WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

HOUSE BILL No. 4207

(By Delegates Gallagher, Adkins, Walters, Mt. Joy, Thompson and Green)

Passed March 9, 1996

In Effect From Passage
AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six-b, relating to the establishment of a health maintenance organization guarantee association to protect residents of this state against the failure of a domestic health maintenance organization to fulfill its contractual obligations due to insolvency, and to be funded by domestic health maintenance organizations; short title; purpose; scope; construction; definitions; creation of association; board of directors; powers and duties of association; assessments; plan of operation; powers and duties of the commissioner; records; annual report of the association; tax exemptions; immunity; and prohibited advertisements.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-six-b, to read as follows:

ARTICLE 26B. WEST VIRGINIA HEALTH MAINTENANCE ORGANIZATION GUARANTY ASSOCIATION.

§33-26B-1. Short title.

This article shall be known and may be cited as the
"West Virginia Health Maintenance Organization Guaranty Association Act."

§33-26B-2. Purpose.

The purpose of this article is to protect, subject to certain limitations, covered individuals against the failure or inability of a health maintenance organization to perform its contractual obligations due to its insolvency.


This article shall provide prospective coverage for any individual resident of this state who is entitled to receive health care services under a policy, certificate or contract, other than one purchased under this state’s medicaid program, which has been issued by a health maintenance organization possessing a valid certificate of authority issued by the commissioner pursuant to article twenty-five-a of this chapter.

§33-26B-4. Construction.

This article shall be liberally construed to effect its purpose as set forth in section two of this article, which shall constitute an aid and guide to its interpretation.

§33-26B-5. Definitions.

(a) As used in this article:

(1) "Association" means the West Virginia health maintenance organization guaranty association created by section six of this article.

(2) "Board of directors" means the board of directors of the association, formed pursuant to section seven of this article.

(3) "Commissioner" means the commissioner of insurance or his designee.

(4) "Contractual obligation(s)" means any and all obligations to covered individuals under a covered health care policy.

(5) "Covered health care policy" means any policy, certificate or contract issued by an health maintenance organization for health care services.
"Covered individual" means a subscriber, enrollee or member of an insolvent health maintenance organization who is a resident of this state, but shall not include an individual enrolled in such health maintenance organization under this state's medicaid program.

"Date of insolvency" means the date upon which an order of liquidation is entered by a court of competent jurisdiction, even if such order has not become final by the exhaustion of appellate reviews, or if the health maintenance organization is incorporated in another state, the date upon which the commissioner enters an order revoking the health maintenance organization's certificate of authority as described in subdivision nine of this subsection.

"Health maintenance organization" means a health maintenance organization possessing a valid certificate of authority issued by the commissioner pursuant to article twenty-five-a of this chapter, but shall not include any health maintenance organization with one hundred percent of its enrollees participating in the health maintenance organization under this state's medicaid program or any health maintenance organization which is not required, as a condition of being allowed to transact business as an health maintenance organization in this state, to maintain at least two million dollars of either surplus or of surplus and fully paid in capital stock.

"Insolvent health maintenance organization" or "insolvent" means an health maintenance organization against which an order of liquidation has been entered by a court of competent jurisdiction, even if such order has not become final by the exhaustion of appellate reviews, or an health maintenance organization which is incorporated in another state and which has had its certificate of authority revoked by an order of the commissioner containing a finding by the commissioner that the health maintenance organization either is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to its enrollees, or is in a hazardous financial condition.

"Person" means any individual, corporation, part-
nership, association, or voluntary organization, or any other legal entity.

(b) Words and phrases which are not defined in this section, but are defined in article twenty-five-a of this chapter, shall have the meanings established in that article unless the context in which a word or phrase appears clearly requires otherwise.

§33-26B-6. Creation of association.

There is created a nonprofit legal entity to be known as the West Virginia health maintenance organization guaranty association. All health maintenance organizations shall be and must remain members of the association as a condition of the continuation of their certificates of authority to transact business in this state as health maintenance organizations. The association shall perform its functions under the plan of operation to be established and approved pursuant to the provisions of section ten of this article and shall exercise its powers through a board of directors to be established and approved pursuant to the provisions of section seven of this article. The association shall come under the immediate supervision of the commissioner.

§33-26B-7. Board of directors.

(a) The board of directors of the association shall consist of not less than five nor more than nine individuals serving terms as established in the plan of operation. The members of the board of directors shall be selected by a vote of the health maintenance organizations, subject to the approval of the commissioner, with each health maintenance organization being entitled to one vote. Vacancies on the board of directors shall be filled for the remaining period of the term in the same manner as initial appointments.

(b) To allow for the selection the original board of directors and the organization of the association, the commissioner shall give notice to all health maintenance organizations of the time and place of an organizational meeting. If the health maintenance organizations have not selected a suitable board of directors within sixty days
following the organizational meeting, the commissioner may appoint the initial members of the board of directors.

(c) In approving or appointing members to the board of directors, the commissioner shall consider, among other things, whether all health maintenance organizations are fairly represented.

(d) Members of the board of directors may be reimbursed from the assets of the association for reasonable expenses incurred by them as members of the board of directors, but shall not otherwise be compensated by the association for their services.


(a) Upon being notified by the commissioner that an health maintenance organization is insolvent, the association, with the approval of the commissioner, shall appoint one or more health maintenance organizations to enroll covered individuals.

(1) Except as otherwise provided in this article, an health maintenance organization operating in a given service area shall be appointed to enroll covered individuals within that service area. If more than one health maintenance organization is operating in a given service area, the association shall allocate the covered individuals within that service area among those health maintenance organizations. The ratio of covered individuals allocated to each health maintenance organization shall approximate the ratio of that health maintenance organization's subscribers in the service area to the total number of health maintenance organization subscribers in the service area. In computing the latter ratio, the association shall use the most recent membership data filed with the commissioner by the health maintenance organizations and shall exclude from the computation all covered individuals.

(2) If no health maintenance organization is operating within a given service area, the association shall appoint to enroll covered individuals within that service area the health maintenance organization(s) that it deems best suited to provide health care services to those individuals. In determining which health maintenance organization(s)
are best suited, the association shall consider the health
care delivery systems and financial resources of all candi-
date health maintenance organizations.

(3) An health maintenance organization appointed by
the association shall enroll covered individuals under its
own contract containing terms which are, in the opinion of
the association, comparable to those which were extended
to the covered individuals by the insolvent health mainte-
nance organization. The rate for said contract shall be
determined by the health maintenance organization's rate
methodology for the contract. In selecting a contract of
the appointed health maintenance organization to be used
to provide services to covered individuals, the association
shall consider the services, benefits, and exclusions under
the contract.

(4) An health maintenance organization appointed by
the association shall not exclude from coverage a preexist-
ing condition which was not excluded under the covered
individual's policy with the insolvent health maintenance
organization.

(5) Except as specifically provided elsewhere in this
section, an health maintenance organization appointed by
the association may not terminate the coverage of a cov-
ered individual for any reason other than:

(A) Nonpayment of premiums;

(B) Attainment of medicare or medicaid eligibility;

(C) Nonresidency in the service area;

(D) Fraud;

(E) Termination of eligibility.

(6) If the association appoints an health maintenance
organization to enroll covered individuals residing in a
service area in which the health maintenance organization
is not currently functioning, the association, at the request
of the health maintenance organization and with the ap-
proval of the commissioner, shall transfer to the health
maintenance organization some or all of the contracts
existing between the insolvent health maintenance organi-
transfers shall be prospective only, and the health maintenance organization receiving the contract shall not be subject to liability, of any type whatsoever, which is based upon the contract and arose before its transfer.

(7) The liability of a health maintenance organization appointed to enroll covered individuals under this subsection shall be based only upon the policy issued by the health maintenance organization, as limited by this article. In no event shall the health maintenance organization be subject to liability, of any kind whatsoever, that is based upon the covered policy issued by the insolvent health maintenance organization or upon a statement, act or omission of the insolvent health maintenance organization. The liability of the health maintenance organization shall be strictly limited by the terms of its contract with the covered individual and shall not include any liability for any amount or obligation in excess of the applicable limits of coverage for contractually covered matters, and as limited by the terms of this article.

(8) Notwithstanding any other provision of this chapter, a covered individual shall not be entitled to convert or renew a contract which has been issued by an health maintenance organization pursuant to this subsection unless the health maintenance organization, in its discretion, agrees to the conversion or renewal.

(b) Notwithstanding any other provision of this article, coverage provided to a covered individual under this section shall terminate when the value of the benefits provided to the covered individual exceeds one hundred thousand dollars. If the value of the benefits is less than this amount, coverage nonetheless shall terminate one year from the insolvent health maintenance organization's date of insolvency or upon the expiration of the policy issued by the insolvent health maintenance organization, whichever is earlier, but in no event prior to one hundred and eighty days from the insolvent health maintenance organization's date of insolvency. When the value of the benefits provided do not exceed one hundred thousand dollars, no covered individual may be terminated under the provi-
sions of this subsection if, at the time such coverage could
otherwise be terminated:

(1) The individual is undergoing treatment for an
acute injury which occurred while the individual was cov-
ered, in which case coverage shall last until such treatment
is completed, but shall be limited to such treatment; or

(2) The individual is undergoing treatment for an
acute illness which was diagnosed while the individual was
covered, in which case coverage shall continue until such
treatment is completed, but shall be limited to such treat-
ment; or

(3) The individual is undergoing a course of inpatient
treatment which began while the individual was covered, in
which case coverage shall continue until such treatment is
completed, but shall be limited to such treatment.

(c) If the association fails to appoint an health mainte-
nance organization to enroll a covered individual within a
reasonable period of time, the commissioner, in his or her
discretion, may appoint an health maintenance organiza-
tion on behalf of the association.

(d) At the request of a covered individual, the associa-
tion shall defend any suit brought against that covered
individual contrary to the provisions of section seven-a,
article twenty-five-a of this chapter. If the association
prevails in such a suit, it shall be entitled to recover its
costs and attorney's fees from the plaintiff.

(e) The association shall render assistance and advice
to the commissioner, upon his or her request, in any delib-
eration, proceeding, inquiry or presentation which con-
cerns an insolvent health maintenance organization.

(f) The association shall have standing to appear be-
fore any court which has jurisdiction over an insolvent
health maintenance organization. Such standing shall
extend to all matters germane to the powers and duties of
the association including, but not limited to, the liquida-
tion of the health maintenance organization, and the deter-
mination or transfer of the contractual obligations, assets
or liabilities of the health maintenance organization.
(g) In addition to exercising such other powers as may be granted or implied elsewhere in this article, the association may:

(1) Enter into contracts or perform such other actions as are necessary and appropriate to carry out its duties under this article.

(2) Take any legal actions as are necessary and appropriate including, but not limited to, actions for the recovery of any unpaid assessments made under section nine of this article.

(3) Borrow money as necessary to effectuate the purposes of this article and issue evidence of such indebtedness, which if not in default, shall be treated as legal investments for domestic insurers or health maintenance organizations and may be carried by a domestic insurer or health maintenance organization as an admitted asset.

(4) Employ or retain such persons to handle the financial transactions of the association and to perform such other functions as become necessary or appropriate; and

(5) Negotiate and contract with any liquidator, conservator, or ancillary receiver of an insolvent health maintenance organization.


(a) For the purpose of providing the funds necessary for the association to carry out its duties under this article, the initial assessment of health maintenance organizations shall be as follows:

(1) Each health maintenance organization possessing a valid certificate of authority issued by the commissioner on or before the effective date of this article shall pay an initial assessment of five thousand dollars.

(2) Prior to and as a condition of first receiving a certificate of authority from the commissioner after the effective date of this article, an health maintenance organization shall pay an initial assessment of five thousand dollars.

(b) To obtain funds to pay administrative expenses,
including but not limited to legal costs, the association
may make additional assessments. The association shall
make only such assessments as are necessary to pay ex-
spenses or debts which have been incurred by the associa-
tion, or are reasonably foreseeable. Assessments shall be
based on the annual earned premium revenue for
non-medicare and non-medicaid contracts allocated to
West Virginia in the preceding calendar year unless the
association, in its discretion, substitutes such other amount
that more accurately reflects an health maintenance organ-
ization's current activity within this state. The rate used to
calculate the assessment shall be the same for all health
maintenance organizations.

(c) Assessments shall be made by issuing written no-
tice of the assessment to the health maintenance organiza-
tions, and shall be due thirty days after the issuance of
such written notice. Assessments which are not paid when
due shall accrue interest at a reasonable rate to be set by
the association, subject to the approval of the commissio-
er.

(d) With the approval of the commissioner, the associ-
ation may abate or defer, in whole or in part, the assess-
ment of an health maintenance organization if, in the
opinion of the association, immediate payment of the
assessment would materially impair the health mainte-
nance organization's ability to fulfill its contractual obliga-
tions. The amount by which an assessment is abated or
defered may be assessed against the other health mainte-
nance organizations in addition to all other assessments
called for by this section.

(e) The association may, by an equitable method es-
tablished in its plan of operation, refund to health mainte-
nance organizations all or part of an assessment which the
association determines is unnecessary to carry out its du-
ties. Refunds shall be proportional to the amounts actual-
ly paid by the health maintenance organizations to satisfy
the assessment.

(f) It shall be proper for any health maintenance orga-
nization, in determining its premium rates, to consider the
amount reasonably necessary to meet its assessment obli-
gations under this article.
(g) The association shall issue to each health maintenance organization paying an assessment under this article, a certificate of contribution for the amount paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. For purposes of determining the financial condition of the health maintenance organization, a certificate of contribution shall be treated as an asset of such form, amount and duration as the commissioner may prescribe.

§33-26B-10. Plan of operation.

(a) The association shall submit to the commissioner a proposed plan of operation and all subsequent amendments thereto to assure the equitable, efficient administration of the association. The proposed plan of operation and any amendments thereto shall become effective upon approval by the commissioner.

(b) If the association fails to submit a suitable proposed plan of operation within one hundred and eighty days following the effective date of this article, or if at any time thereafter, the association fails to submit suitable amendments to the plan of operation within a reasonable time, the commissioner, after notice and hearing, shall promulgate by order such plan provisions as he deems necessary or appropriate. Plan provisions promulgated by the commissioner shall continue in force until modified by the commissioner or superseded by a plan or amendments thereto which has been submitted by the association and approved by the commissioner.

(c) All health maintenance organizations shall comply with the plan of operation.

(d) In addition to such requirements as are set forth elsewhere in this article, the plan of operation shall:

(1) Establish procedures for handling the assets of the association;

(2) Establish the amount and method of reimbursing members of the board of directors for reasonable expenses;

(3) Provide for regular meetings of the board of direc-
tors and establish methods by which meetings of the board of directors may be conducted, including but not limited to telephone conferences.

(4) Establish procedures for keeping records of all financial transactions of the association, its agents, and the board of directors;

(5) Establish criteria for board members, and procedures for selecting board members and submitting such selections to the commissioner;

(6) Establish procedures for making assessments under this article;

(7) Contain additional provisions necessary for the exercise of the association's powers and the fulfillment of the association's duties.

(e) The plan of operation may provide that any or all powers of the association, except those set forth in subsection (f), section eight of this article, and in subdivision two, subsection (g), section eight of this article, and in section nine of this article, may be delegated to an administrator, which may be a corporation, association, or other organization, and which performs or will perform functions similar to those of the association, or its equivalent. Such a delegation shall take effect only with the approval of the commissioner, who may revoke such delegation at any time. The administrator shall be reimbursed for any payments it makes on behalf of the association and shall be paid for the services it renders to the association. The delegation of powers to an administrator shall not absolve the association of any duty imposed upon it by this article.

(f) If the plan of operation provides for the delegation of powers to an administrator, the association shall select an administrator, with the approval of the commissioner. The selection of an administrator shall be exempt from the competitive bidding process which may apply to certain state agencies. The association shall evaluate potential administrators based upon reasonable criteria, which shall include, but not be limited to:

(1) The administrator's proven ability to manage large
group health insurance plans or health maintenance orga-
nizations;

(2) The efficiency of the administrator's procedures;

(3) An estimate of the administrator’s charges for
services rendered to the association.


(a) The commissioner may suspend or revoke, after
notice and hearing, the certificate of authority of an health
maintenance organization for:

(1) Failure to pay an assessment when due; or

(2) Failure to comply with the plan of operation; or

(3) Failure either timely to comply with or timely to
appeal its appointment under section eight of this article.

(b) Any action of the board of directors may be ap-
pealed to the commissioner by any health maintenance
organization within thirty days of the action. The resulting
action or order of the commissioner shall be subject to
judicial review in a court of competent jurisdiction.

(c) The commissioner may require the association to
notify the enrollees of an insolvent health maintenance
organization, and any other interested parties, of the deter-
mination of insolvency and of their rights under this arti-
cle. Such notification shall be by mail at their last known
addresses, or by publication in a newspaper of general
circulation, if sufficient information for notification by
mail is not available.

(d) Powers of the commissioner established in this
section are in addition to those granted or implied else-
where in this chapter, and this section shall not be con-
strued to diminish or eliminate those other powers.

§33-26B-12. Records.

The association shall keep records of all meetings of
the board of directors and of all transactions by which the
association or its representatives carry carrys out its duties.
All records shall be made available to the commissioner
upon his or her request.

1 The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than the first day of May of each year and in a form approved by the commissioner, a financial report for the preceding calendar year and a report of its activities during the preceding calendar year.


1 The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except ad valorem taxes.


1 There shall be no liability on the part of and no cause of action of any nature shall arise against the association, members of the board of directors, the commissioner, or the representatives, agents or employees of the aforementioned persons for statements made or actions taken or not taken in the good faith exercise of their powers under this article, or for the statements, acts or omissions of an health maintenance organization appointed pursuant to section eight of this article or an insolvent health maintenance organization.

§33-26B-16. Prohibited advertisements.

1 No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, an advertisement, announcement, or statement which uses the existence of the association or of this article for the purpose of soliciting subscriptions to an health maintenance organization: Provided, That this section shall not apply to the association.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rudy Schommer
Chairman Senate Committee

Rudy Saccenti
Chairman House Committee

Originating in the House.

Takes effect from passage.

R. J. Adger
Clerk of the Senate

Ray K. Smley
Clerk of the House of Delegates

John G. Miller
President of the Senate

Peter S. Clark
Speaker of the House of Delegates

The within is approved this the 1st day of April, 1996.

Jaston Caperton
Governor
PRESENTED TO THE
GOVERNOR
Date 3/28/46
Time 10:01 AM