

# 17B:32B-1

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2000                   **CHAPTER:** 12  
**NJSA:** 17B:32B-1           **(Insolvent Health Maintenance Assistance Fund Act)**  
**BILL NO.** A1890           **(Substituted for S1046)**  
**SPONSOR(S):** Bateman and Doria  
**DATE INTRODUCED:** January 20, 2000  
**COMMITTEE:**   **ASSEMBLY:** Banking and Insurance; Appropriations  
                  **SENATE:** -----  
**AMENDED DURING PASSAGE:** Yes  
**DATE OF PASSAGE:**   **ASSEMBLY:** March 16, 2000  
                                  **SENATE:** March 23, 2000  
**DATE OF APPROVAL:** April 6, 2000  
**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL:** Assembly Committee Substitute (First Reprint) for ACS for A1890/A1605  
**A1890**

<b>SPONSORS STATEMENT:</b> (Begins on page 10 of original bill)	Yes
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b> No
	<b>SENATE:</b> No
<b>FLOOR AMENDMENT STATEMENTS:</b>	No
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	No

### A1605

<b>SPONSOR STATEMENT:</b> (Begins on page 11 of original bill)	Yes
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b> No
	<b>SENATE:</b> No
<b>FLOOR AMENDMENT STATEMENTS:</b>	No
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	No

### ASSEMBLY COMMITTEE SUBSTITUTE for A1890/A1605

<b>SPONSOR STATEMENT:</b>	No
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b> Yes
	<b>SENATE:</b> No
<b>FLOOR AMENDMENT STATEMENTS:</b>	No
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	No

### ASSEMBLY COMMITTEE SUBSTITUTE for ACS for A1890/A1605

<b>SPONSOR STATEMENT:</b>	No
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b> Yes
	<b>SENATE:</b> No
<b>FLOOR AMENDMENT STATEMENTS:</b>	No
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	Yes

### S1046

<b>SPONSORS STATEMENT:</b> (Begins on page 14 of original bill)	Yes
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b> No
	<b>SENATE:</b> Yes
<b>FLOOR AMENDMENT STATEMENTS:</b>	No
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	Yes

(Identical to Fiscal Estimate for ACS for A1890/A1605)

**VETO MESSAGE:**

**GOVERNOR'S PRESS RELEASE ON SIGNING:**

No  
Yes

### FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

**REPORTS:**

No

**HEARINGS:**

Yes

974.90           New Jersey. Legislature. Senate. Health Committee.  
H434            Public Hearing...testimony on the causes of insolvency on the HIP health plan.  
1999d            May 20, 1999. Trenton, 1999.

[PDF version]   [HTML version]

**NEWSPAPER ARTICLES:**

Yes

"HMO relief fund becomes law," 4-7-2000, Courier News, p.A3  
"100M fund to remedy HMO woes," 4-7-2000, Home News, p.A1  
"Whitman signs \$100 million..." 4-7-2000, Philadelphia Inquirer, p.B3  
"Whitman oks fund to offset HMO losses," 4-7-2000, Asbury Park Press, p.A3

**ASSEMBLY, No. 1890**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

INTRODUCED JANUARY 20, 2000

**Sponsored by:**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**SYNOPSIS**

Provides for payment of certain individual and provider claims against HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.; appropriates \$50,000,000 from the General Fund.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning the insolvency of certain health maintenance  
2 organizations and making an appropriation.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. This act shall be known and may be cited as the "New Jersey  
8 Insolvent Health Maintenance Organization Assistance Fund Act of  
9 2000."

10  
11 2. The purpose of this act is to protect, subject to certain  
12 limitations, covered individuals and providers against the failure or  
13 inability of HIP Health Plan of New Jersey, Inc. and American  
14 Preferred Provider Plan, Inc. to perform certain contractual obligations  
15 due to their insolvency. The act creates a funding mechanism and  
16 authorizes this funding mechanism to pay certain unpaid contractual  
17 obligations of these insolvent health maintenance organizations  
18 incurred prior to the date of their insolvency. In addition, providers  
19 of health care services must agree to forgive one-third of those unpaid  
20 contractual obligations due them to receive payment from the funding  
21 mechanism.

22 This act is intended to provide only limited coverage of claims  
23 against HIP Health Plan of New Jersey, Inc. and American Preferred  
24 Provider Plan, Inc. This act is not intended to provide coverage for  
25 claims of creditors other than those of covered individuals or  
26 providers.

27  
28 3. As used in this act:

29 "Association" means the New Jersey Insolvent Health Maintenance  
30 Organization Assistance Association created by section 5 of this act.

31 "Commissioner" means the Commissioner of Banking and  
32 Insurance.

33 "Contractual obligation" means an obligation, arising from an  
34 agreement, policy, certificate or evidence of coverage, to a covered  
35 individual or provider incurred prior to the declaration of insolvency  
36 of a covered health maintenance organization that remains unpaid at  
37 the time of its insolvency, but does not include claims by former  
38 employees, including medical professional employees for deferred  
39 compensation, severance, vacation or other employment benefits.

40 "Covered health maintenance organization contract" means a policy,  
41 certificate, evidence of coverage or contract for health care services  
42 issued in New Jersey by HIP Health Plan of New Jersey, Inc. or  
43 American Preferred Provider Plan, Inc.

44 "Covered individual" means an enrollee or member of HIP Health  
45 Plan of New Jersey, Inc. or American Preferred Provider Plan, Inc.

46 "Department" means Department of Banking and Insurance.

1 "Fund" means the New Jersey Insolvent Health Maintenance  
2 Organization Assistance Fund created pursuant to section 6 of this act.

3 "Insolvent organization" means HIP Health Plan of New Jersey,  
4 Inc. or American Preferred Provider Plan, Inc.

5 "Member organization" means a person who holds a certificate of  
6 authority to operate a health maintenance organization pursuant to  
7 P.L.1973, c.337 (C.26:2J-1 et seq.), and includes any person whose  
8 certificate of authority has been suspended, revoked or nonrenewed.

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

12 "Provider" means a physician, hospital or other person which is  
13 licensed or otherwise authorized by this State, or licensed or otherwise  
14 authorized under similar laws of another state, to provide health care  
15 services, and which provided health care services to covered  
16 individuals. As used in this act, provider also includes persons who  
17 incurred a contractual obligation as defined by this act by providing  
18 home health care services, durable medical equipment, physical  
19 therapy services, medical transportation, ambulance services or  
20 laboratory services to covered individuals.

21

22 4. This act shall provide coverage to any covered individual or  
23 provider who is entitled to receive payment from HIP Health Plan of  
24 New Jersey, Inc. and American Preferred Provider Plan, Inc. for any  
25 contractual obligation of HIP Health Plan of New Jersey, Inc. and  
26 American Preferred Provider Plan, Inc. incurred prior to the date of  
27 their insolvency that remains unpaid.

28

29 5. There is created a nonprofit legal entity to be known as the New  
30 Jersey Insolvent Health Maintenance Organization Assistance  
31 Association. All health maintenance organizations authorized to  
32 transact business in this State shall be and remain members of the  
33 association as a condition of their authority to transact business in this  
34 State. The association shall perform its functions under the plan of  
35 operation established and approved pursuant to section 10 of this act  
36 and shall exercise its powers through a board of directors established  
37 pursuant to section 7 of this act. The association shall be supervised  
38 by the commissioner and is subject to the provisions of this act.

39

40 6. a. For purposes of administration and assessment, the New  
41 Jersey Insolvent Health Maintenance Organization Assistance Fund is  
42 created, and shall be held in trust and maintained by the association for  
43 the purposes specified in this act.

44 b. The New Jersey Insolvent Health Maintenance Organization  
45 Assistance Fund is created as a limited purpose trust fund consisting  
46 of not more than \$100,000,000 as follows:

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1 (1) \$50,000,000 to be deposited in the fund from the appropriation  
2 made from the General Fund pursuant to section 17 of this act; and

3 (2) an additional aggregate sum of not more than \$50,000,000  
4 collected through equal assessments over a three-year period as  
5 provided in section 9 of this act.

6  
7 7. a. The board of directors of the association shall consist of not  
8 less than five nor more than nine members, who shall be representative  
9 of the member organizations, serving terms as established in the plan  
10 of operation. The members of the board of directors shall be selected  
11 by a vote of the member organizations, subject to the approval of the  
12 commissioner, with each member organization entitled to one vote.  
13 Vacancies on the board of directors shall be filled for the remaining  
14 period of the term in the same manner as the initial appointment.

15 b. To allow for the selection of the initial board of directors and  
16 the organization of the association, the commissioner shall give notice  
17 to all member organizations of the time and place of an organizational  
18 meeting. If the member organizations have not selected a suitable  
19 board of directors within 60 days following the organizational meeting,  
20 the commissioner may appoint the initial members of the board of  
21 directors.

22 c. In approving or appointing members to the board of directors,  
23 the commissioner shall consider, among other things, whether all  
24 member organizations are fairly represented.

25 d. Members of the board of directors may be reimbursed from the  
26 assets of the association for reasonable costs incurred by them as  
27 members of the board of directors, but shall not otherwise be  
28 compensated by the association for their services.

29  
30 8. a. The maximum liability of the association for all coverage  
31 provided under this act shall be limited to the amount available from  
32 the New Jersey Insolvent Health Maintenance Organization Assistance  
33 Fund created in section 6 of this act.

34 b. If the association fails to act within a reasonable period of time,  
35 the commissioner shall have the powers and duties of the association  
36 provided by this act with respect to the insolvent organizations.

37 c. The association may render assistance and advice to the  
38 commissioner concerning the liquidation, payment of claims or other  
39 performance of other contractual obligations of the insolvent  
40 organizations under this act.

41 d. The association shall have standing to appear before any court  
42 in this State with jurisdiction over the insolvent organizations. That  
43 standing shall extend to all matters germane to the powers and duties  
44 of the association, including, but not limited to, proposals for  
45 guaranteeing the contractual obligations. The association shall also  
46 have the right to appear or intervene before a court in another state

1 with jurisdiction over the insolvent organizations or with jurisdiction  
2 over a third party against whom the association may have rights  
3 through subrogation of the organization's enrollees.

4 e. (1) Any person receiving benefits under this act shall be deemed  
5 to have assigned the rights under, and any causes of action relating to,  
6 the covered health maintenance organization contract to the  
7 association to the extent of the benefits received pursuant to this act,  
8 whether the benefits are payments of, or on account of, contractual  
9 obligations. The association may require an assignment to it of those  
10 rights and causes of action by any payee, policy or contract owner,  
11 beneficiary, member or enrollee as a condition precedent to the receipt  
12 of any right or benefit conferred by this act upon that person.

13 (2) The subrogation rights of the association under this subsection  
14 shall have the same priority against the assets of the insolvent  
15 organization as that possessed by the person entitled to receive  
16 benefits under this act.

17 (3) In addition to the rights of subrogation contained in paragraphs  
18 (1) and (2) of this subsection, the association shall have all common  
19 law rights of subrogation and any other equitable or legal remedy  
20 which would have been available to the insolvent organization or  
21 holder of a policy or contract with respect to that policy or contract.

22 f. The association may:

23 (1) enter into any contracts necessary or proper to carry out the  
24 provisions and purposes of this act;

25 (2) sue or be sued, including taking any legal actions including a  
26 summary proceeding necessary or proper to recover any unpaid  
27 assessments imposed pursuant to section 9 of this act and to settle  
28 claims or potential claims against it;

29 (3) borrow money to effectuate the purposes of this act. Any notes  
30 or other evidence of indebtedness of the association not in default shall  
31 be legal investment for domestic insurers and may be carried as  
32 admitted assets;

33 (4) employ or retain persons necessary to handle the financial  
34 transactions of the association, and to perform other functions as are  
35 necessary or proper under this act; and

36 (5) take any legal action necessary to avoid payment of improper  
37 claims.

38  
39 9. a. For the purpose of providing the funds necessary to carry out  
40 the powers and duties of the association, the board of directors shall  
41 assess the member organizations an aggregate amount not to exceed  
42 \$50,000,000, to be collected through equal assessments over a period  
43 not to exceed three years. Assessments shall be due not less than 30  
44 days after prior written notice to the member organizations and shall  
45 accrue interest on and after the due date at the percentage of interest  
46 prescribed in the Rules Governing the Courts of the State of New

1 Jersey for judgments, awards and orders for the payment of money.  
2 b. Assessments against member organizations shall be made in the  
3 proportion that the net written premiums received on health  
4 maintenance organization business in this State by each assessed  
5 member organization for the most recent calendar year for which  
6 premium information is available preceding the year in which the  
7 assessment is made bears to such premiums received on total health  
8 maintenance organization business in this State for that calendar year  
9 by all assessed member organizations. The net written premium paid  
10 to enroll Medicaid recipients in a Medicaid-contracting health  
11 maintenance organization shall not be used to calculate any assessment  
12 under this subsection.

13 c. Assessments to meet the requirements of the association with  
14 respect to the insolvent organizations under this act shall be made  
15 annually as necessary to implement the purposes of this act.  
16 Computations of assessments under this section shall be made with a  
17 reasonable degree of accuracy, recognizing that exact determinations  
18 may not always be possible.

19 d. The association shall exempt, abate or defer, in whole or in part,  
20 the assessment of a member organization if, in the opinion of the  
21 commissioner, payment of the assessment would endanger the ability  
22 of the member organization to fulfill its contractual obligations or  
23 place the member organization in an unsafe or unsound financial  
24 condition. If an assessment against a member organization is  
25 exempted, abated or deferred, in whole or in part, the amount by  
26 which that assessment is exempted, abated or deferred shall be  
27 assessed against the other member organizations in a manner  
28 consistent with the basis for assessments set forth in this section.

29 e. The board may provide in the plan of operation for a method of  
30 allocating funds among claims, whether relating to one or more  
31 insolvent organizations, when the maximum assessment will be  
32 insufficient to cover anticipated claims. If payment of a claim or  
33 portion of a claim is delayed due to the insufficiency of funds available  
34 through the maximum assessment, the association shall not be required  
35 to pay, and shall have no liability to, any person for any interest or late  
36 charge for the period that the payment of that claim is delayed.

37 f. The board may, by an equitable method established in the plan  
38 of operation, refund to member organizations and the State in  
39 proportion to the contribution of each organization, the amount by  
40 which the assets of the fund exceed the amount the board, with the  
41 concurrence of the commissioner, finds necessary to carry out the  
42 obligations of the association, including assets accruing from  
43 assignment, subrogation, net realized gains and income from  
44 investments. Monies that are available or become available from the  
45 insolvent organization shall be used to make pro rata refunds to  
46 member organizations and the State, as appropriate, for the



1 contractual obligations of the insolvent organization paid by the  
2 association from assessments under this act.

3 g. In determining its schedule of charges filed with the  
4 commissioner pursuant to subsection b. of section 8 of P.L. 1973, c.  
5 337 (C.26:2J-8), no member organization shall include the amount  
6 necessary to meet its assessments under this act, or any portion  
7 thereof, unless the commissioner specifically determines after a  
8 separate filing by a member that exclusion of those assessments in  
9 determining its schedule of charges will significantly and adversely  
10 affect a health maintenance organization. Each member organization  
11 shall annually file a certification to the commissioner that demonstrates  
12 compliance with this paragraph.

13 h. The association shall issue to each organization paying an  
14 assessment pursuant to this act a certificate of contribution, in a form  
15 and manner prescribed by the commissioner, for the amount of the  
16 assessment so paid. All outstanding certificates shall be of equal  
17 dignity and priority without reference to amount or date of issue. A  
18 certificate of contribution may be shown by the organization in its  
19 financial statement as an asset in that form and manner and for the  
20 amount and period of time as the commissioner may approve.

21

22 10. a. (1) The association shall submit to the commissioner a plan  
23 of operation, and any amendments thereto, necessary or suitable to  
24 assure the fair, reasonable and equitable administration of the  
25 association and the fund. The plan of operation and any amendments  
26 thereto shall become effective upon the commissioner's written  
27 approval or at the expiration of 30 days after submission if it has not  
28 been disapproved.

29 (2) If the association fails to submit a suitable plan of operation  
30 within 90 days following the effective date of this act, or if at any time  
31 thereafter the association fails to submit suitable amendments to the  
32 plan, the commissioner shall adopt a plan, or amendments as  
33 necessary, to implement the provisions of this act. The plan or  
34 amendments shall continue in force until modified by the commissioner  
35 or superseded by a plan submitted by the association and approved by  
36 the commissioner.

37 b. All member organizations shall comply with the plan of  
38 operation.

39 c. The plan of operation shall, in addition to any other  
40 requirements specified in this act:

41 (1) establish procedures for handling the assets of the association;

42 (2) establish the amount and method of reimbursing members of  
43 the board of directors under subsection d. of section 7 of this act:

44 (3) establish regular places and times for meetings, including  
45 telephone conference calls, of the board of directors;

46 (4) establish procedures for keeping records of all financial

1 transactions of the association, its agents and the board of directors;

2 (5) establish procedures for selecting members of the board of  
3 directors and submitting their names to the commissioner;

4 (6) establish any additional procedures for the imposition of  
5 assessments under section 9 of this act; and

6 (7) contain additional provisions necessary or proper for the  
7 execution of the powers and duties of the association.

8 d. The plan of operation may provide for the delegation of any or  
9 all powers and duties of the association, except those set forth in  
10 paragraph (3) of subsection e. of section 8 and section 9 of this act, to  
11 a corporation, association or other organization which performs or will  
12 perform functions similar to those of the association, or its equivalent,  
13 in two or more other states. Such a corporation, association or  
14 organization shall be reimbursed for any payments made on behalf of  
15 the association and shall be paid for its performance of any function of  
16 the association. A delegation under this subsection shall take effect  
17 only with the approval of both the board of directors and the  
18 commissioner, and may be made only to a corporation, association or  
19 organization which extends protection not substantially less favorable  
20 or effective than that provided by this act.

21 e. The plan of operation shall provide for the orderly cessation of  
22 activity by the association upon the exhaustion of monies in the New  
23 Jersey Insolvent Health Maintenance Organization Assistance Fund  
24 created in section 6 of this act.

25

26 11. a. In addition to the duties and powers enumerated elsewhere  
27 in this act, the commissioner shall, upon request of the board of  
28 directors, provide the association with a statement of the net written  
29 premiums received in this State and any other appropriate states for  
30 each member organization.

31 b. The commissioner may suspend or revoke, after notice and  
32 hearing, the certificate of authority to transact business in this State of  
33 any member organization which fails to pay an assessment when due  
34 or fails to comply with the plan of operation. As an alternative, the  
35 commissioner may levy a penalty on any member organization which  
36 fails to pay an assessment when due. That penalty shall not exceed  
37 five percent of the unpaid assessment per month, but no penalty shall  
38 be less than \$100 per month.

39 c. Any action of the board of directors or the association may be  
40 appealed to the commissioner by a member organization if that appeal  
41 is taken within 30 days from the final action being appealed. If a  
42 member organization is appealing an assessment, the amount assessed  
43 shall be paid to the association and made available to meet association  
44 obligations during the pendency of an appeal. If the appeal of an  
45 assessment is upheld, the amount paid in error or excess shall be  
46 returned to the member organization. Any determination of an appeal

1 from an action of the board of directors shall be subject to review by  
2 the commissioner on the record below, and shall not be considered a  
3 contested case under the "Administrative Procedure Act," P.L.1968,  
4 c.410 (C.52:14B-1 et seq.). The commissioner's determination shall  
5 be a final agency decision subject to review by the Appellate Division  
6 of Superior Court.

7  
8 12. a. A member organization may offset against its corporation  
9 business tax liability pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.)  
10 any assessment for which a certificate of contribution has been issued  
11 pursuant to subsection h. of section 9 of this act in an amount of not  
12 more than 10% of the amount of that assessment for each of the five  
13 calendar years following the second year after the year in which the  
14 assessment was paid, except that no member organization may offset  
15 more than 20% of its corporation business tax liability in any one year  
16 pursuant to this section. If a member organization should cease doing  
17 business in this State, any uncredited assessment may be offset against  
18 its corporation business tax liability for the year in which it ceases to  
19 do business in this State.

20 b. Any sums which are acquired by member organizations as the  
21 result of a refund from the association pursuant to subsection f. of  
22 section 9 of this act, and which have theretofore been offset against  
23 corporation business taxes as provided in subsection a. of this section,  
24 shall be paid by those organizations to the State as the Director of the  
25 Division of Taxation may require. The association shall notify the  
26 commissioner and the Director of the Division of Taxation of any  
27 refunds made.

28  
29 13. The association shall be subject to examination and regulation  
30 by the commissioner. The board of directors shall submit to the  
31 commissioner each year, not later than 120 days after the close of the  
32 association's fiscal year, a financial report in a form approved by the  
33 commissioner and a report of its activities during the preceding fiscal  
34 year.

35  
36 14. The association shall be exempt from the payment of all fees  
37 and all taxes levied by this State or any of its subdivisions, except  
38 those levied on real property.

39  
40 15. In order to receive payment directly from the association upon  
41 a claim against an insolvent organization, a provider shall agree to  
42 forgive that organization of one-third of the unpaid contractual  
43 obligation incurred prior to insolvency, which would otherwise be paid  
44 by the organization had it not been insolvent. The obligations of  
45 solvent health maintenance organizations to pay all or part of the  
46 covered claim are not diminished by the forgiveness provided in this

1 section. The association is not bound by an assignment of benefits  
2 executed with respect to the coverage provided by the insolvent  
3 organization. The association may aggregate all claims owed  
4 providers when negotiating direct payment of claims of all covered  
5 individuals.

6  
7 16. There shall be no liability on the part of, and no cause of action  
8 of any nature shall arise against, any member organization or its agents  
9 or employees, the association or its agents or employees, or the  
10 commissioner or his representatives, for any action or omission by  
11 them in the performance of their powers and duties under this act.

12  
13 17. There is appropriated \$50,000,000 from the General Fund to  
14 the Department of Banking and Insurance for deposit in the New  
15 Jersey Insolvent Health Maintenance Organization Assistance Fund for  
16 the purposes of that fund as provided in this act.

17  
18 18. This act shall take effect immediately and shall apply only to  
19 the insolvency of HIP Health Plan of New Jersey, Inc. and American  
20 Preferred Provider Plan, Inc.

21  
22  
23 STATEMENT

24  
25 This bill provides for reimbursement to health care professionals  
26 and health care facilities, who were participating providers of HIP  
27 Health Plan of New Jersey, Inc. and American Preferred Provider Plan,  
28 Inc. on contractual obligations that are unpaid and were incurred prior  
29 to insolvency of those organizations.

30 The New Jersey Insolvent Health Maintenance Organization  
31 Assistance Association, whose membership consists of all health  
32 maintenance organizations authorized to transact business in this State,  
33 is established to carry out the plan of operation adopted pursuant to  
34 the provisions of the bill and to manage the New Jersey Insolvent  
35 Health Maintenance Organization Assistance Fund. The fund is a  
36 limited purpose fund consisting of not more than \$100,000,000 with  
37 \$50,000,000 coming from the General Fund and \$50,000,000 from the  
38 assessment of association members over three years. To receive  
39 payment from the fund, a health care provider or hospital must forgive  
40 one-third of the unpaid contractual obligations incurred prior to the  
41 insolvency which would otherwise have been paid by the health  
42 maintenance organizations had they not been insolvent.

43 A member organization may offset against its corporation business  
44 tax liability any assessment made by the fund in an amount of not more  
45 than 10% of the amount of that assessment for each of the five  
46 calendar years following the second year after the year in which the

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11

- 1 assessment is paid, except that no member organization may offset
- 2 more than 20% of its corporation business tax liability in any one year.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, Nos. 1890 and 1605**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 7, 2000

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 1890 and 1605 (ACS).

This Assembly Committee Substitute for Assembly Bill Nos. 1890 and 1605 (ACS) provides for reimbursement, to covered individuals and to health care professionals and health care facilities that were participating providers of HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc., for unpaid contractual obligations that were incurred by those two organizations prior to their insolvency. The substitute does not cover the claims of creditors other than those of "covered individuals" or "providers," as defined in the substitute.

The substitute establishes the New Jersey Insolvent Health Maintenance Organization Assistance Association as a tax-exempt, nonprofit legal entity, whose membership consists of all health maintenance organizations authorized to transact business in this State. The association shall exercise its powers through a board of directors consisting of not less than five nor more than nine members, who shall be representative of the member organizations.

The substitute authorizes the association to carry out the plan of operation necessary for the administration of the association, adopted pursuant to the provisions of the substitute and approved by the Commissioner of Banking and Insurance. The substitute gives the association the primary responsibility for the management of the New Jersey Insolvent Health Maintenance Organization Assistance Fund, a limited purpose trust fund consisting of not more than \$100,000,000. Of that \$100,000,000, \$50,000,000 will come from the proceeds of the settlement between the State and the major tobacco manufacturers and \$50,000,000 will come from the assessment of association members over three years. The \$100,000,000 amount represents the maximum liability of the association for all coverage provided under the substitute. The substitute provides for the assessment of member

organizations based on their net written premiums received on health maintenance organization business in this State. However, net written premiums paid to enroll Medicaid recipients in a Medicaid-contracting health maintenance organization, New Jersey Kid Care and similar State-sponsored programs, and Medicare Plus Choice plans will be excluded from the assessment calculation. The substitute precludes a member organization from including assessment amounts in determining its premium rates unless the commissioner specifically determines that exclusion of those assessments will significantly and adversely affect that member organization.

To receive payment from the fund, a health care provider or hospital must forgive one-third of the unpaid contractual obligations incurred prior to the insolvency which would otherwise have been paid by the health maintenance organizations had they not been insolvent, and allows for the aggregation of all eligible claims owed providers when negotiating direct payment of eligible claims of all covered individuals. The plan of operation shall also provide for the orderly cessation of activity by the association upon the exhaustion of moneys in the fund.

The substitute provides that claims shall be adjudicated in accordance with standard industry practice, subject to available documentation and information. In addition, the substitute provides that the cost of auditing the claims shall be borne by association members but that cost shall not exceed \$2,000,000.

The commissioner may suspend or revoke the certificate of authority to transact business in this State of any member organization which fails to pay an assessment when due, or impose a monetary penalty. A certificate of contribution shall be issued to each member organization for the amount of the assessment paid, which certificate may be shown as an asset in the member organization's financial statement, for the amount and period of time as the commissioner may approve.

The substitute also provides that assessments shall be exempt, abated or deferred, in whole or in part, if, in the opinion of the commissioner, payment of the assessment would endanger the ability of a member organization to fulfill its contractual obligations or jeopardize its financial stability. If the assets of the fund, including monies available from the insolvent organizations, exceed the amount necessary to carry out the obligations of the association, the association shall make pro rata refunds to member organizations and the State.

The substitute allows a member organization to take a credit against its corporation business tax liability 50% of any assessment over the five years beginning with the third year after the year in which the assessment is paid, except that no member organization may offset more than 20% of its total corporation business tax liability in any one year.

The substitute requires the board of directors to submit an annual

financial report and a report of its activities during the preceding fiscal year to the commissioner. The substitute requires the commissioner to report annually to the Chairman and the Ranking Minority member of the Assembly Appropriations Committee and the Chairman and the Ranking Minority member of the Senate Budget and Appropriations Committee regarding the administration of the fund, including the status of pending litigation, the amount of claims made and the amount of any distributions on those claims, as well as the effects of the assessments under this act on the operations of member organizations.

**FISCAL IMPACT:**

The substitute establishes the New Jersey Insolvent Health Maintenance Organization Assistance Fund, consisting in part with \$50,000,000 of State funds from the proceeds of the Tobacco Settlement.

The remainder of the fund consists of \$50,000,000 from assessments of association members, of which up to 50%, or \$25,000,000, may be taken over years four through ten of the plan as corporation business tax credits.

The maximum State fiscal impact over the ten years is the \$50,000,000 State contribution plus the up to \$25,000,000 tax expenditure, or a total of up to \$75,000,000.



# ASSEMBLY BANKING AND INSURANCE COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, Nos. 1890 and 1605**

# **STATE OF NEW JERSEY**

DATED: JANUARY 27, 2000

The Assembly Banking and Insurance Committee reports favorably Assembly Committee Substitute for Assembly, Nos. 1890 and 1605.

This bill, an Assembly Committee Substitute for Assembly, Nos. 1890 and 1605, provides for reimbursement to health care professionals and health care facilities, who were participating providers of HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc. on contractual obligations that are unpaid and were incurred prior to the insolvency of those two organizations. The bill is not intended to provide coverage for claims of creditors other than those of covered individuals or providers, as defined in the bill.

The bill establishes the New Jersey Insolvent Health Maintenance Organization Assistance Association as a tax exempt, nonprofit legal entity, whose membership consists of all health maintenance organizations authorized to transact business in this State. The association shall exercise its powers through a board of directors consisting of not less than five nor more than nine members, who shall be representative of the member organizations. To allow for the selection of the initial board of directors and the organization of the association, the bill provides for the Commissioner of Banking and Insurance to hold an organizational meeting. Under the bill, if the member organizations have not selected a suitable board of directors within 60 days following the organizational meeting, the commissioner may appoint the initial members of the board.

The bill authorizes the association to carry out the plan of operation necessary for the administration of the association, adopted pursuant to the provisions of the bill and approved by the commissioner. If the association fails to submit a suitable plan of operation within 90 days of the effective date of the bill, the bill provides that the commissioner shall adopt the plan. Among other requirements enumerated in the bill, the plan of operation may, with the approval of both the board of directors and the commissioner, provide for the delegation of any or all powers and duties of the association, with certain exceptions, to an entity which performs functions similar to those of the association in two or more other

states. The plan of operation shall also provide for the orderly cessation of activity by the association upon the exhaustion of monies in the fund created by the bill.

As provided in the bill, the association is primarily responsible for the management of the New Jersey Insolvent Health Maintenance Organization Assistance Fund, a limited purpose trust fund consisting of not more than \$100,000,000 with \$50,000,000 coming from the General Fund and \$50,000,000 to be collected through equal assessments of association members over a period not to exceed three years, and represents the maximum liability of the association for all coverage provided under the bill. The bill provides for the assessment of member organizations in the proportion that the net written premiums received on health maintenance organization business in this State by each assessed member organization for the most recent calendar year for which premium information is available preceding the year in which the assessment is made bears to such premiums received on total health maintenance organization business in this State for that calendar year by all assessed member organizations. Net written premiums paid to enroll Medicaid recipients in a Medicaid-contracting health maintenance organization will not be used to calculate any assessment. The bill precludes a member organization from including assessment amounts in determining its premium rates unless the commissioner specifically determines that exclusion of those assessments will significantly and adversely affect that member organization.

The commissioner may suspend or revoke the certificate of authority to transact business in this State of any member organization which fails to pay an assessment when due, or impose a monetary penalty. A certificate of contribution shall be issued to each member organization for the amount of the assessment paid, which certificate may be shown as an asset in the member organization's financial statement, for the amount and period of time as the commissioner may approve.

The bill also provides that assessments shall be exempt, abated or deferred, in whole or in part, if, in the opinion of the commissioner, payment of the assessment would endanger the ability of a member organization to fulfill its contractual obligations or jeopardize its financial stability. The board may provide, by an equitable method established in the plan of operation, for the refund to member organizations and the State in proportion the contribution of each organization, if the assets of the fund exceed the amount necessary to carry out the obligations of the association.

The bill provides that to receive payment from the fund, a health care professional or health care facility must forgive one-third of the unpaid contractual obligations incurred prior to the insolvency which would otherwise have been paid by the health maintenance organizations had they not been insolvent, and allows for the aggregation of all claims owed providers when negotiating direct

payment of claims of all covered individuals.

A member organization may offset against its corporation business tax liability any assessment made by the fund in an amount of not more than 10% of the amount of that assessment for each of the five calendar years following the second year after the year in which the assessment is paid, except that no member organization may offset more than 20% of its corporation business tax liability in any one year.

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 1890 and 1605**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

ADOPTED JANUARY 27, 2000

**Sponsored by:**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Assemblyman JOSEPH V. DORIA, JR.**

**District 31 (Hudson)**

**Assemblyman NICHOLAS R. FELICE**

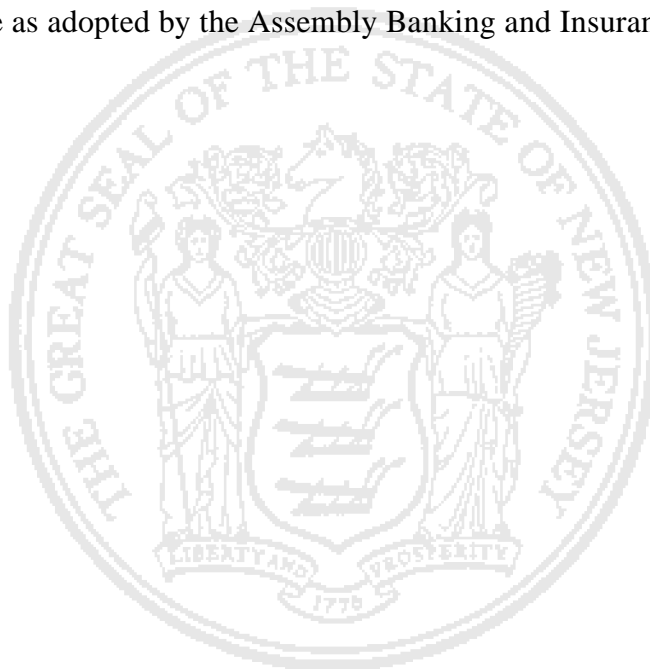
**District 40 (Bergen and Passaic)**

**SYNOPSIS**

Provides for payment of certain individual and provider claims against HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.; appropriates \$50,000,000 from the General Fund.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Banking and Insurance Committee.



**(Sponsorship Updated As Of: 2/8/2000)**

1 AN ACT concerning the insolvency of certain health maintenance  
2 organizations and making an appropriation.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Insolvent Health Maintenance Organization Assistance Fund Act of  
9 2000."

10

11 2. The purpose of this act is to protect, subject to certain  
12 limitations, covered individuals and providers against the failure or  
13 inability of HIP Health Plan of New Jersey, Inc. and American  
14 Preferred Provider Plan, Inc. to perform certain contractual obligations  
15 due to their insolvency. The act creates a funding mechanism and  
16 authorizes this funding mechanism to pay certain unpaid contractual  
17 obligations of these insolvent health maintenance organizations  
18 incurred prior to the date of their insolvency. In addition, providers  
19 of health care services must agree to forgive one-third of those unpaid  
20 contractual obligations due them to receive payment from the funding  
21 mechanism.

22 This act is intended to provide only limited coverage of claims  
23 against HIP Health Plan of New Jersey, Inc. and American Preferred  
24 Provider Plan, Inc. This act is not intended to provide coverage for  
25 claims of creditors other than those of covered individuals or  
26 providers.

27

28 3. As used in this act:

29 "Association" means the New Jersey Insolvent Health Maintenance  
30 Organization Assistance Association created by section 5 of this act.

31 "Commissioner" means the Commissioner of Banking and  
32 Insurance.

33 "Contractual obligation" means an obligation, arising from an  
34 agreement, policy, certificate or evidence of coverage, to a covered  
35 individual or provider incurred prior to the declaration of insolvency  
36 of a covered health maintenance organization that remains unpaid at  
37 the time of its insolvency, but does not include claims by former  
38 employees, including medical professional employees for deferred  
39 compensation, severance, vacation or other employment benefits.

40 "Covered health maintenance organization contract" means a  
41 policy, certificate, evidence of coverage or contract for health care  
42 services issued in New Jersey by HIP Health Plan of New Jersey, Inc.  
43 or American Preferred Provider Plan, Inc.

44 "Covered individual" means an enrollee or member of HIP Health  
45 Plan of New Jersey, Inc. or American Preferred Provider Plan, Inc.

46 "Department" means Department of Banking and Insurance.

1 "Fund" means the New Jersey Insolvent Health Maintenance  
2 Organization Assistance Fund created pursuant to section 6 of this act.

3 "Insolvent organization" means HIP Health Plan of New Jersey,  
4 Inc. or American Preferred Provider Plan, Inc.

5 "Member organization" means a person who holds a certificate of  
6 authority to operate a health maintenance organization pursuant to  
7 P.L.1973, c.337 (C.26:2J-1 et seq.), and includes any person whose  
8 certificate of authority has been suspended, revoked or nonrenewed.

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

12 "Provider" means a physician, hospital or other person which is  
13 licensed or otherwise authorized by this State, or licensed or otherwise  
14 authorized under similar laws of another state, to provide health care  
15 services, and which provided health care services to covered  
16 individuals. As used in this act, provider also includes persons who  
17 incurred a contractual obligation as defined by this act by providing  
18 home health care services, durable medical equipment, physical  
19 therapy services, medical transportation, ambulance services or  
20 laboratory services to covered individuals.

21

22 4. This act shall provide coverage to any covered individual or  
23 provider who is entitled to receive payment from HIP Health Plan of  
24 New Jersey, Inc. and American Preferred Provider Plan, Inc. for any  
25 contractual obligation of HIP Health Plan of New Jersey, Inc. and  
26 American Preferred Provider Plan, Inc. incurred prior to the date of  
27 their insolvency that remains unpaid.

28

29 5. There is created a nonprofit legal entity to be known as the  
30 New Jersey Insolvent Health Maintenance Organization Assistance  
31 Association. All health maintenance organizations authorized to  
32 transact business in this State shall be and remain members of the  
33 association as a condition of their authority to transact business in this  
34 State. The association shall perform its functions under the plan of  
35 operation established and approved pursuant to section 10 of this act  
36 and shall exercise its powers through a board of directors established  
37 pursuant to section 7 of this act. The association shall be supervised  
38 by the commissioner and is subject to the provisions of this act.

39

40 6. a. For purposes of administration and assessment, the New  
41 Jersey Insolvent Health Maintenance Organization Assistance Fund is  
42 created, and shall be held in trust and maintained by the association for  
43 the purposes specified in this act.

1       b. The New Jersey Insolvent Health Maintenance Organization  
2 Assistance Fund is created as a limited purpose trust fund consisting  
3 of not more than \$100,000,000 as follows:

4       (1) \$50,000,000 to be deposited in the fund from the  
5 appropriation made from the General Fund pursuant to section 17 of  
6 this act; and

7       (2) an additional aggregate sum of not more than \$50,000,000  
8 collected through equal assessments over a three-year period as  
9 provided in section 9 of this act.

10  
11       7. a. The board of directors of the association shall consist of not  
12 less than five nor more than nine members, who shall be representative  
13 of the member organizations, serving terms as established in the plan  
14 of operation. The members of the board of directors shall be selected  
15 by a vote of the member organizations, subject to the approval of the  
16 commissioner, with each member organization entitled to one vote.  
17 Vacancies on the board of directors shall be filled for the remaining  
18 period of the term in the same manner as the initial appointment.

19       b. To allow for the selection of the initial board of directors and  
20 the organization of the association, the commissioner shall give notice  
21 to all member organizations of the time and place of an organizational  
22 meeting. If the member organizations have not selected a suitable  
23 board of directors within 60 days following the organizational meeting,  
24 the commissioner may appoint the initial members of the board of  
25 directors.

26       c. In approving or appointing members to the board of directors,  
27 the commissioner shall consider, among other things, whether all  
28 member organizations are fairly represented.

29       d. Members of the board of directors may be reimbursed from the  
30 assets of the association for reasonable costs incurred by them as  
31 members of the board of directors, but shall not otherwise be  
32 compensated by the association for their services.

33  
34       8. a. The maximum liability of the association for all coverage  
35 provided under this act shall be limited to the amount available from  
36 the New Jersey Insolvent Health Maintenance Organization Assistance  
37 Fund created in section 6 of this act.

38       b. If the association fails to act within a reasonable period of time,  
39 the commissioner shall have the powers and duties of the association  
40 provided by this act with respect to the insolvent organizations.

41       c. The association may render assistance and advice to the  
42 commissioner concerning the liquidation, payment of claims or other  
43 performance of other contractual obligations of the insolvent  
44 organizations under this act.

45       d. The association shall have standing to appear before any court  
46 in this State with jurisdiction over the insolvent organizations. That

1 standing shall extend to all matters germane to the powers and duties  
2 of the association, including, but not limited to, proposals for  
3 guaranteeing the contractual obligations. The association shall also  
4 have the right to appear or intervene before a court in another state  
5 with jurisdiction over the insolvent organizations or with jurisdiction  
6 over a third party against whom the association may have rights  
7 through subrogation of the organization's enrollees.

8 e. (1) Any person receiving benefits under this act shall be  
9 deemed to have assigned the rights under, and any causes of action  
10 relating to, the covered health maintenance organization contract to  
11 the association to the extent of the benefits received pursuant to this  
12 act, whether the benefits are payments of, or on account of,  
13 contractual obligations. The association may require an assignment to  
14 it of those rights and causes of action by any payee, policy or contract  
15 owner, beneficiary, member or enrollee as a condition precedent to the  
16 receipt of any right or benefit conferred by this act upon that person.

17 (2) The subrogation rights of the association under this subsection  
18 shall have the same priority against the assets of the insolvent  
19 organization as that possessed by the person entitled to receive  
20 benefits under this act.

21 (3) In addition to the rights of subrogation contained in  
22 paragraphs (1) and (2) of this subsection, the association shall have all  
23 common law rights of subrogation and any other equitable or legal  
24 remedy which would have been available to the insolvent organization  
25 or holder of a policy or contract with respect to that policy or  
26 contract.

27 f. The association may:

28 (1) enter into any contracts necessary or proper to carry out the  
29 provisions and purposes of this act;

30 (2) sue or be sued, including taking any legal actions, including a  
31 summary proceeding, necessary or proper to recover any unpaid  
32 assessments imposed pursuant to section 9 of this act and to settle  
33 claims or potential claims against it;

34 (3) borrow money to effectuate the purposes of this act. Any  
35 notes or other evidence of indebtedness of the association not in  
36 default shall be legal investment for domestic insurers and may be  
37 carried as admitted assets;

38 (4) employ or retain persons necessary to handle the financial  
39 transactions of the association, and to perform other functions as are  
40 necessary or proper under this act; and

41 (5) take any legal action necessary to avoid payment of improper  
42 claims.

43  
44 9. a. For the purpose of providing the funds necessary to carry  
45 out the powers and duties of the association, the board of directors  
46 shall assess the member organizations an aggregate amount not to



1 exceed \$50,000,000, to be collected through equal assessments over  
2 a period not to exceed three years. Assessments shall be due not less  
3 than 30 days after prior written notice to the member organizations  
4 and shall accrue interest on and after the due date at the percentage of  
5 interest prescribed in the Rules Governing the Courts of the State of  
6 New Jersey for judgments, awards and orders for the payment of  
7 money.

8 b. Assessments against member organizations shall be made in the  
9 proportion that the net written premiums received on health  
10 maintenance organization business in this State by each assessed  
11 member organization for the most recent calendar year for which  
12 premium information is available preceding the year in which the  
13 assessment is made bears to such premiums received on total health  
14 maintenance organization business in this State for that calendar year  
15 by all assessed member organizations. The net written premium paid  
16 to enroll Medicaid recipients in a Medicaid-contracting health  
17 maintenance organization shall not be used to calculate any assessment  
18 under this subsection.

19 c. Assessments to meet the requirements of the association with  
20 respect to the insolvent organizations under this act shall be made  
21 annually as necessary to implement the purposes of this act.  
22 Computations of assessments under this section shall be made with a  
23 reasonable degree of accuracy, recognizing that exact determinations  
24 may not always be possible.

25 d. The association shall exempt, abate or defer, in whole or in  
26 part, the assessment of a member organization if, in the opinion of the  
27 commissioner, payment of the assessment would endanger the ability  
28 of the member organization to fulfill its contractual obligations or  
29 place the member organization in an unsafe or unsound financial  
30 condition. If an assessment against a member organization is  
31 exempted, abated or deferred, in whole or in part, the amount by  
32 which that assessment is exempted, abated or deferred shall be  
33 assessed against the other member organizations in a manner  
34 consistent with the basis for assessments set forth in this section.

35 e. The board may provide in the plan of operation for a method  
36 of allocating funds among claims, whether relating to one or more  
37 insolvent organizations, when the maximum assessment will be  
38 insufficient to cover anticipated claims. If payment of a claim or  
39 portion of a claim is delayed due to the insufficiency of funds available  
40 through the maximum assessment, the association shall not be required  
41 to pay, and shall have no liability to, any person for any interest or late  
42 charge for the period that the payment of that claim is delayed.

43 f. The board may, by an equitable method established in the plan  
44 of operation, refund to member organizations and the State in  
45 proportion to the contribution of each organization, the amount by  
46 which the assets of the fund exceed the amount the board, with the

1 concurrence of the commissioner, finds necessary to carry out the  
2 obligations of the association, including assets accruing from  
3 assignment, subrogation, net realized gains and income from  
4 investments. Monies that are available or become available from the  
5 insolvent organization shall be used to make pro rata refunds to  
6 member organizations and the State, as appropriate, for the  
7 contractual obligations of the insolvent organization paid by the  
8 association from assessments under this act.

9 g. In determining its schedule of charges filed with the  
10 commissioner pursuant to subsection b. of section 8 of P.L. 1973, c.  
11 337 (C.26:2J-8), no member organization shall include the amount  
12 necessary to meet its assessments under this act, or any portion  
13 thereof, unless the commissioner specifically determines after a  
14 separate filing by a member that exclusion of those assessments in  
15 determining its schedule of charges will significantly and adversely  
16 affect a health maintenance organization. Each member organization  
17 shall annually file a certification to the commissioner that demonstrates  
18 compliance with this paragraph.

19 h. The association shall issue to each organization paying an  
20 assessment pursuant to this act a certificate of contribution, in a form  
21 and manner prescribed by the commissioner, for the amount of the  
22 assessment so paid. All outstanding certificates shall be of equal  
23 dignity and priority without reference to amount or date of issue. A  
24 certificate of contribution may be shown by the organization in its  
25 financial statement as an asset in that form and manner and for the  
26 amount and period of time as the commissioner may approve.

27  
28 10. a. (1) The association shall submit to the commissioner a plan  
29 of operation, and any amendments thereto, necessary or suitable to  
30 assure the fair, reasonable and equitable administration of the  
31 association and the fund. The plan of operation and any amendments  
32 thereto shall become effective upon the commissioner's written  
33 approval or at the expiration of 30 days after submission if it has not  
34 been disapproved.

35 (2) If the association fails to submit a suitable plan of operation  
36 within 90 days following the effective date of this act, or if at any time  
37 thereafter the association fails to submit suitable amendments to the  
38 plan, the commissioner shall adopt a plan, or amendments as  
39 necessary, to implement the provisions of this act. The plan or  
40 amendments shall continue in force until modified by the commissioner  
41 or superseded by a plan submitted by the association and approved by  
42 the commissioner.

43 b. All member organizations shall comply with the plan of  
44 operation.

45 c. The plan of operation shall, in addition to any other  
46 requirements specified in this act:

- 1 (1) establish procedures for handling the assets of the association;  
2 (2) establish the amount and method of reimbursing members of  
3 the board of directors under subsection d. of section 7 of this act:  
4 (3) establish regular places and times for meetings, including  
5 telephone conference calls, of the board of directors;  
6 (4) establish procedures for keeping records of all financial  
7 transactions of the association, its agents and the board of directors;  
8 (5) establish procedures for selecting members of the board of  
9 directors and submitting their names to the commissioner;  
10 (6) establish any additional procedures for the imposition of  
11 assessments under section 9 of this act; and  
12 (7) contain additional provisions necessary or proper for the  
13 execution of the powers and duties of the association.
- 14 d. The plan of operation may provide for the delegation of any or  
15 all powers and duties of the association, except those set forth in  
16 paragraph (3) of subsection e. of section 8 and section 9 of this act, to  
17 a corporation, association or other organization which performs or will  
18 perform functions similar to those of the association, or its equivalent,  
19 in two or more other states. Such a corporation, association or  
20 organization shall be reimbursed for any payments made on behalf of  
21 the association and shall be paid for its performance of any function of  
22 the association. A delegation under this subsection shall take effect  
23 only with the approval of both the board of directors and the  
24 commissioner, and may be made only to a corporation, association or  
25 organization which extends protection not substantially less favorable  
26 or effective than that provided by this act.
- 27 e. The plan of operation shall provide for the orderly cessation of  
28 activity by the association upon the exhaustion of monies in the New  
29 Jersey Insolvent Health Maintenance Organization Assistance Fund  
30 created in section 6 of this act.
- 31
- 32 11. a. In addition to the duties and powers enumerated elsewhere  
33 in this act, the commissioner shall, upon request of the board of  
34 directors, provide the association with a statement of the net written  
35 premiums received in this State and any other appropriate states for  
36 each member organization.
- 37 b. The commissioner may suspend or revoke, after notice and  
38 hearing, the certificate of authority to transact business in this State of  
39 any member organization which fails to pay an assessment when due  
40 or fails to comply with the plan of operation. As an alternative, the  
41 commissioner may levy a penalty on any member organization which  
42 fails to pay an assessment when due. That penalty shall not exceed  
43 five percent of the unpaid assessment per month, but no penalty shall  
44 be less than \$100 per month.
- 45 c. Any action of the board of directors or the association may be  
46 appealed to the commissioner by a member organization if that appeal

1 is taken within 30 days from the final action being appealed. If a  
2 member organization is appealing an assessment, the amount assessed  
3 shall be paid to the association and made available to meet association  
4 obligations during the pendency of an appeal. If the appeal of an  
5 assessment is upheld, the amount paid in error or excess shall be  
6 returned to the member organization. Any determination of an appeal  
7 from an action of the board of directors shall be subject to review by  
8 the commissioner on the record below, and shall not be considered a  
9 contested case under the "Administrative Procedure Act," P.L.1968,  
10 c.410 (C.52:14B-1 et seq.). The commissioner's determination shall  
11 be a final agency decision subject to review by the Appellate Division  
12 of Superior Court.

13

14 12. a. A member organization may offset against its corporation  
15 business tax liability pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.)  
16 any assessment for which a certificate of contribution has been issued  
17 pursuant to subsection h. of section 9 of this act in an amount of not  
18 more than 10% of the amount of that assessment for each of the five  
19 calendar years following the second year after the year in which the  
20 assessment was paid, except that no member organization may offset  
21 more than 20% of its corporation business tax liability in any one year  
22 pursuant to this section. If a member organization should cease doing  
23 business in this State, any uncredited assessment may be offset against  
24 its corporation business tax liability for the year in which it ceases to  
25 do business in this State.

26 b. Any sums which are acquired by member organizations as the  
27 result of a refund from the association pursuant to subsection f. of  
28 section 9 of this act, and which have theretofore been offset against  
29 corporation business taxes as provided in subsection a. of this section,  
30 shall be paid by those organizations to the State as the Director of the  
31 Division of Taxation may require. The association shall notify the  
32 commissioner and the Director of the Division of Taxation of any  
33 refunds made.

34

35 13. The association shall be subject to examination and regulation  
36 by the commissioner. The board of directors shall submit to the  
37 commissioner each year, not later than 120 days after the close of the  
38 association's fiscal year, a financial report in a form approved by the  
39 commissioner and a report of its activities during the preceding fiscal  
40 year.

41

42 14. The association shall be exempt from the payment of all fees  
43 and all taxes levied by this State or any of its subdivisions, except  
44 those levied on real property.

45

46 15. In order to receive payment directly from the association upon

1 a claim against an insolvent organization, a provider shall agree to  
2 forgive that organization of one-third of the unpaid contractual  
3 obligation incurred prior to insolvency, which would otherwise be paid  
4 by the organization had it not been insolvent. The obligations of  
5 solvent health maintenance organizations to pay all or part of the  
6 covered claim are not diminished by the forgiveness provided in this  
7 section. The association is not bound by an assignment of benefits  
8 executed with respect to the coverage provided by the insolvent  
9 organization. The association may aggregate all claims owed  
10 providers when negotiating direct payment of claims of all covered  
11 individuals.

12

13 16. There shall be no liability on the part of, and no cause of  
14 action of any nature shall arise against, any member organization or its  
15 agents or employees, the association or its agents or employees, or the  
16 commissioner or his representatives, for any action or omission by  
17 them in the performance of their powers and duties under this act.

18

19 17. There is appropriated \$50,000,000 from the General Fund to  
20 the Department of Banking and Insurance for deposit in the New  
21 Jersey Insolvent Health Maintenance Organization Assistance Fund for  
22 the purposes of that fund as provided in this act.

23

24 18. This act shall take effect immediately and shall apply only to  
25 the insolvency of HIP Health Plan of New Jersey, Inc. and American  
26 Preferred Provider Plan, Inc.

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 1890 and 1605**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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ADOPTED FEBRUARY 7, 2000

**Sponsored by:**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Assemblyman JOSEPH V. DORIA, JR.**

**District 31 (Hudson)**

**Assemblyman NICHOLAS R. FELICE**

**District 40 (Bergen and Passaic)**

**Assemblyman NEIL M. COHEN**

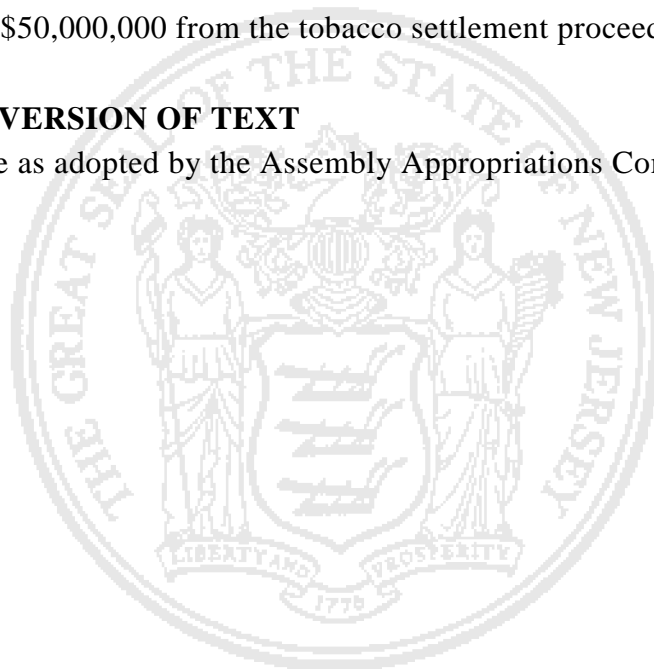
**District 20 (Union)**

**SYNOPSIS**

Provides for payment of certain individual and provider claims against HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.; appropriates \$50,000,000 from the tobacco settlement proceeds.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Appropriations Committee.



1 AN ACT concerning the insolvency of certain health maintenance  
2 organizations and making an appropriation.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Insolvent Health Maintenance Organization Assistance Fund Act of  
9 2000."

10

11 2. The purpose of this act is to protect, subject to certain  
12 limitations, covered individuals and providers against the failure or  
13 inability of HIP Health Plan of New Jersey, Inc. and American  
14 Preferred Provider Plan, Inc. to perform certain contractual obligations  
15 due to their insolvency. The act creates a funding mechanism and  
16 authorizes this funding mechanism to pay certain unpaid contractual  
17 obligations of these insolvent health maintenance organizations  
18 incurred prior to the date of their insolvency. In addition, providers  
19 of health care services must agree to forgive one-third of those unpaid  
20 contractual obligations due them to receive payment from the funding  
21 mechanism.

22

23 This act is intended to provide only limited coverage of claims  
24 against HIP Health Plan of New Jersey, Inc. and American Preferred  
25 Provider Plan, Inc. This act is not intended to provide coverage for  
26 claims of creditors other than those of covered individuals or  
27 providers.

27

28 3. As used in this act:

29

30 "Association" means the New Jersey Insolvent Health Maintenance  
31 Organization Assistance Association created by section 5 of this act.

31

32 "Commissioner" means the Commissioner of Banking and  
33 Insurance.

33

34 "Contractual obligation" means an obligation, arising from an  
35 agreement, policy, certificate or evidence of coverage, to a covered  
36 individual or provider incurred prior to the declaration of insolvency  
37 of a covered health maintenance organization that remains unpaid at  
38 the time of its insolvency, but does not include claims by former  
39 employees, including medical professional employees for deferred  
40 compensation, severance, vacation or other employment benefits.

40

41 "Covered health maintenance organization contract" means a  
42 policy, certificate, evidence of coverage or contract for health care  
43 services issued in New Jersey by HIP Health Plan of New Jersey, Inc.  
44 or American Preferred Provider Plan, Inc., but shall not include any  
45 contract with an employer or other person to provide health care  
46 benefits on an administrative services only basis.

46

"Covered individual" means an enrollee or member of HIP Health

1 Plan of New Jersey, Inc. or American Preferred Provider Plan, Inc.

2 "Department" means Department of Banking and Insurance.

3 "Eligible claim" means a claim for a covered service or benefit  
4 under a contract or policy issued by an insolvent health maintenance  
5 organization and provided by a provider or to a covered individual  
6 prior to the declaration of insolvency of an insolvent organization, but  
7 shall not include any claim filed after the claims bar date established by  
8 the Superior Court of New Jersey supervising the insolvent  
9 organizations.

10 "Fund" means the New Jersey Insolvent Health Maintenance  
11 Organization Assistance Fund created pursuant to section 6 of this act.

12 "Insolvent organization" means HIP Health Plan of New Jersey,  
13 Inc. or American Preferred Provider Plan, Inc.

14 "Member organization" means a person who holds a certificate of  
15 authority to operate a health maintenance organization pursuant to  
16 P.L.1973, c.337 (C.26:2J-1 et seq.), and includes any person whose  
17 certificate of authority has been suspended, revoked or nonrenewed.

18 "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 "Provider" means a physician, hospital or other person which is  
22 licensed or otherwise authorized by this State, or licensed or otherwise  
23 authorized under similar laws of another state, to provide health care  
24 services, and which provided health care services to covered  
25 individuals. As used in this act, provider also includes persons who  
26 incurred a contractual obligation as defined by this act by providing  
27 home health care services, durable medical equipment, physical  
28 therapy services, medical transportation, ambulance services or  
29 laboratory services to covered individuals.

30

31 4. This act shall provide payment for eligible services or benefits  
32 under a covered health maintenance association contract to any  
33 covered individual or provider who is entitled to receive payment from  
34 HIP Health Plan of New Jersey, Inc. and American Preferred Provider  
35 Plan, Inc. for an eligible claim that remains unpaid.

36

37 5. There is created a nonprofit legal entity to be known as the  
38 New Jersey Insolvent Health Maintenance Organization Assistance  
39 Association. All health maintenance organizations authorized to  
40 transact business in this State shall be and remain members of the  
41 association as a condition of their authority to transact business in this  
42 State. The association shall perform its functions under the plan of  
43 operation established and approved pursuant to section 10 of this act  
44 and shall exercise its powers through a board of directors established  
45 pursuant to section 7 of this act. The association shall be supervised  
46 by the commissioner and is subject to the provisions of this act.



1       6. a. For purposes of administration and assessment, the New  
2 Jersey Insolvent Health Maintenance Organization Assistance Fund is  
3 created, and shall be held in trust and maintained by the association as  
4 provided in this act for the purposes specified in this act.

5       b. The New Jersey Insolvent Health Maintenance Organization  
6 Assistance Fund is created as a limited purpose trust fund consisting  
7 of not more than \$100,000,000 as follows:

8       (1) \$50,000,000 to be deposited in the fund pursuant to section 17  
9 of this act; and

10       (2) an additional aggregate sum of not more than \$50,000,000  
11 collected through assessments over a three-year period as provided in  
12 section 9 of this act.

13       Moneys deposited in the fund pursuant to this section shall be  
14 deposited with the State Treasurer in the New Jersey Cash  
15 Management Fund established pursuant to section 1 of P.L.1977,  
16 c.281 (C.52:18A-90.4), pending disbursement for the payment of  
17 eligible claims as provided in this act.

18       c. Moneys deposited in the fund in accordance with this act shall  
19 be used by the association to pay eligible claims of the insolvent  
20 organizations and loss adjustment expenses associated with the claims,  
21 including the cost of claims adjudication.

22  
23       7. a. The board of directors of the association shall consist of not  
24 less than five nor more than nine members, who shall be representative  
25 of the member organizations, serving terms as established in the plan  
26 of operation. The members of the board of directors shall be selected  
27 by a vote of the member organizations, subject to the approval of the  
28 commissioner, with each member organization entitled to one vote.  
29 Vacancies on the board of directors shall be filled for the remaining  
30 period of the term in the same manner as the initial appointment.

31       b. To allow for the selection of the initial board of directors and  
32 the organization of the association, the commissioner shall give notice  
33 to all member organizations of the time and place of an organizational  
34 meeting no later than 30 days following the effective date of this act.  
35 If the member organizations have not selected a suitable board of  
36 directors no later than 30 days following the organizational meeting,  
37 the commissioner may appoint the initial members of the board of  
38 directors.

39       c. In approving or appointing members to the board of directors,  
40 the commissioner shall consider, among other things, whether all  
41 member organizations are fairly represented. No representative of an  
42 association member that is exempt or becomes exempt from  
43 assessments pursuant to subsection e. of section 9 of this act shall be  
44 eligible for membership or remain on the board.

45       d. Members of the board of directors may be reimbursed from the  
46 assets of the association for reasonable expenses incurred by them as

1 members of the board of directors, but shall not otherwise be  
2 compensated by the association for their services.

3

4 8. a. The maximum liability of the association for all coverage  
5 provided under this act shall be limited to the amount available from  
6 the New Jersey Insolvent Health Maintenance Organization Assistance  
7 Fund created in section 6 of this act.

8 b. If the association fails to act within a reasonable period of time,  
9 the commissioner shall have the powers and duties of the association  
10 provided by this act with respect to the insolvent organizations.

11 c. The commissioner shall, in consultation with the association,  
12 oversee the payment of eligible claims reimbursable pursuant to this  
13 act.

14 d. The association shall have standing to appear before any court  
15 in this State with jurisdiction over the insolvent organizations. That  
16 standing shall extend to all matters germane to the powers and duties  
17 of the association, including, but not limited to, the payment of eligible  
18 claims as provided for in this act. The association shall also have the  
19 right to appear or intervene before a court in another state with  
20 jurisdiction over the insolvent organizations or with jurisdiction over  
21 a third party against whom the association may have rights through  
22 subrogation of the organization's enrollees.

23 e. (1) Any person receiving payment for eligible claims under this  
24 act shall be deemed to have assigned the rights under, and any causes  
25 of action relating to, the covered health maintenance organization  
26 contract to the association to the extent of the payment received  
27 pursuant to this act, whether the payments are in full, or on account  
28 of, contractual obligations. The association may require an assignment  
29 to it of those rights and causes of action by any payee, policy or  
30 contract owner, beneficiary, member or enrollee as a condition  
31 precedent to the receipt of any right or payment conferred by this act  
32 upon that person.

33 (2) The subrogation rights of the association under this subsection  
34 shall have the same priority against the assets of the insolvent  
35 organization as that possessed by the person entitled to receive  
36 payment under this act.

37 (3) In addition to the rights of subrogation contained in  
38 paragraphs (1) and (2) of this subsection, the association shall have all  
39 common law rights of subrogation and any other equitable or legal  
40 remedy which would have been available to the insolvent organization  
41 or holder of a policy or contract with respect to that policy or  
42 contract.

43 f. The association may:

44 (1) enter into any contracts necessary or proper to carry out the  
45 provisions and purposes of this act;

46 (2) sue or be sued, including taking any legal actions including a

1 summary proceeding necessary or proper to recover any unpaid  
2 assessments imposed pursuant to section 9 of this act and to settle  
3 claims or potential claims against it;

4 (3) borrow money to effectuate the purposes of this act. Any  
5 notes or other evidence of indebtedness of the association not in  
6 default shall be legal investment for domestic insurers and may be  
7 carried as admitted assets;

8 (4) employ or retain persons necessary to handle the financial  
9 transactions of the association, and to perform other functions as are  
10 necessary or proper under this act, which may include, but shall not be  
11 limited to, the oversight of the adjudication of the claims of the  
12 insolvent organization in order to ensure conformance with subsection  
13 g. of this section and recommendations to the board with respect to  
14 any remedial action necessary for the adjudication of those claims; and

15 (5) take any legal action necessary to avoid payment of improper  
16 claims.

17 g. Claims shall be adjudicated in accordance with standard  
18 industry practice, subject to available documentation and information.  
19 The guidelines shall include, but shall not be limited to, the  
20 establishment of procedures to ensure that:

21 (1) the eligible claims or other obligations are paid in accordance  
22 with the contractual reimbursement rate payable by the insolvent  
23 organization to a covered individual or provider to whom the payment  
24 is to be made;

25 (2) claims submitted by providers or covered individuals for  
26 payment are for eligible services or benefits under the contract or  
27 policy issued by the insolvent organization, the persons receiving the  
28 eligible services or benefits were covered individuals, and the eligible  
29 services or benefits were rendered by an eligible provider;

30 (3) in the case of a provider not in the network of the insolvent  
31 association, any payment made to the provider in accordance with the  
32 provisions of section 15 of this act is made only on that portion of the  
33 payment due to the provider by the insolvent organization, net of any  
34 payment due under the insolvent organization's contract with the  
35 covered individual;

36 (4) eligible claims are paid in accordance with coordination of  
37 benefits regulations or contract provisions;

38 (5) no eligible claims are paid that are duplicative; and

39 (6) claims presented for payment are in compliance with the  
40 insolvent organization's utilization review requirements.

41 h. (1) At the discretion of the commissioner, the association shall  
42 employ the services of a consulting organization with expertise in the  
43 adjudication and payment of health benefits claims, other than an  
44 organization that is responsible for the payment of claims of the  
45 insolvent organizations pursuant to this act, to audit the adjudicated  
46 claims of the insolvent organization to determine whether they have

1 been adjudicated in accordance with subsection g. of this section. The  
2 consulting organization shall employ procedures for the audit  
3 consistent with industry standards and in accordance with standards  
4 established by the board and approved by the commissioner, to  
5 determine if the adjudication of the claims of the insolvent  
6 organizations meets the standards set forth in subsection g. of this  
7 section.

8 (2) The consulting organization shall recommend to the board and  
9 the commissioner any remedial measures that may be necessary to  
10 ensure the accurate and timely payment of eligible claims.

11 (3) The cost for the audit of claims provided for in this subsection  
12 shall be borne by the members of the association as provided for in the  
13 plan of operation and shall not exceed \$2,000,000, for which an  
14 assessment shall be made on each association member in proportion to  
15 the share its net premiums bear to the aggregate net premiums of all  
16 association members writing business in this State.

17

18 9. a. For the purpose of providing the funds necessary to carry  
19 out the powers and duties of the association, the board of directors  
20 shall assess the member organizations an aggregate amount not to  
21 exceed \$50,000,000, to be payable in installments, in a manner  
22 determined by the commissioner, and after notification to the board,  
23 over a period not to exceed three years, in amounts as may be  
24 sufficient to meet the periodic disbursements of the association as  
25 provided for in subsection b. of this section; provided, however, that  
26 the amount of the assessment for the twelve calendar months following  
27 the effective date of this act shall not be more than one-third of the  
28 aggregate assessment required to be paid pursuant to this subsection.  
29 Assessments shall be due not less than 30 days after prior written  
30 notice to the member organizations and shall accrue interest on and  
31 after the due date at the percentage of interest prescribed in the Rules  
32 Governing the Courts of the State of New Jersey for judgments,  
33 awards and orders for the payment of money.

34 b. Fund moneys as set forth in subsection b. of section 6 of this act  
35 shall be deposited in an account in the name of the fund in the New  
36 Jersey Cash Management Fund established pursuant to section 1 of  
37 P.L.1977, c.281 (C.5218A-90.4) and shall be disbursed by the State  
38 Treasurer from time to time as needed to pay eligible claims of the  
39 insolvent organizations, upon request of the commissioner, after  
40 notification to the commissioner by the board of the amount of the  
41 disbursement needed by the association to carry out its functions under  
42 this act. The funds so disbursed from the New Jersey Cash  
43 Management Fund shall be deposited in an account or accounts which  
44 are in the name of, and shall remain in the custody of, the association,  
45 and which account or accounts may be drawn upon as needed by a  
46 person designated to disburse funds of the association to covered

1 individuals and providers to pay the eligible claims of the insolvent  
2 organizations. Accounts shall be maintained in accordance with the  
3 "Governmental Unit Deposit Protection Act," P.L.1970, c.236  
4 (C.17:9-41 et seq.). Disbursements shall be made in the name of the  
5 association by a person authorized to disburse association funds to  
6 pay eligible claims, which disbursements shall be made in accordance  
7 with the plan of operation. The commissioner may direct the  
8 association to make an interim partial payment or payments on a pro  
9 rata basis to eligible providers or covered individuals of a portion of  
10 the aggregate eligible claims payable pursuant to this act, pending any  
11 future claims audit or other verification of the eligibility of a claim.  
12 The person authorized to disburse association funds to providers shall,  
13 in the case of such partial payment, notify the provider that the claim  
14 may be subject to retrospective verification or audit and all or part of  
15 the disbursement may be reclaimed as a result of the findings. The  
16 commissioner may also direct the association to make payment, interim  
17 or otherwise, for loss adjustment expenses, including claims  
18 adjudication.

19 c. Assessments against member organizations shall be made in the  
20 proportion that the net written premiums received on health  
21 maintenance organization business in this State by each assessed  
22 member organization for the most recent calendar year for which  
23 premium information is available preceding the year in which the  
24 assessment is made bears to such premiums received on total health  
25 maintenance organization business in this State for that calendar year  
26 by all assessed member organizations. The net written premium paid  
27 to enroll Medicaid recipients in a Medicaid-contracting health  
28 maintenance organization, New Jersey Kid Care and similar State-  
29 sponsored programs, and Medicare Plus Choice plans shall not be used  
30 to calculate any assessment under this subsection.

31 d. The amount of each member organization's assessment  
32 necessary to meet the requirements of the association with respect to  
33 the insolvent organizations under this act shall be determined annually  
34 as necessary to implement the purposes of this act, and shall be  
35 payable in accordance with subsection a. of this section.  
36 Computations of assessments under this section shall be made with a  
37 reasonable degree of accuracy, recognizing that exact determinations  
38 may not always be possible.

39 e. The association shall exempt, abate or defer, in whole or in  
40 part, the assessment of a member organization if, in the opinion of the  
41 commissioner, payment of the assessment would endanger the ability  
42 of the member organization to fulfill its contractual obligations or  
43 place the member organization in an unsafe or unsound financial  
44 condition. If an assessment against a member organization is  
45 exempted, abated or deferred, in whole or in part, the amount by  
46 which that assessment is exempted, abated or deferred shall be

1 assessed against the other member organizations in a manner  
2 consistent with the basis for assessments set forth in subsection c. of  
3 this section.

4 f. The board may provide in the plan of operation for a method of  
5 allocating funds among claims, whether relating to one or more  
6 insolvent organizations, when the funds available under this act as  
7 provided in subsection b. of section 6 of this act will be insufficient to  
8 cover anticipated eligible claims. If payment of an eligible claim or  
9 portion of a claim is delayed due to the insufficiency of funds available,  
10 the association shall not be required to pay, and shall have no liability  
11 to, any person for any interest or late charge for the period that the  
12 payment of that claim is delayed.

13 g. The board may, by an equitable method established in the plan  
14 of operation, refund to member organizations and the State in  
15 proportion to the contribution of each organization, the amount by  
16 which the assets of the fund exceed the amount the board, in  
17 accordance with subsection e. of section 10 of this act, with the  
18 concurrence of the commissioner, finds necessary to carry out the  
19 obligations of the association, including assets accruing from  
20 assignment, subrogation, net realized gains and income from  
21 investments.

22 h. In determining its schedule of charges or rates filed with the  
23 commissioner pursuant to subsection b. of section 8 of P.L.1973,  
24 c.337 (C.26:2J-8), or filed in accordance with any other law requiring  
25 such filing, no member organization shall include the amount paid or  
26 to be paid as assessments under this act, or any portion of that  
27 amount, unless the commissioner specifically determines after a  
28 separate filing by a member that exclusion of those assessments in  
29 determining its schedule of charges or rates will significantly and  
30 adversely affect the organization. Each member organization shall  
31 annually file a certification to the commissioner that demonstrates  
32 compliance with this subsection.

33 i. The association shall issue to each organization paying an  
34 assessment pursuant to this act a certificate of contribution, in a form  
35 and manner prescribed by the commissioner, for the amount of the  
36 assessment so paid. All outstanding certificates shall be of equal  
37 dignity and priority without reference to amount or date of issue. A  
38 certificate of contribution may be shown by the organization in its  
39 financial statement as an asset in that form and manner and for the  
40 amount and period of time as the commissioner may approve.

41  
42 10. a. (1) The association shall submit to the commissioner a plan  
43 of operation, and any amendments thereto, necessary or suitable to  
44 assure the fair, reasonable and equitable administration of the  
45 association and the fund. The plan of operation and any amendments  
46 thereto shall become effective upon the commissioner's written

1 approval or at the expiration of 30 days after submission if it has not  
2 been disapproved.

3 (2) If the association fails to submit a suitable plan of operation  
4 within 90 days following the effective date of this act, or if at any time  
5 thereafter the association fails to submit suitable amendments to the  
6 plan, the commissioner shall adopt a plan, or amendments as  
7 necessary, to implement the provisions of this act. The plan or  
8 amendments shall continue in force until modified by the commissioner  
9 or superseded by a plan submitted by the association and approved by  
10 the commissioner.

11 b. All member organizations shall comply with the plan of  
12 operation.

13 c. The plan of operation shall, in addition to any other  
14 requirements specified in this act:

15 (1) establish procedures for handling the assets of the association,  
16 in accordance with the provisions of this act;

17 (2) establish the method of reimbursing members of the board of  
18 directors under subsection d. of section 7 of this act:

19 (3) establish regular places and times for meetings, including  
20 telephone conference calls, of the board of directors;

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

23 (5) establish procedures for selecting members of the board of  
24 directors and submitting their names to the commissioner;

25 (6) establish any additional procedures for the imposition of  
26 assessments under section 9 of this act; and

27 (7) contain additional provisions necessary or proper for the  
28 execution of the powers and duties of the association.

29 d. The plan of operation may provide for the delegation of any or  
30 all powers and duties of the association, except those set forth in  
31 paragraph (3) of subsection e. of section 8 and section 9 of this act, to  
32 a corporation, association or other organization which performs or will  
33 perform functions similar to those of the association, or its equivalent,  
34 in two or more other states. Such a corporation, association or  
35 organization shall be reimbursed for any payments made on behalf of  
36 the association and shall be paid for its performance of any function of  
37 the association. A delegation under this subsection shall take effect  
38 only with the approval of both the board of directors and the  
39 commissioner, and may be made only to a corporation, association or  
40 organization which extends protection not substantially less favorable  
41 or effective than that provided by this act.

42 e. The plan of operation shall provide for the orderly cessation of  
43 activity by the association upon the exhaustion of monies in the New  
44 Jersey Insolvent Health Maintenance Organization Assistance Fund  
45 created in section 6 of this act, or upon the completion of the payment  
46 of eligible claims by the association pursuant to this act, whichever is

1 earlier. Any moneys remaining in the fund upon the cessation of  
2 activity by the association shall be distributed to the State and to  
3 member organizations in proportion to their contributions to the fund  
4 pursuant to sections 6 and 9 of this act.

5 f. Moneys that are available or become available from the  
6 insolvent organization shall be used to make pro rata refunds to  
7 member organizations and the State, as appropriate, for the  
8 contractual obligations of the insolvent organizations paid by the  
9 association pursuant to this act, in accordance with and subject to the  
10 provisions of the "Life and Health Insurers Rehabilitation and  
11 Liquidation Act," P.L.1992, c.65 (C.17B:32-31 et. seq.).

12  
13 11. a. In addition to the duties and powers enumerated elsewhere  
14 in this act, the commissioner shall, upon request of the board of  
15 directors, provide the association with a statement of the net written  
16 premiums received in this State and any other appropriate states for  
17 each member organization.

18 b. The commissioner may suspend or revoke, after notice and  
19 hearing, the certificate of authority to transact business in this State of  
20 any member organization which fails to pay an assessment when due  
21 or fails to comply with the plan of operation. As an alternative, the  
22 commissioner may levy a penalty on any member organization which  
23 fails to pay an assessment when due. That penalty shall not exceed  
24 five percent of the unpaid assessment per month, but no penalty shall  
25 be less than \$100 per month.

26 c. Any action of the board of directors or the association may be  
27 appealed to the commissioner by a member organization if that appeal  
28 is taken within 30 days from the final action being appealed. If a  
29 member organization is appealing an assessment, the amount assessed  
30 shall be paid to the association and made available to meet association  
31 obligations during the pendency of an appeal. If the appeal of an  
32 assessment is upheld, the amount paid in error or excess shall be  
33 returned to the member organization. Any determination of an appeal  
34 from an action of the board of directors shall be subject to review by  
35 the commissioner on the record below, and shall not be considered a  
36 contested case under the "Administrative Procedure Act," P.L.1968,  
37 c.410 (C.52:14B-1 et seq.). The commissioner's determination shall  
38 be a final agency decision subject to review by the Appellate Division  
39 of Superior Court.

40  
41 12. a. A member organization shall be allowed a credit against the  
42 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),  
43 in an amount equal to 50 % of an assessment for which a certificate of  
44 contribution has been issued pursuant to subsection h. of section 9 of  
45 this act. One-fifth of that credit amount may be applied against the  
46 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)



1 for each of the five privilege periods beginning on or after the third  
2 calendar year commencing after the assessment was paid, provided  
3 however that no member organization may reduce that tax liability  
4 pursuant to this section by more than 20% of the amount (determined  
5 without regard to any other credits allowed pursuant to law) otherwise  
6 due for a privilege period. If a member organization should cease  
7 doing business in this State, any credit amounts not yet applied against  
8 its liability may be applied against its liability for tax imposed pursuant  
9 to section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period  
10 that it ceases to do business in this State.

11 b. Any sums that are acquired by a member organization as the  
12 result of a refund from the association pursuant to subsection f. of  
13 section 9 of this act are deemed to be assessment amounts for which  
14 a credit was allowed pursuant to subsection a. of this section. If the  
15 member organization has applied any amounts of the credit allowed  
16 pursuant to subsection a. of this section, then 50% of the amount of  
17 any refund shall be paid by the member organization to the State as the  
18 Director of the Division of Taxation in the Department of the Treasury  
19 may require until the amounts paid equal the amounts applied as  
20 credit. The association shall notify the commissioner and the director  
21 of any refunds made.

22

23 13. a. The association shall be subject to examination and  
24 regulation by the commissioner. The board of directors shall submit  
25 to the commissioner each year, not later than 120 days after the close  
26 of the association's fiscal year, a financial report in a form approved by  
27 the commissioner and a report of its activities during the preceding  
28 fiscal year.

29 b. The commissioner shall report annually to the Chairman and the  
30 Ranking Minority member of the Assembly Appropriations Committee  
31 and the Chairman and the Ranking Minority member of the Senate  
32 Budget and Appropriations Committee regarding the administration of  
33 the fund , including the status of pending litigation, the amount of  
34 claims made and the amount of any distributions on those claims, as  
35 well as the effects of the assessments under this act on the operations  
36 of member organizations.

37

38 14. The association shall be exempt from the payment of all fees  
39 and all taxes levied by this State or any of its subdivisions, except  
40 those levied on real property.

41

42 15. As a condition of receiving payment directly from the  
43 association for an eligible claim against an insolvent organization, a  
44 provider shall agree to forgive that organization of one-third of the  
45 unpaid contractual obligation incurred prior to insolvency, which  
46 would otherwise be paid by the organization had it not been insolvent.

1 The foregoing shall not apply to any portion of an eligible claim owed  
2 to a provider by another insurer, health maintenance organization, or  
3 other payer through a coordination of benefits provision. The  
4 association is not bound by an assignment of benefits executed with  
5 respect to the coverage provided by the insolvent organization. The  
6 association may aggregate all eligible claims owed providers when  
7 negotiating direct payment of eligible claims of all covered individuals.  
8

9 16. There shall be no liability on the part of, and no cause of  
10 action of any nature shall arise against, any member organization or its  
11 agents or employees, the association or its agents or employees, or the  
12 commissioner or his representatives, for any action or omission by  
13 them in the performance of their powers and duties under this act.  
14

15 17. There is appropriated \$50,000,000 from the payments made  
16 by the tobacco manufacturers pursuant to the settlement agreement  
17 entered into by the tobacco manufacturers and the State on November  
18 23, 1998 that resolved the State's pending claim against the tobacco  
19 industry to the Department of Banking and Insurance for deposit in the  
20 New Jersey Insolvent Health Maintenance Organization Assistance  
21 Fund for the purposes of that fund as provided in this act. If the State  
22 Treasurer deems it necessary, he may advance from the General Fund  
23 those monies appropriated by this section to the Department of  
24 Banking and Insurance for deposit in the New Jersey Insolvent Health  
25 Maintenance Organization Assistance Fund. Those monies advanced  
26 pursuant to this section shall be reimbursed from the payments made  
27 by the tobacco manufacturers pursuant to the settlement agreement  
28 entered into by the tobacco manufacturers and the State on November  
29 23, 1998 that resolved the State's pending claim against the tobacco  
30 industry.  
31

32 18. The commissioner shall promulgate such rules and regulations  
33 as may be necessary to effectuate the purposes of this act.  
34

35 19. This act shall take effect immediately and shall apply only to  
36 the insolvency of HIP Health Plan of New Jersey, Inc. and American  
37 Preferred Provider Plan, Inc.

STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 1890 and 1605**

with Assembly Floor Amendments  
(Proposed By Assemblyman BATEMAN)

ADOPTED: FEBRUARY 24, 2000

These floor amendments make this committee substitute identical to Senate Bill No. 1046.

In addition to certain technical amendments, specifically, these amendments: (1) provide for payment for eligible services or benefits under a covered health maintenance organization contract on an equitable basis; (2) clarify certain provisions of the claims adjudication process with respect to utilization review and payment to out-of-network providers; and (3) clarify that a provider is not precluded under the bill from collecting moneys owing to the provider from a self-insured benefit plan that contracted with an insolvent organization to pay claims on an administrative services only basis.

[First Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 1890 and 1605**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

---

ADOPTED FEBRUARY 7, 2000

**Sponsored by:**

**Assemblyman CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Assemblyman JOSEPH V. DORIA, JR.**

**District 31 (Hudson)**

**Assemblyman NICHOLAS R. FELICE**

**District 40 (Bergen and Passaic)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Co-Sponsored by:**

**Assemblymen Thompson, Augustine, Conaway, Jones, LeFevre, Senators  
Sinagra, Cardinale, Codey and Robertson**

**SYNOPSIS**

Provides for payment of certain individual and provider claims against HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.; appropriates \$50,000,000 from the tobacco settlement proceeds.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on February 24, 2000.

(Sponsorship Updated As Of: 3/24/2000)

1 AN ACT concerning the insolvency of certain health maintenance  
2 organizations and making an appropriation.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Insolvent Health Maintenance Organization Assistance Fund Act of  
9 2000."

10

11 2. The purpose of this act is to protect, subject to certain  
12 limitations, covered individuals and providers against the failure or  
13 inability of HIP Health Plan of New Jersey, Inc. and American  
14 Preferred Provider Plan, Inc. to perform certain contractual obligations  
15 due to their insolvency. The act creates a funding mechanism and  
16 authorizes this funding mechanism to pay certain unpaid contractual  
17 obligations of these insolvent health maintenance organizations  
18 incurred prior to the date of their insolvency. In addition, providers  
19 of health care services must agree to forgive one-third of those unpaid  
20 contractual obligations due them to receive payment from the funding  
21 mechanism.

22

23 This act is intended to provide only limited coverage of claims  
24 against HIP Health Plan of New Jersey, Inc. and American Preferred  
25 Provider Plan, Inc. This act is not intended to provide coverage for  
26 claims of creditors other than those of covered individuals or  
27 providers.

27

28 3. As used in this act:

29

30 "Association" means the New Jersey Insolvent Health Maintenance  
31 Organization Assistance Association created by section 5 of this act.

31

32 "Commissioner" means the Commissioner of Banking and  
33 Insurance.

33

34 "Contractual obligation" means an obligation, arising from an  
35 agreement, policy, certificate or evidence of coverage, to a covered  
36 individual or provider incurred prior to the declaration of insolvency  
37 of a covered health maintenance organization that remains unpaid at  
38 the time of its insolvency, but does not include claims by former  
39 employees, including medical professional employees for deferred  
40 compensation, severance, vacation or other employment benefits.

40

41 "Covered health maintenance organization contract" means a  
42 policy, certificate, evidence of coverage or contract for health care  
services issued in New Jersey by HIP Health Plan of New Jersey, Inc.

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

**<sup>1</sup> Assembly floor amendments adopted February 24, 2000.**

1 or American Preferred Provider Plan, Inc., but shall not include any  
2 contract with an employer or other person to provide health care  
3 benefits on an administrative services only basis.

4 "Covered individual" means an enrollee or member of HIP Health  
5 Plan of New Jersey, Inc. or American Preferred Provider Plan, Inc.

6 "Department" means Department of Banking and Insurance.

7 "Eligible claim" means a claim for a covered service or benefit  
8 under a contract or policy issued by an insolvent health maintenance  
9 organization and provided by a provider or to a covered individual  
10 prior to the declaration of insolvency of an insolvent organization, but  
11 shall not include any claim filed after the claims bar date established by  
12 the Superior Court of New Jersey supervising the insolvent  
13 organizations.

14 "Fund" means the New Jersey Insolvent Health Maintenance  
15 Organization Assistance Fund created pursuant to section 6 of this act.

16 "Insolvent organization" means HIP Health Plan of New Jersey,  
17 Inc. or American Preferred Provider Plan, Inc.

18 "Member organization" means a person who holds a certificate of  
19 authority to operate a health maintenance organization pursuant to  
20 P.L.1973, c.337 (C.26:2J-1 et seq.), and includes any person whose  
21 certificate of authority has been suspended, revoked or nonrenewed.

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

25 "Provider" means a physician, hospital or other person which is  
26 licensed or otherwise authorized by this State, or licensed or otherwise  
27 authorized under similar laws of another state, to provide health care  
28 services, and which provided health care services to covered  
29 individuals. As used in this act, provider also includes persons who  
30 incurred a contractual obligation as defined by this act by providing  
31 home health care services, durable medical equipment, physical  
32 therapy services, medical transportation, ambulance services or  
33 laboratory services to covered individuals.

34  
35 4. This act shall provide payment for eligible services or benefits  
36 under a covered health maintenance <sup>1</sup>[association] organization<sup>1</sup>  
37 contract <sup>1</sup>on an equitable basis<sup>1</sup> to any covered individual or provider  
38 who is entitled to receive payment from HIP Health Plan of New  
39 Jersey, Inc. and American Preferred Provider Plan, Inc. for an eligible  
40 claim that remains unpaid.

41  
42 5. There is created a nonprofit legal entity to be known as the  
43 New Jersey Insolvent Health Maintenance Organization Assistance  
44 Association. All health maintenance organizations authorized to  
45 transact business in this State shall be and remain members of the  
46 association as a condition of their authority to transact business in this

1 State. The association shall perform its functions under the plan of  
2 operation established and approved pursuant to section 10 of this act  
3 and shall exercise its powers through a board of directors established  
4 pursuant to section 7 of this act. The association shall be supervised  
5 by the commissioner and is subject to the provisions of this act.

6

7 6. a. For purposes of administration and assessment, the New  
8 Jersey Insolvent Health Maintenance Organization Assistance Fund is  
9 created, and shall be held in trust and maintained by the association as  
10 provided in this act for the purposes specified in this act.

11 b. The New Jersey Insolvent Health Maintenance Organization  
12 Assistance Fund is created as a limited purpose trust fund consisting  
13 of not more than \$100,000,000 as follows:

14 (1) \$50,000,000 to be deposited in the fund pursuant to section 17  
15 of this act; and

16 (2) an additional aggregate sum of not more than \$50,000,000  
17 collected through assessments over a three-year period as provided in  
18 section 9 of this act.

19 Moneys deposited in the fund pursuant to this section shall be  
20 deposited with the State Treasurer in the <sup>1</sup>State of<sup>1</sup> New Jersey Cash  
21 Management Fund established pursuant to section 1 of P.L.1977,  
22 c.281 (C.52:18A-90.4), pending disbursement for the payment of  
23 eligible claims as provided in this act.

24 c. Moneys deposited in the fund in accordance with this act shall  
25 be used by the association to pay eligible claims of the insolvent  
26 organizations and loss adjustment expenses associated with the claims,  
27 including the cost of claims adjudication.

28

29 7. a. The board of directors of the association shall consist of not  
30 less than five nor more than nine members, who shall be representative  
31 of the member organizations, serving terms as established in the plan  
32 of operation. The members of the board of directors shall be selected  
33 by a vote of the member organizations, subject to the approval of the  
34 commissioner, with each member organization entitled to one vote.  
35 Vacancies on the board of directors shall be filled for the remaining  
36 period of the term in the same manner as the initial appointment.

37 b. To allow for the selection of the initial board of directors and  
38 the organization of the association, the commissioner shall give notice  
39 to all member organizations of the time and place of an organizational  
40 meeting no later than 30 days following the effective date of this act.  
41 If the member organizations have not selected a suitable board of  
42 directors no later than 30 days following the organizational meeting,  
43 the commissioner may appoint the initial members of the board of  
44 directors.

45 c. In approving or appointing members to the board of directors,  
46 the commissioner shall consider, among other things, whether all

1 member organizations are fairly represented. No representative of an  
2 association member that is exempt or becomes exempt from  
3 assessments pursuant to subsection e. of section 9 of this act shall be  
4 eligible for membership or remain on the board.

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

9  
10 8. a. The maximum liability of the association for all coverage  
11 provided under this act shall be limited to the amount available from  
12 the New Jersey Insolvent Health Maintenance Organization Assistance  
13 Fund created in section 6 of this act.

14 b. If the association fails to act within a reasonable period of time,  
15 the commissioner shall have the powers and duties of the association  
16 provided by this act with respect to the insolvent organizations.

17 c. The commissioner shall, in consultation with the association,  
18 oversee the payment of eligible claims reimbursable pursuant to this  
19 act.

20 d. The association shall have standing to appear before any court  
21 in this State with jurisdiction over the insolvent organizations. That  
22 standing shall extend to all matters germane to the powers and duties  
23 of the association, including, but not limited to, the payment of eligible  
24 claims as provided for in this act. The association shall also have the  
25 right to appear or intervene before a court in another state with  
26 jurisdiction over the insolvent organizations or with jurisdiction over  
27 a third party against whom the association may have rights through  
28 subrogation of the organization's enrollees.

29 e. (1) Any person receiving payment for eligible claims under this  
30 act shall be deemed to have assigned the rights under, and any causes  
31 of action relating to, the covered health maintenance organization  
32 contract to the association to the extent of the payment received  
33 pursuant to this act, whether the payments are in full, or on account  
34 of, contractual obligations. The association may require an assignment  
35 to it of those rights and causes of action by any payee, policy or  
36 contract owner, beneficiary, member or enrollee as a condition  
37 precedent to the receipt of any right or payment conferred by this act  
38 upon that person.

39 (2) The subrogation rights of the association under this subsection  
40 shall have the same priority against the assets of the insolvent  
41 organization as that possessed by the person entitled to receive  
42 payment under this act.

43 (3) In addition to the rights of subrogation contained in  
44 paragraphs (1) and (2) of this subsection, the association shall have all  
45 common law rights of subrogation and any other equitable or legal  
46 remedy which would have been available to the insolvent organization



1 or holder of a policy or contract with respect to that policy or  
2 contract.

3 f. The association may:

4 (1) enter into any contracts necessary or proper to carry out the  
5 provisions and purposes of this act;

6 (2) sue or be sued, including taking any legal actions including a  
7 summary proceeding necessary or proper to recover any unpaid  
8 assessments imposed pursuant to section 9 of this act and to settle  
9 claims or potential claims against it;

10 (3) borrow money to effectuate the purposes of this act. Any  
11 notes or other evidence of indebtedness of the association not in  
12 default shall be legal investment for domestic insurers and may be  
13 carried as admitted assets;

14 (4) employ or retain persons necessary to handle the financial  
15 transactions of the association, and to perform other functions as are  
16 necessary or proper under this act, which may include, but shall not be  
17 limited to, the oversight of the adjudication of the claims of the  
18 insolvent organization in order to ensure conformance with subsection  
19 g. of this section and recommendations to the board with respect to  
20 any remedial action necessary for the adjudication of those claims; and

21 (5) take any legal action necessary to avoid payment of improper  
22 claims.

23 g. Claims shall be adjudicated in accordance with standard  
24 industry practice, subject to available documentation and information.  
25 The guidelines shall include, but shall not be limited to, the  
26 establishment of procedures to ensure that:

27 (1) the eligible claims or other obligations are paid in accordance  
28 with the contractual reimbursement rate payable by the insolvent  
29 organization to a covered individual or provider to whom the payment  
30 is to be made;

31 (2) claims submitted by providers or covered individuals for  
32 payment are for eligible services or benefits under the contract or  
33 policy issued by the insolvent organization, the persons receiving the  
34 eligible services or benefits were covered individuals, and the eligible  
35 services or benefits were rendered by an eligible provider;

36 (3) in the case of a provider not in the network of the insolvent  
37 <sup>1</sup>[association] organization<sup>1</sup>, any payment made to the provider in  
38 accordance with the provisions of section 15 of this act is made <sup>1</sup>on  
39 the basis of reasonable and customary reimbursement and shall not be  
40 made at a rate that is disproportionate to the reimbursement rates  
41 applicable to network providers; and is made<sup>1</sup> only on that portion of  
42 the payment due to the provider by the insolvent organization, net of  
43 any <sup>1</sup>coinsurance<sup>1</sup> payment due under the insolvent organization's  
44 contract with the covered individual;

45 (4) eligible claims are paid in accordance with coordination of  
46 benefits regulations or contract provisions;

1 (5) no eligible claims are paid that are duplicative; and

2 (6) claims presented for payment are in compliance with the  
3 insolvent organization's utilization review requirements. <sup>1</sup>Claims shall  
4 be deemed to be in compliance with respect to benefits or services  
5 reviewed by a representative that regularly conducted utilization  
6 review on behalf of the insolvent organization on the site of a provider  
7 prior to the date of insolvency.<sup>1</sup>

8 h. (1) At the discretion of the commissioner, the association shall  
9 employ the services of a consulting organization with expertise in the  
10 adjudication and payment of health benefits claims, other than an  
11 organization that is responsible for the payment of claims of the  
12 insolvent organizations pursuant to this act, to audit the adjudicated  
13 claims of the insolvent organization <sup>1</sup>payable by the association  
14 pursuant to this act<sup>1</sup> to determine whether they have been adjudicated  
15 in accordance with subsection g. of this section. The consulting  
16 organization shall employ procedures for the audit consistent with  
17 industry standards and in accordance with standards established by the  
18 board and approved by the commissioner, to determine if the  
19 adjudication of the claims of the insolvent organizations <sup>1</sup>payable by  
20 the association pursuant to this act<sup>1</sup> meets the standards set forth in  
21 subsection g. of this section.

22 (2) The consulting organization shall recommend to the board and  
23 the commissioner any remedial measures that may be necessary to  
24 ensure the accurate and timely payment of eligible claims.

25 (3) The cost for the audit of claims provided for in this subsection  
26 shall be borne by the members of the association as provided for in the  
27 plan of operation and shall not exceed \$2,000,000, for which an  
28 assessment shall be made on each association member <sup>1</sup>that is required  
29 to pay an assessment pursuant to section 9 of this act<sup>1</sup> in proportion  
30 to the share its net premiums bear to the aggregate net premiums of all  
31 association members writing business in this State.

32  
33 9. a. For the purpose of providing the funds necessary to carry  
34 out the powers and duties of the association, the board of directors  
35 shall assess the member organizations an aggregate amount not to  
36 exceed \$50,000,000, to be payable in installments, in a manner  
37 determined by the commissioner, and after notification to the board,  
38 over a period not to exceed three years, in amounts as may be  
39 sufficient to meet the periodic disbursements of the association as  
40 provided for in subsection b. of this section; provided, however, that  
41 the amount of the assessment for the twelve calendar months following  
42 the effective date of this act shall not be more than one-third of the  
43 aggregate assessment required to be paid pursuant to this subsection.  
44 Assessments shall be due not less than 30 days after prior written  
45 notice to the member organizations and shall accrue interest on and  
46 after the due date at the percentage of interest prescribed in the Rules

1 Governing the Courts of the State of New Jersey for judgments,  
2 awards and orders for the payment of money.

3 b. Fund moneys as set forth in subsection b. of section 6 of this act  
4 shall be deposited in an account in the name of the fund in the <sup>1</sup>State  
5 of<sup>1</sup> New Jersey Cash Management Fund established pursuant to  
6 section 1 of P.L.1977, c.281 (C.52:18A-90.4) and shall be disbursed  
7 by the State Treasurer from time to time as needed to pay eligible  
8 claims of the insolvent organizations, upon request of the  
9 commissioner, after notification to the commissioner by the board of  
10 the amount of the disbursement needed by the association to carry out  
11 its functions under this act. The funds so disbursed from the <sup>1</sup>State  
12 of<sup>1</sup> New Jersey Cash Management Fund shall be deposited in an  
13 account or accounts which are in the name of, and shall remain in the  
14 custody of, the association, and which account or accounts may be  
15 drawn upon as needed by a person designated to disburse funds of the  
16 association to covered individuals and providers to pay the eligible  
17 claims of the insolvent organizations. Accounts shall be maintained in  
18 accordance with the "Governmental Unit Deposit Protection Act,"  
19 P.L.1970, c.236 (C.17:9-41 et seq.). Disbursements shall be made in  
20 the name of the association by a person authorized to disburse  
21 association funds to pay eligible claims, which disbursements shall be  
22 made in accordance with the plan of operation. The commissioner  
23 may direct the association to make an interim partial payment or  
24 payments on a pro rata basis to eligible providers or covered  
25 individuals of a portion of the aggregate eligible claims payable  
26 pursuant to this act, pending any future claims audit or other  
27 verification of the eligibility of a claim. The person authorized to  
28 disburse association funds to providers shall, in the case of such partial  
29 payment, notify the provider that the claim may be subject to  
30 retrospective verification or audit and all or part of the disbursement  
31 may be reclaimed as a result of the findings. The commissioner may  
32 also direct the association to make payment, interim or otherwise, for  
33 loss adjustment expenses, including claims adjudication.

34 c. Assessments against member organizations shall be made in the  
35 proportion that the net written premiums received on health  
36 maintenance organization business in this State by each assessed  
37 member organization for the most recent calendar year for which  
38 premium information is available preceding the year in which the  
39 assessment is made bears to such premiums received on total health  
40 maintenance organization business in this State for that calendar year  
41 by all assessed member organizations. The net written premium paid  
42 to enroll Medicaid recipients in a Medicaid-contracting health  
43 maintenance organization, New Jersey Kid Care and similar State-  
44 sponsored programs, and Medicare Plus Choice plans shall not be used  
45 to calculate any assessment under this subsection.

46 d. The amount of each member organization's assessment

1 necessary to meet the requirements of the association with respect to  
2 the insolvent organizations under this act shall be determined annually  
3 as necessary to implement the purposes of this act, and shall be  
4 payable in accordance with subsection a. of this section.  
5 Computations of assessments under this section shall be made with a  
6 reasonable degree of accuracy, recognizing that exact determinations  
7 may not always be possible.

8 e. The association shall exempt, abate or defer, in whole or in  
9 part, the assessment of a member organization if, in the opinion of the  
10 commissioner, payment of the assessment would endanger the ability  
11 of the member organization to fulfill its contractual obligations or  
12 place the member organization in an unsafe or unsound financial  
13 condition. If an assessment against a member organization is  
14 exempted, abated or deferred, in whole or in part, the amount by  
15 which that assessment is exempted, abated or deferred shall be  
16 assessed against the other member organizations in a manner  
17 consistent with the basis for assessments set forth in subsection c. of  
18 this section.

19 f. The board may provide in the plan of operation for a method of  
20 allocating funds among claims, whether relating to one or more  
21 insolvent organizations, when the funds available under this act as  
22 provided in subsection b. of section 6 of this act will be insufficient to  
23 cover anticipated eligible claims. If payment of an eligible claim or  
24 portion of a claim is delayed due to the insufficiency of funds available,  
25 the association shall not be required to pay, and shall have no liability  
26 to, any person for any interest or late charge for the period that the  
27 payment of that claim is delayed.

28 g. The board may, by an equitable method established in the plan  
29 of operation, refund to member organizations and the State in  
30 proportion to the contribution of each organization, the amount by  
31 which the assets of the fund exceed the amount the board, in  
32 accordance with subsection e. of section 10 of this act, with the  
33 concurrence of the commissioner, finds necessary to carry out the  
34 obligations of the association, including assets accruing from  
35 assignment, subrogation, net realized gains and income from  
36 investments.

37 h. In determining its schedule of charges or rates filed with the  
38 commissioner pursuant to subsection b. of section 8 of P.L.1973,  
39 c.337 (C.26:2J-8), or filed in accordance with any other law requiring  
40 such filing, no member organization shall include the amount paid or  
41 to be paid as assessments under this act, or any portion of that  
42 amount, unless the commissioner specifically determines after a  
43 separate filing by a member that exclusion of those assessments in  
44 determining its schedule of charges or rates will significantly and  
45 adversely affect the organization. Each member organization shall  
46 annually file a certification to the commissioner that demonstrates

1 compliance with this subsection.

2 i. The association shall issue to each organization paying an  
3 assessment pursuant to this act a certificate of contribution, in a form  
4 and manner prescribed by the commissioner, for the amount of the  
5 assessment so paid. All outstanding certificates shall be of equal  
6 dignity and priority without reference to amount or date of issue. A  
7 certificate of contribution may be shown by the organization in its  
8 financial statement as an asset in that form and manner and for the  
9 amount and period of time as the commissioner may approve.

10

11 10. a. (1) The association shall submit to the commissioner a plan  
12 of operation, and any amendments thereto, necessary or suitable to  
13 assure the fair, reasonable and equitable administration of the  
14 association and the fund. The plan of operation and any amendments  
15 thereto shall become effective upon the commissioner's written  
16 approval or at the expiration of 30 days after submission if it has not  
17 been disapproved.

18 (2) If the association fails to submit a suitable plan of operation  
19 within 90 days following the effective date of this act, or if at any time  
20 thereafter the association fails to submit suitable amendments to the  
21 plan, the commissioner shall adopt a plan, or amendments as  
22 necessary, to implement the provisions of this act. The plan or  
23 amendments shall continue in force until modified by the commissioner  
24 or superseded by a plan submitted by the association and approved by  
25 the commissioner.

26 b. All member organizations shall comply with the plan of  
27 operation.

28 c. The plan of operation shall, in addition to any other  
29 requirements specified in this act:

30 (1) establish procedures for handling the assets of the association,  
31 in accordance with the provisions of this act;

32 (2) establish the method of reimbursing members of the board of  
33 directors under subsection d. of section 7 of this act:

34 (3) establish regular places and times for meetings, including  
35 telephone conference calls, of the board of directors;

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

38 (5) establish procedures for selecting members of the board of  
39 directors and submitting their names to the commissioner;

40 (6) establish any additional procedures for the imposition of  
41 assessments under section 9 of this act; and

42 (7) contain additional provisions necessary or proper for the  
43 execution of the powers and duties of the association.

44 d. The plan of operation may provide for the delegation of any or  
45 all powers and duties of the association, except those set forth in  
46 paragraph (3) of subsection e. of section 8 and section 9 of this act, to

1 a corporation, association or other organization which performs or will  
2 perform functions similar to those of the association, or its equivalent,  
3 in two or more other states. Such a corporation, association or  
4 organization shall be reimbursed for any payments made on behalf of  
5 the association and shall be paid for its performance of any function of  
6 the association. A delegation under this subsection shall take effect  
7 only with the approval of both the board of directors and the  
8 commissioner, and may be made only to a corporation, association or  
9 organization which extends protection not substantially less favorable  
10 or effective than that provided by this act.

11 e. The plan of operation shall provide for the orderly cessation of  
12 activity by the association upon the exhaustion of monies in the New  
13 Jersey Insolvent Health Maintenance Organization Assistance Fund  
14 created in section 6 of this act, or upon the completion of the payment  
15 of eligible claims by the association pursuant to this act, whichever is  
16 earlier. Any moneys remaining in the fund upon the cessation of  
17 activity by the association shall be distributed to the State and to  
18 member organizations in proportion to their contributions to the fund  
19 pursuant to sections 6 and 9 of this act.

20 f. Moneys that are available or become available from the  
21 insolvent organization shall be used to make pro rata refunds to  
22 member organizations and the State, as appropriate, for the  
23 contractual obligations of the insolvent organizations paid by the  
24 association pursuant to this act, in accordance with and subject to the  
25 provisions of the "Life and Health Insurers Rehabilitation and  
26 Liquidation Act," P.L.1992, c.65 (C.17B:32-31 et. seq.).  
27

28 11. a. In addition to the duties and powers enumerated elsewhere  
29 in this act, the commissioner shall, upon request of the board of  
30 directors, provide the association with a statement of the net written  
31 premiums received in this State and any other appropriate states for  
32 each member organization.

33 b. The commissioner may suspend or revoke, after notice and  
34 hearing, the certificate of authority to transact business in this State of  
35 any member organization which fails to pay an assessment when due  
36 or fails to comply with the plan of operation. As an alternative, the  
37 commissioner may levy a penalty on any member organization which  
38 fails to pay an assessment when due. That penalty shall not exceed  
39 five percent of the unpaid assessment per month, but no penalty shall  
40 be less than \$100 per month.

41 c. Any action of the board of directors or the association may be  
42 appealed to the commissioner by a member organization if that appeal  
43 is taken within 30 days from the final action being appealed. If a  
44 member organization is appealing an assessment, the amount assessed  
45 shall be paid to the association and made available to meet association  
46 obligations during the pendency of an appeal. If the appeal of an

1 assessment is <sup>1</sup>[upheld] successful<sup>1</sup>, the amount paid in error or  
2 excess shall be returned to the member organization. Any  
3 determination of an appeal from an action of the board of directors  
4 shall be subject to review by the commissioner on the record below,  
5 and shall not be considered a contested case under the "Administrative  
6 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The  
7 commissioner's determination shall be a final agency decision subject  
8 to review by the Appellate Division of Superior Court.

9  
10 12. a. A member organization shall be allowed a credit against the  
11 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),  
12 in an amount equal to 50 % of an assessment for which a certificate of  
13 contribution has been issued pursuant to subsection <sup>1</sup>[h.] i.<sup>1</sup> of section  
14 9 of this act. One-fifth of that credit amount may be applied against  
15 the tax imposed pursuant to section 5 of P.L.1945, c.162  
16 (C.54:10A-5) for each of the five privilege periods beginning on or  
17 after the third calendar year commencing after the assessment was  
18 paid, provided however<sup>1</sup>,<sup>1</sup> that no member organization may reduce  
19 that tax liability pursuant to this section by more than 20% of the  
20 amount (determined without regard to any other credits allowed  
21 pursuant to law) otherwise due for a privilege period. If a member  
22 organization should cease doing business in this State, any credit  
23 amounts not yet applied against its liability may be applied against its  
24 liability for tax imposed pursuant to section 5 of P.L.1945, c.162  
25 (C.54:10A-5) for the privilege period that it ceases to do business in  
26 this State.

27 b. Any sums that are acquired by a member organization as the  
28 result of a refund from the association pursuant to subsection <sup>1</sup>[f.] g.<sup>1</sup>  
29 of section 9 of this act are deemed to be assessment amounts for which  
30 a credit was allowed pursuant to subsection a. of this section. If the  
31 member organization has applied any amounts of the credit allowed  
32 pursuant to subsection a. of this section, then 50% of the amount of  
33 any refund shall be paid by the member organization to the State as the  
34 Director of the Division of Taxation in the Department of the Treasury  
35 may require until the amounts paid equal the amounts applied as  
36 credit. The association shall notify the commissioner and the director  
37 of any refunds made.

38  
39 13. a. The association shall be subject to examination and  
40 regulation by the commissioner. The board of directors shall submit  
41 to the commissioner each year, not later than 120 days after the close  
42 of the association's fiscal year, a financial report in a form approved by  
43 the commissioner and a report of its activities during the preceding  
44 fiscal year.

45 b. The commissioner shall report annually to the Chairman and the  
46 Ranking Minority member of the Assembly Appropriations Committee

1 and the Chairman and the Ranking Minority member of the Senate  
2 Budget and Appropriations Committee regarding the administration of  
3 the fund , including the status of pending litigation, the amount of  
4 claims made and the amount of any distributions on those claims, as  
5 well as the effects of the assessments under this act on the operations  
6 of member organizations.

7  
8 14. The association shall be exempt from the payment of all fees  
9 and all taxes levied by this State or any of its subdivisions, except  
10 those levied on real property.

11  
12 15. As a condition of receiving payment directly from the  
13 association for an eligible claim against an insolvent organization, a  
14 provider shall agree to forgive that organization of one-third of the  
15 unpaid contractual obligation incurred prior to insolvency, which  
16 would otherwise be paid by the organization had it not been insolvent.  
17 The foregoing shall not apply to any portion of an eligible claim owed  
18 to a provider by another insurer, health maintenance organization, or  
19 other payer through a coordination of benefits provision. The  
20 association is not bound by an assignment of benefits executed with  
21 respect to the coverage provided by the insolvent organization. The  
22 association may aggregate all eligible claims owed providers when  
23 negotiating direct payment of eligible claims of all covered individuals.  
24 <sup>1</sup>Nothing in this act shall be construed to preclude any provider from  
25 collecting moneys owing to the provider from a self-insured benefit  
26 plan that contracted with an insolvent organization to pay claims on an  
27 administrative services only basis.<sup>1</sup>

28  
29 16. There shall be no liability on the part of, and no cause of  
30 action of any nature shall arise against, any member organization or its  
31 agents or employees, the association or its agents or employees, or the  
32 commissioner or his representatives, for any action or omission by  
33 them in the performance of their powers and duties under this act.

34  
35 17. There is appropriated \$50,000,000 from the payments made  
36 by the tobacco manufacturers pursuant to the settlement agreement  
37 entered into by the tobacco manufacturers and the State on November  
38 23, 1998 that resolved the State's pending claim against the tobacco  
39 industry to the Department of Banking and Insurance for deposit in the  
40 New Jersey Insolvent Health Maintenance Organization Assistance  
41 Fund for the purposes of that fund as provided in this act. If the State  
42 Treasurer deems it necessary, he may advance from the General Fund  
43 those monies appropriated by this section to the Department of  
44 Banking and Insurance for deposit in the New Jersey Insolvent Health  
45 Maintenance Organization Assistance Fund. Those monies advanced  
46 pursuant to this section shall be reimbursed from the payments made



1 by the tobacco manufacturers pursuant to the settlement agreement  
2 entered into by the tobacco manufacturers and the State on  
3 November 23, 1998 that resolved the State's pending claim against the  
4 tobacco industry.

5

6 18. The commissioner shall promulgate such rules and regulations  
7 as may be necessary to effectuate the purposes of this act.

8

9 19. This act shall take effect immediately and shall apply only to  
10 the insolvency of HIP Health Plan of New Jersey, Inc. and American  
11 Preferred Provider Plan, Inc.

**LEGISLATIVE FISCAL ESTIMATE**  
**ASSEMBLY COMMITTEE SUBSTITUTE FOR**  
**ASSEMBLY, Nos. 1890 and 1605 (ACS)**  
**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

DATED: FEBRUARY 23, 2000

**SUMMARY**

- Synopsis:** Provides for payment of certain individual and provider claims against HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.; appropriates \$50,000,000 from the tobacco settlement proceeds.
- Type of Impact:** Appropriation from the tobacco settlement proceeds for deposit in the New Jersey Insolvent Health Maintenance Organization Assistance Fund; potential General Fund revenue loss due to corporation business tax credits.
- Agencies Affected:** Department of Banking and Insurance; Division of Taxation

**Office of Legislative Services Estimate**

<b>Fiscal Impact</b>	
<b>State Appropriation:</b>	\$50,000,000
<b>Tobacco Settlement Proceeds</b>	
<b>State Revenue: General Fund (Maximum over 10 years)</b>	(\$25,000,000)

- ! The bill appropriates \$50 million from the state's tobacco settlement proceeds and provides for an additional aggregate sum of not more than \$50 million to be collected through assessments on health maintenance organizations (HMO's) over a three-year period.
- ! HMO's may take a credit against their corporation business tax (CBT) liability of 50 percent of any assessment, spread equally over five years, subject to a maximum annual credit equal to 20 percent of CBT liability. Maximum state revenue loss over 10 years equals \$25 million.
- ! The bill establishes the New Jersey Insolvent Health Maintenance Organization Assistance Association, as a tax exempt, nonprofit legal entity authorized to transact business in this State. The association is primarily responsible for the management of the New Jersey Insolvent Health Maintenance Organization Assistance Fund, a limited purpose trust fund, consisting of not more than \$100 million.
- ! There are 19 active HMO's in New Jersey. However, according to informal information

obtained from the Department of Banking and Insurance, only 16 HMO's will be subject to the premium assessment because they have commercial premiums. The three remaining HMO's have Medicaid or Medicare premiums only and therefore will not be subject to the assessment, pursuant to the bill's provisions.

- ! The assessment of member organizations is based on their net written premiums received on HMO business in this State. The amount of each member organization's assessment shall be determined annually.

## **BILL DESCRIPTION**

The purpose of this bill is to protect, subject to certain limitations, covered individuals and providers against the failure or inability of HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc. to perform certain contractual obligations due to insolvency. The bill creates the New Jersey Insolvent Health Maintenance Organization Assistance Fund, a limited purpose trust fund, and authorizes the fund to pay certain unpaid contractual obligations of these health maintenance organizations incurred prior to the date of insolvency. In addition, providers of health care services must agree to forgive one-third of those unpaid contractual obligations due them to receive payment from the fund.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

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

The New Jersey Insolvent Health Maintenance Organization Assistance Fund is created as a limited purpose trust fund consisting of not more than \$100 million: \$50 million from the state's tobacco settlement proceeds; and an additional sum of not more than \$50 million to be collected through assessments on member HMO's over a three-year period. The bill makes an appropriation of \$50 million from the tobacco settlement proceeds and, if necessary, allows for a loan from the General Fund until tobacco settlement proceeds are available.

HMO's may take a credit against their corporation business tax (CBT) liability of 50 percent of any assessment, spread equally over five years, subject to a maximum annual credit equal to 20 percent of CBT liability. Maximum revenue loss over 10 years equals \$25 million. (See chart below for an illustrative example.)

<b>Office of Legislative Services Estimate (in \$ millions)</b>										
<b><u>YEARS</u></b>										
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
<b>HMO Assessments</b>	\$17	\$17	\$16							
<b>General Fund Revenue Loss:</b>										
<b>Year 1</b>				\$1.7	\$1.7	\$1.7	\$1.7	\$1.7		
<b>Year 2</b>					\$1.7	\$1.7	\$1.7	\$1.7	\$1.7	
<b>Year 3</b>						\$1.6	\$1.6	\$1.6	\$1.6	\$1.6
<b>Annual State Cost</b>				\$1.7	\$3.4	\$5.0	\$5.0	\$5.0	\$3.3	\$1.6

Section: *Commerce, Labor and Industry*

Analyst: *Kristen A. Calderon*  
*Assistant Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

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

Title 17B.  
Chapter 32B. (New)  
Insolvent Health  
Maintenance  
Organization  
Assistance  
§§1-16,18-  
C.17B:32B-1 to  
17B:32B-17  
§17 - Approp.  
§19 - Note to  
§§1-18

P.L. 2000, CHAPTER 12, *approved April 6, 2000*  
Assembly Committee Substitute (*First Reprint*) for  
Assembly Committee Substitute for  
Assembly, Nos. 1890 and 1605

1 **AN ACT** concerning the insolvency of certain health maintenance  
2 organizations and making an appropriation.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. This act shall be known and may be cited as the "New Jersey  
8 Insolvent Health Maintenance Organization Assistance Fund Act of  
9 2000."  
10

11 2. The purpose of this act is to protect, subject to certain  
12 limitations, covered individuals and providers against the failure or  
13 inability of HIP Health Plan of New Jersey, Inc. and American  
14 Preferred Provider Plan, Inc. to perform certain contractual obligations  
15 due to their insolvency. The act creates a funding mechanism and  
16 authorizes this funding mechanism to pay certain unpaid contractual  
17 obligations of these insolvent health maintenance organizations  
18 incurred prior to the date of their insolvency. In addition, providers  
19 of health care services must agree to forgive one-third of those unpaid  
20 contractual obligations due them to receive payment from the funding  
21 mechanism.

22 This act is intended to provide only limited coverage of claims  
23 against HIP Health Plan of New Jersey, Inc. and American Preferred  
24 Provider Plan, Inc. This act is not intended to provide coverage for  
25 claims of creditors other than those of covered individuals or  
26 providers.  
27

28 3. As used in this act:

29 "Association" means the New Jersey Insolvent Health Maintenance

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly floor amendments adopted February 24, 2000.

1 Organization Assistance Association created by section 5 of this act.  
2 "Commissioner" means the Commissioner of Banking and  
3 Insurance.

4 "Contractual obligation" means an obligation, arising from an  
5 agreement, policy, certificate or evidence of coverage, to a covered  
6 individual or provider incurred prior to the declaration of insolvency  
7 of a covered health maintenance organization that remains unpaid at  
8 the time of its insolvency, but does not include claims by former  
9 employees, including medical professional employees for deferred  
10 compensation, severance, vacation or other employment benefits.

11 "Covered health maintenance organization contract" means a  
12 policy, certificate, evidence of coverage or contract for health care  
13 services issued in New Jersey by HIP Health Plan of New Jersey, Inc.  
14 or American Preferred Provider Plan, Inc., but shall not include any  
15 contract with an employer or other person to provide health care  
16 benefits on an administrative services only basis.

17 "Covered individual" means an enrollee or member of HIP Health  
18 Plan of New Jersey, Inc. or American Preferred Provider Plan, Inc.

19 "Department" means Department of Banking and Insurance.

20 "Eligible claim" means a claim for a covered service or benefit  
21 under a contract or policy issued by an insolvent health maintenance  
22 organization and provided by a provider or to a covered individual  
23 prior to the declaration of insolvency of an insolvent organization, but  
24 shall not include any claim filed after the claims bar date established by  
25 the Superior Court of New Jersey supervising the insolvent  
26 organizations.

27 "Fund" means the New Jersey Insolvent Health Maintenance  
28 Organization Assistance Fund created pursuant to section 6 of this act.

29 "Insolvent organization" means HIP Health Plan of New Jersey,  
30 Inc. or American Preferred Provider Plan, Inc.

31 "Member organization" means a person who holds a certificate of  
32 authority to operate a health maintenance organization pursuant to  
33 P.L.1973, c.337 (C.26:2J-1 et seq.), and includes any person whose  
34 certificate of authority has been suspended, revoked or nonrenewed.

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

38 "Provider" means a physician, hospital or other person which is  
39 licensed or otherwise authorized by this State, or licensed or otherwise  
40 authorized under similar laws of another state, to provide health care  
41 services, and which provided health care services to covered  
42 individuals. As used in this act, provider also includes persons who  
43 incurred a contractual obligation as defined by this act by providing  
44 home health care services, durable medical equipment, physical  
45 therapy services, medical transportation, ambulance services or  
46 laboratory services to covered individuals.

1       4. This act shall provide payment for eligible services or benefits  
2 under a covered health maintenance <sup>1</sup>[association] organization<sup>1</sup>  
3 contract <sup>1</sup>on an equitable basis<sup>1</sup> to any covered individual or provider  
4 who is entitled to receive payment from HIP Health Plan of New  
5 Jersey, Inc. and American Preferred Provider Plan, Inc. for an eligible  
6 claim that remains unpaid.

7  
8       5. There is created a nonprofit legal entity to be known as the  
9 New Jersey Insolvent Health Maintenance Organization Assistance  
10 Association. All health maintenance organizations authorized to  
11 transact business in this State shall be and remain members of the  
12 association as a condition of their authority to transact business in this  
13 State. The association shall perform its functions under the plan of  
14 operation established and approved pursuant to section 10 of this act  
15 and shall exercise its powers through a board of directors established  
16 pursuant to section 7 of this act. The association shall be supervised  
17 by the commissioner and is subject to the provisions of this act.

18  
19       6. a. For purposes of administration and assessment, the New  
20 Jersey Insolvent Health Maintenance Organization Assistance Fund is  
21 created, and shall be held in trust and maintained by the association as  
22 provided in this act for the purposes specified in this act.

23       b. The New Jersey Insolvent Health Maintenance Organization  
24 Assistance Fund is created as a limited purpose trust fund consisting  
25 of not more than \$100,000,000 as follows:

26       (1) \$50,000,000 to be deposited in the fund pursuant to section 17  
27 of this act; and

28       (2) an additional aggregate sum of not more than \$50,000,000  
29 collected through assessments over a three-year period as provided in  
30 section 9 of this act.

31       Moneys deposited in the fund pursuant to this section shall be  
32 deposited with the State Treasurer in the <sup>1</sup>State of<sup>1</sup> New Jersey Cash  
33 Management Fund established pursuant to section 1 of P.L.1977,  
34 c.281 (C.52:18A-90.4), pending disbursement for the payment of  
35 eligible claims as provided in this act.

36       c. Moneys deposited in the fund in accordance with this act shall  
37 be used by the association to pay eligible claims of the insolvent  
38 organizations and loss adjustment expenses associated with the claims,  
39 including the cost of claims adjudication.

40  
41       7. a. The board of directors of the association shall consist of not  
42 less than five nor more than nine members, who shall be representative  
43 of the member organizations, serving terms as established in the plan  
44 of operation. The members of the board of directors shall be selected  
45 by a vote of the member organizations, subject to the approval of the  
46 commissioner, with each member organization entitled to one vote.

1 Vacancies on the board of directors shall be filled for the remaining  
2 period of the term in the same manner as the initial appointment.

3 b. To allow for the selection of the initial board of directors and  
4 the organization of the association, the commissioner shall give notice  
5 to all member organizations of the time and place of an organizational  
6 meeting no later than 30 days following the effective date of this act.  
7 If the member organizations have not selected a suitable board of  
8 directors no later than 30 days following the organizational meeting,  
9 the commissioner may appoint the initial members of the board of  
10 directors.

11 c. In approving or appointing members to the board of directors,  
12 the commissioner shall consider, among other things, whether all  
13 member organizations are fairly represented. No representative of an  
14 association member that is exempt or becomes exempt from  
15 assessments pursuant to subsection e. of section 9 of this act shall be  
16 eligible for membership or remain on the board.

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

21

22 8. a. The maximum liability of the association for all coverage  
23 provided under this act shall be limited to the amount available from  
24 the New Jersey Insolvent Health Maintenance Organization Assistance  
25 Fund created in section 6 of this act.

26 b. If the association fails to act within a reasonable period of time,  
27 the commissioner shall have the powers and duties of the association  
28 provided by this act with respect to the insolvent organizations.

29 c. The commissioner shall, in consultation with the association,  
30 oversee the payment of eligible claims reimbursable pursuant to this  
31 act.

32 d. The association shall have standing to appear before any court  
33 in this State with jurisdiction over the insolvent organizations. That  
34 standing shall extend to all matters germane to the powers and duties  
35 of the association, including, but not limited to, the payment of eligible  
36 claims as provided for in this act. The association shall also have the  
37 right to appear or intervene before a court in another state with  
38 jurisdiction over the insolvent organizations or with jurisdiction over  
39 a third party against whom the association may have rights through  
40 subrogation of the organization's enrollees.

41 e. (1) Any person receiving payment for eligible claims under this  
42 act shall be deemed to have assigned the rights under, and any causes  
43 of action relating to, the covered health maintenance organization  
44 contract to the association to the extent of the payment received  
45 pursuant to this act, whether the payments are in full, or on account  
46 of, contractual obligations. The association may require an assignment



1 to it of those rights and causes of action by any payee, policy or  
2 contract owner, beneficiary, member or enrollee as a condition  
3 precedent to the receipt of any right or payment conferred by this act  
4 upon that person.

5 (2) The subrogation rights of the association under this subsection  
6 shall have the same priority against the assets of the insolvent  
7 organization as that possessed by the person entitled to receive  
8 payment under this act.

9 (3) In addition to the rights of subrogation contained in  
10 paragraphs (1) and (2) of this subsection, the association shall have all  
11 common law rights of subrogation and any other equitable or legal  
12 remedy which would have been available to the insolvent organization  
13 or holder of a policy or contract with respect to that policy or  
14 contract.

15 f. The association may:

16 (1) enter into any contracts necessary or proper to carry out the  
17 provisions and purposes of this act;

18 (2) sue or be sued, including taking any legal actions including a  
19 summary proceeding necessary or proper to recover any unpaid  
20 assessments imposed pursuant to section 9 of this act and to settle  
21 claims or potential claims against it;

22 (3) borrow money to effectuate the purposes of this act. Any  
23 notes or other evidence of indebtedness of the association not in  
24 default shall be legal investment for domestic insurers and may be  
25 carried as admitted assets;

26 (4) employ or retain persons necessary to handle the financial  
27 transactions of the association, and to perform other functions as are  
28 necessary or proper under this act, which may include, but shall not be  
29 limited to, the oversight of the adjudication of the claims of the  
30 insolvent organization in order to ensure conformance with subsection  
31 g. of this section and recommendations to the board with respect to  
32 any remedial action necessary for the adjudication of those claims; and

33 (5) take any legal action necessary to avoid payment of improper  
34 claims.

35 g. Claims shall be adjudicated in accordance with standard  
36 industry practice, subject to available documentation and information.  
37 The guidelines shall include, but shall not be limited to, the  
38 establishment of procedures to ensure that:

39 (1) the eligible claims or other obligations are paid in accordance  
40 with the contractual reimbursement rate payable by the insolvent  
41 organization to a covered individual or provider to whom the payment  
42 is to be made;

43 (2) claims submitted by providers or covered individuals for  
44 payment are for eligible services or benefits under the contract or  
45 policy issued by the insolvent organization, the persons receiving the  
46 eligible services or benefits were covered individuals, and the eligible

1 services or benefits were rendered by an eligible provider;

2 (3) in the case of a provider not in the network of the insolvent  
3 <sup>1</sup>[association] organization<sup>1</sup>, any payment made to the provider in  
4 accordance with the provisions of section 15 of this act is made <sup>1</sup>on  
5 the basis of reasonable and customary reimbursement and shall not be  
6 made at a rate that is disproportionate to the reimbursement rates  
7 applicable to network providers; and is made<sup>1</sup> only on that portion of  
8 the payment due to the provider by the insolvent organization, net of  
9 any <sup>1</sup>coinsurance<sup>1</sup> payment due under the insolvent organization's  
10 contract with the covered individual;

11 (4) eligible claims are paid in accordance with coordination of  
12 benefits regulations or contract provisions;

13 (5) no eligible claims are paid that are duplicative; and

14 (6) claims presented for payment are in compliance with the  
15 insolvent organization's utilization review requirements. <sup>1</sup>Claims shall  
16 be deemed to be in compliance with respect to benefits or services  
17 reviewed by a representative that regularly conducted utilization  
18 review on behalf of the insolvent organization on the site of a provider  
19 prior to the date of insolvency.<sup>1</sup>

20 h. (1) At the discretion of the commissioner, the association shall  
21 employ the services of a consulting organization with expertise in the  
22 adjudication and payment of health benefits claims, other than an  
23 organization that is responsible for the payment of claims of the  
24 insolvent organizations pursuant to this act, to audit the adjudicated  
25 claims of the insolvent organization <sup>1</sup>payable by the association  
26 pursuant to this act<sup>1</sup> to determine whether they have been adjudicated  
27 in accordance with subsection g. of this section. The consulting  
28 organization shall employ procedures for the audit consistent with  
29 industry standards and in accordance with standards established by the  
30 board and approved by the commissioner, to determine if the  
31 adjudication of the claims of the insolvent organizations <sup>1</sup>payable by  
32 the association pursuant to this act<sup>1</sup> meets the standards set forth in  
33 subsection g. of this section.

34 (2) The consulting organization shall recommend to the board and  
35 the commissioner any remedial measures that may be necessary to  
36 ensure the accurate and timely payment of eligible claims.

37 (3) The cost for the audit of claims provided for in this subsection  
38 shall be borne by the members of the association as provided for in the  
39 plan of operation and shall not exceed \$2,000,000, for which an  
40 assessment shall be made on each association member <sup>1</sup>that is required  
41 to pay an assessment pursuant to section 9 of this act<sup>1</sup> in proportion  
42 to the share its net premiums bear to the aggregate net premiums of all  
43 association members writing business in this State.

44

45 9. a. For the purpose of providing the funds necessary to carry  
46 out the powers and duties of the association, the board of directors

1 shall assess the member organizations an aggregate amount not to  
2 exceed \$50,000,000, to be payable in installments, in a manner  
3 determined by the commissioner, and after notification to the board,  
4 over a period not to exceed three years, in amounts as may be  
5 sufficient to meet the periodic disbursements of the association as  
6 provided for in subsection b. of this section; provided, however, that  
7 the amount of the assessment for the twelve calendar months following  
8 the effective date of this act shall not be more than one-third of the  
9 aggregate assessment required to be paid pursuant to this subsection.  
10 Assessments shall be due not less than 30 days after prior written  
11 notice to the member organizations and shall accrue interest on and  
12 after the due date at the percentage of interest prescribed in the Rules  
13 Governing the Courts of the State of New Jersey for judgments,  
14 awards and orders for the payment of money.

15 b. Fund moneys as set forth in subsection b. of section 6 of this act  
16 shall be deposited in an account in the name of the fund in the <sup>1</sup>State  
17 of<sup>1</sup> New Jersey Cash Management Fund established pursuant to  
18 section 1 of P.L.1977, c.281 (C.52:18A-90.4) and shall be disbursed  
19 by the State Treasurer from time to time as needed to pay eligible  
20 claims of the insolvent organizations, upon request of the  
21 commissioner, after notification to the commissioner by the board of  
22 the amount of the disbursement needed by the association to carry out  
23 its functions under this act. The funds so disbursed from the <sup>1</sup>State  
24 of<sup>1</sup> New Jersey Cash Management Fund shall be deposited in an  
25 account or accounts which are in the name of, and shall remain in the  
26 custody of, the association, and which account or accounts may be  
27 drawn upon as needed by a person designated to disburse funds of the  
28 association to covered individuals and providers to pay the eligible  
29 claims of the insolvent organizations. Accounts shall be maintained in  
30 accordance with the "Governmental Unit Deposit Protection Act,"  
31 P.L.1970, c.236 (C.17:9-41 et seq.). Disbursements shall be made in  
32 the name of the association by a person authorized to disburse  
33 association funds to pay eligible claims, which disbursements shall be  
34 made in accordance with the plan of operation. The commissioner  
35 may direct the association to make an interim partial payment or  
36 payments on a pro rata basis to eligible providers or covered  
37 individuals of a portion of the aggregate eligible claims payable  
38 pursuant to this act, pending any future claims audit or other  
39 verification of the eligibility of a claim. The person authorized to  
40 disburse association funds to providers shall, in the case of such partial  
41 payment, notify the provider that the claim may be subject to  
42 retrospective verification or audit and all or part of the disbursement  
43 may be reclaimed as a result of the findings. The commissioner may  
44 also direct the association to make payment, interim or otherwise, for  
45 loss adjustment expenses, including claims adjudication.

46 c. Assessments against member organizations shall be made in the

1 proportion that the net written premiums received on health  
2 maintenance organization business in this State by each assessed  
3 member organization for the most recent calendar year for which  
4 premium information is available preceding the year in which the  
5 assessment is made bears to such premiums received on total health  
6 maintenance organization business in this State for that calendar year  
7 by all assessed member organizations. The net written premium paid  
8 to enroll Medicaid recipients in a Medicaid-contracting health  
9 maintenance organization, New Jersey Kid Care and similar State-  
10 sponsored programs, and Medicare Plus Choice plans shall not be used  
11 to calculate any assessment under this subsection.

12 d. The amount of each member organization's assessment  
13 necessary to meet the requirements of the association with respect to  
14 the insolvent organizations under this act shall be determined annually  
15 as necessary to implement the purposes of this act, and shall be  
16 payable in accordance with subsection a. of this section.  
17 Computations of assessments under this section shall be made with a  
18 reasonable degree of accuracy, recognizing that exact determinations  
19 may not always be possible.

20 e. The association shall exempt, abate or defer, in whole or in  
21 part, the assessment of a member organization if, in the opinion of the  
22 commissioner, payment of the assessment would endanger the ability  
23 of the member organization to fulfill its contractual obligations or  
24 place the member organization in an unsafe or unsound financial  
25 condition. If an assessment against a member organization is  
26 exempted, abated or deferred, in whole or in part, the amount by  
27 which that assessment is exempted, abated or deferred shall be  
28 assessed against the other member organizations in a manner  
29 consistent with the basis for assessments set forth in subsection c. of  
30 this section.

31 f. The board may provide in the plan of operation for a method of  
32 allocating funds among claims, whether relating to one or more  
33 insolvent organizations, when the funds available under this act as  
34 provided in subsection b. of section 6 of this act will be insufficient to  
35 cover anticipated eligible claims. If payment of an eligible claim or  
36 portion of a claim is delayed due to the insufficiency of funds available,  
37 the association shall not be required to pay, and shall have no liability  
38 to, any person for any interest or late charge for the period that the  
39 payment of that claim is delayed.

40 g. The board may, by an equitable method established in the plan  
41 of operation, refund to member organizations and the State in  
42 proportion to the contribution of each organization, the amount by  
43 which the assets of the fund exceed the amount the board, in  
44 accordance with subsection e. of section 10 of this act, with the  
45 concurrence of the commissioner, finds necessary to carry out the  
46 obligations of the association, including assets accruing from

1 assignment, subrogation, net realized gains and income from  
2 investments.

3 h. In determining its schedule of charges or rates filed with the  
4 commissioner pursuant to subsection b. of section 8 of P.L.1973,  
5 c.337 (C.26:2J-8), or filed in accordance with any other law requiring  
6 such filing, no member organization shall include the amount paid or  
7 to be paid as assessments under this act, or any portion of that  
8 amount, unless the commissioner specifically determines after a  
9 separate filing by a member that exclusion of those assessments in  
10 determining its schedule of charges or rates will significantly and  
11 adversely affect the organization. Each member organization shall  
12 annually file a certification to the commissioner that demonstrates  
13 compliance with this subsection.

14 i. The association shall issue to each organization paying an  
15 assessment pursuant to this act a certificate of contribution, in a form  
16 and manner prescribed by the commissioner, for the amount of the  
17 assessment so paid. All outstanding certificates shall be of equal  
18 dignity and priority without reference to amount or date of issue. A  
19 certificate of contribution may be shown by the organization in its  
20 financial statement as an asset in that form and manner and for the  
21 amount and period of time as the commissioner may approve.

22

23 10. a. (1) The association shall submit to the commissioner a plan  
24 of operation, and any amendments thereto, necessary or suitable to  
25 assure the fair, reasonable and equitable administration of the  
26 association and the fund. The plan of operation and any amendments  
27 thereto shall become effective upon the commissioner's written  
28 approval or at the expiration of 30 days after submission if it has not  
29 been disapproved.

30 (2) If the association fails to submit a suitable plan of operation  
31 within 90 days following the effective date of this act, or if at any time  
32 thereafter the association fails to submit suitable amendments to the  
33 plan, the commissioner shall adopt a plan, or amendments as  
34 necessary, to implement the provisions of this act. The plan or  
35 amendments shall continue in force until modified by the commissioner  
36 or superseded by a plan submitted by the association and approved by  
37 the commissioner.

38 b. All member organizations shall comply with the plan of  
39 operation.

40 c. The plan of operation shall, in addition to any other  
41 requirements specified in this act:

42 (1) establish procedures for handling the assets of the association,  
43 in accordance with the provisions of this act;

44 (2) establish the method of reimbursing members of the board of  
45 directors under subsection d. of section 7 of this act:

46 (3) establish regular places and times for meetings, including

1 telephone conference calls, of the board of directors;

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

4 (5) establish procedures for selecting members of the board of  
5 directors and submitting their names to the commissioner;

6 (6) establish any additional procedures for the imposition of  
7 assessments under section 9 of this act; and

8 (7) contain additional provisions necessary or proper for the  
9 execution of the powers and duties of the association.

10 d. The plan of operation may provide for the delegation of any or  
11 all powers and duties of the association, except those set forth in  
12 paragraph (3) of subsection e. of section 8 and section 9 of this act, to  
13 a corporation, association or other organization which performs or will  
14 perform functions similar to those of the association, or its equivalent,  
15 in two or more other states. Such a corporation, association or  
16 organization shall be reimbursed for any payments made on behalf of  
17 the association and shall be paid for its performance of any function of  
18 the association. A delegation under this subsection shall take effect  
19 only with the approval of both the board of directors and the  
20 commissioner, and may be made only to a corporation, association or  
21 organization which extends protection not substantially less favorable  
22 or effective than that provided by this act.

23 e. The plan of operation shall provide for the orderly cessation of  
24 activity by the association upon the exhaustion of monies in the New  
25 Jersey Insolvent Health Maintenance Organization Assistance Fund  
26 created in section 6 of this act, or upon the completion of the payment  
27 of eligible claims by the association pursuant to this act, whichever is  
28 earlier. Any moneys remaining in the fund upon the cessation of  
29 activity by the association shall be distributed to the State and to  
30 member organizations in proportion to their contributions to the fund  
31 pursuant to sections 6 and 9 of this act.

32 f. Moneys that are available or become available from the  
33 insolvent organization shall be used to make pro rata refunds to  
34 member organizations and the State, as appropriate, for the  
35 contractual obligations of the insolvent organizations paid by the  
36 association pursuant to this act, in accordance with and subject to the  
37 provisions of the "Life and Health Insurers Rehabilitation and  
38 Liquidation Act," P.L.1992, c.65 (C.17B:32-31 et. seq.).

39  
40 11. a. In addition to the duties and powers enumerated elsewhere  
41 in this act, the commissioner shall, upon request of the board of  
42 directors, provide the association with a statement of the net written  
43 premiums received in this State and any other appropriate states for  
44 each member organization.

45 b. The commissioner may suspend or revoke, after notice and  
46 hearing, the certificate of authority to transact business in this State of

1 any member organization which fails to pay an assessment when due  
2 or fails to comply with the plan of operation. As an alternative, the  
3 commissioner may levy a penalty on any member organization which  
4 fails to pay an assessment when due. That penalty shall not exceed  
5 five percent of the unpaid assessment per month, but no penalty shall  
6 be less than \$100 per month.

7 c. Any action of the board of directors or the association may be  
8 appealed to the commissioner by a member organization if that appeal  
9 is taken within 30 days from the final action being appealed. If a  
10 member organization is appealing an assessment, the amount assessed  
11 shall be paid to the association and made available to meet association  
12 obligations during the pendency of an appeal. If the appeal of an  
13 assessment is <sup>1</sup>[upheld] successful<sup>1</sup>, the amount paid in error or  
14 excess shall be returned to the member organization. Any  
15 determination of an appeal from an action of the board of directors  
16 shall be subject to review by the commissioner on the record below,  
17 and shall not be considered a contested case under the "Administrative  
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The  
19 commissioner's determination shall be a final agency decision subject  
20 to review by the Appellate Division of Superior Court.

21

22 12. a. A member organization shall be allowed a credit against the  
23 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),  
24 in an amount equal to 50 % of an assessment for which a certificate of  
25 contribution has been issued pursuant to subsection <sup>1</sup>[h.] i.<sup>1</sup> of section  
26 9 of this act. One-fifth of that credit amount may be applied against  
27 the tax imposed pursuant to section 5 of P.L.1945, c.162  
28 (C.54:10A-5) for each of the five privilege periods beginning on or  
29 after the third calendar year commencing after the assessment was  
30 paid, provided however<sup>1</sup> 1 that no member organization may reduce  
31 that tax liability pursuant to this section by more than 20% of the  
32 amount (determined without regard to any other credits allowed  
33 pursuant to law) otherwise due for a privilege period. If a member  
34 organization should cease doing business in this State, any credit  
35 amounts not yet applied against its liability may be applied against its  
36 liability for tax imposed pursuant to section 5 of P.L.1945, c.162  
37 (C.54:10A-5) for the privilege period that it ceases to do business in  
38 this State.

39 b. Any sums that are acquired by a member organization as the  
40 result of a refund from the association pursuant to subsection <sup>1</sup>[f.] g.<sup>1</sup>  
41 of section 9 of this act are deemed to be assessment amounts for which  
42 a credit was allowed pursuant to subsection a. of this section. If the  
43 member organization has applied any amounts of the credit allowed  
44 pursuant to subsection a. of this section, then 50% of the amount of  
45 any refund shall be paid by the member organization to the State as the  
46 Director of the Division of Taxation in the Department of the Treasury

1 may require until the amounts paid equal the amounts applied as  
2 credit. The association shall notify the commissioner and the director  
3 of any refunds made.

4  
5 13. a. The association shall be subject to examination and  
6 regulation by the commissioner. The board of directors shall submit  
7 to the commissioner each year, not later than 120 days after the close  
8 of the association's fiscal year, a financial report in a form approved by  
9 the commissioner and a report of its activities during the preceding  
10 fiscal year.

11 b. The commissioner shall report annually to the Chairman and the  
12 Ranking Minority member of the Assembly Appropriations Committee  
13 and the Chairman and the Ranking Minority member of the Senate  
14 Budget and Appropriations Committee regarding the administration of  
15 the fund , including the status of pending litigation, the amount of  
16 claims made and the amount of any distributions on those claims, as  
17 well as the effects of the assessments under this act on the operations  
18 of member organizations.

19  
20 14. The association shall be exempt from the payment of all fees  
21 and all taxes levied by this State or any of its subdivisions, except  
22 those levied on real property.

23  
24 15. As a condition of receiving payment directly from the  
25 association for an eligible claim against an insolvent organization, a  
26 provider shall agree to forgive that organization of one-third of the  
27 unpaid contractual obligation incurred prior to insolvency, which  
28 would otherwise be paid by the organization had it not been insolvent.  
29 The foregoing shall not apply to any portion of an eligible claim owed  
30 to a provider by another insurer, health maintenance organization, or  
31 other payer through a coordination of benefits provision. The  
32 association is not bound by an assignment of benefits executed with  
33 respect to the coverage provided by the insolvent organization. The  
34 association may aggregate all eligible claims owed providers when  
35 negotiating direct payment of eligible claims of all covered individuals.  
36 <sup>1</sup>Nothing in this act shall be construed to preclude any provider from  
37 collecting moneys owing to the provider from a self-insured benefit  
38 plan that contracted with an insolvent organization to pay claims on an  
39 administrative services only basis.<sup>1</sup>

40  
41 16. There shall be no liability on the part of, and no cause of  
42 action of any nature shall arise against, any member organization or its  
43 agents or employees, the association or its agents or employees, or the  
44 commissioner or his representatives, for any action or omission by  
45 them in the performance of their powers and duties under this act.



1       17. There is appropriated \$50,000,000 from the payments made  
2 by the tobacco manufacturers pursuant to the settlement agreement  
3 entered into by the tobacco manufacturers and the State on November  
4 23, 1998 that resolved the State's pending claim against the tobacco  
5 industry to the Department of Banking and Insurance for deposit in the  
6 New Jersey Insolvent Health Maintenance Organization Assistance  
7 Fund for the purposes of that fund as provided in this act. If the State  
8 Treasurer deems it necessary, he may advance from the General Fund  
9 those monies appropriated by this section to the Department of  
10 Banking and Insurance for deposit in the New Jersey Insolvent Health  
11 Maintenance Organization Assistance Fund. Those monies advanced  
12 pursuant to this section shall be reimbursed from the payments made  
13 by the tobacco manufacturers pursuant to the settlement agreement  
14 entered into by the tobacco manufacturers and the State on  
15 November 23, 1998 that resolved the State's pending claim against the  
16 tobacco industry.

17

18       18. The commissioner shall promulgate such rules and regulations  
19 as may be necessary to effectuate the purposes of this act.

20

21       19. This act shall take effect immediately and shall apply only to  
22 the insolvency of HIP Health Plan of New Jersey, Inc. and American  
23 Preferred Provider Plan, Inc.

24

25

26

27

28       Provides for payment of certain individual and provider claims against  
29 HIP Health Plan of New Jersey, Inc. and American Preferred Provider  
30 Plan, Inc.; appropriates \$50,000,000 from the tobacco settlement  
31 proceeds.

## CHAPTER 12

AN ACT concerning the insolvency of certain health maintenance organizations and making an appropriation.

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

C.17B:32B-1 Short title.

1. This act shall be known and may be cited as the "New Jersey Insolvent Health Maintenance Organization Assistance Fund Act of 2000."

C.17B:32B-2 Purpose of act.

2. The purpose of this act is to protect, subject to certain limitations, covered individuals and providers against the failure or inability of HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc. to perform certain contractual obligations due to their insolvency. The act creates a funding mechanism and authorizes this funding mechanism to pay certain unpaid contractual obligations of these insolvent health maintenance organizations incurred prior to the date of their insolvency. In addition, providers of health care services must agree to forgive one-third of those unpaid contractual obligations due them to receive payment from the funding mechanism.

This act is intended to provide only limited coverage of claims against HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc. This act is not intended to provide coverage for claims of creditors other than those of covered individuals or providers.

C.17B:32B-3 Definitions relative to certain insolvent health maintenance organizations.

3. As used in this act:

"Association" means the New Jersey Insolvent Health Maintenance Organization Assistance Association created by section 5 of this act.

"Commissioner" means the Commissioner of Banking and Insurance.

"Contractual obligation" means an obligation, arising from an agreement, policy, certificate or evidence of coverage, to a covered individual or provider incurred prior to the declaration of insolvency of a covered health maintenance organization that remains unpaid at the time of its insolvency, but does not include claims by former employees, including medical professional employees for deferred compensation, severance, vacation or other employment benefits.

"Covered health maintenance organization contract" means a policy, certificate, evidence of coverage or contract for health care services issued in New Jersey by HIP Health Plan of New Jersey, Inc. or American Preferred Provider Plan, Inc., but shall not include any contract with an employer or other person to provide health care benefits on an administrative services only basis.

"Covered individual" means an enrollee or member of HIP Health Plan of New Jersey, Inc. or American Preferred Provider Plan, Inc.

"Department" means the Department of Banking and Insurance.

"Eligible claim" means a claim for a covered service or benefit under a contract or policy issued by an insolvent health maintenance organization and provided by a provider or to a covered individual prior to the declaration of insolvency of an insolvent organization, but shall not include any claim filed after the claims bar date established by the Superior Court of New Jersey supervising the insolvent organizations.

"Fund" means the New Jersey Insolvent Health Maintenance Organization Assistance Fund created pursuant to section 6 of this act.

"Insolvent organization" means HIP Health Plan of New Jersey, Inc. or American Preferred Provider Plan, Inc.

"Member organization" means a person who holds a certificate of authority to operate a health maintenance organization pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.), and includes any person whose certificate of authority has been suspended, revoked or nonrenewed.

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

"Provider" means a physician, hospital or other person which is licensed or otherwise authorized by this State, or licensed or otherwise authorized under similar laws of another state, to provide health care services, and which provided health care services to covered individuals.

As used in this act, provider also includes persons who incurred a contractual obligation as defined by this act by providing home health care services, durable medical equipment, physical therapy services, medical transportation, ambulance services or laboratory services to covered individuals.

C.17B:32B-4 Payment for eligible services, benefits.

4. This act shall provide payment for eligible services or benefits under a covered health maintenance organization contract on an equitable basis to any covered individual or provider who is entitled to receive payment from HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc. for an eligible claim that remains unpaid.

C.17B:32B-5 New Jersey Insolvent Health Maintenance Organization Assistance Association.

5. There is created a nonprofit legal entity to be known as the New Jersey Insolvent Health Maintenance Organization Assistance Association. All health maintenance organizations authorized to transact business in this State shall be and remain members of the association as a condition of their authority to transact business in this State. The association shall perform its functions under the plan of operation established and approved pursuant to section 10 of this act and shall exercise its powers through a board of directors established pursuant to section 7 of this act. The association shall be supervised by the commissioner and is subject to the provisions of this act.

C.17B:32B-6 New Jersey Insolvent Health Maintenance Organization Assistance Fund.

6. a. For purposes of administration and assessment, the New Jersey Insolvent Health Maintenance Organization Assistance Fund is created, and shall be held in trust and maintained by the association as provided in this act for the purposes specified in this act.

b. The New Jersey Insolvent Health Maintenance Organization Assistance Fund is created as a limited purpose trust fund consisting of not more than \$100,000,000 as follows:

- (1) \$50,000,000 to be deposited in the fund pursuant to section 17 of this act; and
- (2) an additional aggregate sum of not more than \$50,000,000 collected through assessments over a three-year period as provided in section 9 of this act.

Moneys deposited in the fund pursuant to this section shall be deposited with the State Treasurer in the State of New Jersey Cash Management Fund established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4), pending disbursement for the payment of eligible claims as provided in this act.

c. Moneys deposited in the fund in accordance with this act shall be used by the association to pay eligible claims of the insolvent organizations and loss adjustment expenses associated with the claims, including the cost of claims adjudication.

C.17B:32B-7 Board of directors.

7. a. The board of directors of the association shall consist of not less than five nor more than nine members, who shall be representative of the member organizations, serving terms as established in the plan of operation. The members of the board of directors shall be selected by a vote of the member organizations, subject to the approval of the commissioner, with each member organization 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 the initial appointment.

b. To allow for the selection of the initial board of directors and the organization of the association, the commissioner shall give notice to all member organizations of the time and place of an organizational meeting no later than 30 days following the effective date of this act. If the member organizations have not selected a suitable board of directors no later than 30 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 member organizations are fairly represented. No representative of an association member that is exempt or becomes exempt from assessments pursuant to subsection e. of section 9 of this act shall be eligible for membership or remain on

the board.

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.

C.17B:32B-8 Maximum liability of association.

8. a. The maximum liability of the association for all coverage provided under this act shall be limited to the amount available from the New Jersey Insolvent Health Maintenance Organization Assistance Fund created in section 6 of this act.

b. If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association provided by this act with respect to the insolvent organizations.

c. The commissioner shall, in consultation with the association, oversee the payment of eligible claims reimbursable pursuant to this act.

d. The association shall have standing to appear before any court in this State with jurisdiction over the insolvent organizations. That standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, the payment of eligible claims as provided for in this act. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over the insolvent organizations or with jurisdiction over a third party against whom the association may have rights through subrogation of the organization's enrollees.

e. (1) Any person receiving payment for eligible claims under this act shall be deemed to have assigned the rights under, and any causes of action relating to, the covered health maintenance organization contract to the association to the extent of the payment received pursuant to this act, whether the payments are in full, or on account of, contractual obligations. The association may require an assignment to it of those rights and causes of action by any payee, policy or contract owner, beneficiary, member or enrollee as a condition precedent to the receipt of any right or payment conferred by this act upon that person.

(2) The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent organization as that possessed by the person entitled to receive payment under this act.

(3) In addition to the rights of subrogation contained in paragraphs (1) and (2) of this subsection, the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the insolvent organization or holder of a policy or contract with respect to that policy or contract.

f. The association may:

(1) enter into any contracts necessary or proper to carry out the provisions and purposes of this act;

(2) sue or be sued, including taking any legal actions including a summary proceeding necessary or proper to recover any unpaid assessments imposed pursuant to section 9 of this act and to settle claims or potential claims against it;

(3) borrow money to effectuate the purposes of this act. Any notes or other evidence of indebtedness of the association not in default shall be legal investment for domestic insurers and may be carried as admitted assets;

(4) employ or retain persons necessary to handle the financial transactions of the association, and to perform other functions as are necessary or proper under this act, which may include, but shall not be limited to, the oversight of the adjudication of the claims of the insolvent organization in order to ensure conformance with subsection g. of this section and recommendations to the board with respect to any remedial action necessary for the adjudication of those claims; and

(5) take any legal action necessary to avoid payment of improper claims.

g. Claims shall be adjudicated in accordance with standard industry practice, subject to available documentation and information. The guidelines shall include, but shall not be limited to, the establishment of procedures to ensure that:

(1) the eligible claims or other obligations are paid in accordance with the contractual

reimbursement rate payable by the insolvent organization to a covered individual or provider to whom the payment is to be made;

(2) claims submitted by providers or covered individuals for payment are for eligible services or benefits under the contract or policy issued by the insolvent organization, the persons receiving the eligible services or benefits were covered individuals, and the eligible services or benefits were rendered by an eligible provider;

(3) in the case of a provider not in the network of the insolvent organization, any payment made to the provider in accordance with the provisions of section 15 of this act is made on the basis of reasonable and customary reimbursement and shall not be made at a rate that is disproportionate to the reimbursement rates applicable to network providers; and is made only on that portion of the payment due to the provider by the insolvent organization, net of any coinsurance payment due under the insolvent organization's contract with the covered individual;

(4) eligible claims are paid in accordance with coordination of benefits regulations or contract provisions;

(5) no eligible claims are paid that are duplicative; and

(6) claims presented for payment are in compliance with the insolvent organization's utilization review requirements. Claims shall be deemed to be in compliance with respect to benefits or services reviewed by a representative that regularly conducted utilization review on behalf of the insolvent organization on the site of a provider prior to the date of insolvency.

h. (1) At the discretion of the commissioner, the association shall employ the services of a consulting organization with expertise in the adjudication and payment of health benefits claims, other than an organization that is responsible for the payment of claims of the insolvent organizations pursuant to this act, to audit the adjudicated claims of the insolvent organization payable by the association pursuant to this act to determine whether they have been adjudicated in accordance with subsection g. of this section. The consulting organization shall employ procedures for the audit consistent with industry standards and in accordance with standards established by the board and approved by the commissioner, to determine if the adjudication of the claims of the insolvent organizations payable by the association pursuant to this act meets the standards set forth in subsection g. of this section.

(2) The consulting organization shall recommend to the board and the commissioner any remedial measures that may be necessary to ensure the accurate and timely payment of eligible claims.

(3) The cost for the audit of claims provided for in this subsection shall be borne by the members of the association as provided for in the plan of operation and shall not exceed \$2,000,000, for which an assessment shall be made on each association member that is required to pay an assessment pursuant to section 9 of this act in proportion to the share its net premiums bear to the aggregate net premiums of all association members writing business in this State.

#### C.17B:32B-9 Assessment of member organizations.

9. a. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member organizations an aggregate amount not to exceed \$50,000,000, to be payable in installments, in a manner determined by the commissioner, and after notification to the board, over a period not to exceed three years, in amounts as may be sufficient to meet the periodic disbursements of the association as provided for in subsection b. of this section; provided, however, that the amount of the assessment for the twelve calendar months following the effective date of this act shall not be more than one-third of the aggregate assessment required to be paid pursuant to this subsection. Assessments shall be due not less than 30 days after prior written notice to the member organizations and shall accrue interest on and after the due date at the percentage of interest prescribed in the Rules Governing the Courts of the State of New Jersey for judgments, awards and orders for the payment of money.

b. Fund moneys as set forth in subsection b. of section 6 of this act shall be deposited in an account in the name of the fund in the State of New Jersey Cash Management Fund established pursuant to section 1 of P.L.1977, c.281 (C.52:18A-90.4) and shall be disbursed by the State Treasurer from time to time as needed to pay eligible claims of the insolvent organizations, upon

request of the commissioner, after notification to the commissioner by the board of the amount of the disbursement needed by the association to carry out its functions under this act. The funds so disbursed from the State of New Jersey Cash Management Fund shall be deposited in an account or accounts which are in the name of, and shall remain in the custody of, the association, and which account or accounts may be drawn upon as needed by a person designated to disburse funds of the association to covered individuals and providers to pay the eligible claims of the insolvent organizations. Accounts shall be maintained in accordance with the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.). Disbursements shall be made in the name of the association by a person authorized to disburse association funds to pay eligible claims, which disbursements shall be made in accordance with the plan of operation. The commissioner may direct the association to make an interim partial payment or payments on a pro rata basis to eligible providers or covered individuals of a portion of the aggregate eligible claims payable pursuant to this act, pending any future claims audit or other verification of the eligibility of a claim. The person authorized to disburse association funds to providers shall, in the case of such partial payment, notify the provider that the claim may be subject to retrospective verification or audit and all or part of the disbursement may be reclaimed as a result of the findings. The commissioner may also direct the association to make payment, interim or otherwise, for loss adjustment expenses, including claims adjudication.

c. Assessments against member organizations shall be made in the proportion that the net written premiums received on health maintenance organization business in this State by each assessed member organization for the most recent calendar year for which premium information is available preceding the year in which the assessment is made bears to such premiums received on total health maintenance organization business in this State for that calendar year by all assessed member organizations. The net written premium paid to enroll Medicaid recipients in a Medicaid-contracting health maintenance organization, New Jersey Kid Care and similar State-sponsored programs, and Medicare Plus Choice plans shall not be used to calculate any assessment under this subsection.

d. The amount of each member organization's assessment necessary to meet the requirements of the association with respect to the insolvent organizations under this act shall be determined annually as necessary to implement the purposes of this act, and shall be payable in accordance with subsection a. of this section. Computations of assessments under this section shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

e. The association shall exempt, abate or defer, in whole or in part, the assessment of a member organization if, in the opinion of the commissioner, payment of the assessment would endanger the ability of the member organization to fulfill its contractual obligations or place the member organization in an unsafe or unsound financial condition. If an assessment against a member organization is exempted, abated or deferred, in whole or in part, the amount by which that assessment is exempted, abated or deferred shall be assessed against the other member organizations in a manner consistent with the basis for assessments set forth in subsection c. of this section.

f. The board may provide in the plan of operation for a method of allocating funds among claims, whether relating to one or more insolvent organizations, when the funds available under this act as provided in subsection b. of section 6 of this act will be insufficient to cover anticipated eligible claims. If payment of an eligible claim or portion of a claim is delayed due to the insufficiency of funds available, the association shall not be required to pay, and shall have no liability to, any person for any interest or late charge for the period that the payment of that claim is delayed.

g. The board may, by an equitable method established in the plan of operation, refund to member organizations and the State in proportion to the contribution of each organization, the amount by which the assets of the fund exceed the amount the board, in accordance with subsection e. of section 10 of this act, with the concurrence of the commissioner, finds necessary to carry out the obligations of the association, including assets accruing from assignment, subrogation, net realized gains and income from investments.

h. In determining its schedule of charges or rates filed with the commissioner pursuant to

subsection b. of section 8 of P.L.1973, c.337 (C.26:2J-8), or filed in accordance with any other law requiring such filing, no member organization shall include the amount paid or to be paid as assessments under this act, or any portion of that amount, unless the commissioner specifically determines after a separate filing by a member that exclusion of those assessments in determining its schedule of charges or rates will significantly and adversely affect the organization. Each member organization shall annually file a certification to the commissioner that demonstrates compliance with this subsection.

i. The association shall issue to each organization paying an assessment pursuant to this act a certificate of contribution, in a form and manner prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amount or date of issue. A certificate of contribution may be shown by the organization in its financial statement as an asset in that form and manner and for the amount and period of time as the commissioner may approve.

C.17B:32B-10 Submission of plan of operation.

10. a. (1) The association shall submit to the commissioner a plan of operation, and any amendments thereto, necessary or suitable to assure the fair, reasonable and equitable administration of the association and the fund. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or at the expiration of 30 days after submission if it has not been disapproved.

(2) If the association fails to submit a suitable plan of operation within 90 days following the effective date of this act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall adopt a plan, or amendments as necessary, to implement the provisions of this act. The plan or amendments shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

b. All member organizations shall comply with the plan of operation.

c. The plan of operation shall, in addition to any other requirements specified in this act:

(1) establish procedures for handling the assets of the association, in accordance with the provisions of this act;

(2) establish the method of reimbursing members of the board of directors under subsection d. of section 7 of this act;

(3) establish regular places and times for meetings, including telephone conference calls, of the board of directors;

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

(5) establish procedures for selecting members of the board of directors and submitting their names to the commissioner;

(6) establish any additional procedures for the imposition of assessments under section 9 of this act; and

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

d. The plan of operation may provide for the delegation of any or all powers and duties of the association, except those set forth in paragraph (3) of subsection e. of section 8 and section 9 of this act, to a corporation, association or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more other states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable or effective than that provided by this act.

e. The plan of operation shall provide for the orderly cessation of activity by the association upon the exhaustion of moneys in the New Jersey Insolvent Health Maintenance Organization Assistance Fund created in section 6 of this act, or upon the completion of the payment of

eligible claims by the association pursuant to this act, whichever is earlier. Any moneys remaining in the fund upon the cessation of activity by the association shall be distributed to the State and to member organizations in proportion to their contributions to the fund pursuant to sections 6 and 9 of this act.

f. Moneys that are available or become available from the insolvent organization shall be used to make pro rata refunds to member organizations and the State, as appropriate, for the contractual obligations of the insolvent organizations paid by the association pursuant to this act, in accordance with and subject to the provisions of the "Life and Health Insurers Rehabilitation and Liquidation Act," P.L.1992, c.65 (C.17B:32-31 et seq.).

C.17B:32B-11 Additional powers, duties of the commissioner.

11. a. In addition to the duties and powers enumerated elsewhere in this act, the commissioner shall, upon request of the board of directors, provide the association with a statement of the net written premiums received in this State and any other appropriate states for each member organization.

b. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any member organization which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a penalty on any member organization which fails to pay an assessment when due. That penalty shall not exceed five percent of the unpaid assessment per month, but no penalty shall be less than \$100 per month.

c. Any action of the board of directors or the association may be appealed to the commissioner by a member organization if that appeal is taken within 30 days from the final action being appealed. If a member organization is appealing an assessment, the amount assessed shall be paid to the association and made available to meet association obligations during the pendency of an appeal. If the appeal of an assessment is successful, the amount paid in error or excess shall be returned to the member organization. Any determination of an appeal from an action of the board of directors shall be subject to review by the commissioner on the record below, and shall not be considered a contested case under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). The commissioner's determination shall be a final agency decision subject to review by the Appellate Division of the Superior Court.

C.17B:32B-12 Tax credit permitted for member organizations.

12. a. A member organization shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 50 % of an assessment for which a certificate of contribution has been issued pursuant to subsection i. of section 9 of this act. One-fifth of that credit amount may be applied against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for each of the five privilege periods beginning on or after the third calendar year commencing after the assessment was paid, provided however, that no member organization may reduce that tax liability pursuant to this section by more than 20% of the amount (determined without regard to any other credits allowed pursuant to law) otherwise due for a privilege period. If a member organization should cease doing business in this State, any credit amounts not yet applied against its liability may be applied against its liability for tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for the privilege period that it ceases to do business in this State.

b. Any sums that are acquired by a member organization as the result of a refund from the association pursuant to subsection g. of section 9 of this act are deemed to be assessment amounts for which a credit was allowed pursuant to subsection a. of this section. If the member organization has applied any amounts of the credit allowed pursuant to subsection a. of this section, then 50% of the amount of any refund shall be paid by the member organization to the State as the Director of the Division of Taxation in the Department of the Treasury may require until the amounts paid equal the amounts applied as credit. The association shall notify the commissioner and the director of any refunds made.

C.17B:32B-13 Examination, regulation.



13. a. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than 120 days after the close of the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year.

b. The commissioner shall report annually to the Chairman and the Ranking Minority member of the Assembly Appropriations Committee and the Chairman and the Ranking Minority member of the Senate Budget and Appropriations Committee regarding the administration of the fund, including the status of pending litigation, the amount of claims made and the amount of any distributions on those claims, as well as the effects of the assessments under this act on the operations of member organizations.

C.17B:32B-14 Exemption of association from certain fees, taxes.

14. The association shall be exempt from the payment of all fees and all taxes levied by this State or any of its subdivisions, except those levied on real property.

C.17B:32B-15 Condition for receipt by providers of payments.

15. As a condition of receiving payment directly from the association for an eligible claim against an insolvent organization, a provider shall agree to forgive that organization of one-third of the unpaid contractual obligation incurred prior to insolvency, which would otherwise be paid by the organization had it not been insolvent. The foregoing shall not apply to any portion of an eligible claim owed to a provider by another insurer, health maintenance organization, or other payer through a coordination of benefits provision. The association is not bound by an assignment of benefits executed with respect to the coverage provided by the insolvent organization. The association may aggregate all eligible claims owed providers when negotiating direct payment of eligible claims of all covered individuals. Nothing in this act shall be construed to preclude any provider from collecting moneys owing to the provider from a self-insured benefit plan that contracted with an insolvent organization to pay claims on an administrative services only basis.

C.17B:32B-16 Immunity from liability for member organizations, etc.

16. There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member organization or its agents or employees, the association or its agents or employees, or the commissioner or his representatives, for any action or omission by them in the performance of their powers and duties under this act.

17. There is appropriated \$50,000,000 from the payments made by the tobacco manufacturers pursuant to the settlement agreement entered into by the tobacco manufacturers and the State on November 23, 1998 that resolved the State's pending claim against the tobacco industry to the Department of Banking and Insurance for deposit in the New Jersey Insolvent Health Maintenance Organization Assistance Fund for the purposes of that fund as provided in this act. If the State Treasurer deems it necessary, he may advance from the General Fund those moneys appropriated by this section to the Department of Banking and Insurance for deposit in the New Jersey Insolvent Health Maintenance Organization Assistance Fund. Those moneys advanced pursuant to this section shall be reimbursed from the payments made by the tobacco manufacturers pursuant to the settlement agreement entered into by the tobacco manufacturers and the State on November 23, 1998 that resolved the State's pending claim against the tobacco industry.

C.17B:32B-17 Rules, regulations.

18. The commissioner shall promulgate such rules and regulations as may be necessary to effectuate the purposes of this act.

19. This act shall take effect immediately and shall apply only to the insolvency of HIP Health Plan of New Jersey, Inc. and American Preferred Provider Plan, Inc.

Approved April 6, 2000.

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*Office of the Governor*  
**NEWS RELEASE**

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**GOVERNOR SIGNS LEGISLATION REIMBURSING  
DOCTORS AND HOSPITALS \$100 MILLION FOR LOSSES  
RESULTING FROM TWO HMO FAILURES**

Gov. Christie Whitman today signed legislation that will enable health care professionals and health care facilities to recover some \$100 million of the \$150 million in losses resulting from the failure of the HIP Health Plan of New Jersey Inc. (HIP) and American Preferred Provider Plan, Inc. (APPP). Fifty million dollars of the reimbursement will come from tobacco settlement funds and \$50 million through assessments on all Health Maintenance Organizations (HMOs) doing business in New Jersey.

"When the HIP Health Plan of New Jersey and American Preferred Provider Plan collapsed, more than 200,000 patients were then left without health insurance coverage. We were faced with a crisis," the Governor said.

"But the crisis was averted, thanks to our state's hospitals and doctors. They stepped up to the plate to make sure that none of the people who needed care went without it. Patient care came first, despite the risk of financial ruin," she said.

"It's not fair for us to ask doctors and hospitals to shoulder that burden alone. We can't expect our doctors and hospitals to swallow more than \$150 million in losses. That's why this legislation is so important. Our state's doctors and hospitals were there when we needed them. They need us to do the same. This legislation does that," Gov. Whitman said.

"We also have to do all we can to protect New Jersey patients by making sure we never have to ask doctors and hospitals to make that kind of sacrifice again," the Governor said. "We've strengthened our regulations covering financial requirements and I've signed legislation that requires the licensing of any subcontractor that accepts risk."

Gov. Whitman said in order to tackle the problem of slow payment by insurers and HMOs, she has asked the Departments of Banking and Insurance and Health and Senior Services to draft rules requiring that all insurers create a process for resolving late payment disputes and spell out that process in their contracts with providers. She said slow payment deprives doctors and hospitals of needed income and it is also a red flag indicating management or financial problems with the insurers.

The legislation, **A-1890**, was sponsored by Assembly Members Christopher "Kip" Bateman (R-Morris/Somerset), Joseph V. Doria, Jr. (D-Hudson), Nicholas R. Felice (R-Bergen/Passaic) and Neil M. Cohen (D-Union) and Senators Jack Sinagra (R-Middlesex) and Gerald Cardinale (R-Bergen). It applies to contractual obligations that were incurred prior to the insolvency of the two HMOs.

The bill provides that to receive a reimbursement, a health care professional or health care facility must forgive one-third of the unpaid contractual obligations incurred prior to the insolvencies. These obligations would otherwise have been paid by HIP and APPP. The bill raises money for the reimbursements by creating the New Jersey Insolvent Health Maintenance Organization Assistance Fund, with \$50 million coming from the tobacco settlement monies and \$50 million to be collected through equal assessments on all HMOs doing business in New Jersey.

The bill provides that the assessment on each HMO will be proportioned to its market share in the state. The bill includes a "no pass through" provision and prevents an HMO from passing the assessment on to businesses and consumers in the form of higher health insurance premiums.

The bill provides that the assessments shall be exempt, abated or deferred, in whole or in part, if, in the opinion of the Commissioner of Banking and Insurance, payment of the assessment would endanger the ability of a member organization to fulfill its contractual obligations or jeopardize its financial security.

HMOs may offset against their corporation business tax liability any assessment made by the fund in an amount of not more than ten percent of the amount of that assessment for each of the five calendar years following the second year after the year in which the assessment is paid. No organization may offset more than 20 percent of its corporation business tax liability in any one year.