  
34 services from the health maintenance organization or the enrollee's  
35 primary care physician; and

-- discouraging or preventing a provider, through a contractual arrangement or otherwise, from discussing a diagnostic testing or treatment option with an enrollee, regardless of whether the testing or treatment option is covered under an enrollee agreement or is deemed experimental by the HMO.

In addition, the bill requires that an HMO annually spend at least 90% of its gross receipts (as certified by the Commissioner of Health) on health care benefits to its enrollees, except that an HMO which has been operating for less than one full calendar year is exempted from this requirement. Under this provision, the aggregate amount which an HMO could apply to administration and other expenses and retain

1 as profit could not exceed 10% of its gross receipts.

2 Finally, the bill protects a health care provider who, through a  
3 contractual arrangement or otherwise, provides health care services  
4 to an HMO enrollee from civil or criminal liability solely as a result of  
5 any limitation imposed by the enrollee's HMO with respect to the  
6 provision of health care services to the enrollee.

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11 Prohibits HMO's from imposing certain restrictions regarding  
12 provision of health care services to enrollees.