

AN ACT concerning State government.

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

Section 1. Short title. This Act may be cited as the Veterans' Health Insurance Program Act of 2008.

Section 3. Legislative intent. The General Assembly finds that those who have served their country honorably in military service and who are residing in this State deserve access to affordable, comprehensive health insurance. Many veterans are uninsured and unable to afford healthcare. This lack of healthcare, including preventative care, often exacerbates health conditions. The effects of lack of insurance negatively impact those residents of the State who are insured because the cost of paying for care to the uninsured is often shifted to those who have insurance in the form of higher health insurance premiums. It is, therefore, the intent of this legislation to provide access to affordable health insurance for veterans residing in Illinois who are unable to afford such coverage. However, the State has only a limited amount of resources, and the General Assembly therefore declares that while it intends to cover as many such veterans as possible, the State may not be able to cover every eligible person who qualifies for this Program as a matter of entitlement due to limited funding.

Section 5. Definitions. The following words have the following meanings:

"Department" means the Department of Healthcare and Family Services, or any successor agency.

"Director" means the Director of Healthcare and Family Services, or any successor agency.

"Medical assistance" means health care benefits provided under Article V of the Illinois Public Aid Code.

"Program" means the Veterans' Health Insurance Program.

"Resident" means an individual who has an Illinois residence, as provided in Section 5-3 of the Illinois Public Aid Code.

"Veteran" means any person who has served in a branch of the United States military for greater than 180 consecutive days after initial training.

"Veterans' Affairs" or "VA" means the United States Department of Veterans' Affairs.

Section 10. Operation of the Program.

(a) The Veterans' Health Insurance Program is created. This Program is not an entitlement. Enrollment is based on the availability of funds, and enrollment may be capped based on funds appropriated for the Program. As soon as practical after the effective date of this Act, coverage for this Program shall begin. The Program shall be administered by the Department of

Healthcare and Family Services in collaboration with the Department of Veterans' Affairs. The Department shall have the same powers and authority to administer the Program as are provided to the Department in connection with the Department's administration of the Illinois Public Aid Code. The Department shall coordinate the Program with other health programs operated by the Department and other State and federal agencies.

(b) The Department shall operate the Program in a manner so that the estimated cost of the Program during the fiscal year will not exceed the total appropriation for the Program. The Department may take any appropriate action to limit spending or enrollment into the Program, including, but not limited to, ceasing to accept or process applications, reviewing eligibility more frequently than annually, adjusting cost-sharing, or reducing the income threshold for eligibility as necessary to control expenditures for the Program.

Section 15. Eligibility.

(a) To be eligible for the Program, a person must:

(1) be a veteran who is not on active duty and who has not been dishonorably discharged from service;

(2) be a resident of the State of Illinois;

(3) be at least 19 years of age and no older than 64 years of age;

(4) be uninsured, as defined by the Department by rule,

for a period of time established by the Department by rule, which shall be no less than 6 months;

(5) not be eligible for medical assistance under the Illinois Public Aid Code;

(6) not be eligible for medical benefits through the Veterans Health Administration; and

(7) have a household income no greater than the sum of (i) an amount equal to 25% of the federal poverty level plus (ii) an amount equal to the Veterans Administration means test income threshold at the initiation of the Program; depending on the availability of funds, this level may be increased to an amount equal to the sum of (iii) an amount equal to 50% of the federal poverty level plus (iv) an amount equal to the Veterans Administration means test income threshold. This means test income threshold is subject to alteration by the Department as set forth in subsection (b) of Section 10.

(b) A veteran who is determined eligible for the Program shall remain eligible for 12 months, provided the veteran remains a resident of the State and is not excluded under subsection (c) of this Section and provided the Department has not limited the enrollment period as set forth in subsection (b) of Section 10.

(c) A veteran is not eligible for coverage under the Program if:

(1) the premium required under Section 35 of this Act

has not been timely paid; if the required premiums are not paid, the liability of the Program shall be limited to benefits incurred under the Program for the time period for which premiums have been paid and for grace periods as established under subsection (d); if the required monthly premium is not paid, the veteran is ineligible for re-enrollment for a minimum period of 3 months; or

(2) the veteran is a resident of a nursing facility or an inmate of a public institution, as defined by 42 CFR 435.1009.

(d) The Department shall adopt rules for the Program, including, but not limited to, rules relating to eligibility, re-enrollment, grace periods, notice requirements, hearing procedures, cost-sharing, covered services, and provider requirements.

Section 20. Notice of decisions to terminate eligibility. Whenever the Department decides to either deny or terminate eligibility under this Act, the veteran shall have a right to notice and a hearing, as provided by the Department by rule.

Section 25. Illinois Department of Veterans' Affairs. The Department shall coordinate with the Illinois Department of Veterans' Affairs and the Veterans Assistance Commissions to allow State Veterans' Affairs service officers and the Veterans Assistance Commissions to assist veterans to apply for the

Program. All applicants must be reviewed for Veterans Health Administration eligibility or other existing health benefits prior to consideration for the Program.

Section 30. Health care benefits.

(a) For veterans eligible and enrolled, the Department shall purchase or provide health care benefits for eligible veterans that are identical to the benefits provided to adults under the State's approved plan under Title XIX of the Social Security Act, except for nursing facility services and non-emergency transportation.

(b) Providers shall be subject to approval by the Department to provide health care under the Illinois Public Aid Code and shall be reimbursed at the same rates as providers reimbursed under the State's approved plan under Title XIX of the Social Security Act.

(c) As an alternative to the benefits set forth in subsection (a) of this Section, and when cost-effective, the Department may offer veterans subsidies toward the cost of privately sponsored health insurance, including employer-sponsored health insurance.

Section 35. Cost-sharing. The Department, by rule, shall set forth requirements concerning co-payments and monthly premiums for health care services. This cost-sharing shall be based on household income, as defined by the Department by

rule, and is subject to alteration by the Department as set forth in subsection (b) of Section 10.

Section 40. Charge upon claims and causes of action; right of subrogation; recoveries. Sections 11-22, 11-22a, 11-22b, and 11-22c of the Illinois Public Aid Code apply to health benefits provided to veterans under this Act, as provided in those Sections.

Section 45. Reporting. The Department shall prepare an annual report for submission to the General Assembly. The report shall be due to the General Assembly by January 1 of each year beginning in 2009. This report shall include information regarding implementation of the Program, including the number of veterans enrolled and any available information regarding other benefits derived from the Program, including screening for and acquisition of other veterans' benefits through the Veterans' Service Officers and the Veterans' Assistance Commissions. This report may also include recommendations regarding improvements that may be made to the Program and regarding the extension of the repeal date set forth in Section 85 of this Act.

Section 50. Emergency rulemaking. The Department may adopt rules necessary to establish and implement this Act through the use of emergency rulemaking in accordance with Section 5-45 of

the Illinois Administrative Procedure Act. For the purposes of that Act, the General Assembly finds that the adoption of rules to implement this Act is deemed an emergency and necessary for the public interest, safety, and welfare.

Section 85. Repeal. This Act is repealed on January 1, 2012.

Section 90. The Illinois Public Aid Code is amended by changing Sections 11-22, 11-22a, 11-22b, and 11-22c as follows:

(305 ILCS 5/11-22) (from Ch. 23, par. 11-22)

Sec. 11-22. Charge upon claims and causes of action for injuries. The Illinois Department shall have a charge upon all claims, demands and causes of action for injuries to an applicant for or recipient of (i) financial aid under Articles III, IV, and V, (ii) health care benefits provided under the Covering ALL KIDS Health Insurance Act, or (iii) health care benefits provided under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008 for the total amount of medical assistance provided the recipient from the time of injury to the date of recovery upon such claim, demand or cause of action. In addition, if the applicant or recipient was employable, as defined by the Department, at the time of the injury, the Department shall also have a charge upon any such claims, demands and causes of action for the

total amount of aid provided to the recipient and his dependents, including all cash assistance and medical assistance only to the extent includable in the claimant's action, from the time of injury to the date of recovery upon such claim, demand or cause of action. Any definition of "employable" adopted by the Department shall apply only to persons above the age of compulsory school attendance.

If the injured person was employable at the time of the injury and is provided aid under Articles III, IV, or V and any dependent or member of his family is provided aid under Article VI, or vice versa, both the Illinois Department and the local governmental unit shall have a charge upon such claims, demands and causes of action for the aid provided to the injured person and any dependent member of his family, including all cash assistance, medical assistance and food stamps, from the time of the injury to the date of recovery.

"Recipient", as used herein, means (i) in the case of financial aid provided under this Code, the grantee of record and any persons whose needs are included in the financial aid provided to the grantee of record or otherwise met by grants under the appropriate Article of this Code for which such person is eligible, (ii) in the case of health care benefits provided under the Covering ALL KIDS Health Insurance Act, the child to whom those benefits are provided, and (iii) in the case of health care benefits provided under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance

Program Act of 2008, the veteran to whom benefits are provided.

In each case, the notice shall be served by certified mail or registered mail, upon the party or parties against whom the applicant or recipient has a claim, demand or cause of action. The notice shall claim the charge and describe the interest the Illinois Department, the local governmental unit, or the county, has in the claim, demand, or cause of action. The charge shall attach to any verdict or judgment entered and to any money or property which may be recovered on account of such claim, demand, cause of action or suit from and after the time of the service of the notice.

On petition filed by the Illinois Department, or by the local governmental unit or county if either is claiming a charge, or by the recipient, or by the defendant, the court, on written notice to all interested parties, may adjudicate the rights of the parties and enforce the charge. The court may approve the settlement of any claim, demand or cause of action either before or after a verdict, and nothing in this Section shall be construed as requiring the actual trial or final adjudication of any claim, demand or cause of action upon which the Illinois Department, the local governmental unit or county has charge. The court may determine what portion of the recovery shall be paid to the injured person and what portion shall be paid to the Illinois Department, the local governmental unit or county having a charge against the recovery. In making this determination, the court shall conduct

an evidentiary hearing and shall consider competent evidence pertaining to the following matters:

(1) the amount of the charge sought to be enforced against the recovery when expressed as a percentage of the gross amount of the recovery; the amount of the charge sought to be enforced against the recovery when expressed as a percentage of the amount obtained by subtracting from the gross amount of the recovery the total attorney's fees and other costs incurred by the recipient incident to the recovery; and whether the Department, unit of local government or county seeking to enforce the charge against the recovery should as a matter of fairness and equity bear its proportionate share of the fees and costs incurred to generate the recovery from which the charge is sought to be satisfied;

(2) the amount, if any, of the attorney's fees and other costs incurred by the recipient incident to the recovery and paid by the recipient up to the time of recovery, and the amount of such fees and costs remaining unpaid at the time of recovery;

(3) the total hospital, doctor and other medical expenses incurred for care and treatment of the injury to the date of recovery therefor, the portion of such expenses theretofore paid by the recipient, by insurance provided by the recipient, and by the Department, unit of local government and county seeking to enforce a charge against

the recovery, and the amount of such previously incurred expenses which remain unpaid at the time of recovery and by whom such incurred, unpaid expenses are to be paid;

(4) whether the recovery represents less than substantially full recompense for the injury and the hospital, doctor and other medical expenses incurred to the date of recovery for the care and treatment of the injury, so that reduction of the charge sought to be enforced against the recovery would not likely result in a double recovery or unjust enrichment to the recipient;

(5) the age of the recipient and of persons dependent for support upon the recipient, the nature and permanency of the recipient's injuries as they affect not only the future employability and education of the recipient but also the reasonably necessary and foreseeable future material, maintenance, medical, rehabilitative and training needs of the recipient, the cost of such reasonably necessary and foreseeable future needs, and the resources available to meet such needs and pay such costs;

(6) the realistic ability of the recipient to repay in whole or in part the charge sought to be enforced against the recovery when judged in light of the factors enumerated above.

The burden of producing evidence sufficient to support the exercise by the court of its discretion to reduce the amount of a proven charge sought to be enforced against the recovery

shall rest with the party seeking such reduction.

The court may reduce and apportion the Illinois Department's lien proportionate to the recovery of the claimant. The court may consider the nature and extent of the injury, economic and noneconomic loss, settlement offers, comparative negligence as it applies to the case at hand, hospital costs, physician costs, and all other appropriate costs. The Illinois Department shall pay its pro rata share of the attorney fees based on the Illinois Department's lien as it compares to the total settlement agreed upon. This Section shall not affect the priority of an attorney's lien under the Attorneys Lien Act. The charges of the Illinois Department described in this Section, however, shall take priority over all other liens and charges existing under the laws of the State of Illinois with the exception of the attorney's lien under said statute.

Whenever the Department or any unit of local government has a statutory charge under this Section against a recovery for damages incurred by a recipient because of its advancement of any assistance, such charge shall not be satisfied out of any recovery until the attorney's claim for fees is satisfied, irrespective of whether or not an action based on recipient's claim has been filed in court.

This Section shall be inapplicable to any claim, demand or cause of action arising under (a) the Workers' Compensation Act or the predecessor Workers' Compensation Act of June 28, 1913,

(b) the Workers' Occupational Diseases Act or the predecessor Workers' Occupational Diseases Act of March 16, 1936; and (c) the Wrongful Death Act.

(Source: P.A. 94-693, eff. 7-1-06; 94-816, eff. 5-30-06.)

(305 ILCS 5/11-22a) (from Ch. 23, par. 11-22a)

Sec. 11-22a. Right of Subrogation. To the extent of the amount of (i) medical assistance provided by the Department to or on behalf of a recipient under Article V or VI, (ii) health care benefits provided for a child under the Covering ALL KIDS Health Insurance Act, or (iii) health care benefits provided to a veteran under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008, the Department shall be subrogated to any right of recovery such recipient may have under the terms of any private or public health care coverage or casualty coverage, including coverage under the "Workers' Compensation Act", approved July 9, 1951, as amended, or the "Workers' Occupational Diseases Act", approved July 9, 1951, as amended, without the necessity of assignment of claim or other authorization to secure the right of recovery to the Department. To enforce its subrogation right, the Department may (i) intervene or join in an action or proceeding brought by the recipient, his or her guardian, personal representative, estate, dependents, or survivors against any person or public or private entity that may be liable; (ii) institute and prosecute legal proceedings against

any person or public or private entity that may be liable for the cost of such services; or (iii) institute and prosecute legal proceedings, to the extent necessary to reimburse the Illinois Department for its costs, against any noncustodial parent who (A) is required by court or administrative order to provide insurance or other coverage of the cost of health care services for a child eligible for medical assistance under this Code and (B) has received payment from a third party for the costs of those services but has not used the payments to reimburse either the other parent or the guardian of the child or the provider of the services.

(Source: P.A. 94-693, eff. 7-1-06; 94-816, eff. 5-30-06.)

(305 ILCS 5/11-22b) (from Ch. 23, par. 11-22b)

Sec. 11-22b. Recoveries.

(a) As used in this Section:

(1) "Carrier" means any insurer, including any private company, corporation, mutual association, trust fund, reciprocal or interinsurance exchange authorized under the laws of this State to insure persons against liability or injuries caused to another and any insurer providing benefits under a policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of a motor vehicle which provides uninsured motorist endorsement or coverage.

(2) "Beneficiary" means any person or their dependents

who has received benefits or will be provided benefits under this Code, under the Covering ALL KIDS Health Insurance Act, or under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008 because of an injury for which another person may be liable. It includes such beneficiary's guardian, conservator or other personal representative, his estate or survivors.

(b) (1) When benefits are provided or will be provided to a beneficiary under this Code, under the Covering ALL KIDS Health Insurance Act, or under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008 because of an injury for which another person is liable, or for which a carrier is liable in accordance with the provisions of any policy of insurance issued pursuant to the Illinois Insurance Code, the Illinois Department shall have a right to recover from such person or carrier the reasonable value of benefits so provided. The Attorney General may, to enforce such right, institute and prosecute legal proceedings against the third person or carrier who may be liable for the injury in an appropriate court, either in the name of the Illinois Department or in the name of the injured person, his guardian, personal representative, estate, or survivors.

(2) The Department may:

(A) compromise or settle and release any such claim for benefits provided under this Code, or

(B) waive any such claims for benefits provided under this Code, in whole or in part, for the convenience of the Department or if the Department determines that collection would result in undue hardship upon the person who suffered the injury or, in a wrongful death action, upon the heirs of the deceased.

(3) No action taken on behalf of the Department pursuant to this Section or any judgment rendered in such action shall be a bar to any action upon the claim or cause of action of the beneficiary, his guardian, conservator, personal representative, estate, dependents or survivors against the third person who may be liable for the injury, or shall operate to deny to the beneficiary the recovery for that portion of any damages not covered hereunder.

(c) (1) When an action is brought by the Department pursuant to subsection (b), it shall be commenced within the period prescribed by Article XIII of the Code of Civil Procedure.

However, the Department may not commence the action prior to 5 months before the end of the applicable period prescribed by Article XIII of the Code of Civil Procedure. Thirty days prior to commencing an action, the Department shall notify the beneficiary of the Department's intent to commence such an action.

(2) The death of the beneficiary does not abate any right of action established by subsection (b).

(3) When an action or claim is brought by persons entitled

to bring such actions or assert such claims against a third person who may be liable for causing the death of a beneficiary, any settlement, judgment or award obtained is subject to the Department's claim for reimbursement of the benefits provided to the beneficiary under this Code, under the Covering ALL KIDS Health Insurance Act, or under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008.

(4) When the action or claim is brought by the beneficiary alone and the beneficiary incurs a personal liability to pay attorney's fees and costs of litigation, the Department's claim for reimbursement of the benefits provided to the beneficiary shall be the full amount of benefits paid on behalf of the beneficiary under this Code, under the Covering ALL KIDS Health Insurance Act, or under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008 less a pro rata share which represents the Department's reasonable share of attorney's fees paid by the beneficiary and that portion of the cost of litigation expenses determined by multiplying by the ratio of the full amount of the expenditures of the full amount of the judgment, award or settlement.

(d) (1) If either the beneficiary or the Department brings an action or claim against such third party or carrier, the beneficiary or the Department shall within 30 days of filing the action give to the other written notice by personal service or registered mail of the action or claim and of the name of

the court in which the action or claim is brought. Proof of such notice shall be filed in such action or claim. If an action or claim is brought by either the Department or the beneficiary, the other may, at any time before trial on the facts, become a party to such action or claim or shall consolidate his action or claim with the other if brought independently.

(2) If an action or claim is brought by the Department pursuant to subsection (b)(1), written notice to the beneficiary, guardian, personal representative, estate or survivor given pursuant to this Section shall advise him of his right to intervene in the proceeding, his right to obtain a private attorney of his choice and the Department's right to recover the reasonable value of the benefits provided.

(e) In the event of judgment or award in a suit or claim against such third person or carrier:

(1) If the action or claim is prosecuted by the beneficiary alone, the court shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of such action or claim, together with reasonable attorney's fees, when an attorney has been retained. After payment of such expenses and attorney's fees the court shall, on the application of the Department, allow as a first lien against the amount of such judgment or award the amount of the Department's expenditures for the benefit of the beneficiary under this

Code, under the Covering ALL KIDS Health Insurance Act, or under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008, as provided in subsection (c) (4).

(2) If the action or claim is prosecuted both by the beneficiary and the Department, the court shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of such action or claim, together with reasonable attorney's fees for plaintiffs attorneys based solely on the services rendered for the benefit of the beneficiary. After payment of such expenses and attorney's fees, the court shall apply out of the balance of such judgment or award an amount sufficient to reimburse the Department the full amount of benefits paid on behalf of the beneficiary under this Code, under the Covering ALL KIDS Health Insurance Act, or under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008.

(f) The court shall, upon further application at any time before the judgment or award is satisfied, allow as a further lien the amount of any expenditures of the Department in payment of additional benefits arising out of the same cause of action or claim provided on behalf of the beneficiary under this Code, under the Covering ALL KIDS Health Insurance Act, or under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008, when such

benefits were provided or became payable subsequent to the original order.

(g) No judgment, award, or settlement in any action or claim by a beneficiary to recover damages for injuries, when the Department has an interest, shall be satisfied without first giving the Department notice and a reasonable opportunity to perfect and satisfy its lien.

(h) When the Department has perfected a lien upon a judgment or award in favor of a beneficiary against any third party for an injury for which the beneficiary has received benefits under this Code, under the Covering ALL KIDS Health Insurance Act, or under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008, the Department shall be entitled to a writ of execution as lien claimant to enforce payment of said lien against such third party with interest and other accruing costs as in the case of other executions. In the event the amount of such judgment or award so recovered has been paid to the beneficiary, the Department shall be entitled to a writ of execution against such beneficiary to the extent of the Department's lien, with interest and other accruing costs as in the case of other executions.

(i) Except as otherwise provided in this Section, notwithstanding any other provision of law, the entire amount of any settlement of the injured beneficiary's action or claim, with or without suit, is subject to the Department's claim for

reimbursement of the benefits provided and any lien filed pursuant thereto to the same extent and subject to the same limitations as in Section 11-22 of this Code.

(Source: P.A. 94-693, eff. 7-1-06; 94-816, eff. 5-30-06.)

(305 ILCS 5/11-22c) (from Ch. 23, par. 11-22c)

Sec. 11-22c. Recovery of back wages.

(a) As used in this Section, "recipient" means any person receiving financial assistance under Article IV or Article VI of this Code, receiving health care benefits under the Covering ALL KIDS Health Insurance Act, or receiving health care benefits under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008.

(b) If a recipient maintains any suit, charge or other court or administrative action against an employer seeking back pay for a period during which the recipient received financial assistance under Article IV or Article VI of this Code, health care benefits under the Covering ALL KIDS Health Insurance Act, or health care benefits under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008, the recipient shall report such fact to the Department. To the extent of the amount of assistance provided to or on behalf of the recipient under Article IV or Article VI, health care benefits provided under the Covering ALL KIDS Health Insurance Act, or health care benefits provided under the Veterans' Health Insurance Program Act or the Veterans' Health

Insurance Program Act of 2008, the Department may by intervention or otherwise without the necessity of assignment of claim, attach a lien on the recovery of back wages equal to the amount of assistance provided by the Department to the recipient under Article IV or Article VI, under the Covering ALL KIDS Health Insurance Act, or under the Veterans' Health Insurance Program Act or the Veterans' Health Insurance Program Act of 2008.

(Source: P.A. 94-693, eff. 7-1-06; 94-816, eff. 5-30-06.)

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

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