



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5350

Introduced 01/26/06, by Rep. Frank J. Mautino

SYNOPSIS AS INTRODUCED:

215 ILCS 125/2-8
215 ILCS 125/6-8

from Ch. 111 1/2, par. 1407.01
from Ch. 111 1/2, par. 1418.8

Amends the Health Maintenance Organization Act. Changes references from hospital to provider in a Section concerning provider agreements. Deletes a provision providing that the Health Maintenance Organization Guaranty Association is not required to pay any provider of health care services to an enrollee if the provider has agreed by contract not to seek payment from the enrollee or if as a matter of law the provider may not seek payment from the enrollee. Effective immediately.

LRB094 18092 LJB 53397 b

1 AN ACT concerning insurance.

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 2-8 and 6-8 as follows:

6 (215 ILCS 125/2-8) (from Ch. 111 1/2, par. 1407.01)

7 Sec. 2-8. Provider agreements. (a) All provider contracts
8 currently in existence between any organization and any
9 provider ~~hospital~~ which are renewed on or after 180 days
10 following the effective date of this amendatory Act of 1987,
11 and all contracts between any organization and any provider
12 ~~hospital~~ executed on or after 180 days after such effective
13 date, shall contain the following "hold-harmless" clause: "The
14 provider agrees that in no event, including but not limited to
15 nonpayment by the organization of amounts due the ~~hospital~~
16 provider under this contract, insolvency of the organization or
17 any breach of this contract by the organization, shall the
18 ~~hospital~~ provider or its assignees or subcontractors have a
19 right to seek any type of payment from, bill, charge, collect a
20 deposit from, or have any recourse against, the enrollee,
21 persons acting on the enrollee's behalf (other than the
22 organization), the employer or group contract holder for
23 services provided pursuant to this contract except for the
24 payment of applicable co-payments or deductibles for services
25 covered by the organization or fees for services not covered by
26 the organization. The requirements of this clause shall survive
27 any termination of this contract for services rendered prior to
28 such termination, regardless of the cause of such termination.
29 The organization's enrollees, the persons acting on the
30 enrollee's behalf (other than the organization) and the
31 employer or group contract holder shall be third party
32 beneficiaries of this clause. This clause supersedes any oral

1 or written agreement now existing or hereafter entered into
2 between the provider and the enrollee, persons acting on the
3 enrollee's behalf (other than the organization) and the
4 employer or group contract holder." To the extent that any
5 ~~hospital~~ provider contract, which is renewed or entered into on
6 or after 180 days following the effective date of this
7 amendatory Act of 1987, fails to incorporate such provisions,
8 such provisions shall be deemed incorporated into such
9 contracts by operation of law as of the date of such renewal or
10 execution. Changes made to this Section by this amendatory Act
11 of the 94th General Assembly apply to provider agreements
12 renewed or executed on or after 180 days after the effective
13 date of this amendatory Act of the 94th General Assembly.

14 (b) All provider and subcontractor contracts must contain
15 provisions whereby the provider or subcontractor shall
16 provide, arrange for, or participate in the quality assurance
17 programs mandated by this Act, unless the Illinois Department
18 of Public Health certifies that such programs will be fully
19 implemented without any participation or action from such
20 contracting provider.

21 (c) The Director may promulgate rules requiring that
22 provider contracts contain provisions concerning reasonable
23 notices to be given between the parties and for the
24 organization to provide reasonable notice to its enrollees and
25 to the Director. Notice shall be given for such events as, but
26 not limited to, termination of insurance protection, quality
27 assurance or availability of medical care.

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

29 (215 ILCS 125/6-8) (from Ch. 111 1/2, par. 1418.8)

30 Sec. 6-8. Powers and duties of the Association. In addition
31 to the powers and duties enumerated in other Sections of this
32 Article, the Association shall have the powers set forth in
33 this Section.

34 (1) If a domestic organization is an impaired organization,
35 the Association may, subject to any conditions imposed by the

1 Association other than those which impair the contractual
2 obligations of the impaired organization, and approved by the
3 impaired organization and the Director:

4 (a) guarantee or reinsure, or cause to be guaranteed,
5 assumed or reinsured, any or all of the covered health care
6 plan certificates of covered persons of the impaired
7 organization;

8 (b) provide such monies, pledges, notes, guarantees,
9 or other means as are proper to effectuate paragraph (a),
10 and assure payment of the contractual obligations of the
11 impaired organization pending action under paragraph (a);
12 and

13 (c) loan money to the impaired organization.

14 (2) If a domestic, foreign, or alien organization is an
15 insolvent organization, the Association shall, subject to the
16 approval of the Director:

17 (a) guarantee, assume, indemnify or reinsure or cause
18 to be guaranteed, assumed, indemnified or reinsured the
19 covered health care plan benefits of covered persons of the
20 insolvent organization; however, in the event that the
21 Director of Healthcare and Family Services (formerly
22 Director of the Department of Public Aid) assigns
23 individuals that are recipients of public aid from an
24 insolvent organization to another organization, the
25 Director of Healthcare and Family Services ~~the Department~~
26 ~~of Public Aid~~ shall, before fixing the rates to be paid by
27 the Department of Healthcare and Family Services ~~Public Aid~~
28 to the transferee organization on account of such
29 individuals, consult with the Director of the Department of
30 Insurance as to the reasonableness of such rates in light
31 of the health care needs of such individuals and the costs
32 of providing health care services to such individuals;

33 (b) assure payment of the contractual obligations of
34 the insolvent organization to covered persons;

35 (c) make payments to providers of health care, or
36 indemnity payments to covered persons, so as to assure the

1 continued payment of benefits substantially similar to
2 those provided for under covered health care plan
3 certificate issued by the insolvent organization to
4 covered persons; and

5 (d) provide such monies, pledges, notes, guaranties,
6 or other means as are reasonably necessary to discharge
7 such duties.

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

14 (3) There shall be no liability on the part of and no cause
15 of action shall arise against the Association or against any
16 transferee from the Association in connection with the transfer
17 by reinsurance or otherwise of all or any part of an impaired
18 or insolvent organization's business by reason of any action
19 taken or any failure to take any action by the impaired or
20 insolvent organization at any time.

21 (4) If the Association fails to act within a reasonable
22 period of time as provided in subsection (2) of this Section
23 with respect to an insolvent organization, the Director shall
24 have the powers and duties of the Association under this
25 Article with regard to such insolvent organization.

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

31 (6) The Association has standing to appear before any court
32 concerning all matters germane to the powers and duties of the
33 Association, including, but not limited to, proposals for
34 reinsuring or guaranteeing the covered health care plan
35 certificates of the impaired or insolvent organization and the
36 determination of the covered health care plan certificates and

1 contractual obligations.

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

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

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

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

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

35 (A) was a securityholder of such organization (but
36 excluding any securityholder holding an equity

1 interest of 5% or less);

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

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

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

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

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

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

27 (c) In no event shall the Association be required to pay
28 any provider participating in the insolvent organization any
29 amount for in-plan services rendered by such provider prior to
30 the insolvency of the organization in excess of (1) the amount
31 provided by a capitation contract between a physician provider
32 and the insolvent organization for such services; or (2) the
33 amounts provided by contract between a hospital provider and
34 the Department of Healthcare and Family Services (formerly
35 Department of Public Aid) for similar services to recipients of
36 public aid; or (3) in the event neither (1) nor (2) above is

1 applicable, then the amounts paid under the Medicare area
2 prevailing rate for the area where the services were provided,
3 or if no such rate exists with respect to such services, then
4 80% of the usual and customary rates established by the Health
5 Insurance Association of America. The payments required to be
6 made by the Association under this Section shall constitute
7 full and complete payment for such provider services to the
8 enrollee.

9 (d) The Association shall not be required to pay more than
10 an aggregate of \$300,000 for any organization which is declared
11 to be insolvent prior to July 1, 1987, and such funds shall be
12 distributed first to enrollees who are not public aid
13 recipients pursuant to a plan recommended by the Association
14 and approved by the Director and the court having jurisdiction
15 over the liquidation.

16 (9) The Association may:

17 (a) Enter into such contracts as are necessary or
18 proper to carry out the provisions and purposes of this
19 Article.

20 (b) Sue or be sued, including taking any legal actions
21 necessary or proper for recovery of any unpaid assessments
22 under Section 6-9. The Association shall not be liable for
23 punitive or exemplary damages.

24 (c) Borrow money to effect the purposes of this
25 Article. Any notes or other evidence of indebtedness of the
26 Association not in default are legal investments for
27 domestic organizations and may be carried as admitted
28 assets.

29 (d) Employ or retain such persons as are necessary to
30 handle the financial transactions of the Association, and
31 to perform such other functions as become necessary or
32 proper under this Article.

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

36 (f) Take such legal action as may be necessary to avoid

1 payment of improper claims.

2 (g) Exercise, for the purposes of this Article and to
3 the extent approved by the Director, the powers of a
4 domestic organization, but in no case may the Association
5 issue evidence of coverage other than that issued to
6 perform the contractual obligations of the impaired or
7 insolvent organization.

8 (h) Exercise all the rights of the Director under
9 Section 193(4) of the Illinois Insurance Code with respect
10 to covered health care plan certificates after the
11 association becomes obligated by statute.

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 (Source: P.A. 90-655, eff. 7-30-98; revised 12-15-05.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law.