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**WASHINGTON, D.C. ADOPTS HEALTHCARE LEGISLATION**

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The District of Columbia has traditionally exercised less regulatory oversight of healthcare than its sister states.<sup>(1)</sup> However, the regulatory authority of the D.C. Insurance Administration is being enhanced as a result of legislation passed by the D.C. City Council. This legislation will require action by health maintenance organizations (HMOs) and hospital and medical service corporations doing business in the District of Columbia.

Two principal reasons exist for this increase in insurance regulatory authority. First, the District of Columbia has been accredited by the NAIC. In order to become accredited, D.C. had to adopt legislation required by the NAIC Financial Standards Accreditation Program (FRSAP) and to make the additions to regulatory staff and procedures similarly required. Second, changes in the healthcare industry, including the increased utilization of HMOs, have increased consumer and regulator interest in regulating the business of healthcare.

The D.C. City Council recently enacted two significant pieces of legislation -- the Health Maintenance Organization Act of 1996 (D.C. Law 11-235) and the Hospital and Medical Services Corporation Regulatory Act of 1996 (D.C. Law 11-245). Regulations are now in the process of being formulated by the Insurance Administration.

***Health Maintenance Organization Act of 1996***

D.C. Law 11-235 sets the standards for the formation, operation and regulation of all HMOs operating in D.C. Pursuant to D.C. Law 11-235, a corporation must apply to the Commissioner of Insurance and Securities for a certificate of authority to operate an HMO in D.C.<sup>(2)</sup> Every application for a certificate must be accompanied with a \$500 filing fee and be verified by an officer or authorized representative of the applicant.<sup>(3)</sup>

Once certified, an HMO must take several steps to comply with D.C. Law 11-235. An HMO must promulgate internal quality assurance programs to monitor the health care services provided to enrollees.<sup>(4)</sup> An HMO must maintain a fidelity bond or insurance in an amount not less than \$250,000 and not more than \$5,000,000 on employees, officers, directors, and partners who receive, collect, disburse or invest funds of the organization.<sup>(5)</sup> An HMO must provide every group and individual contract holder with a contract from the HMO including pertinent information as set forth in the legislation.<sup>(6)</sup> Every HMO must file an annual report, an audited financial statement, a list of providers who have executed a contract, and a description of any changes in grievance procedures.<sup>(7)</sup> All HMOs must maintain grievance procedures for the resolution of enrollee complaints.<sup>(8)</sup> The Commissioner has the authority to suspend, revoke or deny a certificate of authority for failure to comply with such requirements.<sup>(9)</sup>

***Proposed Rule for D.C. Law 11-235***

The Insurance Administration has drafted proposed regulations pursuant to D.C. Law 11-235 to regulate HMOs and managed care systems in the District. These regulations focus on the review and approval of applications for certificates of authority, rates and minimum capital requirements for HMOs with a goal towards ensuring financial solvency.

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The proposed rule empowers the Commissioner to issue a certificate of authority upon satisfaction of the following: a completed application is filed; prescribed fees are paid; people responsible for the conduct of the applicant's affairs are competent and trustworthy; deficiencies identified by the Commissioner are corrected; the HMO provides or arranges for the provision of basic health care services on a prepaid basis; the HMO complies with the protection against insolvency provisions of the act; and the HMO complies with the enrollment period and replacement coverage provisions in the act in the event of insolvency.<sup>(10)</sup>

The proposed rule enumerates the manner in which an HMO must comply with certain requirements of D.C. Law 11-235. Specifically, the proposed regulations set forth compliance requirements for an HMO's quality assurance program,<sup>(11)</sup> protections against insolvency,<sup>(12)</sup> uncovered expenditures insolvency deposits<sup>(13)</sup> filing requirements for rating information,<sup>(14)</sup> regulation of HMO producers and agents<sup>(15)</sup>, and readability of contracts.<sup>(16)</sup> The proposed rule further prescribes the Commissioner's authority to deny, suspend or revoke a certificate of authority based on an HMO's failure to comply with these requirements.<sup>(17)</sup>

### ***Hospital and Medical Services Corporation Act of 1996***

D.C. Law 11-245 provides for the licensure and regulation of hospital and medical service corporations<sup>(18)</sup> organized under the laws of D.C., of any state, or chartered by an act of the U.S. Congress, that issue subscriber contracts<sup>(19)</sup> in D.C. To qualify to issue subscriber contracts, a corporation must apply to the Mayor for a certificate of authority.<sup>(20)</sup>

Upon receipt of a certificate of authority, a corporation must take certain steps to remain in compliance with D.C. Law 11-245. All corporations must file annual statements identifying the number of contract holders, the types of contracts issued, and total subscriber income, benefit, and indemnification payments.<sup>(21)</sup> The corporation must offer D.C. citizens not eligible for coverage as an employee of an employer which provides basic hospital and medical services, benefits, and indemnification, an open enrollment program providing such services.<sup>(22)</sup> A corporation must also establish and maintain pro rata gross unearned premium reserves, reserves for incurred but unpaid claims, reserves for expenses related to claim settlements, and reserves as required for proper reporting of its financial condition.<sup>(23)</sup> Any corporation wishing to issue group subscriber contracts in D.C. must include in its contracts certain provisions enumerated in the Act, or provisions more favorable to the subscriber.<sup>(24)</sup> Further, D.C. Law 11-245 mandates the size and composition of a corporation's board or trustees.<sup>(25)</sup>

### ***Proposed Rule for D.C. Law 11-245***

Once issued a certificate of authority, D.C. Law 11-245 permits a corporation to convert to a for-profit stock insurance company or a mutual insurance company subject to the provisions of the law.<sup>(26)</sup> The Insurance Administration has drafted proposed requirements pursuant to D.C. Law 11-245 and applicable to any hospital and medical services corporation which submits to the Commissioner of Insurance a proposed plan for such a conversion.

The proposed rule requires a corporation seeking authorization for such a conversion to file a proposed conversion plan or procedure with the Commissioner.<sup>(27)</sup> To increase the likelihood of gaining approval for a proposed conversion, a corporation should ensure that its proposed plan is equitable to current and potential contract holders of the converting corporation and the public. The proposed plan should include sufficient safeguards to assure D.C. residents continued access to affordable health care coverage and services. Further, the converting corporation should exercise sufficient due diligence in negotiating the terms and conditions of the proposed conversion transaction when deciding to sell, transfer, lease, merge or similarly dispose of its assets.<sup>(28)</sup>

### ***Conclusion***

D.C. Law 11-235 and 11-245 and the proposed regulations require HMOs and hospital and medical service corporations to become licensed in D.C. for the first time and require careful navigation of certification requirements and thorough monitoring to remain in compliance.

### *Endnotes*

1. While the District of Columbia is a "federal enclave" and not a state, the D.C. City Council exercises the authority of a legislature and the Office of the Mayor exercises the authority of the Executive Branch. Insurance regulation is within the purview of the D.C. Insurance Administration.
2. D.C. Law 11-235, 3. HMOs already operating in D.C. have 120 days from the effective date of this law to apply for this certification and may continue to operate until the Commissioner acts upon their application. HMOs currently operating with a valid certificate of authority from the Maryland Insurance Division or the Virginia Bureau of Insurance may operate without the D.C. Commissioner's certification until the next renewal date or anniversary date of coverage, or 120 days from the date of the application is denied, whichever date occurs later. *Id.*
3. A completed application must include: copies of the applicant's organizational documents and by-laws; a list of the names, addresses, and positions of people responsible for the applicant's affairs; sample contract forms between providers and the HMO' a copy of a group contract form to be issued to employers or other organizations' financial statements showing the applicant's assets, liabilities, and sources of financial support; a financial feasibility plan' a power of attorney providing that the Commissioner is the attorney of the applicant for service of process; a description of grievance procedures for enrollee complaints; a proposed quality assurance program; procedures against insolvency; a list of the names, addresses, and license numbers of all providers with which the procedures against insolvency; a list of themes, addresses, and license numbers of all providers with which the HMO has agreements; the method of determining the group contract situs; and other information as the Commissioner may require. The Commissioner requires that the HMO have an initial net worth of \$1,500,000. *Id.* at13.
4. *Id.* at 7.
5. *Id.* at 6.
6. *Id.* at 8.
7. *Id.* at 9.
8. *Id.* at 11.
9. *Id.* at 20.
10. Proposed D.C. Reg. 3501 (amending Title 26 D.C.M.R. (Insurance) by adding a new Chapter 35, Insurance Rules for HMOs).
11. *Id.* at 3506.
12. *Id.* at 3508.
13. *Id.* at 3509.
14. *Id.* at 3509.
15. *Id.* at 3510.
16. *Id.* at 6.
17. *Id.* at 6.

18. "Corporation," as defined by D.C. Law 11-245, means a "non-stock, nonprofit corporation which is subject to regulation and licensing under this act and which offers subscriber contracts as part of a hospital service plan, a medical service plan, or both." D.C. Law 11-245, 2.

19. "Subscriber contract," as defined by D.C. Law 11-245, means a "written group or individual contract which is issued to a contract holders by a corporation which provides for subscriber participation in a hospital service plan, a medical service plan, or a combination of two." *Id.*

20. *Id.* at 35. Each application must be accompanied with a \$200 fee, as well as: the applicant's articles of incorporation and by laws; a copy of each contract executed or proposed between the corporation and a hospital, physician, or medical service provider encompassing the terms under which the service is to be furnished; each subscriber contract form including a table of rates; a corporation's financial statement; a risk-based capital report; a list of names, addresses and biographical information of members of the board of directors or trustee and the corporation's officers; a statement of the geographical area in which the corporation proposed to operate; and any other information required by the Mayor. *Id.*

21. *Id.* at 14.

22. *Id.* at 15.

23. *Id.* at 10.

24. *Id.* at 12.

25. *Id.* at 10.

26. *Id.* at 16-17.

27. Proposed D.C. Reg. 4715 (amending Title 26 D.C.M.R. (Insurance) by adding a new chapter 47, Hospital and Medical Services Corporation Regulation).

28. The following documents must accompany the proposed plan: a description of the terms and conditions of the proposed conversion transaction; an opinion by an independent financial advisor that the proposed conversion is fair to current and potential contract holders; an opinion of the financial condition of the corporation before and subsequent to the proposed conversion, and copies of the most recent audited annual financial statements and any subsequent quarterly financial statements submitted to the Department; an opinion of short and long-term risks to current and potential contract holders in terms of future availability of healthcare coverage; certification that the proposed conversion transaction was adopted by a majority vote of the board of directors; a disclosure statement of any direct or indirect economic interests in the conversion transaction for each officer, director or trustee; and any other information required by the Commissioner to ensure that the proposed conversion is equitable to contract holders, any surplus noteholders of the converting corporation and the public. *Id.* At 4715.1.

