

(H. B. 2576)

(No. 172-2015)

(Approved October 8, 2015)

AN ACT

To amend Sections 2-A and 2-B of Article IV of Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” in order to conform the power of the Health Insurance Administration to authorize financing and revolving financing in accordance with its fiscal reality and be able to honor the commitments of the Health Insurance Administration with the insurance companies and providers that render services to the Health Plan of the Government of Puerto Rico, and establish a severability clause.

STATEMENT OF MOTIVES

Act No. 72 of September 7, 1993, as amended, (hereinafter Act No. 72) created the Puerto Rico Health Insurance Administration (hereinafter ASES, Spanish acronym) in order to implement, administer, and negotiate through contracts with insurers and/or health services organizations, a health insurance system which shall eventually provide all the residents of Puerto Rico access to quality medical and hospital care.

In addition to the power to negotiate and contract with insurers, Article IV, Section 2 of Act No. 72 grants ASES the power to perform all the acts that are necessary and convenient to fulfill the purposes of this Act, except that ASES shall not have the power to pledge the credit of the Commonwealth of Puerto Rico or of any of its political subdivisions.

In addition to the aforementioned functions and powers, Act No. 72 of September 7, 1993 granted ASES the power to establish an administrative and

financial structure that will allow it to manage its funds and revenues, administer cash and make disbursements.

In 2011, the previous government administration approved Senate Bill 2271, which became Act No. 205-2011. Such legislation added a new Section 2B and amended Sections 3 and 4 of Article IV of Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” in order to authorize the Health Insurance Administration to obtain from the Government Development Bank, or from any other private financial institution, a revolving credit line for the sum authorized by the Government Development Bank for Puerto Rico; establish that the sum authorized shall be determined by the amount of federal funds to be received according to the approval and certification of the Government of the United States of America, taking into consideration the necessary adjustments, among other matters.

The need for such legislation was declared in its Statement of Motives, which expressed, where pertinent, the following:

In the past months, we witnessed how differences in government philosophy between most members of our Nation’s Congress and President Barack Obama almost left the federal government without the money to meet its obligations. Fortunately, Congress and the President reached a preliminary agreement that, for the moment, prevented programs nurtured with federal funds, such as Mi Salud, from being affected.

It is our responsibility to be ready in the event that any future situation should occur which would make it difficult to transfer said funds to the state coffers. Likewise, even though these fund transfers are not at risk, the bureaucratic processes of the Federal Government sometimes cause certain delays in making the same available in the coffers of the Government of Puerto Rico. In the case of Medicaid funds, any delay in the availability thereof would affect ASES’ capacity to make timely payments to the insurers

that administer Mi Salud which, in turn, affect payments to Government Plan providers. Failure to take action to address this situation could jeopardize the health of our People.

In view of the foregoing, it is essential to identify a mechanism that enables ASES to have sufficient funds to meet its obligations in a timely manner if delays in federal fund transfers occur without having to compromise the budget of the Government.

This measure authorizes ASES to apply for a revolving credit line from the Government Development Bank for Puerto Rico (GDB) or any other private financial institution. This line would make it possible for said corporation to have sufficient funds to meet their obligations with health service insurers or providers while ASES receives the transfers of the corresponding funds from the federal government. Repayment for this credit line shall be guaranteed by the funds transferred to the Government of Puerto Rico to provide services to the population that participates in the Island's Medicaid program. It shall be the obligation of ASES to use said funds primarily to pay the credit line awarded by the GDB. This Legislative Assembly deems it to be in the best interests of Mi Salud Program participants to prevent our health plan from being affected by situations that are foreign to its normal operation. For such reason, it is deemed reasonable to allow ASES to apply for a revolving credit line from the GDB, so it may have the cash flow needed to meet its obligations, thus ensuring no interruptions in payments to providers and in rendering of health services to the beneficiaries of Mi Salud. (Excerpt from the Statement of Motives of Act No. 205-2011).

Currently, the Health Insurance Administration receives about \$1.5 billion in federal funding each year. Furthermore, it receives income in the form of contributions made by the Municipal Revenue Collection Center (CRIM, Spanish acronym), prescription drug rebates and employer contributions to public employees covered under the Government Health Plan. Notwithstanding the foregoing, federal

funds impact the current government administration's financing due to the nature of the Medicaid program, which is carried out through reimbursement. Therefore, we cannot lose sight of the fact that federal matching funds are contingent on the availability of local funds; thus, a lack of local funds could result in the loss of federal funding.

In November 2014, private banking institutions decided not to renew the ASES's credit line. On November 14, 2014, a credit line was negotiated with the Government Development Bank to replace the credit provided by private banking institutions. On March 17, 2015, the GDB opted not to renew ASES's credit line due to their fiscal situation. It is public knowledge that ASES has made several efforts to obtain a line of credit to replace the one provided by the Government Development Bank. Unfortunately, these efforts have not been fruitful.

In view of this serious situation, the Committee on Health of the House of Representatives began to analyze and assess possible alternatives that could help the Administration address the lack of cash flow in order to pay the providers of the Government Health Plan and to the insurers that manage the Government Health Plan. After several meetings between the governing bodies of the Administration and officials of the fiscal entity of the Executive Branch (to wit: the Health Insurance Administration, the Government Development Bank, the Office of Management and Budget, and the Department of the Treasury), the Committee on Health of the House of Representatives deemed it necessary to expand the financing authority of the Health Insurance Administration.

In view of the foregoing, and in order to honor ASES's commitments to physicians, hospitals, pharmacies, and laboratories, among other providers and insurance companies that offer services to the Government Health Plan, this Legislative Assembly deems it meritorious and necessary to seek alternatives in order to expand ASES's financing authority to find an immediate solution to the

Administration's cash flow problem. Given the fiscal situation of the Government of the Commonwealth of Puerto Rico, it is essential to obtain fiscal resources through different existing financing methods in order to stabilize payments for services rendered and settle the remaining debt with the health services providers that work with the Government Health Plan, as well as prevent that patients of the Health Plan experience health service disruptions as a result of not solving this problem adequately.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 2-A of Article IV of Act No. 72 of September 7, 1993, as amended, known as the "Puerto Rico Health Insurance Administration Act," is hereby amended to read as follows:

"Section 2-A.- Authorization for Financing.

a) The Administration is hereby authorized to borrow, incur in financial obligations and take out any kind of loan, up to a principal sum not to exceed four hundred million dollars (\$400,000,000.00) under the terms and conditions approved by the Board of Directors of the Administration and the Government Development Bank, in its capacity as fiscal agent of the Government of Puerto Rico and its instrumentalities.

b) The moneys derived from the aforementioned obligations may only be used for the payment of debts incurred with insurers and health service providers, as well as with other Administration suppliers, as established through a resolution approved by the Board of Directors. The Board of Directors shall provide the mechanisms it deems convenient or necessary to ensure that such funds derived from these credit facilities are used solely and exclusively for the aforementioned purposes.

(c) ...

(d) ...

(e) ...”

Section 2.- Section 2-B of Article IV of Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” is hereby amended to read as follows:

“Section 2-B.- Authorization for Revolving Financing.

(a) The Administration is hereby authorized to incur obligations through a revolving credit line, term loan, or any other credit facility in an amount to be determined by the Board of Directors of the Administration and approved by the Government Development Bank for Puerto Rico. However, such instruments shall never be greater than the grants in effect at the time its issuance. The credit line, fixed-term loan, or other credit facility, as the case may be, and hereby authorized, may be taken through the Bank or any private financial institution. The credit line used for the payment of services rendered by insurance companies or health service providers, as well as for any financing expense. For such purposes, the Administration shall be required to identify the funds to repay, in full and within a reasonable time, the principal and interests, as well as the costs associated with said financing. The repayment of said financing shall not be conditioned to the refinancing of the principal due on the loan’s maturity date.

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) As used in this Section, the term ‘Bank’ shall mean the Government Development Bank for Puerto Rico.”

Section 3.- Severability Clause.

If any clause, paragraph, subparagraph, article, provision, section, subsection, chapter, subchapter or part of this Act were held to be void or unconstitutional by a competent court, said holding shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of said holding shall be limited to the clause, paragraph, subparagraph, article, provision, section, subsection, chapter, subchapter, or part thereof thus held to be void or unconstitutional.

Section 4.- Effectiveness.

This Act shall take effect upon its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 172-2015 (H. B. 2576)** of the **6th Regular Session** of the **17th Legislative Assembly of Puerto Rico**:

AN ACT amend Sections 2-A and 2-B of Article IV of Act No. 72 of September 7, 1993, as amended, known as the “Puerto Rico Health Insurance Administration Act,” in order to conform the power of the Health Insurance Administration to authorize financing and revolving financing in accordance with its fiscal reality and be able to honor the commitments of the Health Insurance Administration with the insurance companies and providers that render services to the Health Plan of the Government of Puerto Rico, and establish a severability clause.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 19th day of May, 2022.

Mónica Freire-Florit, Esq.
Director