



Sen. William R. Haine

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09600HB5018sam002

LRB096 18816 RPM 44604 a

1 AMENDMENT TO HOUSE BILL 5018

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5018 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Health Maintenance Organization Act is  
5 amended by changing Section 6-8 as follows:

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

7 Sec. 6-8. Powers and duties of the Association. In addition  
8 to the powers and duties enumerated in other Sections of this  
9 Article, the Association shall have the powers set forth in  
10 this Section.

11 (1) If a domestic organization is an impaired organization,  
12 the Association may, subject to any conditions imposed by the  
13 Association other than those which impair the contractual  
14 obligations of the impaired organization, and approved by the  
15 impaired organization and the Director:

16 (a) guarantee, assume, or reinsure, or cause to be

1           guaranteed, assumed or reinsured, any or all of the covered  
2           health care plan certificates of covered persons of the  
3           impaired organization;

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

9           (c) loan money to the impaired organization.

10          (2) If a domestic, foreign, or alien organization is an  
11          insolvent organization, the Association shall, subject to the  
12          approval of the Director:

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

1 individuals and the costs of providing health care services  
2 to such individuals;

3 (b) assure payment of the contractual obligations of  
4 the insolvent organization to covered persons;

5 (c) make payments to providers of health care, or  
6 indemnity payments to covered persons, so as to assure the  
7 continued payment of benefits substantially similar to  
8 those provided for under covered health care plan  
9 certificate issued by the insolvent organization to  
10 covered persons; and

11 (d) provide such monies, pledges, notes, guaranties,  
12 or other means as are reasonably necessary to discharge  
13 such duties.

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

20 (3) There shall be no liability on the part of and no cause  
21 of action shall arise against the Association or against any  
22 transferee from the Association in connection with the transfer  
23 by reinsurance or otherwise of all or any part of an impaired  
24 or insolvent organization's business by reason of any action  
25 taken or any failure to take any action by the impaired or  
26 insolvent organization at any time.

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

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

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

18           (7) (a) Any person receiving benefits under this Article is  
19 deemed to have assigned the rights under the covered health  
20 care plan certificates to the Association to the extent of the  
21 benefits received because of this Article whether the benefits  
22 are payments of contractual obligations or continuation of  
23 coverage. The Association may require an assignment to it of  
24 such rights by any payee, enrollee or beneficiary as a  
25 condition precedent to the receipt of any rights or benefits  
26 conferred by this Article upon such person. The Association is

1 subrogated to these rights against the assets of any insolvent  
2 organization and against any other party who may be liable to  
3 such payee, enrollee or beneficiary.

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

8 (8) (a) The contractual obligations of the insolvent  
9 organization for which the Association becomes or may become  
10 liable are as great as but no greater than the contractual  
11 obligations of the insolvent organization would have been in  
12 the absence of an insolvency unless such obligations are  
13 reduced as permitted by subsection (3), but the aggregate  
14 liability of the Association shall not exceed \$500,000 ~~\$300,000~~  
15 with respect to any one natural person.

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

19 (i) if such provider, or his or its affiliates or  
20 members of his immediate family, at any time within the one  
21 year prior to the date of the issuance of the first order,  
22 by a court of competent jurisdiction, of conservation,  
23 rehabilitation or liquidation pertaining to the health  
24 maintenance organization:

25 (A) was a securityholder of such organization (but  
26 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 of ~~or~~  
7 his or her official position as a representative of  
8 such provider on the board of any entity which  
9 exercised 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) if and to the extent such a provider has agreed by  
22 contract not to seek payment from the enrollee for services  
23 provided to such enrollee or if, and to the extent, as a  
24 matter of law such provider may not seek payment from the  
25 enrollee for services provided to such enrollee; or ~~or~~

26 (iii) related to any policy, contract, or certificate

1 providing any hospital, medical, prescription drug, or  
2 other health care benefits pursuant to Part C or Part D of  
3 Subchapter XVIII, Chapter 7 of Title 42 of the United  
4 States Code (commonly known as Medicare Part C & D) or any  
5 regulations issued pursuant thereto; or

6 (iv) for any portion of a policy, contract, or  
7 certificate to the extent that the assessments required by  
8 this Article with respect to the policy or contract are  
9 preempted or otherwise not permitted by federal or State  
10 law; or

11 (v) for any obligation that does not arise under the  
12 express written terms of the policy or contract issued by  
13 the organization to the contract owner or policy owner,  
14 including without limitation:

15 (A) claims based on marketing materials;

16 (B) claims based on side letters, riders, or other  
17 documents that were issued by the insurer without  
18 meeting applicable policy form filing or approval  
19 requirements;

20 (C) misrepresentations of or regarding policy  
21 benefits;

22 (D) extra-contractual claims; or

23 (E) claims for penalties or consequential or  
24 incidental damages.

25 (c) In no event shall the Association be required to pay  
26 any provider participating in the insolvent organization any

1 amount for in-plan services rendered by such provider prior to  
2 the insolvency of the organization in excess of (1) the amount  
3 provided by a capitation contract between a physician provider  
4 and the insolvent organization for such services; or (2) the  
5 amounts provided by contract between a hospital provider and  
6 the Department of Healthcare and Family Services (formerly  
7 Department of Public Aid) for similar services to recipients of  
8 public aid; or (3) in the event neither (1) nor (2) above is  
9 applicable, then the amounts paid under the Medicare area  
10 prevailing rate for the area where the services were provided,  
11 or if no such rate exists with respect to such services, then  
12 80% of the usual and customary rates established by the Health  
13 Insurance Association of America. The payments required to be  
14 made by the Association under this Section shall constitute  
15 full and complete payment for such provider services to the  
16 enrollee.

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

24 (9) The Association may:

25 (a) Enter into such contracts as are necessary or  
26 proper to carry out the provisions and purposes of this



1 Article.

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

6 (c) Borrow money to effect the purposes of this  
7 Article. Any notes or other evidence of indebtedness of the  
8 Association not in default are legal investments for  
9 domestic organizations and may be carried as admitted  
10 assets.

11 (d) Employ or retain such persons as are necessary to  
12 handle the financial transactions of the Association, and  
13 to perform such other functions as become necessary or  
14 proper under this Article.

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

18 (f) Take such legal action as may be necessary to avoid  
19 payment of improper claims.

20 (g) Exercise, for the purposes of this Article and to  
21 the extent approved by the Director, the powers of a  
22 domestic organization, but in no case may the Association  
23 issue evidence of coverage other than that issued to  
24 perform the contractual obligations of the impaired or  
25 insolvent organization.

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

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

4 (i) Request information from a person seeking coverage  
5 from the Association in order to aid the Association in  
6 determining its obligations under this Article with  
7 respect to the person and the person shall promptly comply  
8 with the request.

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

1 contract providing stop loss coverage or similar coverages or  
2 any health care service contract to which the insolvent  
3 organization was a party, on the terms set forth under such  
4 contract, to the extent that such contract provides coverage  
5 for health care services provided after the date of the order  
6 of liquidation or rehabilitation. As a condition to making this  
7 election, the Association must pay premiums for coverage  
8 relating to periods after the date of the order of liquidation  
9 or rehabilitation.

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

26 (12) The Board of Directors of the Association shall have

1 discretion and may exercise reasonable business judgment to  
2 determine the means by which the Association is to provide the  
3 benefits of this Article in an economical and efficient manner.

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

10 (14) Venue in a suit against the Association arising under  
11 the Article shall be in Cook County. The Association shall not  
12 be required to give any appeal bond in an appeal that relates  
13 to a cause of action arising under this Article.

14 (Source: P.A. 95-331, eff. 8-21-07; 96-1450, eff. 8-20-10;  
15 revised 9-16-10.)

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