

HOUSE BILL No. 4369

March 7, 1989, Introduced by Reps. Runco, Palamara, Brown, Porreca, Bartnik, Dutko, Rocca, Weeks, Webb, Saunders, Stallworth, Jaye, Willis Bullard, Middaugh, Van Singel, Fitzgerald, Sikkema, Law, Trim, Hoekman, Crandall, Wartner and Clack 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 estimate, illustration, circular, or statement
3 misrepresenting the terms of a certificate or contract for admin-
4 istrative or other services, the benefits thereunder, or the true
5 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 SHALL NOT PROVIDE A COMMISSION
12 OR OTHER COMPENSATION TO THE HEALTH CARE CORPORATION'S AGENT OR
13 EMPLOYEE PURSUANT TO THE SALE OR SERVICE OF A HEALTH CARE BENE-
14 FITS CERTIFICATE ISSUED TO AN INDIVIDUAL ELIGIBLE FOR MEDICARE,
15 INCLUDING A CERTIFICATE PROVIDING LONG-TERM CARE COVERAGE, UNLESS
16 THE PERCENTAGE OF THE COMMISSION OR COMPENSATION PAID IN THE
17 FIRST YEAR OF THE CERTIFICATE IS NOT MORE THAN THE PERCENTAGE OF
18 THE COMMISSION OR COMPENSATION FOR WHICH THE HEALTH CARE
19 CORPORATION'S AGENT OR EMPLOYEE MAY RECEIVE IN THE 2 SUBSEQUENT,
20 CONSECUTIVE RENEWAL PERIODS FOR THE CERTIFICATE.

21 (4) ~~(3)~~ Nothing in subsection (2) shall prevent a health
22 care corporation from readjusting the rates charged to a sub-
23 scriber group which is experience-rated based on the previous
24 claims of the group.

25 (5) ~~(4)~~ The commissioner shall allow a health care corpo-
26 ration to participate in any trade practice conference for
27 disability insurers convened under section 2047 of Act No. 218

1 of the Public Acts of 1956, being section 500.2047 of the
2 Michigan Compiled Laws, and may bind a health care corporation to
3 any rules promulgated as provided in that section.

4 (6) ~~-(5)-~~ Nothing in this section shall alter or supersede
5 any provider class plan established pursuant to part 5.

6 (7) ~~-(6)-When~~ IF the commissioner has probable cause to
7 believe that a health care corporation is violating, or has vio-
8 lated subsection (1), indicating a persistent tendency to engage
9 in conduct prohibited by that subsection, or has probable cause
10 to believe that a health care corporation is violating, or has
11 violated subsection (2) OR (3), he or she shall give written
12 notice to the corporation, pursuant to the administrative proce-
13 dures act OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING
14 SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS, setting
15 forth the general nature of the complaint against the corporation
16 and the proceedings contemplated under this section. Before the
17 issuance of a notice of hearing, the staff of the bureau of
18 insurance responsible for the matters which would be at issue in
19 the hearing shall give the corporation an opportunity to confer
20 and discuss the possible complaint and proceedings in person with
21 the commissioner or a representative of the commissioner, and the
22 matter may be disposed of summarily upon agreement of the
23 parties. This subsection shall not be construed to diminish the
24 right of a person to bring an action for damages under this
25 section.

26 (8) ~~-(7)-~~ A hearing held pursuant to subsection ~~-(6)-~~ (7)
27 shall be held in accordance with section 2030 of THE INSURANCE

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

20 (9) ~~-(8)-~~ A health care corporation which violates a cease
21 and desist order of the commissioner issued under subsection
22 ~~-(7)-~~ (8), after notice and an opportunity for a hearing, and
23 upon order of the commissioner, may be subject to a civil fine of
24 not more than \$10,000.00 for each violation.

25 (10) ~~-(9)-~~ In addition to other remedies provided by law, an
26 aggrieved member may bring an action for actual monetary damages
27 sustained as a result of a violation of this section. If

1 successful on the merits, the member shall be awarded actual
2 monetary damages or \$200.00, whichever is greater, together with
3 reasonable attorneys' fees. If the health care corporation shows
4 by a preponderance of the evidence that a violation of this sec-
5 tion resulted from a bona fide error notwithstanding the mainte-
6 nance of procedures reasonably adapted to avoid the error, the
7 amount of recovery shall be limited to actual monetary damages.