

AN ACT concerning insurance.

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

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

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

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

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

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

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

and

(c) loan money to the impaired organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) claims based on marketing materials;

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

(C) misrepresentations of or regarding policy benefits;

(D) extra-contractual claims; or

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

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

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

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

(9) The Association may:

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

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

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



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

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

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

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

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

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

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

with the request.

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

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

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

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

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

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

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

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

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

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