

# ASSEMBLY, No. 3116

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JUNE 21, 2004

**Sponsored by:**

**Assemblyman JOHN S. WISNIEWSKI**

**District 19 (Middlesex)**

**Co-Sponsored by:**

**Senator Buono**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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

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

6

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

9

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

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

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

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

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

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

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

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

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

**Matter underlined thus is new matter.**

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

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

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

16

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

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

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

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

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

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

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

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

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

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

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

35 25. Statutory construction and relationship to other laws.

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

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

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

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

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

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

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

29 STATEMENT  
30

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

36 The bill also directs the State Treasurer and the Commissioner of  
37 Banking and Insurance to undertake a comparative study of the  
38 revenues received under the Corporation Business Tax Act (1945),  
39 P.L.1945, c.162 (C.54:10A-1 et seq.) from health maintenance  
40 organizations and any other health care delivery systems or health care  
41 providers subject to that tax, and those insurers, health service  
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6 appropriately identify and capture revenues which adequately reflect  
7 both the volume of business conducted by those entities and the costs  
8 to the State of the operation of those various businesses in the State,  
9 as well as the current and anticipated future demands the State's  
10 charity care obligation will place on the General Fund and other State  
11 resources.

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