HOUSE . . . . . No. 778

By Mr. O'Leary of Melrose, petition of the Mass. Association of HMOs and Timothy F. O'Leary for legislation to provide for the protection of consumers under certain health insurance plans. Insurance.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-One.

AN ACT PROVIDING FURTHER CONSUMER PROTECTION FOR MEMBERS OF CERTAIN HEALTH PLANS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 176G of the General Laws, as appearing
2 in the 1988 Official Edition, is hereby amended by adding the
3 following new Section 18: —
4 Section 18. The commissioner may bring an action in the
5 Supreme Judicial Court requesting appointment as a receiver for
6 a health maintenance organization whenever the commissioner
7 has reason to believe that the health maintenance organization
8 is being operated in a manner which threatens the health, safety
9 and continuity of care of members of the health maintenance
10 organization. Nothing in this section shall be construed to
11 abrogate or supersede any common law or statutory right of any
12 persons to bring an action requesting appointment of a receiver
13 for a health maintenance organization or to petition for relief
14 under federal bankruptcy law. The court shall issue a short order
15 of notice and set the matter for hearing within five days after the
16 filing of the action.
17 The purpose of a receivership created under this section shall
18 be to ensure the health and safety of and provision of health
19 services to members of the health maintenance organization, and
20 a health maintenance organization shall not be deemed a domestic
21 or foreign insurance company for purposes or rehabilitation,
22 liquidation or bankruptcy. A receiver appointed hereunder shall

23 not take any actions or assume any responsibilities inconsistent
24 with that purpose.
25 The court may on such petition issue a temporary injunction
26 restraining the health maintenance organization in whole or in
27 part from further proceeding with its business and may appoint
28 the commissioner as a temporary receiver forthwith. After due
29 notice and a full opportunity to be heard, the court may appoint
30 the commissioner as a permanent receiver and authorize him to
31 conduct the health maintenance organization's business by
32 performing those acts necessary or desirable to accomplish the
33 purpose of the receivership, and to exercise such additional
34 powers and perform such additional duties as the court may deem
35 appropriate.
36 The receiver or the health maintenance organization may at any
37 time make application to the court for the termination of a
38 proceeding under this section and to return the conduct of the
39 business to the health maintenance organization. The court, if
40 satisfied after due notice and a full hearing that the purposes of
41 the proceedings have been substantially accomplished, shall grant
42 such application.
43 Section 19. (a) In the event that a health maintenance
44 organization is declared insolvent by a federal bankruptcy court
45 or by a state court of competent jurisdiction, no member of the
46 health maintenance organization shall be liable to any provider
47 of health services for any covered services which are the
48 responsibility of the insolvent health maintenance organization
49 and for which a premium has been paid. Nor provider of health
50 services or any representative of such provider shall collect or
51 attempt to collect from the member sums for which the health
52 maintenance organization so deemed insolvent is responsible, and
53 no provider or representative of such provider may maintain any
54 action at law against a member to collect such sums.
55 (b) Every contract between a health maintenance organization
56 and any other persons or corporation which provides health
57 services shall provide that if the health maintenance organization
58 fails to pay for covered health care services as set forth in the
59 member's evidence of coverage or contract, the member shall not
60 be liable to such other person or corporation, or any
61 representative of such person or corporation, for any amounts

62 owed by the health maintenance organization. The commissioner
63 may by regulation further specify those contractual terms which
64 shall satisfy the requirements of this paragraph.
65 In the event that a contract between a health maintenance
66 organization and any other person or corporation which provides
67 health services does not contain such a provision, the contract will
68 be deemed to contain such a clause.
69 (c) In the event that a health maintenance organization is
70 declared insolvent by a federal bankruptcy court or a state court
71 of competent jurisdiction, all health maintenance organizations
72 that participated in the enrollment process with the insolvent
73 health maintenance organization at a group's last regular
74 enrollment period shall, subject to service area and capacity
75 constraints, participate in a thirty day enrollment period for such
76 group's members of the insolvent health maintenance organiza-
77 tion as provided for in rules and regulations promulgated
78 pursuant to this chapter.
79 All non-group members of the insolvent health maintenance
80 organization shall be equitably allocated among all insurers,
81 including health maintenance organizations, which operate within
82 a portion of the insolvent health maintenance organization's
83 service area as provided for in rules and regulations promulgated
84 pursuant to this chapter.
85 (d) Each health maintenance organization shall have a plan for
86 handling insolvency which shall be on file with the Division of
87 Insurance which provides for continuation of benefits for the
88 duration of the contract period for which premiums have been
89 paid and continuation of benefits to members who are confined
90 on the date of insolvency in an inpatient facility until their
91 discharge or expiration of benefits.

1 SECTION 2. Chapter 175 of the General Laws, as appearing
2 in the 1988 Official Edition, is hereby amended by adding the
3 following new Section 110L: —
4 Section 110L. In the event that a health maintenance
5 organization is declared insolvent, all insurers that participated
6 in the enrollment process with the insolvent health maintenance
7 organization at a group's last regular enrollment period shall,
8 subject to service area and capacity constraints, offer such group's

9 members of the insolvent health maintenance organization a thirty
10 day enrollment period as provided for in rules and regulations
11 promulgated pursuant to this chapter.

1 SECTION 3. Chapter 176A of the General Laws, as appearing
2 in the 1988 Official Edition, is hereby amended by adding the
3 following new Section 23A: —
4 Section 23A. In the event that a health maintenance
5 organization is declared insolvent by a federal bankruptcy court
6 or a state court of competent jurisdiction, all non-profit hospital
7 service corporations that participate in the enrollment process
8 with the insolvent health maintenance organization at a group's
9 last regular enrollment period shall offer such group's members
10 of the insolvent health maintenance organization a thirty day
11 enrollment period as provided for in rules and regulations
12 promulgated pursuant to this chapter.

1 SECTION 4. Section 9 of Chapter 176A of the General Laws,
2 as appearing in the 1988 Official Edition, is hereby amended by
3 adding the following new words after the word "Section" in the
4 first line: — "nine-A and section".

1 SECTION 5. Chapter 176A of the General Laws, as appearing
2 in the 1988 Official Edition, is hereby amended by adding the
3 following new Section 9A: —
4 Section 9A. Any person who is insured by a health mainte-
5 nance organization pursuant to a non-group subscriber agreement
6 and whose coverage is subject to cancellation because said health
7 maintenance organization has been declared insolvent by a federal
8 bankruptcy court or other court or competent jurisdiction shall
9 be issued, upon application, a subscriber agreement without being
10 subject to the requirements of section nine for a period of three
11 months after notice of insolvency has been provided to said
12 individual.

1 SECTION 6. Chapter 176B of the General Laws, as appearing
2 in the 1988 Official Edition, is hereby amended by adding the
3 following new Section 13A: —

4 Section 13A. In the event that a health maintenance
5 organization is declared insolvent by a federal bankruptcy court
6 or a state court of competent jurisdiction, all non-profit medical
7 service corporations that participated in the enrollment process
8 with the insolvent health maintenance organization at a group's
9 last regular enrollment period shall offer such group's members
10 of the insolvent health maintenance organization a thirty day
11 enrollment period as provided for in rules and regulations
12 promulgated pursuant to this chapter.

1 SECTION 7. Section 5 of Chapter 176B of the General Laws,
2 as appearing in the 1988 Official Edition, is hereby amended by
3 adding the following new sentence: —
4 Any person who is insured by a health maintenance
5 organization pursuant to a non-group subscriber agreement and
6 whose coverage is subject to cancellation because said health
7 maintenance organization has been declared insolvent by a federal
8 bankruptcy court or a state court of competent jursidiction shall
9 have the right to become a subscriber in a medical service
10 corporation without being subject to any restrictions or
11 limitations in coverage for a period of three months after notice
12 of insolvency has been provided to said individual.

1 SECTION 8. Chapter 176I of the General Laws, as appearing
2 in the 1988 Official Edition, is hereby amended by adding the
3 following new Section 12: —
4 Section 12. In the event that a health maintenance organiza-
5 tion is declared insolvent by a federal bankruptcy court or a state
6 court of competent jurisdiction, all preferred provider
7 arrangements that participated in the enrollment process with the
8 insolvent health maintenance organization at a group's last
9 regular enrollment period shall, subject to service area and
10 capacity constraints, offer such group's members of the insolvent
11 health maintenance organization a thirty day enrollment period
12 as provided for in rules and regulations promulgated pursuant to
13 this chapter.