

HOUSE BILL No. 4330

March 2, 1989, Introduced by Reps. Gire, Weeks, Gubow, DeBeaussaert, Pitoniak, Webb, Hart, Niederstadt, Harrison, Watkins, Barns, Clack, Brown, Perry Bullard, Crandall, DeLange, Runco, Martin, Johnson, Dolan and DeMars and referred to the Committee on Insurance.

A bill to amend section 402 of Act No. 350 of the Public Acts of 1980, entitled

"The nonprofit health care corporation reform act,"

being section 550.1402 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 402 of Act No. 350 of the Public Acts of
2 1980, being section 550.1402 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 402. (1) A health care corporation shall not do any of
5 the following:

6 (a) Misrepresent pertinent facts or certificate provisions
7 relating to coverage.

8 (b) Fail to acknowledge promptly or to act reasonably and
9 promptly upon communications with respect to a claim arising
10 under a certificate.

1 (c) Fail to adopt and implement reasonable standards for the
2 prompt investigation of a claim arising under a certificate.

3 (d) Refuse to pay claims without conducting a reasonable
4 investigation based upon the available information.

5 (e) Fail to affirm or deny coverage of a claim within a rea-
6 sonable time after a claim has been received.

7 (f) Fail to attempt in good faith to make a prompt, fair,
8 and equitable settlement of a claim for which liability has
9 become reasonably clear.

10 (g) Compel members to institute litigation to recover
11 amounts due under a certificate by offering substantially less
12 than the amounts due.

13 (h) By making reference to written or printed advertising
14 material accompanying or made part of an application for cover-
15 age, attempt to settle a claim for less than the amount which a
16 reasonable person would believe was due under the certificate.

17 (i) For the purpose of compelling a member to accept a set-
18 tlement or compromise in a claim, make known to the member a
19 policy of appealing from administrative hearing decisions in
20 favor of members.

21 (j) Attempt to settle a claim on the basis of an application
22 which was altered without notice to, or knowledge or consent of,
23 the subscriber under whose certificate the claim is being made.

24 (k) Delay the investigation or payment of a claim by requir-
25 ing a member, or the provider of health care services to the
26 member, to submit a preliminary claim and then requiring

1 subsequent submission of a formal claim, seeking solely the
2 duplication of a verification.

3 (l) Fail to promptly provide a reasonable explanation of the
4 basis for denial of a claim or for the offer of a compromise
5 settlement.

6 (m) Fail to promptly settle a claim where liability has
7 become reasonably clear under 1 portion of a certificate in order
8 to influence a settlement under another portion of the
9 certificate.

10 (2) In order to induce a person to contract or to continue
11 to contract with the health care corporation for the provision of
12 health care benefits or administrative or other services offered
13 by the corporation; to induce a person to lapse, forfeit, or sur-
14 render a certificate issued by the health care corporation; or to
15 induce a person to secure or terminate coverage with another
16 health care corporation, insurer, health maintenance organi-
17 zation, or other person, a health care corporation shall not,
18 directly or indirectly:

19 (a) Issue or deliver to the person money or any other valu-
20 able consideration.

21 (b) Offer to make or make an agreement relating to a certif-
22 icate other than as plainly expressed in the certificate.

23 (c) Offer to give or pay, or give or pay, directly or indi-
24 rectly, a rebate or part of the premium, or an advantage with
25 respect to the furnishing of health care benefits or administra-
26 tive or other services offered by the corporation except as
27 reflected in the rate and expressly provided in the certificate.

1 (d) Make, issue, or circulate, or cause to be made, issued,
2 or circulated, ~~any~~ AN estimate, illustration, circular, or
3 statement misrepresenting the terms of a certificate or contract
4 for administrative or other services, the benefits thereunder, or
5 the true nature thereof.

6 (e) Make a misrepresentation or incomplete comparison,
7 whether oral or written, between certificates of the corporation
8 or between certificates or contracts of the corporation and
9 another health care corporation, health maintenance organization,
10 or other person.

11 (3) A HEALTH CARE CORPORATION OR AN EMPLOYEE OR AGENT OF A
12 HEALTH CARE CORPORATION SHALL NOT INDUCE A PERSON TO CANCEL OR
13 OTHERWISE TERMINATE A MEDICARE SUPPLEMENTAL CERTIFICATE OR INSUR-
14 ANCE POLICY AND REPLACE IT WITH A MEDICARE SUPPLEMENTAL CERTIFI-
15 CATE THAT HAS FEWER AGGREGATE BENEFITS AND THE SAME OR GREATER
16 PREMIUM THAN THE CANCELED CERTIFICATE OR POLICY OR THAT HAS EQUAL
17 AGGREGATE BENEFITS AND A GREATER PREMIUM THAN THE CANCELED POLICY
18 OR CONTRACT.

19 (4) A HEALTH CARE CORPORATION OR AN EMPLOYEE OR AGENT OF A
20 HEALTH CARE CORPORATION SHALL NOT INDUCE A PERSON TO CANCEL OR
21 OTHERWISE TERMINATE A LONG-TERM CARE CERTIFICATE OR INSURANCE
22 POLICY AND REPLACE IT WITH A LONG-TERM CARE CERTIFICATE THAT HAS
23 FEWER AGGREGATE BENEFITS AND THE SAME OR GREATER PREMIUM THAN THE
24 CANCELED CERTIFICATE OR POLICY OR THAT HAS EQUAL AGGREGATE BENE-
25 FITS AND A GREATER PREMIUM THAN THE CANCELED POLICY OR COVERAGE.

26 (5) ~~(3)~~ Nothing in subsection (2), (3), OR (4) shall
27 prevent a health care corporation from readjusting the rates

1 charged to a subscriber group which is experience-rated based on
2 the previous claims of the group.

3 (6) ~~-(4)-~~ The commissioner shall allow a health care corpo-
4 ration to participate in any trade practice conference for dis-
5 ability insurers convened under section 2047 of THE INSURANCE
6 CODE OF 1956, Act No. 218 of the Public Acts of 1956, being sec-
7 tion 500.2047 of the Michigan Compiled Laws, and may bind a
8 health care corporation to any rules promulgated as provided in
9 that section.

10 (7) ~~-(5)-~~ Nothing in this section shall alter or supersede
11 any provider class plan established pursuant to part 5.

12 (8) ~~-(6)-When~~ IF the commissioner has probable cause to
13 believe that a health care corporation is violating, or has vio-
14 lated subsection (1), indicating a persistent tendency to engage
15 in conduct prohibited by that subsection, or has probable cause
16 to believe that a health care corporation is violating, or has
17 violated subsection (2), (3), OR (4), he or she shall give writ-
18 ten notice to the corporation, pursuant to the administrative
19 procedures act OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969,
20 BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS,
21 setting forth the general nature of the complaint against the
22 corporation and the proceedings contemplated under this section.
23 Before the issuance of a notice of hearing, the staff of the
24 bureau of insurance responsible for the matters which would be at
25 issue in the hearing shall give the corporation an opportunity to
26 confer and discuss the possible complaint and proceedings in
27 person with the commissioner or a representative of the

1 commissioner, and the matter may be disposed of summarily upon
2 agreement of the parties. This subsection shall not be construed
3 to diminish the right of a person to bring an action for damages
4 under this section.

5 (9) ~~-(7)-~~ A hearing held pursuant to subsection ~~-(6)-~~ (8)
6 shall be held in accordance with section 2030 of Act No. 218 of
7 the Public Acts of 1956, as amended, being section 500.2030 of
8 the Michigan Compiled Laws. The hearing shall be held pursuant
9 to the administrative procedures act OF 1969, ACT NO. 306 OF THE
10 PUBLIC ACTS OF 1969. If, after the hearing, the commissioner
11 determines that the health care corporation is violating, or has
12 violated subsection (1), indicating a persistent tendency to
13 engage in conduct prohibited by that subsection, or ~~has probable~~
14 ~~cause to believe that the corporation~~ is violating, or has vio-
15 lated subsection (2), (3), OR (4), the commissioner shall reduce
16 his or her findings and decision to writing, and shall issue and
17 cause to be served upon the corporation a copy of the findings
18 and an order requiring the corporation to cease and desist from
19 engaging in the prohibited activity. The commissioner may at any
20 time, by order, and after notice and opportunity for a hearing,
21 reopen and alter, modify, or set aside, in whole or in part, an
22 order issued by him or her under this subsection, when in his or
23 her opinion conditions of fact or law have so changed as to
24 require that action, or if the public interest so requires.

25 (10) ~~-(8)-~~ A health care corporation which violates a cease
26 and desist order of the commissioner issued under subsection
27 ~~-(7)-~~ (9), after notice and an opportunity for a hearing, and

1 upon order of the commissioner, may be subject to a civil fine of
2 not more than \$10,000.00 for each violation.

3 (11) ~~-(9)-~~ In addition to other remedies provided by law, an
4 aggrieved member may bring an action for actual monetary damages
5 sustained as a result of a violation of this section. If suc-
6 cessful on the merits, the member shall be awarded actual mone-
7 tary damages or \$200.00, whichever is greater, together with rea-
8 sonable attorneys' fees. If the health care corporation shows by
9 a preponderance of the evidence that a violation of this section
10 resulted from a bona fide error notwithstanding the maintenance
11 of procedures reasonably adapted to avoid the error, the amount
12 of recovery shall be limited to actual monetary damages.