



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/6/2004, by Frank J. Mautino

SYNOPSIS AS INTRODUCED:

215 ILCS 125/6-2	from Ch. 111 1/2, par. 1418.2
215 ILCS 125/6-4	from Ch. 111 1/2, par. 1418.4
215 ILCS 125/6-5	from Ch. 111 1/2, par. 1418.5
215 ILCS 125/6-8	from Ch. 111 1/2, par. 1418.8
215 ILCS 125/6-9	from Ch. 111 1/2, par. 1418.9
215 ILCS 125/6-10	from Ch. 111 1/2, par. 1418.10
215 ILCS 125/6-11	from Ch. 111 1/2, par. 1418.11
215 ILCS 125/6-12	from Ch. 111 1/2, par. 1418.12
215 ILCS 125/6-14	from Ch. 111 1/2, par. 1418.14
215 ILCS 125/6-17	from Ch. 111 1/2, par. 1418.17

Amends the Health Maintenance Organization Act concerning the operation of the Health Maintenance Organization Guaranty Association. Provides that the Guaranty Association is subrogated to certain rights of persons having claims covered by it. Limits the liability of the Guaranty Association with respect to claims based upon marketing materials, misrepresentations, and certain other acts of a health maintenance organization. Provides for the continuation of services by providers. Requires that suits against the Guaranty Association be brought in Cook County. Provides for the Director of Insurance to monitor capital levels of health maintenance organization.

LRB093 18699 SAS 44427 b

FISCAL NOTE ACT
MAY APPLY

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 of
13 the organization operating such health care plans. Nonresident
14 enrollees of such health care plans shall be protected by this
15 Association if: (1) they reside in states which have
16 associations similar to the Association created by this
17 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 health
22 maintenance organizations is created to enable the guaranty of
23 payment of benefits and of continuation of coverages, either on
24 a prepaid or indemnity basis, (2) members of the Association
25 are subject to assessment to provide funds to carry out the
26 purpose of this Article, and (3) the Association is authorized
27 to assist the Director, in the prescribed manner, in the
28 detection and prevention of health care plan impairments or
29 insolvencies.

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

31 (215 ILCS 125/6-4) (from Ch. 111 1/2, par. 1418.4)

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

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

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

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

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

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

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

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

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

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

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

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

30 (9) "Member organization" means any person licensed or who
31 holds a certificate of authority to transact in this State any
32 kind of business to which this Article applies under Section
33 6-3. For purposes of this Article "member organization"
34 includes any person whose certificate of authority may have
35 been suspended pursuant to Section 5-5 of this Act.

1 (10) "Premiums" means direct gross premiums or
2 subscriptions received on covered health care plan
3 certificates.

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

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

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

15 (215 ILCS 125/6-8) (from Ch. 111 1/2, par. 1418.8)

16 Sec. 6-8. Powers and duties of the Association. In addition
17 to the powers and duties enumerated in other Sections of this
18 Article, the Association shall have the powers set forth in
19 this Section.

20 (1) If a domestic organization is an impaired organization,
21 the Association may, subject to any conditions imposed by the
22 Association other than those which impair the contractual
23 obligations of the impaired organization, and approved by the
24 impaired organization and the Director:

25 (a) guarantee or reinsure, or cause to be guaranteed,
26 assumed or reinsured, any or all of the covered health care
27 plan certificates of covered persons of the impaired
28 organization; and

29 (b) provide such monies, pledges, notes, guarantees,
30 or other means as are proper to effectuate paragraph (a),
31 and assure payment of the contractual obligations of the
32 impaired organization pending action under paragraph (a). ~~+~~
33 ~~and~~

34 ~~(c) loan money to the impaired organization.~~

35 (2) If a domestic, foreign, or alien organization is an

1 insolvent organization, the Association shall, subject to the
2 approval of the Director:

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

17 (b) assure payment of the contractual obligations of
18 the insolvent organization to covered persons;

19 (c) make payments to providers of health care, or
20 indemnity payments to covered persons, so as to assure the
21 continued payment of benefits substantially similar to
22 those provided for under covered health care plan
23 certificate issued by the insolvent organization to
24 covered persons; and

25 (d) provide such monies, pledges, notes, guaranties,
26 or other means as are reasonably necessary to discharge
27 such duties.

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

34 (3) There shall be no liability on the part of and no cause
35 of action shall arise against the Association or against any
36 transferee from the Association in connection with the transfer

1 by reinsurance or otherwise of all or any part of an impaired
2 or insolvent organization's business by reason of any action
3 taken or any failure to take any action by the impaired or
4 insolvent organization at any time.

5 (4) If the Association fails to act within a reasonable
6 period of time as provided in subsection (2) of this Section
7 with respect to an insolvent organization, the Director may
8 assume ~~shall have~~ the powers and duties of the Association
9 under this Article with regard to such insolvent organization.

10 (5) The Association or its designated representatives may
11 render assistance and advice to the Director, upon his request,
12 concerning rehabilitation, payment of claims, continuations of
13 coverage, or the performance of other contractual obligations
14 of any impaired or insolvent organization.

15 (6) The Association has standing to appear or intervene
16 before any court or agency concerning all matters germane to
17 the powers and duties of the Association, including, but not
18 limited to, proposals for reinsuring or guaranteeing the
19 covered health care plan certificates of the impaired or
20 insolvent organization and the determination of the covered
21 health care plan certificates and contractual obligations.

22 (7) (a) Any person receiving benefits under this Article is
23 deemed to have assigned to the Association the rights under the
24 covered health care plan certificates, and any causes of action
25 against any person for losses arising under, resulting from, or
26 otherwise relating to, the covered health care plan
27 certificates, in each case ~~Association~~ to the extent of the
28 benefits received because of this Article (whether the benefits
29 are payments of contractual obligations or continuation of
30 coverage). The Association may require an assignment to it of
31 such rights by any payee, enrollee or beneficiary as a
32 condition precedent to the receipt of any rights or benefits
33 conferred by this Article upon such person. The Association is
34 subrogated to these rights against the assets of any insolvent
35 organization and against any other party who may be liable to
36 such payee, enrollee or beneficiary.

1 (b) The subrogation rights of the Association under this
2 subsection have the same priority against the assets of the
3 insolvent organization as that possessed by the person entitled
4 to receive benefits under this Article.

5 (c) In addition to paragraphs (a) and (b) of this
6 subsection, the Association shall have all common law rights of
7 subrogation and any other equitable or legal remedy that would
8 have been available to the impaired or insolvent organization
9 or owner or beneficiary or payee of a covered health care plan
10 certificate with respect to the covered health care plan
11 certificate.

12 (d) If the Association has provided benefits with respect
13 to a covered health care plan certificate and a person recovers
14 amounts as to which the Association has rights as described in
15 paragraphs (a), (b), or (c) of this subsection, the person
16 shall pay to the Association the portion of the recovery
17 attributable to the health care plan certificate (or portion
18 thereof) covered by the Association.

19 (8) (a) The contractual obligations of the insolvent
20 organization for which the Association becomes or may become
21 liable are as great as but no greater than the contractual
22 obligations of the insolvent organization would have been in
23 the absence of an insolvency unless such obligations are
24 reduced as permitted by subsection (3), but the aggregate
25 liability of the Association shall not exceed \$300,000 with
26 respect to any one natural person.

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

30 (i) if such provider, or his or its affiliates or
31 members of his immediate family, at any time within the one
32 year prior to the date of the issuance of the first order,
33 by a court of competent jurisdiction, of conservation,
34 rehabilitation or liquidation pertaining to the health
35 maintenance organization:

36 (A) was a securityholder of such organization (but

1 excluding any securityholder holding an equity
2 interest of 5% or less);

3 (B) exercised control over the organization by
4 means such as serving as an officer or director,
5 through a management agreement or as a principal member
6 of a not-for-profit organization;

7 (C) had a representative serving by virtue or his
8 or her official position as a representative of such
9 provider on the board of any entity which exercised
10 control over the organization;

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

14 (E) received distributions other than for
15 physician services from a not-for-profit organization
16 on account of such provider's status as a member of
17 such organization.

18 For purposes of this subparagraph (i), the terms
19 "affiliate," "person," "control" and "securityholder"
20 shall have the meanings ascribed to such terms in Section
21 131.1 of the Illinois Insurance Code; or

22 (ii) if and to the extent such a provider has agreed by
23 contract not to seek payment from the enrollee for services
24 provided to such enrollee or if, and to the extent, as a
25 matter of law such provider may not seek payment from the
26 enrollee for services provided to such enrollee.

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

29 (i) Any claim under a covered health care plan
30 certificate to the extent that the assessments with respect
31 to the certificate are prohibited or preempted by federal
32 or State law.

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

- 1 (A) claims based on marketing materials;
- 2 (B) claims based on side letters, riders, or other
3 documents that were issued by the insolvent
4 organization without meeting applicable form filing or
5 approval requirements;
- 6 (C) misrepresentations of or regarding health care
7 plan benefits;
- 8 (D) bad faith claims; or
- 9 (E) claims for penalties or consequential or
10 incidental damages.
- 11 (iii) Any claim that was not submitted to the insolvent
12 organization prior to the date of its final order of
13 liquidation and which is not submitted to the Association
14 within one year after the date of the final order of
15 liquidation.
- 16 (iv) Any claim that had been previously submitted to
17 and denied by the insolvent organization prior to the date
18 on which the organization became an insolvent
19 organization, if not re-submitted to the Association for
20 its review and determination within one year of the date of
21 the final order of liquidation.
- 22 (v) Any claim for services provided by a provider or
23 other person more than one year prior to the date of the
24 final order of liquidation.
- 25 (vi) Any claim of any provider to the extent that any
26 other provider or person has, under an agreement with the
27 insolvent organization, agreed to pay, reimburse, or
28 otherwise accept responsibility for the claim.
- 29 (vii) Any claim to the extent covered by a policy,
30 program, contract, or health care plan certificate issued
31 by an insurer, another organization, or employer. A person
32 who has a claim against any such entity under a provision
33 in a policy, contract, or certificate (other than one
34 issued by the impaired or insolvent organization), that
35 also is a contractual obligation under this Article must
36 first exhaust his right under that policy, contract, or

1 certificate. The amount of an approved claim under this
2 Article shall be reduced by the policy limits of or amount
3 paid under that policy contract or certificate, whichever
4 amount is greater. If a claimant exhausts his right under a
5 policy, contract, or certificate (other than one issued by
6 the impaired or insolvent organization), the insurer,
7 organization, or employer issuing that policy, contract,
8 or certificate is not entitled to sue or continue a suit
9 against the enrollee of the impaired or insolvent
10 organization to recover an amount paid the claimant under
11 that policy, contract, or certificate.

12 (d) (i) The Association shall have no obligation under a
13 covered health care plan certificate to convert coverage to an
14 individual or group HMO contract or to any other form of health
15 care coverage or to offer any other conversion product.

16 (ii) In the event that the insolvent organization acted
17 with an insurer in the issuance of a point-of-service
18 product offered by both the insolvent organization and an
19 insurer (i.e., a product offering both health care plan
20 services from the insolvent organization and indemnity by
21 the insurer for out-of-plan health care services), the
22 Association shall be responsible only for those covered
23 health care plan services obtained from providers at that
24 time employed by or under contract with the insolvent
25 organization or the Association (or providers to whom the
26 enrollee was properly referred by such providers) and for
27 covered health care plan emergency services.

28 (e) (i) ~~(e)~~ In no event shall the Association be required
29 to pay any provider ~~participating in the insolvent organization~~
30 any amount for ~~in-plan~~ services rendered by such provider prior
31 to the insolvency of the organization in excess of (1) the
32 amount provided by a capitation or other contract between the a
33 physician provider and the insolvent organization for such
34 services; or (2) the amounts provided by contract between the a
35 hospital provider and the Department of Public Aid for similar
36 services to recipients of public aid; or (3) in the event

1 neither (1) nor (2) above is applicable, then the amounts paid
2 under the Medicare area prevailing rate for the area where the
3 services were provided, or if no such rate exists with respect
4 to such services, then 80% of the usual and customary rates
5 established by the Health Insurance Association of America. ~~The~~
6 ~~payments required to be made by the Association under this~~
7 ~~Section shall constitute full and complete payment for such~~
8 ~~provider services to the enrollee.~~

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

33 (f) The payments required to be made by the Association
34 under this Section shall constitute full and complete payment
35 for such provider services to the enrollee. The enrollee shall
36 have no liability, and the provider may not seek any payment

1 from the enrollee, for or with respect to any amounts not paid
2 to the provider on account of the exclusions or limitations on
3 the liability or obligations of the Association under this
4 Article.

5 (9) The Association may:

6 (a) Enter into such contracts as are necessary or
7 proper to carry out the provisions and purposes of this
8 Article.

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

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

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

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

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

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

35 (h) Exercise all the rights of the Director under
36 Section 193(4) of the Illinois Insurance Code with respect

1 to covered health care plan certificates after the
2 association becomes obligated by statute.

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

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

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

36 (11) The Association shall be entitled to collect premiums

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

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

24 (13) The Board of Directors of the Association shall have
25 discretion and may exercise reasonable business judgment to
26 determine the means by which the Association is to provide the
27 benefits of this Article in an economical and efficient manner.

28 (14) Where the Association has arranged or offered to
29 provide the benefits of this Article to a covered person under
30 a plan or arrangement that fulfills the Association's
31 obligations under this Article, the person shall not be
32 entitled to benefits from the Association in addition to or
33 other than those provided under the plan or arrangement.

34 (15) Venue in a suit against the Association arising under
35 this Article shall be in Cook County. The Association shall not
36 be required to give an appeal bond in any case or proceeding

1 that arises from or is based in whole or in part on claims or
2 other rights asserted under this Article.

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

4 (215 ILCS 125/6-9) (from Ch. 111 1/2, par. 1418.9)

5 Sec. 6-9. Assessments. (1) For the purpose of providing
6 the funds necessary to carry out the powers and duties of the
7 Association, the board of directors shall assess the member
8 organizations, at such times and for such amounts as the board
9 finds necessary. Assessments shall be due not less than 30 days
10 after written notice to the member organizations and shall
11 accrue interest from the due date at such adjusted rate as is
12 established under Section 531.09 of the Illinois Insurance Code
13 and such interest shall be compounded daily.

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

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

19 (b) Class B assessments shall be made to the extent
20 necessary to carry out the powers and duties of the Association
21 under Section 6-8 with regard to an impaired or insolvent
22 domestic organization or insolvent foreign or alien
23 organizations.

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

27 (b) Class B assessments against member organizations shall
28 be in the proportion that the premiums received on health
29 maintenance organization business in this State by each
30 assessed member organization on covered health care plan
31 certificates for the calendar year preceding the assessment
32 bears to such premiums received on health maintenance
33 organization business in this State for the calendar year
34 preceding the assessment by all assessed member organizations.

35 (c) Assessments to meet the requirements of the Association

1 with respect to an impaired or insolvent organization shall not
2 be made until necessary to implement the purposes of this
3 Article. Classification of assessments under subsection (2)
4 and computations of assessments under this subsection shall be
5 made with a reasonable degree of accuracy, recognizing that
6 exact determinations may not always be possible.

7 (4) (a) The Association may abate or defer, in whole or in
8 part, the assessment of a member organization if, in the
9 opinion of the board, payment of the assessment would endanger
10 the ability of the member organization to fulfill its
11 contractual obligations.

12 (b) The total of all assessments upon a member organization
13 may not in any one calendar year exceed 2% of such
14 organization's premiums in this State during the calendar year
15 preceding the assessment on the covered health care plan
16 certificates.

17 (5) In the event an assessment against a member
18 organization is abated, or deferred, in whole or in part,
19 because of the limitations set forth in subsection (4) of this
20 Section, the amount by which such assessment is abated or
21 deferred, may be assessed against the other member
22 organizations in a manner consistent with the basis for
23 assessments set forth in this Section. If the maximum
24 assessment, together with the other assets of the Association,
25 does not provide in any one year an amount sufficient to carry
26 out the responsibilities of the Association, the necessary
27 additional funds may be assessed as soon thereafter as
28 permitted by this Article.

29 (6) The board may, by an equitable method as established in
30 the plan of operation, refund to member organizations, ~~in~~
31 ~~proportion to the contribution of each organization,~~ the amount
32 by which the assets of the fund exceed the amount the board
33 finds is necessary to carry out ~~during the coming year~~ the
34 obligations of the Association, including assets accruing from
35 net realized gains and income from investments. A reasonable
36 amount may be retained in the fund to provide moneys for the

1 continuing expenses of the Association and for future claims
2 ~~losses~~ if refunds are impractical.

3 (7) An assessment is deemed to occur on the date upon which
4 the board votes such assessment. The board may defer calling
5 the payment of the assessment or may call for payment in one or
6 more installments.

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

11 (9) The Association must issue to each organization paying
12 a Class B assessment under this Article a certificate of
13 contribution, in a form prescribed by the Director, for the
14 amount of the assessment so paid. All outstanding certificates
15 are of equal dignity and priority without reference to amounts
16 or dates of issue. A certificate of contribution may be shown
17 by the organization in its financial statement as an admitted
18 asset in such form and for such amount, if any, and period of
19 time as the Director may approve, provided the organization
20 shall in any event at its option have the right to show a
21 certificate of contribution as an asset at percentages of the
22 original face amount for calendar years as follows:

23 100% for the calendar year after the year of issuance;

24 80% for the second calendar year after the year of
25 issuance;

26 60% for the third calendar year after the year of issuance;

27 40% for the fourth calendar year after the year of
28 issuance;

29 20% for the fifth calendar year after the year of issuance.

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

31 (215 ILCS 125/6-10) (from Ch. 111 1/2, par. 1418.10)

32 Sec. 6-10. Plan of Operation. (1) (a) The Association must
33 submit to the Director a plan of operation and any amendments
34 thereto necessary or suitable to assure the fair, reasonable,
35 and equitable administration of the Association. The plan of

1 operation and any amendments thereto become effective upon
2 approval in writing by the Director.

3 (b) If the Association fails to submit a suitable plan of
4 operation within 90 days following the effective date of this
5 Article or if at any time thereafter the Association fails to
6 submit suitable amendments to the plan, the Director may, after
7 notice and hearing, adopt and promulgate such reasonable rules
8 as are necessary or advisable to effectuate the provisions of
9 this Article. Such rules are in force until modified by the
10 Director or superseded by a plan submitted by the Association
11 and approved by the Director.

12 (2) All member organizations must comply with the plan of
13 operation.

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

16 (a) Establish procedures for handling the assets of the
17 Association;

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

20 (c) Establish regular places and times for meetings
21 including telephone conference calls of the board of directors;

22 (d) Establish procedures for records to be kept of all
23 financial transactions of the Association, its agents, and the
24 board of directors;

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

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

29 (g) Contain additional provisions necessary or proper for
30 the execution of the powers and duties of the Association.

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

35 (a) Any member organization that wishes to protest all or
36 any part of an assessment for any year shall first pay the full

1 amount of the assessment as set forth in the notice provided by
2 the Association; provided, however, that the Association and
3 the protesting member HMO may agree that (A) the member HMO
4 need pay, at the time of the protest, only the portion of the
5 entire assessment that is under protest by the member HMO, (B)
6 the member HMO waives any further protest with respect to the
7 assessment, and (C) the member HMO must pay any balance of the
8 assessment not under protest at the time or times specified by
9 the Association for payment of non-protested amounts. Any such
10 payments shall be available and may be used to meet Association
11 obligations during the pendency of the protest and any
12 subsequent appeal. Such payments shall be accompanied by a
13 statement in writing that the payment is made under protest,
14 setting forth a brief statement of the ground for the protest.
15 ~~The Association shall hold such payments in a separate interest~~
16 ~~bearing account.~~

17 (b) Within 30 days following the payment of an assessment
18 under protest by any protesting member organization, the
19 Association must notify the member organization in writing of
20 its determination with respect to the protest unless the
21 Association notifies the member that additional time is
22 required to resolve the issues raised by the protest.

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

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

30 (e) In the alternative to rendering a decision with respect
31 to any protest based on a question regarding the assessment
32 base, the Association may refer such protests to the Director
33 for final decision, with or without a recommendation from the
34 Association.

35 (f) Interest on any refund due a protesting member
36 organization shall be paid at a rate equal to the Treasury bill

1 rate in effect from time to time during the time ~~at the rate~~
2 ~~actually earned by~~ the Association held ~~on~~ the amounts under
3 protest ~~separate account~~.

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

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

20 (215 ILCS 125/6-11) (from Ch. 111 1/2, par. 1418.11)

21 Sec. 6-11. Duties and Powers of the Director. In addition
22 to the duties and powers enumerated elsewhere in this Article,
23 the Director shall have the powers set forth in this Section.

24 (1) The Director must:

25 (a) Upon request of the board of directors, provide the
26 Association with a statement of the premiums in the
27 appropriate states for each member organization.

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

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

1 if any.

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

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

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

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

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

1 providers.

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

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

9 (215 ILCS 125/6-12) (from Ch. 111 1/2, par. 1418.12)

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

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

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

18 (i) revocation of license;

19 (ii) suspension of license;

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

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

30 (b) To report to the board of directors when he has taken
31 any of the actions set forth in subparagraph (a) of this
32 paragraph or has received a report from any other regulatory
33 authority indicating that any such action has been taken in
34 another state. Such report to the board of directors shall
35 contain all significant details of the action taken or the

1 report received from another regulatory authority.

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

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

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

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

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

26 (215 ILCS 125/6-14) (from Ch. 111 1/2, par. 1418.14)

27 Sec. 6-14. Miscellaneous Provisions. (1) Records must be
28 kept of all ~~negotiations and~~ meetings of the Board of Directors
29 ~~in which the Association or its representatives are involved~~ to
30 discuss the activities of the Association in carrying out its
31 powers and duties under Section 6-8. Records of the Association
32 with respect to an impaired ~~such negotiations~~ or insolvent
33 organization meetings may be made public only (a) upon the
34 order of the Director or a court of competent jurisdiction or
35 upon a determination by the Board of Directors of the

1 Association and (b) during the pendency ~~termination~~ of a
2 liquidation, rehabilitation, or conservation proceeding
3 involving the impaired or insolvent organization, upon ~~the~~
4 ~~termination of the impairment or insolvency of the~~
5 ~~organization, or upon the order of a court~~ showing of
6 compelling ~~competent~~ circumstances ~~jurisdiction~~. Nothing in
7 this subsection (1) limits the duty of the Association to
8 submit a report of its activities under Section 6-15.

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

26 (3) (a) Prior to the termination of any liquidation,
27 rehabilitation, or conservation proceeding, the court may take
28 into consideration the contributions of the respective
29 parties, including the Association, the shareholders of the
30 impaired or insolvent organization, and any other party with a
31 bona fide interest, in making an equitable distribution of the
32 ownership rights of such impaired or insolvent organization. In
33 such a determination, consideration must be given to the
34 welfare of the enrollees of the continuing or successor
35 organization.

36 (b) No distribution to stockholders, if any, of an impaired

1 or insolvent organization may be made until and unless the
2 total amount of valid claims of the Association for funds
3 expended in carrying out its powers and duties under Section
4 6-8, with respect to such organization have been fully
5 recovered by the Association.

6 (4) (a) If an order for liquidation or rehabilitation of an
7 organization domiciled in this State has been entered, the
8 receiver appointed under such order has a right to recover on
9 behalf of the organization, from any affiliate that controlled
10 it, the amount of distributions, other than stock dividends
11 paid by the organization on its capital stock, made at any time
12 during the 5 years preceding the petition for liquidation or
13 rehabilitation subject to the limitations of paragraphs (b) to
14 (d).

15 (b) No such distribution is recoverable if the organization
16 shows that when paid the distribution was lawful and
17 reasonable, and that the organization did not know and could
18 not reasonably have known that the distribution might adversely
19 affect the ability of the organization to fulfill its
20 contractual obligations.

21 (c) Any person who was an affiliate that controlled the
22 organization at the time the distributions were paid is liable
23 up to the amount of distributions he received. Any person who
24 was an affiliate that controlled the organization at the time
25 the distributions were declared, is liable up to the amount of
26 distributions he would have received if they had been paid
27 immediately. If 2 persons are liable with respect to the same
28 distributions, they are jointly and severally liable.

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

33 (e) If any person liable under paragraph (c) of subsection
34 (4) of this Section is insolvent, all its affiliates that
35 controlled it at the time the distribution was paid are jointly
36 and severally liable for any resulting deficiency in the amount

1 recovered from the insolvent affiliate.

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

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

9 (215 ILCS 125/6-17) (from Ch. 111 1/2, par. 1418.17)

10 Sec. 6-17. Immunity. There is no liability on the part of
11 and no cause of action of any nature may arise against any
12 member organization or its agents or employees, the Association
13 or its agents or employees, members of the board of directors,
14 or the Director or his representatives, for any action or
15 omission ~~taken~~ by them in the performance of their powers and
16 duties under this Article. Without limitation, the Association
17 shall be immune from any claim that any omission of the
18 Association or any action of the Association, taken separately
19 or in concert with the Director in any of his or her
20 capacities, has caused loss or any other injury to any impaired
21 organization or any insolvent organization.

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