



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB6156

Introduced 2/11/2010, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

215 ILCS 5/154	from Ch. 73, par. 766
215 ILCS 5/359d new	
215 ILCS 97/30	
215 ILCS 97/50	
215 ILCS 125/5-3	from Ch. 111 1/2, par. 1411.2

Amends the Illinois Insurance Code. Provides that with the exception of a policy of accident and health insurance, no misrepresentation or false warranty shall defeat or avoid a policy unless it shall have been made with actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed. Provides that no insurer shall rescind or cancel any policy of insurance, contract, evidence of coverage, or certificate that provides accident and health coverage on the basis of written information by the insured if the insurer failed to complete medical underwriting and resolve all reasonable medical questions. Provides that an insurer shall apply for approval of a policy rescission or cancellation by submitting written information to the Director of Insurance. Sets forth provisions concerning the approval of a rescission or cancellation. Amends the Illinois Health Insurance Portability and Accountability Act. Provides that a health insurance issuer may rescind health insurance coverage offered in connection with a group health plan or coverage of an individual in the individual market only upon evidence of fraud. Amends the Health Maintenance Organization Act to provide that Health Maintenance Organizations shall be subject to the provisions of the Illinois Insurance Code concerning the prior approval of health insurance rescissions. Contains a nonacceleration clause. Makes other changes. Effective July 1, 2010.

LRB096 20829 RPM 36596 b

1 AN ACT concerning insurance, which may be referred to as
2 the Health Insurance Contract Fairness Act.

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

5 Section 5. The Illinois Insurance Code is amended by
6 changing Section 154 and by adding Section 359d as follows:

7 (215 ILCS 5/154) (from Ch. 73, par. 766)

8 Sec. 154. Misrepresentations and false warranties.

9 (a) No misrepresentation or false warranty made by the
10 insured or in his behalf in the negotiation for a policy of
11 insurance, or breach of a condition of such policy shall defeat
12 or avoid the policy or prevent its attaching unless such
13 misrepresentation, false warranty or condition shall have been
14 stated in the policy or endorsement or rider attached thereto,
15 or in the written application therefor.

16 (b) With respect to a policy of insurance as defined in
17 subsection (a), (b), or (c) of Section 143.13 of this Code,
18 except a policy of accident and health insurance, no ~~no~~ such
19 misrepresentation or false warranty shall defeat or avoid the
20 policy unless it shall have been made with actual intent to
21 deceive or materially affects either the acceptance of the risk
22 or the hazard assumed by the company.

23 (c) With respect to a policy of insurance as defined in

1 subsection (a), (b), or (c) of Section 143.13, except life,
2 accident and health, fidelity and surety, and ocean marine
3 policies, a policy or policy renewal shall not be rescinded
4 after the policy has been in effect for one year or one policy
5 term, whichever is less. This Section shall not apply to
6 policies of marine or transportation insurance.

7 (Source: P.A. 89-413, eff. 6-1-96.)

8 (215 ILCS 5/359d new)

9 Sec. 359d. Health insurance rescissions; prior approval
10 required.

11 (a) Notwithstanding any other provision of law, unless
12 approval is granted pursuant to subsection (b) of this Section,
13 no insurer shall rescind or cancel any policy of insurance,
14 contract, evidence of coverage, or certificate that provides
15 coverage of the type specified in clause (b) of Class 1 or
16 clause (a) of Class 2 of Section 4 of this Code on the basis of
17 written information submitted on or with or omitted from an
18 insurance application by the insured if the insurer failed to
19 complete medical underwriting and resolve all reasonable
20 medical questions related to the written information submitted
21 on or with or omitted from the insurance application before
22 issuing the policy, contract, evidence of coverage, or
23 certificate.

24 (b) An insurer shall apply for approval of such rescission
25 or cancellation by submitting written information to the

1 Director on an application in such form as the Director
2 prescribes. The insurer shall provide a copy of the application
3 for approval to the insured or the insured's representative.
4 Not later than 7 business days after receipt of the application
5 for approval, the insured or the insured's representative shall
6 have an opportunity to review the application and respond and
7 submit relevant information to the Director with respect to the
8 application. Not later than 15 business days after the
9 submission of information by the insured or the insured's
10 representative, the Director shall issue a written decision on
11 the application. The Director may approve the rescission or
12 cancellation if the Director finds that the insured performed
13 an act or practice that constitutes fraud or made an
14 intentional misrepresentation of material fact under the terms
15 of the coverage. The decision shall be mailed to the insured,
16 the insured's representative, if any, and the insurer.

17 (c) The Director shall not approve a rescission or
18 cancellation under subsection (b) of this Section if the
19 rescission or cancellation is initiated after a claim is
20 submitted by the insured unless the submitted claim bears a
21 direct relationship to the information found by the Director
22 under subsection (b) of this Section to have been fraudulently
23 submitted on or with or omitted from the insurance application
24 by the insured.

25 (d) An insurer or insured may appeal a decision by the
26 Director under this Section by making a written request for a

1 hearing before the Director within 30 days after the date that
2 the Director's decision is mailed.

3 (e) This Section shall not apply to short term, disability
4 income, long-term care, accident only, or limited or specified
5 disease policies.

6 Section 10. The Illinois Health Insurance Portability and
7 Accountability Act is amended by changing Sections 30 and 50 as
8 follows:

9 (215 ILCS 97/30)

10 Sec. 30. Guaranteed renewability of coverage for employers
11 in the group market.

12 (A) In general. Except as provided in this Section, if a
13 health insurance issuer offers health insurance coverage in the
14 small or large group market in connection with a group health
15 plan, the issuer must renew or continue in force, including
16 without rescission, such coverage at the option of the plan
17 sponsor of the plan.

18 (B) General exceptions. A health insurance issuer may
19 nonrenew or discontinue health insurance coverage offered in
20 connection with a group health plan in the small or large group
21 market based only on one or more of the following:

22 (1) Nonpayment of premiums. The plan sponsor has failed
23 to pay premiums or contributions in accordance with the
24 terms of the health insurance coverage or the issuer has

1 not received timely premium payments.

2 (2) Fraud. The plan sponsor has performed an act or
3 practice that constitutes fraud or made an intentional
4 misrepresentation of material fact under the terms of the
5 coverage.

6 (3) Violation of participation or contribution rules.
7 The plan sponsor has failed to comply with a material plan
8 provision relating to employer contribution or group
9 participation rules, as permitted under Section 40(D) in
10 the case of the small group market or pursuant to
11 applicable State law in the case of the large group market.

12 (4) Termination of coverage. The issuer is ceasing to
13 offer coverage in such market in accordance with subsection
14 (C) and applicable State law.

15 (5) Movement outside service area. In the case of a
16 health insurance issuer that offers health insurance
17 coverage in the market through a network plan, there is no
18 longer any enrollee in connection with such plan who lives,
19 resides, or works in the service area of the issuer (or in
20 the area for which the issuer is authorized to do business)
21 and, in the case of the small group market, the issuer
22 would deny enrollment with respect to such plan under
23 Section 40(C)(1)(a).

24 (6) Association membership ceases. In the case of
25 health insurance coverage that is made available in the
26 small or large group market (as the case may be) only

1 through one or more bona fide association, the membership
2 of an employer in the association (on the basis of which
3 the coverage is provided) ceases but only if such coverage
4 is terminated under this paragraph uniformly without
5 regard to any health status-related factor relating to any
6 covered individual.

7 (C) Requirements for uniform termination of coverage.

8 (1) Particular type of coverage not offered. In any
9 case in which an issuer decides to discontinue offering a
10 particular type of group health insurance coverage offered
11 in the small or large group market, coverage of such type
12 may be discontinued by the issuer in accordance with
13 applicable State law in such market only if:

14 (a) the issuer provides notice to each plan sponsor
15 provided coverage of this type in such market (and
16 participants and beneficiaries covered under such
17 coverage) of such discontinuation at least 90 days
18 prior to the date of the discontinuation of such
19 coverage;

20 (b) the issuer offers to each plan sponsor provided
21 coverage of this type in such market, the option to
22 purchase all (or, in the case of the large group
23 market, any) other health insurance coverage currently
24 being offered by the issuer to a group health plan in
25 such market; and

26 (c) in exercising the option to discontinue

1 coverage of this type and in offering the option of
2 coverage under subparagraph (b), the issuer acts
3 uniformly without regard to the claims experience of
4 those sponsors or any health status-related factor
5 relating to any participants or beneficiaries who may
6 become eligible for such coverage.

7 (2) Discontinuance of all coverage.

8 (a) In general. In any case in which a health
9 insurance issuer elects to discontinue offering all
10 health insurance coverage in the small group market or
11 the large group market, or both markets, in Illinois,
12 health insurance coverage may be discontinued by the
13 issuer only in accordance with Illinois law and if:

14 (i) the issuer provides notice to the
15 Department and to each plan sponsor (and
16 participants and beneficiaries covered under such
17 coverage) of such discontinuation at least 180
18 days prior to the date of the discontinuation of
19 such coverage; and

20 (ii) all health insurance issued or delivered
21 for issuance in Illinois in such market (or
22 markets) are discontinued and coverage under such
23 health insurance coverage in such market (or
24 markets) is not renewed.

25 (b) Prohibition on market reentry. In the case of a
26 discontinuation under subparagraph (a) in a market,

1 the issuer may not provide for the issuance of any
2 health insurance coverage in the Illinois market
3 involved during the 5-year period beginning on the date
4 of the discontinuation of the last health insurance
5 coverage not so renewed.

6 (D) Exception for uniform modification of coverage. At the
7 time of coverage renewal, a health insurance issuer may modify
8 the health insurance coverage for a product offered to a group
9 health plan:

10 (1) in the large group market; or

11 (2) in the small group market if, for coverage that is
12 available in such market other than only through one or
13 more bona fide associations, such modification is
14 consistent with State law and effective on a uniform basis
15 among group health plans with that product.

16 (E) Application to coverage offered only through
17 associations. In applying this Section in the case of health
18 insurance coverage that is made available by a health insurance
19 issuer in the small or large group market to employers only
20 through one or more associations, a reference to "plan sponsor"
21 is deemed, with respect to coverage provided to an employer
22 member of the association, to include a reference to such
23 employer.

24 (F) Rescission. A health insurance issuer may rescind
25 health insurance coverage offered in connection with a group
26 health plan in the small or large group market only upon

1 evidence of fraud described in subsection (2) of Section (B).

2 (Source: P.A. 90-30, eff. 7-1-97.)

3 (215 ILCS 97/50)

4 Sec. 50. Guaranteed renewability of individual health
5 insurance coverage.

6 (A) In general. Except as provided in this Section, a
7 health insurance issuer that provides individual health
8 insurance coverage to an individual shall renew or continue in
9 force, including without rescission, such coverage at the
10 option of the individual.

11 (B) General exceptions. A health insurance issuer may
12 nonrenew or discontinue health insurance coverage of an
13 individual in the individual market based only on one or more
14 of the following:

15 (1) Nonpayment of premiums. The individual has failed
16 to pay premiums or contributions in accordance with the
17 terms of the health insurance coverage or the issuer has
18 not received timely premium payments.

19 (2) Fraud. The individual has performed an act or
20 practice that constitutes fraud or made an intentional
21 misrepresentation of material fact under the terms of the
22 coverage.

23 (3) Termination of plan. The issuer is ceasing to offer
24 coverage in the individual market in accordance with
25 subsection (C) of this Section and applicable Illinois law.

1 (4) Movement outside the service area. In the case of a
2 health insurance issuer that offers health insurance
3 coverage in the market through a network plan, the
4 individual no longer resides, lives, or works in the
5 service area (or in an area for which the issuer is
6 authorized to do business), but only if such coverage is
7 terminated under this paragraph uniformly without regard
8 to any health status-related factor of covered
9 individuals.

10 (5) Association membership ceases. In the case of
11 health insurance coverage that is made available in the
12 individual market only through one or more bona fide
13 associations, the membership of the individual in the
14 association (on the basis of which the coverage is
15 provided) ceases, but only if such coverage is terminated
16 under this paragraph uniformly without regard to any health
17 status-related factor of covered individuals.

18 (C) Requirements for uniform termination of coverage.

19 (1) Particular type of coverage not offered. In any
20 case in which an issuer decides to discontinue offering a
21 particular type of health insurance coverage offered in the
22 individual market, coverage of such type may be
23 discontinued by the issuer only if:

24 (a) the issuer provides notice to each covered
25 individual provided coverage of this type in such
26 market of such discontinuation at least 90 days prior

1 to the date of the discontinuation of such coverage;

2 (b) the issuer offers, to each individual in the
3 individual market provided coverage of this type, the
4 option to purchase any other individual health
5 insurance coverage currently being offered by the
6 issuer for individuals in such market; and

7 (c) in exercising the option to discontinue
8 coverage of that type and in offering the option of
9 coverage under subparagraph (b), the issuer acts
10 uniformly without regard to any health status-related
11 factor of enrolled individuals or individuals who may
12 become eligible for such coverage.

13 (2) Discontinuance of all coverage.

14 (a) In general. Subject to subparagraph (c), in any
15 case in which a health insurance issuer elects to
16 discontinue offering all health insurance coverage in
17 the individual market in Illinois, health insurance
18 coverage may be discontinued by the issuer only if:

19 (i) the issuer provides notice to the Director
20 and to each individual of the discontinuation at
21 least 180 days prior to the date of the expiration
22 of such coverage;

23 (ii) all health insurance issued or delivered
24 for issuance in Illinois in such market is
25 discontinued and coverage under such health
26 insurance coverage in such market is not renewed;

1 and

2 (iii) in the case where the issuer has
3 affiliates in the individual market, the issuer
4 gives notice to each affected individual at least
5 180 days prior to the date of the expiration of the
6 coverage of the individual's option to purchase
7 all other individual health benefit plans
8 currently offered by any affiliate of the carrier.

9 (b) Prohibition on market reentry. In the case of a
10 discontinuation under subparagraph (a) in the
11 individual market, the issuer may not provide for the
12 issuance of any health insurance coverage in Illinois
13 involved during the 5-year period beginning on the date
14 of the discontinuation of the last health insurance
15 coverage not so renewed.

16 (c) If an issuer elects to discontinue offering all
17 health insurance coverage in the individual market
18 under subparagraph (a), its affiliates that offer
19 health insurance coverage in the individual market in
20 Illinois shall offer individual health insurance
21 coverage to all individuals who were covered by the
22 discontinued health insurance coverage on the date of
23 the notice provided to affected individuals under
24 subdivision (iii) of subparagraph (a) of this item (2)
25 if the individual applies for coverage no later than 63
26 days after the discontinuation of coverage.

1 (d) Subject to subparagraph (e) of this item (2),
2 an affiliate that issues coverage under subparagraph
3 (c) shall waive the preexisting condition exclusion
4 period to the extent that the individual has satisfied
5 the preexisting condition exclusion period under the
6 individual's prior contract or policy.

7 (e) An affiliate that issues coverage under
8 subparagraph (c) may require the individual to satisfy
9 the remaining part of the preexisting condition
10 exclusion period, if any, under the individual's prior
11 contract or policy that has not been satisfied, unless
12 the coverage has a shorter preexisting condition
13 exclusion period, and may include in any coverage
14 issued under subparagraph (c) any waivers or
15 limitations of coverage that were included in the
16 individual's prior contract or policy.

17 (D) Exception for uniform modification of coverage. At the
18 time of coverage renewal, a health insurance issuer may modify
19 the health insurance coverage for a policy form offered to
20 individuals in the individual market so long as the
21 modification is consistent with Illinois law and effective on a
22 uniform basis among all individuals with that policy form.

23 (E) Application to coverage offered only through
24 associations. In applying this Section in the case of health
25 insurance coverage that is made available by a health insurance
26 issuer in the individual market to individuals only through one

1 or more associations, a reference to an "individual" is deemed
2 to include a reference to such an association (of which the
3 individual is a member).

4 The changes to this Section made by this amendatory Act of
5 the 94th General Assembly apply only to discontinuances of
6 coverage occurring on or after the effective date of this
7 amendatory Act of the 94th General Assembly.

8 (F) Rescission. A health insurance issuer may rescind
9 health insurance coverage of an individual in the individual
10 market only upon evidence of fraud described in subsection (2)
11 of Section (B).

12 (Source: P.A. 94-502, eff. 8-8-05.)

13 Section 15. The Health Maintenance Organization Act is
14 amended by changing Section 5-3 as follows:

15 (215 ILCS 125/5-3) (from Ch. 111 1/2, par. 1411.2)

16 (Text of Section before amendment by P.A. 96-833)

17 Sec. 5-3. Insurance Code provisions.

18 (a) Health Maintenance Organizations shall be subject to
19 the provisions of Sections 133, 134, 137, 140, 141.1, 141.2,
20 141.3, 143, 143c, 147, 148, 149, 151, 152, 153, 154, 154.5,
21 154.6, 154.7, 154.8, 155.04, 355.2, 356g.5-1, 356m, 356v, 356w,
22 356x, 356y, 356z.2, 356z.4, 356z.5, 356z.6, 356z.8, 356z.9,
23 356z.10, 356z.11, 356z.12, 356z.13, 356z.14, 356z.15 ~~356z.14~~,
24 356z.17 ~~356z.15~~, 359d, 364.01, 367.2, 367.2-5, 367i, 368a,

1 368b, 368c, 368d, 368e, 370c, 401, 401.1, 402, 403, 403A, 408,
2 408.2, 409, 412, 444, and 444.1, paragraph (c) of subsection
3 (2) of Section 367, and Articles IIA, VIII 1/2, XII, XII 1/2,
4 XIII, XIII 1/2, XXV, and XXVI of the Illinois Insurance Code.

5 (b) For purposes of the Illinois Insurance Code, except for
6 Sections 444 and 444.1 and Articles XIII and XIII 1/2, Health
7 Maintenance Organizations in the following categories are
8 deemed to be "domestic companies":

9 (1) a corporation authorized under the Dental Service
10 Plan Act or the Voluntary Health Services Plans Act;

11 (2) a corporation organized under the laws of this
12 State; or

13 (3) a corporation organized under the laws of another
14 state, 30% or more of the enrollees of which are residents
15 of this State, except a corporation subject to
16 substantially the same requirements in its state of
17 organization as is a "domestic company" under Article VIII
18 1/2 of the Illinois Insurance Code.

19 (c) In considering the merger, consolidation, or other
20 acquisition of control of a Health Maintenance Organization
21 pursuant to Article VIII 1/2 of the Illinois Insurance Code,

22 (1) the Director shall give primary consideration to
23 the continuation of benefits to enrollees and the financial
24 conditions of the acquired Health Maintenance Organization
25 after the merger, consolidation, or other acquisition of
26 control takes effect;

1 (2) (i) the criteria specified in subsection (1) (b) of
2 Section 131.8 of the Illinois Insurance Code shall not
3 apply and (ii) the Director, in making his determination
4 with respect to the merger, consolidation, or other
5 acquisition of control, need not take into account the
6 effect on competition of the merger, consolidation, or
7 other acquisition of control;

8 (3) the Director shall have the power to require the
9 following information:

10 (A) certification by an independent actuary of the
11 adequacy of the reserves of the Health Maintenance
12 Organization sought to be acquired;

13 (B) pro forma financial statements reflecting the
14 combined balance sheets of the acquiring company and
15 the Health Maintenance Organization sought to be
16 acquired as of the end of the preceding year and as of
17 a date 90 days prior to the acquisition, as well as pro
18 forma financial statements reflecting projected
19 combined operation for a period of 2 years;

20 (C) a pro forma business plan detailing an
21 acquiring party's plans with respect to the operation
22 of the Health Maintenance Organization sought to be
23 acquired for a period of not less than 3 years; and

24 (D) such other information as the Director shall
25 require.

26 (d) The provisions of Article VIII 1/2 of the Illinois

1 Insurance Code and this Section 5-3 shall apply to the sale by
2 any health maintenance organization of greater than 10% of its
3 enrollee population (including without limitation the health
4 maintenance organization's right, title, and interest in and to
5 its health care certificates).

6 (e) In considering any management contract or service
7 agreement subject to Section 141.1 of the Illinois Insurance
8 Code, the Director (i) shall, in addition to the criteria
9 specified in Section 141.2 of the Illinois Insurance Code, take
10 into account the effect of the management contract or service
11 agreement on the continuation of benefits to enrollees and the
12 financial condition of the health maintenance organization to
13 be managed or serviced, and (ii) need not take into account the
14 effect of the management contract or service agreement on
15 competition.

16 (f) Except for small employer groups as defined in the
17 Small Employer Rating, Renewability and Portability Health
18 Insurance Act and except for medicare supplement policies as
19 defined in Section 363 of the Illinois Insurance Code, a Health
20 Maintenance Organization may by contract agree with a group or
21 other enrollment unit to effect refunds or charge additional
22 premiums under the following terms and conditions:

23 (i) the amount of, and other terms and conditions with
24 respect to, the refund or additional premium are set forth
25 in the group or enrollment unit contract agreed in advance
26 of the period for which a refund is to be paid or

1 additional premium is to be charged (which period shall not
2 be less than one year); and

3 (ii) the amount of the refund or additional premium
4 shall not exceed 20% of the Health Maintenance
5 Organization's profitable or unprofitable experience with
6 respect to the group or other enrollment unit for the
7 period (and, for purposes of a refund or additional
8 premium, the profitable or unprofitable experience shall
9 be calculated taking into account a pro rata share of the
10 Health Maintenance Organization's administrative and
11 marketing expenses, but shall not include any refund to be
12 made or additional premium to be paid pursuant to this
13 subsection (f)). The Health Maintenance Organization and
14 the group or enrollment unit may agree that the profitable
15 or unprofitable experience may be calculated taking into
16 account the refund period and the immediately preceding 2
17 plan years.

18 The Health Maintenance Organization shall include a
19 statement in the evidence of coverage issued to each enrollee
20 describing the possibility of a refund or additional premium,
21 and upon request of any group or enrollment unit, provide to
22 the group or enrollment unit a description of the method used
23 to calculate (1) the Health Maintenance Organization's
24 profitable experience with respect to the group or enrollment
25 unit and the resulting refund to the group or enrollment unit
26 or (2) the Health Maintenance Organization's unprofitable

1 experience with respect to the group or enrollment unit and the
2 resulting additional premium to be paid by the group or
3 enrollment unit.

4 In no event shall the Illinois Health Maintenance
5 Organization Guaranty Association be liable to pay any
6 contractual obligation of an insolvent organization to pay any
7 refund authorized under this Section.

8 (g) Rulemaking authority to implement Public Act 95-1045
9 ~~this amendatory Act of the 95th General Assembly~~, if any, is
10 conditioned on the rules being adopted in accordance with all
11 provisions of the Illinois Administrative Procedure Act and all
12 rules and procedures of the Joint Committee on Administrative
13 Rules; any purported rule not so adopted, for whatever reason,
14 is unauthorized.

15 (Source: P.A. 95-422, eff. 8-24-07; 95-520, eff. 8-28-07;
16 95-876, eff. 8-21-08; 95-958, eff. 6-1-09; 95-978, eff. 1-1-09;
17 95-1005, eff. 12-12-08; 95-1045, eff. 3-27-09; 95-1049, eff.
18 1-1-10; 96-328, eff. 8-11-09; 96-639, eff. 1-1-10; revised
19 10-23-09.)

20 (Text of Section after amendment by P.A. 96-833)

21 Sec. 5-3. Insurance Code provisions.

22 (a) Health Maintenance Organizations shall be subject to
23 the provisions of Sections 133, 134, 137, 140, 141.1, 141.2,
24 141.3, 143, 143c, 147, 148, 149, 151, 152, 153, 154, 154.5,
25 154.6, 154.7, 154.8, 155.04, 355.2, 356g.5-1, 356m, 356v, 356w,

1 356x, 356y, 356z.2, 356z.4, 356z.5, 356z.6, 356z.8, 356z.9,
2 356z.10, 356z.11, 356z.12, 356z.13, 356z.14, 356z.15, 356z.17,
3 356z.18, 359d, 364.01, 367.2, 367.2-5, 367i, 368a, 368b, 368c,
4 368d, 368e, 370c, 401, 401.1, 402, 403, 403A, 408, 408.2, 409,
5 412, 444, and 444.1, paragraph (c) of subsection (2) of Section
6 367, and Articles IIA, VIII 1/2, XII, XII 1/2, XIII, XIII 1/2,
7 XXV, and XXVI of the Illinois Insurance Code.

8 (b) For purposes of the Illinois Insurance Code, except for
9 Sections 444 and 444.1 and Articles XIII and XIII 1/2, Health
10 Maintenance Organizations in the following categories are
11 deemed to be "domestic companies":

12 (1) a corporation authorized under the Dental Service
13 Plan Act or the Voluntary Health Services Plans Act;

14 (2) a corporation organized under the laws of this
15 State; or

16 (3) a corporation organized under the laws of another
17 state, 30% or more of the enrollees of which are residents
18 of this State, except a corporation subject to
19 substantially the same requirements in its state of
20 organization as is a "domestic company" under Article VIII
21 1/2 of the Illinois Insurance Code.

22 (c) In considering the merger, consolidation, or other
23 acquisition of control of a Health Maintenance Organization
24 pursuant to Article VIII 1/2 of the Illinois Insurance Code,

25 (1) the Director shall give primary consideration to
26 the continuation of benefits to enrollees and the financial

1 conditions of the acquired Health Maintenance Organization
2 after the merger, consolidation, or other acquisition of
3 control takes effect;

4 (2) (i) the criteria specified in subsection (1) (b) of
5 Section 131.8 of the Illinois Insurance Code shall not
6 apply and (ii) the Director, in making his determination
7 with respect to the merger, consolidation, or other
8 acquisition of control, need not take into account the
9 effect on competition of the merger, consolidation, or
10 other acquisition of control;

11 (3) the Director shall have the power to require the
12 following information:

13 (A) certification by an independent actuary of the
14 adequacy of the reserves of the Health Maintenance
15 Organization sought to be acquired;

16 (B) pro forma financial statements reflecting the
17 combined balance sheets of the acquiring company and
18 the Health Maintenance Organization sought to be
19 acquired as of the end of the preceding year and as of
20 a date 90 days prior to the acquisition, as well as pro
21 forma financial statements reflecting projected
22 combined operation for a period of 2 years;

23 (C) a pro forma business plan detailing an
24 acquiring party's plans with respect to the operation
25 of the Health Maintenance Organization sought to be
26 acquired for a period of not less than 3 years; and

1 (D) such other information as the Director shall
2 require.

3 (d) The provisions of Article VIII 1/2 of the Illinois
4 Insurance Code and this Section 5-3 shall apply to the sale by
5 any health maintenance organization of greater than 10% of its
6 enrollee population (including without limitation the health
7 maintenance organization's right, title, and interest in and to
8 its health care certificates).

9 (e) In considering any management contract or service
10 agreement subject to Section 141.1 of the Illinois Insurance
11 Code, the Director (i) shall, in addition to the criteria
12 specified in Section 141.2 of the Illinois Insurance Code, take
13 into account the effect of the management contract or service
14 agreement on the continuation of benefits to enrollees and the
15 financial condition of the health maintenance organization to
16 be managed or serviced, and (ii) need not take into account the
17 effect of the management contract or service agreement on
18 competition.

19 (f) Except for small employer groups as defined in the
20 Small Employer Rating, Renewability and Portability Health
21 Insurance Act and except for medicare supplement policies as
22 defined in Section 363 of the Illinois Insurance Code, a Health
23 Maintenance Organization may by contract agree with a group or
24 other enrollment unit to effect refunds or charge additional
25 premiums under the following terms and conditions:

26 (i) the amount of, and other terms and conditions with

1 respect to, the refund or additional premium are set forth
2 in the group or enrollment unit contract agreed in advance
3 of the period for which a refund is to be paid or
4 additional premium is to be charged (which period shall not
5 be less than one year); and

6 (ii) the amount of the refund or additional premium
7 shall not exceed 20% of the Health Maintenance
8 Organization's profitable or unprofitable experience with
9 respect to the group or other enrollment unit for the
10 period (and, for purposes of a refund or additional
11 premium, the profitable or unprofitable experience shall
12 be calculated taking into account a pro rata share of the
13 Health Maintenance Organization's administrative and
14 marketing expenses, but shall not include any refund to be
15 made or additional premium to be paid pursuant to this
16 subsection (f)). The Health Maintenance Organization and
17 the group or enrollment unit may agree that the profitable
18 or unprofitable experience may be calculated taking into
19 account the refund period and the immediately preceding 2
20 plan years.

21 The Health Maintenance Organization shall include a
22 statement in the evidence of coverage issued to each enrollee
23 describing the possibility of a refund or additional premium,
24 and upon request of any group or enrollment unit, provide to
25 the group or enrollment unit a description of the method used
26 to calculate (1) the Health Maintenance Organization's

1 profitable experience with respect to the group or enrollment
2 unit and the resulting refund to the group or enrollment unit
3 or (2) the Health Maintenance Organization's unprofitable
4 experience with respect to the group or enrollment unit and the
5 resulting additional premium to be paid by the group or
6 enrollment unit.

7 In no event shall the Illinois Health Maintenance
8 Organization Guaranty Association be liable to pay any
9 contractual obligation of an insolvent organization to pay any
10 refund authorized under this Section.

11 (g) Rulemaking authority to implement Public Act 95-1045,
12 if any, is conditioned on the rules being adopted in accordance
13 with all provisions of the Illinois Administrative Procedure
14 Act and all rules and procedures of the Joint Committee on
15 Administrative Rules; any purported rule not so adopted, for
16 whatever reason, is unauthorized.

17 (Source: P.A. 95-422, eff. 8-24-07; 95-520, eff. 8-28-07;
18 95-876, eff. 8-21-08; 95-958, eff. 6-1-09; 95-978, eff. 1-1-09;
19 95-1005, eff. 12-12-08; 95-1045, eff. 3-27-09; 95-1049, eff.
20 1-1-10; 96-328, eff. 8-11-09; 96-639, eff. 1-1-10; 96-833, eff.
21 6-1-10.)

22 Section 95. No acceleration or delay. Where this Act makes
23 changes in a statute that is represented in this Act by text
24 that is not yet or no longer in effect (for example, a Section
25 represented by multiple versions), the use of that text does

1 not accelerate or delay the taking effect of (i) the changes
2 made by this Act or (ii) provisions derived from any other
3 Public Act.

4 Section 99. Effective date. This Act takes effect July 1,
5 2010.