

# SB3972



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB3972

Introduced 11/16/2010, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

215 ILCS 125/6-8

from Ch. 111 1/2, par. 1418.8

Amends the Health Maintenance Organization Act. In the provision concerning the powers and duties of the Illinois Health Maintenance Organization Guaranty Association, provides that the aggregate liability of the Association with respect to the contractual obligations of an insolvent organization shall not exceed \$500,000 (instead of \$300,000) with respect to any one natural person. Effective immediately.

LRB096 23903 RPM 43292 b

A BILL FOR

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 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  
17 guaranteed, assumed or reinsured, any or all of the covered  
18 health care plan certificates of covered persons of the  
19 impaired organization;

20 (b) provide such monies, pledges, notes, guarantees,  
21 or other means as are proper to effectuate paragraph (a),  
22 and assure payment of the contractual obligations of the  
23 impaired organization pending action under paragraph (a);

1 and

2 (c) loan money to the impaired organization.

3 (2) If a domestic, foreign, or alien organization is an  
4 insolvent organization, the Association shall, subject to the  
5 approval of the Director:

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

22 (b) assure payment of the contractual obligations of  
23 the insolvent organization to covered persons;

24 (c) make payments to providers of health care, or  
25 indemnity payments to covered persons, so as to assure the  
26 continued payment of benefits substantially similar to

1 those provided for under covered health care plan  
2 certificate issued by the insolvent organization to  
3 covered persons; and

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

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

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

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

25 (5) The Association or its designated representatives may  
26 render assistance and advice to the Director, upon his request,

1 concerning rehabilitation, payment of claims, continuations of  
2 coverage, or the performance of other contractual obligations  
3 of any impaired or insolvent organization.

4 (6) The Association has standing to appear before any court  
5 concerning all matters germane to the powers and duties of the  
6 Association, including, but not limited to, proposals for  
7 reinsuring or guaranteeing the covered health care plan  
8 certificates of the impaired or insolvent organization and the  
9 determination of the covered health care plan certificates and  
10 contractual obligations.

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

23 (b) The subrogation rights of the Association under this  
24 subsection have the same priority against the assets of the  
25 insolvent organization as that possessed by the person entitled  
26 to receive benefits under this Article.

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

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

12           (i) if such provider, or his or its affiliates or  
13 members of his immediate family, at any time within the one  
14 year prior to the date of the issuance of the first order,  
15 by a court of competent jurisdiction, of conservation,  
16 rehabilitation or liquidation pertaining to the health  
17 maintenance organization:

18           (A) was a securityholder of such organization (but  
19 excluding any securityholder holding an equity  
20 interest of 5% or less);

21           (B) exercised control over the organization by  
22 means such as serving as an officer or director,  
23 through a management agreement or as a principal member  
24 of a not-for-profit organization;

25           (C) had a representative serving by virtue of ~~or~~  
26 his or her official position as a representative of

1 such provider on the board of any entity which  
2 exercised control over the organization;

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

6 (E) received distributions other than for  
7 physician services from a not-for-profit organization  
8 on account of such provider's status as a member of  
9 such organization.

10 For purposes of this subparagraph (i), the terms  
11 "affiliate," "person," "control" and "securityholder"  
12 shall have the meanings ascribed to such terms in Section  
13 131.1 of the Illinois Insurance Code; or

14 (ii) if and to the extent such a provider has agreed by  
15 contract not to seek payment from the enrollee for services  
16 provided to such enrollee or if, and to the extent, as a  
17 matter of law such provider may not seek payment from the  
18 enrollee for services provided to such enrollee; or.

19 (iii) related to any policy, contract, or certificate  
20 providing any hospital, medical, prescription drug, or  
21 other health care benefits pursuant to Part C or Part D of  
22 Subchapter XVIII, Chapter 7 of Title 42 of the United  
23 States Code (commonly known as Medicare Part C & D) or any  
24 regulations issued pursuant thereto; or

25 (iv) for any portion of a policy, contract, or  
26 certificate to the extent that the assessments required by

1           this Article with respect to the policy or contract are  
2           preempted or otherwise not permitted by federal or State  
3           law; or

4           (v) for any obligation that does not arise under the  
5           express written terms of the policy or contract issued by  
6           the organization to the contract owner or policy owner,  
7           including without limitation:

8                   (A) claims based on marketing materials;

9                   (B) claims based on side letters, riders, or other  
10           documents that were issued by the insurer without  
11           meeting applicable policy form filing or approval  
12           requirements;

13                   (C) misrepresentations of or regarding policy  
14           benefits;

15                   (D) extra-contractual claims; or

16                   (E) claims for penalties or consequential or  
17           incidental damages.

18           (c) In no event shall the Association be required to pay  
19           any provider participating in the insolvent organization any  
20           amount for in-plan services rendered by such provider prior to  
21           the insolvency of the organization in excess of (1) the amount  
22           provided by a capitation contract between a physician provider  
23           and the insolvent organization for such services; or (2) the  
24           amounts provided by contract between a hospital provider and  
25           the Department of Healthcare and Family Services (formerly  
26           Department of Public Aid) for similar services to recipients of



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

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

17 (9) The Association may:

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

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

25 (c) Borrow money to effect the purposes of this  
26 Article. Any notes or other evidence of indebtedness of the

1 Association not in default are legal investments for  
2 domestic organizations and may be carried as admitted  
3 assets.

4 (d) Employ or retain such persons as are necessary to  
5 handle the financial transactions of the Association, and  
6 to perform such other functions as become necessary or  
7 proper under this Article.

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

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

13 (g) Exercise, for the purposes of this Article and to  
14 the extent approved by the Director, the powers of a  
15 domestic organization, but in no case may the Association  
16 issue evidence of coverage other than that issued to  
17 perform the contractual obligations of the impaired or  
18 insolvent organization.

19 (h) Exercise all the rights of the Director under  
20 Section 193(4) of the Illinois Insurance Code with respect  
21 to covered health care plan certificates after the  
22 association becomes obligated by statute.

23 (i) Request information from a person seeking coverage  
24 from the Association in order to aid the Association in  
25 determining its obligations under this Article with  
26 respect to the person and the person shall promptly comply

1 with the request.

2 (j) Take other necessary or appropriate action to  
3 discharge its duties and obligations under this Article or  
4 to exercise its powers under this Article.

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

1 relating to periods after the date of the order of liquidation  
2 or rehabilitation.

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

19 (12) The Board of Directors of the Association shall have  
20 discretion and may exercise reasonable business judgment to  
21 determine the means by which the Association is to provide the  
22 benefits of this Article in an economical and efficient manner.

23 (13) Where the Association has arranged or offered to  
24 provide the benefits of this Article to a covered person under  
25 a plan or arrangement that fulfills the Association's  
26 obligations under this Article, the person shall not be

1 entitled to benefits from the Association in addition to or  
2 other than those provided under the plan or arrangement.

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

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

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.