



## 93RD GENERAL ASSEMBLY

### State of Illinois

#### 2003 and 2004

Introduced 2/6/2004, by Denny Jacobs

#### 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 18702 SAS 44430 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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.)