

# 26:2J-45

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2004                    **CHAPTER:** 49  
**NJSA:** 26:2J-45                (Establishes interim assessment on HMO's)  
**BILL NO:** A3116                (Substituted for S1781)

**SPONSOR(S):** Wisniewski

**DATE INTRODUCED:** June 21, 2004

**COMMITTEE:**                    **ASSEMBLY:** Budget

**SENATE:**                        ---

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**            **ASSEMBLY:** June 24, 2004

**SENATE:** June 24, 2004

**DATE OF APPROVAL:** June 29, 2004

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (Original version of bill enacted)

**A3116**

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

**COMMITTEE STATEMENT:**                    [ASSEMBLY:](#) [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

**S1781**

[SPONSOR'S STATEMENT:](#) (Begins on page 5 of original bill) [Yes](#)

Bill and Sponsors Statement identical to A3116

**COMMITTEE STATEMENT:**                    **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 2004, CHAPTER 49, *approved June 29, 2004*  
Assembly, No. 3116

1 **AN ACT** establishing a special interim assessment on health  
2 maintenance organizations, requiring the State Treasurer and the  
3 Commissioner of Banking and Insurance to undertake a  
4 comparative study of the equity of the various taxes imposed  
5 thereon, and amending and supplementing P.L.1973, c.337.

6

7 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
8 *of New Jersey:*

9

10 1. (New section) The Legislature finds and declares that:

11 a. When the "Health Maintenance Organizations Act" took effect  
12 in 1973, among its purposes was the recognition and encouragement  
13 of the fledgling industry of health maintenance organizations as the  
14 emerging alternative model for health care delivery systems; and

15 b. Part of this encouragement by the Legislature was the authority  
16 granted to insurance companies and nonprofit service corporations to  
17 operate, either directly or through a subsidiary or affiliate, a health  
18 maintenance organization, or to join together or contract with a health  
19 maintenance organization, to provide insurance or protection against  
20 the cost of health care; and

21 c. At the same time, the act exempted health maintenance  
22 organizations from the provisions of the insurance and service  
23 corporation laws under most circumstances, and excluded charges paid  
24 by or on behalf of enrollees of a health maintenance organization with  
25 respect to health care services from the State's insurance premium tax;  
26 and

27 d. Now, more than 30 years later, there has been a proliferation of  
28 health maintenance organizations, or HMO's, organized and operated  
29 according to myriad business models and various other business  
30 organizations designed to offer various health care services; and

31 e. The regulatory and tax structures that developed as these  
32 various health care delivery systems developed and evolved over this  
33 span of time are essentially the same as those that were in place 30  
34 years ago, even though the marketplace has been a dynamic and  
35 creative one throughout that same time frame; and

36 f. Meanwhile, the cost of reimbursing hospitals for the services  
37 they provide for the health care needs of the uninsured population,  
38 more commonly referred to as "charity care," has grown exponentially,  
39 with a concomitant urgency to identify, capture and retain appropriate  
40 revenue streams to fund that care; and

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 g. Every sector of the New Jersey business community, including  
2 insurers, health service corporations and health maintenance  
3 organizations, contributes, either directly or indirectly, to the costs of  
4 charity care, although it is unclear whether inequities currently exist in  
5 the manner and proportions in which the various entities contribute,  
6 and in particular whether health maintenance organizations bear their  
7 fare share of the burden, given their varied business models and  
8 corresponding tax obligations; and

9 h. It is time to examine and compare how the several health  
10 maintenance organizations, service corporations, insurers, and other  
11 health care delivery systems and providers are taxed, how they  
12 contribute to charity care funding, and whether adjustments need to be  
13 made to the current tax structure to respond to the evolution of the  
14 industry; and

15 i. While the Legislature awaits the conclusions and  
16 recommendations of such an examination, it is imperative that an  
17 interim source of additional revenue be identified, pledged and  
18 appropriated to charity care funding in the ensuing fiscal year.

19  
20 2. (New section) a. The State Treasurer and the Commissioner of  
21 Banking and Insurance shall undertake a comparative study of the  
22 revenues received under the Corporation Business Tax Act (1945),  
23 P.L.1945, c.162 (C.54:10A-1 et seq.) from health maintenance  
24 organizations and any other health care delivery systems or health care  
25 providers subject to that tax, and those insurers, health service  
26 corporations and any other health care delivery systems paying the  
27 insurance premium tax pursuant to P.L.1945, c.132 (C.54:18A-1 et  
28 seq.), or any other State tax, to evaluate the equities of those  
29 respective tax schemes as applied to those entities. In particular, the  
30 study shall consider:

31 (1) the continued viability of the public policy behind the 1973  
32 exemption of health maintenance organizations from taxation on  
33 enrollee charges, otherwise known as premiums;

34 (2) the various business models under which health maintenance  
35 organizations, health service corporations, insurers, and other health  
36 care delivery systems operate; and

37 (3) whether those various models allow the State to appropriately  
38 identify and capture revenues which adequately reflect both the  
39 volume of business conducted by those entities and the costs to the  
40 State of the operation of those various businesses in the State, as well  
41 as the current and anticipated future demands the State's charity care  
42 obligation will place on the General Fund and other State resources.

43 b. The State Treasurer and the Commissioner of Banking and  
44 Insurance shall complete their study pursuant to this section no later  
45 than September 1, 2004, at which time they shall report the results and  
46 conclusions of their study, together with any recommendations they

1 may have for legislation, to the Governor and the members of the  
2 Legislature.

3 c. It is the intent of the Legislature, in requiring a speedy  
4 completion of this study, and enacting the interim special assessment  
5 contained in this act, that the study, report and recommendations will  
6 allow for an expeditious and deliberate consideration of any legislative  
7 initiative introduced in response to that report, so that the interim  
8 assessment will be unnecessary in future fiscal years.

9  
10 3. (New section) a. (1) For the fiscal year 2005, the  
11 Commissioner of Banking and Insurance shall issue, in accordance  
12 with the provisions of this section, a special interim assessment in the  
13 amount of one percent on the net written premiums received by each  
14 health maintenance organization granted a certificate of authority to  
15 operate in this State pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.),  
16 to be allocated to the Health Care Subsidy Fund established pursuant  
17 to section 8 of P.L.1992, c.160 (C.26:2H-18.58) for the purpose of  
18 providing charity care payments to hospitals in accordance with the  
19 formula used for the distribution of charity care subsidies that are  
20 provided pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.).

21 (2) "Net written premiums received" means direct premiums as  
22 reported on the annual financial statement submitted pursuant to  
23 section 9 of P.L.1973, c.337 (C.26:2J-9).

24 b. The commissioner shall certify the amount of the special interim  
25 assessment issued to each health maintenance organization. Each  
26 health maintenance organization shall remit the amount so certified to  
27 the Department of Banking and Insurance in accordance with the  
28 procedures established in P.L.1995, c.156 (C.17:1C-19 et seq.).  
29 Amounts collected by the commissioner shall be allocated to the  
30 Health Care Subsidy Fund established pursuant to section 8 of  
31 P.L.1992, c.160 (C.26:2H-18.58) and used solely for the purpose of  
32 providing charity care payments to hospitals in accordance with the  
33 formula used for the distribution of charity care subsidies that are  
34 provided pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.).

35  
36 4. Section 25 of P.L.1973, c.337 (C.26:2J-25) is amended to read  
37 as follows:

38 25. Statutory construction and relationship to other laws.

39 a. Except as otherwise provided in this act, provisions of the  
40 insurance law and provisions of hospital, medical or health service  
41 corporation laws shall not be applicable to any health maintenance  
42 organization granted a certificate of authority under this act. This  
43 provision shall not apply to an insurer or hospital, medical or health  
44 service corporation licensed and regulated pursuant to the insurance  
45 laws or the hospital, medical or health service corporation laws of this  
46 State except with respect to its health maintenance organization

1 activities authorized and regulated pursuant to this act. Charges paid  
2 by or on behalf of enrollees of a health maintenance organization with  
3 respect to health care services shall not be subject to taxation by the  
4 State or any of its political subdivisions, except as otherwise provided  
5 in section 3 of P.L. , c. (C. ) (now before the Legislature as  
6 this bill) for the purpose of the special interim assessment issued  
7 pursuant thereto.

8 b. Solicitation of enrollees by a health maintenance organization  
9 granted a certificate of authority, or its representatives, shall not be  
10 construed to violate any provision of law relating to solicitation or  
11 advertising by health professionals.

12 c. Any health maintenance organization authorized under this act  
13 shall not be deemed to be practicing medicine and shall be exempt  
14 from the provisions of chapter 9 of Title 45, Medicine and Surgery,  
15 of the Revised Statutes relating to the practice of medicine.

16 d. Except as provided in P.L.2001, c.187 (C.2A:53A-30 et al.), no  
17 person participating in the arrangements of a health maintenance  
18 organization other than the actual provider of health care services or  
19 supplies directly to enrollees and their families shall be liable for  
20 negligence, misfeasance, nonfeasance or malpractice in connection  
21 with the furnishings of such services and supplies. The provisions of  
22 this subsection shall not be construed to eliminate any cause of action  
23 against a health maintenance organization otherwise provided by law.

24 e. A health maintenance organization shall be subject to the  
25 provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), including those  
26 relating to merger or acquisition of control.

27 (cf: P.L.2001, c.187, s.8)

28  
29 5. This act shall take effect immediately.

30  
31  
32 STATEMENT

33  
34 This bill imposes a special interim assessment on health maintenance  
35 organizations in this State to fund payments from the Health Care  
36 Subsidy Fund for charity care. In addition, the bill eliminates certain  
37 prohibitions on taxation of health maintenance organizations for the  
38 purpose of the special interim assessment.

39 The bill also directs the State Treasurer and the Commissioner of  
40 Banking and Insurance to undertake a comparative study of the  
41 revenues received under the Corporation Business Tax Act (1945),  
42 P.L.1945, c.162 (C.54:10A-1 et seq.) from health maintenance  
43 organizations and any other health care delivery systems or health care  
44 providers subject to that tax, and those insurers, health service  
45 corporations and any other health care delivery systems paying the  
46 insurance premium tax pursuant to P.L.1945, c.132 (C.54:18A-1 et

1 seq.), or any other State tax, to evaluate the equities of those  
2 respective tax schemes as applied to those entities. In particular, the  
3 study shall consider the continued viability of the public policy behind  
4 the 1973 exemption of health maintenance organizations from taxation  
5 on enrollee charges, otherwise known as premiums, the various  
6 business models under which health maintenance organizations, health  
7 service corporations, insurers, and other health care delivery systems  
8 operate, and whether those various models allow the State to  
9 appropriately identify and capture revenues which adequately reflect  
10 both the volume of business conducted by those entities and the costs  
11 to the State of the operation of those various businesses in the State,  
12 as well as the current and anticipated future demands the State's  
13 charity care obligation will place on the General Fund and other State  
14 resources.

15 The bill directs the State Treasurer and the Commissioner of  
16 Banking and Insurance to complete their study no later than  
17 September 1, 2004, at which time they shall report the results and  
18 conclusions of their study, together with any recommendations they  
19 may have for legislation, to the Governor and the members of the  
20 Legislature.

21

22

23

24

25 Establishes special interim assessment on health maintenance  
26 organizations; requires comparative study of the equity of the various  
27 taxes imposed thereon.

# ASSEMBLY, No. 3116

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 21, 2004

**Sponsored by:**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Co-Sponsored by:**

**Senator Buono**

**SYNOPSIS**

Establishes special interim assessment on health maintenance organizations; requires comparative study of the equity of the various taxes imposed thereon.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/25/2004)**



A3116 WISNIEWSKI

2

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12 in 1973, among its purposes was the recognition and encouragement  
13 of the fledgling industry of health maintenance organizations as the  
14 emerging alternative model for health care delivery systems; and

15 b. Part of this encouragement by the Legislature was the authority  
16 granted to insurance companies and nonprofit service corporations to  
17 operate, either directly or through a subsidiary or affiliate, a health  
18 maintenance organization, or to join together or contract with a health  
19 maintenance organization, to provide insurance or protection against  
20 the cost of health care; and

21 c. At the same time, the act exempted health maintenance  
22 organizations from the provisions of the insurance and service  
23 corporation laws under most circumstances, and excluded charges paid  
24 by or on behalf of enrollees of a health maintenance organization with  
25 respect to health care services from the State's insurance premium tax;  
26 and

27 d. Now, more than 30 years later, there has been a proliferation of  
28 health maintenance organizations, or HMO's, organized and operated  
29 according to myriad business models and various other business  
30 organizations designed to offer various health care services; and

31 e. The regulatory and tax structures that developed as these  
32 various health care delivery systems developed and evolved over this  
33 span of time are essentially the same as those that were in place 30  
34 years ago, even though the marketplace has been a dynamic and  
35 creative one throughout that same time frame; and

36 f. Meanwhile, the cost of reimbursing hospitals for the services  
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38 more commonly referred to as "charity care," has grown exponentially,  
39 with a concomitant urgency to identify, capture and retain appropriate  
40 revenue streams to fund that care; and

41 g. Every sector of the New Jersey business community, including  
42 insurers, health service corporations and health maintenance  
43 organizations, contributes, either directly or indirectly, to the costs of

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2 the manner and proportions in which the various entities contribute,  
3 and in particular whether health maintenance organizations bear their  
4 fare share of the burden, given their varied business models and  
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6 h. It is time to examine and compare how the several health  
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36 volume of business conducted by those entities and the costs to the  
37 State of the operation of those various businesses in the State, as well  
38 as the current and anticipated future demands the State's charity care  
39 obligation will place on the General Fund and other State resources.

40 b. The State Treasurer and the Commissioner of Banking and  
41 Insurance shall complete their study pursuant to this section no later  
42 than September 1, 2004, at which time they shall report the results and  
43 conclusions of their study, together with any recommendations they  
44 may have for legislation, to the Governor and the members of the  
45 Legislature.

46 c. It is the intent of the Legislature, in requiring a speedy

1 completion of this study, and enacting the interim special assessment  
2 contained in this act, that the study, report and recommendations will  
3 allow for an expeditious and deliberate consideration of any legislative  
4 initiative introduced in response to that report, so that the interim  
5 assessment will be unnecessary in future fiscal years.

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21 b. The commissioner shall certify the amount of the special interim  
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24 the Department of Banking and Insurance in accordance with the  
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27 Health Care Subsidy Fund established pursuant to section 8 of  
28 P.L.1992, c.160 (C.26:2H-18.58) and used solely for the purpose of  
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30 formula used for the distribution of charity care subsidies that are  
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33 4. Section 25 of P.L.1973, c.337 (C.26:2J-25) is amended to read  
34 as follows:

35 25. Statutory construction and relationship to other laws.

36 a. Except as otherwise provided in this act, provisions of the  
37 insurance law and provisions of hospital, medical or health service  
38 corporation laws shall not be applicable to any health maintenance  
39 organization granted a certificate of authority under this act. This  
40 provision shall not apply to an insurer or hospital, medical or health  
41 service corporation licensed and regulated pursuant to the insurance  
42 laws or the hospital, medical or health service corporation laws of this  
43 State except with respect to its health maintenance organization  
44 activities authorized and regulated pursuant to this act. Charges paid  
45 by or on behalf of enrollees of a health maintenance organization with  
46 respect to health care services shall not be subject to taxation by the

1 State or any of its political subdivisions, except as otherwise provided  
2 in section 3 of P.L. , c. (C. ) (now before the Legislature as  
3 this bill) for the purpose of the special interim assessment issued  
4 pursuant thereto.

5 b. Solicitation of enrollees by a health maintenance organization  
6 granted a certificate of authority, or its representatives, shall not be  
7 construed to violate any provision of law relating to solicitation or  
8 advertising by health professionals.

9 c. Any health maintenance organization authorized under this act  
10 shall not be deemed to be practicing medicine and shall be exempt  
11 from the provisions of chapter 9 of Title 45, Medicine and Surgery,  
12 of the Revised Statutes relating to the practice of medicine.

13 d. Except as provided in P.L.2001, c.187 (C.2A:53A-30 et al.), no  
14 person participating in the arrangements of a health maintenance  
15 organization other than the actual provider of health care services or  
16 supplies directly to enrollees and their families shall be liable for  
17 negligence, misfeasance, nonfeasance or malpractice in connection  
18 with the furnishings of such services and supplies. The provisions of  
19 this subsection shall not be construed to eliminate any cause of action  
20 against a health maintenance organization otherwise provided by law.

21 e. A health maintenance organization shall be subject to the  
22 provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), including those  
23 relating to merger or acquisition of control.  
24 (cf: P.L.2001, c.187, s.8)

25  
26 5. This act shall take effect immediately.  
27  
28

29 STATEMENT  
30

31 This bill imposes a special interim assessment on health maintenance  
32 organizations in this State to fund payments from the Health Care  
33 Subsidy Fund for charity care. In addition, the bill eliminates certain  
34 prohibitions on taxation of health maintenance organizations for the  
35 purpose of the special interim assessment.

36 The bill also directs the State Treasurer and the Commissioner of  
37 Banking and Insurance to undertake a comparative study of the  
38 revenues received under the Corporation Business Tax Act (1945),  
39 P.L.1945, c.162 (C.54:10A-1 et seq.) from health maintenance  
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43 insurance premium tax pursuant to P.L.1945, c.132 (C.54:18A-1 et  
44 seq.), or any other State tax, to evaluate the equities of those  
45 respective tax schemes as applied to those entities. In particular, the  
46 study shall consider the continued viability of the public policy behind

**A3116 WISNIEWSKI**

6

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3 business models under which health maintenance organizations, health  
4 service corporations, insurers, and other health care delivery systems  
5 operate, and whether those various models allow the State to  
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7 both the volume of business conducted by those entities and the costs  
8 to the State of the operation of those various businesses in the State,  
9 as well as the current and anticipated future demands the State's  
10 charity care obligation will place on the General Fund and other State  
11 resources.

12 The bill directs the State Treasurer and the Commissioner of  
13 Banking and Insurance to complete their study no later than  
14 September 1, 2004, at which time they shall report the results and  
15 conclusions of their study, together with any recommendations they  
16 may have for legislation, to the Governor and the members of the  
17 Legislature.

# ASSEMBLY BUDGET COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 3116

# STATE OF NEW JERSEY

DATED: JUNE 22, 2004

The Assembly Budget Committee reports favorably Assembly Bill No. 3116.

Assembly Bill No. 3116 imposes a special interim assessment on health maintenance organizations in this State to fund Health Care Subsidy Fund payments for charity care. In addition, the bill eliminates certain prohibitions on the taxation of health maintenance organizations for the purpose of the special interim assessment.

The bill directs the State Treasurer and the Commissioner of Banking and Insurance to undertake a comparative study of the revenues received under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) from health maintenance organizations and any other health care delivery systems or health care providers subject to that tax, and those insurers, health service corporations and any other health care delivery systems paying the insurance premium tax pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), or any other State tax, to evaluate the equities of those respective tax schemes as applied to those entities. In particular, the bill directs the study to consider the continued viability of the public policy behind the 1973 exemption of health maintenance organizations from taxation on enrollee charges (otherwise known as premiums); the various business models under which health maintenance organizations, health service corporations, insurers, and other health care delivery systems operate; and whether those various models allow the State to appropriately identify and capture revenues which adequately reflect both the volume of business conducted by those entities and the costs to the State of the operation of those various businesses in the State, as well as the current and anticipated future demands the State's charity care obligation will place on the General Fund and other State resources.

The bill directs the State Treasurer and the Commissioner of Banking and Insurance to complete their study no later than September 1, 2004, at which time they shall report the results and conclusions of their study, together with any recommendations they may have for legislation, to the Governor and the members of the Legislature.

FISCAL IMPACT:

This bill has been estimated to increase State revenues by \$55 million annually.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY, No. 3116**  
**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

DATED: DECEMBER 13, 2004

**SUMMARY**

**Synopsis:** Establishes special interim assessment on health maintenance organizations; requires comparative study of the equity of the various taxes imposed thereon.

**Type of Impact:** Revenue gain to the Health Care Subsidy Fund for charity care

**Agencies Affected:** Department of Banking and Insurance

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	<b><u>FY 2005</u></b>	<b><u>FY 2006</u></b>	<b><u>FY 2007</u></b>
<b>Revenue Increase</b>	\$37.4 million	\$0	\$0

- ! The Office of Legislative Services estimates that the State will obtain \$37.4 million in HMO premium assessment revenue for the Health Care Subsidy Fund in FY 2005 as a result of this bill.
- ! The bill imposes a special interim 1 percent assessment on health maintenance organizations in FY 2005 to fund payments from the Health Care Subsidy Fund for charity care. According to the Departments of Banking and Insurance and Treasury, based on the 2003 premium data (the most recent available), the assessment would generate \$51.1 million.
- ! However, the departments indicate that \$13.7 million of this \$51.1 million amount includes assessments on Medicaid HMO premiums, which the State must reimburse to Medicaid HMOs. Taking into account the State's reimbursements, the total obtained for Health Care Subsidy Fund charity care payments would total \$37.4 million.

**BILL DESCRIPTION**

Assembly Bill No. 3116 of 2004 imposes a special interim assessment on health maintenance organizations in this State to fund payments from the Health Care Subsidy Fund for charity care. In addition, the bill eliminates certain prohibitions on the taxation of premium income of health maintenance organizations for the purpose of the special interim assessment.



The bill also directs the State Treasurer and the Commissioner of Banking and Insurance to undertake a comparative study of the revenues received under the Corporation Business Tax Act (1945), P.L.1945, c.162 (c.54:10A-1 et seq.) from health maintenance organizations and any other health care delivery systems or health care providers subject to that tax, and those insurers, health service corporations and any other health care delivery systems paying the insurance premium tax pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), or any other State tax, to evaluate the equities of those respective tax schemes as applied to those entities. In particular, the study shall consider the continued viability of the public policy behind the 1973 exemption of health maintenance organizations from taxation on enrollee charges, otherwise known as premiums, the various business models under which health maintenance organizations, health service corporations, insurers, and other health care delivery systems operate, and whether those various models allow the State to appropriately identify and capture revenues which adequately reflect both the volume of business conducted by those entities and the costs to the State of the operation of those various businesses in the State, as well as the current and anticipated future demands the State's charity care obligation will place on the General Fund and other State resources.

The bill directs the State Treasurer and the Commissioner of Banking and Insurance to complete their study no later than September 1, 2004, at which time they shall report the results and conclusions of their study, together with any recommendations they may have for legislation, to the Governor and the members of the Legislature.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services estimates that the State will obtain \$37.4 million in premium assessment revenue for the Health Care Subsidy Fund as a result of this bill. The bill imposes a special interim percent assessment on health maintenance organizations in FY 2005 to fund payments from the Health Care Subsidy Fund for charity care. According to the Departments of Banking and Insurance and Treasury, based on the 2003 premium data (the most recent available), the assessment would generate \$51.1 million. However, the departments indicate that \$13.7 million of this amount includes assessments on Medicaid HMO premiums, which the State must reimburse to Medicaid HMOs. Taking into account the State's reimbursements, the total obtained for Health Care Subsidy Fund charity care payments would total \$37.4 million.

Section: *Commerce, Labor and Industry*

Analyst: *Sonya S. Davis*  
*Associate Fiscal Analyst*

Approved: *David J. Rosen*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the

A3116

3

failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

**SENATE, No. 1781**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED JUNE 21, 2004

**Sponsored by:**  
**Senator BARBARA BUONO**  
**District 18 (Middlesex)**

**SYNOPSIS**

Establishes special interim assessment on health maintenance organizations; requires comparative study of the equity of the various taxes imposed thereon.

**CURRENT VERSION OF TEXT**

As introduced.



S1781 BUONO

2

1 AN ACT establishing a special interim assessment on health  
2 maintenance organizations, requiring the State Treasurer and the  
3 Commissioner of Banking and Insurance to undertake a  
4 comparative study of the equity of the various taxes imposed  
5 thereon, and amending and supplementing P.L.1973, c.337.

6

7 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
8 *of New Jersey:*

9

10 1. (New section) The Legislature finds and declares that:

11 a. When the "Health Maintenance Organizations Act" took effect  
12 in 1973, among its purposes was the recognition and encouragement  
13 of the fledgling industry of health maintenance organizations as the  
14 emerging alternative model for health care delivery systems; and

15 b. Part of this encouragement by the Legislature was the authority  
16 granted to insurance companies and nonprofit service corporations to  
17 operate, either directly or through a subsidiary or affiliate, a health  
18 maintenance organization, or to join together or contract with a health  
19 maintenance organization, to provide insurance or protection against  
20 the cost of health care; and

21 c. At the same time, the act exempted health maintenance  
22 organizations from the provisions of the insurance and service  
23 corporation laws under most circumstances, and excluded charges paid  
24 by or on behalf of enrollees of a health maintenance organization with  
25 respect to health care services from the State's insurance premium tax;  
26 and

27 d. Now, more than 30 years later, there has been a proliferation of  
28 health maintenance organizations, or HMO's, organized and operated  
29 according to myriad business models and various other business  
30 organizations designed to offer various health care services; and

31 e. The regulatory and tax structures that developed as these  
32 various health care delivery systems developed and evolved over this  
33 span of time are essentially the same as those that were in place 30  
34 years ago, even though the marketplace has been a dynamic and  
35 creative one throughout that same time frame; and

36 f. Meanwhile, the cost of reimbursing hospitals for the services  
37 they provide for the health care needs of the uninsured population,  
38 more commonly referred to as "charity care," has grown exponentially,  
39 with a concomitant urgency to identify, capture and retain appropriate  
40 revenue streams to fund that care; and

41 g. Every sector of the New Jersey business community, including  
42 insurers, health service corporations and health maintenance  
43 organizations, contributes, either directly or indirectly, to the costs of

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 charity care, although it is unclear whether inequities currently exist in  
2 the manner and proportions in which the various entities contribute,  
3 and in particular whether health maintenance organizations bear their  
4 fare share of the burden, given their varied business models and  
5 corresponding tax obligations; and

6 h. It is time to examine and compare how the several health  
7 maintenance organizations, service corporations, insurers, and other  
8 health care delivery systems and providers are taxed, how they  
9 contribute to charity care funding, and whether adjustments need to be  
10 made to the current tax structure to respond to the evolution of the  
11 industry; and

12 i. While the Legislature awaits the conclusions and  
13 recommendations of such an examination, it is imperative that an  
14 interim source of additional revenue be identified, pledged and  
15 appropriated to charity care funding in the ensuing fiscal year.

16

17 2. (New section) a. The State Treasurer and the Commissioner of  
18 Banking and Insurance shall undertake a comparative study of the  
19 revenues received under the Corporation Business Tax Act (1945),  
20 P.L.1945, c.162 (C.54:10A-1 et seq.) from health maintenance  
21 organizations and any other health care delivery systems or health care  
22 providers subject to that tax, and those insurers, health service  
23 corporations and any other health care delivery systems paying the  
24 insurance premium tax pursuant to P.L.1945, c.132 (C.54:18A-1 et  
25 seq.), or any other State tax, to evaluate the equities of those  
26 respective tax schemes as applied to those entities. In particular, the  
27 study shall consider:

28 (1) the continued viability of the public policy behind the 1973  
29 exemption of health maintenance organizations from taxation on  
30 enrollee charges, otherwise known as premiums;

31 (2) the various business models under which health maintenance  
32 organizations, health service corporations, insurers, and other health  
33 care delivery systems operate; and

34 (3) whether those various models allow the State to appropriately  
35 identify and capture revenues which adequately reflect both the  
36 volume of business conducted by those entities and the costs to the  
37 State of the operation of those various businesses in the State, as well  
38 as the current and anticipated future demands the State's charity care  
39 obligation will place on the General Fund and other State resources.

40 b. The State Treasurer and the Commissioner of Banking and  
41 Insurance shall complete their study pursuant to this section no later  
42 than September 1, 2004, at which time they shall report the results and  
43 conclusions of their study, together with any recommendations they  
44 may have for legislation, to the Governor and the members of the  
45 Legislature.

46 c. It is the intent of the Legislature, in requiring a speedy

1 completion of this study, and enacting the interim special assessment  
2 contained in this act, that the study, report and recommendations will  
3 allow for an expeditious and deliberate consideration of any legislative  
4 initiative introduced in response to that report, so that the interim  
5 assessment will be unnecessary in future fiscal years.

6  
7 3. (New section) a. (1) For the fiscal year 2005, the  
8 Commissioner of Banking and Insurance shall issue, in accordance  
9 with the provisions of this section, a special interim assessment in the  
10 amount of one percent on the net written premiums received by each  
11 health maintenance organization granted a certificate of authority to  
12 operate in this State pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.),  
13 to be allocated to the Health Care Subsidy Fund established pursuant  
14 to section 8 of P.L.1992, c.160 (C.26:2H-18.58) for the purpose of  
15 providing charity care payments to hospitals in accordance with the  
16 formula used for the distribution of charity care subsidies that are  
17 provided pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.).

18 (2) "Net written premiums received" means direct premiums as  
19 reported on the annual financial statement submitted pursuant to  
20 section 9 of P.L.1973, c.337 (C.26:2J-9).

21 b. The commissioner shall certify the amount of the special interim  
22 assessment issued to each health maintenance organization. Each  
23 health maintenance organization shall remit the amount so certified to  
24 the Department of Banking and Insurance in accordance with the  
25 procedures established in P.L.1995, c.156 (C.17:1C-19 et seq.).  
26 Amounts collected by the commissioner shall be allocated to the  
27 Health Care Subsidy Fund established pursuant to section 8 of  
28 P.L.1992, c.160 (C.26:2H-18.58) and used solely for the purpose of  
29 providing charity care payments to hospitals in accordance with the  
30 formula used for the distribution of charity care subsidies that are  
31 provided pursuant to P.L.1992, c.160 (C.26:2H-18.51 et al.).

32  
33 4. Section 25 of P.L.1973, c.337 (C.26:2J-25) is amended to read  
34 as follows:

35 25. Statutory construction and relationship to other laws.

36 a. Except as otherwise provided in this act, provisions of the  
37 insurance law and provisions of hospital, medical or health service  
38 corporation laws shall not be applicable to any health maintenance  
39 organization granted a certificate of authority under this act. This  
40 provision shall not apply to an insurer or hospital, medical or health  
41 service corporation licensed and regulated pursuant to the insurance  
42 laws or the hospital, medical or health service corporation laws of this  
43 State except with respect to its health maintenance organization  
44 activities authorized and regulated pursuant to this act. Charges paid  
45 by or on behalf of enrollees of a health maintenance organization with  
46 respect to health care services shall not be subject to taxation by the

1 State or any of its political subdivisions, except as otherwise provided  
2 in section 3 of P.L. , c. (C. ) (now before the Legislature as  
3 this bill) for the purpose of the special interim assessment issued  
4 pursuant thereto.

5 b. Solicitation of enrollees by a health maintenance organization  
6 granted a certificate of authority, or its representatives, shall not be  
7 construed to violate any provision of law relating to solicitation or  
8 advertising by health professionals.

9 c. Any health maintenance organization authorized under this act  
10 shall not be deemed to be practicing medicine and shall be exempt  
11 from the provisions of chapter 9 of Title 45, Medicine and Surgery,  
12 of the Revised Statutes relating to the practice of medicine.

13 d. Except as provided in P.L.2001, c.187 (C.2A:53A-30 et al.), no  
14 person participating in the arrangements of a health maintenance  
15 organization other than the actual provider of health care services or  
16 supplies directly to enrollees and their families shall be liable for  
17 negligence, misfeasance, nonfeasance or malpractice in connection  
18 with the furnishings of such services and supplies. The provisions of  
19 this subsection shall not be construed to eliminate any cause of action  
20 against a health maintenance organization otherwise provided by law.

21 e. A health maintenance organization shall be subject to the  
22 provisions of P.L.1970, c.22 (C.17:27A-1 et seq.), including those  
23 relating to merger or acquisition of control.

24 (cf: P.L.2001, c.187, s.8)

25  
26 5. This act shall take effect immediately.  
27  
28

29 STATEMENT  
30

31 This bill imposes a special interim assessment on health maintenance  
32 organizations in this State to fund payments from the Health Care  
33 Subsidy Fund for charity care. In addition, the bill eliminates certain  
34 prohibitions on taxation of health maintenance organizations for the  
35 purpose of the special interim assessment.

36 The bill also directs the State Treasurer and the Commissioner of  
37 Banking and Insurance to undertake a comparative study of the  
38 revenues received under the Corporation Business Tax Act (1945),  
39 P.L.1945, c.162 (C.54:10A-1 et seq.) from health maintenance  
40 organizations and any other health care delivery systems or health care  
41 providers subject to that tax, and those insurers, health service  
42 corporations and any other health care delivery systems paying the  
43 insurance premium tax pursuant to P.L.1945, c.132 (C.54:18A-1 et  
44 seq.), or any other State tax, to evaluate the equities of those  
45 respective tax schemes as applied to those entities. In particular, the  
46 study shall consider the continued viability of the public policy behind

**S1781 BUONO**

1 the 1973 exemption of health maintenance organizations from taxation  
2 on enrollee charges, otherwise known as premiums, the various  
3 business models under which health maintenance organizations, health  
4 service corporations, insurers, and other health care delivery systems  
5 operate, and whether those various models allow the State to  
6 appropriately identify and capture revenues which adequately reflect  
7 both the volume of business conducted by those entities and the costs  
8 to the State of the operation of those various businesses in the State,  
9 as well as the current and anticipated future demands the State's  
10 charity care obligation will place on the General Fund and other State  
11 resources.

12 The bill directs the State Treasurer and the Commissioner of  
13 Banking and Insurance to complete their study no later than  
14 September 1, 2004, at which time they shall report the results and  
15 conclusions of their study, together with any recommendations they  
16 may have for legislation, to the Governor and the members of the  
17 Legislature.



# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### SENATE, No. 1781

# STATE OF NEW JERSEY

DATED: JUNE 22, 2004

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1781.

This bill imposes a special interim assessment on health maintenance organizations in this State to fund payments from the Health Care Subsidy Fund for charity care. In addition, the bill eliminates certain prohibitions on taxation of health maintenance organizations for the purpose of the special interim assessment.

The bill also directs the State Treasurer and the Commissioner of Banking and Insurance to undertake a comparative study of the revenues received under the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) from health maintenance organizations and any other health care delivery systems or health care providers subject to that tax, and those insurers, health service corporations and any other health care delivery systems paying the insurance premium tax pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), or any other State tax, to evaluate the equities of those respective tax schemes as applied to those entities. In particular, the study shall consider the continued viability of the public policy behind the 1973 exemption of health maintenance organizations from taxation on enrollee charges, otherwise known as premiums, the various business models under which health maintenance organizations, health service corporations, insurers, and other health care delivery systems operate, and whether those various models allow the State to appropriately identify and capture revenues which adequately reflect both the volume of business conducted by those entities and the costs to the State of the operation of those various businesses in the State, as well as the current and anticipated future demands the State's charity care obligation will place on the General Fund and other State resources.

The bill directs the State Treasurer and the Commissioner of Banking and Insurance to complete their study no later than September 1, 2004, at which time they shall report the results and conclusions of their study, together with any recommendations they may have for legislation, to the Governor and the members of the Legislature.

FISCAL IMPACT

The anticipated revenue to be raised under the provisions of this bill is estimated at \$55 million in FY2005.