

**OPINION NO. 84-049**

**Syllabus:**

1. At all times other than during the open enrollment period described in R.C. 1742.12, a health maintenance organization may not, pursuant to R.C. 1742.16, decline to enroll an individual on the basis of health status or health history information submitted by such an individual.
2. During the open enrollment period described in R.C. 1742.12, a health maintenance organization is not required to enroll individuals who are confined to health care facilities because of chronic illnesses, permanent injuries, or infirmities that would cause economic impairment to the health maintenance organization, and thus a health maintenance organization may require applicants to submit health status and health history information during the open enrollment period for the purpose of identifying such individuals. A health maintenance organization may not decline to enroll an individual on the basis of health status or health history information during the open enrollment period for any reason other than one specified in R.C. 1742.12.

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**To: George Fabe, Director, Ohio Department of Insurance, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, October 17, 1984**

I have before me your request for my opinion as to whether a health maintenance organization (hereinafter "HMO") may consider health status and health history in determining whether to enroll individuals for health care insurance coverage, both during the open enrollment period mentioned in R.C. 1742.12 and at all other times not within an open enrollment period. I understand that your specific concern is whether an HMO may decline to enroll an applicant for membership in the HMO on the basis of health status and health history information obtained from the applicant as part of the application process.

I turn first to the consideration of the health status and health history of individuals during times not within an open enrollment period. HMO's are regulated in the State of Ohio pursuant to the provisions of R.C. Chapter 1742.<sup>1</sup> See R.C. 1742.01(G) (defining "health maintenance organization"). More specifically, as you note in the text of the letter in which you solicit my opinion, R.C. 1742.16 states in part:

Unless otherwise required by state or federal law, no health maintenance organization, or any health care facility or provider through which it has made arrangements to provide health care services under its health care plan or plans, shall discriminate against any individual with regard to enrollment, disenrollment, or the quality of health care services rendered to enrollees, on the basis of such individual's race, color, sex, age, religion, state of health, or status as a recipient of medicare or medical assistance. . . . (Emphasis added.)

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<sup>1</sup> HMO's are also regulated by federal law. See 42 U.S.C. §§300e-300e-17, 42 C.F.R. §110.108(d) states in part:

The HMO shall not expel or refuse to re-enroll any member nor refuse to enroll individual members of a group, on the basis of the health status, health care needs, or age of the member or individual. For purposes of this paragraph, a "group" is an entity which consists of members who enroll in the HMO through a contract or other arrangement which provides for the enrollment of two or more subscribers. (Emphasis added.)

R.C. 1742.16 clearly indicates that an HMO may not discriminate against an individual for purposes of enrollment, on the basis of the individual's "state of health". R.C. 1742.16 is not ambiguous on this point and there is no need to resort to rules of statutory construction for its interpretation. See R.C. 142 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"); Wachendorf v. Shaver, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (where legislative intent is clearly expressed in statute, courts may not restrict, qualify, narrow, enlarge or abridge the statutory language); Swetland v. Miles, 101 Ohio St. 501, 130 N.E. 22 (1920) (where the meaning of a statute is plain, courts may not construe such statute). If an HMO "screens" prospective enrollees by requiring enrollees to submit health status information and health histories, for the purpose of rejecting individuals who might represent poor health risks, the HMO is clearly discriminating "with regard to enrollment. . . on the basis of. . . state of health. . ." in contravention of R.C. 1742.16. Such screening of prospective enrollees would of course, constitute discrimination within the meaning of R.C. 1742.16 only to the extent that such enrollees would be actually rejected for coverage on the basis of health status and health history information submitted to the HMO during the screening process.

Therefore, I conclude that pursuant to R.C. 1742.16, an HMO may not use health status or health history information as a basis for refusing to enroll individuals during periods other than open enrollment periods.

You further inquire whether HMO's may use health status and health history information as a basis for deciding whether to enroll an individual during the open enrollment period described in R.C. 1742.12. R.C. 1742.12 states in part:

After the health maintenance organization has furnished, directly or indirectly, basic health care services to enrollees for a period of twenty-four months, it shall hold an open enrollment period of not less than thirty days at least once during each consecutive twelve-month period during which it accepts individuals up to its capacity, as determined by the organization subject to review by the superintendent of insurance, in the order in which they apply for enrollment. . . .

. . . .  
A health maintenance organization shall not be required to enroll individuals who are confined to a health care facility because of chronic illness, permanent injury, or other infirmity that would cause economic impairment to the health maintenance organization if such individuals were enrolled or to make the effective date of benefits for individuals enrolled under this section earlier than ninety days after the date of enrollment.

Thus, during an open enrollment period, an HMO is not required to enroll prospective enrollees<sup>2</sup> "who are confined to a health care facility because of chronic illness, permanent injury, or other infirmity that would cause economic impairment to the health maintenance organization if such individuals were enrolled. . . ." An HMO may not, however, decline to enroll an individual on the basis of health status or health history information submitted during the open enrollment period for any reason other than one specified in R.C. 1742.12.

<sup>2</sup> As I note above, pursuant to R.C. 1742.16 an HMO is prohibited from discriminating on the basis of state of health for purposes of enrollment. Further, an HMO is prohibited from so discriminating for purposes of expelling, refusing to re-enroll, canceling or failing to renew the subscriptions of, or disenrolling members. R.C. 1742.16; 42 U.S.C. §300e(c)(4); 42 U.S.C. §300e-9(d); 42 C.F.R. §110.108(d). The limited extent to which HMO's may discriminate on the basis of the exceptions contained in R.C. 1742.12, discussed *infra*, pertain only to new applicants who desire to enroll during an open enrollment period.

Therefore, I conclude that since an HMO may not be required to enroll certain individuals described in R.C. 1742.12, quoted above, during the open enrollment period also described in that statute, the HMO may inquire into the health status and health histories of applicants as part of the open enrollment process to determine whether the applicants are the types of individuals whom the HMO may decline to enroll pursuant to R.C. 1742.12. The HMO is limited in using such information as a basis for rejecting applicants to those circumstances specified in R.C. 1742.12.

It is, therefore, my opinion, and you are advised, that:

1. At all times other than during the open enrollment period described in R.C. 1742.12, a health maintenance organization may not, pursuant to R.C. 1742.16, decline to enroll an individual on the basis of health status or health history information submitted by such an individual.
2. During the open enrollment period described in R.C. 1742.12, a health maintenance organization is not required to enroll individuals who are confined to health care facilities because of chronic illnesses, permanent injuries, or infirmities that would cause economic impairment to the health maintenance organization, and thus a health maintenance organization may require applicants to submit health status and health history information during the open enrollment period for the purpose of identifying such individuals. A health maintenance organization may not decline to enroll an individual on the basis of health status or health history information during the open enrollment period for any reason other than one specified in R.C. 1742.12.