

106TH CONGRESS
2^D SESSION

S. 3261

To provide for the establishment of an HMO Guaranty Fund to provide payments to States to pay the outstanding health care provider claims of insolvent health maintenance organizations.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30 (legislative day, SEPTEMBER 22), 2000

Mr. REED introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for the establishment of an HMO Guaranty Fund to provide payments to States to pay the outstanding health care provider claims of insolvent health maintenance organizations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “HMO Guaranty Act
5 of 2000”.

6 **SEC. DEFINITIONS.**

7 In this Act:

1 (1) BOARD.—The term “Board” means the
2 Board of Directors appointed under section 3(d).

3 (2) CONTRACTUAL OBLIGATION.—The term
4 “contractual obligation” means an obligation by a
5 health maintenance organization, under an agree-
6 ment, policy, certificate, or evidence of coverage in-
7 volving a covered individual and the organization, to
8 pay or reimburse the covered individual (or a health
9 care provider who provided items or services to the
10 individual) for services provided prior to the declara-
11 tion of the insolvency of the health maintenance or-
12 ganization, that remains unpaid at the time of such
13 insolvency. Such term does not include claims by
14 former employees, including medical professional em-
15 ployees, for deferred compensation, severance, vaca-
16 tion, or other employment benefits.

17 (3) COVERED INDIVIDUAL.—The term “covered
18 individual” means an enrollee or member of a health
19 maintenance organization.

20 (4) GUARANTY FUND.—The term “Guaranty
21 Fund” means the Federal HMO Guaranty Fund es-
22 tablished under section 3.

23 (5) HEALTH CARE PROVIDER.—The term
24 “health care provider” means a physician, hospital,
25 or other person that is licensed or otherwise author-

1 ized by the State to provide health care services, and
2 that provided health care services to an enrollee of
3 a health maintenance organization.

4 (6) HEALTH MAINTENANCE ORGANIZATION.—
5 The term “health maintenance organization” has the
6 meaning given such term by section 2791(b)(3) of
7 the Public Health Service Act (42 U.S.C. 300gg-
8 91(b)(3)).

9 (7) HEALTH MAINTENANCE ORGANIZATION
10 CONTRACT.—The term “covered health maintenance
11 organization contract” means a policy, certificate, or
12 other evidence of health care coverage that is issued
13 by a health maintenance organization.

14 (8) INSOLVENT ORGANIZATION.—The term “in-
15 solvent organization” means a health maintenance
16 organization that is declared insolvent by court of
17 competent jurisdiction and placed under the control
18 of a State Commissioner of Insurance for the pur-
19 pose of liquidation.

20 (9) SECRETARY.—The term “Secretary” means
21 the Secretary of Health and Human Services, in
22 consultation with the Secretary of Labor and the
23 Secretary of the Treasury.

24 (10) STATE.—The term “State” includes each
25 of the several States, the District of Columbia, the

1 Commonwealth of Puerto Rico, the Northern Mar-
 2 iana Islands, or any agency or instrumentality there-
 3 of.

4 (11) UNCOVERED EXPENDITURES.—The term
 5 “uncovered expenditures” means the expenditures
 6 for the provision of health care services that are the
 7 obligation of a health maintenance organization that
 8 have not been paid by such organization and for
 9 which no alternative payment arrangements have
 10 been made.

11 **SEC. 3. ESTABLISHMENT OF HMO GUARANTY FUND.**

12 (a) IN GENERAL.—There is established in the Treas-
 13 ury of the United States a fund to be known as the HMO
 14 Guaranty Fund to be used as provided for in this Act.

15 (b) AMOUNTS IN FUND.—

16 (1) IN GENERAL.—There shall be deposited into
 17 the Guaranty Fund—

18 (A) amounts collected under section 5(a);

19 (B) penalties collected under section 5(b);

20 and

21 (C) earnings on investments of monies in
 22 the Guaranty Fund.

23 (2) INVESTMENTS.—

24 (A) IN GENERAL.—The Secretary of the
 25 Treasury shall invest amounts in the Guaranty

1 Fund that are not required to meet current
2 withdrawals. Such investments may be made
3 only in interest-bearing obligations of the
4 United States. For such purpose, such obliga-
5 tions may be acquired on original issue at the
6 issue price, or by purchase of outstanding obli-
7 gations at the market price.

8 (B) AVAILABILITY OF INCOME.—Any inter-
9 est derived from obligations held by the Guar-
10 anty Fund and the proceeds from any sale or
11 redemption of such obligations, are hereby ap-
12 propriated to the Fund.

13 (c) USE OF GUARANTY FUND.—Subject to section 4,
14 amounts in the Guaranty Fund shall be used to make pay-
15 ments to a State—

16 (1) to pay the outstanding health care provider
17 claims for uncovered expenditures, and to fulfill con-
18 tractual obligations to covered individuals, with re-
19 spect to an insolvent health maintenance organiza-
20 tion; and

21 (2) to provide for a temporary continuation of
22 health care coverage for covered individuals.

23 (d) BOARD OF DIRECTORS.—

1 (1) IN GENERAL.—The Guaranty Fund shall be
2 administered by a Board of Directors to be com-
3 posed of 9 individuals of which—

4 (A) three directors shall be appointed by
5 the National Association of Insurance Commis-
6 sioners from among individuals who serve as in-
7 surance regulators of a State;

8 (B) three directors shall be appointed by a
9 national association which represents the health
10 maintenance organization industry of all States
11 (as determined by the Secretary) from among
12 representatives of health maintenance organiza-
13 tions; and

14 (C) three directors shall be—

15 (i) the Secretary of the Treasury, or
16 the designee of the Secretary;

17 (ii) the Secretary of Health and
18 Human Services, or the designee of the
19 Secretary; and

20 (iii) the Secretary of Labor, or the
21 designee of the Secretary.

22 (2) TERMS, VACANCIES.—The members of the
23 Board shall establish the terms of service of the
24 members of the Board appointed under subpara-
25 graphs (A) and (B) of paragraph (1). Any vacancy

1 in the Board shall not affect its powers, and shall
2 be filled in the same manner as the original appoint-
3 ment.

4 (3) COMPENSATION OF MEMBERS.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), each member of the Board
7 who is not an officer or employee of the Federal
8 Government shall serve without compensation.
9 All members of the Board who are officers or
10 employees of the United States shall serve with-
11 out compensation in addition to that received
12 for their services as officers or employees of the
13 United States.

14 (B) TRAVEL EXPENSES.—The members of
15 the Board shall be allowed travel expenses, in-
16 cluding per diem in lieu of subsistence, at rates
17 authorized for employees of agencies under sub-
18 chapter I of chapter 57 of title 5, United States
19 Code, while away from their homes or regular
20 places of business in the performance of serv-
21 ices for the Board. Such expenses shall be paid
22 from the Guaranty Fund.

23 (4) VOTING.—Each member of the Board shall
24 have 1 vote. The Board shall set policy and decide
25 all matters by a simple majority of the votes cast.

1 (5) CHAIRPERSON.—The Board shall elect a
2 chairperson from among its members.

3 (6) MEETINGS.—The Board shall first meet not
4 later than 30 days after the date on which all mem-
5 bers are appointed under paragraph (1). Subsequent
6 meetings shall be at the call of the chairperson. The
7 Board may hold public hearings after giving proper
8 notice.

9 (7) FIDUCIARY DUTY.—With respect to the
10 members of the Board that are not appointed under
11 paragraph (1)(A), in carrying out the duties of the
12 Board such members shall have a fiduciary duty to
13 the Guaranty Fund that shall supersede any duty to
14 an employer or other special interest that the mem-
15 ber may otherwise represent.

16 (8) LIMITATIONS ON LIABILITY.—A member of
17 the Board shall not be liable, or in any way respon-
18 sible, for the obligations of the Guaranty Fund.

19 (e) DUTIES.—The Board shall—

20 (1) administer the Guaranty Fund;

21 (2) adopt bylaws that permit the Board to enter
22 into contracts to receive contributions and make dis-
23 tributions in accordance with this Act;

1 (3) establish the application criteria and mate-
2 rials necessary to enable a State to submit an appli-
3 cation to the Guaranty Fund;

4 (4) review and make determination on applica-
5 tions received under section 4(b); and

6 (5) carry out other activities in accordance with
7 this Act.

8 **SEC. 4. EXPENDITURES FROM THE GUARANTY FUND.**

9 (a) IN GENERAL.—The Guaranty Fund shall be used
10 to make payments to a State to enable such State to pay
11 the claims of health care providers for health care services
12 provided to covered individuals prior to the declaration of
13 insolvency of a health maintenance organization and to
14 provide for a temporary continuation of health care cov-
15 erage for such individuals.

16 (b) PROCEDURE.—

17 (1) IN GENERAL.—Upon the declaration by a
18 court of competent jurisdiction that a health mainte-
19 nance organization is insolvent, the official respon-
20 sible for regulating health insurance in the State in
21 which the declaration is made may submit an appli-
22 cation to the Guaranty Fund for payment under this
23 Act.

1 (2) CONTENTS OF APPLICATION.—An applica-
2 tion submitted by a State under paragraph (1) shall
3 include the following:

4 (A) LIQUIDATION OF ASSETS AND RETURN
5 OF UNUSED FUNDS.—The application shall con-
6 tain an accounting of amounts received (or ex-
7 pected to be received) as a result of the liquida-
8 tion of the assets of the insolvent organization.

9 (B) FUND AMOUNT.—The application shall
10 contain a request for a specific amount of funds
11 that will be used for the uncovered expenditures
12 and contractual obligations of an insolvent or-
13 ganization.

14 (C) UNCOVERED EXPENDITURES.—The
15 application shall contain an estimate of the ag-
16 gregate number of uncovered individuals and
17 aggregate amount of uncovered expenditures
18 with respect to the insolvent organization in-
19 volved.

20 (D) CONTINUATION COVERAGE.—The ap-
21 plication shall contain an estimate of the aggre-
22 gate amount of funds needed to provide con-
23 tinuation coverage to uncovered individuals.

24 (c) CONSIDERATION BY BOARD.—Not later than 30
25 days after the date on which the Guaranty Fund receives

1 a completed application from a State under subsection (b),
2 the Board shall make a determination with respect to pay-
3 ments to the States.

4 (d) LIMITATION.—The aggregate amount that may
5 be paid to a State under this section with respect to a
6 single uncovered individual shall not exceed \$300,000.

7 (e) USE FOR CONTINUATION COVERAGE.—

8 (1) IN GENERAL.—A State may use amounts
9 provided under this section to provide for the con-
10 tinuation of health care coverage for an uncovered
11 individual through a health maintenance organiza-
12 tion or other health care coverage that has been de-
13 termined appropriate by the official responsible for
14 regulating health insurance in the State in collabora-
15 tion with the Board.

16 (2) LIMITATION.—The period of continuation
17 coverage with respect to an uncovered individual
18 under paragraph (1) shall terminate on the earlier
19 of—

20 (A) the date that is 1 year after the date
21 on which the health maintenance organization
22 was declared insolvent; or

23 (B) or the date on which the contractual
24 obligation of the health maintenance organiza-
25 tion to the individual was to terminate.

1 (f) REPAYMENT OF FUNDS.—The State shall repay
2 to the Guaranty Fund an amount equal to—

3 (1) any amounts not utilized by the State on
4 the date on which the liquidation of the insolvent or-
5 ganization is completed; and

6 (2) any amounts recovered through liquidation
7 that have not been accounted for in the application
8 of the State under subsection (b)(2)(A).

9 **SEC. 5. CONTRIBUTIONS TO THE GUARANTY FUND.**

10 (a) ASSESSMENT ON HEALTH MAINTENANCE ORGA-
11 NIZATIONS.—

12 (1) IN GENERAL.—Not later than January 1,
13 2001, and every 6 months thereafter, each health
14 maintenance organization that is licensed by a State
15 to provide health care coverage shall pay to the
16 Guaranty Fund an amount to be determined in ac-
17 cordance with an assessment schedule to be estab-
18 lished by the Secretary not later than 180 days after
19 the date of enactment of this Act.

20 (2) DEFERMENT.—The Board, after consulta-
21 tion with the official responsible for regulating
22 health insurance in the State involved may exempt,
23 abate, or defer, in whole or in part, the assessment
24 of a health maintenance organization under para-
25 graph (1) if the organization demonstrates that the

1 payment of the assessment would endanger the abil-
2 ity of the organization to fulfill its contractual obli-
3 gations or place the organization in an unsound fi-
4 nancial condition.

5 (3) PROHIBITION.—A health maintenance orga-
6 nization shall not adjust the amount of premiums
7 paid by enrollees to account for the assessment paid
8 under paragraph (1).

9 (b) FAILURE TO PAY.—A health maintenance organi-
10 zation that fails to pay an assessment under subsection
11 (a)(1) within 30 days after the date on which such assess-
12 ment was to be paid shall be subject to a civil penalty
13 in an amount not to exceed \$1,000 per day.

14 **SEC. 6. STATE PREEMPTION.**

15 (a) IN GENERAL.—Nothing in this Act shall be con-
16 strued to preempt or supersede any provision of State law
17 that establishes, implements, or continues in effect any
18 standard or requirement relating to health maintenance
19 organizations.

20 (b) DEFINITION.—In this section, the term “State
21 law” means all laws, decisions, rules, regulations or other
22 State actions that have the effect of law.

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