

CHAPTER 49

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

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

C.26:2J-45 Findings, declarations relative to special interim assessment on HMOs.

1. The Legislature finds and declares that:
 - a. When the "Health Maintenance Organizations Act" took effect in 1973, among its purposes was the recognition and encouragement of the fledgling industry of health maintenance organizations as the emerging alternative model for health care delivery systems; and
 - b. Part of this encouragement by the Legislature was the authority granted to insurance companies and nonprofit service corporations to operate, either directly or through a subsidiary or affiliate, a health maintenance organization, or to join together or contract with a health maintenance organization, to provide insurance or protection against the cost of health care; and
 - c. At the same time, the act exempted health maintenance organizations from the provisions of the insurance and service corporation laws under most circumstances, and excluded charges paid by or on behalf of enrollees of a health maintenance organization with respect to health care services from the State's insurance premium tax; and
 - d. Now, more than 30 years later, there has been a proliferation of health maintenance organizations, or HMO's, organized and operated according to myriad business models and various other business organizations designed to offer various health care services; and
 - e. The regulatory and tax structures that developed as these various health care delivery systems developed and evolved over this span of time are essentially the same as those that were in place 30 years ago, even though the marketplace has been a dynamic and creative one throughout that same time frame; and
 - f. Meanwhile, the cost of reimbursing hospitals for the services they provide for the health care needs of the uninsured population, more commonly referred to as "charity care," has grown exponentially, with a concomitant urgency to identify, capture and retain appropriate revenue streams to fund that care; and
 - g. Every sector of the New Jersey business community, including insurers, health service corporations and health maintenance organizations, contributes, either directly or indirectly, to the costs of charity care, although it is unclear whether inequities currently exist in the manner and proportions in which the various entities contribute, and in particular whether health maintenance organizations bear their fair share of the burden, given their varied business models and corresponding tax obligations; and
 - h. It is time to examine and compare how the several health maintenance organizations, service corporations, insurers, and other health care delivery systems and providers are taxed, how they contribute to charity care funding, and whether adjustments need to be made to the current tax structure to respond to the evolution of the industry; and
 - i. While the Legislature awaits the conclusions and recommendations of such an examination, it is imperative that an interim source of additional revenue be identified, pledged and appropriated to charity care funding in the ensuing fiscal year.

C.26:2J-46 Study of tax revenues received from HMOs, other health care delivery systems.

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

- (1) the continued viability of the public policy behind the 1973 exemption of health maintenance organizations from taxation on enrollee charges, otherwise known as premiums;
- (2) the various business models under which health maintenance organizations, health service

corporations, insurers, and other health care delivery systems operate; and

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

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

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

C.26:2J-47 Issuance of special interim assessment for FY2005.

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

(2) "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).

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

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

C.26:2J-25 Statutory construction and relationship to other laws.

25. Statutory construction and relationship to other laws.

a. Except as otherwise provided in this act, provisions of the insurance law and provisions of hospital, medical or health service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this act. This provision shall not apply to an insurer or hospital, medical or health service corporation licensed and regulated pursuant to the insurance laws or the hospital, medical or health service corporation laws of this State except with respect to its health maintenance organization activities authorized and regulated pursuant to this act. Charges paid by or on behalf of enrollees of a health maintenance organization with respect to health care services shall not be subject to taxation by the State or any of its political subdivisions, except as otherwise provided in section 3 of P.L.2004, c.49 (C.26:2J-47) for the purpose of the special interim assessment issued pursuant thereto.

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

c. Any health maintenance organization authorized under this act shall not be deemed to be practicing medicine and shall be exempt from the provisions of chapter 9 of Title 45, Medicine

and Surgery, of the Revised Statutes relating to the practice of medicine.

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

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

5. This act shall take effect immediately.

Approved June 29, 2004.