

1 AN ACT concerning health maintenance organizations.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Health Maintenance Organization Act is
5 amended by changing Sections 6-2, 6-4, 6-5, 6-8, 6-9, 6-10,
6 6-11, 6-12, 6-14, and 6-17 as follows:

7 (215 ILCS 125/6-2) (from Ch. 111 1/2, par. 1418.2)

8 Sec. 6-2. Purpose. The purpose of this Article is to
9 protect enrollees of health care plans who reside in this
10 State, ~~and their beneficiaries, payees and assignees,~~ subject
11 to certain limitations, against failure in the performance of
12 contractual obligations due to the impairment or insolvency
13 of the organization operating such health care plans.
14 Nonresident enrollees of such health care plans shall be
15 protected by this Association if: (1) they reside in states
16 which have associations similar to the Association created by
17 this Article; (2) they are not eligible for coverage by such
18 associations; (3) the organization which operates such health
19 care plan never held a license or certificate of authority in
20 such states; and (4) such organization was domiciled in this
21 State. To provide this protection, (1) an association of
22 health maintenance organizations is created to enable the
23 guaranty of payment of benefits and of continuation of
24 coverages, either on a prepaid or indemnity basis, (2)
25 members of the Association are subject to assessment to
26 provide funds to carry out the purpose of this Article, and
27 (3) the Association is authorized to assist the Director, in
28 the prescribed manner, in the detection and prevention of
29 health care plan impairments or insolvencies.

30 (Source: P.A. 86-620.)

1 (215 ILCS 125/6-4) (from Ch. 111 1/2, par. 1418.4)

2 Sec. 6-4. Construction. This Article is to be liberally
3 construed to be for the benefit of the member organizations'
4 enrollees and to effect the purpose under Section 6-2 which
5 ~~constitutes an aid and guide to interpretation.~~

6 (Source: P.A. 85-20.)

7 (215 ILCS 125/6-5) (from Ch. 111 1/2, par. 1418.5)

8 Sec. 6-5. Definitions. As used in this Act:

9 (1) "Association" means the Illinois Health Maintenance
10 Organization Guaranty Association created under Section 6-6.

11 (2) "Director" means the Director of Insurance of this
12 State.

13 (3) "Contractual obligation" means any obligation of the
14 member organization under covered health care plan
15 certificates.

16 (4) "Covered person" means any enrollee who is entitled
17 to the protection of the Association as described in Section
18 6-2.

19 (5) "Covered health care plan certificate" means any
20 health care plan certificate, contract or other evidence of
21 coverage within the scope of this Article under Section 6-3.

22 (6) "Fund" means the fund created under Section 6-6.

23 (7) "Impaired organization" means a member organization
24 determined deemed by the Director in a written notice to the
25 Association after the effective date of this Article to be
26 potentially unable to fulfill its contractual obligations and
27 not an insolvent organization.

28 (8) "Insolvent organization" means a member organization
29 that is found to be ~~which becomes~~ insolvent and is placed
30 under a final order of liquidation or rehabilitation by a
31 court of competent jurisdiction.

32 (9) "Member organization" means any person licensed or
33 who holds a certificate of authority to transact in this

1 State any kind of business to which this Article applies
2 under Section 6-3. For purposes of this Article "member
3 organization" includes any person whose certificate of
4 authority may have been suspended pursuant to Section 5-5 of
5 this Act.

6 (10) "Premiums" means direct gross premiums or
7 subscriptions received on covered health care plan
8 certificates.

9 (11) "Person" means any individual, corporation, trust,
10 limited liability company, partnership, association,
11 governmental body or entity, or voluntary organization.

12 (12) "Resident" means any person who resides in this
13 State at the time the organization is issued a Notice of
14 Impairment by the Director or at the time a complaint for
15 liquidation or rehabilitation is filed and to whom
16 contractual obligations are owed. A person may be a resident
17 of only one state which, in the case of a person other than a
18 natural person, shall be its principal place of business.

19 (Source: P.A. 88-297.)

20 (215 ILCS 125/6-8) (from Ch. 111 1/2, par. 1418.8)

21 Sec. 6-8. Powers and duties of the Association. In
22 addition to the powers and duties enumerated in other
23 Sections of this Article, the Association shall have the
24 powers set forth in this Section.

25 (1) If a domestic organization is an impaired
26 organization, the Association may, subject to any conditions
27 imposed by the Association other than those which impair the
28 contractual obligations of the impaired organization, and
29 approved by the impaired organization and the Director:

30 (a) guarantee or reinsure, or cause to be
31 guaranteed, assumed or reinsured, any or all of the
32 covered health care plan certificates of covered persons
33 of the impaired organization; and

1 (b) provide such monies, pledges, notes,
 2 guarantees, or other means as are proper to effectuate
 3 paragraph (a), and assure payment of the contractual
 4 obligations of the impaired organization pending action
 5 under paragraph (a).~~;~~ and

6 ~~(c) -- loan money to the impaired organization.~~

7 (2) If a domestic, foreign, or alien organization is an
 8 insolvent organization, the Association shall, subject to the
 9 approval of the Director:

10 (a) guarantee, assume, indemnify or reinsure or
 11 cause to be guaranteed, assumed, indemnified or reinsured
 12 the covered health care plan benefits of covered persons
 13 of the insolvent organization; however, in the event that
 14 the Director of the Department of Public Aid assigns
 15 individuals that are recipients of public aid from an
 16 insolvent organization to another organization, the
 17 Director of the Department of Public Aid shall, before
 18 fixing the rates to be paid by the Department of Public
 19 Aid to the transferee organization on account of such
 20 individuals, consult with the Director of the Department
 21 of Insurance as to the reasonableness of such rates in
 22 light of the health care needs of such individuals and
 23 the costs of providing health care services to such
 24 individuals;

25 (b) assure payment of the contractual obligations
 26 of the insolvent organization to covered persons;

27 (c) make payments to providers of health care, or
 28 indemnity payments to covered persons, so as to assure
 29 the continued payment of benefits substantially similar
 30 to those provided for under covered health care plan
 31 certificate issued by the insolvent organization to
 32 covered persons; and

33 (d) provide such monies, pledges, notes,
 34 guaranties, or other means as are reasonably necessary to

1 discharge such duties.

2 This subsection (2) shall not apply when the Director has
3 determined that the foreign or alien organization's
4 domiciliary jurisdiction or state of entry provides, by
5 statute, protection substantially similar to that provided by
6 this Article for residents of this State and such protection
7 will be provided in a timely manner.

8 (3) There shall be no liability on the part of and no
9 cause of action shall arise against the Association or
10 against any transferee from the Association in connection
11 with the transfer by reinsurance or otherwise of all or any
12 part of an impaired or insolvent organization's business by
13 reason of any action taken or any failure to take any action
14 by the impaired or insolvent organization at any time.

15 (4) If the Association fails to act within a reasonable
16 period of time as provided in subsection (2) of this Section
17 with respect to an insolvent organization, the Director may
18 assume ~~shall~~ have the powers and duties of the Association
19 under this Article with regard to such insolvent
20 organization.

21 (5) The Association or its designated representatives
22 may render assistance and advice to the Director, upon his
23 request, concerning rehabilitation, payment of claims,
24 continuations of coverage, or the performance of other
25 contractual obligations of any impaired or insolvent
26 organization.

27 (6) The Association has standing to appear or intervene
28 before any court or agency concerning all matters germane to
29 the powers and duties of the Association, including, but not
30 limited to, proposals for reinsuring or guaranteeing the
31 covered health care plan certificates of the impaired or
32 insolvent organization and the determination of the covered
33 health care plan certificates and contractual obligations.

34 (7) (a) Any person receiving benefits under this Article

1 is deemed to have assigned to the Association the rights
2 under the covered health care plan certificates, and any
3 causes of action against any person for losses arising under,
4 resulting from, or otherwise relating to, the covered health
5 care plan certificates, in each case Association to the
6 extent of the benefits received because of this Article
7 (whether the benefits are payments of contractual obligations
8 or continuation of coverage). The Association may require an
9 assignment to it of such rights by any payee, enrollee or
10 beneficiary as a condition precedent to the receipt of any
11 rights or benefits conferred by this Article upon such
12 person. The Association is subrogated to these rights
13 against the assets of any insolvent organization and against
14 any other party who may be liable to such payee, enrollee or
15 beneficiary.

16 (b) The subrogation rights of the Association under this
17 subsection have the same priority against the assets of the
18 insolvent organization as that possessed by the person
19 entitled to receive benefits under this Article.

20 (c) In addition to paragraphs (a) and (b) of this
21 subsection, the Association shall have all common law rights
22 of subrogation and any other equitable or legal remedy that
23 would have been available to the impaired or insolvent
24 organization or owner or beneficiary or payee of a covered
25 health care plan certificate with respect to the covered
26 health care plan certificate.

27 (d) If the Association has provided benefits with
28 respect to a covered health care plan certificate and a
29 person recovers amounts as to which the Association has
30 rights as described in paragraphs (a), (b), or (c) of this
31 subsection, the person shall pay to the Association the
32 portion of the recovery attributable to the health care plan
33 certificate (or portion thereof) covered by the Association.

34 (8) (a) The contractual obligations of the insolvent

1 organization for which the Association becomes or may become
2 liable are as great as but no greater than the contractual
3 obligations of the insolvent organization would have been in
4 the absence of an insolvency unless such obligations are
5 reduced as permitted by subsection (3), but the aggregate
6 liability of the Association shall not exceed \$300,000 with
7 respect to any one natural person.

8 (b) Furthermore, the Association shall not be required
9 to pay, and shall have no liability to, any provider of
10 health care services to an enrollee:

11 (i) if such provider, or his or its affiliates or
12 members of his immediate family, at any time within the
13 one year prior to the date of the issuance of the first
14 order, by a court of competent jurisdiction, of
15 conservation, rehabilitation or liquidation pertaining to
16 the health maintenance organization:

17 (A) was a securityholder of such organization
18 (but excluding any securityholder holding an equity
19 interest of 5% or less);

20 (B) exercised control over the organization by
21 means such as serving as an officer or director,
22 through a management agreement or as a principal
23 member member of a not-for-profit organization;

24 (C) had a representative serving by virtue or
25 his or her official position as a representative of
26 such provider on the board of any entity which
27 exercised control over the organization;

28 (D) received provider payments made by such
29 organization pursuant to a contract which was not a
30 product of arms-length bargaining; or

31 (E) received distributions other than for
32 physician services from a not-for-profit
33 organization on account of such provider's status as
34 a member of such organization.

1 For purposes of this subparagraph (i), the terms
2 "affiliate," "person," "control" and "securityholder"
3 shall have the meanings ascribed to such terms in Section
4 131.1 of the Illinois Insurance Code; or

5 (ii) if and to the extent such a provider has
6 agreed by contract not to seek payment from the enrollee
7 for services provided to such enrollee or if, and to the
8 extent, as a matter of law such provider may not seek
9 payment from the enrollee for services provided to such
10 enrollee.

11 (c) Furthermore, the Association shall not be required
12 to pay, and shall have no liability for any of the following:

13 (i) Any claim under a covered health care plan
14 certificate to the extent that the assessments with
15 respect to the certificate are prohibited or preempted by
16 federal or State law.

17 (ii) Any claim that does not arise under the
18 express written terms of a health care plan certificate,
19 contract, or other evidence of coverage issued by the
20 insolvent organization, including without limitation:

21 (A) claims based on marketing materials;

22 (B) claims based on side letters, riders, or
23 other documents that were issued by the insolvent
24 organization without meeting applicable form filing
25 or approval requirements;

26 (C) misrepresentations of or regarding health
27 care plan benefits;

28 (D) bad faith claims; or

29 (E) claims for penalties or consequential or
30 incidental damages.

31 (iii) Any claim that was not submitted to the
32 insolvent organization prior to the date of its final
33 order of liquidation and which is not submitted to the
34 Association within one year after the date of the final

1 order of liquidation.

2 (iv) Any claim that had been previously submitted
3 to and denied by the insolvent organization prior to the
4 date on which the organization became an insolvent
5 organization, if not re-submitted to the Association for
6 its review and determination within one year of the date
7 of the final order of liquidation.

8 (v) Any claim for services provided by a provider
9 or other person more than one year prior to the date of
10 the final order of liquidation.

11 (vi) Any claim of any provider to the extent that
12 any other provider or person has, under an agreement with
13 the insolvent organization, agreed to pay, reimburse, or
14 otherwise accept responsibility for the claim.

15 (vii) Any claim to the extent covered by a policy,
16 program, contract, or health care plan certificate issued
17 by an insurer, another organization, or employer. A
18 person who has a claim against any such entity under a
19 provision in a policy, contract, or certificate (other
20 than one issued by the impaired or insolvent
21 organization), that also is a contractual obligation
22 under this Article must first exhaust his right under
23 that policy, contract, or certificate. The amount of an
24 approved claim under this Article shall be reduced by the
25 policy limits of or amount paid under that policy
26 contract or certificate, whichever amount is greater. If
27 a claimant exhausts his right under a policy, contract,
28 or certificate (other than one issued by the impaired or
29 insolvent organization), the insurer, organization, or
30 employer issuing that policy, contract, or certificate is
31 not entitled to sue or continue a suit against the
32 enrollee of the impaired or insolvent organization to
33 recover an amount paid the claimant under that policy,
34 contract, or certificate.

1 (d) (i) The Association shall have no obligation under a
 2 covered health care plan certificate to convert coverage to
 3 an individual or group HMO contract or to any other form of
 4 health care coverage or to offer any other conversion
 5 product.

6 (ii) In the event that the insolvent organization
 7 acted with an insurer in the issuance of a
 8 point-of-service product offered by both the insolvent
 9 organization and an insurer (i.e., a product offering
 10 both health care plan services from the insolvent
 11 organization and indemnity by the insurer for out-of-plan
 12 health care services), the Association shall be
 13 responsible only for those covered health care plan
 14 services obtained from providers at that time employed by
 15 or under contract with the insolvent organization or the
 16 Association (or providers to whom the enrollee was
 17 properly referred by such providers) and for covered
 18 health care plan emergency services.

19 (e) (i) (e) In no event shall the Association be
 20 required to pay any provider participating-in-the-insolvent
 21 organization any amount for in-plan services rendered by such
 22 provider prior to the insolvency of the organization in
 23 excess of (1) the amount provided by a capitation or other
 24 contract between the a physician provider and the insolvent
 25 organization for such services; or (2) the amounts provided
 26 by contract between the a hospital provider and the
 27 Department of Public Aid for similar services to recipients
 28 of public aid; or (3) in the event neither (1) nor (2) above
 29 is applicable, then the amounts paid under the Medicare area
 30 prevailing rate for the area where the services were
 31 provided, or if no such rate exists with respect to such
 32 services, then 80% of the usual and customary rates
 33 established by the Health Insurance Association of America.
 34 The-payments-required-to-be-made--by--the--Association--under

1 this--Section--shall--constitute--full--and--complete--payment--for
2 such--provider--services--to--the--enrollee--

3 (ii) Any provider whose contract with the insolvent
4 organization remains in-force on the date of the order of
5 liquidation (or on the date of the order of conservation or
6 rehabilitation, if any such order was entered) shall be
7 obliged, at the request of (d) the Association shall--not--be
8 required--to--pay--more--than--an--aggregate--of--\$300,000 and for
9 and on behalf of the Association, to continue any
10 organization--which--is--declared to provide the same services
11 required under the contract for a period after the order of
12 liquidation specified by the Association (which may not
13 exceed 4 months after the order of liquidation) with respect
14 be--insolvent--prior to those July-1, 1987, and such funds
15 shall--be--distributed--first--to enrollees that remain from time
16 to time covered who are not public-aid recipients pursuant to
17 a plan recommended by the Association--and--approved by the
18 Association during such period Director and that are assigned
19 by the Association to such provider the--court--having
20 jurisdiction--over--the--liquidation. If the Association
21 requests such services, the Association will be obliged,
22 notwithstanding the limitations of subdivision (8)(b) of
23 Section 6-8, to pay for such post-liquidation services during
24 such period, on the basis of the payment provisions of such
25 contracts, with respect to the enrollees that are from time
26 to time covered by the Association during such period and
27 assigned to such provider.

28 (f) The payments required to be made by the Association
29 under this Section shall constitute full and complete payment
30 for such provider services to the enrollee. The enrollee
31 shall have no liability, and the provider may not seek any
32 payment from the enrollee, for or with respect to any amounts
33 not paid to the provider on account of the exclusions or
34 limitations on the liability or obligations of the

1 Association under this Article.

2 (9) The Association may:

3 (a) Enter into such contracts as are necessary or
4 proper to carry out the provisions and purposes of this
5 Article.

6 (b) Sue or be sued, including taking any legal
7 actions necessary or proper for recovery of any unpaid
8 assessments under Section 6-9 and to settle any
9 litigation, threatened or potential litigation, claims or
10 potential claims by or against the Association. The
11 Association shall not be liable for punitive or exemplary
12 damages.

13 (c) Borrow money to effect the purposes of this
14 Article. Any notes or other evidence of indebtedness of
15 the Association not in default are legal investments for
16 domestic organizations and may be carried as admitted
17 assets.

18 (d) Employ or retain such persons as are necessary
19 or appropriate to handle the financial transactions of
20 the Association, and to perform such other functions as
21 become necessary or proper under this Article.

22 (e) Negotiate and contract with any liquidator,
23 rehabilitator, conservator, or ancillary receiver to
24 carry out the powers and duties of the Association.

25 (f) Take such legal action as may be necessary or
26 appropriate to avoid or recover payment of improper
27 claims.

28 (g) Exercise, for the purposes of this Article and
29 to the extent approved by the Director, the powers of a
30 domestic organization, but in no case may the Association
31 issue evidence of coverage other than that issued to
32 perform the contractual obligations of the impaired or
33 insolvent organization.

34 (h) Exercise all the rights of the Director under

1 Section 193(4) of the Illinois Insurance Code with
2 respect to covered health care plan certificates after
3 the association becomes obligated by statute.

4 (i) Request information from a person seeking
5 coverage or provider seeking payment from the Association
6 in order to aid the Association in determining its
7 obligations under this Article. The person or provider
8 shall promptly comply with the request as a condition
9 precedent to the receipt of any rights or benefits
10 conferred by this Article.

11 (j) Take other necessary or appropriate action to
12 discharge its duties and obligations under this Article
13 or to exercise its powers under this Article.

14 (10) The obligations of the Association under this
15 Article shall not relieve any reinsurer, insurer or other
16 person of its obligations to the insolvent organization (or
17 its conservator, rehabilitator, liquidator or similar
18 official) or its enrollees, including without limitation any
19 reinsurer, insurer or other person liable to the insolvent
20 insurer (or its conservator, rehabilitator, liquidator or
21 similar official) or its enrollees under any contract of
22 reinsurance, any contract providing stop loss coverage or
23 similar coverage or any health care contract. With respect to
24 covered health care plan certificates for which the
25 Association becomes obligated after an entry of an order of
26 liquidation or rehabilitation, the Association may elect to
27 succeed to the rights of the insolvent organization arising
28 after the date of the order of liquidation or rehabilitation
29 under any contract of reinsurance, any contract providing
30 stop loss coverage or similar coverages or any health care
31 service contract to which the insolvent organization was a
32 party, on the terms set forth under such contract, to the
33 extent that such contract provides coverage for health care
34 services provided after the date of the order of liquidation

1 or rehabilitation. As a condition to making this election,
2 the Association must pay premiums for coverage relating to
3 periods after the date of the order of liquidation or
4 rehabilitation.

5 (11) The Association shall be entitled to collect
6 premiums due under or with respect to covered health care
7 certificates for a period from the date on which the
8 domestic, foreign, or alien organization became an insolvent
9 organization until the Association no longer has obligations
10 under subsection (2) of this Section with respect to such
11 certificates. The Association's obligations under subsection
12 (2) of this Section with respect to any covered health care
13 plan certificates shall terminate in the event that all such
14 premiums due under or with respect to such covered health
15 care plan certificates are not paid to the Association (i)
16 within 30 days of the Association's demand therefor, or (ii)
17 in the event that such certificates provide for a longer
18 grace period for payment of premiums after notice of
19 non-payment or demand therefor, within the lesser of (A) the
20 period provided for in such certificates or (B) 60 days.

21 (12) The Association may take all necessary or
22 appropriate action to non-renew any covered health care plan
23 certificate on the earliest date after the final order of
24 liquidation on which the certificate may be non-renewed by
25 the insolvent organization, provided that the Association
26 provides notice of non-renewal on or before the date
27 specified in the certificate (or, if no date is specified in
28 the certificate, at least 90 days prior to the effective date
29 of non-renewal).

30 (13) The Board of Directors of the Association shall
31 have discretion and may exercise reasonable business judgment
32 to determine the means by which the Association is to provide
33 the benefits of this Article in an economical and efficient
34 manner.

1 (14) Where the Association has arranged or offered to
2 provide the benefits of this Article to a covered person
3 under a plan or arrangement that fulfills the Association's
4 obligations under this Article, the person shall not be
5 entitled to benefits from the Association in addition to or
6 other than those provided under the plan or arrangement.

7 (15) Venue in a suit against the Association arising
8 under this Article shall be in Cook County. The Association
9 shall not be required to give an appeal bond in any case or
10 proceeding that arises from or is based in whole or in part
11 on claims or other rights asserted under this Article.

12 (Source: P.A. 90-655, eff. 7-30-98.)

13 (215 ILCS 125/6-9) (from Ch. 111 1/2, par. 1418.9)

14 Sec. 6-9. Assessments. (1) For the purpose of
15 providing the funds necessary to carry out the powers and
16 duties of the Association, the board of directors shall
17 assess the member organizations, at such times and for such
18 amounts as the board finds necessary. Assessments shall be
19 due not less than 30 days after written notice to the member
20 organizations and shall accrue interest from the due date at
21 such adjusted rate as is established under Section 531.09 of
22 the Illinois Insurance Code and such interest shall be
23 compounded daily.

24 (2) There shall be 2 classes of assessments, as follows:

25 (a) Class A assessments shall be made for the purpose of
26 meeting administrative costs and other general expenses and
27 examinations conducted under the authority of the Director
28 under subsection (5) of Section 6-12.

29 (b) Class B assessments shall be made to the extent
30 necessary to carry out the powers and duties of the
31 Association under Section 6-8 with regard to an impaired or
32 insolvent domestic organization or insolvent foreign or alien
33 organizations.

1 (3) (a) The amount of any Class A assessment shall be
2 determined by the Board and may be made on a non-pro rata
3 basis.

4 (b) Class B assessments against member organizations
5 shall be in the proportion that the premiums received on
6 health maintenance organization business in this State by
7 each assessed member organization on covered health care plan
8 certificates for the calendar year preceding the assessment
9 bears to such premiums received on health maintenance
10 organization business in this State for the calendar year
11 preceding the assessment by all assessed member
12 organizations.

13 (c) Assessments to meet the requirements of the
14 Association with respect to an impaired or insolvent
15 organization shall not be made until necessary to implement
16 the purposes of this Article. Classification of assessments
17 under subsection (2) and computations of assessments under
18 this subsection shall be made with a reasonable degree of
19 accuracy, recognizing that exact determinations may not
20 always be possible.

21 (4) (a) The Association may abate or defer, in whole or
22 in part, the assessment of a member organization if, in the
23 opinion of the board, payment of the assessment would
24 endanger the ability of the member organization to fulfill
25 its contractual obligations.

26 (b) The total of all assessments upon a member
27 organization may not in any one calendar year exceed 2% of
28 such organization's premiums in this State during the
29 calendar year preceding the assessment on the covered health
30 care plan certificates.

31 (5) In the event an assessment against a member
32 organization is abated, or deferred, in whole or in part,
33 because of the limitations set forth in subsection (4) of
34 this Section, the amount by which such assessment is abated

1 or deferred, may be assessed against the other member
2 organizations in a manner consistent with the basis for
3 assessments set forth in this Section. If the maximum
4 assessment, together with the other assets of the
5 Association, does not provide in any one year an amount
6 sufficient to carry out the responsibilities of the
7 Association, the necessary additional funds may be assessed
8 as soon thereafter as permitted by this Article.

9 (6) The board may, by an equitable method as established
10 in the plan of operation, refund to member organizations, ~~in~~
11 ~~proportion to the contribution of each organization,~~ the
12 amount by which the assets of the fund exceed the amount the
13 board finds is necessary to carry out ~~during the coming year~~
14 the obligations of the Association, including assets accruing
15 from net realized gains and income from investments. A
16 reasonable amount may be retained in the fund to provide
17 moneys for the continuing expenses of the Association and for
18 future claims losses if refunds are impractical.

19 (7) An assessment is deemed to occur on the date upon
20 which the board votes such assessment. The board may defer
21 calling the payment of the assessment or may call for payment
22 in one or more installments.

23 (8) It is proper for any member organization, in
24 determining its rates to consider the amount reasonably
25 necessary to meet its assessment obligations under this
26 Article.

27 (9) The Association must issue to each organization
28 paying a Class B assessment under this Article a certificate
29 of contribution, in a form prescribed by the Director, for
30 the amount of the assessment so paid. All outstanding
31 certificates are of equal dignity and priority without
32 reference to amounts or dates of issue. A certificate of
33 contribution may be shown by the organization in its
34 financial statement as an admitted asset in such form and for

1 such amount, if any, and period of time as the Director may
2 approve, provided the organization shall in any event at its
3 option have the right to show a certificate of contribution
4 as an asset at percentages of the original face amount for
5 calendar years as follows:

6 100% for the calendar year after the year of issuance;

7 80% for the second calendar year after the year of
8 issuance;

9 60% for the third calendar year after the year of
10 issuance;

11 40% for the fourth calendar year after the year of
12 issuance;

13 20% for the fifth calendar year after the year of
14 issuance.

15 (Source: P.A. 85-20.)

16 (215 ILCS 125/6-10) (from Ch. 111 1/2, par. 1418.10)

17 Sec. 6-10. Plan of Operation. (1) (a) The Association
18 must submit to the Director a plan of operation and any
19 amendments thereto necessary or suitable to assure the fair,
20 reasonable, and equitable administration of the Association.
21 The plan of operation and any amendments thereto become
22 effective upon approval in writing by the Director.

23 (b) If the Association fails to submit a suitable plan
24 of operation within 90 days following the effective date of
25 this Article or if at any time thereafter the Association
26 fails to submit suitable amendments to the plan, the Director
27 may, after notice and hearing, adopt and promulgate such
28 reasonable rules as are necessary or advisable to effectuate
29 the provisions of this Article. Such rules are in force until
30 modified by the Director or superseded by a plan submitted by
31 the Association and approved by the Director.

32 (2) All member organizations must comply with the plan
33 of operation.

1 (3) The plan of operation must, in addition to
2 requirements enumerated elsewhere in this Article:

3 (a) Establish procedures for handling the assets of the
4 Association;

5 (b) Establish the amount and method of reimbursing
6 members of the board of directors under Section 6-7;

7 (c) Establish regular places and times for meetings
8 including telephone conference calls of the board of
9 directors;

10 (d) Establish procedures for records to be kept of all
11 financial transactions of the Association, its agents, and
12 the board of directors;

13 (e) Establish the procedures whereby selections for the
14 board of directors will be made and submitted to the
15 Director;

16 (f) Establish any additional procedures for assessments
17 under Section 6-9; and

18 (g) Contain additional provisions necessary or proper
19 for the execution of the powers and duties of the
20 Association.

21 (4) The plan of operation shall establish a procedure
22 for protest by any member organization of assessments made by
23 the Association pursuant to Section 6-9. Such procedures
24 shall require that:

25 (a) Any member organization that wishes to protest all
26 or any part of an assessment for any year shall first pay the
27 full amount of the assessment as set forth in the notice
28 provided by the Association; provided, however, that the
29 Association and the protesting member HMO may agree that (A)
30 the member HMO need pay, at the time of the protest, only the
31 portion of the entire assessment that is under protest by the
32 member HMO, (B) the member HMO waives any further protest
33 with respect to the assessment, and (C) the member HMO must
34 pay any balance of the assessment not under protest at the

1 time or times specified by the Association for payment of
2 non-protested amounts. Any such payments shall be available
3 and may be used to meet Association obligations during the
4 pendency of the protest and any subsequent appeal. Such
5 payments shall be accompanied by a statement in writing that
6 the payment is made under protest, setting forth a brief
7 statement of the ground for the protest. ~~The--Association~~
8 ~~shall--hold--such--payments--in--a--separate-interest-bearing~~
9 ~~account.~~

10 (b) Within 30 days following the payment of an
11 assessment under protest by any protesting member
12 organization, the Association must notify the member
13 organization in writing of its determination with respect to
14 the protest unless the Association notifies the member that
15 additional time is required to resolve the issues raised by
16 the protest.

17 (c) In the event the Association determines that the
18 protesting member organization is entitled to a refund, such
19 refund shall be made within 30 days following the date upon
20 which the Association makes its determination.

21 (d) The decision of the Association with respect to a
22 protest may be appealed to the Director pursuant to
23 subsection (3) of Section 6-11.

24 (e) In the alternative to rendering a decision with
25 respect to any protest based on a question regarding the
26 assessment base, the Association may refer such protests to
27 the Director for final decision, with or without a
28 recommendation from the Association.

29 (f) Interest on any refund due a protesting member
30 organization shall be paid at a rate equal to the Treasury
31 bill rate in effect from time to time during the time at--the
32 rate--actually--earned-by the Association held on the amounts
33 under protest separate-account.

34 (5) The plan of operation may provide that any or all

1 powers and duties of the Association, except those under
2 paragraph (c) of subsection (10) of Section 6-8 and Section
3 6-9 are delegated to a corporation, association or other
4 organization which performs or will perform functions similar
5 to those of this Association, or its equivalent, in 2 or more
6 states. Such a corporation, association or organization
7 shall be reimbursed for any payments made on behalf of the
8 Association and shall be paid for its performance of any
9 function of the Association. A delegation under this
10 subsection shall take effect only with the approval of both
11 the Board of Directors and the Director, and may be made only
12 to a corporation, association or organization which extends
13 protection not substantially less favorable and effective
14 than that provided by this Article.

15 (Source: P.A. 85-20.)

16 (215 ILCS 125/6-11) (from Ch. 111 1/2, par. 1418.11)

17 Sec. 6-11. Duties and Powers of the Director. In
18 addition to the duties and powers enumerated elsewhere in
19 this Article, the Director shall have the powers set forth in
20 this Section.

21 (1) The Director must:

22 (a) Upon request of the board of directors, provide
23 the Association with a statement of the premiums in the
24 appropriate states for each member organization.

25 (b) Notify the board of directors of the existence
26 of an impaired or insolvent organization not later than 3
27 days after a determination of impairment or insolvency is
28 made or when the Director receives notice of impairment
29 or insolvency.

30 (c) Give notice to an impaired organization as
31 required by Section 2-4 of this Act. Notice to the
32 impaired organization shall constitute notice to its
33 shareholders, if any.

1 (d) In any liquidation or rehabilitation proceeding
2 involving a domestic organization, be appointed as the
3 liquidator or rehabilitator. If a foreign or alien
4 member organization is subject to a liquidation
5 proceeding in its domiciliary jurisdiction or state of
6 entry, the Director may be appointed conservator.

7 (2) The Director may suspend or revoke, after notice and
8 hearing, the certificate of authority to transact business in
9 this State of any member organization which fails to pay an
10 assessment when due or fails to comply with the plan of
11 operation. As an alternative the Director may levy a
12 forfeiture on any member organization which fails to pay an
13 assessment when due. Such forfeiture may not exceed 5% of
14 the unpaid assessment per month, but no forfeiture may be
15 less than \$100 per month.

16 (3) Any final decision or action of the board of
17 directors or the Association may be appealed to the Director
18 by any member organization or any other person adversely
19 affected by such action if such appeal is taken within 30
20 days of the action being appealed. Any final action or order
21 of the Director is subject to judicial review in a court of
22 competent jurisdiction. An action or order of the Director
23 may be final and subject to judicial review even if the
24 aggrieved party seeking judicial review has not sought
25 reconsideration or rehearing by the Director.

26 (4) The liquidator, rehabilitator, or conservator of any
27 impaired organization may notify all interested persons of
28 the effect of this Article.

29 (5) The Director shall require any member organization
30 whose RBC level (as determined pursuant to Article IIA of the
31 Illinois Insurance Code) is less than its company action
32 level RBC (as determined pursuant to Article IIA of the
33 Illinois Insurance Code) to maintain current information, on
34 a readily accessible basis, relating to its members, members'

1 premium payments, benefits to members, providers, and
2 payments to providers.

3 (6) The Director shall share with the Association
4 information in his possession respecting any member
5 organization if and when either (a) such organization becomes
6 an impaired organization under this Article or (b) the
7 Director initiates conservation, rehabilitation, or
8 liquidation proceedings with respect to such organization.

9 (Source: P.A. 86-620.)

10 (215 ILCS 125/6-12) (from Ch. 111 1/2, par. 1418.12)

11 Sec. 6-12. Prevention of Insolvencies. To aid in the
12 detection and prevention of organization insolvencies or
13 impairments:

14 (1) It shall be the duty of the Director:

15 (a) To notify the appropriate regulatory authority of
16 all other states, territories of the United States, and the
17 District of Columbia when he takes any of the following
18 actions against a member organization:

19 (i) revocation of license;

20 (ii) suspension of license;

21 (iii) makes any formal order, except for an order issued
22 pursuant to Article XII 1/2 of the Illinois Insurance Code,
23 that such company restrict its subscriptions, obtain
24 additional contributions to surplus, withdraw from the State,
25 reinsure all or any part of its business, or increase
26 capital, surplus or any other account for the security of
27 enrollees or creditors.

28 Such notice shall be transmitted to all regulatory
29 authorities within 30 days following the action taken or the
30 date on which the action occurs.

31 (b) To report to the board of directors when he has
32 taken any of the actions set forth in subparagraph (a) of
33 this paragraph or has received a report from any other

1 regulatory authority indicating that any such action has been
2 taken in another state. Such report to the board of
3 directors shall contain all significant details of the action
4 taken or the report received from another regulatory
5 authority.

6 (2) The Director may seek the advice and recommendations
7 of the board of directors concerning any matter affecting his
8 duties and responsibilities regarding the financial condition
9 of member organizations and organizations seeking admission
10 to transact business in this State.

11 (3) The board of directors may, upon majority vote, make
12 reports and recommendations to the Director upon any matter
13 germane to the liquidation, rehabilitation or conservation of
14 any member organization. Such reports and recommendations
15 shall not be considered public documents.

16 (4) The board of directors may, upon majority vote, make
17 recommendations to the Director for the detection and
18 prevention of health maintenance organization insolvencies.

19 (5) The board of directors ~~may shall~~, at the conclusion
20 of any health maintenance organization insolvency in which
21 the Association was obligated to make payments, prepare a
22 report to the Director containing such information as it may
23 have in its possession bearing on the history and causes of
24 such insolvency. The board shall cooperate with the boards
25 of directors of guaranty associations in other states in
26 preparing a report on the history and causes for insolvency
27 of a particular organization, and may adopt by reference any
28 report prepared by such other associations.

29 (Source: P.A. 86-620.)

30 (215 ILCS 125/6-14) (from Ch. 111 1/2, par. 1418.14)

31 Sec. 6-14. Miscellaneous Provisions. (1) Records must be
32 kept of all ~~negotiations--and~~ meetings of the Board of
33 Directors in-which-the-Association-or-its-representatives-are

1 involved to discuss the activities of the Association in
2 carrying out its powers and duties under Section 6-8.
3 Records of the Association with respect to an impaired such
4 negotiations or insolvent organization meetings may be made
5 public only (a) upon the order of the Director or a court of
6 competent jurisdiction or upon a determination by the Board
7 of Directors of the Association and (b) during the pendency
8 termination of a liquidation, rehabilitation, or conservation
9 proceeding involving the impaired or insolvent organization,
10 upon the--termination-of-the-impairment-or-insolvency-of-the
11 organization,-or--upon--the--order--of a court showing of
12 compelling competent circumstances jurisdiction. Nothing in
13 this subsection (1) limits the duty of the Association to
14 submit a report of its activities under Section 6-15.

15 (2) For the purpose of carrying out its obligations
16 under this Article, the Association is deemed to be a
17 creditor of the impaired or insolvent organization to the
18 extent of assets attributable to covered health care plan
19 certificates reduced by any amounts to which the Association
20 is entitled as subrogee (under subsection (7) of Section
21 6-8). All assets of the impaired or insolvent organization
22 attributable to covered health care plan certificates must be
23 used to continue all covered health care plan certificates
24 and pay all contractual obligations of the impaired
25 organization as required by this Article. "Assets
26 attributable to covered health care plan certificates", as
27 used in this subsection (2), is that proportion of the assets
28 which the reserves that should have been established for such
29 health care plan certificates bear to the reserve that should
30 have been established for all health care plan certificates
31 of the impaired or insolvent organization.

32 (3) (a) Prior to the termination of any liquidation,
33 rehabilitation, or conservation proceeding, the court may
34 take into consideration the contributions of the respective

1 parties, including the Association, the shareholders of the
2 impaired or insolvent organization, and any other party with
3 a bona fide interest, in making an equitable distribution of
4 the ownership rights of such impaired or insolvent
5 organization. In such a determination, consideration must be
6 given to the welfare of the enrollees of the continuing or
7 successor organization.

8 (b) No distribution to stockholders, if any, of an
9 impaired or insolvent organization may be made until and
10 unless the total amount of valid claims of the Association
11 for funds expended in carrying out its powers and duties
12 under Section 6-8, with respect to such organization have
13 been fully recovered by the Association.

14 (4) (a) If an order for liquidation or rehabilitation of
15 an organization domiciled in this State has been entered, the
16 receiver appointed under such order has a right to recover on
17 behalf of the organization, from any affiliate that
18 controlled it, the amount of distributions, other than stock
19 dividends paid by the organization on its capital stock, made
20 at any time during the 5 years preceding the petition for
21 liquidation or rehabilitation subject to the limitations of
22 paragraphs (b) to (d).

23 (b) No such distribution is recoverable if the
24 organization shows that when paid the distribution was lawful
25 and reasonable, and that the organization did not know and
26 could not reasonably have known that the distribution might
27 adversely affect the ability of the organization to fulfill
28 its contractual obligations.

29 (c) Any person who was an affiliate that controlled the
30 organization at the time the distributions were paid is
31 liable up to the amount of distributions he received. Any
32 person who was an affiliate that controlled the organization
33 at the time the distributions were declared, is liable up to
34 the amount of distributions he would have received if they

1 had been paid immediately. If 2 persons are liable with
2 respect to the same distributions, they are jointly and
3 severally liable.

4 (d) The maximum amount recoverable under subsection (4)
5 of this Section is the amount needed in excess of all other
6 available assets of the insolvent organization to pay the
7 contractual obligations of the insolvent organization.

8 (e) If any person liable under paragraph (c) of
9 subsection (4) of this Section is insolvent, all its
10 affiliates that controlled it at the time the distribution
11 was paid are jointly and severally liable for any resulting
12 deficiency in the amount recovered from the insolvent
13 affiliate.

14 (5) No member organization may voluntarily withdraw from
15 this State or liquidate its property, business, and affairs,
16 and no such voluntary withdrawal or voluntary liquidation
17 shall be effective, until such member organization has paid
18 all authorized assessments, whether called or uncalled, for
19 which it is liable under this Article.

20 (Source: P.A. 86-620.)

21 (215 ILCS 125/6-17) (from Ch. 111 1/2, par. 1418.17)

22 Sec. 6-17. Immunity. There is no liability on the part
23 of and no cause of action of any nature may arise against any
24 member organization or its agents or employees, the
25 Association or its agents or employees, members of the board
26 of directors, or the Director or his representatives, for any
27 action or omission taken by them in the performance of their
28 powers and duties under this Article. Without limitation, the
29 Association shall be immune from any claim that any omission
30 of the Association or any action of the Association, taken
31 separately or in concert with the Director in any of his or
32 her capacities, has caused loss or any other injury to any
33 impaired organization or any insolvent organization.

1 (Source: P.A. 85-20.)